
(2022) 02 UK CK 0035

In the Uttarakhand High Court

Case No : Appeal From Order No. 38 Of 2022

Samir Thapar

APPELLANT

Vs

Tiny Kesag Ligtsang Thapar

RESPONDENT

Date of Decision : 11-02-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Citation : (2022) 02 UK CK 0035

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : U. K. Uniyal, Rajesh Sharma, V. S. Rathore

Final Decision : Dismissed

Judgement

Ravindra Maithani, J

1. Challenge in this appeal is to the order dated 24.01.2022, passed in Original Suit No.09 of 2022, Samir Thapar versus Tiney Kesag Lingsangh

Thapar by the court of Civil Judge (Senior Division), District Pauri Garhwal (for short â??the suitâ??).

2. Heard learned counsel for the parties through video conferencing and perused the record.

3. The suit has been filed by the appellant for cancellation of a gift deed dated 27.02.2013 (â??the gift deedâ?) as also for permanent injunction with

regard to the property involved in the deed. On that date, when the suit was instituted, an application under Order 39 Rules 1 & 2 of the Code of Civil

Procedure, 1908 (for short â??the Codeâ??) was moved by the appellant seeking ad-interim-injunction. The Court issued notice on 24.01.2022.

4. The appellant, is aggrieved by that part of the order by which an ex-parte ad-interim-injunction has not be granted.

5. It is the case of the appellant that an agricultural property was purchased in the year 1989 by the appellant and his father for constructing a resort thereupon. In the year 2007, the father of the appellant Manmohan Thapar insisted for construction of the resort, but the appellant was not in a position to undertake that task at that point of time. Subsequently, Manmohan Thapar insisted the appellant and his brother to transfer their shares in the property, in favour of Manmohan Thapar, in order to facilitate the requisite permission and licenses for construction of resort. On 13.04.2007, the appellant and his brother transferred their shares of property in favour of Manmohan Thapar. In the year 2015, the appellant came to know about the marriage of Manmohan Thapar with the respondent, who was working as a Secretary with Manmohan Thapar. It is also the case of the appellant that, in fact, the respondent did furnish false information for the purpose of marriage, revealing herself as unmarried though she was already married and had a child. Manmohan Thapar expired on 26.07.2019. On 30.09.2019, through a lawyer, the appellant came to know about a will dated 18.11.2006 of Manmohan Thapar with regard to the property-in-suit. When enquired, the appellant also came to know that the property was mutated in the name of respondent on the basis of the gift deed dated 27.02.2013.

6. It is the case of the appellant that the alleged will dated 18.11.2006 and the gift deed dated 27.02.2013 are sham and forged. The father of the appellant Manmohan Thapar, in his old age, was suffering with various ailments namely Dementia, Hypertension, Alzheimer etc. In the year 2006, Manmohan Thapar could not have executed the will with regard to the whole of the property because on that date, he was not the owner of the whole property. It is in the year 2007, at the request of Manmohan Thapar, the appellant and his brother transferred their shares in the property in favour of Manmohan Thapar. With these allegations, the suit was filed for the cancellation of the Gift deed as also for permanent injunction. The appellant also moved an application under Order 39 Rules 1& 2 of the Code. The Court below observed that there is no ground to grant ex-parte ad-interim-injunction and issued notice. It is impugned.

7. Learned Senior Counsel appearing for the appellant would submit that Manmohan Thapar was not owner of the entire property in the year 2006, when he executed this will. The appellant and his brother transferred their shares

in the property to him in the year 2007. Therefore, it is argued that this will is not genuine.

8. The marriage of respondent with Manmohan Thapar has also been assailed on the ground that, in fact respondent was already married having a

son, when she married Manmohan Thapar. In the marriage documents, respondent gave false statement that she was unmarried then. With regard to

gift deed also, it is argued that it is forged and sham. The respondent does not derive any right out from the gift deed. The appellant is in possession of

the property, therefore, till the application under Order 39 Rules 1 & 2 of the Code, filed by the appellant is decided, the Court below ought to have

issued ad-interim-injunction. Learned Senior Counsel would argue that till the application filed by the appellant under Order 39 Rules 1 & 2 of the

Code is decided, directions may be issued to the respondent so as not to further transfer the property in suit to any other person.

9. The principle which governs grant of injunctions need no reiteration. In order to issue temporary injunction, it has to be shown that the party seeking

temporary injunction has a prima facie case in his favour. So also the balance of convenience and irreparable loss are other factors, which are to be

taken into consideration.

10. Insofar as, ex-parte ad-interim-injunction is concerned, it may be issued in a little more urgent cases, when it appears that the object of granting

the injunction would be defeated by delay. But, first and foremost, a party seeking temporary injunction has to establish these factor, namely, prima

facie case, balance of convenience and irreparable loss.

11. Learned Senior Counsel has argued that, in fact, when the appellant came to know about alleged will of Manmohan Thapar in the year 2019, it is

only thereafter, they came to know about the gift deed. Then it was revealed that, in fact, based on the gift deed the respondent mutated her name in

the revenue records.

12. Admittedly, the appellant had transferred his share to Manmohan Thapar in the year 2007. It is the case of the appellant that mutation was done

on the basis of gift deed which was allegedly executed sometimes in the year 2013. It is also stated before this Court that the respondent is recorded

tenure holder. Under those circumstances, without making any further observation with regard to merits of the case, this Court is of the view that the

court below did not commit any error in denying to issue ex-parte temporary injunction to the appellant. Once objections are filed, the court below may definitely decide the application of the petitioner filed under Order 39 Rules 1 & 2 of the Code.

13. Accordingly, this Court is of the view that there is no merit in this appeal and it deserves to be dismissed at this admission stage.

14. The appeal is dismissed in limine.