
(2012) 04 AHC CK 0130
In the Allahabad High Court
Case No : Writ Petition No. 1398 of 2004

Paras Nath Singh

APPELLANT

Vs

Sirtaji Kunwari and Another

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)

Citation : (2012) 04 AHC CK 0130

Hon'ble Judges : Devendra Kumar Upadhyaya, J

Final Decision : Allowed

Judgement

Devendra Kumar Upadhyaya,J.

Heard the learned counsel for the parties and perused the record.

The writ petition challenges an order dated 25.03.2004 passed by the learned Addl. District Judge , Court No.1, Sultanpur allowing the Misc.Civil Appeal No. 62 of 2003 preferred by the respondent no.1 Smt.Sirtaji Kunwari, whereby the order dated 14.07.2003 passed by the learned trial court on the application moved by the plaintiff (petitioner in the instant writ petition) under Order XXXIX Rule 1 of the Code of Civil Procedure directing therein to maintain status quo and restraining the respondent no.1 from alienating the suit property , was set aside.

A perusal of the order dated 14.07.2003 passed by the learned trial court on the application moved by the plaintiff reveals that the learned trial court after considering the three ingredients governing grant/refusal of an interim injunction namely; prima facie case, balance of convenience and prospects of irreparable loss passed a detailed and reasoned order with a view to protect the suit property restraining the respondent no.1 from alienating and transferring the property and further for maintaining status quo.

The respondent no.1 feeling aggrieved by the order of interim injunction granted by the learned trial court on 14.07.2003 preferred a Misc.Civil Appeal no. 62 of

2003 which has been allowed by the learned Addl. District Judge, Court No.1, Sultanpur vide judgment and order dated 25.03.2004 which has been assailed by the petitioner.

Learned counsel for the petitioner while being critical about the reasons indicated by the learned appellate court below for setting aside the order of interim injunction granted by the trial court vehemently argued that the reasons indicated by the learned appellate court below are not sustainable in the eyes of law. He refers to the observations made by the appellate court in para 5 of the judgment dated 25.03.2004 and wherein it has been observed that though, there is no legal requirement of registration of the will but the party seeking benefit out of the will has to explain as to under what circumstances the will could not be registered. Learned court below also observed that the person who is alleged to have executed the will was only 40 Years of age at the time of execution of will and also that it is not proved that at the time of the execution of will whether he was sick or he was unable to move. The learned counsel for the petitioner argued that under law there is no requirement of establishing the reason for nonregistration of will and also that there is no age bar so far as execution of will is concerned.

On the other hand learned counsel for the respondents submitted that the suit itself was barred under Section 330 of the U.P.Z.A. And L.R.Act and as such the learned trial court could not have passed the order of interim injunction in favour of the petitioner.

A perusal of the judgment and order passed by the learned appellate court establishes that for not believing the execution of will and doubting the same, reasons given by it are legally not sustainable. There is no requirement under law for establishing the reasons for nonexecution of the will by the person who is seeking to derive benefit out of the will. Learned counsel for the respondents has completely failed to point out as to under what law the fact that the person who executed the will was only 40 years of age will be a relevant factor of determining as to whether the will is genuine or not ?

Learned appellate court, by attempting to give finding about the genuineness of the will, appears to have completely misdirected himself as what was the issue under consideration before the appellate court was only an order of interim injunction which needs to be tested on the well established legal yardsticks enunciated under Order XXXIX Rule 1 of the Code of Civil Procedure. According to Order XXXIX Rule 1 of the Code of Civil Procedure, if by affidavit or otherwise it is proved that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, then the Court may grant a temporary injunction restraining the parties from indulging in such acts. The well established principles regarding exercise of jurisdiction under Order XXXIX Rule 1 of the Code of Civil Procedure are that the court concerned has to see that the party praying for temporary injunction has a Prima facie case, grant of temporary injunction will be in favour of balance of convenience and that if the temporary

injunction is not granted, the party praying for the same shall suffer irreparable loss and injury. The Hon'ble Supreme Court in a case of Esha Ekta Apartments CHS Ltd. And others Versus The Municipal Corporation of Mumbai and another reported in 2012(30) LCD 525 has inter alia observed that the appellate court in an appeal against an order of temporary injunction is generally not required to interfere with the exercise of discretion vested in the learned trial court under Order XXXIX Rule 1 of the Code of Civil Procedure and further that the appellate court generally will not substituted its own discretion except in a situation where the discretion by the trial court has been exercised perversely or capriciously and whether the trial court appears to have passed the order of temporary injunction in ignorance of settled legal principles regulating grant /refusal of temporary injunction order. Paras 14 and 15 of the aforesaid judgment of the Supreme Court in the case of Esha Ekta Apartments CHS Ltd. And others(supra) are being quoted below :

