

(2004) 09 AHC CK 0136
In the Allahabad High Court
Case No : F.A.F.O. No. 2429 of 2004

Smt. Tabassum Gazala

APPELLANT

Vs

Amit Garg and Another

RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4

Citation : (2005) 1 ARC 372 : (2005) 1 AWC 276

Hon'ble Judges : Umeshwar Pandey, J;A.K. Yog, J

Bench : Division Bench

Advocate : Ravi Kant and S.F.A. Naqvi, for the Appellant; Shashi Nandan, S.C. Srivastava, Arvind Srivastava, C.L. Satsangi and S.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—In this First Appeal from order, the judgment under challenge is an interim order dated 27.8.2004 passed by the Civil Judge (Sr. Division), Allahabad by which the Court below has restrained the appellant-defendant from carving out plots in the disputed land and from transferring it to the prospective purchasers through sale and thus from dispossessing the plaintiffs from the property.

2. In the factual background of the disputes between the parties in the present declaratory suit the subject-matter is one Bungalow No. 11, Kanpur Road, Allahabad which happens to be a "Nazool" property initially given to Smt. Sehar Bano on lease of 90 years. She being the owner of the lease hold rights in the property, had contracted on 20.6.1976 with one Mahesh Chandra Gupta to transfer those rights in the property for a consideration of Rs. 1,00,000/- to a person nominated by him. She had also received a sum of Rs. 50,000/- as earnest money. In pursuance to this agreement of sale of the lease rights in the property, a permission from the competent authority for such transfer of rights was required but meanwhile Smt. Sehar Bano died on 7.9.1978. Thereafter, her legal representatives Javed Haidar, Tanveer Haidar and Naved Haider

surreptitiously and in violation of the earlier contract wanted to transfer those lease rights in somebody else's favour. The mala fide intention of the legal representatives of Smt. Sehar Bano was countered by Mahesh Chandra Gupta by filing a Suit No. 231 of 1978 for permanent injunction against them, which was finally decreed on 22.2.1979 and the defendants in that suit were permanently restrained from transferring the lease rights in the property in dispute in favour of anybody else. Subsequently the said Mahesh Chandra Gupta on 12.11.1978 had nominated the great grandfather of plaintiff No. 1 and grandfather-in-law of plaintiff No. 2 namely Udai Ram Garg authorising him to get the transfer deed executed by Javed Haider and others after making payment of the remaining sale consideration to them. Mahesh Chandra Gupta for the purposes of nominating Udai Ram Garg and authorizing him to get the sale deed executed in his favour, had received a consideration of Rs. 55,000/- from him. The said Udai Ram Garg in his life time on 1.9.1983 had executed a Will in favour of the plaintiffs in respect of authority and nomination given to him by Mahesh Chandra Gupta for getting the lease hold rights of Bungalow No. 11 aforesaid transferred in his favour. Thereafter, Udai Ram Garg died on 2.12.1983. The plaintiffs after acquiring authority to get the leaseholds rights of the disputed property transferred in their favour in pursuance of the agreement dated 20.6.1976, made repeated requests to Javed Haider and others but with no result. In spite of this, those Javed Haider and his two brothers even in the face of a decree of court passed against them in Suit No. 231 of 1978, restraining them from transferring their leaseholds rights, executed an agreement nominating the defendant to obtain freehold rights in her favour. After getting information of this illegal act of Javed Haider and others, the plaintiff filed Suit No. 388 of 2003 in which the present defendant Smt. Tabassum Gazala was also arrayed as defendant and obtained interim injunction order dated 19.7.2003 from the Court of Civil Judge (Sr. Division) whereby the defendants of that suit were restrained from making transfer of the property in question through sale, from creating any charge over the property and from obtaining freehold rights in the property in question. In spite of all this, the defendant Smt Tabassum Gazala in utter violation and derogation of decree of the Court and also the interim injunction order as aforesaid obtained the free hold rights in the disputed property and got the free hold deed registered in her favour on 29.3.2004.

3. It is in the aforesaid factual matrix that the present suit for declaration of the free hold rights obtained by the appellant/defendant in the property in question, as void, was filed before the Court below and this ad-interim injunction application was also presented.

