

(2010) 09 CAL CK 0030

In the Calcutta High Court

Case No : C.O. No. 2718 of 2010 with C.O. No. 2719 of 2010

P.S. Buildcon Pvt. Ltd. and Others

APPELLANT

Vs

Santanu Das and Others and Narayan Chandra Das and Others

RESPONDENT

Date of Decision : 02-09-2010

Acts Referred:

Citation : (2011) 1 CHN 135

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : A.K. Mitra, A. Mitra, J. Choudhury, P.R. Basu and D. Mukherjee, for the Appellant; Sudish Das Gupta, Probal Mukherjee, Suhrid Sur and Rajdip Bhattacharya, for the Respondent

Judgement

Prasenjit Mandal, J.—These two applications are at the instance of the defendants and are directed against the orders dated August 17, 2010 passed by the learned Additional District Judge, Fifth Court, Barasat in Misc. Appeal No. 53 of 2010 and Misc. Appeal No. 54 of 2010 respectively.

2. Since the common question of fact and law is involved in the two applications, the two applications are disposed of by this common judgment.

3. It will be convenient to discuss the fact of the C.O. No. 2718 of 2010.

4. The plaintiffs/opposite parties filed the suit being No. 417 of 2007 praying for a decree of declaration and plaintiffs' right, title and interest in the suit property, permanent injunction against the defendants restraining them from disturbing the plaintiffs' peaceful possession over the suit property and other reliefs. The plaintiffs contended that one Wahed Bux Sarkar @ Ohed Baksh Sarkar was in exclusive possession of the suit property measuring 7 decimals of land, as described in the schedule of the plaint. The total area of the said plot No. 241 was to the extent of 52 decimals of land. The Government of West Bengal acquired 30 decimals of land therefrom and the remaining portion of the land

containing an area of 22 decimals was possessed by the said Ohed Baksh Sarkar. He died leaving four sons and one daughter as his heirs and his heirs were in joint possession in respect of their proportionate shares. An amicable partition was held amongst the heirs of Ohed Baksh Sarkar and by virtue of such amicable settlement, three sons got the said portion of the suit plot and they transferred their right, title and interest in favour of one Dulal Ch. Jana by a registered deed of sale in 1987 and delivered possession. There was an oral agreement for re-conveyance and so subsequently the deed of re-conveyance was executed by Dulal Ch. Jana in 1989 in favour of two sons as the other son, namely, Nur Mohammed, did not intend to get back such property. The vendor delivered possession in favour of the two sons of Ohed Baksh Sarkar accordingly, namely, Amhed Ali Sarkar and Iman Ali Sarkar. In fact, the suit property was possessed by Amhed Ali Sarkar and Iman Ali Sarkar and their sister Jaimunnecha Bibi. Amhed Ali Sarkar died in 2001 leaving his widow, three sons and two daughters as his legal heirs. They were also in joint possession with the other heirs as stated. Such joint owners intended to sell 7 decimals of land to the plaintiffs and accordingly the plaintiffs purchased the said portion at a consideration value of Rs. 48,00,000/- only in 2006 by a registered deed and thus the plaintiffs became the owner of the said property. These 7 decimals of land comprise the suit property, as described in schedule A to the plaint and their names have been duly mutated with the Government of West Bengal and they paid rents. The defendant Nos. 1 to 8 are the sellers from whom the plaintiffs acquired the schedule A property. These defendants with an ulterior motive gave proposal to the plaintiffs to sell out the said A schedule property in favour of them or to enter into an agreement for development with the defendant Nos. 9 to 37 for making construction of multi-storied buildings. The plaintiffs did not agree to such proposal. For that reason, the defendants are trying to dispossess the plaintiff from A schedule property and for that reason they are trying to start construction works on A schedule property. Immediately after purchase, the plaintiffs made construction of the boundary wall surrounding the A schedule property. But the defendants in collusion with each other demolished a portion of such boundary wall with a view to raising structures over the A schedule property and for that reason they already stored the building materials just in front of the suit property. So, the plaintiffs were compelled to file the suit for the reliefs, stated earlier.

5. At the time of filing the suit, the plaintiffs prayed for temporary injunction before the learned Civil Judge (Senior Division), First Court at Barasat. Initially, the learned Trial Judge granted an ad interim order of injunction directing the parties to maintain status quo. But upon hearing the learned Advocate for both the sides, the learned Trial Judge vacated the order of status quo and rejected the application for temporary injunction.

6. Being aggrieved, the plaintiffs preferred a misc. appeal which was allowed by the learned Additional District Judge, First Court, Barasat directing both the parties to maintain status quo till disposal of the suit by the impugned order.

Being aggrieved, this application has been preferred by the answering defendants.

