

(2013) 03 GUJ CK 0051
In the Gujarat High Court

Case No : Civil Application (for Stay) No. 8405 of 2012 in Appeal From Order No. 278 of 2012

Upadhyay Yogeshkumar Prahladbhai APPELLANT

Vs

Vitthalbhai Karsanbhai Patel and Another RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : (2013) 03 GUJ CK 0051

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Judgement

Rajesh H. Shukla, J.

1 Rule. Heard learned Advocate Shri J.V. Japee for the Applicant and learned Advocate Shri Pravin Gondaliya for the Respondents.

2. Learned Advocate Shri J.V. Japee for the Applicant has referred to the papers and submitted that an agreement to sell dated 14.11.2011 has been entered into, for which the part payment/consideration has been paid and he has also referred to the correspondence including the legal notice produced at page 45 to support his submission that there is no dispute about execution of the agreement to sell. Learned Advocate Shri Japee submitted that the Court below has failed to consider the provisions of the Registration Act and has made the observations that it does not confer any right, and since it has not been registered, it cannot be considered, and the injunction has been refused. However, learned Advocate Shri Japee submitted that when there is no dispute about the execution of agreement to sell and the evidence has also been produced with regard to the cash consideration, at least it suggests a prima facie case, and therefore, the injunction or status quo with regard to the property in question ought to have been granted. He has also submitted that as the Court below has failed to consider the criteria for grant of injunction it has mainly focused on the aspect of registration and has declined the injunction. He therefore submitted that the Appeal from Order may be Admitted and the interim relief may be granted.

3. Per contra, learned Advocate Shri Pravin Gondaliya for the Respondents referred to the papers and submitted that the consideration is said to have been paid in part for which the receipts are referred are not admitted. For that purpose he pointedly referred to the receipts and submitted that some of the receipts are not bearing the signature on the revenue stamp. He has also submitted that the court below has therefore considered the aspect of the prima facie case, balance of convenience and irreparable injury and declined to grant injunction, which is just and proper. He has referred to and relied upon the judgment of the Hon''ble Apex Court reported in 2010 (3) GLR NOC 57 and submitted that the unregistered document cannot be considered and it cannot create any right, title, interest, and therefore, has rightly observed and the injunction has been refused. He submitted that normally the appellate court would not interfere with the discretionary orders, and therefore, the present Appeal from Order may not be entertained.

4. In view of the rival submissions, the first aspect which is required to be considered is that the agreement to sell is executed which is not undisputed. Therefore, on the aspect of payment of consideration in cash, both the sides have raised the dispute, which can be considered on the basis of the evidence as observed by the trial Court. Much reliance placed by learned Advocate Shri Gondaliya referring to those vouchers, there is no doubt that two vouchers do not bear the signature on the revenue stamp, but at the same time, there are two other vouchers where the signatures are there on the revenue stamp. Therefore, without expressing any opinion, it can be considered on the basis of evidence at the trial. In the circumstances, when the agreement to sell is not disputed and there is a payment, for which the legal notice referred by learned Advocate Shri Gondaliya has a reference to the repayment and the payment made through somebody, also require appreciation of the rival claims on the basis of evidence. On the one hand, learned Advocate Shri Gondaliya has contended that by making a cash payment of Rs. 4 lacs/5 lacs, the property worth more than crores cannot be kept under cloud, and therefore, the injunction which has been refused is just and proper. On the other hand as it is evident from the contentions, it has been contended that merely because there is rise in the price, the dispute has started, and it is a matter, which could be considered on the basis of the evidence. It is in this background, when the court below has focused on the aspect of the fact that the banakhat is unregistered and therefore cannot be considered in evidence even for the purpose of considering the prima facie case or balance of convenience, is misconceived, and the court below has made the observations without having regard to the judgment of the Hon''ble Apex Court reported in S. Kaladevi Vs. V.R. Somasundaram and Others, , where it has been specifically observed by the Hon''ble Apex Court referring to the provisions of the Registration Act and particularly Section 49 of the Registration Act. Therefore, in light of this judgment, which has been considered, the court below has failed to-consider the issue involved for the purpose of deciding the prima facie case and has misdirected in considering the relevant criteria for grant

of injunction.

5. When the agreement to sell is not in dispute, when the part payment, even though it is in cash, is also not in dispute, as it is evident from the legal notice itself, the court below has failed to appreciate this aspect, and therefore, the injunction ought to have been granted. The submissions made by learned Counsel Shri Pravin Gondaliya for part payment of Rs. 4 lacs to Rs. 5 lacs may not be sufficient to create a embargo or a cloud on the property, is misconceived. The Hon"ble Apex Court in a judgment reported in Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, , has made the observation that in such a situation status quo is normally required to be granted unless there are special circumstances which can be pointed out.

6. Further, the submissions made by learned Advocate Shri Gondalia that normally the appellate court would not interfere with the discretionary order, is justified. However, the appellate court is required to consider whether the court below has considered the relevant material and has taken into consideration the well accepted criteria for grant of injunction and also the provisions of law. The facts of the case as stated above, while appreciating the aspect of registration of document, the court below has made the observations having regard to the judgment of the Hon"ble Apex Court reported in S. Kaladevi Vs. V.R. Somasundaram and Others, . Further, when the agreement to sell has been executed admittedly, and the part of the consideration has also been paid, it cannot be said that there is no prima facie case or the balance of convenience.

7. Therefore, as the court below has failed to consider the relevant criteria for grant of injunction, the present Appeal from Order is required to be considered and it has been Admitted. It is in these circumstances Civil Application also deserves to be allowed by directing the parties to maintain the status quo with regard to the land in question referred to in the banakath dated 21.10.2010 till the final hearing of the present Appeal from Order. Rule is made absolute.