(1999) 07 DEL CK 0097

In the Delhi High Court

Case No : IA No''s. 5496/98 and 417/99 in Suit No. 1336 of 1998

Ajit Narain APPELLANT

Vs

Shri Arti Singh and Others RESPONDENT

Date of Decision : 26-07-1999

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4

Citation : (1999) 5 AD 932 : (1999) 81 DLT 355 : (1999) 51 DRJ 40

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Shri V.K. Makhija and Ms. Vandana Khurana, for the Appellant; Shri P.N. Lekhi and S/Shri Aman Lekhi and Pramod, for the Respondent

Judgement

Mukul Mudgal, J.—is No. 5496/98 is an application under Order XXXIX Rules 1 and 2 of the CPC for ad interim injunction filed by the plaintiff and is No. 417/99 under Order XXXIX Rule 4 of the Code on behalf of the defendants for vacation of the interim order dated 13th July, 1998.

2. The plaintiff seeks by his suit a declaration that the documents i.e. general power of attorney and other documents in respect of property bearing No. 110, Jor Bagh New Delhi (first and second floor) would not come into operation till 31st December, 1999 and only in the event the plaintiff does not return the due amount. A decree for permanent injunction was also sought restraining the defendants from acting upon or using the General Power of Attorney and any other related documents in respect of the property in question. The plaintiff has further prayed for permanent injunction against the defendants from alienating, disposing off or creating any third party right, title or interest in the property in question.

3. It is the case of the plaintiff, Shri Ajay Narain, that he is the owner of the property bearing No. 110, Jor Bagh, New Delhi. In 1986 he had rented the second floor of the property to defendant No. 1 Smt. Aarti Singh, to begin with and thereafter the first floor of the property in 1990 was rented to defendant No.

1. In 1992 defendant No. 1 married defendant No. 2, Shri Kanwar Raj Singh. Since the plaintiff had very good relations with the defendants Therefore all the ceremonies of the defendants'' marriage were performed in the ground floor of the disputed property, where the plaintiff and his family resides. The plaintiff further alleged that due to cordial relations between the parties monetary transactions had taken place and he has referred to a loan of Rs. 1,50,000/- given by the plaintiff to the defendants without any documentation. The plaintiff''s further case is that in the year 1996 for starting a mew business he needed a loan of about Rs. 50-60 lacs and due to the cordial relations between the parties the defendants readily agreed to give a loan to the plaintiff and sought some sort of security. Accordingly at first the plaintiff had offered documents of his commercial property at Kasturba Gandhi Marg which was not acceptable to the defendants and consequently the defendants sought the documents of second floor of the property in question as a security. The plaintiff''s case is that this was desired by the defendant to arrive at some sort of comfort level for the loan extended to the plaintiff. Accordingly the defendants got the documents such as 2 General Power of Attornies. Agreement to Sell and other related documents etc. prepared and asked the plaintiff to sign them. The defendants had declined to accept an equitable mortgage as the property already stood mortgaged in favor of a bank. It is further stated that due to tremendous amount of faith and trust between the parties the plaintiff did not bother to read the text of the documents and blindly signed the same and gave them to the defendants on 6th December,1996. After the documents were handed over to defendant No. 1, he gave three cheques totaling Rs. 8 lacs dated 9th December, 1996 and thereafter defendant No. 2 also gave a bank draft of Rs. 5 lacs on 11th December, 1996 thereby giving a total sum of Rs. 13 lacs to the plaintiff. The defendants thereafter persuaded the plaintiff to get the documents registered with the Sub-Registrar and the plaintiff in good faith got these documents registered with the Sub-Registrar on 12th December, 1996.

4. In September, 1997 the plaintiff sought some more money due to his expansion place and asked for more loan for the defendants. A similar transaction was gone through now in respect of first floor of the property in question and more loan was secured by the plaintiff. It is stated by the plaintiff that he was preoccupied due to his involvement with the affairs of his son who had met with an accident which lead to a fatality. The defendant No. 2 further approached the plaintiff that since the NDMC was harassing him for a ports cabin built in the barsati floor he requested the plaintiff to sign some more documents and forms for seeking time to regularise the structure and also to sign 3/4 blank letter heads. Due to the pre occupation with his son''s accident, the plaintiff hurriedly signed the documents and also some blank letter heads but did not take copies of these documents. In February 1998 the plaintiff sought further loan and for securing the said loan the agreement to sell etc. were got executed for the first and second floors due to the defendants averment that the agreements earlier executed have been misplaced by them. Since the agreement

to sell was only taken as a security and the plaintiff required more loan he agreed to execute a fresh set of documents in respect of the first and second floors of the property in dispute.

