
(2006) 12 AHC CK 0095

In the Allahabad High Court

Case No : First Appeal From Order No. 1228 of 2006

Maheshwari Oxygen Pvt. Ltd Meerut

APPELLANT

Vs

Deep Live Stock Pvt. Ltd.& Ors.

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 43 Rule 1, 104

Citation : (2006) 12 AHC CK 0095

Hon'ble Judges : V.M.Sahai, J and Sabhajeet Yadav, J

Final Decision : Dismissed

Judgement

1. This appeal under Section 104 read with Order XLIII, Rule 1 (r) C.P.C. has been filed against the judgment and order dated 20/12/2006 passed by VI Upper Civil Judge (Senior Division), Meerut in Original Suit No. 1247 of 2000, M/s. Maheshwari Oxygen Private Limited v. M/s. Deep Live Stock Private Limited Company & Ors., whereby the application for ad interim injunction during the pendency of suit filed by plaintiff/appellant has been rejected on merits after hearing the parties.

2. The brief facts leading to the case are that the plaintiff/appellant has instituted a suit being Original Suit No. 1247 of 2000 in the Court of Civil Judge Senior Division, Meerut with the allegation that the plaintiff/appellant is a Private Limited Company incorporated under the Companies Act, 1956 having its registered office at B4 Shambhoo Nagar, Meerut. The defendant No. 1 is also a Private Limited Company. The defendant No. 5 is officer of defendant No. 4. The defendant Nos. 2 is officer of State Government and defendants No. 3 and 4 are the Departments of the Government of India. It is alleged in the plaint that the District Industry Centre, Meerut, defendant No. 4 had allotted plot Nos. C15 to C22 to M/s. Bansal Steel Sons Company Pvt. Limited (a third party to the suit) which is hereinafter referred to as "the Company" in order to carry on business of rolling mill in the said plots about 30 years ago and in pursuance thereof a lease deed was executed for a period of 99 years in favour of said company.

Thereafter a factory building was constructed on the aforesaid leased land by the said company. The said Company had defaulted in making repayment of the loan taken from the creditors including State Bank of India. Ultimately a petition for winding up of the Company in the year 1987 was filed, which was registered as Company petition No. 2/87. The official liquidator was appointed in the terms of provisions of Companies Act. Thereafter an advertisement was published in local daily newspaper 'Amar Ujala' sometime in the September 2002. The plaintiff has submitted its tender for purchase of entire immovable property of the Company in liquidation. Vide order dated 22 October 2002 offer of plaintiff Company for the purchase of immovable property of the Company measuring 6220 sq. metres against a sale consideration of Rs. 24,51,000/- was accepted and vide order dated 4/12/2002 the High Court has confirmed the sale in favour of the plaintiff's Company. The official liquidator was directed to hand over the possession of assets which have been sold and to execute the necessary sale deed in favour of the purchaser. An office order was prepared on 9/12/2002 by the official liquidator to hand over physical possession of immovable assets i.e. land and building of the Company (in liquidation) to the plaintiff and the possession memo was issued on 11/12/2002 and as per possession memo the physical possession of entire land and building of the Company (in liquidation) was handed over to the plaintiff. Thereafter official liquidator has executed the sale deed on 7/3/2003 in favour of plaintiff Company in respect of land and building, which were in the occupation of Company (in liquidation) measuring about 6200 sq. metres with the description of plots/land and boundaries. According to the plaint case in the said sale deed dated 7/3/2003 only plots No. C17 to C22 were mentioned and plots No. C15 and C16 were inadvertently omitted.

