

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

% **Date of decision: 22nd March, 2017.**

+ **CS(OS) No.358/2016, IA No.8664/2016 (u/O 39 R-1&2 CPC) & IA No.8666/2016 (for condonation of 45 days delay)**

RAVINDER KUMAR KHANNA **Plaintiff**

Through: Mr. Jagjit Singh, Adv.

Versus

PREM PARKASH KHANNA & ORS **Defendants**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit (i) for declaration that the Gift Deed dated August, 2015 executed by defendants No.1&2 namely Sh. Prem Parkash Khanna and Smt. Krishna Kumari Khanna wife of Sh. Prem Parkash Khanna in favour of the defendant No.3 Smt. Anu Narula qua property No.M-174, Greater Kailash, Part-II, New Delhi is bad, illegal, void and non-enforceable document; (ii) for mandatory injunction to the Sub Registrar of Assurances with whom the Gift Deed aforesaid is registered to cancel the registration thereof; (iii) for permanent injunction restraining the defendant No.3 from claiming herself to be the owner of the property on the basis of Gift Deed and from dealing with the property; and, (iv) for mandatory injunction directing the defendant No.3 to deposit the Gift Deed in this Court.

2. The suit came up before this Court first on 25th July, 2016 when queries were raised from the counsel for the plaintiff as to the very

maintainability of the suit and as to the valuation of the suit for the purposes of court fees and jurisdiction. On request of the counsel for the plaintiff, the order on maintainability of the suit was deferred. On 11th August, 2016, after hearing the counsel for the plaintiff further, orders on maintainability of this suit and valuation of the suit for the purposes of court fees and jurisdiction were reserved.

3. It is the case of the plaintiff:

- (a) that the plaintiff is the son of defendants No.1&2 and the defendant No.3 is the sister of the plaintiff;
- (b) that the plaintiff sent his earnings from Canada to the defendants No.1&2 in India for purchase of a plot of land and for raising construction thereon;
- (c) that with the said monies, plot No.M-174, Greater Kailash, Part-II, New Delhi admeasuring 300 sq. yards was purchased and construction raised thereon;
- (d) however, on account of relationship, the said property was registered in the name of defendants No.1&2;
- (e) that the property however is not the absolute property of the defendants No.1&2, as the same has been purchased with the contribution made by the plaintiff only and neither the defendants No.1&2 nor any other brother or sister of the plaintiff had contributed a single penny for purchase of the plot of land or for raising construction thereon;

(f) however the defendants no.1&2 in lieu of having put their labour in looking after construction of the property have half share in the property;

(g) that the attitude of the defendants No.1&2 towards the plaintiff during the visit of the plaintiff from Canada to India in the year 2001 was very rude and the plaintiff was not even allowed to reside in the property; the same conduct was repeated during the visit of the plaintiff and his wife in the year 2005;

(h) that the plaintiff in or about the year 2005 instituted a suit in the Court of the Senior Civil Judge, Delhi for permanent injunction to restrain the defendants No.1&2 from dealing with the property and for mandatory injunction to provide proper accommodation to the plaintiff and his wife and children in the said property during their stay in India “as the suit property is a joint property of the plaintiff” and the defendants no.1&2.

(i) that the defendants No.1&2 on being served with the summons of the suit applied under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for rejection of the plaint and the learned Civil Judge before whom the suit aforesaid was pending, vide order dated 27th April, 2005 rejected the plaint;

(j) that the plaintiff preferred an appeal and the Court of the Additional District Judge allowed the appeal and set aside the order of rejection of the plaint and restored the suit to be tried and decided on merits;

- (k) that the defendants No.1&2 preferred a second appeal being RSA No.103/2010 to this Court but which appeal was withdrawn on 12th December, 2013;
- (l) that the suit aforesaid filed by the plaintiff is still pending consideration;
- (m) that the plaintiff sought amendment of the plaint in the aforesaid suit but which amendment was denied and the plaintiff preferred a petition under Article 227 of the Constitution of India against the said order and which petition is also pending consideration;
- (n) that on the application of the plaintiff under Order XXXIX Rules 1&2 of CPC in the aforesaid suit, directions were passed in June, 2012 of “governance of doctrine of *lis pendens*”;
- (o) that by governance of doctrine of *lis pendens*, neither the plaintiff nor the defendants No.1&2 have any right or authority or competence or jurisdiction to transfer the suit property save and except with previous leave of Court;
- (p) that the defendants No.1&2 have however, to defeat the rights of the plaintiff, executed the Gift Deed and registered a gift deed registered with the office of the Sub Registrar-V, Hauz Khas, New Delhi vide Registration No.5135 in Book No.1, Vol. No.1163, pages 159 to 169 on 10th September, 2015 with respect to the property in favour of the defendant No.3;

