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**(2009) 11 AHC CK 0159**

**In the Allahabad High Court**

**Case No : First Appeal From Order No. 3161 of 2009**

Pullin Kaparia

APPELLANT

Vs

Rakesh Garg and Others

RESPONDENT

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**Date of Decision :** 13-11-2009

**Acts Referred:**

**Citation :** (2009) 11 AHC CK 0159

**Hon'ble Judges :** S.P.Mehrotra, J

**Final Decision :** Dismissed

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## **Judgement**

Ran Vijai Singh,J.

The present Appeal has been filed against the order dated 22.10.2009 passed by the learned Additional Civil Judge(Senior Division), Court No.2, Kanpur Nagar on Application No. 6Ga filed on behalf of the plaintiffappellant in Suit No. 1823 of 2009.

It appears that the plaintiffappellant filed the aforesaid Suit No. 1823 of 2009 against the defendantsrespondents, interalia, praying for decree of declaration, declaring an agreement to sell dated 13.3.2008 allegedly executed by the defendantsrespondents no.1 and 2 in favour of the plaintiffappellant in regard to the property mentioned in the plaint as bona fide and legal, and further for a decree of permanent injunction restraining the defendantsrespondents, their agents etc. from selling or otherwise transferring the property in question.

It is, interalia, alleged in the Plaint of the said Suit that an agreement dated 13.3.2008 to sell the property in question was executed by the defendantsrespondents no.1 & 2 in favour of the plaintiffappellant, and the plaintiff appellant paid a sum of Rs.2,00,000/ as an advance through cheque. Copy of the Plaint of the said Suit has been filed as Annexure6 to the Affidavit accompanying the Stay Application, filed along with the present Appeal.

The Written Statement was filed on behalf of the defendantsrespondents no.1 &

2, copy whereof has been filed as Annexure7 to the Affidavit accompanying the aforesaid Stay Application. It was, interalia, averred in the said Written Statement that the defendantsrespondents no. 1 & 2 had made proposal for one time settlement before the defendantsrespondents no.3 & 4, and that in order to show their readiness to arrive at settlement, the defendantsrespondents no.1 & 2 had deposited certain amount as mentioned in paragraph 10 of the said Written Statement.

The Written Statement was also filed on behalf of the defendantsrespondents no. 3 & 4, copy whereof has been filed as Annexure8 to the Affidavit accompanying the aforesaid Stay Application. It was, interalia, admitted in the said Written Statement that the property in question was in the ownership of the defendantsrespondents no. 1 & 2. It was further averred that the defendantsrespondents no.1 and 2 created equitable mortgage on the property in question as collateral security for the financial facility extended to M/s Avanti Packaging (P.) Ltd. It was, however, denied that any consent was given by the defendantsrespondents no.3 & 4 for execution of any agreement to sell by the defendantsrespondents no.1 & 2 in favour of the plaintiffappellant. It was further denied any assurance of any kind was given by the defendantsrespondents no.3 & 4 to sell the property in question on the alleged sale consideration of Rs.26,25,000/.

Reference was made in the said Written Statement (filed on behalf of the defendantsrespondents no. 3 & 4 ) to the judgment dated 14.9.2005 passed by the Debts Recovery Tribunal, Allahabad in O.A. No. 94 of 2004 [Bank of Borada vs M/s Avanti Packaging (P.) Ltd. & others],copy whereof has been filed as Annexure1 to the Affidavit accompanying the aforesaid Stay Application. It was, interalia, stated in the said Written Statement that the entire attempt on the part of defendantsrespondents no. 1 & 2 is to anyhow defuse the recovery and realization proceedings through attachment and sale of the property in question pursuant to the said judgement of the Debts Recovery Tribunal,Allahabad.

Reference was also made in the said Written Statement to the execution case, being DRC No. 45 of 2006, filed for recovery and realization of the dues by auction and sale of the mortgage property i.e., the property in question. It was, interalia, further averred in the said Written Statement that the said execution case, namely DRC No. 45 of 2006 is pending before the Recovery Officer, Debts Recovery Tribunal, Allahabad.

