

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 27 of 2018****Reserved on 18.07.2018**
Pronounced on 01.08.2018

- Jitendra Goel, S/o Shri Ratanlal Goel, Aged About 50 Years R/o Ratan Villa, Silver Spring, Gayatri Nagar, Raipur, Tehsil And District Raipur Chhattisgarh.....(Plaintiff), **---- Appellant**

Versus

1. Sewakram Pandey, S/o Late G.R. Pandey, Aged About 66 Years R/o Rohinipuram, Raipur, Tehsil And District Raipur Chhattisgarh.
2. R.K. Dubey S/o Shri R.S. Dubey, Aged About 49 Years, R/o H.No. 393, Sector -2, Bajaj Colony, Raipur, Tehsil And District Raipur Chhattisgarh.
3. State Of Chhattisgarh, Through Collector, Raipur Chhattisgarh... (Defendants). **---- Respondents**

For Appellant	:Mr. Manoj Paranjpe with Shri Ankur Agrawal, learned Advocate
For Respondent No.1	:Mr. B.P.Gupta, learned Advocate
For Respondent No.3	:Mr. Vijay Bahadur Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay Agrawal**CAV Order**

1. This Miscellaneous Appeal has been preferred by the plaintiff under Order 43 Rule 1(r) of the Code of Civil Procedure Code, 1908 (hereinafter referred to as the C.P.C.) questioning the order dated 22.03.2018 passed by the District Judge, Raipur, in Civil Suit No. 31-A/2017, by which, the application filed by him under Order 39 Rule 1 & 2 of the C.P.C. has been refused

2. Facts leading to this appeal are that a suit for declaration and injunction was filed by the plaintiff submitting, inter alia, that he acquired the valid right, title and interest upon the land in question bearing Kh.Nos.383/2,

383/3 and 402 admeasuring respectively as 0.182 hectares, 0.061 hectares and 0.121 hectares, total admeasuring 0.364 hectares on the strength of a registered deed of sale dated 20.12.2005, purported to have been executed in his favour by its real owner, i.e., R.K.Dubey, the defendant No.2. According to the plaintiff, a part of the suit land, i.e., bearing Kh.No. 402 admeasuring 0.121 hectares and a piece of land admeasuring 0.0557 hectares of Kh.No.383/2 has been acquired for widening the road for National Highway No. 43/30 by the Sub-Divisional Officer (Revenue)-cum-Land Acquisition Officer while initiating the acquisition proceedings against defendant No.1, which was registered as Land Acquisition Case No. 09(5)/A-82/2014-15. It is pleaded by the plaintiff that in the month of January, 2017, he came to know about the said acquisition proceedings and further came to know that the revenue papers in relation to the suit land are in the name of defendant No.1, who informed him in response to his notice, that he acquired the valid title over the suit land by virtue of the registered deed of sale dated 24.02.2012 executed in pursuance to the execution of ex parte decree dated 30.10.2010 passed in a suit for specific performance of contract instituted by him (defendant No.1) against his vendor R.K.Dubey (defendant No.2).

3. It is pleaded further in the plaint that since he had already acquired valid right, title and interest over the suit land way back in 2005 from his vendor R.K.Dubey, therefore, defendant No.1, in collusion with his vendor has obtained the alleged ex parte decree in a suit for specific performance contract by playing fraud upon the Court. Based upon these facts, the instant suit has been filed seeking declaration to the effect that the alleged ex parte decree is null and void with a further claim for restraining defendant No.1 to obtain the amount of compensation as assessed by the Land Acquisition Officer in the said acquisition proceedings.

4. Along with aforesaid claim, an application enumerated under Order 39 Rule 1 & 2 of the C.P.C. has been made while reiterating the aforesaid facts and praying for restraining defendant No.1 from obtaining the amount of compensation so assessed by the Land Acquisition Officer in the said acquisition proceedings.

5. Defendant No.1, while filing the written statement and reply to the said application for issuance of temporary injunction, contested the claim by saying that the suit as framed is not maintainable as the plaintiff has no right to question the validity of the alleged decree passed in a suit for specific performance of contract instituted by him against defendant No.2 on the basis of an agreement to sell dated 30.07.2008. It is pleaded therein that he acquired valid right, title and interest on the basis of the registered deed of sale dated 24.02.2012 executed in pursuance to the execution of the alleged decree and since the revenue papers were also mutated accordingly, therefore, he cannot be restrained from obtaining the alleged amount of compensation passed in the said acquisition proceedings.