7. The defendant Nos. 9 to 37 are contesting the suit by filing the written statement and the written objection to the application for temporary injunction contending, inter alia, that Ohed Baksh Sarkar was the owner of the suit property and he died leaving 5 sons and three daughters, in all 8 as heirs and not 4 sons and 1 daughter as stated by the plaintiffs. Out of such heirs, three sons and 2 daughters had transferred their right, title and interest in the plot in suit under No. 241 to one Latika Das by a registered deed of conveyance in May, 1962 and the rest two sons and another daughter had sold and transferred their undivided share in the suit property in the said plot to two companies, namely, Luit Associates Ltd. And A.C. & Associates Pvt. Ltd. by two separate deeds of sale in February, 1997. Subsequently, the heirs of Latika Das had sold their right, title and interest in the suit plot to the defendant Nos. 9 to 37 by a registered deed of conveyance in May, 2007 and the same had been duly mutated in the names of the answering defendants. Thus, at present Luit Associates Ltd. and A.C. & Associates Pvt. Ltd. and the defendant Nos. 9 to 37 are the owners of the entire plot No. 241. The plaintiffs did not acquire any right, title and interest in the suit property by purchase in 2006 because at that time, the vendors of the plaintiffs had no right, title and interest in the suit property. The entire suit plot had been recorded in the name of the answering defendants and those two concerns and they paid rents to the Government. They are in possession of the suit property. They did not give any proposal for sale, as claimed by the plaintiffs. So, the learned Trial Judge was justified in rejecting the application for temporary injunction. The learned Appellate Court had committed wrong in allowing the appeal and directing both the parties to maintain status quo with regard to the suit property. So, the order of injunction should be vacated.

8. Mr. A.K. Mitra, learned senior Advocate appearing on behalf of the applicants, submits that Ohed Baksh Sarkar was the original owner of the suit plot No. 241 measuring 52 decimals of land. Admittedly, the Government of West Bengal acquired the 30 decimals of land and so Ohed Baksh Sarkar possessed the rest 22 decimals of land. He died leaving five sons and three daughters as his heirs and out of such 8 heirs, Abed Ali, Nehar Ali, Nur Mohammed, Najiman Bibi and Razia Bibi, that is, three sons and 2 daughters had sold their right, title and interest in the undivided property by a registered deed of sale executed in May, 1962 to the extent of 15 decimals in favour of one Latika Das and the name of Latika Das had been recorded in the R.S. record of rights. The rest three heirs of Ohed Baksh Sarkar, namely, Iman Ali, Amhed Ali and Jaimunnecha Bibi had sold their undivided right, title and interest in suit plot No. 241 to two companies, namely, Luit Associates Ltd. and A.C. & Associates Pvt. Ltd. by two separate indentures in February, 1997 to the extent of 7 decimals of land. Subsequently, the heirs of Latika Das had sold their right, title and interest in the suit plot No. 241 to the defendant Nos. 9 to 37 by a registered deed of conveyance in May, 2007 and their names have been duly mutated in the L.R. records of right and

they paid rents to the Government of West Bengal. Thus, the answering defendants and the said two companies became the owner of 22 decimals of land that was possessed by Ohed Baksh Sarkar previously after acquisition. In December, 2006, the plaintiffs purchased the land to the extent of 7 decimals in plot No. 241 from the heirs of Ohed Baksh Sarkar who had already sold their right, title and interest in the suit property to Luit Associates Ltd. and A.C. & Associates Pvt. Ltd., two companies, in February, 1997. Therefore, the plaintiffs did not acquire any right, title and interest in the suit property at all and so the learned Trial Judge was justified in rejecting the application for temporary injunction. Mr. Mitra has also contended that the records of right prepared in the name of the petitioners being later in point of time in comparison with those of the plaintiffs/opposite parties, the later entries shall prevail.

9. On the other hand, Mr. S. Dasgupta, learned senior Advocate appearing on behalf of the plaintiffs, submits that the answering defendants are developers and promoters and they are grabbing the properties to raise multi-storied buildings in the suit property. In fact, as per materials on record, they had collected building materials staged outside the suit property and if the order of injunction, as granted by the learned Appellate Court is vacated, then the plaintiffs would not get the land back if they win ultimately. The object of granting injunction is to keep the property in status quo during the pendency of the suit and so, if the order of injunction is not granted, it will be difficult for the plaintiffs to get the property back if they win ultimately. The learned Trial Judge did not appreciate the contention of the plaintiffs. In fact, the sale of the suit property in favour of the plaintiffs is earlier than that of the answering defendants. Their names have also been recorded in the L.R. records of right and they paid rents to the Government. They are very much in possession of the suit property. So, the learned Appellate Court was justified in passing the order of status quo till disposal of the suit.

