

SUSHIL KUMAR  
v.  
MOTI RAM AND ANR.

AUGUST 26, 1996

[N.P. SINGH AND FAIZAN UDDIN, JJ.]

*Constitution of India, 1950 : Article 142.*

*Interest of parties—Order passed by Court—Houses purchased by appellant's grandfather in the name of appellant but later sold to appellant's step-mother—Suit filed by appellant for permanent injunction restraining his father and step-mother from interfering with his possession—Suit, first and second appeals dismissed—Appellant in possession of house throughout—Offered half portion of house to step-mother—Held : In the circumstances of the case, offer made by person shall be in the interest of both parties—Hence, order issued accordingly.*

The appellant's grandfather purchased a house in the name of the appellant, but later sold the house to the appellant's step-mother. The appellant filed a suit for permanent injunction restraining his father and step-mother (respondents) from interfering with the possession of the appellant. The suit as well as first and second appeals were dismissed. Being aggrieved the appellant preferred the present appeal.

On behalf of the appellant it was contended that the appellant was prepared to give half portion of the house to his step-mother, Respondent No. 2, and to deliver possession of that portion in order to have a peaceful settlement.

On behalf of the respondents it was suggested that the Court could pass any appropriate order taking all the facts and circumstances into consideration as well as the interest of the parties concerned.

Allowing the appeal, this Court

Held : 1. The offer made on behalf of the appellant shall be in the interest of both the parties. In view of the admitted position that the respondent No. 2 is not in possession of the house in question and for one reason or the other the appellant has continued in possession of the said

**A** house throughout, it would be in the interest of Respondent No. 2 also that she is given possession of the half portion of the house as offered on behalf of the appellant. The appellant shall remain in possession of the half portion of the house and deliver possession of the remaining half portion to the Respondent No. 2. [213-C-D]

**B** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1187 of 1987.

From the Judgment and Order dated 26.3.85 of the Allahabad High Court in S.A. No. 1894 of 1978.

**C** D.K. Garg for the Appellants.

R.S. Sodhi for the Respondents.

The Judgment of the Court was delivered by

**D** N.P. SINGH, J. When this appeal was taken up for hearing on August 8, 1996 the following order was passed :

**E** "The appellant is the son of Respondent No. 1 born through his first wife, one Smt. Chandro. In the year 1943 the mother of the appellant died. Respondent No. 1 married Smt. Satwant Kaur (Respondent No. 2) in the year 1946. On April 12, 1948 the grandfather of the appellant purchased the disputed house in the name of the appellant. However, on May 19, 1949 the grand-father of the appellant sold the said disputed house for a consideration of Rs. 2,000 in favour of the step-mother of the appellant i.e.

**F** Respondent No. 2. The suit in question was filed on July 2, 1974 on behalf of the appellant for permanent injunction restraining the Respondent Nos. 1 and 2 from interfering with the possession of the appellant. That suit was dismissed by the Civil Judge. The appeal filed on behalf of the appellant was also dismissed. The High Court also dismissed the second appeal filed on behalf of the

**G** appellant. It appears to be an admitted position that the appellant has remained in possession of the house throughout. However, learned counsel appearing for the appellant made an offer that the appellant was prepared to give half portion of the house to Respondent No. 2 and is also prepared to deliver possession of

**H** that portion in order to have peaceful settlement. Mr. Sodhi,

learned counsel appearing for the respondents stated that the matter be listed on some other day when he will inform in respect of the attitude of the respondents. If the settlement is arrived at, memo of settlement should be filed on that date." A

Mr. Sodhi, learned counsel appearing for the respondents on August 20, 1996 informed that he could not receive any instructions from the respondents in respect of the offer made on behalf of the appellant on August 8, 1996. But he suggested that the Court may pass any appropriate order taking all the facts and circumstances into consideration as well as the interest of the parties concerned. According to us, the offer made on behalf of the appellant shall be in the interest of both the parties. In view of an admitted position that the respondent No. 2 is not in possession of the house in question and for one reason or the other the appellant has continued in possession of the said house throughout, it would be in the interest of Respondent No. 2 also that she is given possession of the half portion of the house as offered on behalf of the appellant. Accordingly, we allow the appeal in terms of the offer made on behalf of the appellant. The appellant shall remain in possession of the half portion of the house and deliver possession of the remaining half portion to the respondent No. 2 within three months from today. The appeal is allowed to the extent indicated above. There shall be no order as to costs. B  
C  
D

V.S.S.

Appeal allowed. E