**(1993) 01 DEL CK 0021**

**In the Delhi High Court**

**Case No :** Leave Application No. 6688 of 1991 and Suit No. 1511 of 1993

Hari Mohan Sharma and Others APPELLANT

Vs

CSR Poultry Research and Breeding Farm RESPONDENT

**Date of Decision :** 28-01-1993

**Acts Referred:**

**Citation :** AIR 1993 Delhi 293 : (1994) 53 DLT 486 : (1993) 25 DRJ 187 : (1993) RLR 163

**Hon'ble Judges :** Sagar Chand Jain, J

**Bench :** Single Bench

**Advocate :** Arun Mohan, Sanjay Aggarwal, Y.P. Narulla, Shashi Kala Warroi and P.S. Shroff, for the Appellant;

## Judgement

S.C. Jain, J.

(1) This application has been filed on behalf of the plaintiffs under Order 39 Rules 1-2 and Order 40 Rule 1 CPC for appointment of a receiver with the direction to assume possession of the property in dispute and then to hand over the same to the plaintiff. Relief of mandatory injunction directing the defendants to hand over the possession of the property in suit to the plaintiff has also been claimed.

(2) In brief the facts of the case as are apparent on record are that on the basis of agreement to sell dated 14.9.90 entered into between Shri Charanjit Singh Rekhi and his wife Smt Manjit Kaur Rekhi, herein-after called respondent-defendant and Shri Hari Mohan Sharma and others, hereinafter referred to as the plaintiffs-applicants. Shri Hari Mohan Sharma and others filed a suit for specific performance praying for a decree for specific performance against the defendant seeking direction to the defendant to specifically perform the agreement dated 14.9.90 and transfer the possession of property in village Narsinghpur in Haryana and village Ghitorni in Delhi and a decree for recovery of Rs 10 lakhs for damages has also been claimed. In this suit, which is still pending, this application for appointment of a receiver and for handing over possession of the property has been filed by the plaintiffs-applicants alleging therein that the

plaintiffs have already paid Rs.l,01,00,000.00 as sale consideration and that now the respondents-defendants are trying to band over possession of land to somebody else to create complications. It would be just and convenient that a receiver of the property in suit be appointed to take possession of the property and make inventory and then to hand over the same to the plaintiff. The property is to be preserved to prevent unnecessary complication.

(3) Mr Arun Mohan Senior Advocate, counsel for the applicants argued that the respondents-defendants took a loan from Punjab & Sind Bank, Green Park branch New Delhi against the said property and title deeds were deposited with the bank. They could not repay the loan amount which necessitated the Punjab & Sind Bank to file a suit for recovery of Rs.42,06,676.02 which was decreed on 5.2.85 against the respondents-defendants. Punjab & Sind Bank filed execution (Ex- 32/85) by which they sought sale of the property for recovery of their dues. Ultimately vide order dated 1.8.86 Shri T.S.Ahuja Manager of the Punjab & Sind Bank and S. Kanwaljeet Singh (brother of Smt Manjit Kaur Rekhi ) were directed to advertise the property for sale. The sale could not materialise though efforts were made by the Joint Receivers for that purpose. Punjab & Sind Bank approached plaintiff No.1 and the plaintiff offered Rs 6 lakhs to Punjab & Sind Bank in October, 89. Accepting the offer of the respondents-defendants the plaintiffs entered into the agreement on 4.9.90 for transfer of the said property. A sum of Rs 3 lakh was paid to respondents- defendants by the plaintiff and later on the balance amount was also paid to Punjab & Sind Bank. The plaintiffs have been and are ready to perform their part of the obligation under the agreement. They have paid the entire money and they have prima facie case to get the possession of the property. He cited a decision of this court reported in Air 1980 Del 140, wherein, in a suit for specific performance, this court directed the delivery of possession to the .plaintiff and that order was upheld by the Supreme Court. According to learned counsel the fact remains that but for the plaintiff''s money (Rs 98 lakhs) in execution proceedings the court would have ordered auction of the property and the defendants could have had no objection.

