

(2019) 01 RAJ CK 0069

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2433 Of 2018

Mala And Ors

APPELLANT

Vs

Vedhehi Resort Private Ltd And Ors

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1
Rajasthan Land Revenue Act, 1956 — Section 90A
Specific Performance Of Contract Act — Section 20

Citation : (2019) 01 RAJ CK 0069

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : Sachin Acharya, J.M. Choudhary, Vikas Balia, Rishi Soni, Dinesh Pal Singh

Final Decision : Allowed

Judgement

By the instant appeal under Order 43 Rule 1 read with Section 151 CPC, appellant-plaintiffs have challenged order dated 12.07.2018, passed by Additional District Judge No.2, Udaipur (for short, 'learned trial Court'), whereby learned trial Court rejected their application under Order 39 Rule 1 & 2 read with Section 151 CPC.

The facts, in brief, are that appellant-plaintiffs laid a suit for for cancellation of Patta, declaring sale deed null & void and for permanent and mandatory injunction against respondent-defendants. Along with the plaint, appellants also preferred an application under Order 39 Rules 1 & 2 CPC for temporary injunction. It is the case of the plaintiffs that land of Aaraji Nos.3347, 3348, 3349, 3350 admeasuring 1.4900 hectare i.e. 2/10 of the total land was purchased through registered sale-deeds dated 21.02.2013 from one Panna Lal Bheel and thereafter applications were laid before the Urban Improvement Trust under the provisions of Section 90-A of the Land Revenue Act for conversion of the land from agriculture to non-agriculture purposes. It is also the case of

plaintiffs that other purchasers of remaining parts of the land of aforesaid Arajis also submitted their applications for conversion of land on 24.06.2013. It is claimed that their applications for allotment of land in their favour were pending consideration respondent No.5 U.I.T., but as they were out of town, they could not appear before the U.I.T. and taking benefit of this situation defendants Nos.1 to 3 got issued allotment orders in their favour by submitting requisite fees through challan. It is claimed that by putting forged signatures of the appellants in the office of U.I.T., the allotments orders were got issued by defendant Nos.1 to 3 in their favour showing that the appellants had consented for it whereas the appellants had never given consent or authorized defendants Nos.1 to 3 to get allotment orders or get issued Patta for the land in question to them. Patta dated 29.11.2013 was issued by the U.I.T. in the name of defendant No.1 and on that basis defendant Nos.1 to 3 on 12.10.2017 sold out the land in question to defendant No.4. It is also claimed by appellants that they were not in know of these facts but when an information was published in daily newspaper "Danik Bhaskar" dated 16.02.2018 by defendant No.4 that the land in question is being transferred in its name, the appellants approached the U.I.T. and could know all about the forgery made by defendant Nos.1 to 3, as such they lodged a report at Police Station. Later on, appellants also realized that defendant No.4 is influential, resourceful and contemplating to construct a hotel over the land in question, filed the suit along with temporary injunction application.

After issuance and service of summons as none appeared on behalf of defendants Nos.1 to 3, learned trial Court closed their right to file written statement and reply to T.I. application vide order dated 22.06.2018 and thereafter vide order dated 27.06.2018 ex-parte proceed against them. Defendant No.4 submitted its written statement and reply to the T.I. application on 12.04.2018 while denying the averments of the suit as well as application for grant of temporary injunction. In the reply, it is also averred by defendant No.4 that it is a bona fide purchaser of the land in question. Defendant No.4 claimed that there was an agreement to sale dated between plaintiffs with 8 other Khatedars and defendant Nos.1 to 3 and the each of the plaintiffs received an amount of Rs.6,00,000 on 18.09.2013. It is contended by defendant No.4 that it purchased the land after it was allotted to defendant Nos.1 to 3 and on that basis. Defendant No.5 U.I.T. also submitted its separate written statement denying the averments of the suit.

The appellant-plaintiffs submitted rejoinder to the written statement and reply to the application for grant of temporary injunction submitted by defendant No.4 denying the averments made by it. In the rejoinder, the appellants also stated that they did not enter into any agreement with any person rather their signatures were forged and that there was no attesting witness to the so called agreement. It was the case of appellants that for want of money they had mortgaged their land with defendants Nos.1 to 3 on 12.03.2013 and both of them received Rs.6,00,000/- for which two post dated cheques of double the amount were handed over as security. Certain other objections were also raised

by appellants to the reply submitted by defendant No.4. Likewise, rejoinder to the reply filed by U.I.T. was also submitted denying the averments of the reply.

Thereafter learned trial Court heard on temporary injunction application and by the impugned order rejected the same.

I have heard learned counsel for the parties, perused the impugned order and other materials available on record.

In support of his arguments, learned counsel for the appellants has place reliance on judgment of Rajeshwer Shankar Choudhary @ Rajesh Choudhary & Anr. V/s. Shiv Shankar Choudhary & Ors. [2014 (2) RLW 1561 (Raj.)], whereas counsel for respondents has placed reliance on judgment of Rajmohan V/s. Pawan Kumar & Ors. [AIR 2013 (Raj) 153].

Upon examining the impugned order, it is crystal clear that the learned trial Court has discussed threadbare the facts, which are relevant and germane to the matter, and recorded a finding that appellant-plaintiffs have not been able to prove prima facie case. The factum of 2/10 of the total land mortgaged by the appellants with respondents No.1 to 3 is also considered by the learned trial Court besides construction permission granted to fourth respondent by the U.I.T. The Court has also observed that construction is being carried out in consonance and conformity with the permission granted besides title of the fourth respondent as bona fide purchaser for non-suiting the appellants on the anvil of unavailability of prima facie case.

In Rajeshwer Shankar Choudhary (supra), the Court examined the issue relating to a plot, which was part of HUF property, allegedly partitioned on the basis of some forged family settlement, and therefore, directed the parties to maintain status quo as regards construction, alienation and creating any third party interest. Furthermore, the Court has also issued necessary direction to learned trial Court to expedite trial of the suit. Facts of the instant case are quite different inasmuch as fourth respondent is bona fide purchaser by a registered instrument and it is raising construction as per the construction permission granted by U.I.T. Therefore, the said judgment is clearly distinguishable.

In the case of Rajmohan (supra), Coordinate Bench, while considering the fact that property in question was transferred to a party by registered document and possession is handed over to him, declined to issue any injunctory order against raising construction over it. The suit in question was although for specific performance of contract but the Court by relying on Section 20 of the Specific Performance of Contract Act declined to interfere with the order of learned trial Court rejecting prayer for temporary injunction by observing that relief of specific performance is a discretionary relief.

It is also noteworthy that land allegedly owned by the appellants is only 2/10 of the total land, and therefore, in that background, it would not be appropriate to restrain the fourth respondent from carrying out construction activities at the site.

True it is that learned Court below has not examined the other two ingredients viz., balance of convenience and irreparable injury with precision but then a blanket order of status quo restraining the fourth respondent from raising construction, in the backdrop of peculiar facts and circumstances of the case, appears to be harsh and inequitable.

In view thereof, for doing substantial justice in the matter, it would be just and appropriate to partly allow the application for temporary injunction.

Accordingly, the appeal is allowed in part and the respondents are restrained from alienating the suit property during pendency of the suit for creating any third party interest.

Before parting, it may be observed that learned trial Court is expected to proceed with the trial with promptitude and decide the main suit as early as possible.