

iqbal Singh Vs. Mahender Singh and anr

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Court : Delhi

Decided On : Nov-23-2012

Judge : Valmiki J. Mehta

Appellant : iqbal Singh

Respondent : Mahender Singh and anr

Advocate for Pet/Ap. : Mr. R.S.Tomar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % CS(OS) 3298/2012 23rd November, 2012 IQBAL SINGH Plaintiff Through: Mr. R.S.Tomar, Adv. VERSUS MAHENDER SINGH & ANR Defendants Through CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not? VALMIKI J.

MEHTA, J (ORAL) 1. This suit is a suit for specific performance of an Agreement to Sell dated 2.8.2004. The agreement to sell is for a plot which the defendant no.1 was to be allotted on account of acquisition of his land under the Land Acquisition Act, 1984.

2. Under the Agreement to Sell dated 2.8.2004 the plaintiff paid certain amounts and it is the case of the plaintiff that the defendant no.1 failed to perform his part of the contract, and therefore, in terms of an arbitration clause, the plaintiff way back in the year 2006 (as mentioned in para 13 of the plaint) invoked arbitration

proceedings. It is during the pendency of the arbitration proceedings that the defendant no.1 is said to have transferred the suit property to the defendant no.2, and who is said to have further transferred the same to defendant no.3. The stage in the arbitration proceedings is that after filing of the claim petition, an interim order was sought under Section 9 of the Arbitration and Conciliation Act, 1996, which was granted, however, presently, the arbitration proceedings are said to be stayed on account of a petition which has been filed by the defendant no.1 on the ground that the arbitrator is biased. 3(i). It is trite that any transfer of an immovable property during the pendency of a legal proceeding, is void and hit by Section 52 of the Transfer of Property Act, 1882 which incorporates the doctrine of lis pendens. If a property is transferred before filing of a suit, a purchaser may have a benefit of claiming that he was a bonafide purchaser for value without notice, however, to a transferee pending a legal proceeding, there is no defence. Order 22 Rule 10 CPC provides that in case there is a transfer of an immovable property during the pendency of the legal proceedings, the transferee can be brought on record in exercise of the powers under Order 22 Rule 10 CPC. (ii) Therefore, in my opinion, if during the pendency of the arbitration proceedings any transfer takes place, such transfer is void, and there is no need to file a fresh suit being the present suit seeking cancellation of the documents in favour of the defendant nos.2 and 3 because what is required is that the transferee is to be impleaded under Order 22 Rule 10 CPC under the earlier legal proceedings. (iii) In fact, the Supreme Court in the case of Dhurandhar Prasad Singh Vs. Jai Prakash University & ors. 2001 (6) SCC 53.has held that Order 22 Rule 10 CPC is not mandatory i.e even if, the transferee is not brought on record in exercise of powers under Order 22 Rule 10 CPC, the legal proceedings can continue in the name of the original parties to the legal proceedings, and the decision in the legal proceedings will bind the persons to whom the property has been transferred or the same has devolved during the pendency of the proceedings.

4. As per Section 21 of the Arbitration and Conciliation Act, 1996, arbitration proceedings commence on a date on which a request for the disputes to be referred to arbitration is received by the respondent. Once the arbitration proceedings commence, the suit property becomes sub-judice and any transfer during the pendency of the arbitration proceedings would be hit by Section 52 of

the Transfer of Property Act, 1882. I may note that the provision of Section 21 of the Arbitration and Conciliation Act, 1996, and similar such provision in the earlier Act of 1940, exist inasmuch as whereas a court always exists, where legal proceedings can be immediately filed, the Arbitration Tribunal in certain cases have to be constituted before which proceedings cannot start. It is for this reason that the commencement of arbitration proceedings is taken from the date of receipt of the request by the respondent for commencement of arbitration proceedings, and after which, constitution of the Arbitration Tribunal may take time.

5. At the commencement of the hearing, I put it to counsel for the plaintiff that ex facie, the suit is barred inasmuch as, at best, the plaintiff need only file an application under Order 22 Rule 10 CPC for impleading the subsequent transferees in the earlier arbitration proceedings. Counsel for the plaintiff however states that he has instructions to press the suit. I had given the suggestion to the counsel for the plaintiff because I thought if the suggestion is acceptable I can refund 50% of the court fees under Section 16A of the Court Fees Act, 1870 as applicable to Delhi. However, a Court can only make a suggestion but no more.

6. The suit and the application are therefore wholly misconceived, and are dismissed inasmuch as the decision in the earlier arbitration proceedings will bind the defendant no.1/proposed seller and his transferees pendente lite and there is no need to file a separate suit to challenge the execution of pendente lite documents qua the suit property in favour of defendant nos. 2 and 3.

7. Copy of this order be sent to the defendants through the High Court Process Serving Agency and also by registered AD post by the Registry. NOVEMBER 23 2012 ib CS(OS) 3298/2012.

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