

A.K. Chatterjee Vs. Ashok Kumar Chatterjee

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Court : Delhi

Decided On : Dec-11-2008

Reported in : 156(2009)DLT475

Judge : Rajiv Sahai Endlaw, J.

Acts : Transfer of Property Act - Sections 52; Specific Relief Act - Sections 19; Code of Civil Procedure (CPC) - Sections 151 - Order 22, Rule 10 - Order 39, Rules 1 and 2A

Appeal No. : IA No. 12212/2007 in CS(OS) No. 2314/1994

Appellant : A.K. Chatterjee

Respondent : Ashok Kumar Chatterjee

Advocate for Def. : N.N. Aggrawal, ; Abhijeet Chatterjee, ; Subodh K. Pathak

Advocate for Pet/Ap. : Ravinder Sethi, Sr. Adv. and; Rajiv Kumar Ghawana, Adv.,; A

Judgement :

Rajiv Sahai Endlaw, J.

1. The purchasers from the defendant in this suit for partition of immovable property claim substitution in place of the defendant. The application is opposed

by the defendant only to the extent of substitution. The defendant otherwise has no objection to the impleadment of the applicants as a party to the suit. The plaintiffs, however, oppose substitution or even impleadment of the applicants as parties.

2. This suit for partition has been pending since 1994 and the plaintiffs and the defendant have already concluded their evidence and the suit is ripe for final arguments. The plaintiffs claimed that each of the plaintiffs No. 1 to 6 and the defendant have a 1/7th share in the property. It is the case of the plaintiffs that the predecessor of the parties was a member of the cooperative society which had allotted the land; that the said predecessor with the consent of all the parties transferred the said land in the name of the defendant being the eldest son so as to enable grant of government loan for house construction, the defendant being in government service. The defendant contested the suit claiming to be the sole owner of the property.

3. There was an interim order in the suit restraining the defendant from selling the property. The defendant, however, notwithstanding the said interim order admittedly executed and registered a sale deed in favour of the applicants. Separate applications for taking action against the defendant and applicants for violation of the interim order of the court are pending.

4. The contention of the senior counsel for the plaintiffs is that the sale deed executed by the defendant in favour of the applicants being in violation of the order of the court, is nonest and void. Reliance is placed on *Surjit Singh v. Harbans Singh* : AIR 1996 SC135 .

5. The senior counsels for the applicants on the other hand have relied upon *Savitri Devi v. Distt. Judge Gorakhpur* : [1999]1SCR725 where *Surjit Singh (Supra)* was considered and distinguished.

6. In *Savitri Devi* the suit was for recovery of maintenance and for creation of charge therefor on ancestral properties of family. The defendants in that case also were enjoined by interim order from transferring the properties; they however, in breach of injunction order sold the property. The purchasers applied for

impleadment. It was contended by the plaintiff in that case that the sale being in breach, contempt and disregard of order of injunction, the applicants therein got no title to the property in order to get impleaded. The application for impleadment was allowed. The plaintiff took the matter to apex court and relied upon Surjit Singh (Supra). However, the apex court relying on Khem Chand Shankar Choudhari v. Vishnu Hari Patil : [1983]1SCR898 held that a transferee pendente lite of an interest in immovable property subject matter of suit has a right to be impleaded. Surjit Singh (supra) was distinguished because (i) in that case there was an assignment of rights under a preliminary decree and which was held not capable of conveying any rights to the assignees and (ii) in that case there was no dispute that the assignors and the assignee had knowledge of the order of injunction. The apex court held that impleadment of purchasers during pendency of suit, and in violation of interim order was warranted.

7. Thus it follows that a sale deed of immovable property executed in violation/contempt of interim order of injunction is not nonest or void, as contended by the plaintiffs in the present case. It also cannot be said that no right in immovable property subject matter of suit has passed to the applicants, under such a sale deed. In a given case, where sale deed is executed in violation of interim order, the court may direct status quo ante by ordering reconveyance to be executed by the erring parties or asking the erring parties to join in execution of conveyance in favour of party ultimately found entitled to the same. The Apex Court in Gurunath Manohar Pavaskar v Nagesh Siddappa Navalgund : AIR 2008 SC901 has held that the courts can pass an interlocutory order in the nature of mandatory injunction in exercise of its jurisdiction under Section 151 CPC on the premise that a party against whom an order of injunction was passed acted in breach thereof and so as to relegate the parties to the same position as if the order of injunction has not been violated. This again implies that the conveyance in violation of interlocutory order is not void, inasmuch as if it was so, there would be no need for reconveyance.

8. Lord Denning had observed as follows in Hadkinson v Hadkinson (1952) (2) All.E.R. 567:

I am of the opinion that the fact a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.

9. I do not find the act of execution of sale deed in violation of interim order of this Court in the present case to be of such nature as to be an impediment in the decision of the suit or grant of a decree as claimed by the plaintiffs, if found entitled to the same. The said sale deed would not be binding on the plaintiffs and would be hit by the doctrine of lis pendens as adumbrated under Section 52 of the Transfer of Property Act. The said sale deed would not come in the court's way in passing a decree in favour of plaintiffs. Its validity or otherwise would not be necessary to be considered as the plaintiffs are not bound thereby.

10. In Lal Chand v. Sohan Lal AIR 1938 Lah, 220 also it was held that effect of non compliance with an injunction under Order 39 is to make the offender liable to punishment prescribed therein and there is no statutory authority for the proposition that a completed sale in contravention of an injunction under Order 39 Rule 1 is a nullity.