10. Thus, I find that two points have emerged for decision in this application:

1. Whether the plaintiffs have shown the prima facie case to go for trial in the suit, and
2. Whether the learned Appellate Court was justified in granting the order of status quo in disposing of the appeal.

11. Upon hearing the learned Advocate of both the sides and on perusal of the materials on record, I find that admittedly, Ohed Baksh Sarkar was the owner of the R.S. suit plot No. 241 under Mouza Mondal ganthi, P.S. Baguihati, District ? North 24 Parganas to the extent of 52 decimals of land. Admittedly, out of such 52 decimals of land, the Government of West Bengal acquired 30 decimals of land for public purpose in 1962 and Ohed Baksh Sarkar possessed the rest 22 decimals of land. Ohed Baksh Sarkar died in 1953 leaving 5 sons and 3 daughters, namely, Abed Ali, Nehar Ali, Nur Mohammed, Najiman Bibi Rajia Khatun, Ahmed Ali, Iman Ali and Jaimunnechha Bibi as heirs. Out of such 22

decimals of land, some of the heirs, namely, 3 sons and 2 daughters had sold their undivided right, title and interest in the suit plot to the extent of 15 decimals of land in favour of one Latika Das by a registered deed of sale in May, 1962 and her name was duly recorded in the R.S. records of right. Such 15 decimals of land are not the suit property. But I find that the defendant Nos. 9 to 37 became the owner of such 15 decimals of land by a deed of sale in May, 2007. The remaining heirs of Ohed Baksh Sarkar, namely other 2 sons and 1 daughter had sold their right, title and interest in the undivided suit property in favour of Luit Associates Ltd. And A.C. & Associates Pvt. Ltd. in February, 1997.

12. The contention of the plaintiffs is that the heirs of Ohed Baksh Sarkar, namely, Amhed Ali Sarkar, Iman Ali Sarkar & Jaimunnecha Bibi had sold their right, title and interest in the suit property in favour of the plaintiffs in December, 2006 and thus the plaintiffs became the owners of the suit property. Since such vendors had already transferred their right, title and interest in the suit property in favour of two companies in the year 1997, I find that, prima facie, the plaintiffs could not have acquired any right, title and interest in respect of the suit property in December, 2006. The claim of the plaintiffs in the suit property to the extent of such 7 decimals of land is on the basis of the deed executed in December, 2006. Since their vendors had already transferred their right, title and interest in the suit property in favour of the two companies in February, 1997, the vendors could not have conferred any right, title and interest in the suit property in favour of the plaintiffs by the deed of December, 2006. Therefore, I am of the view that the plaintiffs have failed to show prima facie case to proceed with the suit for trial.

13. Mr. Mitra has referred to the decision of Mandali Ranganna and Others etc. Vs. T. Ramachandra and Others, and thus he has submitted that when the appellants are seeking injunction for restraining the respondents from raising construction on the suit property and from transferring or alienating right in respect of the suit property during the pendency of the suit ? Held, on facts, High Court rightly refused grant of injunction to the appellants.

14. On the other hand, Mr. Dasgupta has referred to the decision of Shridevi and Anr. v. Muralidhar and Anr. Reported in (2007) 14 SCC 721 and submitted that the Court is to consider the prima facie case, balance of convenience, irreparable injury and facts and circumstances of the case and then to arrive at a conclusion whether injunction should be granted or not. So, in appropriate cases order of status quo should be granted.

15. Mr. Dasgupta has also referred to the decision of Gangubai Bablya Chaudhary and Others Vs. Sitaram Bhalchandra Sukhtankar and Others, and thus he submitted that where refusal to grant injunction may preclude fair and just decision while grant of injunction will not cause any inconvenience to the other party, - Held, injunction should be granted in the interest of justice. By referring to paragraph 6 of the said judgment, Mr. Dasgupta has submitted that if the respondents are allowed to put up construction by the use of the FSI for the

whole of the land including the land involved in dispute, the situation may become irreversible by the time the dispute is decided and would preclude fair and just decision of the matter. If, on the contrary injunction is granted as prayed for, the respondents are not likely to be inconvenienced because they are in possession of sufficient land on which they can put up construction. Therefore, the interim injunction must be granted. I have considered those decisions properly.

16. In the instant case, I find that an Advocate commissioner was appointed and he visited the suit property and thereafter he submitted a report (vide page 47). From the report of the Advocate commissioner appearing at page No. 50, I find that the learned Advocate commissioner has observed that there is no construction over any part of the suit property, only a kacha Ghar made of brick wall and tin shed is situated over the suit property. The suit property with other properties are surrounded by pacca brick built boundary wall. There is only one main gate on the Western side of the boundary wall wherein it has been written as ? P.S. Group & company?. Out of the suit property there is one pucca room within the said boundary wall. Some tube lights are fixed.... The learned Advocate commissioner has also observed that there is no building materials lying on the suit property.

