

Hari Narayan Kumar and anr. Vs. Radhey Sham Maria and ors.

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Court : Delhi

Decided On : May-19-2000

Reported in : 2000(54)DRJ566

Judge : J.B. Goel, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1 and 2

Appeal No. : I.A. 8219/92, 7759/94, 2115/96 and 3013/96 in S. No. 1979/92

Appellant : Hari Narayan Kumar and anr.

Respondent : Radhey Sham Maria and ors.

Advocate for Def. : Defendant No. 1 for self and ; as attorney of defendant No. 2 and ;

Advocate for Pet/Ap. : Sanjeev Anand and; Kajal Chandra, Advs

Judgement :

J.B. Goel, J.

1. All these four applications under Order 39 Rules 1 and 2 CPC for various interim injunctions have been filed by the plaintiffs in a suit for specific performance and injunction based on an agreement to sell dated 13.4.1989 in their favor entered into between them and defendants No. 3 to 5 on behalf of

defendants No. 1 and 2.

2. The case of the plaintiffs, who are husband and wife, is that defendants No. 1 and 2 are the perpetual lessees of plot of land No. C-6/37, Safdarjung Residential Scheme New Delhi. Defendants No. 3 to 5 had represented to them that defendants No. 1 and 2 had entered into a collaboration agreement with defendants No. 3 to 5 on 16.6.1987, the latter agreeing to develop and construct apartments over this plot of land at their own cost after obtaining necessary sanctions/permissions on the terms agreed therein with a right and authority to defendants No. 3 to 5 to sell the flats to be constructed to others. On construction being made, defendants No. 3 to 5 had entered into an agreement to sell dated 13.4.1989 with the plaintiffs agreeing to sell complete ground floor flat in the said building comprising of three bedrooms with attached, bathrooms, drawing/dining with front, middle and back courtyards for a consideration of Rs. 6.50 lakhs. Out of this sale consideration, Rs. 5.50 lakhs were paid by them by means of two bank drafts of Rs. 1.50 lakhs and Rs. 4.00 lakhs dated 12.4.1989 and 13.4.1989 and the balance amount was to be paid at the time of registration of the sale deed after obtaining requisite clearance under Section 230-A of the Income Tax Act and permission from the DDA within six months. Vacant possession of the premises including that of the back courtyard was also given to them, that the plaintiffs, have been ready and willing to complete their part of the agreement. The sale having not been completed by the defendants in spite of notices, the plaintiffs have filed the present suit for specific performance and injunction against interference in their use, occupation and enjoyment of the premises including the back courtyard. Regarding interference in their use and occupation, it is alleged that the back courtyard was also agreed to be sold to the plaintiffs, it belongs to them, possession of it was given to them and they are in its possession; that there is a basement underneath and its windows have openings in that courtyard; the defendants No. 1 and 2 illegally and unlawfully have been trying to enter into the said courtyard through those windows with a view to occupy the courtyard and to deprive the plaintiffs of it which has been resisted in the past. However plaintiffs apprehending further such attempts have also sought injunction against such interference and seeks directions to put permanent grill over those windows.

3. Along with the suit, the plaintiffs had also filed an application LA. No. 8219/92 under Order 39 Rules 1 & 2 CPC on which by an ex parte interim injunction passed on May 29, 1992 the defendants were restrained from interfering in the possession of the plaintiffs with respect to the ground floor of property bearing No. C-6/37, Safdarjung Residential Scheme, New Delhi and also from transferring, alienating or encumbering in any manner the ground floor of the said premises.

4. This interim order is still in operation. Defendants No. 1 and 2, defendants No. 3 and 4 and defendant No. 5 have filed three separate written statements. Defendants No. 1 and 2 have pleaded that they had entered into the collaboration agreement with defendants No. 3 to 5 dated 15.6.1987 and not dated 16.6.1987 and also had executed General and Special power of attorneys but subject to the condition that the sale deed/documents will only be executed and registered before the Registrar of Assurances and the sale price will be accepted in their presence by means of cross cheques. The period of construction was eight months, which has been fabricated to 18 months by the defendants No. 3 to 5 with three extensions of two months each, subject to payment of agreed amounts of compensation. It is alleged that the signatures of defendants No. 1 and 2 were obtained on various blank papers and the collaboration agreement dated 16.6.1.987 is a fraudulent and fabricated document; that they did not give any authority/consent/approval for sale of any flats to anybody which was necessary; that the agreement to sell entered into with plaintiffs is also forged and fabricated and the property worth Rs. 50/55 lakhs could not be sold for a small amount of about Rs. 5.00 lakhs; they had also lodged a complaint to the police where an FIR has been registered; they claim that they are entitled to compensation and possession of the premises and also seek vacation of the interim injunctions. Defendants No. 1 and 2 thus are contesting the suit and the applications. However, no counter claim has been filed.

