
(1990) 11 DEL CK 0032

In the Delhi High Court

Case No : Interim Application No. 277 of 1989 and Suit No. 821 of 1989

Parkash Kaur

APPELLANT

Vs

Everest Construction Company

RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

Transfer of Property Act, 1882 — Section 54

Citation : (1990) ILR Delhi 500 : (1991) RLR 19

Hon'ble Judges : Mahinder Narain, J

Bench : Single Bench

Advocate : P.C. Khanna, Reva Khetrapal, P.D. Aggarwal and Vasudha Indurkar, for the Appellant;

Judgement

Mahinder Narajn, J.

(1) By this order, I propose to deal with the interim application I.A. No. 277 of 1989, whereby the plaintiff & seeks an order of injunction again me defendant, restraining the defendant from entering into any agreement with respect to flat No. 606 in "Resham Tower", a building proposed to be constructed at Prabha Devi, Bombay .The alleged agreement to ell on the basis of which the injunction is sought was dated 13-10-1981.

(2) By my order dated 2-2-1989. I granted injunction sought initially.

(3) The mater has to be finally disposed of now.

(4) I have heard counsel for both the parties at length. At an earlier stage, when the matter came up before me for determining the preliminary issue regarding want of jurisdiction of this Court, by my order dated 18-9-1990., I have held that this Court has jurisdiction to deal with the suit as filed. I.A. No. 277 of 1989 was not dealt with by me at that time at the request of counsel.

(5) Mr. P. C. Khanna has not been able to bring any case to my notice which goes against what is stated by the Supreme Court in Rambaran Prosad Vs. Ram Mohit

Hazra and Others, and Bai Dosabai Vs. Mathurdas Govinddas and Others, that a contract of sale does not of itself create any interest or charge on such property.

(6) In view of the aforesaid judgments of the Supreme Court, and in view of the provisions of section 54 of the Transfer of Property Act, in the facts and circumstances of the case, which is a suit for declaration of existence of an agreement to sell, it would not be appropriate to pass an order of injunction, restraining sale of property pending establishment of the existence of an agreement to sell by the suit of declaration.

(7) BE. ides this. in the plaint there is no relief sought for an injunction, restraining the defendant, from selling the property which is the subject-matter of the purported agreement between the parties. Inasmuch as in the main suit, the relief of injunction which is sought in the interim application, has not been prayed for. it would not be proper to grant the injunction which is sought.

(8) With these remarks, the application for injection is dismissed. The plaintiff is not entitled to an injunction, and the. order of injunction already granted on 2-2-1989, restraining the defendant from entering into any agreement with respect to the flat in question with any person, or delivering the possession of the whole or part thereof to a third person, is vacated.

(9) Suit No. 82 of 1989 be listed before the Deputy Registrar on 17-1-1991.