(q) that the said Gift Deed is bad because,

(i) the defendants No.1&2 who have executed the Gift Deed are not the owners of the gifted property and were not competent to execute the Gift Deed;

(ii) the Gift Deed is in violation of the principles of *lis pendens*;

(iii) the Gift Deed is in violation of the orders in the pending suit;

(iv) that no prior sanction of the Court where the suit was pending had been obtained prior to executing the Gift Deed.

4. Being of the view that for consequences provided for in Section 52 of the Transfer of Property Act, 1881, where the principles of *lis pendens* is enshrined, to be attracted, no independent suit lies, it was on 25th July, 2016, when the suit came up first for admission, enquired from the counsel for the plaintiff, as to how the suit was maintainable.

5. Also, the plaintiff has valued the suit for the purposes of jurisdiction at Rs.6.60 crores being the valuation of the property given in the Gift Deed but has paid court fees of Rs.20/- only.

6. It was thus also enquired from the counsel for the plaintiff as to how the plaintiff can seek the relief of cancellation of a registered document, without payment of *ad valorem* court fees.

7. The counsel for the plaintiff on the first of the aforesaid queries contended that though by the principles of *lis pendens* enshrined in Section 52 of the Transfer of Property Act, if the plaintiff succeeds in the suit during

the pendency of which the impugned Gift Deed has been executed, the Gift Deed would be of no avail but the Supreme Court in ***Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited*** (2013) 5 SCC 397 has observed that Section 52 of the Transfer of Property Act does not indeed annul the conveyance or the transfer but renders it subservient to the rights of the parties to a litigation.

8. The counsel for the plaintiff with respect to the second query aforesaid contended that the relief claimed by the plaintiff in the suit pending before the Court of Civil Judge, Delhi being of declaration to the effect that though title to the property is recorded in favour of the defendants No.1&2 but the plaintiff also has a share in the property and is in joint possession of the property, the plaintiff in accordance with ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh*** (2010) 12 SCC 112 is not required to pay court fees as per valuation given in the document of which cancellation was sought.

9. I was however not convinced with the aforesaid response and further time was given to the counsel for the plaintiff.

10. The counsel for the plaintiff in addition referred to ***Khatri Hotels Private Limited Vs. Union of India*** (2011) 9 SCC 126 to contend that per Article 58 of the Schedule to the Limitation Act, 1963 applicable to suits to obtain declaration, limitation commences from the date when the cause of action “first” accrues and has also contended that the limitation for claiming the relief as claimed in this suit may expire, if the plaintiff were to wait for the decision of the earlier suit.

11. I have considered the controversy.

12. The principle of English Law of *lis pendens* having been codified in Section 52 of the Transfer of Property Act, has to be governed thereby only. Section 52 is as under:

“52. Transfer of property pending suit relating thereto—
During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation. – For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

13. I continue to be of the same opinion as *prima facie* expressed in the order dated 25th July, 2016, that neither is the suit maintainable nor has the suit been correctly valued for the purposes of court fees and jurisdiction.

14. The only grounds disclosed by the plaintiff in the plaint to have the Gift Deed executed by the defendants No.1&2 in favour of the defendant No.3 declared as bad and for cancellation thereof are (a) the defendants

no.1&2 being not the absolute owners of the property and the plaintiff having a half share in the property; and, (b) the gift deed having been executed during the pendency of the suit earlier filed by the plaintiff and in which plaintiff's right to half share in the property is in question.

