

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.360 of 2022

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Prem Nath Chaubey S/o Late Jagdish Chaubey @ Bhushan Chaubey R/o Village- Khirauli, Ward No. 1, PS.- Dumraw, District- Buxar, at present R/o Neera Apartment Justice Narain Path Nageshwar Colony, Boring Road, Flat No. 202, P.S.- Budha Colony, Patna, District- Patna.

... .. Appellant/s

Versus

Shalini Pathak D/o Late Shiv Prasad Chaubey, W/o Herambar Kumar Pathak R/o MB 32 1st Floor, Gali No. 2, Sakarpur Delhi Pin- 110092

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Chandra Kant, Advocate
For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 15-12-2022

Heard Mr. Chandra Kant, learned counsel for the appellant.

2. The present appeal is directed against the order dated 18.7.2022 passed by the learned Sub-Judge-II, Dumraon, (Buxar) in Title Suit No. 423 of 2021 by which the learned Court rejected the injunction petition.

3. The matrix of facts giving rise to the present appeal is/are as follows:-

4. The plaintiff filed the aforesaid Title Suit for declaration to the defendant to execute the said land with respect to Schedule-1 land of the plaint (as incorporated in Annexure-1) and hand over to him failing which the same shall be executed by the order of the Court.



The genealogy has also been incorporated in the said Annexure-1 according to which, Nathun Choubey was blessed with two sons namely Sachida Nand Choubey and Jagdish Choubey. Further, while Shiv Prasad Choubey was son of Sachida Nand Choubey, Jagdish Choubey was blessed with Onkar Nath Choubey, Prem Nath Choubey (plaintiff), Anil Kumar Choubey , Sunil Kumar Choubey, Amrendra Nath Choubey and Narendra Nath Choubey.

5. Indubala Choubey was married to Shiv Prasad Choubey and the couple was blessed with a daughter, Shalini Pathak, the defendant/respondent herein.

6. The case of the plaintiff is/ was that the father of the defendant-respondent was living with him at Boring Road flat where he expressed his desire to sale the suit land and took Rs. 16,00,000/- but for which no document was prepared. He died on 21.1.2013. Subsequently, Indubala Choubey also expressed her desire to sale the land for which she took 17,50,000/- from the plaintiff and the money was given on 6.11.2013(Rs. 5,00,000/-), 7.11.2013 (Rs. 2,50,000/-) and Rs. 10,00,000/- the same day.

7. The claim of the appellant is that while the lady executed sale deed on 11.11.2013 with respect to payment made



to her late husband, with regard to suit land, she promised him to execute the same in his favour in 2018 i.e. five years after the said payment was made. As she was her sister-in-law (Bhabhi), he decided to wait for the next five years after the payments that were made on 6.11.2013 and 7.11.2013.

8. The lady, Indubala Choubey however, died on 23.11.2017 whereafter the appellant requested the defendant-respondent, his niece to execute the sale deed for the payment that was made to her mother five years ago. As there was no response from her side, legal notice was sent, no reply, reminder was sent, again no response and then because she was the family member waited for another four years and thereafter, filed the Title Suit No. 423 of 2021 (Annexure-1) for specific performance of the contract.

9. The said suit was filed on 7.9.2021 and thereafter in 2022, this year, petition for granting injunction on the suit property was filed.

10. The defendant-respondent filed reply to the said injunction petition wherein she stated that there is no need for her to sale the land, her mother never had any conversation with the plaintiff-appellant herein to sale the land as she was receiving pension, her father being a retired government servant.



She further denied acceptance of any money with regard to the suit land by her mother.

11. So far as the payments that the appellant has alleged to have been made to the lady, it was her case that her mother had already executed the sale deed on 11.11.2013 in favour of the appellant pursuant to the said payment made for the land bearing khata no. 1552, 1775 (plot no. 3566, 3346 and area 82 decimal) and as such the claim put forward by the plaintiff is without any merit and in the said backdrop, no interim protection should be given.

