

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.130 of 2015

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1. Niagaree Builders & Developers Pvt. Ltd., having its Office at 7th Floor, 503, Adharshila Complex, South Gandhi Maidan, P.S.- Gandhi Maidan, District- Patna, through its Director Naushad Alam S/O Adalat Hussain, Resident of Mohalla- New Azimabad Colony, P.S.- Sultanganj, District- Patna.

Defendant 3rd Set.... Appellant/s

Versus

1. Ayodhya Singh, Son of Late Sipahi Singh, resident of Village- Shivobahar, P.S.- Suryapura, District- Rohtas, at present residing at Cross Road No.3. Quarter No. 4L-5, Agricho JamshedpurPlaintiff/Respondent Ist Set.

2. Suman Kumar, Son of Late Meghnath Singh, Resident of Mohalla- Flat No. B 103, Ashirwad Apartment, Exhibition Road, P.S. Gandhi Maidan, District- Patna

.....Defendant Ist Set/Respondent 2nd Set.

3. Smt. Rinki Kumari, Wife of Suman Kumar & D/O Rajeshwar Prasad @ Rajeshwar Yadav, resident of Mohalla- Paharpur, P.S. Gardanibagh, District- Patna, at present residing at Flat No. B- 103, Ashirwad Apartment, Exhibition Road, P.S. Gandhi Maidan, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. K.N. Chaubey, Sr. Advocate
Me. Uma Kant Pd., & Mr. Ajay Kumar Singh
For the Respondent/s : Mr. Devendra Kumar Sinha, Sr. Advocate
Mr. Bajrangi Lal & Mr. Ashish Kr. Ghosh.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 13.07.2015

Heard the parties.

2. Appellant- Defendant no.3 has filed the present appeal for setting aside the order dated 13.4.2015 passed by the Sub Judge- II, Danapur in Title Suit No.199 of 2011 by which he has granted relief of injunction thereby prohibited the construction of building as well as transfer of constructed Flat.

3. Appellant is defendant no.3 who is a builder over the disputed land. From the record it appears that plaintiff-



respondent 1st set is the Uncle of defendant no.1-respondent no.2 and defendant no. 2-respondent no.3 is wife of defendant no.1-respondent no.2. As per plaintiff's claim, he purchased 4 Kathas, 15 Dhurs of land situated at Village Mustafapur, Pargana Phulwari Thana Danapur bearing Tauzi No.5276, Thana No.36, Khata No.176, Survey Plot No.51 from Smt. Shila Rani Pandey through a registered sale deed and accordingly being the owner come in possession of the land. Subsequently the land was mutated in his name vide Mutation Case No.2384 of 2001-2002 and accordingly the land was recorded in Jamabandi no.587. At the request of defendant no.1-respondent no.2, on the pretext of urgent matter, call the plaintiff-respondent no.1 from Jamshedpur to Patna where a proposal was made to the plaintiff for construction of apartment on the land aforesaid with the help of the builder and for that inducement was made to plaintiff-respondent no.1 for granting general power of attorney to deal with land for the aforesaid purposes. Close relationship and on the persuasion of defendant no.1-respondent no.2 prevailed upon the plaintiff-respondent no.1, executed the general power of attorney on 12.7.2011 which was kept by defendant no.1-respondent no.2 on the pretext of showing to the builder. Taking benefit of relationship and general power of attorney, defendant

no.1-respondent no.2 executed the sale deed in favour of defendant no.2-respondent no.3 who happens to be the wife of defendant no.1 –respondent no.2 showing consideration amount of Rs. 19 lacs paid to the plaintiff-respondent no.1, in fact the said consideration amount of money was never paid to him.

