

(1981) 02 BOM CK 0025

In the Bombay High Court

Case No : Notice of Motion No. 1608 of 1980 (In Suit No. 1916 of 1970)

B.S. Patel

APPELLANT

Vs

Vadilal Dolalram and Sons and Others

RESPONDENT

Date of Decision : 05-02-1981

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : AIR 1982 Bom 66 : (1981) 83 BOMLR 599 : (1982) MhLj 252

Hon'ble Judges : Mody, J

Bench : Single Bench

Advocate : M. Ghelanl and S.J. Rahimtoola, for the Appellant; J.J. Mehta and H.H. Mody, for the Respondent

Judgement

Mody, J.—This is an application by the defendants under the provisions of S. 52 of the Transfer of Property Act for relief from lis pendens. The grounds urged in the affidavit-in-support of this application are, inter alia, that the plaintiff's suit is for specific performance of an alleged agreement which is oral only, that the 1st defendant from which has allegedly agreed to sell the property consists of partners who are very old and that they are not helped in the business by their sons who have their own independent business, that none of the defendants reside at the suit property, that the property is a valuable property worth about Rs. 20 lacs and that the defendants desire to wind up the affairs of the partnership and the main thing necessary for the purpose is to sell the property. The affidavit thereafter proceeds to narrate shortly the circumstances surrounding the alleged agreement and concludes that the entire case in the plaint is false and that the suit is filed only with a view to prevent the defendants from selling the property pending the suit. It is contended that in fact the plaintiff has no cause of action at all and that the reason why the plaintiff did not apply for interim relief. If it is stated that in the present uncertain conditions in the present property market, the defendants are anxious to sell the property and that several enquiries were received but the purchaser is not willing to make an agreement in view of the suit. From the said affidavit, one fact is clearly,

emerges is that enquiries have been received from purchasers and it can therefore be safely presumed that the value of the property mentioned in the affidavit is obviously based on the said enquiries, and therefore, the value of about Rs. 20 lacs can be said to be a fair market value according to the defendants.

2. Mr. Mehta took me through the facts of the case with a view to convince me that the plaintiff does not have any case or in any event a very weak prima facie case. The made out in the plaint is so weak as is hardly likely that the plaintiff will succeed in the suit. After Mr. Mehta completed his arguments, the case was adjourned for negotiations and it is being heard today.

3. Mr. Ghelani for the plaintiff states that his client is prepared to buy the said property for a price of Rs. 21,33,000/- which is equivalent to the value of the property as alleged by the defendants themselves and give up rest of the claim. This offer is not acceptable to the defendants.

4. The principles applicable to granting of relief from *lis pendens* are not available in any reported case nor are they given in the section. The being free from any reported case I have to form my own view as to what are the principles which are to be applied. Though, there cannot be an exhaustive enumeration of principles one thing is clear that this is a discretionary order and *lis pendens* is a rule and relief is an exception and strong grounds must be made out to deprive the plaintiff of the fruits of litigation.

5. This being a discretionary relief, it will depend on the several circumstances which *inter alia*, can be, the nature of the plaintiff's case and the defence, the nature of property market and the circumstances of the defendants. If the Court is convinced on the affidavits and the proceedings that even it all the evidence was led by the parties there is a very strong probability that the plaintiff will lose the matter. It will be a very important factor, possibly conclusive for granting relief. The Court will also have to consider the inconvenience and injustice that is likely to be caused to the defendants if the relief is not granted and balance it with the inconvenience and injustice that is likely to be caused to the plaintiff if the relief from *lis pendens* is granted. While comparing this comparative injustice and inconvenience. The Court must necessarily take into consideration the price at which the property is allegedly agreed to be sold originally and the present market value. In case the plaintiff offers to purchase the property at the value of the property on the date of application as alleged by the defendant then no injustice can be caused to the defendants if condition is imposed that the defendants should sell the property to the plaintiff at the price or application is refused. However, if in addition in this the plaintiff is willing to give up rest of his claim this will counter additional benefit on the defendants and the balance will certainly tilt in favour of the plaintiff.

6. When the plaintiff has filed the suit and there is some evidence to show possibility of an agreement having been arrived at supported by the facts of

exchange of draft agreement and the letter of authority given in favour of the architect and when the plaintiff offers to buy the property at the present market value claimed by the defendants, and which is not accepted. It will be one of the strong grounds for refusing the relief of *lis pendens* as it discloses the bona fide of the plaintiff as against the bona fide of the plaintiff as against the act or bona fides of the defendants. If the plaintiff offers a rate market value as on the date of the application of relief and when he has some case though it may be weak, it cannot be said that his claim is imaginary and if the defendants are not willing to sell at the present value alleged by the defendants themselves, it will be one of the grounds for refusing the relief from *lis pendens*. In an application of present type, the main purpose of the defendants in most cases has to be to get proper market value and avoid possible future loss caused because of delay in litigation. The defendant is not entitled to make it a matter of prestige, by insisting on selling the property to outsiders though he is getting a fair market value from the plaintiff.

In the circumstances notice of motion is dismissed. Costs, cost in the cause.

7. Notice of motion dismissed.