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

%   *Judgment Reserved on : February 16, 2016*
Judgment Delivered on : February 19 , 2016

\+   **FAO(OS) 387/2015**

GURCHARAN SINGH ..... Appellant
Represented by: Mr.V.P. Rana, Advocate

versus

SARASWATI MISHRA & ORS ..... Respondents
Represented by: Mr.Dinesh Garg, Advocate with Ms.Rachna Agrawal, Advocate for R-1 & R-3

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. IA 5789/2012 filed by the appellant seeking interim injunction against the defendants has been dismissed by the learned Single Judge vide impugned order dated April 23, 2015.

2. The three defendants in the suit are: (i) Ms.Saraswati Mishra; (ii) Atma Ram; and (iii)Loharu Infrastructure Pvt. Ltd.

3. Suit seeks declaration, cancellation and permanent injunction pertaining to a sale-deed dated August 31, 2010 executed by defendant No.1 in favour of defendant No.3.

4. As per the plaintiff defendant No.2 had paid consideration in sum of ₹16 lacs to defendant No.1 in the month of August, 2000 to purchase the suit land, ad-measuring 20 bigha and 8 biswa, apart from another 8 bigha and 6 biswa land in the revenue estate of Village Rafipur, Ranhola,

New Delhi. He purchased the suit for a sum of ₹4 lacs from defendant No.2, who finalized the sale on the strength of a general power of attorney executed in his favour by defendant No.1. As per the plaintiff, acting through her attorney, defendant No.2, since defendant No.1 had sold the suit land to him on March 05, 2001, she could not sell the land to defendant No.3 on August 31, 2010. Plaintiff pleaded in the plaint that he got the suit land mutated in his name in the revenue record on April 07, 2001 which order was challenged by defendant No.1 before the Additional Collector, which appeal was allowed vide order dated April 16, 2010. Plaintiff's challenge before the Financial Commissioner failed, when vide order dated February 03, 2011 the Financial Commissioner held that the order of the First Appellate Court was correct. A writ petition filed by the plaintiff against the order passed by the Financial Commissioner was pending. The plaintiff pleaded that Saraswati Mishra had filed a suit challenging the sale-deed executed by defendant No.2 in his favour, which suit was pending. Thus, according to the plaintiff the defendant No.1 and defendant No.3 were liable to be restrained from further selling the suit land.

5. As per Saraswati Mishra, a fraud had been played upon her by defendant No.2, who was a property broker and had contacted her, who on account of the ill-health of her husband could not manage her properties at Delhi. She was residing at Cuttack. She pleaded that defendant No.2 had forged a general power of attorney purportedly executed by her in favour of his employees on May 30, 1994 which was witnessed by another employee of defendant No.2 and on the strength of the said general power of attorney defendant No.2 attempted to obtain a No Objection Certificate from the Tehsildar in the name of defendant No.1 to sell the land to the brother-in-law of defendant No.2, but failed in

his attempt. By way of a second attempt, defendant No.2 fabricated an agreement to sell, a will and a general power of attorney dated January 18, 2000 which contained forged signatures of defendant No.1. The said forged general power of attorney was registered before the Sub-Registrar in Khurda, Orissa on the strength of which a sale-deed was executed in January 28, 2000 at Mumbai. Third attempt made was when one Azad Singh, put up by defendant No.2, filed a suit against one Rajender claiming to have purchased the suit land. Fourth attempt was made when defendant No.2 as attorney of defendant No.1, sold the land by a sale-deed got registered in Mumbai on December 02, 2000 in favour of his brother-in-law. He made a fifth attempt, when in August, 2000, defendant No.2 convinced defendant No.1 to sell the suit land for ₹1.1 Crores and paid ₹16 lacs to her and obtained her signatures on blank papers, one of which was used to create a general power of attorney dated August 28, 2000, on the strength of which a sale-deed dated March 05, 2001 was executed in favour of the plaintiff by the said attorney.

6. As per defendant No.1 in an FIR lodged by her, the aforenoted forgeries emerge including a sale-deed in favour of one Daya Ram and Maya Ram concerning 7 bigha and 4 biswa land out of the suit land which was witnessed by defendant No.2.