3. It is further alleged that after purchase of said property the plaintiff company has also sold a piece of land measuring about 3000 sq. yards demarcated as plot Nos. C17 to C22 to M/s. Gori Components Private Ltd. 275277 Mangal Pandey Nagar Meerut through sale deed dated 15/6/2004 and a piece of land measuring about 1490 sq. yard demarcated out of plot Nos. C17 to C22 to Shyambeer Sharma, Rambeer Sharma, Vijayveer Sharma and Manbeer Sharma, all are sons of Kedar Sharma, resident of 107 Mohallah Uncha Kasharu Khera, Meerut City through sale deed dated 10/9/2005 and as such the plaintiff is still lessee/owner in possession of a piece of land measuring about 2949.12 sq. yards. The plot Nos. C15 and C16 are still owned and possessed by the plaintiff Company. In the last week of November 2004, the plaintiff came to know from reliable sources that the defendant No. 5 Mr. K.N. Lal in collusion and connivance with the promoter Directors namely Ved Prakash Bansal and Mahesh Prakash Bansal of the aforesaid company (in liquidation) intended to illegally transfer the plot Nos. C15 and C16 to third party who is their close relative and as such the plaintiff was compelled to write a letter to the Joint Director District Industry Centre, Meerut on December 6, 2004 and a copy of the said letter was also delivered to the defendants No. 4 and 5 but in spite of receipt of the letter the defendant No. 5

misusing his power and authority and Mr. Ved Prakash Bansal describing himself to be the Managing Director of the Company (in liquidation) had executed transfer agreement of the lease hold right in favour defendant No. 1 through transfer agreement dated 13122004. The said transfer agreement is void on the ground that in case of winding up Company which is subject to the supervision of Court, any disposition of the property of Company made after commencement of winding up proceedings shall unless the Court otherwise orders be void. As such any sale deed without leave of the Court of any of the properties after commencement of such proceedings shall be void in the terms of provisions of Section 537 (1) (b) of the Companies Act. It is also stated that Company petition No. 2/87 is still subjudice in the High Court of Judicature at Allahabad and the company M/s. Bansal Steel Sons and Pvt. Limited has not been completely wound up as per provisions of Companies Act. It is further stated that the alleged transfer deed executed by Ved Prakash Bansal and defendant No. 5 Mr. K.N. Lal on behalf of defendants No. 3 and 4, the defendant No. 1 has tried to interfere in the plaintiffs possession in respect of plot No. C 15 i.e. Partapur, Meerut on 22122004 but defendant No. 1 could not succeed in illegally taking possession of the said property.

4. The suit was filed seeking relief for declaration in favour of plaintiff against the defendant to the effect that plaintiff be declared to be lessee of land and owner of super structure of plot Nos. C15 and C16 i.e. Partapur, Meerut as plots No. C15 and C16 are included in the sale deed executed by official liquidator attached to the High Court Allahabad in favour of plaintiff Company as per order of Hon'ble High Court dated 22102002 and 3122002. A decree of declaration be granted in favour of plaintiff against defendant to the effect that transfer deed dated 13122004 executed in favour of the defendant No. 1 by defendant Nos. 3 and 4 alongwith M/s. Bansal Steel Sons Company Pvt. Ltd. which has been duly registered on 13122004 at Book No. 1 Zild No. 2673 of page 273/285 at serial No. 9534 in the office of SubRegistrar III, Meerut be declared void and its intimation be sent to the Office of Sub Registrar III, Meerut. And a further decree of permanent/perpetual injunction be granted in favour of plaintiff against the defendant, their agents, servants, friends restraining them from interfering, creating hindrance in peaceful enjoyment of premises No. C15 Partapur, Meerut which has been shown in yellow colour in the site plan annexed to the plaint, the boundaries of which are mentioned thereunder and from dispossessing/evicting the plaintiff therefrom. In the aforesaid suit, the plaintiff/appellant has moved an application for ad interim injunction under Order XXXIX, Rules 1 and 2 of C.P.C. with the prayer that during the pendency of suit the defendants, their agents, servants and friends be restrained from interfering and making hindrance/obstruction in plaintiff's peaceful enjoyment of premises No. C15 i.e. Partapur, Meerut, which has been shown in the yellow colour in the site plan annexed with the plaint and from dispossessing/evicting the plaintiff therefrom in any manner whatsoever.