17. I have already stated that the answering defendants have contended that they and the two other companies namely, Luit Associates Ltd. And A.C. & Associates Pvt. Ltd., had purchased the entire 22 decimals of land left by Ohed Baksh Sarkar from the heirs of Latika Das and the heirs of Ohed Baksh Sarkar and thus they became the owner of the same in plot No. 241. The report of the learned Advocate Commissioner clearly shows that the suit property along with other properties are surrounded by boundary wall and there is only one gate wherein it has been written by P.S. Group & company meaning thereby the answering defendants and the two other companies are in possession of the same. Though the purchase deed of the plaintiffs is of the year 2006 and the deed of purchase of the answering defendants is of the year 2007, I find that the vendors of the plaintiffs, prima facie, had no title to the suit plot to sell the same to the plaintiffs.

18. On the other hand, the possession of the said plot No. 241 appears to be with the contesting defendants and the two companies, though both the parties were able to mutate their names with the Government of West Bengal in the L.R. records of right and they paid rents to the Government. Whatever may be the result of the suit, at present, prima facie, I find that the plaintiffs have failed to show prima facie case to go for trial, as discussed above. Possession lies with the answering defendants. So, if they are restrained from using their purchased land which appears to be in order, the rightful owners will be deprived of their right to use the land. So, balance of convenience in refusing the injunction lies in favour of the answering defendants. If, injunction, as prayed for, is granted it is the answering defendants who are to suffer irreparable loss. On the other hand, if

the plaintiffs ultimately succeed, they would get back the land afterwards. So, at present, prima facie the plaintiffs have nothing to suffer loss.

19. In that view of the matter, I hold that the learned Trial Judge has rightly observed that the plaintiffs have failed to make out prima facie case of getting an order of temporary injunction in their favour. The balance of convenience and inconvenience is also against the plaintiffs and is in favour of the defendants. The plaintiffs will not suffer any injury far less irreparable injury by refusal of temporary injunction, as prayed for. I hold that the learned Trial Judge has rightly appreciated the contention of the parties and that he has rightly rejected the application for temporary injunction.

20. On the other hand, the learned Additional District Judge has failed to take note of the fact that the vendors of the plaintiffs having sold their right, title and interest in the suit property in favour of the two companies in February, 1997, had no authority to sell the said land again in favour of the plaintiffs in December, 2006. Therefore, though the sale deed in favour of the plaintiffs is prior to that of the answering defendants, the plaintiffs, prima facie, have failed to show that they can proceed with the trial.

21. During argument, the learned senior Advocate for the plaintiffs has drawn my attention that the sale deed in favour of Latika Das clearly indicates that Latika Das purchased two decimals of land only from the plot No. 241. Though one xerox copy of a certified copy of deed is filed to that effect; yet this paper is not supported by any affidavit. On the other hand, the petitioners have filed the copy of the registered deed to show that Latika Das purchased 15 decimals of land from the plot in suit in 1962. Moreover, such 15 decimals of land is not the subject matter of the suit but the remaining portion of the land to the extent of 7 decimals of land only is the suit property as stated earlier. Therefore, the certified copy of the deed furnished by the plaintiffs cannot be taken into consideration for the time being.

22. The point Nos. 1 & 2 are, thus, answered.

23. The Appellate Court has, therefore, committed a wrong to take notice of the disputes between the parties in its perspective. His observation that there should be an order of status quo cannot be supported in the circumstances. He has committed errors of law and so his findings cannot be supported.

24. Accordingly, this application succeeds. The impugned order passed by the learned Appellate Court is hereby set aside.

25. Considering the circumstances, there will be no order as to costs.

C.O. No. 2719 of 2010

26. As regards, the other C.O. No. 2719 of 2010, the fact is almost similar and this relates to the suit plot No. 240 which is adjacent to the west of the plot No. 241, just discussed above. The two plots are side by side. The above

observations shall apply also in this application.

27. Accordingly, the order impugned cannot be supported. The learned Appellate Court has committed errors of law in passing the impugned order. It is hereby set aside.

28. I like to record here that above observations are only for the purpose of disposal of the two applications and the learned Trial Judge shall not swayed away by the above observations and findings. He shall dispose of the suit independently as expeditiously as possible as the written statement has already been filed and issues are to be framed as per last order sheets of the learned Trial Court filed in the application.

29. Considering the circumstances, there will be no order as to costs.

30. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.