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

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Judgment Reserved on : 28.02.2019

Judgment Pronounced on: 25.03.2019

+ **F.A.O. No.73/2019 & CM NO. 8550/2019 (For Stay)**

SANJAY SHARMA

..... Appellant

Through: Mr.V.K.Garg, Senior Advocate with
Mr.Bijender Singh and Ms.Noopur
Dubey, Advocates.

Versus

SUDHIR MALHOTRA & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

JUDGMENT

VINO GOEL, J.

1. The impugned order dated 30.01.2019 passed by the Court of learned Additional District Judge-04, South East District, Saket Court, New Delhi ('ADJ'), in Civil Suit No. 8018/2016 dismissing the application of the appellant/plaintiff No.1 and the Respondent No.4/ Plaintiff No.2, under Order 39 Rules 1 and 2 r/w Section 151 of the Code of Civil Procedure, 1908 (CPC) is the subject matter of challenge in this appeal.

2. As per the factual matrix, the appellant and respondent no.4 jointly purchased an area of approximately 340 square feet, i.e, front portion of the basement of property No. A-249, Defence Colony, New Delhi vide registered Sale Deed dated 28.01.2003 from the respondent no.1. They claimed that the respondent nos. 1, 2 and 3 in collusion and connivance obtained a judgment and decree dated 21.10.2011 directing the appellant and the respondent no. 4 to deliver the possession of the property to the respondent no.3. It is also pleaded that the respondent no.3 has filed an execution of judgment and decree dated 21.10.2011 in which warrants of possession in respect of the said property have been issued.

3. It has been pleaded by the respondent no.3 in its written statement that the suit of the appellant and the respondent no.4 is without any cause of action and not maintainable, as they have already availed of the remedies under the law and after hearing them, the judgment and decree dated 21.10.2011 came to be passed in its favour against the appellant and the respondent no.4. The respondent no.3 further pleaded that the second round of ligation is nothing but an abuse of the process of court and has been initiated by the appellant and the respondent no.4 in order to frustrate the judgment and decree passed in favour of the respondent no.3.

4. He submits that the respondent no.3, being a tenant on the ground floor of the suit property No. A-249, Defence Colony, New Delhi, filed a Civil Suit No. 82/1997 on 04.03.1997 for permanent injunction against the respondent nos. 1 and 2 and others. The parties

had amicably settled their disputes in terms of the Deed of Compromise dated 27.03.1997 and filed a joint application dated 27.03.1997 under Order 23 Rule 3 of the CPC. He submits that on the same day, an Agreement to Sell was executed among the respondent nos. 1, 2 and 3, whereby it was agreed that by demolishing the existing structure a new residential building shall be constructed consisting of the basement, ground, first and second floors by the respondent No. 2; the basement, ground floor and terrace rights shall vest in respondent no.1/owner; the first floor and the second floor shall belong to the respondent no.2; and on construction, the respondent no.1 was to sell the basement floor to the respondent no.3.

5. He submits that subsequently on 23.07.1997, there was another agreement between the respondent nos. 1 and 2 by which the respondent no.1 has agreed that on construction of the basement, ground floor, first floor and second floor by the respondent no.2, the basement and ground floor shall vest in the respondent no.2, and the first floor, second floor and terrace rights shall vest in the respondent no.1 in contrast to the earlier agreement dated 27.03.1997 by which the basement, ground floor and the terrace were to vest with the respondent no.1 and the first floor and second floor with the respondent no.2.

6. He submits that the Respondent No.3 filed a Civil Suit being CS(OS) No. 1571/1998 against the respondent nos. 1 and 2 in this court for specific performance of the agreement to sell dated 27.03.1997. While considering the application under Order 39 Rules

1 and 2 of CPC of the respondent no.3, this court on 10.11.1998 had directed the parties to maintain the status quo in respect of the basement of the said property as referred to in agreement to sell dated 27.03.1997.

7. He submits that during the pendency of the said civil suit, the respondent no.1 executed a sale deed on 07.08.2000 in favour of M/s. Hotline Fashions India (P) Limited in respect of an area of approximately 600 square feet consisting of the rear portion of the basement of the said property. The respondent no.1 has also executed a sale deed on 28.01.2003 in favour of the respondent no.4 and the appellant in respect of an area of approximately 450 square feet (front portion) of the basement of the said property. He submits that the respondent no.3 filed an application bearing IA No. 5530/2004 under Order 39 Rule 2A of CPC against the appellant and the respondent nos. 1 and 2 for violation of the order of this Court dated 10.11.1998, whereby the parties were directed to maintain the status quo with regard to the basement as referred to in the agreement to sell dated 27.03.1997.

8. The Civil Suit being CS(OS) No. 1571/1998 filed by the respondent no.3 against the respondent nos. 1 and 2 was decreed in favour of the respondent No.3 by the judgment and decree dated 21.10.2011. It was directed that *“in view of my findings on the issues, a decree for specific performance of the agreement to sell dated 27th March, 1997 and for recovery of Rs. 25 lac with proportionate costs is hereby passed in favour of the plaintiff and against both the*

defendants. A decree for possession of the whole of the basement floor of property No. 249, Defence, Colony, New Delhi is also passed in favour of the plaintiff and against the defendants. Defendant no.1 is directed to execute an appropriate sale deed in favour of the plaintiff company in respect of the whole of the basement floor of property No. A-249 Defence Colony, New Delhi within 08 weeks from today after obtaining permissions, if any, required for this purpose. The plaintiff is directed to deposit the balance sale consideration of Rs. 2 lac in this Court by way of a Demand Draft/Pay Order in the name of Registrar General of this Court within two weeks from today. In case of failure of the plaintiff to deposit the aforesaid amount, it will not be entitled to decree for specific performance of the agreement to sell dated 27th March, 1997 and to this extent the suit shall stand dismissed without any further orders.

