

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

+ **FAO 419/2010**

Reserved on : 30.11.2010
Date of Decision : 14.12.2010

HAIDER ALI Appellant
Through Mr. Prasoon Kumar, Adv

versus

HASSAN AHMAD & SONS Respondents
Through Mr. Munish Tyagi, Adv.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: **MOOL CHAND GARG,J**

1. This appeal arises out of an order passed by the learned ADJ on an application filed by the appellant under Order 39 Rule 1 and 2 CPC in a suit filed by the appellant for declaration and permanent injunction against the Respondents No 1 & 2 whereby the appellant wanted a declaration that he is the owner and in possession of the suit property on account of having purchased the suit property from Shri Hasan Ahmed respondent No.1 on the basis of agreement to sell, registered GPA, receipt etc against both respondents No 1 & 2.

2. By the impugned order the learned ADJ has dismissed the application of the appellant. The relevant portion of the order passed by the learned ADJ, reads as under:

“ As mentioned above, the plaintiff has also sought an order of this court to stay judgment/decreed passed by High Court of Delhi without challenging legality of it. I find force in the plea of Ld. Counsel for defendant stating that this court has no power to stay the execution of judgment/decreed passed by High Court of Delhi. The plaintiff may explore his remedy anywhere else.”

“Considering the facts disclosed above, I do not find it a prima facie case in favour of applicant/plaintiff. Similarly, balance of convenience also does not appear in his favour. Application in hands is thus dismissed”

3. According to the appellant, the impugned order is not sustainable as the said order is directly in conflict with rights and interest of the appellant in as much as both the respondent no 1 and 2 in connivance with one another had entered into a compromise in a suit bearing No 1859/99 titled as ‘Kuldeep Rai Vs. Hassan Ahmed’. with respect to property bearing No.S-611E, New Enclave, School Block, Shakarpur, Delhi-92, plot falling under Khasra No 240. (hereinafter referred to as the Suit Property). It has been stated that by an order dated 29.05.2002, this Court had passed a compromise decree and directed respondent No.1 to handover the possession of the suit property to respondent No 2, despite the fact that the respondent No 1 had already parted with the possession of the suit property in favor of the appellant on 16.12.1999. Appellants further submit that respondents in connivance with each other had not disclosed the name of the appellant nor the appellant was made a party by the respondent No 2 in CS(OS) No. 1859/99 which itself shows the falsity of claim as well as concealment of material fact from this Court. It is also a matter of record that the suit bearing No 1859/99 was instituted by the respondent No 2 on 21.08.1999 against respondent No.1 while appellant claims to have come into possession of the suit property on 16.12.1999 through respondent No 1 by way of having purchased the suit property which is during the pendency of suit No. 1859/1999.

4. Briefly stated, the facts of the case are that the Respondent No 2 instituted a suit for possession and permanent injunction bearing No 1859/99 against the respondent No 1, Shri Hasan Ahmed titled as “Kuldeep Rai Vs Hasan Ahmed” on 21.08.1999 before this Court. This Court after hearing respondent No 2 passed status quo order on 23.08.1999 in I.A No:8285 of 1999. The relevant extract is produced here as under:-

“.....Meanwhile, you the defendant above named, your servant, employees or agent be and the same are hereby restrained from selling, transferring, alienating or disposing off the property

bearing NoS-611 AND 611E, Nehru Enclave, School Block, Shahdara, Delhi.”

5. Though the status quo order was passed against respondent No 1, who was proceeded ex-parte, restraining him from selling the property, yet respondent No 1 went ahead and executed the alleged sale documents dated 16.12.1999 in favor of the appellant while the suit was still pending before this Court, appellants are thus hit by Section 52 of Transfer of Property Act.