4. The defendant-appellant Smt. Tabassum Gazala filed her counter-affidavit against the ad-interim injunction application in the Court below and stated that lease created for 90 years was obtained w.e.f. 17.8.1960. On 5.11.2001 Javed Haider and his two brothers nominated the defendant (Smt. Tabassum Gazala) to obtain free hold rights in the property in pursuance to which she has obtained free hold rights in the property and the deed relating thereto has already been

got registered. She also stated that Smt. Sehar Bano had not executed any agreement in respect of the property in dispute in favour of Mahesh Chandra Gupta as claimed by the plaintiffs and that her (defendant's) nominators Javed Haider and others did not have the knowledge of Suit No. 231 of 1978. The decree passed in that suit therefore, could not be said to be operative against them. In fact, Mahesh Chandra Gupta himself had filed an affidavit before the Addl. District Magistrate (Nazool) stating that he did not obtain any agreement of sale dated 20.6.1976 executed by Smt. Sehar Bano. In fact, the plaintiff had filed a writ petition before the High Court being Writ Petition No. 7998 of 2004 which was disposed of giving direction to the Addl. District Magistrate (Nazool) to take up the objections of the petitioner in respect of the property in question and pass orders in accordance with law. Addl. District Magistrate (Nazool) after hearing the parties, was of the opinion that Javed Haider and others did not have the knowledge of the decree passed in the Suit No. 231 of 1978 ; as such, it was not binding upon them till the time they nominated the defendant for obtaining the free hold rights in the property on 5.11.2001. The defendant also took objections to the validity of the agreement dated 20.6.1976 and the Will allegedly executed by Udai Ram Garg in favour of the plaintiffs. Thus, by making the order of Addl. District Magistrate (Nazool) conferring free hold rights upon the defendant and registration of the deed in respect thereto as sheet anchor, the defendant has pleaded for the dismissal of the application of the plaintiff for issue of temporary injunction.

5. The court below, after hearing the parties at length, has considered the respective merits of their cases and has found that the plaintiffs predecessor namely Mahesh Chandra Gupta had acquired preferential right in the property from Smt. Sehar Bano, the original holder of the lease rights when she had agreed to nominate him or his nominee for transferring her rights in the property as back as on 20.6.1976 for a consideration of Rs. 1,00,000/- out of which she had received the earnest money of Rs. 50,000/-. Smt. Sehar Bano's successors Javed Haider and others had been permanently restrained by a decree of the Court dated 28.2.1979 in Original Suit No. 231 of 1978 from transferring the lease rights in the property to anybody else except Mahesh Chandra Gupta and also in the face of temporary injunction order dated 19.7.2003 passed by the Court in Original Suit No. 388 of 2003 restraining Javed Haider and others from disposing of their lease rights in the property or from nominating anyone to obtain free hold rights in the property, the defendant had committed gross violation of all the statutory obligations imposed upon her and her predecessors. As such, the Court below found that the plaintiffs had a very strong prima facie case in their favour for grant of temporary injunction order to restrain the respondent from transferring the property in dispute to prospective purchasers after carving out the plots in the land. The court below also found that since the plaintiffs are in physical possession of the property in dispute, their occupation of the disputed bungalow No. 11 could not be permitted to be disturbed by such action of the defendant and that the defendant should not be permitted to

demolish the building in violation of any statutory provision. Accordingly, the learned trial Judge also found the balance of convenience in favour of the plaintiffs and was of the view that if such possession of the plaintiffs is disturbed they would also be incurring irreparable injury. In the facts and circumstances, the Court below thus, found every justification for issuing temporary injunction and has directed the appellant-defendant Smt. Tabassum Gazala not to interfere in plaintiffs' possession over the disputed bungalow and the appurtenant land by carving out plots, transferring and handing over its possession to any prospective purchaser. She has also been restrained from demolishing the bungalow in question.

6. Aggrieved with the aforesaid impugned order, the defendant has come up to this Court in this First Appeal from order.

7. We have heard Sri Ravi Kant, Sr. advocate, assisted by Sri. S. Farman Ahmad Naqvi on behalf of the appellant and Sri S. C. Srivastva representing the respondents-plaintiffs and have gone through the materials available on the record.

8. There is no denial to the fact, which is also evident from the copies of the documents filed that there is a decree of competent court passed in Suit No. 231 of 1978 restraining the defendant-Javed Haider and others from transferring the lease rights in the property to anybody else except the plaintiff Mahesh Chandra Gupta, the predecessor of the plaintiffs. It is also not disputed that there was an interim injunction order passed in Suit No. 388 of 2003 against the present defendant Smt. Tabassum Gazala restraining the defendants including her, from making transfer of property in question through sale, from creating any right over the property and from obtaining any free hold rights in the said property. There is further no denial that the disputed bungalow is under the physical possession of the plaintiffs who had preferred objections before the competent authority, i.e., Addl. District Magistrate (Nazool) in the matter of grant of free hold rights. It has been contended by the learned counsel for the appellant-defendant that since the competent authority has granted free hold rights in favour of the defendant, no question against its validity can be raised by the plaintiffs. From the relief clause of the plaint, it is evident that the suit is itself filed challenging the validity of the impugned order of Addl. District Magistrate (Nazool), in pursuance to which the deed dated 29.3.2004 conferring free hold rights had been got registered in favour of the defendant. If the validity of such order and deed has been challenged in the suit for declaration, the Court will have to look into that aspect also while passing an ad-interim injunction order.