5. Against the said application for adinterim injunction under Order XXXIX, Rule

1 and 2 C.P.C. defendant No. 1 as well as defendant Nos. 2 to 5 filed their objection. Defendant No. 1 filed objection vide paper No. 20C along affidavit 21C and defendant Nos. 2 to 5 filed objection (paper No. 24C) alongwith affidavit (paper No. 25C). In the objection paper No. 21C defendant/respondent No. 1 M/s. Deep Live Stock Private Limited admitted the fact that Company (in liquidation) was allotted plot Nos. C15 to C22 by defendant No. 4 and in respect thereof lease deed was executed. The Company after allotment of land constructed its factory shed and building and took loan from State Bank of India and other creditors as well. It was stated that the loan which was taken from the State Bank of India was only in respect of plot Nos. C17 to C22 and no loan was taken in respect of plot Nos. C15 and C16. In the advertisement published in daily 'Amar Ujala' only plot Nos. C 17 to C22 were mentioned. It was further stated that sale was confirmed vide order dated 4122002 passed by High Court at the same time submitted that the aforesaid confirmation was only in respect of plot Nos. C17 to C22 and had nothing to do with plot Nos. C15 and C16. However, it was stated that entire assets and land of M/s. Bansal Steel and Sons Company was not sold to the plaintiff Company, rather only plots No. C17 to C22 of Industrial Estate Partapur, Meerut was sold to the plaintiff Company. In the said objection the defendant No. 1 has admitted that in the saledeed in question the area shown is 6220 sq. metres and the boundaries are also correct but further stated that the saledeed was executed in respect of area measuring about 6220 sq. yards only and not in respect of 6220 sq. metres as shown wrongly in the saledeed.. The copy of objection is on record as Annexure 9 of the affidavit.

6. The defendants No. 2 to 5 also filed objection stating therein that the suit is barred by provisions of Section 80 C.P.C. and rest of the averments made in the objection by defendant/respondent No. 1 were adopted. A true copy of the objection paper No. 24C is on record as Annexure 10 of the affidavit. In reply thereto the plaintiff/appellant filed replication against the objection filed by the defendants stating therein that the plot No. C15 is in possession of the plaintiff/appellant in which the defendants/respondents are trying to interfere in wrongful and illegal manner. As an Amin was also appointed on application moved by the plaintiff/appellant but after giving necessary information to both the parties went on spot and prepared a report alongwith a map. In the report it was mentioned that in spite of information given to the defendants, none of the defendants was present, therefore, the report was prepared in their absence. A true copy of Amin's report dated 1792005 is on record as Annexure 12 of the affidavit. Against the said; report of the Amin dated 179 2005 an objection was filed by defendant/respondent No. 1 on 27 12006, in which it was stated that the Amin's report is not correct. A true copy of the objection is on record as Annexure 13 of the affidavit filed in support of the stay application of this appeal. After hearing the parties and perusing the evidence on record, the trial Court has rejected the adinterim injunction of the plaintiff/appellant on merits vide impugned judgment and order dated 2042006. Hence this appeal.

7. While rejecting the adinterim injunction of plaintiff/appellant on merits the trial Court has held that on the basis of material evidence on record the plot No. C15 and plot No. C16 have neither been sold to the plaintiff/appellant nor the possession of the aforesaid plots were handed over to it. Thus plaintiff has failed to prove his prima facie case in his favour and neither balance of convenience lie in favour of plaintiff nor denial of adinterim injunction would cause any irreparable loss to it.

8. We have heard Sri Ravi Kant, learned Senior Counsel assisted by Sri Ashish Kumar Singh holding brief of Sri Pushkar Mehrotra for the plaintiff/appellant and Ms Rachna Srivastava appearing for the respondents. Since the counter and rejoinder affidavits have been exchanged between the parties and the case can be decided finally at the admission stage itself, therefore, with the consent of learned Counsel for the parties, we have heard this appeal for final disposal at this stage.