12. The matter was taken up on 18.7.2022 by the Court of learned Sub-Judge-II, Dumraon (Buxar) and it rejected the prayer of the plaintiff-appellant after observing as follows:-

Heard both sides and perused the record, it appears to me that the defendant has appeared in this suit and filed her written statements. Earlier the plaintiff had filed a petition U/O XXXIX, R-1 & 2 of C.P.C. which was allowed by this court for 30 days because the defendant was not present in this



suit on that day. The plaintiff has filed this petition after appearance of defendant. The plaintiff himself submitted that he has filed this suit for specific performance of the contract as the mother of defendant received Rs. 17 lakhs 50 thousand rupees as advance money through cheque and cash. The plaintiff also admitted that no document between them was made. In order to prove the prima facie case the plaintiff has filed a Cheque of PNB given in the name of Indubala Choubey on dated 06.11.2013, the bank statements of PNB by which it appears that the Indubala withdrawn Rs. 10 lakhs on dated 7.11.2013, on the same day Prem Nath Choubey withdrawn Rs. 250,000/-. The plaintiff has also filed the



statement of ICICI bank in the name of Vivek Chaturvedi in which he himself withdrew Rs. 5 lakhs on dated 06.11.2013. On other hand the defendant filed several sale deed including the sale deed dated 11.11.2013 executed by Indubala Choubey (mother of defendant) in favour of Prem Nath Choubey (plaintiff) bearing Khata No. 1552, 1775, plots no. 3566, 3346, area-82 decimals for the total consideration amount of Rs. 19,70,000/-. After considering the above facts, circumstances and the documents available on the record its appear to me that the plaintiff as alleged that he paid Rs. 17 lakhs 50 thousand to Indubala through cash and cheque, the said amount might have been given to her for the consideration of Sale



deed executed and registered on dated 11.11.2013. The plaintiff himself submitted that Indubala was died on 23.11.2017 and the plaintiff neither paid any amount nor got executed any document by Indubala between 11.11.2013 to 23.11.2017. The plaintiff himself shows that he had paid entire amount of 17 lakhs 50 thousand on dated 06.11.2013 & 7.11.2013 by cash and Cheque, its prima facie that the said amount was paid for the consideration of sale deed dated 11.11.2013. No any registered and unregistered agreement to sale was executed, hence, no prima facie case made out in favour of plaintiff and against the defendant. At the same time balance of convenience also does not lies in favour of plaintiff,



hence, no question to cause irreparable loss to the plaintiff. Hence, the petition of plaintiff dated 16.03.2022 is hereby rejected. Put up on dated 17.08.2022 for the hearing on the petition of defendant dated 21.03.2022 filed U/O VII, R-11 of C.P.C.

13. Aggrieved, the present appeal has been filed.

14. Mr. Chandra Kant, learned counsel for the appellant reiterated that after 1977 the partition happened between Shiv Prasad Choubey and Jagdish Choubey, Shiv Prasad Choubey came in exclusive possession of his land. However, the relationship was cordial and the defendant's father used to live with the plaintiff-appellant herein.

15. It is his further submission that Shiv Prasad Choubey had taken 16,00,000/- for a land but unfortunately died on 21.1.2013.

16. Although, there was no chit of paper with regard to the said transaction, the lady came forward and the sale deed that was executed on 11.11.2013 with regard to earlier



payment made to her husband and not the payments that were made between 6.11.2013 and 7.11.2013.

17. It is his further case that in the circumstance, the learned Court erred in not granting interim relief, thus forcing him to knock the doors of this Court.

18. In support of his case, he has cited **2001(2) PLJR** specifically para-9 which states as follows:-

9. Having considered the rival submission, I am of the view that this application ought to be allowed. Law is well settled that if a lis has been admitted for adjudication, then it becomes the duty of the Court to preserve the subject matter of the litigation by an appropriate order so that the same is available at the time of final adjudication and the decree does not become a barren one. Secondly, the circumstances have changed since the order dated 16.8.99 was passed. While dealing



with such an application filed pursuant to this Court's order dt. 16.8.99, the trial court has recorded in its order dated 25.9.2000 (Annexure B) that no steps for preparation of the final decree have at all been taken by the parties. He has, therefore, found himself unable to entertain the said application. Secondly, after the aforesaid order has been passed whereby the balance of the suit has been revived, it is in the fitness of the things that this Court should interfere in the matter. In that view of the matter, both the sides are hereby injuncted from changing the nature, character, user of, or cutting any of the trees standing on, the suit property, or alienating any portion, till further order of this Court.



