
(2010) 02 CAL CK 0085

In the Calcutta High Court

Case No : F.M.A.T. No. 1569 of 2009 and C.A.N. 9215 of 2009

Sri Gopal Kumar Bhalotia and Another

APPELLANT

Vs

Anirudh Trade and Agencies Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Stamp Act, 1899 — Section 35

Citation : (2010) 3 CALLT 227

Hon'ble Judges : Subhro Kamal Mukherjee, J;Md. Abdul Ghani, J

Bench : Division Bench

Advocate : S.P. Roy Chowdhury, Debasish Roy and Binay Kumar Jain, for the Appellant; Pratap Chatterjee and Dhruba Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Md. Abdul Ghani, J.—The present first miscellaneous appeal is at the instance of the plaintiffs and is directed against the order dated 21st October, 2009 passed by the learned Civil Judge (Senior Division), 1st Court at Alipore, District South 24-Parganas in Title Suit No. 3142 of 2009.

2. It would appear that the plaintiffs/appellants after filing the aforesaid title suit for specific performance of contract, declaration and injunction sought for an ad interim order of injunction upon filing an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure. The record speaks that learned Civil Judge (Senior Division), 1st Court at Alipore, 24-Parganas (South) after hearing the submissions made on behalf of the plaintiffs/appellants as also considering the materials placed before him was pleased to refuse the prayer for ad interim order of injunction on the ground that the plaintiffs could not make out a prima facie case and also for the reason that agreement has not been properly stamped.

3. Being aggrieved by and dissatisfied with the impugned order the plaintiffs have come up before this Court with the present miscellaneous appeal praying for setting aside the order impugned and for obtaining an interim order of

injunction as sought for in the Court below.

4. The plaintiffs case in gist may be depicted as follows:

The defendant No. 1 as owner of the suit property entered into an agreement for sale on 14th August, 2007 with the plaintiffs concerning the suit property measuring more or less 8.16 cottahs with five storied brick built building at Rs. 3.25 crores and also took an advance of Rs. 1 lac from the plaintiffs as earnest money.

5. It may be pertinent to point out that since after purchase of the suit premises, the defendant No. 1 deposited all the six title deeds dated 14th November, 1994, with the defendant No. 2, Standard Chartered Bank, Chowringhee Road, Kolkata, in connection with equitable mortgage of the suit premises as security for repayment of loan advanced by defendant No. 2. It was agreed upon between the parties that balance amount of consideration money being Rs. 3.24 crore would be paid to the defendant No. 2 by the plaintiffs for obtaining release of the mortgage of the suit premises as also the title deeds deposited with the defendant No. 2 and the defendant No. 1 would hand over vacant and peaceful possession of the suit premises in favour of the plaintiffs. In the manner as aforesaid plaintiffs were put in possession of the suit premises.

6. It has been alleged that defendant No. 1 in terms of the agreement dated 14th August, 2007 intimated the defendant No. 2 about the terms and conditions of the agreement and also requested said defendant to collect and receive the entire outstanding dues from the plaintiffs and also to release the mortgage as well as the deeds to the plaintiffs. The defendant No. 1 also requested the defendant No. 2 to issue "no dues certificate". But unfortunately the defendant No. 2 did not pay any heed to the aforesaid request of the defendant No. 1. Rather, defendant No. 2 willfully and deliberately neglected to intimate the plaintiffs about the outstanding dues of the defendant No. 1, as a result of which the sale of the suit premises could not be carried into effect. Taking advantage of the situation, the defendant No. 1 in collusion with the defendant No. 2 and in violation of the existing terms of the agreement is threatening the plaintiffs to be ousted from the suit premises with a view to disposing of the same to any third party of his choice. In the circumstances, the plaintiffs finding no alternative sought for an order of ad interim injunction in the Court below so that the defendants/respondents could be restrained from selling and/or alienating and encumbering the suit premises to any third party by dispossessing the plaintiffs therefrom.

7. The only point for determination and consideration is whether the Court below was justified in passing the impugned order and whether the order impugned needs any interference by this Court?

8. Mr. Syama Prasanna Roychowdhury, the learned senior Counsel appearing on behalf of the plaintiffs/appellants at the very outset of his argument submitted that the Court below while passing the impugned order committed mistake

causing miscarriage of justice to his clients inasmuch as the plaintiffs/appellants are in actual possession of the suit premises and that balance of convenience and inconvenience is leaning in their favour. He has referring to the contents of the impugned order as also some other important materials on record emphatically argued that the order impugned suffers from material infirmity, having no nexus with the actual state of the matters as embodied in the agreement dated 14th August, 2007. In fine, he has urged that in the existing circumstances of the case, the order impugned needs to be set aside and his clients are entitled to the ad interim relief as sought for in the Court below.