9. Sri Ravi Kant, learned Senior Counsel has submitted that since in the saledeed in question executed in favour of plaintiff/appellant, the area of plots mentioned in the saledeed has been given as 6220 Sq. meter but by mistake plots No. C15 and C16 have been omitted while including the plots in saledeed and only plot No. C17 to C22 were mentioned, therefore, in case of any discrepancy between the area and boundary, the boundary may be given effect. In support of his submission he has placed reliance upon two decisions; one rendered by Hon''ble Privy Council in *The Palestine Kupat Am Bank Cooperative Society Ltd. v. Government of Palestine & Ors.*, reported in AIR (35) 1948 Privy Council 207 and another decision of Hon''ble Apex Court rendered in *Subhaga & Ors. v. Shobha & Ors.*, reported in 2006(3) JCLR 70 (SC) : JT 2006 (6) SC 178. Another submission of learned Counsel for the plaintiff/appellant is that the defendant No. 1 is transferee from the ExDirector of Company which was wound up under the orders of High Court and the saledeed was executed without prior permission of official liquidator of High Court, therefore, the saledeed is void under the provisions of Section 537 of the Companies Act and transferee defendant/respondent No. 1 has no right, interest over the property in dispute. Contrary to it learned Counsel appearing for the defendants/respondents Ms Rachana Srivastava has supported the stand taken in the objection filed before the Court below against the application for adinterim injunction moved by the plaintiff/appellant and also the assertions made in the counter affidavit filed on behalf defendant/respondent No. 1 to this appeal.

10. We have also sent Advocate Commissioner and obtained report from the Advocate Commissioner who has made local spot inspection and given report to the Court on which parties have no objection.

11. We have carefully examined the rival submissions of the learned Counsel for the parties and also perused the records. So far as the first submission of learned Counsel for the plaintiff/appellant is concerned, it is to be pointed out that on the basis of pleadings of the parties and material available on record, it is

not in dispute that District Industry Centre, Meerut, defendant No. 4 had allotted plots No. C15 to C22 to M/s. Bansal Steel Sons Company Pvt. Limited, third party to the suit for carrying the business of rolling mill in the said plot about 30 years ago. In pursuance thereof a leased deed was executed for a period of 99 years in favour of said Company. Thereafter a factory building was constructed on the aforesaid leased land by the said Company. It appears that while making repayment of loan advanced to the said Company defaults were made, ultimately winding petition was filed before this Court and under Companies Act official liquidator was appointed to sell the property of Company for repayment of loan advanced by the creditors to the said Company. Thereafter an advertisement was published in local daily News paper "Amar Ujala" some times in September 2002. The plaintiff's offer being the highest was accepted vide order dated 22nd October 2002 for the purchase of immovable property of Company. It is alleged by plaintiff/appellant that the area of immovable property of Company was 6220 sq. metres against a sale consideration of Rs. 24,51,000/- and vide order dated 4/12/2002 the High Court has confirmed the sale in favour of plaintiff company. The official liquidator was directed to hand over possession of assets, which have been sold and to execute the necessary sale deed in favour of purchaser. An office order was prepared on 9/12/2002 by official liquidator to hand over physical possession of immovable assets i.e. land and building of Company in liquidation to the plaintiff and possession memo was prepared on 11/12/2002 and as per possession memo, the physical possession of entire land and building of Company was handed over to the plaintiff. Thereafter official liquidator has executed the sale deed on 7/3/2003 in favour of plaintiff Company in respect of land and building which were in occupation of Company (in liquidation) measuring about 6200 sq. metres with the description of plots and boundaries but in the sale deed only plots No. C17 to C22 were mentioned, whereas the plots No. C15 and C16 were omitted to be included in the sale deed.