19. In the said case, the appeal arose out of the partition suit. During the pendency of the said suit, the State Government had issued notification under Section (3) 1 of the Bihar Consolidation of Holdings and Prevention Act, 1956 wherein the defendant appeared and stated that the suit had abated in view of the aforesaid notification but the trial Court held that the same has not abated with respect to plot no. 82, 247 and 267 and it was in that circumstance that the learned Single Judge of the Patna High Court granted the interim protection.

20. This in the considered view of the Court does not come to the rescue of the appellant herein. Here it is a clear case that lady received consideration amount between 6.11.2013 and 7.11.2013 and subsequently executed a sale deed with respect to the lands as incorporated above and the prayer for specific performance is still under adjudication, after having satisfied, the learned Court was justified in passing the order in question.

21. The learned counsel for the appellant next cited **AIR 1987 Rajasthan 143** with emphasis on para-7 of the petition. Para-7 of the said order of the **Rajasthan High Court** read as follows:



7. I have carefully gone through these authorities and I am of the view that the view taken by this Court in 1980 WLN (UC) 401 (Mahesh Chand Heda v. Mahesh Prasad), is correct. Bombay High Court in Venkat Dharmaji Contalwar's case, (AIR 1983 Bom 413)(supra) dissented from the view taken by the Madras High Court in Krishna Moorthy Koundar's case (AIR 1981 Mad 310) (supra). The case of the plaintiff is that it has been put in possession of the suit land under an agreement of sale. Ordinarily his rights should be protected. There is no bar under C.P.C. which can be invoked in support of the proposition that the plaintiff suing for specific performance cannot obtain any injunction



whatsoever and since there is no bar in the CPC, an application for grant of temporary injunction is solely governed either by O. 39, Rr. 1 and 2 CPC. Injunction is a preventive relief and if the respondent is permitted to sell the plot of land to third party during the pendency of the suit and the third party may make constructions, it will obviously cause further litigation and complication and as such, I am not inclined to follow the view taken by the Madras High Court in Krishna Moorthy Koundar's case (supra).

22. In the considered view of this Court, this too does not help him inasmuch as in that particular case, there was an agreement to sale between the parties and the case of the plaintiff was that it has been put in possession of the suit land under agreement of sale and this backdrop the Court held that



ordinarily the right should be protected.

23. However, in this case, there is clear denial on the part of the defendant-respondent herein of any payment of Rs. 16,00,000/- without any chit of paper to her late father prior to his death on 21.1.2013 and thus the onus lies on the appellant to prove otherwise in the Title Suit No. 243 of 2021.

24. Having taken into account the submission put forward by the appellant as also the order dated 18.7.2022 wherein the learned Judge has specifically taken note of the fact that there is document to show that for the payments that were made on 6.11.2013 and 17.11.2013, the lady, late Indubala executed sale deed on 11.11.2013 with respect to land bearing Khata no. 1552, 1775 (plot nos. 3566, 3346-area 82 decimal). As such unless proved otherwise, it will be assumed that the sale deed was executed by her pursuant to the payments that she received on 6.11.2013 and 7.11.2013.

25. This Court has also taken note of the documents as well as the submissions put forward by the learned counsel for the appellant that for the payments that although payments made quickly on 6.11.2013 and 7.11.2013, it accepted the words of the lady who assured that she will be executing the sale deed five years later (in 2018) they readily



accepted it as there was family relationship between the parties. The aforesaid argument/averment does not seem plausible to this Court. It must be noted that the lady died on 23.11.2017 whereafter the five years story came into existence.

26. Taking into account all the aforesaid facts, this Court does not find any error in the order dated 18.7.2022 passed by the Court of learned Sub-Judge-II, Dumraon (Buxar) in Title Suit No. 423 of 2021 rejecting the prayer of the plaintiff-appellant for temporary injunction.

27. The M.A. No. 360 of 2022 fails and is accordingly dismissed.

28.Nothing observed in the order which shall be considered at the time of hearing of Title Suit No. 243 of 2021 which shall be decided on its own merit.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.12.2022
Transmission Date	NA

