

(1987) 03 DEL CK 0065

In the Delhi High Court

Case No : I. As. No's. 1731, 5362, 5391 and 6351 of 1986 in Suit No. 560 of 1986

Vijay Kumar Gupta

APPELLANT

Vs

Mahi Pal and another

RESPONDENT

Date of Decision : 06-03-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : AIR 1987 Delhi 345

Hon'ble Judges : Mahesh Chandra, J

Bench : Single Bench

Advocate : B.R. Narang, for the Appellant; G.K. Sharma for No. 1 and S.N. Kumar for No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Chandra, J.—By this order, I propose to dispose of I. A. No. 1731 of 1986 filed by the plaintiff under O. 39, Rr. 1 and 2 read with S. 151 of the CPC for grant of ad interim injunction restraining defendant, Mahi Pal, from transferring, conveying, selling, parting with possession, alienating or in any way encumbering the Plot No Block No. B in the lay-out plan of Friends Colony Residential Scheme, New Delhi. This order would also dispose of I. A. No. 5362 of 1986 filed under O. 39, Rr. 1 and 2 read with S. 151 of the Civil P. C. wherein the plaintiff has requested that Shri Vijay Kumar Gupta son of Shri Banwari Lal Gupta resident of E-5, Maharani Bagh, New Delhi be restrained from making any construction, additions or alterations on the above-mentioned plot of land either by himself or through his servants, employees or agents or anybody acting through him or on his behalf.

Likewise I A. No. 5391 of 1986 filed under O. 39, Rr. 1 and 2 read with S. 151 of the Civil P. C. by the plaintiff for restraining the defendant/respondent, his servants, employees or agents or anybody acting through him or on his behalf from making any construction, additions or making further construction on the said

plot would also stand disposed of by this order. Another I A. filed by the defendant Vijay Kumar Gupta under O. 39, R. 4 read with S. 151 of the Civil P. C. which has been registered as I A. No. 6351 of 1986 and is for permitting the said Vijay Kumar Gupta to carry on construction on the said plot would also stand disposed of by this order. I A. Nos. 1731 of 1986, 5362 of 1986, and 5391 of 1986 filed by the plaintiff have been opposed on behalf of the respective counsel for the defendants while I A No. 6351 of 1986 filed by Vijay Kumar Gupta has been opposed by the Learned Counsel for the plaintiff. I have heard the Learned Counsel for the parties and have gone through the file and after giving my considered thought to the matter before me I have come to the following finding.

2. The facts giving rise to these I As. are that the plaintiff had filed Suit No. 560 of 1986 for specific performance of contract of sale on the allegations that defendant Mahi Pal, who is the owner of lease-hold rights in respect of Plot No. 2, Block No. B in the layout plan of Friends Colony Residential Scheme, New Delhi, had agreed to sell the aforesaid plot to the plaintiff on 1 st Jan., 1985 for a total consideration of Rs. 6,60,000/- out of which the plaintiff had paid a sum of Rs. 51,000/- to the defendant by means of a draft dated 1st Jan., 1985 and that the plaintiff has been ready to perform his part of the contract but the defendant Mahipal has failed to perform his part of the contract and as such the plaintiff claims a decree for specific performance of contract of sale of the said property against defendant Mahi Pal. In this suit, I A. No. 1731 of 1986 was filed and Sultan Singh, J. had vide orders dated 14th Mar., 1986 directed that "the defendant is hereby restrained from transferring, conveying, selling, parting with possession, alienating or in any way encumbering Plot No. 2 Block No. B in the lay-out plan of Friends Colony Residential Scheme, New Delhi till further orders". Thereafter I A. No. 5362 of 1986 was filed by the plaintiff against Shri Vijay Kumar Gupta (who was later on added as defendant No. 2 in this suit) and vide orders dated 26th Sept., 1986 the said Vijay Kumar Gupta was restrained from carrying out any construction, addition, alteration on the plot in dispute. Thereafter I.A. No. 5391 of 1986 was filed and in pursuance thereof the restraint order dated 29th Sept., 1986 against the defendant Mahi Pal was issued restraining him from making any construction additions or making further construction on the plot of land in dispute either himself or through his servants, employees or agents or anybody acting through him or on his behalf. I.A. No. 6351 of 1986 was filed by Vijay Kumar Gupta, defendant No. 2 thereafter. It would be appropriate to mention that in between Vijay Kumar Gupta was ordered to be added as defendant No. 2 vide order dated 11th Dec, 1986 in pursuance of I.A. No. 5363 of 1986 and later on vide orders dated 13th Jan., 1987 in pursuance of I.A. No. 176 of 1987 the plaint was permitted to be amended and by amended plaint the plaintiff has now claimed a decree for specific performance against defendant No. 2 Vijay Kumar Gupta also on the ground that defendant No. 1 Mahi Pal had in collusion with defendant No. 2 Vijay Kumar Gupta on 16th July, 1986 executed two special power of attorneys and one general power of attorney and a Will in favour of defendant No. 2 and defendant

No. 2 had entered into the transaction during the pendency of this suit.

