

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.666 of 2021 (O&M)

Date of Decision : 22.03.2021

Nirmala Devi

....Petitioner

VERSUS

Satya Devi and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Namit Khurana, Advocate for the petitioner.

ALKA SARIN, J.

Heard through video conferencing.

The present revision petition has been filed challenging the order dated 23.12.2020 (Annexure P-6) passed by the Trial Court and order dated 10.03.2021 (Annexure P-8) passed by the Appellate Court dismissing the application filed by the plaintiff-petitioner under Order 39 Rules 1 and 2 CPC for grant of ad-interim injunction.

The facts relevant to the present *lis* are that in September 2020 the plaintiff-petitioner filed a civil suit for declaration to the effect that she is owner of 1/2 share in House No.45 bearing Property ID No.300C47082 measuring 200 sq. yards situated in Mauza Chandpur named Jaswant Nagar, Yamunanagar and for cancellation of Transfer Deed No.5735 dated 22.09.2017 executed by defendant-respondent No.1 in favour of her deceased daughter Kanta Devi and consequently for permanent injunction restraining the defendant-respondent No.2 from transferring/selling the

property in dispute to any person by way of auction or any other manner. As per the averments in the plaint (Annexure P-1), the plaintiff-petitioner and the defendant-respondent No.1 are sisters and vide sale deed dated 20.02.1969 their father, Tirath Ram, had purchased the plot in dispute from one Jaswant Singh. Tirath Ram died on 13.05.1983 and the mother has also expired leaving the plaintiff-petitioner and the defendant-respondent No.1 as their legal heirs. It is further alleged that the plaintiff-petitioner had lately learnt that the defendant-respondent No.1 had executed the Transfer Deed in favour of her daughter, Kanta Devi, who was unmarried and had died. Kanta Devi had mortgaged the property in dispute with the defendant-respondent No.2 and availed CC limit and that the defendant-respondent No.2 was going to auction the property in dispute. Along with the plaint, an application (Annexure P-2) was filed for grant of ad-interim injunction for restraining the defendant-respondents from alienating, transferring the property in dispute till final decision of the civil suit.

The defendant-respondent No.1 filed a written statement (Annexure P-3) as also a reply (Annexure P-4) to the application for grant of ad-interim injunction. The defence put up by the defendant-respondent No.1 is that she is an illiterate lady and her son Dharam Veer had gone with his sister Kanta to get executed a transfer deed of some other property in Jaswant Nagar transferred in favour of Kanta Rani from the defendant-respondent No.1. But Kanta Rani in collusion with her brother had played a fraud with defendant-respondent No.1 and had instead got the property in dispute transferred in her favour and that this fact had come to the

knowledge of defendant-respondent No.1 after the plaintiff-petitioner filed the present civil suit.

The defendant-respondent No.2 also filed a written statement (Annexure P-5) raising preliminary objections about jurisdiction and maintainability of the civil suit in view of the bar in Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It was averred that the property in dispute had been mortgaged by Kanta d/o Satpal for a CC limit of rupees forty lakhs granted to M/s Mahaluxmi Enterprises through its proprietor, Kanta, by way of equitable mortgage by way of deposit of original Transfer Deed No.5735 dated 22.09.2017 and original Sale Deed No.3895 dated 20.02.1969 along with other documents. According to the defendant-respondent No.2 there had been default in payment of the loan amount and the account had been declared as NPA and proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 had been initiated to recover the outstanding loan amount. According to the defendant-respondent No.2, notice under Section 13(2) of the said Act had been issued to the borrower M/s Mahaluxmi Enterprises and publication to that effect had also been made in the newspaper on 18.02.2020 and, therefore, the civil court had no jurisdiction to try and decide the civil suit. Defendant-respondent No.2 also averred that the civil suit had been filed in collusion with the defendant-respondent No.1 by concocting a false dispute to cause loss to the defendant-respondent No.2. According to the defendant-respondent No.2, the defendant-respondent No.1 had also submitted an affidavit stating that she was the only heir of Tirath

Ram and being the only heir had transferred the property in dispute in favour of her daughter, Kanta, vide Transfer Deed No.5735 dated 22.09.2017.

Vide order dated 23.12.2020 (Annexure P-6) the Trial Court dismissed the application (Annexure P-2) filed by the plaintiff-petitioner under Order 39 Rules 1 and 2 CPC for grant of ad-interim injunction. The appeal filed by the plaintiff-petitioner was also dismissed by the Appellate Court vide order dated 10.03.2021 (Annexure P-8). Hence, the present civil revision petition.

