

RAJASTHAN HIGH COURT

Sukkha Singh

Vs.

Mahal Singh

S.B. Civil Misc. Appeal No. 574 of 2001

(H.R. Panwar, J.)

21.05.2002

JUDGMENT

H.R. Panwar, J.

1. This appeal is directed against the order dated 24.5.2001 passed by Additional District Judge, *Anupgarh* (hereinafter referred to as 'the Trial Court') whereby the application filed by the applicants under Order 39, Rules 1 and 2 read with Section 151 Civil Procedure Code was dismissed. Aggrieved by the order impugned, the appellants have filed this appeal under Order 43, Rule 1(r) Civil Procedure Code.

2. I have heard learned Counsel for the parties. Carefully perused the order impugned.

3. Briefly stated facts to the extent they are relevant and necessary for decision on this appeal are that plaintiff appellants filed a suit for specific performance of agreement before the Trial Court, stating therein that respondent No. 1 Mahal Singh agreed to sell the land in question to the appellants for a consideration of Rs. 1,50,000/- on 5.3.1986. Since 1996, the appellants are requesting respondent No. 1 Mahal Singh to execute the sale deed in their favour but respondent No. 1 has been avoiding and ultimately refused to execute the sale deed for the land in question.

4. An application under Order 39 Rules 1 and 2 read with Section 151 Civil Procedure Code was filed by the appellants before the Trial Court seeking temporary injunction during the pendency of the suit on the facts stated in the plaint as noticed above. A reply was filed by respondent No. 1, denying the alleged agreement dated 5.3.1986. It was specifically stated that respondent No. 1 had neither entered into any agreement to sell the land in question in favor of the appellants on 5.3.1986 nor he received any consideration under the alleged agreement. It was pleaded that respondent No. 1 has

been continuously in possession of the land since its allotment in his favor till he sold the land in question to respondent No. 1 Iqbal Singh for valuable consideration of Rs. 4,90,000/- by registered sale deed dated 3.5.2001 and since 3.5.2001, respondent No. 1 Iqbal Singh is in peaceful possession of the land in question as its owner. The trial Court considering all the material placed before it, reached to the conclusion that the plaintiff appellants have failed to establish *prima facie* case in their favor on the ground that the land in question has been sold to respondent No. 2 by a registered sale deed dated 3.5.2001 and in the said sale deed, there is a recital that the possession of the land sold has been transferred in favor of vendee. As such, respondent No. 2 Iqbal Singh is in peaceful possession of the land in question since 3.5.2001. The registered sale deed executed by respondent No. 1 in favor of respondent No. 2 was placed on record of the Trial Court. The Trial Court further observed that even if the plaintiff appellants are in possession of the land in question, then also the rights of respondent No. 2, who is *bona fide* purchaser, cannot be jeopardized. The Trial Court did not find balance of convenience in favor of the plaintiff appellants inasmuch as the execution of the alleged document agreement to sell dated 5.3.1986 was denied by respondent No. 1 in his reply affidavit. The said document is unregistered and the fact that respondent No. 2 Iqbal Singh is *bona fide* purchaser of the land in question under the registered sale deed for a valuable consideration, would be deprived of the use and occupation of the land purchased by him. While considering the question of irreparable injury, the Trial Court found that in the event of refusal to grant temporary injunction to the plaintiff appellants, the plaintiff appellants would not suffer any irreparable injury or loss as the alleged agreement to sell is yet to be established and if the plaintiff appellants ultimately succeed in establishing the said agreement, they would be entitled to damages in terms of money all the three essential ingredients necessary for grant of temporary injunction were found, against the plaintiff appellants and accordingly, the application filed by the plaintiff appellants seeking temporary injunction, was rejected by the order impugned.

5. This appeal was admitted by this Court on 7.6.2001. While admitting the appeal, this Court directed both the parties to maintain *status quo*. Respondent No. 2 filed an application under Section 151 PC. On 13.3.2002 wherein in para No. 1 it was admitted by respondent No. 2 that Square No. 222/5 measuring 25 Bighas Chak No. 2 A.M. Tehsil Anupgarh is in possession of the appellants. It was further admitted that the appellants were in possession of the land in question and are getting the fruit of the land, by retaining the possession whereas the applicant has been wrongly deprived

from his right of getting the possession of the land. It was prayed that if the appellants are willing to keep the possession of the land in question, then they may be ordered to deposit Rs. one lac cash security in lieu of the possession per year. This application is supported by an affidavit of respondent No. 2 Iqbal Singh. Thus, from the admitted facts, it is *prima facie* established that the appellants are in possession of the land in question and respondent No. 2 Iqbal Singh despite the registered sale deed in his favor, is out of possession of the land in question. Respondent No. 1 Mahal Singh has not claimed himself to be in possession in his reply before the Trial Court. The situation which emerges from the admitted fact is that the appellants are in possession of the land in question.