4. The general power of attorney was executed for developing the land through builder, not for sale, if there been such intention of sale, in place of executing general power of attorney, would have directly executed sale deed in favour of defendant no.2-respondent no.3. The plaintiff smelt foul play, he came down to Patna defendant no.1-respondent no.2, defendant no.2-respondent no.3 was found traceless. No one could give address of his whereabouts, suspicion grew in his mind, went to registry office and there he could know the sale deed was executed in favour of defendant no.2-respondent no.3. As no consideration amount has been paid and as such no title has been transferred to defendant no.2-respondent no.3, as any sale without consideration amount is incomplete transaction, having no value in the eye of law. Relief has been sought to declare the sale deed, bearing sale deed no.6154 dated 15.7.2011 executed by defendant no.1-respondent no.2 in favour of defendant nos. 2 and 3 without passing of consideration money is void, invalid,



in-operative, fraudulent and not binding on him and also sought the relief for interim injunction restraining defendant no.2 from taking possession on the basis of sale deed and also interfering with the peaceful possession of the plaintiff over the land covered by the sale deed. Further relief is sought for to declare the general power of attorney no. 1384 dated 13.7.2011 executed in favour of defendant no.1 void and in-operative.

5. Defendants appeared and filed written statement claiming that the plaintiff- respondent no.1 in full knowledge and sound mind executed general power of attorney in favour of defendant no.1 and defendant no.2 purchased the said land for consideration amount of Rs.19,00,000/- which is apparent from the recital of the sale deed. It has been further stated that general power of attorney is not for development of the land rather defendant no.1 was allowed to search out the prospective purchaser, as defendant no.1 was himself interested to purchase the land and accordingly paid the entire consideration amount and purchased the land in his and later on entered into development agreement with the appellant and denied all assertions made by the plaintiff-respondent no.1.

6. Later on appellant was made a party. He has filed a separate written statement stating therein that he is engaged in



doing the work of construction of multi storied building after developing the land which defendant had come to know that Smt. Sunita Singh, wife of Samar Singh alias Samar Kumar resident of B/203 Ashirbad Apartment, Exhibition Road Patna and Rinki Kumari daughter of Sri Rajeshwar Prasad alias Rajeshwar Yadav resident of Mohalla Paharpur, P.S. Gardanibag, District Patna were interested to develop the land in the shape of construction of multi storied building, after being satisfied on enquiry of document of right, title and possession over the land entered into development agreement for construction of multi storied building and later on the map was sanctioned from the competent authority and started construction over the land. During construction plaintiff-respondent no.1 never came and raised any objection. He could know about the pendency of the suit by defendant no.2-respondent no.3. Appellant-defendant no.3 has entered into development agreement of land for 6 Kathas 14 Dhurs which is one complex block bearing plot no.31, Khata No.176.

7. In the present case the plaintiff-respondent no.1 is claiming right and title over 4 Kathas 15 Dhurs of land. During pendency of the suit Pleader Knowing Commissioner submitted the report and found that the construction has been affected over



about 6 Kathas of land. The plaintiff-respondent no.1 filed injunction petition which remained pending for long period, ultimately, the situation forced him to move this Court for granting injunction vide C.W.J.C. No. 11325 of 2014 and this Court vide order dated 13.1.2015 has disposed of the writ petition with a direction to the court below to dispose of the injunction petition in accordance with law and later on the court below passed the order as aforesaid.

8. Learned counsel for the appellant submits that in whole of the plaint no relief has been sought against this appellant and as such the plaintiff can not get any relief against this appellant in final judgment, when the plaintiff-respondent no.1 can not get any relief at the time of final adjudication in such circumstances no relief can be given during intervening period. So much so as the document shows that the plaintiff has executed general power of attorney for sale and on each page of general power of attorney bears his full signature and as such the plea of the plaintiff of giving permission to defendant no.1 to enter into development agreement with a third party is completely a wrong statement rather defendant no.1 was granted general power of attorney for sale to the third party and accordingly sale deed executed by defendant no.1 in favour of defendant no.2 shows



the consideration amount of Rs.19 lacs has been effected in favour of plaintiff-respondent no.1. The recital of the document itself shows payment of consideration amount. The plea of non-payment of consideration amount can not stand in view of the specific recital in the sale deed. So much so he has already constructed the multi storied building, some finishing work has been left. The order of injunction will cause a great prejudice not only to this appellant but to other prospective purchasers who have invested the money for sale and purchase of the apartment. He has placed reliance on the following judgment: **(i) ECE Industries Ltd. V. S.P. Real Estate Developers Pvt. Ltd. & Anr., reported in AIR 2009 SC (Supp) 2093 (ii) Dalpat Kumar and another V. Prahlad Singh and others, reported in AIR 1993 SC 276 (iii) Ashok Kumar Bajpai V. Dr. (Smt.) Ranjana Bajpai, reported in AIR 2004 Allahabad 107 (iv) Mandali Ranganna and others V. T. Ramachandra and others, reported in AIR 2008 SC 2291.**