5. Defendants No. 3 and 4 in their written statement have pleaded bar under Section 230 of the Contract Act as they had executed the agreement to sell in favor of the plaintiffs as attorneys and agent of defendants No. 1 and 2 and as there is no privity of contract, they are not liable. It is pleaded that in pursuance of the collaboration agreement, they had paid to the defendants No. 1 and 2 a sum of

Rs. 2.00 lakhs on 10.5.1988 and another sum of Rs. 1.85 lakhs thereafter. It is, also admitted that they had entered into agreement to sell dated 13.4.1989 with the plaintiffs, and possession of the flat in question was handed over to the plaintiffs in part performance of the agreement to sell. Defendant No. 5 has pleaded that there is no privity of contract with him and the suit against him is bad for misguide of parties.

6. During the pendency of the suit, plaintiffs also filed another application LA. No. 7759/94 under Order 39 Rules 1 and 2 CPC for restraining defendants No. 1 and 2 from (1) interfering in their water supply and to allow them separate water supply; (2) for appointment of Local Commissioner to report about the position of the outlets of the 'water supply; and (3) to put their electricity supply meter in separate box. Yet another application LA. No. 2115/96 under Order 39 Rules 1 and 2 was filed for restraining defendants No. 1 and 2 or their agents from entering into the back courtyard by breaking open the wall of the basement or otherwise and to repair the walls already broken. A Local Commissioner was appointed who gave his report dated 20.3.1996 reporting that Walls etc, had been broken. Plaintiffs filed yet another application LA. No. 3012/96 under Order 39 Rule 2A against violation of the interim injunction and another application LA. No. 3013/96 under Order 39 Rules 1 and 2 seeking restraint order against interference in their possession of courtyard and some other reliefs. Defendants No. 1 and 2 were again restrained on March 26, 1996 from entering into the back courtyard with direction to the SHO concerned to ensure its compliance. Defendants are contesting these applications.

7. I have heard learned counsel for the plaintiffs and defendant No. 1 who has appeared in person for himself and for defendant No. 2 his wife.

8. Learned counsel for the plaintiffs has contended that the plaintiffs are bona fide purchasers with possession of the ground floor portion of the house for consideration by means of an agreement to sell executed by defendants No. 3 to 5 as duly authorised representatives of defendants No. 1 and 2; the premises are provided with water and electricity supplies with a overhead water tank; the defendants are frequently interfering and tampering with these supplies by closing

the knobs thereby causing stoppage of this water supply the the plaintiffs. This action of the defendants is unreasonable, un warranted and illegal, resorted to harass the plaintiffs, perhaps to accede to their un reasonable demands; that the back courtyard was agreed to be sold to the plaintiffs which is in their exclusive use and possession. The defendants have been trying to break open the windows of the basement to enter and occupy that back courtyard; that in the facts and circumstances unless interim injunctions as prayed were granted, plaintiffs will suffer irreparable loss, harm and injury. Whereas, defendant No. 1 has contended that the agreement to sell relied by plaintiffs is a collusive and fabricated document; defendants No. 1 and 2 are the owners of the plot of land, they had entered into a collaboration agreement for raising construction thereon with defendants No. 3 to 5; but they have forged and fabricated the collaboration agreement dated 16.6.1987; they have entered into the agreement to sell in question with the plaintiffs without the consent/permission of the defendants No. 1 and 2 and so it is not binding on them. He has denied that the defendants have been obstructing the supplies of water and electricity of the plaintiffs though it is contended that the plaintiffs have got no right to the use of existing water and electricity supplies which are meant for their exclusive use; plaintiffs have also not been paying water and electricity charges; as such they are not entitled to these supplies. As regards basement, it is denied that the courtyard is part of the premises of the plaintiffs. It is contended that there are certain seepage and leakages in the property for which some repair work is required in the house including in the courtyard and the basement for which some digging is required which the plaintiffs have been objecting to be done. He has contended that defendants No. 1 and 2 have no objection if the plaintiffs obtain their own separate water and electricity supplies at their own cost but after clearing all the outstanding dues. He also contends that the plaintiffs are not entitled to any interim injunction and the interim order already passed are liable to be vacated which are causing loss and damage to the defendants as the basement has been flooded with water which required to be cleared, and to be repaired.

