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

***Decided on: 20<sup>th</sup> May, 2019***

+ **FAO 213/2019**

**HARNEET SINGH SAHNI**

..... Appellant

Through: Mr. Mitunjay Singh & Ms. Depti Singh, Advocates.

versus

**DALJIT SINGH & ORS.**

..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**PRATEEK JALAN, J. (ORAL)**

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**CM Appl. 24011/2019(exemption)**

Exemption allowed, subject to all just exceptions.

The application is disposed of.

**FAO 213/2019 & CM Appl. 24012/2019**

1. The appeal is directed against an order dated 14.02.2019 by which the appellant's application under Order XXXIX Rule 4 of the Code of Civil Procedure has been dismissed by the learned Trial Court.

2. The suit was originally filed by the respondent no. 1 [hereinafter referred to as "original plaintiff"] against the legal representatives of his two brothers Harpal Singh and Roop Pal Singh [hereinafter referred to as "original defendants"]. The suit was in respect of property no. J-10/39,

Rajouri Garden, New Delhi-110027, which was owned by the father of the plaintiff and the original defendants. The original defendants claimed title to the property by virtue of a gift deed dated 19.02.2000 executed by the father in favour of the said Mr.Harpal Singh & Mr.Roop Pal Singh. The plaintiff, on the other hand, claimed that he was entitled to the property by virtue of documents such as general power of attorney, special power of attorney, agreement to sell dated 25.07.2001, executed by his father. He filed the suit in question [C.S. 353/2017] before the Trial Court, praying for a declaration that the said gift deed is null and void and also for a decree of injunction restraining the original defendants from the selling, alienating, transferring or creating any third party interest in the property, as well as a mandatory injunction for the defendants to remove their goods and hand over the portion of the entire property to the plaintiff as shown in the site plan.

3. After the written statements were filed, the plaintiff's application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure was heard by the Trial Court and an injunction was granted by an order dated 31.07.2018, restraining the parties or any third person acting on their behalf from creating third party interests in the suit property. The Trial Court observed as follows :-

*“7. Both the parties are claiming ownership over the suit property by separate set of documents. It is admitted fact that father of the plaintiff was owner of the property. The suit property is subject matter of the present suit. If it is transferred further, it will lead to multiplicity of litigation. Title of the suit property is required to be preserved to adjudicate the claim of the parties. Hence, in these circumstances, present application is allowed. All the parties or any other person acting on their behalf are restrained from creating third party interest in the*

*suit property i.e. J-10/39, Rajouri Garden, New Delhi-110027 in any manner till the pendency of the present suit.”*

4. Thereafter, the appellant filed an application under Order I Rule 10 of the Code of Civil Procedure alleging that the original defendants had entered into a collaboration agreement dated 15.06.2016 with him, under which he was entitled to construct a four-storey building on the suit property. He claims to have carried out the entire construction, pursuant to a plan sanctioned by the municipal authorities in the year 2016 and thus become entitled to the second floor of the newly constructed building alongwith an undivided one-fourth share in the stilt parking. The appellant also made an application under Order XXXIX Rule 4 of the Code of Civil Procedure before the Trial Court claiming that the injunction order dated 31.07.2018 had been passed without hearing him as he had not been impleaded as a party to the suit by the plaintiff, despite being a necessary party. It was his contention that he had enquired into the title of the original defendants to the suit property by verifying the correctness of the gift deed.

5. Although the appellant's application under Order I Rule 10 was allowed by the Trial Court by an order dated 20.11.2018, by the impugned order dated 14.02.2019, his application for vacation of the interim injunction granted was dismissed. The Trial Court rejected the appellant's contention regarding material concealment of facts on the part of the plaintiff and held that the *inter se* rights of the plaintiff and the original defendants [from whom the appellant derives his rights, if any], are to be determined upon trial. In view of the fact that the collaboration agreement does not by itself confer upon the appellant, the Trial Court has held that the appellant does not have any ownership rights which are capable of being transferred at this time.