11. The Sr. Counsel for plaintiffs has contended on the basis of language of an agreement dated 30th July, 2003 executed between the defendant and the applicants that the applicants in the present case had knowledge of the interim order in this suit. The senior counsel for the applicants contests the said position and relies on the sale deed in which there is no mention whatsoever of this suit and the various clauses thereof suggest to the contrary. In my view, once the legal position is that sale of immovable property in violation of interim order under Order 39 Rule 1 CPC is not a nullity, the knowledge of the applicants thereof is not relevant for the purposes of deciding whether they are to be impleaded or not and will be of relevance only in applications filed by plaintiffs for taking action against them. I also find that the question whether the applicants are bonafide purchasers

for value or not is of no relevance. The case of the plaintiffs is that defendant has 1/7th share only in the property. The case of defendant is that he is the sole owner - he has executed sale deed conveying rights as sole owner of the property. If the defendant is held to be having 1/7th share only in the property, he could not have conveyed to the applicants more than what he himself had, howsoever bonafide the applicants may have been. The concept of bonafide purchaser for value is only in Section 19(b) of the Specific Relief Act in relation to a purchaser acquiring title subsequent to the agreement of which specific performance is claimed; though specific performance under Section 19 of Specific Relief Act can be enforced against subsequent purchaser from seller but not if such subsequent purchaser is for value and has acted in good faith and without notice of original contract. However, this principle has no application where the seller has no title or title lesser than conveyed.

12. It is relevant to note that the defendant after the execution of the sale deed in favour of applicants has moved an application in the present suit which appears to suggest that the defendant is agreeable to the suit being decreed. It is contended by the senior counsel for the applicants that the defendant after execution of the sale deed in favour of the applicants and after receiving the sale consideration from the applicants is colluding with the plaintiffs and if the suit is left for the defendant to contest, the defendant would not contest the suit and act to the detriment of the applicants. Order 22 Rule 10 of the CPC provides that in cases of assignment, creation or devaluation of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. This is an enabling provision. The trial of a suit cannot be arrested merely by reason of a devaluation of the interest of a party in the subject matter of the suit. The said provision enables the person acquiring the interest to continue with the suit or for a suit to be continued against him with the leave of the court; but that if he does not chose to do so, the suit may be continued with the original party and the person acquiring the interest will be bound by or can have the benefit of the decree. It is not necessary for the assignee to make an application for being substituted or impleaded as a party in the suit or appeal if he finds that his interests are being well looked after by the assignor. This conduct of the defendant shows that the applicants cannot now be

asked to trust the defendant to look after their interest in this suit.

13. I find that if the applicants are not party to the present suit, the same will also lead to multiplicity of proceedings, which is to be avoided. In fact, the decision of the present suit in the absence of the applicants to whom the defendant has conveyed all his rights in the property subject matter of the suit will be no decision at all. A plaintiff cannot be permitted to indulge in a mock action against a party who has no interest or real interest left in the claim of the plaintiff. The defendant in the present case, after execution of sale deed in favour of applicants is left with no interest in the property and any decree in this suit in the presence of defendant alone and absence of applicants will be sham, as is apparent from the conduct of defendant. It will definitely also lead to other actions/litigations by the applicants for adjudication of their rights in the property under the sale deed executed by defendant in their favour. On the contrary, the plaintiffs shall suffer no prejudice if the applicant who has stepped into the shoes of the defendant qua the property subject matter of suit are impleaded as party. It will lead to full and final settlement of lis which has been pending for last 14 years.

14. The only prejudice which the plaintiffs could suffer by substitution/impleadment of applicants is of delay in the disposal of suit. I have enquired from the senior counsel for the applicants whether, if they are impleaded, substituted to the present suit they would lead any evidence. It has been stated that save for relying upon the sale deed executed by the defendant in their favour the applicants do not have to lead any evidence or to file/amend pleadings. They have stated that they are themselves interested in early disposal of the suit and are willing to finally argue the suit immediately.

15. The next question is whether the applicants should be substituted in place of defendant or impleaded in addition to defendant. The defendant wants to continue as a party to the suit on the ground that as per the agreement dated 30th July, 2003, in the event of the defendant losing in the present litigation, the defendant has agreed to refund the entire sale consideration to the applicants. It is the contention of the defendant that his continuance in the suit is necessary to secure at least his 1/7th rights in the property in the event of the suit being decreed. Per

contra it is argued that the defendant has in rejoinder to I.A. No. 5005/2008 categorically stated that in the event of the suit being decreed, the applicants would be entitled to 1/7th share in pursuance to the sale deed already executed by him. The inter se disputes if any between the defendant and the applicants are however not subject matter of this suit.

16. I consider the presence of the defendant, notwithstanding execution of sale deed in favour of applicant's proper. It is the defendant who is the author of all pleadings and evidence in the suit. Applications under Order 39 Rule 2A CPC are also pending against him and in which he, in any case, shall remain a party. Moreover, if the defendant was to be substituted and the suit was to be decided in the absence of defendant, it may leave scope for other/further proceedings and which is avoidable.

17. The application is therefore allowed to the extent that the applicants though found entitled to be a party to the suit are impleaded as defendants No. 2 and 3 instead of being substituted in place of defendant.

Amended memo of parties be filed by plaintiffs within one week.

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