

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO.No.377/2010**

% *Decided On: 15.11.2010*

CHAND SEHGAL Petitioner

Through: Mr. I.C. Tiwari, Adv.

Versus

VINOD KUMAR PAUL & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

: **MOOL CHAND GARG,J.**(Oral)

1. The appellant claims to have purchased two plots bearing No.73-74 measuring 250 sq. yards each located at Khasra No.51/43, at Village Baprola, Delhi Estate Colony, Janak Vihar within jurisdiction of P.S. Nihar Vihar (Now, P.S. Ranhola), New Delhi. The sale was effected by way of an agreement to sale and receipt besides General Power of Attorney which was registered. The plot was taken into possession by encircling the same by barbed wire. According to the appellant this purchase was made at the instance of respondent No.1 and 2 on 24.07.1989.

2. It is also the case of the appellant that in the year 1992 i.e. after 3 years despite requesting respondents No.1 and 2 about return of the title deeds they did not return the same. It was in 2009 that the appellant claims to have known that the two plots were sold by respondents No.1 and 2. It is thereafter, the appellant lodged FIR No.1687/2009 under Sections 420/406/323/504/342 IPC at P.S. Indirapuram, Ghaziabad against respondents No.1 and 2. It is stated that, as informed by respondents No.1 and 2, they had sold the plots in question to respondent No.3. It is, thereafter, the appellant instituted a

suit in the month of September, 2009 and also lodged another FIR No.154/2010 at P.S. Ranhola, Delhi against respondents No.1 and 2. The respondent No.3 in his written statement has taken a stand that the two plots were sold through him in his capacity as a property dealer.

3. In the suit filed by the appellant, he has prayed for declaration in her favour and against respondents No.1 to 3 thereby declaring that the title deeds executed by respondents No.1 and 2 or either by them in favour of respondent No.3 or someone else with respect to the said plots No.73-74 are null and void. He also prayed for relief of permanent injunction and possession.

4. Along with the suit, the appellant also filed an application under Order 39 Rule 1 and 2 CPC. The said application was disposed of by the learned Additional District Judge vide order dated 15.07.2010. By the said order, the learned ADJ has dismissed the application. The relevant facts which have been noticed by the learned ADJ are that the plots in question were sold by respondent No.3 on behalf of respondent No.1 after receiving consideration and on the basis of a attorney executed by the appellant in favour of respondent No.1. It was, therefore, pleaded that respondent No.3 was merely acting as a property dealer and allowed the sale of the property. The trial Court after taking note of the execution of its registered General Power of Attorney by the appellant in favour of respondent No.1 which permitted respondent No.1 to dispose of all the properties of the appellant, observed that in the absence of anything on record which may show that the said power to sell the property was revoked by the appellant before filing of the suit in 2009, the question of further restraining respondents No.1 to 3 from alienating/disposing of the property any further is without any cause of action for the reason that the property stands already sold by virtue of the power given by the appellant to respondent No.1. While referring to the basic principles which are required to be gone into while granting ad interim injunction under Order 39 Rule 1 and 2, the ADJ made the following observations:

“14. It is also a well settled principle of law that where both sides are exposed to irreparable injury, ending trial, the courts have to strike a just balance as held in *Mahadeo*

Savlaram Shelke Vs. Pune Municipal Corporation (1995) 3 SCC 33, it is urged that the court considering an application for an interlocutory injunction has four factors to consider: first, whether the plaintiff would suffer irreparable harm if the injunction is denied; secondly, whether this harm outweighs any irreparable harm that the defendant would suffer from an injunction; thirdly, the parties relative prospects of success on the merits; fourthly, any public interest involved in the decision. The central objective of interlocutory injunctions should therefore be seen as reducing the risk that rights will be irreparably harmed during the inevitable delay of litigation.

15. A prima facie should be made out. The mere institution of a suit does not entitle the plaintiff to any relief. Plaintiff must satisfy the court that there is fair and substantial question to be tried. In the instant case, a registered GPA dt. 13.5.83 was duly executed by plaintiff in favor of defendant no.1. It is also pertinent to mention here that on the basis of said registered GPA, the defendant no.1 had already sold those plots bearing no. 73 & 74 through defendant no.3 in the year 2005. It is also pertinent to mention that said registered GPA dt. 13.5.83 has never been cancelled by the plaintiff till today.

16. Admittedly as per the plaint, defendants are not in the possession of the suit property as the defendants have already sold the suit property on the instructions of plaintiff on the basis of registered GPA dt. 13.5.83 as submitted by defendant no. 1 to 3.

17. I am of the view that prima facie is not to be confused with prima facie title. In the instant case, substantial question raised by the parties which at first sight needs investigation and can be established only after leading the evidence when the case comes to the trial. The balance of convenience also does not lie in favor of the plaintiff as the defendants are not in possession of the suit property as the same has already been sold in the year 2005.

18. Considering facts and circumstances of the case and relying upon the judgment *Mahadeo Savlaram Shelke Vs. Pune Municipal Corporation* (1995) 3 SCC 33 (Supra), I am of the view that the plaintiff at this stage has failed to make out a prima facie case in her favour as prayed. The plaintiff has not been able to satisfy any of the ingredients of Order 39 Rule 1 and 2 CPC in the present case and is not entitled to the interim relief. Hence, the interim application under order 39 Rule 1 & 2 CPC is hereby dismissed.”

5. I find no infirmity. Consequently, when the appellant has not been able to establish the prima facie case and the property in question

stands already sold to a third party and the suit in question has also been filed by the appellant after a long time i.e. in 2009, it cannot be said that there was any infirmity in the order passed by the learned ADJ in having refused injunction as prayed for.

6. Accordingly, the appeal is dismissed at this stage itself.

C.M.18733/2010

Dismissed as having become infructuous.

MOOL CHAND GARG,J

NOVEMBER 15, 2010

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