9. I have considered these contentions and perused the pleadings and the material on record. Copy of the document, named as 'Agreement for Collaboration' {signed by the defendant No. 1 on 16/6 (i.e. 16.6.1987)} available on the record

shows that it was entered between defendants No. 1 and 2 as first party and Shri Surender Pal Singh (defendant No. 4) for and on behalf of M/s. Singh Builders and Contractors (defendant No. 3) as builders of the other party, for construction of apartments on the plot of land bearing No. C-6/37, Safdarjung Residential Scheme. Inter alia, it has been agreed therein as under :-

1. Vacant possession of the entire plot was given 'for the purpose of construction of a building thereon and selling of apartments/flats in due course.....'
2. All costs of construction would be borne by the builders;
3. The defendants No. 1 and 2 had also simultaneously executed general power and special power of attorneys in favor of Shri Surender Pal Singh and Shri D.S. Pal, Architect of the builders for carrying out this agreement.

10. Clause 6 provided as under :-

'6. Sale of apartments/flats shall be done by the Builders, only in consultation with prior approval and concurrence of the owners/Landlords particularly in regard to price.'

11. In clause 7, it is stipulated that the sale proceeds will be shared in the ratio of 60% to builder and 40% to owners.

12. This documents has apparently been entered into on 16.6.1987 as defendant No.1 along with his signatures has put the date as '16/6' and it is also attested by a Notary Public on 16.6.1987. By General Power of Attorney executed by defendants No. 1 and 2 on 16.6.1987 in favor of Shri Surender Pal Singh (defendant No. 4) and Shri Manjit Singh (defendant No. 5) of M/s. Singh Builders and Contractors (defendant No. 3), defendants No. 1 and 2 had authorised the donees, inter alia, to sign and execute agreement for sale of flat (s) subject to the condition that

'Provided always that no sale agreement shall be agreed to and consequent action taken by our said attorney(es) except in accordance with the provisions of the Agreement for Collaboration dated 15.6.1987 entered into by us with M/s. Singh

Builders and Contractors; and in particular the price shall be settled in writing in consultation with Shri Radhey Sham Maria on our behalf and sale proceeds appropriated in accordance with the said Agreement.'

13. By means of receipt dated 10.5.1987, defendants No. 1 and 2 have acknowledged receipt of Rs. 2.00 lakhs from M/s. Singh Builders by means of a cheque dated 10.5.1988 as advance payment towards share of flat/apartment. The agreement to sell dated 13.4.1989 has been entered into on behalf of defendants No. 1 and 2 and M/s. Singh Builders and Contractors as sellers through Shri Surender Pal Singh (defendant No. 4) on the one hand and plaintiffs on the other hand as purchasers. In clause 1, it is stipulated that:-

'The sellers (i.e. M/s. Singh Builders & Contractors) and the owners do hereby agree to sell the purchasers complete ground floor flat of building No. C-6/37, S.D.A. New Delhi for a total consideration of Rs. 6.50,000/-.'

