

(2011) 03 P&H CK 0618

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2166 of 2011 (O and M)

Kamal Kant Gupta

APPELLANT

Vs

Smt. Shashi Sawhney and Others

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Constitution of India, 1950 — Article 227

Citation : (2011) 03 P&H CK 0618

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ram Chand Gupta, J.

C.M. No. 8623-24-CII of 2011

1. Both the applications are allowed subject to all just exceptions.

C.R. No. 2166 of the 2011

2. The present revision petition has been filed under Article 227 of the Constitution of India for quashing of orders dated 16.8.2010 and 21.2.2010, Annexures P8 and P9, passed by Courts below vide which application filed by Petitioner-Plaintiff for ad interim injunction order under Order 39 Rules 1 and 2 read with Section 151 of the CPC (hereinafter to be referred as Rs. the Code") has been dismissed.

3. I have heard learned Counsel for the parties and have gone through the whole record carefully including the impugned orders passed by learned Courts below.

4. Brief facts relevant for the decision of present revision petition are that a suit for possession by way of specific performance of agreement to sell dated 24.1.1999 in respect of House No. 1169, Sector 8-C, Chandigarh, and in alternate, for recovery of Rs. 10 lacs as damages was filed by present Petitioner-

Plaintiff against Respondents-Defendants No. 1 to 4 on the brief allegations that Smt. Sumitra Gadhoke, mother of Defendants and wife of late Shri Bishambar Nath Gadhoke, resident of House No. 1169, Sector 8-C, Chandigarh, was the owner of the said house and during her lifetime, she entered into an agreement to sell the house in dispute on 12.7.1997 for consideration of Rs. 18,50,000/-and in case vacant possession was to be delivered the price was settled at Rs. 21,50,000/-. Part of the ground floor of the said house was already in possession of Smt. Sumitra Gadhoke and she agreed to deliver the vacant possession of the same. Subsequently, another agreement dated 24.1.1999 was executed between the parties. Earlier Rs. 2.00 lacs were paid and thereafter Rs. 2,20,000/-were paid. The last date for execution of the sale-deed was fixed as 31.12.2000. Smt. Sumitra Gadhoke also filed ejectment petition against the tenants occupying portion of the said house. She died on 3.11.2002 leaving behind her legal heirs. Plaintiff was always ready and willing to perform his part of the contract and however, on refusal of Defendants to get the sale deed executed in his favour as per the agreement, the present suit for possession was filed. Respondents - Defendants No. 1 to 4 filed written statement contesting the suit on the ground that no such agreement was executed by their mother in favour of Petitioner-Plaintiff. However, it is admitted that Smt. Sumitra Gadhoke during her lifetime filed ejectment petition against tenants occupying portion of the house in dispute.

5. An application under Order 39 Rules 1 and 2 read with Section 151 of the Code for ad interim injunction order was filed by present Petitioner-Plaintiff against original Respondents-Defendants No. 1 to 4, and the same was disposed of vide order Annexure P5 by learned trial Court directing Respondents No. 1 to 4 to brought to the notice of the proposed vendee regarding the present pending litigation.

6. During pendency of the said suit, the house in dispute was sold by Respondents No. 1 to 4 to Respondents No. 5 to 7 and hence, they were also impleaded as a party in the present suit.

7. Another application under Order 39 Rules 1 and 2 read with Section 151 of the Code was filed by Petitioner-Plaintiff restraining Defendants from demolishing, renovating and from altering the structure of the premises in dispute as well as for further alienating or letting out the house in dispute. The prayer was opposed by Respondents-Defendants No. 5 to 7 on the plea that they have become owner of the same by sale for consideration. The said application was dismissed by learned trial Court by observing that as during pendency of suit, Respondents No. 5 to 7 have become owners of the property in dispute, they are having right to deal with the same, in any manner, they like. Appeal filed against the said order by present Petitioner-Plaintiff was also dismissed by learned first appellate Court.

8. It has been contended by learned Counsel for the Petitioner-Plaintiff that Respondents No. 5 to 7 have purchased the house in dispute during pendency of the present suit and that there is no dispute that they were duly informed by

Respondents No. 1 to 4 about pending litigation as per order of the Court and hence, it is contended that they cannot be said to be a bona fide purchasers. It is further contended that property in dispute was sold by Respondents No. 1 to 4 to Respondents No. 5 to 7 who are impleaded as parties in the suit and now they intend to further alienate the same as they are builders and have given an advertisement for the same, Annexure P10. It is further contended that they have already demolished the house in dispute despite injunction order issued by Courts below and now they intend to raise construction over the same and intend to sell the same to different persons. Hence, it is contended that in order to avoid multiplicity of litigation between the parties, Respondents-Defendants No. 5 to 7 be restrained from further alienating the property in dispute. It is also contended that nature of property in dispute in present position be also maintained during pendency of the present suit as an irreparable loss would be caused to Petitioner-Plaintiff if Respondents-Defendants are permitted to raise de novo construction after demolishing the property in dispute.