5. On 30th March, 1998 the defendant No. 1 got the documents prepared in respect of the second floor of the property including the General Power of Attorney, Agreement to Sell, Will and certain Special Power of Attornies were also singed by the plaintiff. These documents were got registered with the Sub Registrar on 30th March, 1998. Along with the signing of the documents the defendant No. 2 gave a cheque of Rs. 15 lacs to the plaintiff.

Only upon the visit of an employee of NDMC the plaintiff became aware of the plans of construction of the 1st & 2nd floors which according to the plaintiff had been secured by the defendants by misusing the blank signed letter heads and the form which were given by him. On 30th March, 1998 the plaintiff returned a sum of Rs. 45 lacs in cash to the defendants and obtained a receipt and acknowledgement from the defendants.

6. On 23rd June, 1998 through the conversation between their servants the plaintiff came to know that the defendants were claiming to have become the owners of first and second floors of the property. Upon the plaintiff''s queries the defendants asserted their rights of ownership with them and accordingly the plaintiff by a revocation deed revoked all the general power of attornies and other documents executed by him in respect of the property bearing No. 110, Jor Bagh, New Delhi. He also made a fresh Will bequeathing his property to his wife and son. The plaintiff also took out a public notice in the Statesman dated 26th June, 1998 for revocation of the documents in respect of property No. 110, Jor Bagh, New Delhi. Consequently the plaintiff has filed the present suit and an interim order on is 5496/98 was granted on 13th July, 1998 to the plaintiff by this Court restraining the defendants from transferring alieniating or parting with the possession of the first and second floors of the property bearing No. 110, Jow Bagh, New Delhi.

7. The present application is 5496/98 filed by the plaintiff is coming up for confirmation of the said interim order dated 13.7.98 and is No. 417/99 is filed under Order XXXIX Rule 4 of CPC by the defendants for the vacation of the interim order.

8. The defendants have denied the pleas of the plaintiffs and have asserted that the documents executed clearly evidenced the intention of the plaintiff to sell the property and the receipt of Rs. 45 lacs set up by the plaintiff was a blatant forgery. Upon the said denial by the plaintiff this Court by the order dated 6th November, 1998 referred the documents for examination by CFSL which by its report dated 7th January, 1999 found the signatures on the documents to be forged.

9. Pursuant to the report of the CFSL the matter has now come up for hearing. The plaintiff''s case is that the receipt dated 30th April, 1998, the documents at

pages 11 and 11A were allegedly executed by defendants 1 and 2. The plaintiff having taken a positive stand regarding the aforesaid return of the loan is bound by the reliance upon the said receipts. Prima facie the receipts have been found to be forged by the CFSL and the natural consequence of this view would be the vacation of the interim order passed by this Court because the plaintiff has taken a plea which is based on a document which at the moment has not been found to be genuine. The plaintiff must demonstrate in such a situation very compelling reasons to avoid vacation of the interim order. The plaintiff has not been able to do so and on the contrary even if the effect of the documents examined by the C.F.S.L. is ignored than there are several other circumstances which prima facie indicate that the interim orders should be vacated.

10. Shri V.K. Makhija, learned senior counsel for the plaintiff has submitted that the report of the CFSL prepared by Shri Nehra deserves to be ignored because of the track record of Mr. Nehra and the earlier reports made by him having been commented adversely upon. He further submitted that the said report has not been admitted and without cross examination of the proponent of the report it cannot be relied upon. He further submitted that the handwriting expert''s report is at best a weak type of evidence and for this he relied upon the judgment of the Supreme Court reported as S. Gopal Reddy Vs. State of Andhra Pradesh, and Smt. Bhagwan Kaur Vs. Shri Maharaj Krishan Sharma and Others, . He has also relied upon a judgment of the Supreme Court in Bhagwan Kaur''s case to contend that the evidence of a handwriting expert, unlike that of a fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed. He further submitted that no prejudice would be caused to the defendants by interim order.