(4) Learned counsel for the respondents-defendants countered the arguments of Mr Arun Mohan, and submitted that the decree in favor of Punjab & Sind Bank was not a mortgage decree. The property in suit was never mortgaged with the bank and Therefore, the question of sale of equity of redemption could not have arisen. It was a simple money decree. He also argued that in the agreement for sale which is otherwise void, nowhere any authority has been given to the plaintiffs-applicants to deposit or to pay money to the bank directly. The sale consideration was to be paid to the defendants and it was for them to discharge the liability of the bank. The bank being not the owner of this property, the payment allegedly made to the bank cannot be said to be payment made to the owner as sale consideration. He further argued that one of the property is situated outside Delhi and this court has no jurisdiction. The plaintiffs-applicants breached the sale agreement inasmuch as they deposited the money into the bank before 31.1.91. As per this agreement, the respondent-defendants were to

 

pay the decretal amount and to get the decree satisfied and in default it was only after 31.1.91 that the payment could have been made to the bank by the applicants/plaintiffs and. that too not directly but through the defendants. He also argued that by paying money direct to the bank, the defendants have been deprived of the benefit which they would have gat under the Rbi Scheme for 1984 Victims and the act of the plaintiffs has disentitled the respondents from claiming remission in interest from the bank. There is no cause for appointment of receiver inasmuch there is no such allegation that the property is going to be wasted. He relied upon the decision of Rajeshwar Nath Gupta Vs. Administrator General and Others, wherein it has been laid down that where there is bonafide defense which has been set up and where the proposition of law is arguable, it is nor advisable for the court to appoint a receiver to take possession of immovable property from the defendants unless and until, the court is of the opinion that there is a well founded fear that the property in question will be dissipated or that other irreparable mischief may be done unless the court gives a protection. If more than a prima fade case is made out by the plaintiff to the likelihood of the suit being decreed, and if there is no tangible defense raised by the defendants, and if manifest, injustice would be done if interim injunction is not granted then the court would in exceptional circumstances be justified in granting interim relief.

(5) The court shall be guided by the following five requirements in the matter of appointment of a receiver :-

1)THE appointment of a receiver pending a suit is a matter resting in the discretion of the court. 2)The court should not appoint a receiver except upon proof by the plaintiff that prima fade he has a very excellent chance of succeeding in the suit. 3) Not only must the plaintiff show a case of adverse and conflicting claims to property but he must show some emergency or danger or loss demanding immediate action and of his own right be must be reasonably clear and free from doubt. The element of danger is an important consideration. 4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a de facto possession since that might cause irreparable wrong. It would be different where the property is shown to be ''in medio'' that is to say, in the enjoyment of no one. 5) The court on the application made for the appointment of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame.

(6) In this matter, as per own case of the plaintiffs, they deposited the sale consideration with Punjab & Sind Bank directly and not on the instructions of the defendants-plaintiffs. The Punjab & Sind Bank is not the owner of the property in dispute. Only a decree has been passed for the recovery of certain amount which the defendants have to pay. It is not mortgage decree. The question of sale of equity of redemption could not have arisen in this case. A perusal of the agreement shows that the term of payment in the present case is one of the

 

essential term of the agreement. The plaintiff is bound to tender the amount to the defendants. In the present case, the agreement between the parties is that the balance sale consideration would be paid for payment of the liability of the bank. The defendants were entitled to pay the decretal amount up to 31.1.91 and it was only after this date the plaintiffs got the right to deal with the bank as agreed by the defendants as mentioned in clause (iii). Whatever may be the position, plausible defense has been raised by the respondents -defendants in the suit for specific performance, the possession of the property is with the defendant and there is no apprehension even on prima facie ground that the property would be wasted, damaged and destroyed when particularly the defendants have undertaken to keep the property in their possession and maintain status quo till the disposal of the suit.

(7) The facts of the decision relied upon by the plaintiffs-applicants Air 1980 Del 140 arc different from the facts of the present case. In that case payment was made to the actual owner, but here payment was not made to the actual owner i.e. respondent-defendant but to the bank, who is not owner of the property. The bank has only a simple money decree against the respondents- defendants and this property is not a mortgaged property. The property is attached and execution proceedings are already pending.

(8) Keeping in view the circumstances explained, I do not find it a fit case where a receiver can be appointed or mandatory injunction can be granted as prayed for. However, the defendants-respondents are restrained from alienating, disposing of, transferring or otherwise parting with possession of the property in suit except with the permission of the court. Ordered accordingly.

(9) For completion of pleadings, submission of original documents, admission/ denial of documents to be listed before the Deputy Registrar on 10.4.93. Thereafter the matter be listed before the Court for framing of issues and further proceeding;.

 