14. In Clause 2, receipt of Rs. 4.00 lakhs and Rs. 1.50 lakhs by means of two bank drafts has been admitted and it is stipulated that the balance amount of Rs. 1.00 lakh shall be paid by the purchaser at the time of registration of the agreement. In Clause 3, it is stipulated that the sellers have handed over vacant and peaceful possession of the ground floor to the purchasers, 'with the prior approval of the owners which has been obtained by the sellers.' In Clause 8, it is agreed that the sellers shall execute and perform all other acts, deeds and things as are necessary for fully conveying the property to the purchasers and in Clause 9 it is stipulated as under :-

'9. M/s. Singh Builders and Contractors through Mr. Surinder Pal Singh have represented to the purchasers that they have been authorised by Mr. Radhey Sham Maria, and Mrs. Usha Maria to execute this agreement to sell on their behalf in favor of the purchasers and that they have obtained the consent and prior approval of the owners for the sale of the said property No. C- 6/37, SDA, New Delhi in favor of the purchasers and that they shall ensure that the Agreements shall not only be executed by the sellers but also by the owners in favor of the purchasers. The sellers have undertaken to indemnify the purchaser in the event of any breach of any of the terms and conditions by the sellers for which they have

executed a separate indemnity bond in favor of the purchaser.'

15. The plaintiffs had sent a lawyer's notice dated 28.2.1992 to the defendants No. 1 and 2 calling upon them to execute the sale in terms of the agreement to sell dated 13.4.1989 but the defendants in reply disputed the claim. Plaintiffs had also sent notices to defendants No. 3 to 5 by registered post but the same were returned undelivered. Thereafter, the suit was filed on 16.4.1992. One of the objections of defendants No. 1 and 2 is that this agreement to sell was not entered into with the consent and permission as required under the Agreement of Collaboration and it is not binding on them. This question could be finally determined after trial. Prima facie the agreement of collaboration gave authority to the builder to enter into agreement(s) for sale.

16. The agreement to sell dated 13.4.1989 shows that possession of the entire ground floor was handed over to the plaintiffs on 13.4.1989 in pursuance of the agreement to sell. It is also not disputed by the defendants No. 1 and 2 that the plaintiffs are in use and occupation of the premises since then including back courtyard. It is also not disputed that water and electricity supplies are provided in the building and the plaintiffs have been enjoying these facilities since then. It is also not disputed that the basement below the ground floor which is in occupation of defendants No. 1 and 2, has no door opening in the back courtyard but has windows opening there. It is also not the case of the defendants No. 1 and 2 that this back courtyard does not form part of the complete ground floor agreed to be sold to be plaintiffs. The material available on record shows that complete ground floor was agreed to be sold to the plaintiffs by defendants No. 3 and 4 on behalf of defendants No. 1 and 2 for a sale consideration of Rs. 6,50 lakhs out of which part payment of Rs. 5.50 lakhs has been made and the balance payment was to be made at the time of registration of the agreement to sell; Apparently back courtyard forms part of ground floor portion. (2) the plaintiffs are in exclusive use and occupation of the ground floor in pursuance of this agreement to sell dated 13.4.1989; (2) the premises are provided with water and electricity supplies; (4) the plaintiffs have been enjoying the use and supplies of water and electricity; (5) the plaintiffs have alleged that defendants No. 1 and 2 have made attempts to enter and occupy the back courtyard by entering through the windows of the

basement; (6) there is no door to enter the basement in the back courtyard; (7) the defendants No. 1 and 2 had entered into Collaboration Agreement with defendants No. 3 and 4 authorising the latter to raise construction and to enter into agreement to sell the flats.

Prima facie, the plaintiffs are entitled to the use, occupation and enjoyment of the ground floor including the back courtyard. The defendants are not entitled to interfere therein. If the defendants are allowed to enter the back courtyard, it would amount to depriving the plaintiffs of its use and interference in their use and occupation. This is likely to result in loss, harm and injury to the plaintiffs.

17. Plaintiffs have also complained that the defendants No. 1 and 2 off and on have been interfering in the water and electricity supplies enjoyed by the plaintiffs. Prima facie, there is no reason to disbelieve the plaintiffs in this respect at this stage considering the facts and circumstances of the case. Defendants are not entitled to interfere in or stop the supplies of water and electricity of the plaintiffs nor entitled to tamper with the connecting lines, instruments, accessories or the meters provided for these supplies.