12. Contrary to it, the assertion of defendant/respondent No. 1 is that the loan was advanced only in respect of plots No. C17 to C22 of Industrial Estate Partapur, Meerut to M/s. Bansal Steel Sons Company Pvt. Limited and only those plots were mortgaged to the State Bank of India against the loan taken by M/s. Bansal Steel Sons Pvt. Limited. The liquidation proceedings were initiated in the High Court under the provisions of Companies Act in respect of those plots only. The learned trial Court has recorded categorical findings on the basis of material evidence on record i.e. on the basis of news item published in daily newspaper "Amar Ujala" for sale of the property of M/s. Bansal Steel Company, which is also on record as Annexure 2 of the affidavit filed in support of stay application moved in this appeal, that only plots No. C17 to C22 U.P.S.I.R. of village Partapur, District Meerut of M/s. Bansal Steel and Sons Pvt. Limited were put up for auction and sale and vide order dated 4/12/2002 the sale in favour of plaintiff was confirmed, the order passed by this Court in this regard is on record as Annexure 4 of the affidavit. The official liquidator was directed to hand over possession of assets, which have been sold and was directed to execute

necessary saledeed in favour of purchaser. Vide order dated 11122002 the physical possession of immovable assets and land and building of M/s. Bansal Steel and Sons Pvt. Limited was handed over to the plaintiff company namely M/s. Maheshwari Oxygen Private Limited, Meerut in which only plots No. C17 to C22 were included. The aforesaid possession memo is on record as Annexure 6 of the affidavit. Thereafter a saledeed dated 732003 was executed in favour of plaintiff Company, although the area of land in question has been mentioned as 6220 sq. metres but only plots No. C17 to C22 were mentioned in the saledeed and boundaries of property were also mentioned in the saledeed as in the East village Rijhani Isha Om Cultivating Field, Westplot No. C16 (virtually Meerut Cement Company), North 40 ft. wide street and M/s. Bansal forging Company, South Vats Pharmacy. A copy of saledeed is on record as Annexure 6 of the affidavit filed in support of the stay application. On the basis of these materials available on record, learned Court below has come to the conclusion that although the area of land described in saledeed is 6220 sq. metres but the plots No. C15 and C16 were not mentioned therein. The Amin's report in respect of location and identification of land in dispute does not tally with the boundaries mentioned in the sale deed, therefore, cannot be accepted. The Court below has also come to the conclusion that the actual area of plots No. C17 to C22 is about 6200 sq. yard and not in square metres but it appears that taking advantage of mistakes of area of saledeed dated 732003 the plaintiff/appellant is trying to claim the ownership of the aforesaid plots No. C15 and C16 also which was not acceptable to the Court below. It was further held that in case the plaintiff had any grievance about the omission of plots No. C15 and C16 of said Industrial Area which according to plaintiff were inadvertently omitted to be included in sale deed dated 732003 executed in favour of plaintiff, only course was open to get it corrected from the official liquidator and not otherwise by way of suit in question. In our considered opinion the findings recorded by the learned trial Court appears to be correct and with cogent reasons.

13. Besides, we have examined the matter from another angle. From the perusal of sketch map prepared by Mahesh Narain Singh, Advocate Commissioner sent by this Court besides other description about the plots in dispute, the plots No. C15 and C16 have been mentioned with the identical area in the Western side of plot No. C17 as adjoining to each other as the plot No. C15 has been mentioned in the west of plot No. C16 as adjoining to it. From the perusal of boundary described in the saledeed, it is clear that the plots which were subject matter of saledeed were situated in the east of plot No. C16 as the plot No. C16 was mentioned as west boundary of plots included in the saledeed i.e. plots No. C17 to C22.. Thus the plot No. C15 which is situated in the western side of plot No. C16 itself and plot No. C16 also can never be part and parcel of the plots No. C17 to C22 which are covered by the boundaries mentioned in the saledeed and are included in the saledeed in question as these plots are adjoining plots in seriatum in the eastern side of plot No. C16. Besides this Meerut Cement Company which is situated as western boundary of land included in the saledeed