7. Noting the rival pleadings, the documents filed and the charge-sheet filed against defendant No.2 and other persons, commenting upon the sale-deed in favour of the plaintiff, on the strength of which the plaintiff was claiming a right to challenge the sale-deed executed by defendant No.1 in favour of defendant No.3, in paras 7, 8 and 9 the learned Single Judge has recorded as under:

> *"7. Similarly, a perusal of the plaint filed by the defendant No.1 corroborates above allegations made in*

the chargesheet. Defendant No.1 in the plaint has pointed out that plaintiff therein and her husband engaged defendant No.2 and he helped them purchase the suit property comprising of 28 bighas and 16 biswas vide sale-deed of 9.11.1981. The defendant No.1 and her family had close relations with defendant No.2 who used to call her his elder sister and who used to also tie rakhi to him. The plaint further points out that defendant No.2 manufactured a GPA dated 13.5.1994 by forging the plaintiffs signatures in Hindi but defendant No.2 could not succeed in usurping the aforesaid land. Other instances where attempts were made to grab the land in question by defendant No.2 have also been listed out. Finally, it is averred that the defendant No.2 offered to purchase the said land orally for a total consideration of ₹1,10,00,000/- Four drafts amounting to ₹16 lacs on 1.9.2000 were handed over as advance. Defendant No.2 also handed over one more demand draft of ₹3 lacs being the price of usufructs of the above land and requested the plaintiff to sign two back dated receipts of 28.08.2001 in the name of defendant No.2 and another in the name of Prem Shankar Aggarwal. Defendant No.2 also obtained plaintiff's signature on a blank non-judicial stamp paper of ₹50 and blank plain papers. The ostensible reasons for getting these documents signed were that defendant No. 2 had agreed to help defendant No.1 purchase some petrol pump also. For the purpose of getting the petrol pump allotted, defendant No. 2 also took four passport size photographs of defendant No.1, her husband, children and photocopies of the election identity cards. Defendant No.2 also took the defendant No.1's husband and defendant No.1 to around in the neighbourhood for purchase of land for the petrol pump. Some negotiations were held but nothing was finalised. The blank judicial stamp paper and other papers were misused to create a power of attorney. Based on this attorney defendant No.2 is said to have executed a sale-deed in favour of the plaintiff dated 05.03.2001. The above narration of facts tallies with the narration of facts in the chargesheet. The sale-deed dated 5.3.2001 in favour of the plaintiff is signed by defendant No.2 as attorney of defendant No.1. The GPA dated 28.8.2000 is in favour of *defendant No.2.*

8. In my opinion, prima facie there is enough evidence on record to show that the sale-deed executed by defendant No.2 in favour of the plaintiff is not bona fide. The fraudulent acts of defendant No.2 in connivance with the plaintiff prima facie in my opinion make out a clear case that the ex parte injunction granted to the plaintiff should no longer continue. There is no prima facie case in favour of the plaintiff.

9. In this context reference may be had to the judgment of the Supreme Court in the case of Bhaurao Dagdu Paralkar vs. State of Maharashtra and Ors., AIR 2005 SC 3330: MANU/SC/0495/2005 relevant portion of which reads as follows:-

> *"10 ......*
>
> *"Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and*

> *deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors. MANU/SC/ 0802/2003: (2003)8SCC319."*

8. As per the law declared by the Supreme Court in the decision reported as (1991) 1 PTC 1 *Wander Ltd. & Anr. Vs. Antox India Pvt. Ltd.*, an appeal against an interim order of injunction is on law and not on facts. Our job therefore is to see whether the learned Single Judge has correctly applied the principles of judicial discretion in matter concerning interim injunctions and has noted all the relevant facts.

9. It is well settled by now that a relief of injunction is an equitable relief and conduct of parties is relevant. A conduct which is iniquitous would entitle a Court to deny an interim injunction to a party howsoever strong a prima-facie case be in favour of a party.

10. The facts pleaded by defendant No.1, which we have succinctly noted in paragraph 5 above, duly noted by the learned Single Judge, show that the defendant No.2 has been using all tricks up his sleeves and has been making repeated and desperate attempts to usurp the property of defendant No.1, a lady who resides in Cuttack. The sale consideration stated by the plaintiff i.e. ₹4 lacs for a sale in March 05, 2001 is on the face of it prima-facie most inadequate. He has pleaded that the sale-deed in his favour was executed by defendant No.2 as the attorney of defendant No.1. It assumes importance that as per defendant No.1 defendant No.2 had agreed to purchase the land from her in August, 2000 for a consideration of ₹1.1 crores and had paid her ₹16 lacs as part sale

consideration and had obtained her signatures on blank papers, one of which was used to create a general power of attorney dated August 28, 2000, on the strength of which a sale-deed dated March 05, 2001 was executed.

11. Equities have rightly been found in favour of defendant No.1 and 3 and therefore it cannot be said that the view taken by the learned Single Judge in vacating the ad-interim injunction and permitting defendant No.3 to deal with the suit land is illegal.

12. Lis pendence would obviously apply if defendant No.3 sells the land to any third party and the only relief which the appellant is entitled to would be to direct that if defendant No.3 sells the suit land to any party the pendency of the suit filed by the appellant would be disclosed to the buyer and an affidavit would be filed in the suit along with an application informing the name and address of the buyer including the sale consideration, and needless to state there would be no equities in favour of the buyer who would be bound by any decision which is rendered in the suit.

13. The appeal is disposed of issuing a direction in terms of para 12 above, while maintaining the impugned order.

14. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

FEBRUARY 19, 2016
km