3. In order to entitle ad interim injunction prayed for it is incumbent upon the plaintiff to show that he has a prima facie case and further also to show that balance of convenience lies in the grant of ad interim injunction prayed for otherwise irreparable injury would occasion to him. A perusal of the written statement of Mahi Pal, defendant No. 1 would show that he has not denied the agreement for sale dated 1st Jan., 1985 to have been executed by him in favour of the plaintiff in respect of plot in dispute. Similarly receipt of earnest money of Rs. 51,000/- from plaintiff has not been denied by this defendant No. 1. The said agreement and the receipt are incorporated in one single document titled as receipt which is dated 1st Jan., 1985 and perusal thereof shows that certainly the plaintiff and defendant No. 1 had entered into agreement of sale of plot in dispute and in pursuance thereof a sum of Rs. 51,000/- was paid by the plaintiff to defendant No. 1.

The plaintiff has also placed on record a copy of notice dated 8th Sept., 1985 sent by him to defendant through his counsel which shows that on failure of defendant No. 1 to carry out the agreement dated 1st Jan., 1985 the plaintiff had approached defendant No. 1 to do the needful by executing necessary documents. The present suit was filed on 12th Mar., 1986 and written statement was filed by defendant No. 1 on 26th April, 1986. It has been categorically stated by the plaintiff in his plaint that he was willing to perform his part of the contract as a reference to para 6 of the plaint would show. This para further shows that the plaintiff had been contacting the defendant No. 1 for completing the further formalities in this behalf but without any result.

In the face of this situation the conclusion that the plaintiff has established a prima facie case in his favour is irresistible. Mere fact that defendant No. 1 has after the filing of this suit executed general power of attorney on 16th July, 1986 in favour of defendant No. 2 would be of no consequence. Likewise execution of two special power of attorneys by defendant No. 1 in favour of defendant No. 2 would not displace the prima facie case of the plaintiff. All this would be deemed to have been done by defendant No. 1 to thwart the suit of the plaintiff. It may be mentioned here that although defendant No. 2 has filed photocopies of two special power of attorneys and general power of attorney but no copy of any agreement to sell has been filed by defendant No. 2 in this behalf. In fact it has not been alleged anywhere that any formal written agreement of sale was executed between defendant No. 1 and defendant No. 2 in respect of suit property at any time whatsoever. It cannot be said that in a contract of the present nature time could be the essence of the contract. Keeping in view all these facts it would follow that the plaintiff has established a prima facie case for grant of ad interim injunction in his favour.

4. Coming to the balance of convenience and irreparable injury the plaintiff had paid a sum of Rs. 51,000/- way back on 1st Jan., 1985 to defendant No. 1 and was prepared to perform his part of the contract thereafter as required under the

agreement of sale but defendant No. 1 failed to perform his part of the contract and if now defendant No. 1 were permitted to cash upon his default it would naturally result in irreparable injury to the plaintiff. Even otherwise if defendant No. 1 or defendant No. 2 are permitted to continue any further constructions on the plot of land in dispute it would only tantamount to burdening the liability of the plaintiff or in any case it would certainly go to complicate the matters for the plaintiff. It might even result in placing the entire property beyond the reach of the plaintiff, if the defendants are permitted to continue to raise construction thereupon. Defendant No. 2 cannot be held to have acquired any right, title of interest, in the circumstances of the present case.

If defendant No. 1 or defendant No. 2 are permitted to raise further construction it would tantamount to enabling them to carry on their conspiracy against the plaintiff. In view thereof balance of convenience lies in the grant of ad interim injunction rather than in refusal thereof. I would at this stage like to refer to the allegations in para Si. of I.A. No. 6351 of 1986 filed under O. 39, R. 4 of the Civil P. C. by defendant V. K. Gupta in which it has been stated by him that "the negotiations for the deal between the applicant and Sh. Mahi Pal, the owner of the plot first took place during the month of Jan./Feb., 1986. In June/July, 1986 the documents were executed before the Sub Registrar of Assurances, Noida. This by itself shows that the alleged negotiations started between defendant No. 1 and defendant No. 2 after one year of the agreement of sale between the plaintiff and defendant No. 1 and power of attorneys were executed after the institution of the suit which would prima facie show that defendant Nos. 1 and 2 were in league rather than plaintiff and defendant No. 1 as is sought to be made out by defendant No. 2. At this stage it is not to be seen as to whether the plaintiff would be granted the relief of specific performance of contract or not, what is to be considered is whether the plaintiff has established a prima facie case and balance of convenience is in favour of the plaintiff, otherwise irreparable injury would occur to him.

From my discussion above, I have come to the conclusion that the plaintiff has established that he has a prima facie case and balance of convenience lies in the grant of ad interim injunction prayed for otherwise irreparable injury would occasion to him. In these circumstances, I.A. Nos. 1731, 5362 and 5391 of 1986 are liable to be allowed and the I.A. No. 6351 of 1986 is liable to be dismissed.

5. No other point has been urged before me.

6. It may be mentioned here that my observations above are solely for purposes of disposal of these applications and have no bearing or effect on the merits of the case which will be decided after the evidence has been led by the parties.

7. In view of my discussion and findings above, I.A. Nos. 1731, 5362 and 5391 of 1986 are allowed and defendant No. 1 is restrained from transferring, conveying, selling, parting with possession, alienating or in any way encumbering and from making any construction, additions or alterations or further

construction either himself or through his servants, employees or agents or anybody acting through him or on his behalf on the plot of land bearing No. 2, Block No. B in the layout plan of Friends Colony Residential Scheme, New Delhi till the disposal of this suit. Defendant No. 2 is also restrained from carrying out any construction, additions, alterations or making further construction on the plot of land bearing No. 2, Block No. B in the layout plan of Friends Colony Residential Scheme, New Delhi till the disposal of this suit. I.A. No. 6351 of 1986 filed by defendant No. 2 is dismissed.