

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

S.B. Civil Misc. Appeal No.3411/2005

Rajendra Sharma v/s Gokul Singh and others

Date of Order : 22nd September, 2006

HON'BLE MR. R.S. CHAUHAN, J.

Mr.Sagar Mal Mehta, Sr. Advocate with Mr. Anil Mehta
for the appellant.
Mr.S.K. Gupta, for the respondent No.1
Ms.Archana Mantri, for the respondent No.3.

By Court:

The appellant-defendant, in this appeal, challenges the order dated 30.11.2005 passed by the District Judge, Jaipur District, Jaipur whereby a temporary injunction has been granted in favour of the plaintiff-respondent.

The brief facts of the case are that the respondent No.1 had filed a suit for specific performance of contract and permanent injunction in respect of an alleged agreement to sell dated

03.09.1992. According to the respondent No.1, he and the appellant had entered into an agreement to sell with regard to the agricultural land bearing Khasra No.170, measuring 3 bigha 16 biswas and Khasra No.186, measuring 7 bigha 12 bigha, in total measuring 11 bigha 8 biswas, situated in Village Bhanpur Khurd, Tehsil Jamuwarangarh, District Jaipur. Furthermore, he alleged that the appellant had agreed to sell the land @ Rs.15,000/- per bigha and for a total consideration of Rs.1,71,000/-. At the time of signing of the agreement, the respondent No.1 paid Rs.25,000/- to the appellant. Simultaneously, the possession of the land was given to the respondent No.1 by the appellant. He further alleged that on 10.11.1992 he paid a sum of Rs.50,000/-, on 14.01.1993 he paid a sum of Rs.25,000/-, on 20.11.1992 he further paid a sum of Rs.20,000/-, on 05.12.1992 a further sum of Rs.15,000/-, on 29.12.1992 a further sum of Rs.15,000/- and lastly on 13.06.1994 a further sum of RS.50,000/-. Thus, by 13.06.1994 a total amount of Rs.2,00,000/- was paid to the appellant by the respondent No.1. When the said respondent asked the appellant to get the sale deed registered, he was informed that a further sum of

Rs.21,000/- was still outstanding. Therefore, on 20.06.1994 he made the last payment of Rs.21,000/- in the presence of one Shri Hari Ram Meena. Despite the various requests to get the sale deed registered, the appellant refused to do so. Only assurances were given by the appellant to the respondent. But, these assurances were in vain. The respondent further claimed that the appellant wanted to sell the said property to someone else. Therefore, he had no option, but to file the suit for specific performance and permanent injunction.

The appellant submitted his written statement and denied the averments made by the respondent No.1. According to the appellant, he neither agreed to sell the land to the respondent No.1, nor he signed any document. He further denied having received any amount from the respondent No.1. According to the appellant, the agreement to sell and the receipts are forged documents. The appellant further alleged that the plaintiff was trying to take away the crop belonging to the appellant for which he had filed an FIR against the respondent's son Narpat @ Kalu. He further alleged that

another theft was committed by the respondent for which another FIR was filed at Police Station Andhi. He further claimed that the respondent and his son threatened him and demanded that he should sell the land at a concessional rate. Because of this threat, the appellant had filed a complaint, whereupon the respondent and his son were produced before the S.D.M., Jamuwarangarh and were released on bond.

Along with the plaint, the respondent No.1 had also filed an application under Order 39 Rules 1 & 2 of Civil Procedure Code (henceforth to be referred to as 'the Code', for short). After hearing both the parties, vide order dated 30.11.2005, the learned Judge was pleased to grant the temporary injunction in favour of the respondent No.1 and directed the appellant to maintain status-quo and not to interfere with the peaceful possession of the respondent No.1. Hence, this appeal before this Court.

Mr. Sagar Mal Mehta, Senior Advocate, the learned counsel for the appellant, has vehemently argued that the respondent No.1 has fabricated a story

in order to grab his land. According to him, it is rather surprising that a suit for specific performance has been filed after inordinate delay of thirteen years. He has further argued that the learned Judge has failed to consider that twice FIRs were lodged against the respondent No.1 and his son for interfering with the peaceful possession of his land. Hence, according to him, the learned Judge has erred in directing the appellant not to interfere with the peaceful possession of the respondent No.1.

On the other hand, Mr. S.K. Gupta, the learned counsel for the respondent No.1, has argued that a copy of the agreement dated 03.09.1992 has been submitted along with the receipts signed by the appellant for the amount paid to him. These receipts clearly prove that about Rs.2,21,000/- has been paid to the appellant - more than the amount agreed upon by the parties. He further alleged that even the Sarpanch and Up-Sarpanch have certified that the respondent No.1 is in possession of the land. In fact, according to the respondent No.2, who is the appellant's son, in the statement given by him to the police, he had admitted

that the respondent was working on the land on the basis of "Batai". Thus, the respondent No.2, has clearly admitted that the respondent No.1 was, indeed, in possession of the land. The learned counsel has further argued that at the stage of grant of temporary injunction, the court cannot go into the veracity of the document. After all, at the initial stage, the court is not holding a mini-trial. Hence, he has supported the impugned order.

Ms. Archana Mantri, the learned counsel for the respondent No.3, Punjab National Bank, has argued that in order to seek a loan from the Bank, the appellant had mortgaged the said land to the Bank. Therefore, it is the Bank who has the first lien on the land. Hence, the learned Judge has erred in directing the Bank not to interfere with the peaceful possession of the respondent No.1 and to maintain the status-quo.

We have heard the learned counsels for the parties and have perused the impugned order.

It is, indeed, a settled principle of law that

proceedings pertaining to grant of temporary injunction are supplementary in nature. In fact, the moment a *prima facie* case is made out in favour of the plaintiff and the court comes to the conclusion that the property in dispute needs immediate protection, lest it be damaged or destroyed or alienated or its nature may be changed, the court should immediately order the maintenance of the status-quo. In case of **Smt. Rama Devi & Ors. v/s The Sanganer Cooperative Housing Society Ltd.** [1996 RLR 1018], this Court had clearly observed that "*injunction is a preventive relief and if the respondent is permitted to sell the plot of land to third party during the pendency of the suit and the third party may make constructions, it will obviously cause further litigation and complication*". In case of **Maharwal Khewaji Trust (Regd.), Faridkot v/s Baldev Das** [AIR 2005 SC 104], their Lordships of the Hon'ble Supreme Court were of the opinion that in case of dispute over a property ordinarily status-quo should be directed to be maintained and "*until and unless a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the*

property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings". Thus, once there is a dispute over a property, the property needs to be protected by the court.

The respondent No.1 has not only submitted an agreement to sell dated 03.09.1992, but has also submitted receipts of the amount paid by him to the appellant – receipts which have been singed by the appellant himself. At the time of granting interim injunction, the court cannot consider the veracity and the genuineness of the document. In case of

Mishri Lal & Anr. V/s Ram Dev & Ors. [1998 WLC (Raj.) UC 610], this Court had clearly held that at the time of granting interim injunction, the Court examines "the document only for the purpose of seeing whether a prima facie case is made out or not. If in an application under Order 39 Rule 1 and 2 C.P.C., the Court started finally determining the probative value of the document, great injustice will be done to the parties".

Moreover, according to their Lordships of the Supreme Court, in case of **Anand Prasad Agarwalla v/s Terkeshwar Prasad and others [(2001) 5 SCC 568]** "it may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction". Hence, the learned Judge could not go into the probative value of the agreement to sell at this stage. Whether the said agreement to sell is forged or genuine can only be determined by the court after considering the entire evidence produced by both the parties during the course of trial. At this juncture, the agreement to sell, the receipts, the affidavit of the Sarpanch and Up-Sarpanch and the statement of respondent No.2 claiming that earlier the respondent No.1 was cultivating the land on the basis of "Batai", clearly makes out a strong *prima facie* case in favour of the respondent No.1.

Considering the fact that there is a dispute between the respondent No.1 and the appellant, we refrain from making any comment about the FIRs filed by the appellant. Since *prima facie* it seems that the respondent No.1 is in possession of the land, the balance of convenience is also in his favour that he should continue to cultivate the land during the

pendency of the proceedings. Undoubtedly, in case the status-quo is not maintained and the appellant is permitting to interfere with the respondent's peaceful possession of the property in dispute, an irreparable loss would certainly be caused to the respondent No.1. However, in case the trial court finally comes to the conclusion that the appellant was embroiled in a false and fabricated litigation, the trial court is certainly free to order payment of any damages by the respondent No.1 to the appellant in accordance with the law. Thus, this Court finds no reason to interfere with the order dated 30.1.2005.

As far as the contentions of the Bank are concerned, according to the learned Judge, the said land was mortgaged to the Bank after the agreement to sell was entered into and after the appellant had received the consideration price of the land. The learned counsel for the Bank has not brought any evidence on record to show that the appellant has defaulted in the payment of the loan and, therefore, the Bank needs to sell off the land in order to realize the loan amount. Until and unless the said contingency

arises, the interest of the Bank is not adversely affected by the grant of temporary injunction in favour of the respondent No.1. The present dispute is between the respondent No.1 and the appellant. Therefore, till the said dispute is settled, no order in favour of the Bank can be passed at this juncture.

In the result, this appeal has no force. It is, hereby, dismissed.

(R.S. CHAUHAN), J.

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