

(2009) 04 SC CK 0114

In the Supreme Court Of India

Case No : Civil Appeal No's. 2186-2187 of 2009 (Arising out of S.L.P. (C) No's. 12854-12855 of 2008)

Kishorsinh Ratansinh Jadeja

APPELLANT

Vs

Maruti Corp. and Others

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Transfer of Property Act, 1882 — Section 52
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20

Citation : AIR 2009 SC 2882 : (2009) AIRSCW 5236 : (2009) 2 AWC 2017
Supp : (2009) 5 JT 180 : (2009) 3 PLJR 73 : (2010) 1 RLW 101 : (2009) 5
SCALE 229 : (2009) 5 SCR 527 : (2010) 1 ShimLC 236 : (2009) 3 Supreme
337 : (2009) 3 UC 1659 : (2009) 4 UJ 1567

Hon'ble Judges : Cyriac Joseph, J;Altamas kabir, J

Bench : Division Bench

Advocate : Mukul Rohtgi, T. Mahipal, Kavin Gulati, Rashmi Singh, Avnish Pandey and Vimal M. Patel, for the Appellant; Arun Jeitley, Soli J. Sorabjee, Ranjit Kumar, Huzefa Ahmadi, Rajesh Dave, Ejaz Maqbool, Tauna Singh, Oardhuma Gohil, Manik Karanjawala, Rubby Singh Ahuja, M.R. Shamshad, Mukesh Verma and Yash Pal Dhingra, for the Respondent

Final Decision : Disposed Of

Judgement

Altamas Kabir, J.—Leave granted.

2. The appellant and the Respondent Nos. 2 to 7 are owners of agricultural land in Survey No. 36 measuring 32 acres and 38 gunthas situated in Village Nanamauva, Taluka & District Rajkot (hereinafter referred to as the `suit land'). On 19th March, 1980, the appellant and the other joint owners of the suit land entered into an Agreement with Tirupati Cooperative Housing Society - a proposed Cooperative Housing society - for development of the said land upon obtaining necessary permission u/s 20 of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the `Land Ceiling Act, 1976') for exemption

and for construction of houses for the weaker sections. The application made by the proposed Society on 29th April, 1988, u/s 20 of the Land Ceiling Act, 1976, was rejected and according to the appellant and other joint owners, on the failure of the proposed Society to get such permission, the Agreement could not be performed and, therefore, by Public Notice dated 24th April, 1988, the Agreement was declared to have been cancelled.

3. A legal notice was received from one Sharad N. Acharya, Advocate, denying that the Agreement had been cancelled, as indicated in the Public Notice. Despite cancellation of the Agreement, the Respondent No. 1 called upon the appellant to give effect to the Agreement dated 19th March, 1980, executed with the said respondent for development of the said land. The Respondent No. 1 thereupon filed Special Civil Suit No. 299 of 1999 on 29th November, 1999, before the Civil Court at Rajkot against the appellant, inter alia, praying for a declaration that the Respondent No. 1 was in possession of the suit land and for a decree for specific performance of the said Agreement. In the alternative, for a decree for refund of the earnest money of Rs. 1,81,000/- and for damages amounting to Rs. 16,30,670/- with interest @12% per annum. The Respondent No. 1 also filed an application for interim injunction to restrain the appellant from entering into the said land and disturbing the possession of the Respondent No. 1 and to further restrain the appellant from alienating the land to any third party. The Civil Court at Rajkot dismissed the said application by its order dated 29th April, 2002, against which the Respondent No. 1 filed appeal from Order No. 372/2000 before the Gujarat High Court, which was ultimately withdrawn with a direction for expeditious disposal of the suit within a period of 10 months. The suit was thereafter taken up for trial by the Civil Court at Rajkot, and by judgment and order dated 23rd November, 2007, while rejecting the prayer for specific performance, the Trial Court directed refund of the earnest money.