has been mentioned as virtually in the plot No. C16 as mentioned in the saledeed, thus, on this count also plot No. C16 and plot No. C15, which is situated in western side of the plot No. C17 can never be a plot covered by the boundaries of saledeed dated 732003. Therefore, there can be no scope for doubt to hold that plots No. C15 and C16 of Industrial Estate Partapur do not fall within the boundaries of saledeed dated 732003, accordingly mere description of area of plots included in the said saledeed as 6220 Sq. meters cannot embrace in it the aforesaid plots C15 and C16, which are not covered by the boundaries mentioned in the saledeed dated 73 2003. In such a situation the area mentioned in the saledeed appears to be incorrect. Thus, the findings of learned trial Court that plots No. C15 and C16 are not subject matter of saledeed executed in favour of plaintiff/appellant appears to be based on correct appreciation of material evidence on record and cannot call for any interference by this Court. Therefore, the finding of Court below that plaintiff/appellant has failed to prove that the plots. No. C15 and C16 belong to it and the same is in its possession appears to be correct and we are in full agreement with the views of trial Court that there appears no prima facie case in favour of plaintiff/appellant. The balance of convenience also does not lie in favour of plaintiff/appellant and no irreparable injury would cause in case ad interim injunction would be refused to it. We are of the further opinion that once the Court below has come to the conclusion that the plaintiff has failed to prove his prima facie case in respect of suit property, further question of weighing of balance of convenience and irreparable loss does not rise.

14. The decisions cited by learned Counsel for plaintiff/appellant in our considered opinion do not support its case and are quite distinguishable on facts. The decision of Hon''ble Privy Council in Palestine Kupat Am Bank Cooperative Society Ltd. (supra) is no doubt an authority on the proposition that where there exists any conflict between the area and description of plot by boundaries, the description by boundaries has to be preferred but fact remains that there must be a plot, which is described and identified by boundary and area and there exists a discrepancy between the area and boundaries of plot in question. In that eventuality the plot has to be identified, by description of boundaries and not by area. Contrary to it, here in the instant case the plaintiff/appellant rests its claim that plot should be identified by area described in the saledeed instead of boundaries mentioned in the saledeed and taking advantage of area mentioned in the saledeed as 6220 sq. metres, the plaintiff/appellant has made attempt to grab the land of plots No. C15 and C16 also, which were not mentioned in the saledeed. Thus, merely because of the area of plots included in the saledeed is 6220 sq. metres the plaintiff is not entitled to claim any ownership upon the plots No. C15 and C16 of Industrial Estate Partapur, district Meerut, which were not included in the saledeed. That apart, since we have also held as held by trial Court that the plots No. C15 and C16 of Industrial Estate Partapur, Meerut do not fall within the boundaries of plots included in the saledeed dated 732003 executed in favour of plaintiff/appellant rather saledeed itself constitutes only

plots No. C17 to C22 as described by the boundaries of plots/land included in the saledeed, therefore, in our considered opinion the decision of Hon''ble Privy Council referred above can be of no assistance to the case of plaintiff/appellant. Similarly, another decision of Hon''ble Apex Court in Subhaga & Ors. (supra) cited by learned Counsel for appellant is also of no assistance to the case of plaintiff/appellant as the facts of the instant case are quite distinguishable from the facts of the aforesaid case.

15. Since we have held that plaintiff has failed to prove his prima facie case over the property in dispute and there exists no balance of convenience in its favour, inasmuch as, there can be no irreparable loss in case the ad interim injunction is refused during the pendency of suit, hence we need not to deal with another submission of learned Counsel for the plaintiff/appellant wherein the validity of saledeed dated 13 122004 in respect of plots No. C15 and C16 alleged to have been executed by Ex Director of Company (in liquidation) in favour of defendant/respondent No. 1 is questioned.

16. Thus, in view of the observations made hereinbefore, we are of the considered opinion that the appeal is devoid of merits hence liable to be dismissed. However, we would like to make it clear that observations made hereinbefore by this Court and findings recorded by Court below while deciding the application for ad interim injunction during the pendency of suit will not prejudice the case of plaintiff/appellant in trial of pending suit.

17. Accordingly, the appeal stands dismissed under Order XLI, Rule 11 C.P.C.