"14. We have considered the respective submissions and carefully scrutinized the records The scope of the appellate Court's power to interfere with an interim order passed by the Court of first instance has been considered by this Court in several cases. In Wander Ltd.Vs.Antox India(P) Ltd.1990 Supp.SCC 727, the Court was called upon to consider the correctness of an order of injunction passed by the Division Bench of the High Court which had reversed the order of the learned Single Judge declining the respondent's prayer for interim reliefs This Court set aside the order of the Division Bench and made the following observations;

"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

15. In Skyline Education Institute (India) Pvt.Ltd.Vs.S.L.Vaswani, (2010) 2 SCC 142, the 3Judge Bench considered a somewhat similar question in the context of the refusal of the trial Court and the High Court to pass an order of temporary injunction, referred to the judgments in Wander Ltd. Verses Antox India (P) Ltd. (supra), N.R.Dongre Versus Whirlpool Corpn.,(1996) 5 SCC 714 and observed;

"The ratio of the abovenoted judgments is that once the court of first instance

exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of Prima facie case, balance of convenience , irreparable injury and equity."

Hon"ble Supreme Court yet in an another case reported in 2005(23) LCD 298 Maharwal Khewaji Trust (Regd.) Faridkot Versus Baldev Dass has observed that normally the trial court should not permit the nature of property being changed which also includes alienation or transfer of the property as it may lead to loss or damage being caused to the party who may ultimately succeed in the proceedings.

It is well settled that the purpose of grant of interim order or temporary injunction or any other interlocutory order is basically to preserve the suit property and to preserve the state of affairs so as to avoid any irreparable loss or injury to the parties in the suit during the pendency of the case.

A perusal of the order passed by the learned trial court reveals that the learned trial court has granted the interim injunction vide his judgment and order dated 14.07.2003 only with a view to protect the suit property and for this purpose alone the court ordered both the parties to maintain status quo and restrained the respondent no.1 from alienating or transferring the land in suit. The appellate court while reversing the said order of interim injunction dated 14.07.2003 has travelled beyond the scope of Order XXXIX Rule 1 of the Code of Civil Procedure for the reason that he had attempted to arrive at conclusion as regards the genuineness of the will which is the basis of the claim of the petitioner. However, the judgment and order dated 25.03.2004 passed by the appellate court is not sustainable for two reasons, namely; (1) the appellate court appears to have travelled beyond the well settled principle regulating the grant of interim/temporary injunction emanating from Order XXXIX Rule 1 of the Code of Civil Procedure and (2) the reasons given by the appellate court regarding doubt being cast over the will are also not prima facie sustainable as discussed above.

It is also noteworthy that the appellate court has not met the reasons assigned by the learned trial court while granting interim injunction. Merely because some party has got a right to transfer the land, interim injunction granted against such a party retraining it from alienating or transferring the property will not become bad for the reasons that the trial court in the instant case has considered all the three basic principles governing the field of grant of temporary/interim injunction.

At the cost of reiteration , it is observed further that the very basic purpose of grant of interim/interlocutory injunction is to preserve the state of affairs between the parties visavis the suit property during the pendency of the case.

From a perusal of the pleadings on record and the judgment and order passed by

the learned trial court and that of the appellate court in the instant case, the court comes to the definite conclusion that the judgment and order dated 25.03.2004 passed by the learned Addl. District Judge, Court no.1, Sultanpur in Misc. Civil Appeal No. 62 of 2003 Smt. Sirtaji Versus Paras Nath and others deserves to be set aside.

Accordingly, the impugned judgment and order dated 25.03.2004 passed by the learned Addl. District Judge, Court no.1, Sultanpur as is contained in Annexure no.1 to the writ petition, is hereby set aside and the parties are directed to conduct their affairs visavis the suit property in terms of the judgment and order dated 14.07.2003 passed by the learned trial court as is contained as Annexure no.2 to the writ petition.

The writ petition is thus allowed.

However, there will be no order as to costs.