6. After considering the rival submissions of the parties, the trial Court, vide its impugned order dated 22.03.2018, has rejected the said application for grant of temporary injunction observing that though prima facie case and balance of convenience are in favour of the plaintiff but he failed to establish the fact that he would suffer an irreparable loss in the event of its refusal. In consequence, the Court below has refused to restrain the defendant No.1 from obtaining the amount of alleged compensation from the Land Acquisition Officer, as claimed by him.

7. Being aggrieved, the plaintiff has preferred this appeal. Mr. Manoj Paranjpe, learned counsel appearing for the appellant/plaintiff submits that

the order impugned as passed by the trial Court is apparently contrary to law and not at all sustainable in the eye of law. He submits that in absence of assigning proper reasonings, the trial Court has committed an illegality in observing that the plaintiff is not going to suffer an irreparable loss despite holding that prima facie case and balance of convenience are in his favour. He submits further that since the suit property had already been purchased by him by virtue of the registered deed of sale dated 20.12.2005 from defendant No.2, therefore, no right, title or interest, whatsoever, was with him (defendant No.2) so as to enter into an agreement with defendant No.1 and based upon which the alleged decree has been obtained illegally by defendant No.1 by playing fraud upon the Court in utter disregard of plaintiff's interest. Without considering the facts in its proper manner, the trial Court has erred in rejecting the plaintiff's said application. In support, he placed his reliance upon the decision rendered in ***Ramti Devi (Smt)* vs. Union of India** reported in (1995) 1 SCC 198.

8. On the other hand, Mr. B.P.Gupta, learned counsel for respondent No.1 (defendant No.1) supported the order impugned. According to him, the alleged decree was passed in a legally constituted suit for specific performance of contract on the basis of an agreement to sell dated 30.07.2008 executed by its real owner R.K.Dubey (defendant No.2) in his favour. Therefore, prima facie it cannot be said that the alleged decree was obtained by playing fraud upon the Court, as alleged by the plaintiff. He submits further that a bare perusal of the alleged deed of sale, by which, the plaintiff is claiming his interest over the suit property, would show that the number of Krin-pustika in relation to the suit land has wrongly been mentioned therein as "Krin-pustika No. P-621432", however, the actual number of it, is "0499679" and submits further that since the date of alleged purchase, the plaintiff has not made any efforts to obtain the revenue papers

mutated in his name, which by itself shows that it is a forged document, else he would have approached the revenue authorities for obtaining the revenue papers mutated in his name immediately thereafter. The conduct of the plaintiff would, therefore, show that he never acquired the valid title over the suit land, as alleged by him, else he would have raised an objection before the said Land Acquisition Officer and as such, he is not entitled to get the said interim relief of injunction. After considering all these prima facie materials, the trial Court has rightly exercised its discretionary power while refusing to grant him temporary injunction on finding that the plaintiff is not going to suffer an irreparable loss. In support, he placed his reliance upon the decision rendered in the case of ***Smt. Ambey Devi v. State of Bihar and another*** reported in **AIR 1996 SC 1513**.

9. I have heard learned counsel for the parties and perused the entire relevant papers annexed with the appeal carefully.

10. The main contention of the plaintiff in his aforesaid claim is that since he acquired the valid right, title and interest over the suit land by virtue of the registered deed of sale dated 20.12.2005 from its real owner, i.e., R.K.Dubey, defendant No.2, therefore, the alleged ex parte decree as obtained by defendant No.1 while filing a suit for specific performance of contract was, in fact, a nullity in the eye of law as it was obtained by playing fraud upon the Court by suppressing all the material facts like the execution of the said sale as executed in his favour in the year 2005, much prior to alleged deed of agreement dated 30.07.2008 and/or initiation of the said land acquisition proceedings and, as such he is not entitled to obtain the amount of compensation from the Land Acquisition Officer.

