

Sheoraj Vs. Ma Accord Infrastructure Pvt. Ltd. and Others

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Court : Allahabad

Decided On : Feb-11-2011

Judge : Sunil Ambwani; Mrs. Jayashree Tiwari, JJ.

Acts : Specific Relief Act - Sections 34, 38 and 41;

Appeal No. : FIRST APPEAL FROM ORDER NO. 379 OF 2011

Appellant : Sheoraj

Respondent : Ma Accord Infrastructure Pvt. Ltd. and Others

Advocate for Pet/Ap. : Shri. S.O.P. Agrawal

Judgement :

1. We have heard Shri S.O.P. Agarwal for the plaintiff-appellant. Shri Shashi Nandan assisted by Shri Anoop Trivedi appears for the defendant-respondents.
2. This First Appeal From Order arises out of an order passed by the Civil Judge (Senior Division) Ghaziabad dated 24.12.2010 in OS No. 2343 of 2010 Sheoraj vs. M/s Accord Infrastructure Pvt. Ltd. rejecting the application for interim injunction, after hearing the parties.
3. The plaintiff-appellant has filed an Original Suit No. 2343 of 2010, for permanent injunction restraining the defendants-respondents to construct road or building, taking exclusive possession and for interfering in the joint possession and use of

the land in Khasra No. 292 area 0.2780 hec. and plot No. 274 area 0.2530 hec. in village Mahrauli Pargana Dasna, Tehsil and District Ghaziabad.

4. It is alleged in the plaint that the plaintiff along with his brothers Bhagwant Singh and Satveer Singh were the joint owners and in possession of the property. His brothers have sold their two-third share to defendant nos. 1 to 3. There has been no partition in the family between the brothers and that the property continues to be in joint possession of the plaintiff and defendants. They have no right to take possession or raise constructions on any part of the property exclusively. The defendant company keeps changing its name from time to time. It is a powerful company with means to raise constructions. On 30.10.2010 they brought and have kept the construction materials on the eastern portion of plot No. 292, and that their labourers started raising constructions of the pucca road and the building. When they were stopped from raising constructions, the defendants threatened the plaintiff. The defendants want to raise constructions and to stop the passage of the drains for irrigation. They are threatening to occupy a specific portion of the land and to make constructions on it.

5. The defendants-respondents filed objections alleging that they are reputed builders engaged in constructions of residential and commercial buildings in and around Ghaziabad. They have purchased one third portion of 0.2530 hect. in Khata No. 335, Khasra No. 292 by sale deeds dated 29.7.2004 and 4.6.2004 from Bhagwant Singh and are in possession of the land purchased by them. Their name has been mutated in the revenue records and they are in possession thereof. The company has got the building plan sanctioned from the Ghaziabad Development Authority, Ghaziabad after Ghaziabad Development Authority verified the revenue records and the possession of the defendants on the spot. The maps were sanctioned on 1.4.2010, after which the defendants have started constructions on the portion of the land purchased by them in accordance with the law. If the plaintiff alleged that there is no partition, the suit filed by them only for injunction without claiming partition is barred by the provisions of Sections 34, 38 and 41 of the Specific Relief Act. The defendants will suffer irreparable loss and injury, if any injunction is issued restraining them from making constructions.

6. The trial court, while deciding application for interim injunction, has found that it is not denied that the land was own jointly by the three brothers and that two of the brothers have sold the land to the defendants. The plaintiff has not disclosed the dates of the sale deeds. In the objections, it is stated that the sale deeds were executed in the year 2004. The defendant is a builder and has purchased the land for raising the constructions. There is nothing to show that since 2004 the plaintiff has been in joint possession with the defendants or has sown and harvested any crops over the land. The trial court prima facie found that on the spot the brothers had partitioned the land. A suit for partition was also filed by the defendants which was pending in the revenue courts. The Khatauni (record of title) shows that no crops were shown on the land and thus the plaintiff will not suffer any irreparable injury. The trial court also found that the plaintiff has not prayed for relief of partition and has filed the suit only for permanent injunction. The land has been declared as non-agricultural land and for construction the map has been sanctioned by the Ghaziabad Development Authority. In the circumstances the balance of convenience lies in favour of the defendants and that if injunction is granted, the scheme for construction will suffer.