6. Finally this Court decided the above suit no 1859/99 on 29.05.2002 and passed a compromise decree wherein respondent No 1, Shri Hasan Ahmed through whom the appellant is claiming the title, he agreed to handover the suit property to respondent No 2. Being aggrieved by the said decree, appellant preferred an impleadment application under Order 1 Rule 10 of CPC which was dismissed and thereafter he also filed a Review Petition being R.A No 19 of 2002, pleading that he had purchased the suit property from Mr Hasan Ahmed respondent NO 1. Hence he was the owner of the aforesaid suit property.

7. The review application however was withdrawn by the appellant with liberty to take recourse to appropriate proceedings for setting aside the judgment and decree dated 29.05.2002, which liberty was granted vide order dated 13.09.2002.

8. The appellant instead of filing an appeal before the Division Bench within limitation chose to file a complaint case under Sections 406/419/420/506/34 of Indian Penal Code, the Complaint Case being No. 445/1.

9. The aforesaid complaint case was dismissed on 10.04.2006 for non-prosecution as the appellant who was the complainant in that case had not been appearing since 19.07.2004, despite notice being served on him several times through his son. The appellant thereafter filed a revision petition against the said order dated 10.04.2006 which was also dismissed by the Court of Shri S.C Malik, Ld. Additional Sessions Judge, Delhi vide order dated 07.03.2007. The relevant extract is produced here as under:-

“Today, in the course of his personal hearing also the petitioner/complainant has submitted that he was misled by his counsel that petitioner/complainant was not required to

appear before the Ld. Trial Court on the above mentioned dates. Had this submission of Petitioner/complainant been true, he would definitely have taken action against his counsel but he did not do so.

“In these circumstances, I have no reason to believe the submissions made by the petitioner/Complainant during the course of his personal hearing at the time of arguments on the point of admission of present criminal revision petition.”

10. The appellant also filed a suit for declaration to claim ownership in the property in question alleged to have been sold to him by the respondent No.1 through agreement to sell etc registered as suit bearing No 1849/2002. In the said suit he also prayed for declaration and setting aside of the order dated 29.05.2002 challenging the false compromise shown and made between respondents No 1 and 2 in this Court on 7.10.2002. The said suit was later transferred to the Court of Additional District Judge and registered as CS 58/2004. In that suit the appellant was granted status quo order by the Trial Court and the respondents were asked to file written statement. Respondent no 1 became ex-parte, however respondent No 2 contested the suit by filing a written statement.

11. According to the second respondent the documents relied upon by the appellant were forged and fabricated and allegedly executed on 16.12.1999 despite the fact that a status quo order had been passed by this court directing first respondent to maintain status quo in relation to the suit property vide an order dated 23.08.1999. Moreover, the alleged documents dated 16.12.1999 even otherwise have no force in the eyes of the law, as they were cancelled by Hasan Ahmed, respondent No 1 himself by executing Deed of cancellation of G.P.A dated 30.10.2001 and Deed of Cancellation of Will dated 30.10.2001, who also served a notice upon the appellant regarding the cancellation of these documents on 16.11.2001. The appellant despite being aware of that filed this suit on 07.10.2002 yet did not mention the aforesaid fact in the said suit. Thus is guilty of concealment and suppression of material facts.

12. Respondent No 2 also submitted that in suit No 1859/1999 he had specifically pleaded that he is the registered owner of the suit property (shown as situated in Khasra No. 238) vide a registered sale deed dated 03.01.1970 executed in his favour and respondent No 1 is a trespasser in the suit property. He also pleaded that the alleged purchase of the suit

property on 16.12.1999 from respondent No 1 by the appellant is in violation of order dated 29.05.2002 passed by this court against the first respondent and as such the claim of the title by the appellant in relation to the suit property under the claim of respondent No 1 is barred by Doctrine of Res Judicata. It may also be observed here that as far as the confusion raised by the appellant regarding the location of the suit property in a different khasra number, the same is of no consequence because what appellant want here is setting aside of the judgment in favour of respondent No.2 in suit No. 1859/1999.