9. Respondent no.1 vehemently opposed the submission of learned counsel for the appellant and submits that defendant no.1 has played fraud with him and obtained general power of attorney for the purposes of sale instead of development of the land and mischievously obtained the signature on each page of



general power of attorney but the fact is that no consideration amount has been paid to the plaintiff-respondent no.1 the recital made in purported sale deed is self serving and as such the sale is incomplete in absence of payment of consideration amount. The property in question should be remain protected and there should not be physical change the nature of land. He has placed reliance on the two judgments: (i) **Dharam Nath Ojha & Ors. V. Raghunath Ojha, reported in 2001(2) PLJR 268** and (ii) **Mustafa Kamal alias Md. Mustafa V. Mahmooda Khatoon and others, reported in 2012 (1) BBCJ 284.**

10. The issue of grant of injunction in such nature of dispute has been decided in long line of judgments where for granting the benefit of injunction, satisfaction of three ingrediants are required such as, prima-facie case, balance of convenience and irreparable loss which cannot be compensated in terms of money has to be taken into consideration and all three ingredients are required to be statisfied before a person to be entitled for injunction. In the case of **Mandali Ranganna (supra)** the Court has held that a person who had kept quite for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The Court will not interfere only because the property is a very

valuable one and refused to interfere when the Court arrived to a finding that the constructions have come up and respondents have already spent substantial amount in such circumstances stopping of further construction will not be advisable. It will be relevant to quote paragraph nos. 22, 25 and 26 of the aforesaid judgment:

“22. Grant of injunction is an equitable relief. A person who had kept quite for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not, however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.

25. In Seema Arshad Zaheer V. Municipal Corpn. Of Greater Mumbai this Court held (SCC p.294, para 30)

“30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only

when the plaintiff's conduct is free from blame and he approaches the court with clean hands."

26. Rightly or wrongly constructions have come up. They cannot be directed to be demolished at least at this stage. Respondent 7 is said to have spent three crores of rupees. If that be so, in our opinion, it would not be proper to stop further constructions."

11. In the case of **ECE Industries Ltd (supra)** the Court has taken a view that when substantial construction has been made on the sole property in respect of crores of money has been invested by the defendant-respondent and defendant respondent paid the money in terms of agreement belatedly to the plaintiff, the court has held that the appellant will not suffer substantial. It will be appropriate to quote paragraph nos. 19 and 20 of the aforesaid judgment:

"19. Such being the state of affairs, i.e. substantial construction has been made on the suit property in respect of which crores of money have been invested by the defendants/respondents and since the defendants/respondents have already paid/deposited the amount payable in terms of the agreement, although belatedly, to the plaintiff/appellant, we do not think that the plaintiff-appellant will suffer any substantial injury if the construction works is not stopped by an order of injunction. It is well settled that when construction has been made on a land, which is of considerable magnitude, and when the plaintiff shall not face any substantial injury, if no order of injunction is granted because of payment/deposit of the entire amount payable by the defendant to the plaintiff under the Agreement, though belatedly, we are of the view