4. The Respondent No. 1, thereafter, filed an appeal on 15th February, 2008, being First Appeal No. 853/2008, along with an application, being Civil Application No. 2405/2008, inter alia, to restrain the respondents therein from transferring or alienating the land in question to any third party till the disposal of the appeal. Since the appellant was on caveat before the High Court, after hearing the parties, the Division Bench of the Gujarat High Court admitted the appeal but did not grant any stay, as prayed for, and only directed that if the property in question was dealt with in any way, that would be subject to the decision of the appeal.

5. Although, the Respondent No. 1 failed to obtain any order of injunction in the appeal, he issued a Public Notice through his learned Advocate on 7th March, 2008, asking the public not to deal with the property. In response thereto, the appellant also caused a Public Notice to be published on 10th March, 2008, clarifying that no injunction order had been passed by the Gujarat High Court. The said fact was brought to the notice of the Gujarat High Court by the Respondent No. 1 by way of an additional affidavit on the basis whereof, the High

Court passed an order on 22nd April, 2008, directing that the property in question should not be sold. Thereafter, on 6th May, 2008, a further application for injunction No. 5618/2008 was filed in the pending First appeal by the Respondent No. 1 herein indicating that constructions were being raised on the land in question. On the basis of the above, the Division Bench of the Gujarat High Court, on 7th May, 2008, passed the following order impugned in these appeals:

By this application, learned Counsel for the applicant submits that inspite of the directions of this Court issued vide orders dated 29.02.2008 and 22.04.2008, the constructions are being raised in the disputed land.

Learned Counsel Mr. Pahwa, the respondent No. 2 submits that the constructions were raised about 6 months back, and part of the property was already sold.

To avoid further complications and multiplicity of litigations, we order that no construction be raised on the disputed land. In spite of our direction, if further construction is raised, the applicant will be at liberty to approach the concerned police authority, and the concerned police authority is also directed to take immediate steps to stop the construction on the disputed land.

Civil application stands disposed of.

6. Appearing for the appellants, Mr. Mukul Rohtagi, submitted that the Respondent No. 1, Maruti Corporation (plaintiff in the suit), came to be registered as a partnership firm on 21st June, 1989, but has sought specific performance of an agreement alleged to have been entered into with the appellant on 19th March, 1980, executed on a Non-judicial stamp paper dated 17th March, 1990. Mr. Rohtagi urged that it was obvious that the claim of the Respondent No. 1 in the plaint had no valid, legal and/or factual foundation, on the basis of which the interim orders could have been passed by the High Court. He submitted that none of the three orders impugned in the appeal were speaking or reasoned orders. As the orders would themselves reveal, they were simply reactions to new facts brought to the notice of the Court from time to time and orders were passed on the basis thereof without even giving the appellant herein or other interested parties a proper opportunity of meeting the allegations or questioning the same. Mr. Rohtagi submitted that the several interim orders passed by the Division Bench were devoid of any reason and were liable to be set aside.

7. Mr. Ranjit Kumar, learned senior counsel, who appeared for the Respondent Nos. 2 to 7, who were the joint owners of the property with the appellant, while adopting Mr. Rohtagi's submissions, supplemented the same by contending that the original agreement with Tirupati Cooperative Housing Society stipulated that the said proposed Housing Society would have to apply to the authorities of the Land Ceiling Act, 1976, u/s 20 thereof, for exemption and leave to construct on the vacant land. Learned Counsel submitted that such application had been made by Tirupati Cooperative Housing Society, but the same was rejected and on such

rejection, a public announcement was made discontinuing the agreement between the owners of the land and the proposed Tirupati Cooperative Housing Society.

8. Mr. Ranjit Kumar urged that the owners of the property had never entered into any agreement with Maruti Corporation-Respondent No. 1 herein, which filed a suit identical to that filed by Tirupati Cooperative Housing Society, relying on the same cheques by which Tirupati had advanced certain sums to the owners of the property. Mr. Ranjit Kumar also urged that, in any event, even if the case of the Respondent No. 1 is accepted as correct, for 19 years it had not applied for exemption to develop the land u/s 20 of the Land Ceiling Act, 1976, without which it was not possible to develop the property. It is only after the repeal of the Land Ceiling Act, 1976, on 19th March, 1999, that the Respondent No. 1 filed the aforesaid suit seeking enforcement of an agreement alleged to have been entered into between the parties on 19th May, 1980, when exemption u/s 20 of the said Act was no longer required.

