

Court No. - 29

Case :- FIRST APPEAL FROM ORDER No. - 357 of 2023

Appellant :- Abhisht Developers And Builders Private Ltd. Thru. Director Shri Umesh Azad

Respondent :- Shambhu Dayal And 6 Others

Counsel for Appellant :- Suresh Kumar Yadav, Pritish Kumar, Santosh Kumar Yadav, Satyendra Yadav, Shantanu Gupta

Counsel for Respondent :- Amar Nath Dubey, Bajrangi Verma, Vaibhav Tripathi

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard learned counsel for the appellant and learned counsel for respondent nos. 3, 6 and 7.

2. Present appeal has been filed for the following relief:

"Wherefore, it is most humbly & respectfully prayed that this Hon'ble Court may kindly be pleased:-

i. To allow the first appeal and set aside the impugned judgment and order dated 03.11.2023 & formal order dated 03.11.2023 passed by Additional Civil Judge (S.D.), Court No. 21, Lucknow, in R.S. No. 278/2023, Abhisht Developers and Builders Private Ltd. Versus Shambhu Dayal and others marked as Annexure No.1 to this appeal and grant temporary injunction on appellant's land in Khasra No.375sa having a total area of 0.884 hectare, out of which an area of 0.155 hectare has been purchased by the appellant's till the disposal of aforesaid suit in the interest of justice."

3. Contention of learned counsel for the appellant is that the appellant had purchased land of area 0.155 hectare in Gata No.375sa through a sale deed dated 07.06.2021 from Katra Builtech Private Ltd., as well as Ansal Properties Infrastructure Ltd., who were the owners of that land as they have purchased the same from its original tenure holder (respondent nos.1, 2 and 4) through sale deeds dated 27.09.2006 and 16.03.2007. It is further submitted by learned counsel for the appellant that on the basis of the aforesaid sale deed, the name of the appellant has been mutated in the revenue record. Even on this date, he is recorded as a tenure holder of the part

above the land. While rejecting the application for an interim injunction, the court below recorded the finding that the property is not identifiable; therefore, the injunction cannot be granted. Therefore, the impugned order is erroneous. It is further submitted by learned counsel for the appellant that till the filing of Suit No.278 of 2023, there was no dispute about the sale deed dated 07.06.2021, as well as the title of the appellant. It is an established legal position that the title follows the possession. In support of his contention, learned counsel for the appellant has also relied upon the Apex Court's judgement in the case of **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by L. Rs** reported in **AIR 2008 SC 2033**, in which the Apex Court observed that when two persons claim possession over a vacant site, the person who is able to establish title to it will be considered to be in possession. It is also submitted by learned counsel for the appellant that the amin report itself shows the identity of the property in question, but the same was ignored by the court below. It is lastly submitted by learned counsel for the appellant that once the respondent nos.1 to 4 had transferred entire land to different companies then they have no locus to interfere in their possession or to further transfer the same.

4. *Per contra*, learned counsel for respondents nos.3, 6 and 7 have stated that in the garb of the correction deed, the name of the purchaser was changed from Abhisht Colonizers Private Ltd. to Abhisht Developers and Builders Private Ltd. The same is not permissible because, in the garb of the correction deed, the name of the purchaser cannot be changed. It is also submitted by learned counsel for the respondents that now the

respondent no.3 had executed an agreement to sell in favour of respondent nos.6 and 7; therefore, they have also interest in the property in dispute. Lastly, it has been submitted by learned counsel for the respondents that now respondent nos.1 to 4, who were the original tenure holders of the property, had filed a suit in the year 2024 for cancellation of the sale deed by which the land in question is alleged to be transferred to the vendor of the appellant.

5. After considering the submission of learned counsel for the parties and on perusal of the record, it is clear from the record that till the filing of Suit No.278 of 2023, there was no challenge to the sale deed regarding the property in question executed in favour of the appellant and also the sale deed executed by the original tenure holder (respondent nos.1, 2, 3 and 4) in favour of the vendors of the appellant. Though, it is correct that part of the land was purchased by the appellant without partition, but from the amin report, it has been identified, and all the co-sharer/tenure holders transferred their land in Gata No.375sa specifying boundaries of their parts. So far as the contention of learned counsel for the respondents that in the garb of the correction deed, the purchaser's name cannot be changed. It is not in dispute that the original name of the Abhisht remains the same; the only change was regarding the terminology of the company, i.e. from Abhisht Colonizers Private Ltd. to Abhisht Developers and Builders Private Ltd., therefore, it cannot be said that the name of the purchaser had been entirely changed through the correction deed.

6. It is also clear that till the filing of Suit no.278 of 2023, there was no dispute about the sale deed or title of the

appellant in the property in question; therefore, in view of the law laid down by the Apex Court in **Anathula Sudhakar (supra)**, the appellant, will be deemed to be in possession. Paragraph 14 of the said judgement is quoted hereinunder:

"14. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs."

7. In view of the above analysis, the court is of the view that the impugned order suffers from illegality, which is apparent on the face of the record. Therefore, the impugned order dated 03.11.2023 passed by learned Additional Civil Judge (S.D.), Court No.21, Lucknow, rejecting the interim injunction application (6C) of the appellant, is hereby set aside. Consequently, the injunction application 6C of the appellant is hereby allowed, and the respondents are restrained from interfering in the possession of the appellant over the land in dispute, i.e. 0.155 hectares in Gata no.375sa, Village-Muzaffarnagar, Tehsil-Sarojninagar, Pargana-Bijnor, District Lucknow, during the pendency of the suit.

8. Considering the peculiar facts and circumstances of the case, it is further directed that the learned court below shall decide Suit No.278 of 2023, as expeditiously as possible, preferably within a period of one year, without

giving any unnecessary adjournment to any of the parties.

9. With the observations above, the present appeal is **allowed.**

Order Date :- 29.2.2024

S.Chaurasia