7. Shri S.O.P. Agrawal, learned counsel for the petitioner submits that it was not necessary for the plaintiff to claim a relief for partition. The suit for partition filed by the defendants was dismissed on the ground that the revenue courts after declaration of land as non-agricultural land, did not have jurisdiction to entertain the suit. He submits that so far the land has not been partitioned. It is in joint ownership of plaintiff and defendants. The defendant is not entitled to usurp the land for its own benefits and to make constructions. He submits that unless there is a partition by meets and bounce no co-owner has a right to utilise the land for its benefits. The raising of constructions will cause irreparable loss as third party right may also be created. He relies upon the principles of law for grant of temporary injunction laid down in *Narendra Kante vs. Anuradha Kante & others* (2010) 2 SCC 77, in support of his submission.

8. In the present case the sale deeds were executed by the brothers of the plaintiff in the year 2004. The land was thereafter declared as non-agricultural land and the building's plan were approved by the Ghaziabad Development Authority. There

is no pleading or material on record to show that the plaintiff was in physical possession of the land, or had sown any crops. The plaintiff has not pleaded any such facts or produced documents to establish the use of his ownership's rights. There are no pleadings or any proof of any agricultural operations carried out by the plaintiff on the land.

9. Prima facie we do not find any error in the findings of the trial court. The plaintiff was aware of the sale of two-third portion by his brothers in favour of defendants. He did not choose to get the land partitioned or exercise any proprietary rights. He has waited for six years until the defendants got the building plan sanctioned and started making constructions.

10. More than a century ago, it was laid down in *Shadi v. Anup Singh* 1890 ILR 12 All 436 that the Court will grant a perpetual injunction to restrain one of the other co-sharers from appropriating to himself land in which each of his co-sharers has an interest and from building upon it; and if he proceeded to build upon it the Court would grant mandatory injunction directing that the building so far as it has proceeded be pulled down. In the later decision no such broad proposition was accepted.

11. In *Chhedi Lal v. Chhotey Lal* AIR (38) 1951 All. 199 Justice Ghulam Hasan speaking for the Division Bench after citing *Robert Watson Consolidation Officer. v. Ram Chand Dutt*, (18 Cal. 10 P.C.) by Sir Barues Peacock; *Midnapur Zamindary Consolidation Officer. Ltd. v. Naresh Narayan Roy*, AIR (11) 1924 P.C. 144; *Tilok v. Ramadhin* Select Case No. 270 , by Mr. Spankie, ACJ; *Lalla Bissambur Lal v. Rajaram* 13 W.R. 337, a decision by Mahmood, J in *Paras Ram v. Sherjit* 9 All. 661 (1887) A.W.N. 253 and another Full Bench decision of Five-Judges by Mahmood, J in *Shadi v. Anup Singh* 1890 ILR 12 All 436 (1890 AWN 95) FB held as follows:-

"(25). As a result of the foregoing discussion, it appears to us that the question of the right of co-sharers in respect of joint land should be kept separate and distinct from the question as to what relief should be granted to a co-sharer, whose right in respect of

joint land has been invaded by the other co-sharers-either by exclusively appropriating and cultivating land or by raising constructions thereon. The conflict in some of the decisions has apparently risen from the confusion of the two distinct matters. While therefore a co-sharer is entitled to object to another co-sharer exclusively appropriating land to himself to the detriment of other co-sharers the question as to what relief should be granted to the plaintiff in the event of the invasion of his rights will depend upon the circumstances of each case. The right to the relief for demolition and injunction will be granted or withheld by the Court according as the circumstances established in the case justify. The Court may feel persuaded to grant both the reliefs if the evidence establishes that the plaintiff cannot be adequately compensated at the time of the partition and that greater injury will result to him by the refusal of the relief than by granting it. On the contrary if material and substantial injury will be caused to the defendant by the granting of the relief, the Court will no doubt be exercising proper discretion in withholding such relief. As has been pointed out in some of the cases, each case will be decided upon its own peculiar facts and it will be left to the Court to exercise its discretion upon proof of circumstances showing which side the balance of convenience lies. That the Court in the exercise of its discretion will be guided by considerations of justice, equity and good conscience cannot be overlooked and it is not possible for the Court to lay down an inflexible rule as to the circumstances in which the relief for demolition and injunction should be granted or refused."