9. Mr. Ranjit Kumar submitted that initially when the First Appeal of the Respondent No. 1 was admitted in the Gujarat High Court, an order was also passed in Civil Application No. 2405 of 2008 to the effect that if the property in question was dealt with in any way the same would be subject to the decision in the appeal. Learned Counsel urged that since in its order the High Court had embodied the principles of Section 52 of the Transfer of Property Act, 1882 and there was no bar to the alienation of the property, as many as 280 plots had been sold to different purchasers by way of registered sale deeds and they had started construction on the plots which they had acquired presumably after obtaining necessary development permission sanctioned by the Rajkot Municipal Corporation. It was submitted that up to such point there could be no objection with regard to the orders passed in the First Appeal. Thereafter, when the interim order was modified on 22nd April, 2008, on the same application and the owners of the property were restrained from selling the same, the said modification, though not called for, was still capable of being defended.

10. The real problem was created when on 7th May, 2008, on a fresh Civil Application for Injunction No. 5618 of 2008 filed on 6th May, 2008, an order was passed by the Division Bench which not only had serious consequences for the transferees but also for the owners of the land who were parties to the suit. The order which has been extracted hereinabove directed that no construction be raised on the disputed land and if any further construction was raised, the Respondent No. 1 herein would be at liberty to approach the concerned police authorities who were directed to take immediate steps to stop the construction on the disputed land. Mr. Ranjit Kumar emphasised that the cryptic manner in which the said application was disposed of by such a mandatory order, was contrary to all legal principles and even procedural law. He submitted that no liberty to deal with the fresh application filed on 16.5.2008 was even given by the Division Bench to the respondents in the appeal and on the very next day on

7th May, 2008, without even giving any reasons for passing such an order, it disposed of the same finally to the severe prejudice of the appellant and the Respondent Nos. 2-7 herein and the 280 transferees to whom plots had been conveyed and that too when they were not parties to the appeal.

11. It was also submitted that no thought was even given to the principles embodied in Order XXXIX Rules 1 and 2 of the CPC before such a drastic order of injunction was passed by the High Court in the First Appeal. Mr. Ranjit Kumar submitted that the basic principles for granting injunction involving the making out of a prima facie case, the balance of convenience and inconvenience, and irreparable loss and injury, were not even taken into consideration when the orders of injunction were passed.

12. In addition to the above, Mr. Ranjit Kumar also referred to the decision of this Court in *Mandali Ranganna and Others etc. Vs. T. Ramachandra and Others*, wherein an additional principle was sought to be enunciated relating to grant of injunction by way of an equitable relief. This Court held that in addition to the three basic principles, a Court while granting injunction must also take into consideration the conduct of the parties. It was observed that a person who had kept quiet for a long time and allowed others to deal with the property exclusively would not be entitled to an order of injunction. The Court should not interfere only because the property is a very valuable one. Grant or refusal of injunction has serious consequences depending upon the nature thereof and in dealing with such matters the Court must make all endeavours to protect the interest of the parties.

13. Mr. Ranjit Kumar submitted that having filed the suit for enforcement of its purported rights under the Agreement of 1980 in the year 1999 and having allowed the owners of the property to deal with the same and certain rights having been created in favour of third parties when there was no restraint orders of the Courts, the High Court erred in granting such an interim order with such drastic consequences without even giving the persons, who were to be adversely affected by the order, an opportunity of being heard. 14. Opposing the submissions made on behalf of the appellant and the Respondent Nos. 2 to 7, Mr. Soli J. Sorabjee, learned senior counsel, submitted that it was necessary to clear the impression that had been given that the Respondent No. 1-Maruti Corporation came into existence only on 21st June, 1989. He submitted that, on the other hand, the Respondent No. 1 was in existence even in 1980, but as an unregistered partnership, and that it became a registered partnership on 21st June, 1989. Mr. Sorabjee submitted that the question of the existence of Maruti Corporation or the validity of the agreement executed between Maruti Corporation and the owners of the property would have to be considered on evidence and till a decision was arrived at in the matter, it was only appropriate that the status-quo of the property be maintained, particularly when a large number of transfers are alleged to have been made, which could make the relief sought for by the Respondent No. 1 a mere paper relief, if it ultimately succeeded.