13. It is pertinent to mention here that the confusion as to whether the suit property was situated at Khasra No 238 or Khasra No 240 stands clear by the report of the local Commissioner appointed by the Ld. ADJ Shri N.K.Kaushik who as per the report submitted that the suit property is the same as per the claim of the respondent No 2 and mentioned in the registered sale deed executed in favour of respondent No 2 which is located in khasra No. 238.

14. I have heard the submissions from the both sides and have perused the records including the written submissions and judgments filed by both sides.

15. I am satisfied that the appellant is not entitled to injunction for following reasons.

(i) The suit has been filed by the appellant relying upon documents alleged to have been executed in his favour by the first respondent on 16.12.1999 after suit No. 1859/1999 was instituted against the said respondent by the second respondent in this Court in relation to the property in question which is located in Khasra No. 238.

(ii) An application under Order 1 Rule 10 CPC filed by the appellant for becoming a party in that suit was dismissed.

(iii) A review application against the said order was also dismissed with a liberty granted to the appellant to take appropriate actions in terms of the order dated 13.09.2002 as quoted above.

(iv) As far as the complaint filed by the appellant in the complaint case No. 445/1 under Section 406/419/420/506/34 of IPC is concerned the same was dismissed in default. A revision application filed against that has also been dismissed.

(v) No doubt the appellant filed suit for seeking a declaration on 07.10.2002 registered as suit no. 1849/2002 in this Court which

was transferred to the Court of Addl. District judge. It has come on record that despite number of opportunities granted to him the appellant has not filed the original documents to show his title.

(vi) The suit in question has been filed by the appellant on 07.10.2002 whereas the ex-parte injunction directing maintaining status quo in suit No. 1859/1999 was passed on 29.05.2002 and the suit was instituted on 21.08.1999. Thus, the suit instituted by the appellant was even otherwise barred by limitation considering Article 58 of the Limitation Act.

(vii) The documents relied upon in his favour were cancelled in terms of the cancellation deed dated 30.10.2001 i.e. prior to the filing of the suit in question.

(viii) As far as the confusion created with regard to Khasra Number the said confusion was also got cleared by the Court of Shri N.K. Kaushik, the Addl. District Judge who appointed a Local Commissioner and as per the report of the said Local Commissioner, it has been opined that the suit property is located in Khasra No. 238 and not in khasra No. 240 of which there is a registered sale deed in favour of the second respondent executed in the year 1970 itself.

(ix) In terms of the provisions contained under Section 17 of the Transfer of Property Act the sale of an immovable property has to take place only by way of registered document which is not there in this case in favour of the appellant. In view of Section 52 of the Transfer of Property Act the sale of the property in favour of the appellant by the second respondent during the pendency of suit No. 1859/1999 was even otherwise illegal.

16. In view of the aforesaid, it cannot be said that there is any prima facie case in favour of the appellant. The balance of convenience also cannot be said to be in his favour. Obviously when the appellant was not in a possession of the property when the order of the status quo was made in suit No. 1859/1999 on 23.08.1999 even if it is presumed and believed that the possession of the suit property was handed over by the second defendant to the first defendant such act on the part of the second defendant being violative of Section 52 of Transfer of property Act cannot confer any legal right in favour of the appellant which may entitle him any legal protection much less the relief of equity by granting an injunction under Order 39 Rule 1 & 2 of CPC.

17. Considering all these facts I do not find any reason to interfere in the order passed by the Addl. District Judge in having dismissed the application filed by the appellant under Order 39 Rule 1 & 2 CPC vide impugned order dated 13.10.2010. Accordingly the appeal is dismissed with no orders as to costs. It is however made clear that nothing stated
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herein would reflect on the merits of the case. The ADJ would be free to decide the matter in accordance with law on merits. Copy of the order be sent to the lower Court with records. The Trial Court is also directed to dispose of this matter finally within a period of one year from the date of appearance of the parties i.e the date fixed.

CM No.20744/2010 (Stay)

Dismissed as infructuous.

MOOL CHAND GARG, J

DECEMBER 14, 2010

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