

\$~14

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

% **Dictated On: 07.09.2015**

+ **FAO (OS) 98/2014, CM APPL.3154/2014 & 18207/2015**

SHRI TARUN SINGHAL Appellant
Through: Mr. N.S. Dalal with Mr. Pankaj
Gupta, Advocates.

versus

SHRI DEVENDER KUMAR & ORS. Respondents
Through: Mr. Pratyush Sharma, Advocate
for Resp-1.
Mr. D.K. Rustagi, Advocate for Resp-3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA
S.RAVINDRA BHAT, J. (ORAL)

1. This is an unsuccessful plaintiff's interlocutory appeal directed against the order of the learned Single Judge dated 06.01.2014 denying his application for temporary *ad interim* injunction, in a pending suit for declaration, permanent injunction. The permanent injunction claimed is in respect of possession of the suit property.

2. The plaintiff claims and averred to his acquiring title - and possession - over a 300 square yard industrial plot (described as No. 143/1012, Village Kanjhawala, Delhi- hereafter "suit property") from one Jagjit Singh. The right, title and interest to the said suit property, it is said, had been conveyed through a registered sale deed dated

21.09.2006. He claims peaceful and continuous possession over the suit property as well, ever since. The vendor, Jagjit Singh, according to the plaintiff, in turn, was attorney of the property, by virtue of a deed of power of attorney dated 15.07.2002, said to have been executed by Devender Singh (arrayed as the first defendant in the suit- and the first respondent here). The plaintiff contended that he constructed a boundary wall on the plot, in 2007 to protect the suit property. According to him, Devender Singh had attempted to trespass into the suit property then. Alleging that he found some building material on the suit property when he visited it on 14.04.2013, which belonged to the first defendant, he complained to the authorities. He also alleged that on 20.08.2013, the first defendant along with his associates threatened the plaintiff and asked him to leave the spot, or else he would be eliminated. In the meanwhile, he claimed that he became aware of a decree dated 13.01.2010, in CS (OS) 1413/2009, (*Joginder Singh and Anr. v Devender Kumar & Ors*), and, therefore, approached the Court seeking declaration that the decree was void and not binding upon him; he also sought permanent injunction.

3. The learned Single Judge, while considering the application for *ad-interim* temporary injunction, noticed that the documents of title relied on by the plaintiff disclosed that his vendor, Jagjit Singh, is said to have acquired title from the first defendant by a registered power of attorney document dated 15.07.2002 and a receipt for ₹80,000/- in advance from the said Jagjit Singh. Though a copy of the receipt for the said payment allegedly made at the time in favour of Jagjit Singh was placed on record, the registered power of attorney said to have

been executed in favour of Jagjit Singh was not placed on the record in the suit which has led to the present appeal. The plaintiff conceded that no sale deed was executed by his vendor, conveying title. In the hearing before the learned Single Judge, heavy reliance was placed on the complaint filed by Devender Kumar. The latter- first defendant averred that he sold the suit property to the fourth defendant on 01.01.1999 through registered power of attorney, receipt, agreement to sell and by handing over possession; he sold it to the second defendant on 15.07.2003 and she, in turn assigned her rights to the third defendant by executing the requisite documents on 16.07.2009.

4. The Single Judge was of the opinion that the plaintiff's (a) inability to produce any document *prima facie* disclosing legitimate right of his vendor over the suit property and (b) non-disclosure of any document or material to establish, *prima facie*, the plaintiff's possession, disentitled him to any *ad interim* injunctive relief. She was also of the opinion that given the holding in *Suraj Lamp & Industries (P) Ltd v State of Haryana* 2012 (1) SCC 656, unregistered power of attorney documents could not be *prima facie* said to amount to documents of title.

5. The plaintiff's other argument in respect of the decree in CS (OS) 1413/2009, i.e. that it was collusive, was repelled by the Single Judge. She noted that there the suit was for permanent injunction and specific performance in respect of the suit property. The parties were referred to mediation and in terms of the settlement arrived at, a decree was drawn. The decree recorded the statement of the first two defendants (herein) not to interfere with the plaintiffs' (the third and

fourth defendants) possession and also convey title to the property they were concerned with. The Single Judge held that whether the decree was collusive or not was a matter to be gone into after a full trial. Observing that the plaintiff's claim for protecting possession was based on a receipt, she noticed that he relied only on a photograph and receipt for purchase for some material. That according to her was insufficient to establish possession. Accordingly, the application for temporary injunction was denied.

6. During the hearing before us, learned counsel for the plaintiff appellant stressed that the learned Single Judge erred in holding that possession was not established. It was contended that the plaintiff's materials in respect of continuous possession, pre-dated the defendant's claim for interest and possession over the property. As far as materials with respect to possession were concerned, learned counsel highlighted that in a complaint, the defendant had stated that he sold the property to Jagjit Singh. Therefore, the learned single judge, he argued, should have granted protection during pendency of the suit.

7. We find no infirmity with the reasoning or approach of the learned Single Judge, who took note of all material circumstances and contentions and dealt with them. Whether the decree which the plaintiff claims is collusive or not, cannot be gone into without a full trial. It requires examination of all material evidence; an assessment at the stage of a temporary injunction application would, at best be sketchy. As far as possession is concerned, the learned Single Judge, in our opinion, quite correctly focused first on whether the plaintiff

had a *prima facie* strong case. Here, the assessment of materials led her to say that the plaintiff did not even place on record a copy of the registered power of attorney said to have been executed in favour of his vendor. Furthermore, the plaintiff was unable to show any *prima facie* convincing evidence to support his claim for continuous possession of the suit property since the time he claimed to have acquired rights over it, i.e., in 2006.

8. The Supreme Court has repeatedly highlighted the importance of courts' need to assess claims for *ad-interim* temporary injunctive relief taking into consideration and giving due weight to all three elements: *prima facie* strength of the claim; balance of convenience, and irreparable injury. Similarly repeated cautionary notes have been sounded against searching and in-depth appellate review of reasoned assessments by courts of first instance, disclosing judicious exercise of discretion while granting (or denying) such *ad-interim* relief. Our appellate review of the materials - and taking into consideration the arguments advanced before us, leads us to conclude that the Single Judge did exercise discretion soundly in denying the temporary injunction sought. This Court affirms the impugned order. The present appeal merits rejection and is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

SEPTEMBER 07, 2015