15. As far as the first of the aforesaid two grounds pleaded is concerned, the rights of the plaintiff to half ownership of the property are to be decided not in this suit but according to the plaintiff also in the suit before the Civil Judge. Till the said rights are adjudicated and till it is held that the plaintiff is indeed the owner of half share in the property, the question of the plaintiff being entitled to have the Gift Deed set aside on the ground of defendants no.1&2 being not absolute owner of property and thus not competent to gift the entire property does not arise.

16. The counsel for the plaintiff also contended that the plaintiff has filed this suit only to sue for the relief of declaration qua gift deed within limitation, else, has no objection to the proceedings in this suit being adjourned *sine die* awaiting the decision of the previously instituted suit.

17. However for the proceedings to be adjourned *sine die*, the plaintiff first has to show a cause of action in his favour. If there is no cause of action in favour of the plaintiff, the question of entertaining the suit and adjourning the same *sine die* does not arise.

18. In my view, the plaintiff has no cause of action to claim the relief of setting aside of the Gift Deed of the property executed by the defendants No.1&2 on the ground of defendants no.1&2 being not competent to do so till in the previously instituted suit, in which the plaintiff claims to have made a claim of ownership, upholds such rights of the plaintiff.

19. As far as the second ground pleaded for declaration of the gift deed as bad and for setting aside thereof i.e. of the same being in violation of the principle of *lis pendens*, is concerned, in my view the said ground is in misconception of law relating to *lis pendens*.

20. The Supreme Court as far back as in ***Jayaram Mudaliar vs Ayyaswami*** (1972) 2 SCC 200 has held that *lis pendens* literally means a pending suit and the doctrine of *lis pendens* has been defined as the jurisdiction, power, or control which a court acquires over property involved in a suit pending the continuance of the action, and until final judgment therein. It was further held that the need for it arises from the very nature of the jurisdiction of the Courts and their control over the subject matter of litigation so that parties litigating before it may not remove any part of the subject matter outside the power of the Court to deal with it and thus make the proceedings infructuous. It was yet further held that Section 52 of the Transfer of Property Act applies the doctrine of *lis pendens* not merely to actual transfers of rights which are the subject matter of litigation but to other dealings with it by any party to the suit or proceedings so as to affect the right of any other party thereto. The purpose of Section 52 was expounded as not to defeat any just or equitable claim but only to subject them to the authority of the Court which is dealing with the property to which the claims are put forward.

21. In ***Vinod Seth Vs Devinder Bajaj*** (2010) 8 SCC 1, it was held that foundation of the doctrine of *lis pendens* is that it would plainly be impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail. It was

explained that the plaintiff would be liable in every case to be defeated by the defendant's alienating before the judgment or decree driving the plaintiff to commence his proceedings *de novo* subject again to be defeated by the same course of proceeding. It was held to be well settled that the doctrine of *lis pendens* does not annul the conveyance by a party to the suit but only renders it subservient to the rights of the other parties to the litigation. Section 52 was held not to render a transaction relating to the suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit was held to be subject to the decision of the suit.

22. What follows from the aforesaid law expounded by the Supreme Court is that transfer of property during the pendency of suit cannot be a cause of action for another legal proceeding impugning the transfer on the ground of the same being hit by doctrine of *lis pendens*. All that the doctrine of *lis pendens* permits is to render the transfer inoperative qua parties to the suit during the pendency of which the property has been transferred. It is only the Court in which the suit during the pendency of which the property has been transferred, is pending which is entitled to, if finds in favour of the plaintiff, to, notwithstanding the defendants having transferred the property, grant relief to the plaintiff qua the property in whosoever hands it may be by virtue of such transfer.

23. The plaintiff appears to be under a misconception of law that transfer of property by gift deed by the defendants No. 1 and 2 in

favour of the defendant No.3 during the pendency of the suit previously instituted by the plaintiff furnishes an independent cause of action to the plaintiff to impugn the said transfer. The plaintiff forgets that it is only the Court in which his previously instituted suit is pending which can ignore the transfer made by the defendants No. 1 and 2 of the property in favour of the defendant No.3, if finds in favour of the plaintiff. Conversely needless to state if that Court does not find in favour of the plaintiff the occasion for ignoring the transfer will not arise.

