

(1912) 05 CAL CK 0028
In the Calcutta High Court

Pramatha Nath Roy

APPELLANT

Vs

Jagannath Kishore Lal Singh Deo

RESPONDENT

Date of Decision : 07-05-1912

Acts Referred:

Citation : 16 Ind. Cas. 359

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This appeal is directed against an order by which the Court below has refused to grant a temporary injunction during the pendency of a suit for specific performance of an agreement to grant a lease. The plaintiff founds his cause of action upon a contract alleged to have been made with him by the father of the infant defendant on the 8th January 1909, and subsequent to his death, affirmed by his widow, the mother and guardian of the infant. The suit was commenced on the 23rd May 1911 and seven days later, an application was presented under Rule 2 of Order XXXIX of the Code of 1608 for an injunction to restrain the defendant from dealing with the property during the pendency of the litigation. The Subordinate Judge has dismissed the application on the ground that as the plaintiff seeks an injunction to restrain the defendant from granting a lease to any other person till the disposal of the suit, and as that may take years, he could not justly issue such an injunction upon the person to whom the property admittedly belongs. This view has been controverted on behalf of the appellant, and it has been pointed out that the plaintiff may be seriously embarrassed if the injunction is not granted. On behalf of the respondent, it has been contended, on the authority of the decisions in *Turners v. Wight* 4 Beav. 40 : 49 E.R. 252 : 55 R.R. 9 and *Mati Lal Pal v. Preo Nath Mitra* 13 C.W.N. 226 : 9 C.L.J. 96 : 3 Ind. Cas. 696 that the intended transferee would be bound by the result of this litigation, as admittedly he has notice of the present proceedings, it is, consequently, not necessary for the protection of the plaintiff that an injunction should be granted in his favour. In our opinion, this view cannot be supported.

2. The principle applicable to cases of this description was lucidly stated by Lord Cathuham, L.C., in the case of *The Great Western Railway Company v. The Birmingham and Oxford Junction Railway Co.* 2 Ph. 597 at 602 : 5 Rail. Cas. 241 : 17 L.J. Ch. 243 : 12 Jur. 106 : 78 R.R. 178 : "it is certain that the Court will in many cases interfere and preserve property in status quo during the pendency of a suit, in which the rights to it are to be decided, and that without expressing, and often without having the means of forming, any opinion as to such rights. It is true that no purchaser pendente lite would gain a title; but it would embarrass the original purchaser in his suit against the vendor, which the Court prevents by its injunction. Such are the cases of *Echloff v. Baldwin* 16 Ves. 267 : 10 R.R. 178 ; *Curtis v. Marquis of Buckingham* 3 V. & B. 168 : 13 R.R. 174 ; *Spiller v. Spiller* 3 Swanst. 556 : 19 R.R. 276 . It is true that the Court will not so interfere, if it thinks that there is no real question between the parties; but seeing that there is a substantial question to be decided, it will preserve the property until such question can be regularly disposed of. In order to support an injunction for such purpose, it is not necessary for the Court to decide upon the merits in favour of the plaintiff." To the same effect are the observations of Lord Eldon, L.C. in the case of *Hood v. Aston* 1 Russel 412 at 416 : 25 R.R. 93 : "It is true, that, even if the Court were not to act, they would still have the security of *lis pendens*. But it is quite a new doctrine to me that a security like that, which is far from being the best that a prudent man would wish to have, is to deprive the suitor of the more effectual protection of an injunction, or that the Court, because it acts on the doctrine of *lis pendens*, will not prevent, if possible, the necessity of proceeding on such a principle." Our attention was however, invited on behalf of the respondent to the case of *Turner v. Wight* 4 Beav. 40 : 49 E.R. 252 : 55 R.R. 9 where Lord Langdale, M.R., refused an injunction during the pendency of a suit for specific performance of a contract, on the ground that the purchaser would be bound by the doctrine of *lis pendens*. But the cases to which we have referred make it abundantly clear that the weight of authority is in favour of the contrary view. See also *Subba Naidu v. Haji Badsha* 26 M. 168 : 13 M.L.J. 13 ; *Madras Railway Co. v. Thomas Rust* 14 M. 18 The learned Counsel for the respondents has finally contended that regard must be had to the balance of convenience of the parties. This may be accepted as the settled doctrine; but it is not inconsistent with the rule laid down in *Hadley v. London Bank of Scotland* 3 De. G.J. & Smith 63 : 11 Jur. (N.S.) 554 : 12 L.T. 747 : 13 W.R. 978 where Lord Justice Turner observed as follows: "I have always understood the rule of the Court to be, that if there is a clear valid contract for sale, the Court will not permit the vendor afterwards to transfer the legal estate to a third person, although such third person would be effected by *lis pendens*." See further *Preston v. Luck* 27 Ch. D. 497 . It is also true, as argued by the learned Counsel for the respondent, that the Subordinate Judge, in the exercise of his judicial discretion, has refused to grant an injunction; but the exercise of that discretion is liable to correction by this Court as the Court of Appeal; and we are clearly of opinion that, in the circumstances of this case, the injunction ought to be granted. Such injunction, however, will be granted only upon terms as to

security, and upon undertaking given by the. appellant to compensate the defendant for any loss that may result to him in the event of the dismissal of the suit. We make this order in accordance with the principle recognised in the cases of Chandra Nath Pal v. Sree. Gobind Chaudhri 6 C.W.N. 308 ; Shadiram v. Abdul Ali 1 A.L.J. 527 ; Howard v. Press Printers 74 L.J. Ch. 100 : 91 L.T. 718 : 53 W.R. 98 and Chappell v. Davidson 8 De G.M. & G. 1 : 114 R.R. 1. We direct accordingly that in addition to the security already furnished by the appellant, he do furnish security to the extent of Rs. 1,000. If this order is carried out, we further direct that a temporary injunction be granted restraining the defendant from dealing with the subject-matter of the litigation in any manner for six months from this date. We also direct the Subordinate Judge to take up the suit for disposal as speedily as possible. If, upon the expiry of six months, it transpires that the hearing of the suit has not been completed by reason of any fault on the part of the defendant, or for any reason for which the plaintiff is not to; blame, the plaintiff will be at liberty to apply to this Court for continuance of the injunction for a further period. The appellant undertakes to furnish security within seven days after notice of the arrival of the record in the Court below shall have been given to his Pleader. The costs of the injunction proceedings will be costs in the suit. We assess the hearing fee in this Court at three gold mohurs.