6. Learned Counsel for the appellants contended that respondent No. 1 agreed to sell the land in question in favor of the appellants by an agreement to sell dated 5.3.1986 for a consideration of Rs. 1,50,000/- and a sum of Rs. 1,22,000/- was paid by the appellants to respondent No. 1 on the very date of the agreement dated 5.3.1986 and the said agreement to sell was attested by *Tehsildar (Revenue), Anupgarh*. In the agreement to sell, there is a specific recital of having transferred the possession of the land to the appellants by respondent No. 1 along with supply of water and since 5.3.1986, the appellants are in cultivatory possession of the land in dispute. Appellants further paid Rs. 16,000/- to respondent No. 1 endorsement thereof is on the said agreement. He further contended that the Trial Court refused to grant injunction in favor of the appellants on the ground that there is a recital in the registered sale deed executed by respondent No. 1 in favour of respondent No. 2 wherein the transfer of possession is mentioned but the fact remains that after 5.3.1986, respondent No. 1 never remained in possession and since the possession of the land was not with respondent No. 1 at the time of executing the sale deed in favor of respondent No. 2, there arises no question of transfer of physical possession and, therefore, any recital in the registered sale deed dated 3.5.2001 is far from truth so far as physical transfer of the land in question is concerned. This submission further gets strengthened from the fact that during the pendency of appeal, before this Court, respondent No. 2 Iqbal Singh has filed an application dated 13.3.2002 supported by an affidavit wherein in clear terms, respondent No. 2 has admitted that the appellants are in possession of the land.

7. He further contended that the Trial Court has further erred in deciding the point of balance of convenience and irreparable injury to the appellants in the event of refusal

to grant injunction. The appellants who put in lawful possession by the agreement to sell dated 5.3.1986 for payment of consideration of Rs. 1,22,000/- and Rs. 16,000/- on 27.5.1986 total amounting to Rs. 1,38,000/- would be deprived of possession and would suffer irreparable injury on being ousted from the land in question.

8. Learned Counsel appearing for the respondents contended that the suit filed by the plaintiff is beyond limitation as the agreement alleged to have been executed in favor of plaintiff-appellants is dated 5.3.1986 and the suit has been filed in the year 2001 after about 15 years of the agreement. Since the appellants failed to file the suit within a reasonable time, therefore, the appellants are not entitled for specific performance of the contract. He has relied on a judgment of the Hon'ble Supreme Court in *Veerayee Ammal v. Seeni Ammal*,¹ wherein the Hon'ble Supreme Court held that the word "reasonable" has in law *prima facie* meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably known or ought to know as to what was reasonable. It may be reasonable to give an exact definition of the word "reasonable", the reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case.

9. He has also relied on a judgment of the Hon'ble Supreme Court in *Mool Chand Bakhru and Anr. v. Rohan and Ors.*² The point for consideration before the Hon'ble Supreme Court was as to whether a person (claiming to be a proposed vendee) can protect his possession of an immovable property on the plea of part performance under Section 53-A of the Transfer of Property Act on the basis of an oral agreement, the terms of which have not been reduced in writing. The Hon'ble Supreme Court held that written agreement has to precede the putting of the proposed vendee in possession of the property and in that case, Bhagwan Dass was never put in possession of the property in pursuance of the written agreement arrived at between the parties and, therefore, hold that the person who has not been put in possession, by written agreement cannot claim protection of Section 53-A of the Transfer of Property Act. Mool Chand Bakhru's case (supra) relied upon by the learned Counsel for the respondents, is on different facts. In that case, the case of proposed vendee was well based on oral agreement and on the basis of oral agreement to sell, the proposed vendee claimed protection under equitable doctrine of part performance as contained

in Section 53-A of the Transfer of Property Act, 1882, whereas in the instant case, the appellants proposed vendees have been put in possession of the land in question by the agreement, which was reduced into writing and verified and attested by the Tehsildar (Revenue), Anupgarh. Learned counsel for the appellants contended that the appellants are in peaceful possession of the land in question under an agreement to sell dated 5.3.1986 and the recital in that agreement clearly shows that the appellants were put in possession of the land by the said agreement to sell and the document agreement to sell is verified and attested by the Tehsildar (Revenue), Anupgarh. He further contended that respondent No. 2, who is alleged to have purchased the land in question from respondent No. 1 on 3.5.2001 by an application supported by his own affidavit, admitted that the appellants are in possession of the land and he is out of possession, which further strengthens the case of the appellants that they are in possession of the land in question by agreement to sell dated 5.3.1986, specific performance of which is sought by the appellants by way of suit or specific performance, which is pending before the Trial Court and, therefore, the appellants being in long and settled possession of the land in question are entitled to protect their possession.

10. Learned Counsel for the appellants relied on a judgment of this Court in *Gyan Singh v. Ranjeet Singh*,³ wherein this Court held that plaintiff in possession of land under agreement of sale having long possession, is presumed in lawful possession and, therefore, the possession of the plaintiff otherwise required to be protected during the pendency of the suit.