15. Mr. Sorabjee also contended that when the application for a restraint order against construction was sought to be filed on 6th May, 2008, neither the appellant nor the other respondents had disclosed the fact that such transactions had already taken place and that the transferees had started raising their construction on the basis of such conveyances.

16. Mr. Sorabjee took pains to point out that while in the suit all the issues had been decided against the plaintiff, the issue relating to limitation had, however, been decided in favour of the plaintiff and it was held that the suit for specific relief was not barred by limitation. Mr. Sorabjee submitted that since the injunction order was in force since 7th May, 2008 and more than 10 months had passed since then, without disturbing the interim order of stay, the High Court could be requested to dispose of the First Appeal which is pending before it expeditiously.

17. Mr. Huzefa Ahmadi, who appeared for the Respondent No. 1 - Maruti Corporation in SLP (Civil) No. 12855 of 2008, while adopting Mr. Sorabjee's submissions, urged that the Tirupati Cooperative Housing Society had been created by Maruti Corporation with a definite object in mind. He submitted that the lands in question were agricultural in nature and could not, therefore, be acquired by any other body other than a cooperative society. It was on account of such bar that the Tirupati Cooperative Housing Society was proposed to be created on grounds of expediency and was yet to be registered. He also submitted that the payments made to the owners by Tirupati Cooperative Housing Society had been made from the account of Maruti Corporation and consequently when exemption u/s 20 of the Land Ceiling Act, 1976, was not granted to the proposed Cooperative Society, the Respondent No. 1 filed a separate suit for specific performance of the agreement which had been entered into with the Maruti Corporation and the payments made by Tirupati Cooperative Housing Society were shown to be the payments which had been made by Maruti Corporation. Mr. Ahmadi also submitted that Maruti Corporation could not apply for exemption u/s 20 of the Land Ceiling Act, 1976, and as a consequence it filed the suit for specific performance only after the said Act was repealed, thereby doing away with the necessity of obtaining exemption u/s 20 thereof. Mr. Ahmadi also contended that unless the appellant and the other joint owners of the property and their transferees were suitably restrained from dealing with the properties during the pendency of the two appeals before the first Appellate Court, the appeals would be rendered infructuous as it would become impossible once the constructions had come up, to revert back to the position when the plots were still undeveloped.

18. On a careful consideration of the submissions made on the behalf of the respective parties, the scenario which emerges is that while on the one hand the Respondent No. 1 is strongly in favour of the status quo of the suit lands being maintained during the pendency of the suit for specific performance filed by it, the appellant and the other joint owners have projected a case of both balance of

convenience and inconvenience and irreparable loss on being restrained from developing their own property by the Respondent No. 1, purportedly on the basis of a spurious document. Mixed with the aforesaid issues is the issue of the 280 transferees to whom plots have been conveyed by the owners and who were enjoying the same by raising structures which were at different stages of construction. We are faced with a situation where inspite of having obtained the said plots at a point of time when the injunction against the owners was not in force, the transferees, who were not even parties before the Court, have been restrained by an interim order of injunction of a mandatory nature which seriously affects them, but without giving them any opportunity of hearing.

19. We have to consider the effect of the third order passed on 7th May, 2008, on Civil Application for Injunction No. 5618 of 2008 filed of the previous day on 6th May, 2008, ordering that no construction be raised on the disputed lands on the 280 transferees who were in the process of raising their constructions. As will be apparent from the order itself, the same was passed in great haste without even giving the owners of the lands an opportunity of contesting the application. In fact, the application was disposed of by a cryptic order which does not even contain any reason for passing the same. The Division Bench has merely indicated that to avoid further complications and multiplicity of litigation, the order was being passed not to raise constructions on the disputed land, without even taking into consideration the several transferees who were to be adversely affected by such an order. Even the appellant herein and the Respondents No. 2 to 7 were not given an opportunity of filing any affidavit to counter the statements and allegations made in the application for injunction.

