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Court : Mumbai Nagpur

Decided On : Oct-28-2014

Judge : S.B. Shukre

Appeal No. : Appeal Against Order No. 45 of 2014

Appellant : Bhawana and Another

Respondent : Navneet and Another

Judgement :

Oral Judgment:

1. Admit.

2. Heard finally by consent of the learned Counsel for the parties.

3. It is seen from the impugned order that an application for temporary injunction has been granted for two reasons. The first reason is that defendants No. 3 and 4, who are appellants herein, are refusing to perform specifically the agreement of sale entered into by defendants No. 1 and 2 in favour of the respondents. The second reason is that the appellants have sold part of the property, which conduct disclosed the intention of the appellants to meddle with the suit property during pendency of the suit that has been filed for permanent injunction and specific performance of the contract.

4. So far as the first reason is concerned, it relates to existence of prima facie case in favour of the respondents. However, it is submitted by learned Counsel for the appellants that in view of the law laid down by Hon'ble Apex Court in the case of Pemmada Prabhakar and others Vs. Youngmen's Vysya Association and others reported in 2014 (5) ALL MR 921 (S.C.) and also in the case of Van Vibhag Karamchari Griha Nirman Sahakari Sanstha Maryadit (Regd.) Vs. Ramesh Chander and others reported in AIR 2011 SC 41, the respondents would have no prima facie case in their favour. This proposition, however, is disputed by learned Counsel for the respondents, who submits that whether the suit for specific performance would be ultimately decreed or not will have to be decided on merits of the case. He also submits that since defendants No. 1 and 2 have entered into agreement for sale of the suit land to the respondents, the respondents would have something to say about the rights created in their favour by defendants No.1 and 2 and, therefore, there is an arguable case in their favour.

5. In the instant matter, the suit land is jointly owned by defendants No. 1 and 2 and the appellants (defendants No. 3 and 4). There is also no dispute about the fact that the suit that was initially filed in the year 2008 was only for grant of permanent injunction and it was only in the year 2010 that an application for inclusion of prayer for specific performance of the contract by way of an amendment of the plaint was made.

6. In the case of Pemmada Prabhakar (supra) the Hon'ble Apex Court has held that when the agreement for sale is executed by some of the owners, who have no absolute right to property in question, in view of Section 17 of the Specific Relief Act, 1963, the specific performance of the contract cannot be granted. In the case of Van Vibhag Karmachari Griha Nirman... (supra) the Hon'ble Apex Court has held that when the prayer for specific performance of contract is sought to be included in a suit initially filed only for permanent injunction, the Court would have to consider whether the bar under Article 54 of the Limitation Act would come into picture or not. In that case, the suit was initially filed in the year 1991 when the cause for seeking specific performance of the contract had already arisen and even then, no prayer for specific performance of the contract was made.

The prayer for specific performance of the contract was made about 11 years after filing of the suit and, therefore, the Hon'ble Apex Court held that the amendment as sought in that case, could not relate back to the date of filing of the original plaint in view of the clear bar under Article 54 of the Limitation Act. It was also observed that inclusion of plea of the specific performance of contract by way amendment virtually altered the character of the suit.

7. These principles of law, not considered by the trial Court, when applied to the facts of the present case as discussed earlier, would raise a big question mark on the maintainability of the suit itself. It would then follow that the respondents have failed to demonstrate the existence of a prima facie case in their favour. After all, what is a prima facie case? It is a case which is reasonably arguable; which raises debatable and serious issues; which enables the plaintiff to say something in his favour and which, therefore, necessitates the matter to be proceeded to trial (See *Videsh Sanchar Nigam Ltd vs M.V. Kapitan Kud and Ors* (1998) 7 SCC 127 and *United Commercial Bank vs Bank Of India And Others*(1981) 2 SCC 766). In view of the law settled by Hon'ble Apex Court in *Pemmada Prabhakar and Van Vibhag Karmachari Griha Nirman....* laying down principles governing applicability of Section 17 of the Specific Relief Act and Article 54 of the Limitation Act to fact situations like the present ones, I do not think that the respondents have something reasonably arguable and to say in their favour and which must be decided at the trial. The trial Court has committed serious error of law in not considering these vital aspects of the case and, therefore, the view taken by the trial Court is perverse and arbitrary.

8. Once it is found that there is no prima facie case established, further aspects of conduct of appellants, balance of convenience, etc. are immaterial, and need not be considered.

9. In the circumstances, this appeal deserves to be allowed and the impugned order is required to be quashed and set aside.

10. The appeal is accordingly allowed and the impugned order is hereby quashed and set aside. The application vide Exh.5 is rejected. However, it is made clear that the observations appearing in this order have been made only for the purpose

of considering this appeal arising from the order of grant of temporary injunction and, therefore, the trial Court shall not be influenced by them while deciding the suit on merits.

There shall be no order as to costs.

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