

**HIGH COURT OF TRIPURA
AGARTALA**

FAO No.03/2024

Shri Riot Narayan Ghosh, Age-72 years, S/O. Late Basanta Kumar Ghosh,
Resident of Subhash Palli, Ambassa, P.O.-Ambassa, District-Dhalai Tripura,
PIN-799289.

..... Plaintiff/Appellant(s).

V E R S U S

Shri Pranesh Kanti Sarkar, S/O. Late Chunilal Sarkar, Resident of Subhash
Palli, Ambassa, P.O.-Ambassa, District-Dhalai Tripura, PIN-799289.

..... Defendant/Respondent(s).

For Appellant(s) : Mr. S.M. Chakraborty, Sr. Advocate,
Ms. M. Chakraborty, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

20/11/2024

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by
Ms. M. Chakraborty, learned counsel appearing for the plaintiff/appellant.

2. By the order dated 12.08.2024 passed in Civil Misc. No.11 of
2023 arising out of T.S. No.13 of 2023 by the learned Civil Judge (Sr.
Division), Court No.2, Dhalai Judicial District, Ambassa, the petition filed by
the plaintiff-petitioner/appellant herein under Order XXXIX Rule 1 and 2 read
with Sections 94(c) and 94(e) of the Code of Civil Procedure (CPC, for short),
1908 with prayer for temporary injunction to restrain the respondent from
alienating the suit land to the third party has been rejected.

Being aggrieved, the present appeal has been filed by the plaintiff
invoking Order XLIII Rule 1(r) of the CPC, 1908.

3. Learned senior counsel Mr. S.M. Chakraborty appearing for the
plaintiff/appellant has, questioned the observations of the learned trial Court on
the three ingredients for grant of injunction, i.e. *prima facie* case, the likelihood

of irreparable injury if injunction is not granted and balance of convenience, and submitted that they are touching on the merits of the case of the parties which at the interlocutory stage the learned trial Court ought not to have commented upon. However, apart from that, learned senior counsel for the plaintiff/appellant also submits that the plaintiff/appellant bears apprehension that during pendency of the suit, the defendant may dispose of the suit land in favour of third parties which may lead to multiplicity of litigation. If the apprehension of the appellant is duly taken care of, the appellant would not have any subsisting grievance if the defendant renovates his house on the suit land and resides himself.

4. This Court upon hearing learned counsel for the appellant and upon going through the impugned order does not find any such error or illegality which requires interference by this Court in appeal under Order XLIII Rule 1(r) of the CPC. The learned trial Court has while dealing with the case of the plaintiff/appellant and also the stand of the defendant/ respondent herein observed that no *prima facie* case is made out on behalf of the appellant to substantiate the prayer for injunction during pendency of the suit. In the course of the discussion, the learned trial Court has made observations that the suit for specific performance instituted by the plaintiff invoking Sections 10 and 38 of the Specific Relief Act is on the basis of an unwritten unregistered oral agreement between the parties supposedly arrived at in the year 2013 against which the plaintiff claims to have paid Rs.16 lakhs and odd out of the total consideration amount of Rs.18 lakhs. The case of the parties reveals that they are in a business transaction over a period of time and correspondences made between them since 01.09.2022 would reveal that plaintiff was demanding execution of the sale deed or return of the earnest money with interest. On

these findings, the learned trial Court has held that no *prima facie* case has been made out on behalf of the plaintiff/appellant. The learned Court has also rendered findings on the other ingredients for grant of injunction, i.e. no irreparable injury would be caused if injunction is not granted. Based on the findings on these two issues, it also held that the balance of convenience also does not lie in favour of the plaintiff for temporary injunction. Though initially an order of *status quo* was passed by the learned trial Court but after detailed hearing, the injunction petition has been rejected on cogent grounds.

5. Learned senior counsel for the plaintiff/appellant has during course of submission conveyed the apprehension of the plaintiff that the defendant might dispose of the suit land to third party which may lead to multiplicity of proceedings and any protection in the form of *lis pendens* under Section 52 of the Transfer of Property Act, 1882 would be of no help as plaintiff/appellant may have to seek recovery of possession from the third party even if he succeeds in the Trial Court. In this regard, it is pertinent to refer to the paragraph-15 of the impugned order which is as under:

"15. In this case the respondent in his written objection has at first denied existence of any form of agreement to sale between the parties. At the second place he admits that mud house raised on the land has collapsed. So, he has been residing in a rented house with his family since 06.05.2022. The respondent states that he would eventually construct building therein for residence. These facts are mentioned by the petitioner in his petition too. As such there appears to be no apparent threat that respondent would create third party interest in the suit premises. Moreover, there is availability of added protection to the petitioner in form of Section 52 of the Transfer of Property Act, 1882. By virtue of this provision, during pendency of the instant suit, the concerned parties are not allowed to sell or transfer the suit property. Here the protection of injunction order is granted only when there is palpable, material, and imminent threat to the suit property in terms of Order 39 Rule 1 of CPC. Both provisions operate at two distinct layers. Section 52 of TP Act does not restrain the parties to the suit from transferring the same. It only makes such alienations subject to the decision of the suit or proceedings. The order of temporary injunction restrains the parties from entering any such transfer. If any party does so, it provides for consequences of detention. But to invoke Court's discretionary powers under Order 39 Rule 1 of CPC, the petitioner must sufficiently establish 'prima facie' imminent threat of alienation of suit property or material threat of dispossession. In this case the respondent could establish neither. The very

'agreement to sale' is in serious doubt. There is nothing on record to suggest any threat of alienation of suit premises. Moreso ever the respondent has expressed his desire to construct a house and to reside therein. And since the petitioner is not in possession of suit premises, there is no question of his dispossession therefrom. Also, even if the very apprehended transfer takes place by the hands of respondent, the apprehended injury would not be such that it would not be compensated by means of damages. Both parties admittedly are enlisted contractors i.e. people of business. The monetary transactions, that have occurred between them, are related to business dealings. Given this, it would be prudent and reasonable to conclude that even in the event of possible sale of property by the respondent to a third party, the resultant injury can, in all likelihood, be compensated by damages. This is also clear in communication of the petitioner dated 05.01.2023 to respondent, wherein he asked to respondent either to execute the sale deed or to pay the earnest money with interest. Thus, this Court is considered view that no irreparable injury will be caused to the petitioner if order of temporary injunction is not passed in his favour."

6. A perusal of the above extract of the impugned order indicates that any such apprehension on the part of the plaintiff/appellant is misplaced. However, it is made clear that this Court has not made any comments beyond what is recorded in the impugned order as regards the stand of the defendant in respect of the apprehension expressed by the plaintiff towards conveyance of the suit land to any third party by the defendant/respondent herein. In view of the facts and circumstances, discussed above and the reasons recorded, this Court does not find any reason to interfere in the impugned order. Accordingly, the instant appeal is dismissed. However, any observations made by the learned trial Court in the impugned order touching upon the merits would not prejudice the case of the parties during trial.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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