9. On the other hand, Mr. Pratap Chatterjee, the learned senior Counsel appearing for the respondents, relying upon the ruling reported in Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, contended that in the existing circumstances of the case the suit cannot be said to be maintainable for the reason that the agreement in question is not sufficiently stamped and unless the said agreement is duly stamped, the plaintiffs/appellants cannot have any claim for obtaining any relief whatsoever in view of the provisions laid down in Section 35 of the Indian Stamp Act as also in accordance with the principles of the rulings relied upon on behalf of his clients.

10. In reply to the aforesaid legal aspect urged on behalf of the respondents, Mr. Roychowdhury, learned senior Counsel appearing for the plaintiffs/appellants, drew this Court's attention to the decisions reported in 2009 (4) CHN 415 (GTZ India Private Limited v. Power Electronic Electronic Engineers and Ors.) and 2002 (2) CLJ 449 (Biswajit Chakraborty v. Mira Sen Ray) and strenuously contended that in a case like the present one, the plaintiffs/appellants may be granted ad-interim order of injunction during the pendency of the application for temporary injunction. He has further submitted that his clients are ready to take appropriate steps for effecting valid sale deed in respect of the suit premises.

11. It is the admitted position that the plaintiffs entered into an agreement dated 14th August, 2007 for purchase of the suit premises with the defendant No. 1. Further it is the admitted situation that out of the total consideration money of Rs. 3.25 crore, Rs. 1 lac has been paid to defendant No. 1 as earnest money and as per terms of the agreement in question plaintiffs are now in possession of the suit premises to the notice of the defendant No. 2. In terms of the agreement and also in part performance of the application thereunder, the defendant Nos. 1 and 2 have failed and neglected to discharge their obligations.

12. It has been categorically alleged that the defendant No. 1 in collusion with defendant No. 2 is illegally and in violation of the existing terms of agreement threatening the plaintiffs/appellants to be ousted from the suit premises and as such the appellants finding no alternative have sought for an ad interim order of injunction by instituting the suit as aforesaid upon filing an application under Order 39, Rules 1 and 2 of Code of Civil Procedure.

13. True it is that the deed of agreement is not sufficiently stamped, but failure

to stamp a document properly does not affect the validity of the transaction embodied therein. It merely renders the document inadmissible in evidence.

14. Now let us turn to see as to what extent plaintiffs/appellants are willing and ready to get the sale materialised. From the uncontroverted averments of the plaint and the application for temporary injunction as also from the submissions made on behalf of the appellants it could be safely said that the appellants are willing and ready for effecting the sale.

15. Therefore, having heard the learned Counsels for the parties concerned and also giving due regard to the nature and circumstances of the case including the principles of the rulings relied upon by the parties concerned the impugned order cannot be sustained. In the circumstances, we are of the view that the instant miscellaneous appeal deserves to be allowed by passing an order of ad-interim injunction, as prayed for, till disposal of the injunction petition pending in the Court below provided the plaintiffs secure sufficient amount of security to safeguard the interest of the State revenue. The stamp duty at the rate of 7 (seven) per cent on the alleged consideration for sale of the suit property comes to Rs. 22,75,000/- (Rupees twenty two lac seventy five thousand) only. We, therefore, direct the plaintiffs to deposit Rs. 25,00,000/- (Rupees twenty five lac) only with the Court below by 4 (four) weeks from today. In default, the order of injunction shall stand vacated. If deposited, the Court below shall invest the same in renewable fixed deposit with any nationalised bank subject to the result of the application for injunction.

16. However, unconditionally for a period of 4 (four) weeks the defendants are restrained by an order of injunction from any way dealing with or disposing of or encumbering or creating any third party interest over the suit property.

17. Learned trial Judge is directed to dispose of the application for temporary injunction as expeditiously as possible preferably by May, 2010 without granting any unnecessary adjournment and also without being influenced by observation of this Court as we are not entering into the merit of the matter finally.

18. Resultantly, the order impugned hereby stands set aside and the miscellaneous appeal is allowed subject to the condition as above.

19. In view of disposal of the appeal, the connected application for injunction, filed under CAN 9215 of 2009, becomes infructuous and the same is, also, disposed of.

20. However, we make no order as to costs.

21. Urgent xerox certified copy be given to the parties expeditiously, if applied for.
Subhro Kamal Mukherjee, J.

22. I agree.