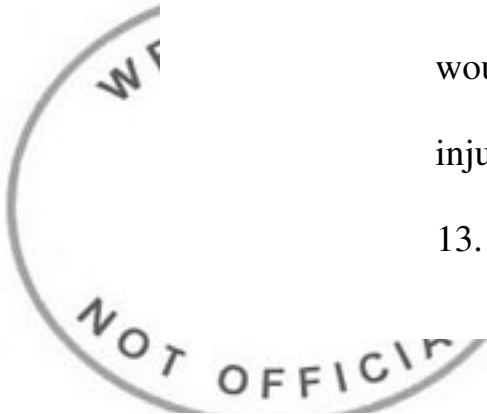
that the Court will not, as a matter of course, pass an order of injunction against the other party restraining the other party from raising any construction on the suit property till the disposal of the suit. If ultimately, the suit filed by the plaintiff-appellant is decreed, he can be compensated in damages or the defendants/respondents may be directed to pull down the construction and deliver vacant possession to the plaintiff/appellant when no equity can be claimed for such construction by the defendants/respondents. On the other hand, in our view, if at this stage, an order of injunction is granted against the defendants/respondents from proceeding with further construction in the suit property, it will undoubtedly destroy the constructions already made by the defendants/respondents and the defendants/respondents will suffer irreparable loss and injury for not allowing them to make construction on the suit property. That apart, in view of our discussions made hereinabove, the entire amount payable by the defendants/respondents having been paid/deposited in favour of the plaintiff/appellant, there is no reason to pass an order of injunction against the defendants/respondent when the plaintiff/appellant would not face substantial injury for permitting the defendants/respondents to proceed with the construction in the suit property.

20. Accordingly, in view of our discussions made hereinabove, we are, therefore, of the view that the balance of convenience lies against granting an order of injunction, which, if granted, will substantially and irreparably injure and prejudice the defendants/respondents. For the reasons aforesaid, we are, therefore, of the view that the High Court was fully justified in affirming the order of the trial Court refusing to grant any order of injunction in favour of the plaintiff/appellant.”

12. Having considered the rival contentions of the parties it appears that as per the report of the Pleader Commissioner construction is over 5 -6 Kathas of land whereas the plaintiff is claiming title over 4 Kathas 15 Dhurs of land. During argument this Court posed a question to the appellant the manner the consideration amount has been paid to the plaintiff-respondent no.1 and also asked whether the money was given in cash, draft or in cheque. So much so on which date the money was withdrawn and also on the day of payment of huge amount, whether money was standing in the account of defendant no.2-respondent no.3 but counsel for the appellant always insisted recital in the sale deed showing payment, as sale deed has been executed by defendant husband in favour of defendant no.2 to the wife. In such situation recital that has been made is self serving have a little bearing to the truthness of the payment of consideration money but it is a fact that plaintiff is claiming 4 Katha 15 Dhurs of land, the construction of the building has been made more than the land of plaintiff. As per the claim made by the plaintiff, he was interested for development of the land and a share in the building will be in terms of the Flat which will fetch huge amount of money. The judgment relied upon by learned counsel for respondent no.1 is dealing with the



situation of keeping the property intact so that the feature of land be not changed so that at the end of the trial plaintiff would be able to execute the judgment and decree effectively. But in the present case character of land has already changed as substantial construction has been made in the shape of multi storied building. Number of prospective purchasers would have invested substantial loan amount obtaining from the Bank, some finishing work has been left out, ultimately possession will be given to the prospective purchasers, in such situation the plaintiff would be able to get the proper relief by a judgment and decree of the trial court and any transfer would be subject to the principle of lis-pendency under the Transfer of Property Act but heavy financial amount is involved. If the decree is passed in favour of the plaintiff it will be very difficult to realize the huge amount along with interest even presumed that the general power of attorney is for sale, not for development. Though the plaintiff –respondent Ist party makes out prima facie case with respect to non-payment of consideration amount but balancing the interest of the parties, also calibrating the comparative hardship it will be in the ends of justice, defendants would deposit Rs.19 lacs in the court below that would be invested by the court below in a nationalized Bank under the scheme so that the said amount should earn maximum



interest and payment will be subject to the result of the suit. The order of injunction is vacated with condition; if the defendants would fail to deposit Rs.19 lacs within 15 days as aforesaid the injunction granted by the court below will remain operative.

13. With the aforesaid observations this appeal is disposed of.

(Shivaji Pandey, J)

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