12. It would also be relevant here to quote the observations of Mahmood, J in *Paras Ram vs. Sherjit* 9 All. 661 (1887 A.W.N 253) as follows:-

"(14) The cases of the Allahabad High Court on the point are far more numerous. *Paras Ram v. Sherjit*, 9 All. 661: (1887 A.W.N. 253)

is a decision by Mahmood J. in a case where a co-owner sought demolition of a building constructed by a joint owner in spite of his protest. The learned Judge observed that as a pure question of law as distinguished from the rules of equity the plaintiffs may be entitled to the decree but Courts in India exercise the combined jurisdiction of law and equity and cannot disregard equitable doctrines in enforcing remedies. He distinguished cases in which a building is erected by a rank trespasser upon a land of another and cases in which the building is erected by a joint proprietor on joint land without the permission of his joint owners or in spite of their protest. The learned Judge then quotes the well-known judgments of Sir Barnes Peacock in *Biswambhar Lal v. Raja Ram*, 3 Beng. L.R. (App) 67: (13 W.R. 337) and concludes that when a joint owner of land, without obtaining the permission of his co-owners, builds upon such land, such buildings should not be demolished at the instance of such co-owners, unless they prove that the action of their joint owner in building upon joint land had caused them a material and substantial injury such as cannot be remedied by partition of the joint land. This case was considered by a Full Bench of five Judges including Mahmood J. in *Shadi v. Anup Singh*, 12 All. 436: (1890 A.W.N. 95 F.B.). The suit was brought for an injunction within three or four days of the defendant commencing a construction upon joint land. The defendant asserted exclusive right to the land. The plaintiff obtained an interim injunction but the District Judge on appeal, in view of the ruling in *Paras Ram's case*, 9 All. 661: (1887 A.W.N. 253) went into the question as to whether the plaintiff could be compensated by the defendant at partition. He found that the defendant was building upon land which was in excess of the share which would come to him on partition and the plaintiff could not, therefore, be adequately compensated. Sir John Edge C.J. Held that the District Judge was wrong in going into the question whether the excess land had been appropriated and that finding of fact given by him the injunction should have been

granted. It is obvious from a reading of the judgment in Paras Ram's case, 9 All. 661: (1887 A.W.N. 253) that it did not justify an investigation into the question whether more land than belonged to the co-sharer was appropriated. The learned Chief Justice observed that the defendant, instead of going to the partition Court, proceeded to appropriate to himself lands in which each of his co-sharers had an interest and thus he proposed to exclude them from all use and enjoyment of a portion of common land. He went on to say:

"We need not in this case consider what a civil Court should do if the defendant has erected at great expense buildings which a Court of equity might hesitate to order him to pull down."

This observation clearly saves the power of the Court under S. 55, Specific Relief Act, as a Court of equity to regulate its discretion in accordance with the provisions of that section in granting or withholding injunction."

13. In Ayyaswami Gounder vs. Munnuswami Gounder AIR 1984 SC 1789 the Supreme Court held that where an owner of land obstructs another co-owner from using the land even when the use causes no injury or detriment to him, an injunction can be granted against the obstructing owner. The only restriction could by law on the in user of land by a co-owner is that it should not be so used as to pre-judicially affect or put the other co-owner to a detriment. In paragraph 10, and 11, it was observed:-

"10. We find considerable force in this contention. In the absence of any specific pleading regarding prejudice or detriment to the defendants-respondents the plaintiffs have every right to use the common land and the common channel. The plaintiffs-appellants were claiming their right on the basis of admitted co-ownership rights which includes unrestricted user, unlimited in point of

disposition, and the High Court was not justified in holding that that plaintiffs' right to take water was not acquired by any grant from the defendants-respondents or from any other sale deed. The right of co-ownership presupposes a bundle of rights which has been lost sight of by the High Court.