9. The learned counsel for the appellant in the aforesaid context itself has cited the case law of Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad, and Jugraj Singh and Another Vs. Jaswant Singh and Others, . On the strength of these case laws, the learned counsel submitted that if certain rights in the property have been created under statutory provisions of law by adopting formal proceeding, such creation of rights would be independent to any other right held

by third persons in the property. In case of Rana Sheo Ambar Singh (supra), the rights, which were created, were that of bhumidhari right in the property, which was the subject of an earlier mortgage, with regard to the proprietary rights in the said property, prior to the enforcement of the U. P. Zamindari Abolition and Land Reforms Act, 1950. Mortgage rights in that case created in the property were held to be inconsequential in view of the fact that on enforcement of U. P. Z. A. & L. R. Act, the proprietary rights and all other rights in property had actually vested in the State u/s 6 of the said Act and the proprietary rights in the property had become extinct. Here the leasehold rights are actually the basis upon which the free hold rights could be conferred under the relevant law and regulations. If the person possesses the lease hold rights or he transfers that right to somebody then in that case such holder of lease rights in the property or the person nominated by him for such purposes, is entitled to the conferment of free hold rights in the property. In fact, at this stage of the case, one thing is very clear that the lease hold rights if transferred in favour of the defendant Smt. Tabassum Gazala or she has been nominated by Javed Haider and others, this act of Javed Haider and others, has to be viewed, prima facie, as done in utter violation of legal obligation, which were imposed upon them and the defendant in the aforesaid decree of permanent injunction of Suit No. 231 of 1978 or temporary injunction granted in Suit No. 388 of 2003. The observation of the Addl. District Magistrate (Nazool) in his impugned order granting free hold rights in favour of the defendant that Smt. Tabassum Gazala's predecessors Javed Haider and others did not have the knowledge of the decree of the Suit No. 231 of 1978, is patently incorrect in view of the judgment dated 28.2.1979 whereby the decree was passed. In the judgment itself, it is observed that the defendants of the said suit Javed Haider and others were contesting the suit only on one point and had filed their written statement. The point was as to what consideration was due for payment for nominating the plaintiff in the said suit (Mahesh Chandra Gupta) to obtain leasehold rights in the property in question. In fact, Javed Haider and others had appointed one K. B. Garg as their Mukhtaream for the purposes of the said suit, who had appeared and given evidence also in the case. Therefore, to say that the defendant Javed Haider and others did not have knowledge of decree passed in that suit appears to have absolutely no basis and such observations made in the impugned order of the Addl. District Magistrate (Nazool) are wholly inconsequential. The aforesaid two decisions relied upon by the learned counsel for the appellant, thus, did not help her in the present case.

10. The other most important factor in this case is the actual physical possession of the plaintiffs-respondents over the property in question. The court below in the interim injunction order under challenge in this appeal, has discussed such aspects in great detail and has finally passed directions that the plaintiffs would not be* dispossessed from the property in question in any manner not recognized under law. This order is quite innocuous and cannot be said to be legally incorrect to any extent. The court below has also directed the defendants

to maintain status quo over the property in question and she would not transfer it to the prospective purchasers by carving out plots in the land appurtenant to the bungalow. These directions have been given by the Court below only to facilitate the compliance of the order passed by it against likely dispossession of the plaintiffs from the property because the plotting and subsequent transfer of the land is likely to result into virtual dispossession of the plaintiffs from the property in question.

11. The court below, in fact, has made the correct assessment of the legal and factual controversies arising in the case between the parties and when it found that there is flagrant violation and disregard of the decree passed by the competent court and a subsequent interim injunction granted by another court against the defendant and her predecessors, it passed the impugned order. It appears to be wholly justified on the part of the Civil Judge to grant the interim order in favour of the respondents plaintiffs who possess strong prima facie case in their favour. Obviously, in such circumstances if in utter disregard to the orders of the Court, it is proposed to dispossess the plaintiffs from the property, the presumption would be that the balance of convenience also weighs in their favour. Obviously, the Court below also appears to be justified to hold that in such a situation if the plaintiffs are dispossessed from the property by an order, which is challenged in the suit they would be incurring irreparable injury.

12. Thus, from the aforesaid facts and circumstances, as discussed above, we are of the view that the learned Civil Judge, while passing the impugned order has not at all committed any factual or legal error in the said order as to warrant our interference in the present appeal. The appeal is wholly devoid of merit and is hereby dismissed with no order as to costs.