6. Learned counsel for the appellant has reiterated the grounds taken before the Trial Court, in support of the appellant's submission that the injunction granted ought to have been vacated. He has cited judgments of the Supreme Court in *Commissioner of Customs, Kandla vs. Essar Oil Limited and Ors.* (2004) 11 SCC 364 and of this Court in *Institute of Human Behaviour & Allied Sciences* (2012) ILR III Delhi 247 in support of his contention.

7. Having heard learned counsel for the appellant, I am of the view that the impugned order of the Trial Court does not call for any interference. The plaintiff and the original defendants are rival claimants to the suit property. The appellant is a builder who claims only through a collaboration agreement entered into with the original defendants. He has no independent right, title or interest upon which a *prima facie* case could have been found in his favour. Until the suit is decided and either of the rival claimants are able to establish their case, the appellant herein cannot claim a right to deal with the suit property. Any such transaction by the appellant would lead to the creation of third party rights during the pendency of the suit relating to the very same property. The balance of convenience also, therefore, is in favour of grant of injunction in a case of this nature. The factors which weigh in the mind of a Court while granting an interim injunction in a suit have been settled by the Supreme Court *inter alia* in *Morgan Stanley Mutual Fund vs. Kartick Das*, (1994) 4 SCC 225 and in *Seema Arshad Zaheer and Ors. vs. Municipal Corpn. Of Greater Mumbai and Ors.*, (2006) 5 SCC 282, which are (i) the existence of a *prima facie* case, (ii) balance of convenience, and (iii) a clear possibility of irreparable injury

if the injunction is not granted. Those factors in the present case are clearly in favour of the grant of an injunction.

8. The appellant's contention, based on plaintiff's failure to implead him and on the alleged concealment of facts, is also unsubstantiated. As found by the Trial Court, the appellant has not been able to establish that the plaintiff in fact had notice of the collaboration agreement between the original defendants and the appellant. The plaintiff mentioned the facts regarding construction of the building in the plaint itself, and stated that he had been informed of the construction by his father. The relevant averments in the plaint is contained in paragraph 12, which is set out hereinbelow:

*"12. That it is pertinent to mention here that during the life time of father, the father told the plaintiff that he wants to construct the building on the said plot by demolishing existing structure through builder and about one year ago father told that a builder has met with him and plaintiff also talked with builder for construction and construction of building started in the year 2016."*

9. In my view, the fact of the construction having been disclosed by the plaintiff, it cannot be held that there was any material concealment, particularly in the absence of any evidence which would *prima facie* indicate that the plaintiff had knowledge of the collaboration agreement. In fact, the plaintiff has averred that the alleged gift deed came to his knowledge only in July, 2017.

10. The judgments relied upon by the learned counsel for the appellant are also not of assistance in the facts of this case. The judgment of the Supreme Court in *Essar Oil Limited & Ors.* (supra) arose out of proceedings before the Customs Excise and Gold (Control) Tribunal. The

question decided by the Court, upon which reliance was placed, concerns the elements required to establish a case of fraud. In view of my finding hereinabove that the appellant has been unable to demonstrate any material concealment of facts in this case, the said judgment does not apply to the present case. It also does not lay down any principle governing the exercise of jurisdiction under Order XXXIX Rule 4 of the Code of Civil Procedure. The judgment of this Court in *Institute of Human Behaviour & Allied Sciences* (supra) was relied upon to contend that a deliberate misrepresentation and non-impleadment of a necessary party, are grounds upon which the Court may refuse to grant an interim injunction. In view of my finding hereinabove, that the appellant has not been able to establish even *prima facie* that the plaintiff had knowledge of the collaboration agreement, or that there was any material concealment of facts by him, reliance upon the aforesaid judgment is also misconceived.

11. In the facts and circumstances, I see no reason to interfere with the order passed by the Trial Court. The appeal is dismissed. However, it is made clear that the observations contained in this judgment are only for the purpose of disposal of this appeal and will not prejudice the appellant at the trial of the suit.

**PRATEEK JALAN, J.**

**MAY 20, 2019**

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