It further appears that in the said Suit, namely, the aforesaid Suit No. 1823 of 2009, the aforementioned Application No. 6Ga was filed on behalf of the plaintiffappellant, interalia, praying for grant of injunction against the defendantsrespondents etc. restraining them from alienating the property in question during the pendency of the said Suit.

As noted above, by the order dated 22.10.2009, the said Application No. 6Ga was rejected by the Trial Court. The plaintiffappellant has filed the present

Appeal against the said order dated 22.10.2009.

We have heard Sri Sharad Malviya, learned counsel for the plaintiffappellant, and perused the record.

From a perusal of the record, it is evident that the aforesaid Original Application No.94 of 2004 was filed by the defendantsrespondents no. 3 & 4 herein as Applicants against M/s Avanti Packaging (P.) Ltd.,Rakesh Kumar Garg (defendant respondent no.1 herein), Smt. Rekha Garg (defendantrespondent no.2 herein) and Smt. Sudha Dubey, impleaded as Defendants in the said Original Application.

The Debts Recovery Tribunal, Allahabad by its judgement dated 14.9.2005 allowed the aforesaid O.A. No. 94 of 2004 against the Defendants in the said Original Application. As noted above, the defendantsrespondents no. 1 & 2 herein were defendants no.2 & 3 in the said Original Application. Copy of the said judgment dated 14.9.2005, as mentioned earlier, has been filed as Annexure1 to the Affidavit accompanying the aforesaid Stay Application.

It is further evident from the record that the case of the plaintiffappellant is that an alleged agreement to sell dated 13.3.2008 in regard to the property in question was executed by the defendantsrespondents no. 1 & 2 in favour of the plaintiffappellant. It is admitted by the learned counsel for the plaintiffappellant that the said agreement to sell was an unregistered document. Copy of the said alleged agreement to sell has been filed as Annexure4 to the Affidavit accompanying the aforesaid Stay Application.

It is further evident that pursuant to the said judgement dated 14.09.2005 passed by the Debts Recovery Tribunal, Allahabad, recovery proceedings by attachment and sale of property in question have been initiated before the Recovery Officer, Debts Recovery Tribunal, Allahabad, and the execution case, namely DRC No. 45 of 2006 is pending.

As noted earlier, the defendantsrespondents no. 1 & 2 herein were also the Defendants in the Original Application before the Debts Recovery Tribunal, Allahabad, and they are, therefore, bound by the said judgement dated 14.09.2005 passed by the Debts Recovery Tribunal, Allahabad.

The alleged agreement to sell, which is admitted to be an unregistered document, was evidently entered into while the recovery proceedings, pursuant to the said judgement dated 14.09.2005 were pending. As per the own case of the plaintiffappellant, only an agreement to sell has been executed in his favour which too is an unregistered document. Section 54 of the Transfer of Properties Act, 1882, interalia, provides that a contract for the sale of immovable property" does not, of itself, create any interest or charge on such property." Hence, despite the alleged agreement to sell, the plaintiff appellant has no prima facie title, interest or right whatsoever in the property in question.

Further, the alleged agreement to sell having been executed, as per the own case of the plaintiffappellant, during the pendency of the recovery proceedings,

namely the execution case being DRC No.45 of 2006, pursuant to the aforesaid judgement dated 14.9.2005 passed by the Debts Recovery Tribunal, Allahabad, such agreement will be subject to the result of the litigation in view of the principle of lis pendens.

From the above discussion, it is clear that the plaintiffappellant failed to make out any prima facie case in his favour for grant of injunction. The Injunction Application No. 6Ga was therefore, rightly rejected by the Trial Court by the impugned order dated 22.10.2009.

The present Appeal lacks merits, and the same is liable to be dismissed.

The Appeal is accordingly dismissed. However, on the facts and in the circumstance of this case, there will be no order as to costs.