11. Mr. Lekhi, learned Senior Counsel for the respondents has submitted that the case set up by the defendant is self contradictory. He has relied upon the plaint of a suit No. 957 of 1999 filed in the Court of a Civil Judge was filed after the filing of the present suit in which an averment was made that since the beginning of the year 1988 the defendants''s conduct towards the plaintiff has been nasty after the plaintiff asked the defendants to vacate the tenancy premises for the occupancy of his two sons who are of marriageable age. If this submission made in the plaint before the Civil Judge, Delhi is correct than he submitted that the averment in the plaint in this Court that due to good relations between the parties, documents purporting to be sale but infact documents for securing a loan were executed between the parties on 30th March, 1998 is clearly contradictory. He further submitted that the comparison of the two plaints demonstrate that the plaintiff''s case is not bona fide and his action are fraudulent. He has also submitted that in this view of the matter no injunction can be granted and the injunction obtained earlier cannot be continued to obtain an undue advantage. Mr. Lekhi has further pointed out several other anomalies and contradictions in the stand of the plaintiff, particularly, in the context of the two suits filed by the plaintiff to contend that the interim injunction deserved to be vacated.

12. Dehors the aforesaid question documents there are sufficient features in this case to demonstrate prima facie that the plaintiffs case is not bona fide and is a strategum to avoid the consequences of the agreement to sell for which full payment was received by the plaintiff. It is a significant to note that the plaintiff has pleaded that due to excellent relations with the defendants, the defendants has advanced a sum of Rs. 1,50,000/- for which there was no documentation. Furthermore the learned counsel for the defendants has relied upon a plaint of a suit filed by the plaintiff against the defendants in the trial court praying for an injunction against the defendants restraining them from raising unauthorised construction or alteration in the first and second floors. It was pleaded as under by the plaintiff in the said plaint:

"That since the beginning of the year 1998, the defendant No. 1 has been showing nasty conduct towards the plaintiff ever since the plaintiff asked the defendant No. 1 to peacefully and amicably vacate the tenancy premises in question owing to the fact that the plaintiff has two sons who are almost of the marriageable age and hence the plaintiff requires more accommodation but instead of listening to the plaintiff, the defendant No. 1 has started misbehaving and quarreling with the plaintiff."

13. This plaint was filed in May, 1998 well after the filing of the present suit in the High Court on 9th July, 1998. The stand taken by the plaintiff before the Civil Judge, is since the beginning of the year 1998 the plaintiff asked defendant No. 1 to vacate the premises peacefully for the purpose of his two sons who are also of marriageable age and the defendant stated acting hastily. This case set up in the suit No. 957 of 1998 filed in the Court of Civil Judge, Delhi clearly contradicts the case of the plaintiff in this Court that due to good relations between the parties he signed some documents purporting to be a sale in respect of the property as late as on 30.3.98 though in fact the transaction was a loan transaction. If the defendants had been getting nasty from the beginning of the year 1998 towards the plaintiff he could not have signed & executed and registered such documents on 30th March, 1998. In the face of the averments in the suit before the Civil Judge that since the beginning of the year after the plaintiff asked the defendant to hand over the tenancy premises he had been acting nasty, no person acting reasonably could have executed the documents which are the usual documents for sale of properties in Delhi on 30.3.98 in such a situation. The documents have also been registered for which also no Explanation is forthcoming from the plaintiff.

14. The stand in the suit in this Court is clearly contradicted by the plea in the suit before the Civil Judge, Furthermore the plaintiff is a businessman upon his own showing and thus his plea that he signed documents of such importance blindly is far fetched. The plaintiff has thus failed to make out a prima facie case for continuance of the interim injunction granted on 13th July, 1998. There is no Explanation in the pleadings or arguments as to why the plaintiff who for his loan of Rs. 1,50,000/- did not execute any documents was persuaded not only to sign

the documents where loan was given by the defendant but also to have them registered. At least the factum of registration should have alerted the plaintiff. Furthermore the documents executed i.e. (a) Power of Attorney, (b) Agreement to sell, (c) Will (d) The power of attorneies to deal with local authorities such as NDMC etc., clearly leads to the prima facie conclusion that the plaintiff had gone through a transaction of sale. These documents are the routine documents executed when a sale of immovable property takes place in Delhi and the execution and further registration of the documents thus primafacie indicates that what was intended was a sale of the property and not the loan as alleged by the plaintiff.

15. However, in view of the above discussions it is unnecessary to go into pleas relating to the genuineness of the receipt of Rs. 45 laks at this stage. It is also clear this that the plaintiff has neither a prima facie case nor is the balance of convenience is in his favour. It is also, there-fore, unnecessary to consider the other pleas raised by Mr. Lekhi, learned senior counsel for the respondents.

16. Accordingly, the ad interim order dated 13rth July, 1998 restraining the defendants from transferring, alienating or parting with possession of the premises on the first and second floors of 110 Jor Bagh, New Delhi, passed in is No. 5496 of 1998 stands vacated. S. No. 1336/98.

17. Suit be listed for completion of the pleadings before the Joint Registrar on 10th November, 1999.