11. In order to obtain the discretionary relief of injunction based upon the

aforesaid facts, the plaintiff is required to establish the three essential ingredients, as required mandatorily for issuance of it. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

12. By keeping the aforesaid settled principles of law in mind, I have examined the registered deed of sale dated 20.12.2005, purported to have been executed in favour of the plaintiff by defendant No.2 R.K. Dubey, the real owner of the suit land and, a bare perusal of it would show that in the year 2005, the plaintiff has already acquired his valid right, title and interest over the suit land. Further perusal of the document annexed with this appeal would show that the part of the suit land purchased by the plaintiff as such was acquired by the Land Acquisition Officer while initiating the said acquisition proceedings for widening the road for National Highway No. 43/30. The said acquisition proceedings was initiated against defendant No.1 as his name was reflected from the revenue papers. However, by the time though he claimed his ownership on the basis of the sale deed dated 24.02.2012 executed in pursuance of the execution of the alleged ex parte decree, but defendant No.2, at that point of time, was not the owner of the suit land owing to alienation of the same to the plaintiff by virtue of the said registered deed of sale dated 20.12.2005. As a consequence of it,

defendant No.1 cannot base his ownership on the basis of the alleged registered deed of sale executed on 24.02.2012 in pursuance of the execution of alleged ex parte decree, drawn on 30.10.2010. The plaintiff's interest as occurred much prior to the alleged acquisition cannot be overlooked at this stage. Pertinently to be observed here that the authenticity of the alleged sale was neither set aside by any of the Court nor the same was ever questioned by its real owner, namely, R.K.Dubey, and therefore, in view of the observations made in the case of **Ramti Devi (Smt) vs. Union of India** (supra) as relied upon by Mr. Paranjpe, the genuineness of it cannot be overlooked. The observation so made in the said decision at paragraph 2, is relevant for the purpose, which reads as under:

“2..... Until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties.”

13. Based upon the aforesaid principles, it thus appears prima facie that the plaintiff has acquired his valid right, title and interest over the suit land, though different number of Krin-Pustika, as pointed out by Mr. B.P.Gupta, counsel for respondent No.1, is mentioned therein, but its authenticity cannot be discarded merely on this ground, particularly, when parties are yet to commence their evidence. At this juncture, the contention of Mr. B.P.Gupta based upon the principles laid down in the matter of **Smt. Ambey Devi v. State of Bihar and another** (supra) that since the plaintiff has never raised any objection to the said Land Acquisition Proceedings and would, therefore, not be entitled to get the relief of injunction restraining respondent No.1 (defendant No.1) from obtaining the amount of compensation in pursuance of the Award passed therein, is however noted to be rejected as the principles laid down therein are clearly distinguishable from the facts

involved in the present case. That is the case where an award was passed by the Land Acquisition Officer and one of the co-owners had applied for enhancement of the amount of compensation while referring his matter to the Civil Court, as per the provisions prescribed under Section 18 of the Land Acquisition Act, 1894 (for short Act, 1894), in which he had been given the enhanced amount of compensation while allowing his said reference application. The other co-owner, who had not applied as such, had preferred an appeal claiming enhancement of the compensation as was awarded to the other co-owner. However, his said prayer was turned down while dismissing his appeal owing to non-filing of reference application, as provided under Section 18 of the Act, 1894. The principles so laid down therein are, thus, distinguishable and would not support the said contention of Shri Gupta.

14. The plaintiff has thus established all the essential ingredients, as required for issuance of temporary injunction though he was not a party to the said Land Acquisition Proceedings, but his interest flowing through the alleged registered deed of sale dated 20.12.2005 cannot be overlooked at this stage, particularly, in view of the dispute which, prima facie, appears to be serious in nature. If the amount of compensation is disbursed to the defendant No.1, pending decision of the suit, then it would certainly cause an irreparable loss to him. In such an eventuality, the plaintiff's interest is required to be safeguarded.

15. In view of the foregoing discussions, the trial Court has committed an illegality in rejecting the application for issuance of temporary injunction. The order impugned is, therefore, liable to be and is hereby set aside. Defendant No.1 is hereby restrained from receiving the amount of compensation from the Land Acquisition Officer based upon the Award

passed in the said Land Acquisition Proceedings, pending decision of the suit.

16. However, by considering all the relevant materials, the interest of both the parties is required to be safeguarded at this stage. I, therefore, direct that the amount of compensation so assessed by the Land Acquisition Officer in the said Land Acquisition Case No.09(5)/A-82/2014-15 pertaining to the part of the suit land, as acquired thereunder, shall be deposited in a Nationalised Bank in a short term deposit by the Land Acquisition Officer, so that, the amount would yield interest and, which would be available for the benefit of the successful party in the suit. A copy of this Order may be placed before the concerned Land Acquisition Officer for doing the needful in this regard. No order as to costs.

17. Before parting with the matter, it is made clear that this Court has not entered into the merits of the case and the trial Court would not be influenced by any of the observations of mine while deciding this appeal.

Sd/-
(Sanjay Agrawal)
Judge