9. On the other hand, it has been argued by learned Counsel for Respondents No. 5 to 7 that Smt. Sumitra Gadhoke was not owner of the house in dispute and house in dispute was in the name of her husband, namely, Bishambar Nath Gadhoke and that after his death, the same was inherited by his daughter Aisha, i.e., one of the Defendants, vide Will dated 7.11.1972. It is further contended that sale deed was executed in their favour by all the daughters of deceased Bishambar Nath and hence, it is contended that Petitioner-Plaintiff is having no prima facie case in his favour.

10. So far as contention of learned Counsel for Respondents No. 5 to 7 that Smt. Sumitra Gadhoke was not owner of the property in dispute and that rather one of the daughters of Bishambar Nath had become owner by way of registered Will is concerned, no such plea was taken by Respondents-Defendants No. 1 to 4 in the written statement before selling the property in dispute to Respondents No. 5 to 7. Moreover, it is a matter to be decided after evidence being led by the parties as to whether Smt. Sumitra Gadhoke wife became sole owner of the house in dispute after death of her husband or as to whether Respondent-Defendant No. 1 Aisha alone became the owner of the same by virtue of will allegedly executed in her favour by Bishambar Nath deceased. Moreover, had this been the fact, the sale deed would have been executed in favour of Respondents No. 5 to 7 by Aisha alone and not by all the daughters of deceased Bishambar Nath. Moreover, in ejectment petition filed by deceased Smt. Sumitra Gadhoke against one of the tenants, application for impleading Defendants No. 1 to 4 as a party was filed which is Annexure P4, and in the said application, it has been admitted by Defendants No. 1 to 4 that earlier suit Smt. Sumitra Gadhoke was owner and that they are her legal heirs.

11. At this stage, only prima facie case, balance of convenience and the fact as to whether irreparable loss would be caused to Petitioner-Plaintiff if ad interim injunction order is not granted to him, are to be seen.

12. Prima facie, Petitioner-Plaintiff is having agreement to sell in his favour duly executed by deceased Smt. Sumitra Gadhoke wife of Bishambar Nath and mother of Respondents-Defendants No. 1 to 4. Suit for specific performance was filed by Petitioner-Plaintiff against all the four daughters of Smt. Sumitra Gadhoke deceased. Learned trial Court had directed Respondents No. 1 to 4 that if they intend to sell the same to some other person, he would be made aware of the pending litigation and as per affidavits filed on behalf of Respondents No. 1 to 4, the fact was brought to the notice of Respondents No. 5 to 7 and knowing fully well about the pendency of present litigation, they had purchased the property in dispute. Hence, it cannot be said that they are bona fide purchasers.

13. Petitioner-Plaintiff has been able to show that Respondents-Defendants No. 5 to 7 intend to further alienate the property in dispute by demolishing and reconstructing the same being builders and for that they have given advertisement, Annexure P10. Hence, in view of these facts, I am of the view that if Respondents No. 5 to 7 are permitted to further alienate the property in dispute to different buyers, the same would give rise to multiplicity of litigation. Hence, the property should be preserved during pendency of present suit. Learned Courts below have committed illegality and material irregularity in dismissing the application for ad interim injunction filed by Petitioner-Plaintiff for restraining Respondents No. 5 to 7 from further alienating the property in dispute and from further raising construction over the same.

14. It has been held by Hon'ble Apex Court in Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, that temporary injunction cannot be declined on the basis that alienation will be subject to law of lis pendens and construction raised will be at own risk. It is further held that unless and until the case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. Relevant paragraph reads as under:

9. Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the Respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the Respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the Appellant's claim being found

baseless ultimately, it is always open to the Respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the Respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.

15. Hence, in my view, on the basis of *lis pendens*, the relief of temporary injunction regarding alienation of the suit property cannot be decided. If injunction is not granted, then the Petitioner-Plaintiff would suffer an irreparable loss and injury, which cannot be compensated in terms of money and will rather lead to further multiplicity of litigation. Respondent-Defendants have failed to show to this Court as to how they are going to suffer any irreparable loss or damage, if injunction is granted in favour of Petitioner-Plaintiff. The order passed by learned Courts below are not based on well established principle of law regarding granting of *ad interim* injunction. At this stage, rights of party with regard to agreement in question cannot be decided and the same would be decided by learned trial Court, after perusing evidence, which is to be led by both the parties. Petitioner-Plaintiff had already paid substantial amount to mother of Respondent-Defendants No. 1 to 4. No prejudice is going to be caused to Respondents-Defendants No. 5 to 7, if they are restrained from transferring the property in dispute as alienation during pendency of the suit is hit by doctrine of *lis pendens*. For this view, reliance has also been placed upon a judgment rendered by a coordinate Bench of this Court in *Smt. Rita Toor v. Logical Developers Pvt. Ltd.* 2010(2) PLR 499, wherein on the similar facts, Defendants were restrained from alienating the property in dispute during pendency of the suit.

16. In view of these facts, the present revision petition is accepted. Impugned order is set aside and as a consequence thereof, application under Order 39 Rules 1 and 2 read with Section 151 of the Code filed by present Petitioner-Plaintiff is accepted and Respondents No. 5 to 7 are restrained from alienating the property in dispute to third person during pendency of the present suit. They are also restrained from raising construction over the property in dispute during pendency of the suit.

17. However, it is made clear that nothing observed herein shall be construed to have any bearing on the decision of this case on merits by learned trial Court.