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Decided on: 30th November, 2010 $+$

PRINCETON NIKETAN PVT. LTD. Plaintiff
Through : Ms. Malvika Rajkotia with Sh. Vivek Singh, Advocates.

versus

FAIZ MURTAZA ALI & ANR Defendants
Through : Nemo.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

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.

MR. JUSTICE S.RAVINDRA BHAT, J. (OPEN COURT)

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1. In this suit, a decree declaring that an agreement to sell dated 01.01.2010, executed by the first defendant, in favor of the second defendant, and registered on 08.01.2010, is illegal, void and not binding on the plaintiff, is sought. Consequential relief of permanent injunction to prohibit the defendants from creating any third-party rights in respect of the property – A-4, Chirag Cooperative House Building Society Ltd., Chirag Enclave, New Delhi (hereafter referred to as “the suit property”) is sought.
2. The plaintiff submits that the suit property originally belonged to Smt. Sayeeda Mehdi

Imam, the predecessor-in-interest of the first defendant; she was member of the Chirag Cooperative House Building Society Ltd, Chirag Enclave, New Delhi. She gifted the suit property to her daughter, Smt. Shamim Amna, after securing the competent authority's permission. The said daughter's name was duly recorded through mutation and in the records of the Society. It is alleged that Smt. Sayeeda Mehdi Imam's brother-in-law, one Syed Hadi Ali Augustine Imam @ Toottoo Imam tried to take advantage of the situation and fabricated a Will in respect of the suit property, disclosing as it were bequeathed to him. The plaint alleges that the said Toottoo Imam tried to sell the property to one Sh. Harish Reddy on the basis of that allegedly fictitious and forged Will. Consequent to this, Smt. Sayeeda Mehdi Imam filed a Title Suit No. 71/2000 before the Subordinate Judge, Patna, seeking a declaration that the Will dated 03.05.1998 was forged and fraudulent. She also preferred a criminal complaint, alleging commission of offences by Syed Hadi Ali Augustine Imam @ Toottoo Imam, punishable under Sections 420, 468, 444 and 34 of the IPC. It is stated that the charge-sheet was filed, in the criminal case, and cognizance was taken by the competent court; apparently, the matter was taken in appeal right to the Supreme Court, which declined to interfere with the order taking cognizance.

3. The plaintiff contends that Smt. Sayeeda Mehdi Imam was desirous of disposing of her property on account of advanced age and ill-health, and inability to manage the property. She, therefore, approached the plaintiff, through its Managing Director – Sh. Jitender Singh, and after negotiation, was paid ₹ 10 lakhs, through various Demand Drafts, in September 2000. It is alleged that the total consideration for the sale of the suit property was ₹ 2,80,00,000/- and the balance, i.e. ₹ 2,70,00,000/- was to be paid within three months of disposal of Title Suit No. 71/2000, pending before the Patna Civil Court. It is further stated that the plaintiff paid another amount of ₹ 3 lakhs to Smt. Sayeeda Mehdi Imam, towards expenses for prosecuting the said Title Suit. The plaint alleges that Smt. Sayeeda Mehdi Imam died on 22.02.2004 but that it (the plaintiff) continues to bear the expenses of the suit by disbursing them to the manager of the said deceased Smt. Sayeeda Mehdi Imam. According to the suit averments, the first defendant was directed to be substituted as the plaintiff in the pending Patna Suit, by order dated 09.01.2007.

4. It is contended that even though the Title Suit No. 71/2000 is pending, the plaintiff was shocked to come across a news item on 14.10.2000, containing a notice informing the public that the first defendant had entered into an agreement to sell the suit property to the second defendant

on 01.01.2010 and that the same had been cancelled. It is alleged that the first defendant had no right in the first instance, to execute the agreement to sell, as the plaintiff had previously entered into an agreement to sell with the predecessor-in-interest of the suit property. It is further alleged, upon enquiry the plaintiff became aware that a registered agreement to sell had been executed by the first defendant, in favor of the second defendant, on 01.01.2010, which was registered by the concerned Sub-Registrar, on 08.01.2010. The plaintiff claims that the Court ought to declare that the impugned agreement to sell is null and void and binding upon it since it has a prior right or claim in respect of the suit property. According to the suit averments, the cause of action for filing the present claim arose first in 2000 when the advance for ₹ 10 lakhs was paid to the predecessor-in-interest, towards part-consideration of the suit property, and further arose in July 2001, when amount of ₹ 3 lakhs was paid to Smt. Sayeeda Mehdi Imam for prosecuting the pending Title Suit. It is alleged that the immediate cause of action arose when the plaintiff became aware of the cancellation of the impugned agreement to sell dated 01.01.2010 on 14.01.2010.

5. It is urged on behalf of the plaintiff that the present suit for declaration and consequential permanent injunction is essential and maintainable because of the prior rights accruing on account of the agreement to sell in respect of the same property subsists and that the plaintiff has a right to approach the Court in terms thereof, immediately upon conclusion of proceedings in the Title Suit. It is submitted that unless summons are issued in the present suit and appropriate *ex-parte* relief is granted, the subject matter of the agreement to sell in respect of the suit property is likely to be affected and the first defendant would be free to create third-party interests. The plaintiff further contends that its civil rights, as beneficiary to have an agreement to sell are in any case endangered, and the Court has to, therefore, intercede in the present case.