24. As far as reliance by the counsel for the plaintiff on ***Thomson Press (India) Limited*** supra is concerned, the observations therein that the provisions of Section 52 of the Transfer of Property Act do not annul the conveyance or the transfer but render it subservient to the rights of the parties to a litigation came to be made in the context of an impleadment application of a subsequent purchaser in a suit for specific performance of an agreement of sale of immovable property. The learned Single Judge and the Division Bench of the Court refused impleadment *inter alia* on the ground that the sale was in violation of the interim orders in force in the suit. It was held by the Supreme Court that since under Section 19 of the Specific Relief Act, 1963 relief of specific performance can be claimed and enforced against a person in whom a title to the property has been created after the date of the agreement to sell, the subsequent purchaser was entitled to be made a party to the suit for specific performance. In the supplementing opinion, it was also reiterated that the title in favour of the subsequent purchaser though subject to *lis pendens* was not void as Section 52 of the Transfer of Property

Act does not render the transfers effected during the pendency of the suit void.

25. It would thus be seen that the observations in *Thomson Press (India) Limited* supra on the basis of which this suit has been filed are not attracted to the present case. Section 19 of the Specific Relief Act on which reliance was placed in that case is not applicable to the present case.

26. Also, it is not as if it is essential for the plaintiff to sue for the reliefs as claimed in this suit. The plaintiff in the plaint in the suit pending before the Civil Judge is claiming the relief of permanent injunction against dealing with the property and mandatory injunction for providing him with the living accommodation in the premises claiming to be the joint owner of the property. If the plaintiff succeeds in establishing so, the plaintiff could continue to hold the property jointly with the defendant No.3, in whom the rights of the defendants No.1&2 stand transferred by virtue of the Gift Deed aforesaid. It is upto the plaintiff to implead the defendant No.3 in the previously instituted suit. Similarly, the reliefs claimed of injunction restraining the defendant No.3 from dealing with the property can also be claimed in the previously instituted suit after impleading the defendant No.3 as a party thereto, if the plaintiff so desires. Else, the plaintiff can always, in the previously instituted suit, rely on the principles of *lis pendens* for treating the gift of property of plaintiff's share to be inoperative qua that suit.

27. Rather, I am of the view that the plaintiff on the basis of the joint ownership cannot seek injunctions against his co-owners and has to seek the relief of partition. However that is not in the domain of the present suit.

28. Thus, the suit is found to be without any cause of action.

29. Though the plaint is liable to be rejected, on the aforesaid ground alone and the question of valuation of the suit for the purposes of court fees and jurisdiction is not relevant but for the sake of completeness, I proceed to deal with the same.

30. Reliance by the plaintiff on *Suhrid Singh* supra is again misconceived. In *Suhrid Singh*, the plaintiff therein was in physical possession of the property. Here, the plaintiff is admittedly not in possession of the property and rather it is his specific plea in the plaint in the previously instituted suit that he was not allowed access to the property and the plaintiff in that suit has claimed mandatory injunction against the defendants No.1&2 in that regard. The plaintiff thus cannot, before this Court, contend that he is in possession of the property.

31. Else, the law is clear. For this suit for the relief of declaration, the valuation for the purposes of court fees and jurisdiction has to be the same and cannot be different. Reference in this regard can be made to Section 8 of the Suits Valuation Act, 1887 read with Section 7(iv) of the Court Fees Act, 1870. I have held so in *Ashok Kalra Vs. Akash Paper Board Pvt. Ltd.* MANU/DE/3028/2013 against which no Special Leave Petition is found to have been preferred. It was so held by me also in order dated 8th August, 2016 in CS(OS) No.1096/2008 titled *H.C. Sachdeva Vs. Ved Prakash*, after considering *Suhrid Singh Vs. Randhir Singh* (2010) 12 SCC 112. Reference may also be made to *Surender Arora Vs. P.N. Mehta* 71 (1998) DLT 744.

32. Need to give an opportunity to the plaintiff to make up the deficiency in court fees is however not felt for the reason of having otherwise also found the suit to be without cause of action.

33. The plaint is accordingly rejected.

34. Needless to state that notice having not been issued to the defendants, nothing herein would bind the defendants.

No costs.

MARCH 22, 2017

‘bs’..

RAJIV SAHAI ENDLAW, J.