Decree sheet be drawn accordingly.”

9. The application under Order 39 Rule 2 A CPC was also disposed of by this Court on 21.10.2011 holding that “*In my view considering all the facts and circumstances of the case, the ends of justice in this case would be adequately met if Mr. Sanjay Sharma and Mr. Manoj Kain are directed to deliver possession of the basement floor occupied by them in property No. A-249 Defence Colony to the plaintiff without demur or protest within 04 weeks from the date of this order. Even otherwise, the basement portion having been purchased them in violation of the injunction order, the sale in their favour is non*

est and nullity in the eyes of law and it confers no right, title or interest on them in respect of the basement portion purchased by them and they are liable to be evicted therefrom. Mr. Sanjay Sharma and Mr. Manoj Kain are accordingly directed to deliver peacefully and vacant possession of the basement portion occupied by them in Property No. A-249 Defence Colony to the plaintiff without demur or protest within 04 weeks from today. The application stands disposed of in terms of this order.”

10. Learned senior counsel for the appellant contends that the respondent nos. 1 and 2 did not disclose the execution of the subsequent agreement to sell dated 23.07.1997 when the status quo order qua the basement of the said property was passed by this Court on 10.11.1998. He also contends that the respondent No. 3 did not disclose the execution of the sale deed dated 07.08.2000 in the civil suit decided by judgment and decree dated 21.10.2011.

11. I have heard the learned senior counsel for the appellant.

12. By an agreement to sell dated 27.03.1997, the respondent no.1 has agreed to sell the entire basement of the said property to the respondent no.3. The respondent no.3 has admittedly filed a suit for specific performance of the said agreement to sell being CS(OS) No. 1571/1998 in which the parties were directed to maintain the status quo with regard to the basement as referred in the agreement to sell dated 27.03.1997. The subsequent agreement to sell dated 23.07.1997 which was between respondent nos. 1 and 2 is of no consequence

since the respondent no.3 was not a party to it and consequently, not bound by it.

13. The sale deed dated 28.01.2003, which was executed by respondent no.1 in favour of the appellant and respondent no. 4 with respect to part of the basement of the suit property, cannot give any benefit to the appellant and the respondent no. 4 as the sale deed is in violation of the status quo order passed by this Court on 10.11.1998. It is well settled law that where third party rights have been created in respect of the disputed property, in violation of the orders of the Court, any such third party rights are of no consequence and liable to be set aside. The Hon'ble Supreme Court has made this position clear in ***Surjit Singh and Others v. Harbans Singh and Others (1995) 6 SCC 50*** that “*In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes.*” This was reiterated in ***C. Elumali & Ors. Vs. A.G.L. Irudayaraj & Anr., AIR 2009 SC 2214*** whereby the Hon'ble Supreme Court not only directed that third party rights created in violation of the Court order were of no consequence and set them aside, but also imposed exemplary costs of Rs. 2,00,000/- on each of the contemnors for violation of the Court order.

14. The principle of *lis pendens* under Section 52 of the Transfer of Property Act, 1882 (TPA), is that in the event of transfer of the suit property *pendente lite*, the purchaser of such property takes the bargain subject to the rights of the plaintiff in the pending suit. The decision of the court in a suit should be binding not only on the litigating parties but also on those who derive title *pendente lite*. This has been reiterated in a catena of judgments by the Hon'ble Supreme Court. In **Vinod Seth v. Devinder Bajaj, (2010) 8 SCC 1** the Hon'ble Supreme Court held that “42. *It is 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 will not therefore 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 will be subject to the decision in the suit.*” In **A. Nawab John & Ors. v. V.N. Subramanyam (2012) 7 SCC 738** the Hon'ble Supreme Court summarized the legal position and held that “18. *The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.*” This is re-iterated by the Hon'ble Supreme Court recently in **T.**

Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342 referring to ***Vinod Seth's case (supra)*** and ***Nawab John's case (supra)*** that the transfer of the suit property pendente lite “*was subject to the outcome of the suit.*”

15. The appellant and the respondent no.4 are transferee *pendente lite* from respondent no.1 and bound by the judgment and decree dated 21.10.2011 under section 52 of the TPA and law enunciated by the Hon'ble Supreme Court in ***Vinod Seth's case (supra)***, ***A. Nawab John's case (supra)*** and ***T. Ravi's case (supra)***. Even otherwise, the sale deed in their favour was executed in violation of section 52 of the TPA and order dated 10.11.1998 which makes transfer of no consequence as if the sale deed had not taken place in terms of law laid by the Hon'ble Supreme Court in ***Surjit Singh's case (supra)*** and ***C. Elumali's case (supra)***. By the judgment and decree dated 21.10.2011 in favour of respondent no.3 of the specific performance of the contract directed the appellant and the respondent no.4 to deliver peaceful and vacant possession of the basement to respondent no.3 without any demur within four weeks. RFA (OS) No. 20/2010 against the order dated 21.10.2011 has already been dismissed by this Court on 21.05.2012. The appellant and respondent no.4 have filed a Special Leave Petition which was dismissed *in limine* on 09.10.2015. The objections filed by the appellant and respondent no.4 in the execution have been dismissed by this Court vide detailed order dated 27.09.2016.

16. In view of this discussion, I do not find any infirmity or illegality in the impugned order. There is no merit in the appeal. Accordingly, the present appeal along with application, being C.M. No. 8550/2019 is dismissed with no order as to costs.

(VINOD GOEL)
JUDGE

MARCH 25, 2019/savita