11. The only restriction put by law on the common user of land by a co-owner is that it should not be so used as to prejudicially affect or put the other co-owner to a detriment."

14. In *Mandali Ranganna and others vs. T. Ramachandra and others* (2008) 11 SCC 1 the Supreme Court held in paras 21 and 22 as follows:-

21. While considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.

22. Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The Courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the Courts is imperative. Contentions raised by the parties must be determined objectively."

15. The judgement in *Mandali Ranganna* (supra) was followed in *Kishorsinh Ratansinh Jadeja vs. Maruti Corporation and others* (2009) 11 SCC 229 and in *Narendra Kante vs. Anuradha Kante and others* 2010 (2) SCC 77. In all these

cases the interim injunction was refused. In *Kishorsinh Ratansinh Jadeja* (supra) the Supreme Court did not favour the grant of injunction, affecting rights of third parties. There were 280 transferees to whom some portion of land was already sold. It was held that if the owners of the property remain restrained from developing the same, it is they who will suffer severe prejudice, as they will be deprived of the benefit of the user of their land during the said period. The balance of convenience and inconvenience is against the grant of such an injunction. In *Narendra Kant* (supra) the High Court had in a Misc. Appeal observed that in case injunction was granted, it would be the defendants who will suffer irreparable loss and injury. It was observed that defendant no. 10 (the transferee from respondent-defendant no. 1 and 2) had acquired a right to the suit property. He was therefore allowed to carry out construction activities over the disputed land but was restrained from alienating or transferring the property in question or from creating any third party rights during the pendency of the civil suit. The trial court was directed to decide the suit expeditiously, and to dispose of the same within six months. The Supreme Court did not interfere with the order except by directing that the co-sharers to the suit property shall not create any third party right or encumber or transfer their respective suit property in any manner and all transactions undertaken in respect thereof shall be subject to the final decision in the suit.

16. Every co-sharer has a right to the property and to develop the property in accordance with the law, subject to the condition that such use of the property will not render the partition impossible. Either the plaintiff may file a suit for partition and injunction, or may bring such facts and circumstances to the notice of the Court that the activities carried out by the defendants will make the partition impossible. In either case the delay in filing the suit will not entitle the plaintiff to seek the relief of injunction.

17. In the present case the plaintiff has neither pleaded nor shown that he was exercising any ownership right on the land by cultivating it or otherwise. He did not make any efforts inspite of execution of the sale deeds in 2004, to get the share partitioned by meets and bounds. The plaintiff waited and watched the defendants to use the property to file a suit. In between he allowed the land to be declared

non-agricultural land and the suit for partition to be dismissed on the ground of jurisdiction of revenue court. He also did not object to measurements and inspections on which the building plans were sanctioned. He was not cared to obtain copies of building plans to show as to whether the entire land or only a part is proposed to be developed. The delay on his part in getting the property partitioned and further in not claiming the relief in partition of suit was rightly accepted as a ground to reject the relief of injunction.

18. The pleadings in the plaint clearly show that the building material has been accumulated on only a part (eastern) of the plot namely Khasra No. 292 and that some labourers had started laying down the road. The activity of the defendants did not amount to usurping the entire land which may defeat the rights of the plaintiffs on partition.

19. The plaintiff did not claim any relief either in the plaint or in the injunction application to restrain the defendants from creating third party rights over the land, nor there was any such contention made by the counsel for plaintiff-appellant.

20. For the aforesaid reasons, we do not find that the trial court committed any error of facts and law in rejecting the injunction application.

21. The First Appeal From Order is dismissed, with observations that the suit may be decided expeditiously.

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