6. Section [34](#) of the Specific Relief Act, 1963, which enables courts to grant declarations, reads as follows:

“34 DISCRETION OF COURT AS TO DECLARATION OF STATUS OR RIGHT.

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief:

PROVIDED that no court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so.

Explanation: A trustee of property is a "person interested to deny" a title adverse to the title of some-one who is not in existence and for whom, if in existence, he would be a trustee."

The question, here, is whether the plaintiff has any legal right or title, in the suit property, to defend which, or in respect of which he can seek a declaration. The question of what is meant by "status or right" was examined previously, in other High Court rulings. In *Ramakrishna Pattar v. Narayana Pattar* : AIR 1915 Mad 584, a declaration that a certain contract continued, and subsisted was claimed from the court; it pertained to a tax. The High Court held that such declaration of contractual rights could not be claimed under the then Section 42 of the Specific Relief Act, as they (such declarations) could not be held to relate to any person's legal character. It was observed, in this context, that:

"We think that the contention must be upheld, to this extent, namely, that Section 42 of the Specific Relief Act does not contemplate a suit like the present. We take it that a man's "legal character" is the same thing as a man's status. "A man's status or 'legal character' is constituted by the attributes which the law attaches to him in his individual and personal capacity, the distinctive mark or dress, as it were, with which the law clothes him apart from the attributes which may be said to belong to normal humanity in general...."

7. The Patna High Court, in *Tian Sahu v. Mulchand Sahu* AIR 1922 Pat 432 was to consider a fact situation where the plaintiff claimed a declaration about his entitlement to a contribution from the defendant, as and when the occasion arose. The Court held that such a suit was not maintainable. An identical view was taken by the Bombay High Court, in *Sripat Rao v. Shankar Rao*: AIR 1930 Bom 331. Following these cases it was held, by the Lahore High Court, in *Nathu Ram v. Mula* AIR 1937 Lah 25 that:

"A suit for a declaration that the defendant would be liable to contribute to the plaintiff all moneys which the plaintiff as the defendant's surety would be liable to pay does not come under Section 42 as it affects only the pecuniary relationship between the parties to the contract."

The view was again reiterated in *Firm Gopal Das Parmanand v. Mul Raj* AIR 1937 Lah 389 where a declaration that some amount deposited by the plaintiff with the defendant (as margin

money) was accountable by the defendant - to the plaintiff - was refused. The Court held that such a declaration could not be claimed granted under Section [42](#) of the Specific Relief Act as it affected only the pecuniary relationship between the parties to the contract. In *Madanlal v. State of Madhya Bharat (S)* AIR 1955 MP 111 a declaration was sought that under a contract the plaintiff was not responsible for payment of any amount due on account of the sale and distribution of food-grains; the Court held that since the declaration did not relate to any legal character or right to property it could not be claimed under Section [42](#) of the Specific Relief Act. These views were affirmed and applied by the Allahabad High Court, in *Mahabir Jute Mills v. Firm Kedar Nath Ram Bharose* AIR 1960 All 254, and also by the Bombay High Court, in *Shanta Shamsher Jung Bahadur v. Kamani Brothers Private Ltd.* : AIR 1959 Bom 201.

8. In this suit case, the plaintiff wishes the Court to declare that a so called cancelled contract, entered into between the first and the second defendant, are null and void, and ineffective. The suit unambiguously states that the first defendant was impleaded as the legal representative of the deceased owner of the suit property. The suit pending in the Patna civil court, is a title suit, where the question of ownership or other related relief in respect of the property is in issue. The present plaintiff is not a party in that suit; it admittedly has no title in respect of the property. It has not claimed specific performance of the contract, it relies upon, said to have been entered into in 2000. According to the suit averments, the occasion to do so will arise when the title suit is disposed off (presumably in the event of the first defendant succeeding). The plaintiff does not claim any lien, or encumbrance, or interest of such kind, in the suit property, as to constitute an interest, as known to law. At best the right it has to the suit property is contingent (and dependant on the happening of an uncertain event, viz the first defendant succeeding in the title suit). Furthermore, the plaintiff does not have privity of contract with the second defendant. All these facts, read in the backdrop of the previous discussion as to the meaning of what is “right or status” shows that the declaration sought does not pertain to the legal right or legal status of either party to the suit. The document is firstly – according to the plaint, not in force, having been cancelled. Second, it at best imposed duties and obligations as between parties; the plaintiff does not have any right or title to the suit property, and therefore, lacks *locus standi* to impugn it.

9. In view of the above discussion, this Court concludes that the declaratory relief sought cannot be granted in law. The consequential injunction is dependent upon the grant of the main declaratory decree. It is well known that what cannot be done directly, cannot be performed indirectly, which is precisely what would happen if the relief, either injunctive or declaratory, about the validity of the impugned contract is granted. The defendants would be prevented from agitating or enforcing their *inter se* rights under an independent contract, or transaction. Therefore, the Court is of opinion that the suit is not maintainable; it has to be rejected under Order VII, Rule 11, Code of Civil Procedure.

10. The plaint in the suit, and all pending applications are, accordingly rejected as not maintainable, and barred in law.

**S. RAVINDRA BHAT
(JUDGE)**

30th November, 2010