20. It is quite obvious that the High Court was completely oblivious to the facts of the case and passed different orders at different times on the applications filed at regular intervals by the Respondent No. 1 Corporation.

21. The reasoning provided in the interim order dated 22nd April, 2008, is, to say the least, legally untenable. Having passed an order earlier on 29th February, 2008, based on the principle of *lis pendens*, the Division Bench of the High Court in its second order dated 22nd April, 2008, observed that when the First Appeal was admitted and the matter in dispute as regards the property in question was sub-judice, the properties in question should not be sold and passed an order which was contrary to the initial order which was made in keeping with Section 52 of the Transfer of Property Act.

22. It is well established, that while passing an interim order of injunction under Order XXXIX Rules 1 and 2 CPC, the Court is required to consider three basic principles, namely,

- (i) *prima facie* case;
- (ii) balance of convenience and inconvenience; and
- (iii) irreparable loss and injury.

None of the said principles have been considered by the High Court while passing the second and third interim orders dated 22nd April, 2008 and 7th May, 2008, nor has the High Court taken into account the long silence on the part of the Respondent No. 1 Corporation in filing a suit after 19 years.

23. In our view, while passing the interim order dated 7th May, 2008, the High Court ought to have considered the effect which its order would have on the 280 transferees to whom some portions of the land had already been sold and who had commenced construction thereupon, particularly when they were not even parties in the appeal, nor were they heard before they were enjoined from continuing with the construction work. Such an order affecting third party rights in their absence, as they were not parties to the proceedings, cannot be sustained having further regard to the manner in which the said order was passed. An application for an order which would have far and wide reaching consequences was sought to be disposed of by the Division Bench on the very next day without giving an opportunity of controverting the allegations made therein even to those who were parties in the suit, though it had been brought to the notice of the Court that conveyances had been executed in favour of 280 purchasers. This is not a case where the appellant and the other co-owners had violated any restraint order passed by the Court in transferring the plots in question to the said 280 transferees. The said transfers were effected at a point of time when there was no injunction or restraint order against the appellant and the other owners of the property and as far as the said transfers are concerned, the only order that could have been passed on the said application is the order which was passed at the first instance on 29th January, 2008, based on the principles of Section 52 of the Transfer of Property Act, 1882. The restraint order on the transferees must, therefore, be held to be bad and liable to be set aside.

24. As far as the lands which the appellant and the other joint owners have been restrained from alienating by the second order dated 22nd April, 2008, are concerned, we are of the view that in the event the order of 22nd April, 2008, is set aside, the Respondent No. 1 can be compensated in terms of money and no irreparable loss and injury will be caused to it on account thereof. On the other hand, if the owners of the property remain restrained from developing the same, it is they, who will suffer severe prejudice, as they will be deprived of the benefit of the user of their land during the said period. The balance of convenience and inconvenience is against grant of such injunction. The success of the suit for specific performance filed by the Respondent No. 1 depends to a large extent on tenuous proof of genuineness of the agreement sought to be enforced after 19 years, despite the finding of the Trial Court that the suit was not barred by limitation.

25. The question of conduct of the Respondent No. 1 also becomes relevant, inasmuch as, having slept over its rights for more than 19 years, it will be inequitable on its prayer to restrain the owners of the property from dealing with the same, having particular regard to the fact that a large portion of the land has

already been conveyed to as many as 280 purchasers who are in the process of erecting constructions thereupon.

26. We are, therefore, unable to sustain the interim orders passed by the Division Bench of the Gujarat High Court on 22nd April, 2008 and 7th May, 2008 in the appeals pending before it.

27. We, accordingly, set aside the orders dated 22nd April, 2008 and 7th May, 2008, passed by the Division Bench of the Gujarat High Court in F.A. No. 853 of 2008 and C.A. Nos. 2405 and 5618 of 2008 and maintain the initial order dated 29th February, 2008. The appeals and the connected Interlocutory Applications are, accordingly, disposed of.

28. The High Court is requested to dispose of the appeals pending before it at an early date without being influenced by any observations made in this judgment.

29. There will be no order as to costs.