11. In *Gangubai Bablya Chaudhary and others v. Sitaram Bhalchandra Sukhtankar and others etc.*⁴ the Hon'ble Supreme Court held as under :

"When an interim injunction is sought, the Court may have to examine whether the party seeking the assistance of the Court was at any time in lawful possession of the property and if it is so established one would *prima facie* ask the other side contesting the suit to show how the plaintiffs, were dispossessed ?"

12. Learned Counsel has also relied on a judgment of this Court in *Smt. Pushpa Kanwar & Anr. v. Suraj Prasad Gupta*,⁵ wherein this Court held that by virtue of Section 49 of the Registration Act, 1908, unregistered agreement of sale of land is

admissible in evidence. In the instant case, the alleged agreement to sale dated 5.3.1986 was not required compulsory registration. The document agreement of sale having recital regarding transfer of possession of the property was made compulsory registrable by amendment in the Registration Act, which came into force from 18.9.1989 and as such, he contended that the said agreement was otherwise not required to be compulsorily registrable and, therefore, admissible in evidence. Be that as it may. The question which remains to be considered is whether the appellants are entitled to protect their long possession. Order 39, Rule 1(c) provides that where in any suit it is proved by affidavit or otherwise that the defendant threatens to dispossess the plaintiff or otherwise causes 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 this purpose. Thus, clause (c) of Rule 1 of Order 39 empowers the Court for granting temporary injunction so as to preserve the subjectmatter of the suit property till the dispute is adjudicated in the suit. Primarily the burden is on the appellant plaintiff to *prima facie* establish by affidavit or otherwise that he has a *prima facie* case in his favor, which needs adjudication in the suit. It is settled law that while considering the question, of *prima facie* case, it is not to be confused with *prima facie* title. What is required is that the plaintiff has to show that he has *bona fide* raised a substantial question, which needs to be adjudicated at the trial of the suit. The plaintiff is thus required to *prima facie* establish that in the event of non-interference by the Court, it will result in irreparable injury and substantial loss. While considering irreparable injury, comparatively which refusal to grant a temporary injunction and if the Court considers that the subject-matter of the suit must be maintained *status quo*, then discretion must be exercised in favor of the party seeking temporary injunction so that the subject-matter of the suit in dispute can be preserved by directing to the party to maintain *status quo*. The third essential ingredient for grant or refusal of temporary injunction is balance of convenience. Keeping in view the admitted fact that the plaintiff appellants are in long settled possession under the agreement though execution of the agreement has been denied but the possession of the appellants has specifically been by respondent No. 2 on affidavit in this view of the matter, I am of the considered view that the appellants, who are admittedly in possession, have a *prima facie* case in their favor. A serious and substantial question regarding the sale of property by respondent No. 1 in favor of the appellants has been raised by the appellants pending adjudication. Therefore, balance of convenience also lies in favor of the appellants for grant of temporary injunction. In the event of refusal, the appellants would be forcibly dispossessed and, therefore, also

refusal to grant injunction would cause irreparable injury or comparatively more mischief to the appellants. In this view of the matter, I am of the considered view that the trial Court substantially erred in deciding all the three essential ingredients for grant of temporary injunction against the appellants. By interim order dated 7.6.2001, this Court directed both the parties to maintain *status quo*. In this view of the matter also, it will not be proper at this juncture to disturb the order directing the parties to maintain *status quo* in respect of the property in dispute. In my considered view, admittedly where the appellants are in possession and the respondents do not claim to be in possession of the land in question. It would not be proper at this juncture to refuse temporary injunction during the pendency of the suit. By interim order, this Court directed both the parties to maintain *status quo*. In my considered opinion, ends of justice would be met if the parties are directed to maintain *status quo*. Since respondent No. 2 is said to be *bona fide* purchaser and the sale deed dated 3.5.2001 is on record, this shows that the land in question had been purchased by him for Rs. 4,90,000/-. Ultimately if the plaintiffs fail in the suit, since they had been enjoying the fruits of the land for all these years it would be appropriate to direct the plaintiff appellants to deposit Rs. 75,000/- annually before the trial Court so that interest of respondent No. 2 be adequately protected in the event of his success.

13. Consequently, this appeal succeeds and is allowed. All the parties are directed to maintain *status quo* of the land in question during the pendency of the suit. However, the appellants are directed to deposit a sum of Rs. 75,000/- annually with the trial Court on or before 30th July, 2002 and thereafter every year, disbursement of which shall be subject to decision of the main suit. The trial Court is directed to expedite and conclude the trial of the suit preferably within one year. It is made clear that any observation made either by the trial Court or this Court shall not be taken to be relevant at the trial of the suit on merits. No order as to costs.

Order accordingly.

Cases Referred.

1. 2002(1) Civ. Times (SC) 69
2. 2002(1) SC 385
3. 2002 WLC (Raj.) UC 342
4. AIR 1983 SC 742

5. 1997 WLC (Raj) UC 377