

Dalpat Kumar and another

Vs

Prahlad Singh and others

Civil Appeals Nos. 5054-55 of 1991

(K. Ramaswamy, G. N. Ray JJ)

16.12.1991

JUDGEMENT

K. RAMASWAMY, J.:-

1. Leave granted.

2. Sri S. K. Jain, on his application, is discharged.

3. Heard the counsel on either side. This is the fourth round of litigation relating to the same subject matter. On June 14, 1979 the first appellant claimed to have entered into an agreement to purchase the residential house situated in Jaipur for a consideration of Rs. 51,000/-. He laid the suit for specific performance and the suit was decreed ex parte. On August 10, 1983, the sale deed was executed through court. On April 29, 1984, the respondent's wife filed Suit No. 83 of 1984 and also sought for temporary injunction from dispossession. In May 1984, the Trial Court rejected the application for ad interim injunction which was confirmed, on appeal, by the High Court on July 14, 1987. There- after the suit was got dismissed for non- prosecution. The first appellant filed Execution Application No. 6 /85 in which the respondent filed five unsuccessful objections. The first was dismissed on March 4, 1987. The second one on December 4, 1987, which was confirmed on revision by the High Court on January 20, 1988. The third one on October 4, 1987 and fourth one on January 17, 1989. Even thereafter 5th objection was filed on May 23, 1989 which was dismissed on October 24, 1989. This was also confirmed by the High Court in Civil Revision No. 109/90 dated August 7, 1990. The third round of litigation was started at the behest of his sons in O.S. No. 278/ 88 claiming to be the joint family property and for a declaration that the sale does not bind them and they sought for partition. They also sought for ad interim injunction which was rejected on July 7, 1988. On appeal, the High Court in Misc. Appeal No. 177/ 88 confirmed it by the order dated July 26, 1988. The 4th round of litigation was started by the respondent in filing the present suit on December 7, 1988 pleading, that the first appellant being his counsel played fraud on him, in paragraphs 9 and 10, the details of which are not material for the purpose of this case. He also sought for an interim injunction from dispossession. In the meanwhile a part of the property, namely, shops were obtained as symbolical possession by the first appellant. The Trial Court by order dated November 3, 1990 dismissed the application. On appeal, the High Court in Misc. Appeals Nos. 498/ 90 and 501/90 by the impugned order dated February 26, 1991 allowed the applications and granted ad interim injunction restraining the appellants from taking possession of the residential portion.

4. Order 39, Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or

otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission clause (c) was brought on statute by S. 88(i)(c) of the Amending Act 104 of 1966 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under S. 151, C.P.C. to grant ad interim injunction against dispossession. Rule 1 primarily concerns with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court in exercise of the power of granting ad interim injunction is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/ defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established a trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

6. Undoubtedly, in a suit seeking to set aside the decree, the subject-matter in the earlier suit, though became final, the Court would in an appropriate case grant ad interim injunction when the party seeks to set aside the decree on the ground of fraud pleaded in the suit or for want of jurisdiction in the Court which passed the decree. But the Court would be circumspect before granting the injunction and look to the conduct of the party, the probable injuries to either party and whether the plaintiff could be adequately compensated if injunction is refused. This case demonstrates (we are not expressing any opinion on the plea of fraud or their relative merits in the case or the validity of

the decree impugned), suffice to state that the conduct of the respondent militates against the bona fides. At present there is a sale deed executed by the Court in favour of the first appellant. If ultimately the respondent succeeds at the trial. They can be adequately compensated by awarding damages for use and occupation from the date of dispossession till date of restitution. Repeatedly the Civil Court and the High Court refused injunction pending proceedings. For any acts of damage, if attempted to make, to the property, or done, appropriate direction could be taken in the suit. If any alienation is made it would be subject to doctrine of lis pendence under S. 52 of the Transfer of Property Act. The High Court without advertng to any of these material circumstances held that balance of convenience lies in favour of granting injunction with the following observations' "keeping in mind the history, various facts which have been brought to my notice, and looking to the balance of convenience and irreparable loss, I think it will be in the interest of justice to allow these appeals and grant temporary injunction that the appellants may not be dispossessed from the suit property". The phrases "prima facie case"; "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of Justice. The facts are eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience. The respondents can be adequately compensated on their success.

7. In our considered view, the High Court committed manifest error of law in jumping to the above conclusion to allow the appeal. .This appeal is, accordingly, allowed. The order of the High Court is set aside and that of the trial Court is confirmed. It is made clear that any observations made either by the trial Court or the High Court or of this Court should be taken to be not relevant at the trail on merits. These are our only prima facie observations, subject to adduction of evidence and proof at the trial on merits in the suit. The parties are directed to bear their own costs.

Appeal allowed.

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