18. Principles for the grant of temporary injunction are well settled. At this stage, the Court has to be satisfied that the claim is not frivolous and vexatious; in other words, that there is a serious question to be tried and it cannot be said that there is no real prospect of succeeding in his claim for a permanent injunction at the trial; it is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed arguments and mature consideration; these are matters to be dealt with at the trial. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiffs during the period the dispute regarding the legal right asserted by the plaintiff is resolved the principles for grant of temporary injunction have also been reiterated by the Supreme Court in *Dalpat Kumar and Anr. v. Parhlad Singh and Ors.*, : AIR 1993 SC276 as under :-

'It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that: (10 there is a serious disputed

question to be tried in the suit and that in act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff; (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 at 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... Prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. 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 favor of granting injunction. 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.'

LA. No. 8219/92

19. In this application under Order 39 Rules 1 and 2, plaintiffs have complained that defendants No. 1 and 2 repeatedly made attempts to enter the back courtyard through the windows of the basement to enter and encroach upon the courtyard. They apprehend that defendants may not create any third party interest in the premises and seek interim injunction, order against defendants No. 1 and 2 : (1) to restrain from disturbing the use and occupation of ground floor portion including the back courtyard; and (2) not to transfer, alienate or encumber the premises.

Prima facie plaintiffs in the facts and circumstances, are entitled to safeguard their rights in the premises including the back courtyard as well as for the peaceful use and enjoyment thereof. This I.A. No. 8219/92 is accordingly allowed and the interim order passed on May 29,1992 is hereby confirmed.

LA. No. 7759/94

20. In this application, plaintiffs have complained of interference in the supply of water and about tampering in electricity meters which serves the plaintiffs. This

application is also allowed and by means of ad interim injunction, defendants are restrained from (1) interfering in, the water supply to the ground floor premises of the plaintiffs; (2) to remove the knobs or any other obstruction put in the outlets of the water tank on the terrace floor or any other obstruction in the water supply; (3) not to tamper with or interfere in the electricity meters through which electricity supply is made to the defendants, plaintiffs may have separate electricity connection for which 'no objection' certificate has been given by the defendants No. 1 and 2 by means of the statement made by defendant No. 1 in Court on 21.1.2000; (4) plaintiffs will be entitled to go to the terrace floor only for the purpose of inspection of overhead water tanks after reasonable notice to defendants No. 1 and 2 and the defendants No. 1 and 2 shall allow them to do so.

LA. No. 2115/96

21. In this application, plaintiffs have alleged that on 28.2.1996 in disregard of the interim order dated 29.5.1992 the defendants No. 1 and 2 came with some labourers and started (1) breaking portion of the wall and a part of the floor of the back courtyard to gain and make an entry in the courtyard and to trespass into it; (2) to demolish/break a part of the load bearing wall in front and below the staircase making structural changes and causing damage and threat to the safety of the building; (3) making holes into the wall at the entrance of the property at the start of the staircase in front before entrance to the plaintiff's property. This application is also allowed and it is ordered as under :-

Defendants No. 1 and 2 are restrained from :

1. entering into or interfering with the use occupation, and enjoyment of the plaintiffs in the courtyard of the house or breaking its floor or otherwise;
2. not to make any structural changes in the building which may cause any damage or endanger the stability and safety of the ground floor premises thereof. If any structural changes are intended to be made, the same shall not be carried out without the sanction/permission of the MCD that may be required under the Delhi Municipal Corporation Act and the building bye laws framed there under and also after giving prior notice of 15 days to the plaintiffs;

3. the defendants shall restore the broken portion of the building to its original position by making repairs of the broken portions so far as it causes interference or obstruction to the plaintiffs' right of entry into or use and enjoyment of the ground floor premises or affects the safety and stability of the ground floor premises.

LA. No. 3013/96

22. In this application also, plaintiffs have alleged further acts of harassment by the defendants. In this application, one of the prayers is that the defendants may be restrained from letting out or parting with possession of the basement or any part thereof to any person or from using the same contrary to the sanctioned plan. This prayer is beyond the scope of the suit and even otherwise is not reasonable and justified. It is disallowed.

23. As regards the remaining reliefs, these have already been granted in orders passed in the other applications. This application is accordingly dismissed. In the circumstances, parties are left to bear their own costs.

24. Nothing stated herein shall be deemed to be expression of opinion on the merits of the case.

LA. No. 8219/92, 7759/94, 2115/96 and 3013/96 are accordingly disposed of.

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