Learned counsel for the plaintiff-petitioner has contended that the impugned orders are illegal and arbitrary. According to him the plaintiff-petitioner has been cheated by none other than her own sister, defendant-respondent No.1. It has been argued that after the death of the parents, the property in dispute was inherited by both the sisters in equal shares and as such the defendant-respondent No.1 could not transfer more than her 1/2 share to her daughter, Kanta, and similarly Kanta could not have mortgaged the share of the plaintiff-petitioner with the defendant-respondent No.2.

I have heard learned counsel for the plaintiff-petitioner. The property in dispute was purchased by Tirath Ram, father of the plaintiff-petitioner and defendant-respondent No.1, vide Sale Deed No.3895 dated 20.02.1969. Tirath Ram died on 13.05.1983. The plaintiff-petitioner never took any steps to get the property in dispute mutated in her name to the extent of 1/2 share. The property in dispute was transferred by the defendant-respondent No.1 in favour of her daughter, Kanta, vide Transfer Deed No.5735 dated 22.09.2017. Thereafter, the defendant-respondent No.2 had granted the CC limit after Kanta satisfied it (defendant-respondent No.2)

by producing the Transfer Deed No.5735 dated 22.09.2017 in her favour and the Sale Deed No.3895 dated 02.02.1969 in favour of her grandfather Tirath Ram along with other documents. It was when the defendant-respondent No.2 took steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 that the plaintiff-petitioner suddenly woke up and filed the civil suit for declaration and permanent injunction. As noticed by the Trial Court in the impugned order Annexure P-6, the first notice issued by the defendant-respondent No.2 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against M/s Mahaluxmi Enterprises (whose proprietor is shown to be Kanta d/o the defendant-respondent No.1) was on 04.02.2020 and the publication in the newspaper was on 18.02.2020 wherein the details of the mortgaged property were clearly mentioned. However, the plaintiff-petitioner failed to show what steps were taken by her either to approach the defendant-respondents or to find out the reasons why the property in dispute was being put to sale. It is difficult to believe that a person claiming 1/2 share in a property would not take any steps immediately upon finding out that the property was being put to sale.

Learned counsel for the plaintiff-petitioner has contended that a fraud has been committed by the defendant-respondent No.1 with the plaintiff-petitioner in as much as the property in dispute was transferred in favour of Kanta without the knowledge and consent of the plaintiff-petitioner. According to counsel, the defendant-respondent No.1 had no right, title or interest in the 1/2 share of the plaintiff-petitioner and could not

transfer it in favour of Kanta. He further contended that the defendant-respondent No.2 also did not undertake proper due diligence before extending the CC limit to M/s Malaluxmi Enterprises and because of that the plaintiff-petitioner cannot be made to suffer. However, a perusal of the plaint (Annexure P-1) shows that there is no plea of fraud raised. In the absence of anything to show so as to commission of a fraud at this interim and nascent stage, this Court cannot grant any relief to the plaintiff-petitioner on this ground. The defendant-respondent No.2 extended the CC limit after the title deeds of the property in dispute produced before it showed Kanta being the owner. There was no reason for the defendant-respondent No.2 to doubt the veracity of the same.

Under Order 39 of the CPC, jurisdiction of the Court to interfere with an order granting or declining interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. His conduct should be fair and honest. The principles for grant of temporary injunction were considered in the matter of **‘Dalpat Kumar vs. Prahlad Singh’** [(1992) 1 SCC 719] where the Supreme Court observed inter-alia as under :

“5. ... Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant

injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

The civil suit is pending and any action taken by the parties with respect to the property in dispute during the pendency of the civil suit would in any event be covered by the principles of *lis pendens*. As such, this Court does not find that the plaintiff-petitioner has a prima facie case in her favour nor is the balance of convenience in her favour nor would she suffer any irreparable loss.

In view of the above, this Court finds no error in the exercise of jurisdiction and discretion by the Courts below while dealing with the application filed by the plaintiff-petitioner under Order 39 Rules 1 and 2 CPC. The present civil revision petition is devoid of any merit and is dismissed.

It is, however, made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Dismissed.

(ALKA SARIN)
JUDGE

22nd March, 2021
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO