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HIGH COURT OF DELHI AT NEW DELHI

Decided on: 1st March, 2016

+ FAO 419/2015

SIMRANJEET SINGH AND ORS Appellant
Through: Mr. P.P. Ahuja, Advocate.

versus

LALIT KUMAR TANWAR AND ORS Respondent
Through: Mr. M.K.Sharma and Mr. Narendra
Gautam, Advocates for respondents 1, 2, 3 & 29.
Ms. Meena Kohli, Advocate for respondents 4, 5 &
32.
Ms. Ruchira, Advocate for defendants 23 & 31.
Ms. Amita Gupta, Advocate for respondent No.34.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. I have heard the learned counsel for the parties.
2. This is an appeal filed by the appellant against the order dated 1.10.2015 passed by Shri R.L. Meena, Additional District Judge-02, South-West District, Dwarka Courts, Delhi in C.S. No. 163/2014 titled Lalit Kumar Tanwar Vs. Jai Pal and others. By virtue of the aforesaid order, the Additional District Judge has restrained the appellants 1 to 3 (defendants 2 to 4) from creating third party interest in the suit properties bearing No. WZ 549-A, WZ 368 and WZ 437, Village Naraina, New Delhi till the disposal of the suit.

3. The facts of the case are not in dispute and can be seen from the impugned order. The appellant has claimed the following reliefs in the plaint:-

- A) “A decree of declaration in favour of the plaintiffs and against the defendant no.1, and defendant no.2 and 3 thereby declaring the mutation dated 6/4/2009 of the suit properties in favour of defendant no.1 and then mutation dt. 16/11/2010 in favour of defendant no.2 and 3 and further the sale deed dated 9/9/2010 registered on 10/9/2010 as document no.11536 addl. Book no.1, vol.no. 5536 pages 163 to 169 with the Sub Registrar Kapashera, Delhi, in favour of defendant No.2 and 3 as null and void and consequently the defendant No.33 and 34 be directed to cancel the respective above said documents.
- B) A decree of permanent injunction restraining the defendant no.1 to 28 from selling, part with possession or creating any third party interest in respect of the suit properties and respective tenanted portions and the defendant no.1 to 5 and defendant no.31 and 32 be further restrained from claiming any rent from other tenants i.e. defendants no. 6 to 28 and the defendant no.6 to 28 be restrained from paying any rent of their respective portion to the defendants no. 1, 4, 5, 31 and 32.
- C) A decree of mandatory injunction in favour of the plaintiffs and against the defendant no. 1 and 4 to 28 directing them to pay the rent to the plaintiffs only and not to anybody else.
- D) The cost of the present proceedings be also awarded in favour of the plaintiffs and against the defendants.

- E) Any other/further relief, which the Hon'ble court may deem fit and proper may be please passed in favour of the plaintiffs and against the defendants.”
4. Out of these main prayers, only prayer ‘A’ is the main substantive prayer for cancellation of the sale deed dated 09.09.2010 and consequently seeking a declaration by respondents 1, 2 and 3 herein, who are the plaintiffs in the suit. So far as the prayer ‘B’ and ‘C’ are concerned i.e. for seeking permanent injunction and mandatory injunction against all the defendants, which includes defendants 1 to 28, Mr. Ahuja, learned counsel for the appellant has drawn the attention of the court to the copy of the sale deed dated 09.09.2010 purported to have been executed by respondent No.4 Jaipal. This indeed pertains to property No.WZ 437, Village Naraina.
5. The grievance of the appellant/defendants in the present appeal is that the relief, which has been claimed by the respondents-plaintiffs with regard to declaration of the sale deed dated 09.09.2010, pertains to property No.WZ 437. Therefore, it was not only improper but illegal on the part of the learned Additional District Judge to have passed a restraint order against the present appellant-defendants in respect of property Nos. WZ 549A and WZ 368, Naraina Village, Delhi, because neither there is a prayer in the application under Order 39 Rules 1 and 2 CPC nor in the

main suit against the said properties.

6. This fact has been contested by the learned counsel for the respondent-plaintiff, who has stated that the aforesaid ad interim order has been passed by the Additional District Judge only to prevent the multiplicity of proceedings between the parties. It has also been contended that although in the prayer clause reference has been made only to sale deed dated 09.09.2010, but in para 2 of the plaint, a reference is made with regard to three properties, which are the subject matter of dispute. All these three properties were owned by Rajbala and they have been termed to be the suit properties and, therefore, by analogy the court taking a proper perspective of the matter has passed a restraint order against the appellants in respect of all the three properties.
7. During the hearing of the appeal it was also brought to the notice of the court that so far as property No.WZ 549A and 368 are concerned, there are two separate independent suits pending two different courts regarding the same; one at Patiala House Court and other in the court which has passed the impugned order. In both these suits there are separate applications under Order 39 Rules 1 and 2 CPC, which are under consideration of the respective courts.
8. I have carefully considered the submissions of both the sides. The area of controversy between the parties is very short one i.e. as to whether under the colour of prevention of

multiplicity of suit or multiplicity of litigation the Additional District Judge could have passed an order restraining the appellant from creating third party interest in respect of certain properties, which were not prayed for and were not part of the sale deed, which is sought to be declared as null and void and further, on the basis of which a declaration is sought by the respondents-plaintiffs. The answer to this query has to be emphatically negative. A person cannot be given a relief more than what he has asked for in the plaint and further a person cannot claim relief under Order 39 Rule 1 and 2 CPC more than he has sought for in the main prayer of the suit itself. These are the elementary principles, which one has to observe. All these elementaries were put to the counsel for the respondent thinking that he would voluntarily agree to have the order set aside and permit the court to proceed in accordance with law. However, to my dismay the learned counsel for the respondent-plaintiff has not only expressed his ignorance to these elementary principles of law, but has rather insisted that such an order granting relief which was not prayed for could be passed. I find myself in total disagreement with what the learned counsel for the respondent has stated. The learned Additional District Judge has exceeded its powers and he had absolutely no authority of restraining the appellants in respect of property Nos. WZ 549-A and WZ 368, Village Naraina, Delhi, which were neither the subject matter of the prayer in the main suit, nor

any relief was claimed in the main suit or in the interim application under Order 39 Rule 1 and 2 CPC.

9. I accordingly set aside the portion of the order, which has been passed by the learned Additional District Judge vide impugned order dated 01.10.2015, so far as it pertains to aforesaid two properties. To that extent the order stands set aside.
10. With these directions, the present appeal stands disposed of.
11. Copy of the order be sent to the learned trial court for information.

MARCH 01, 2016 / n

V.K. SHALI, J

