

13 **11.07.
2023**

Ct. No. 04

Ab

**FMA 834 of 2021
IA No. CAN 1 of 2021**

**Sri Debaditya Banerjee
Vs.
Smt. Reba Dey and another.**

**Mr. Mahendra Prosad Gupta,
Mr. Subhas Chandra Atha,
Ms. Payel Pramanik,
Mr. Antra Panja.**

... for the appellant.

**Mr. Soumik Ganguly,
Ms. Chandana Chakraborty.**

... for the respondent no. 2.

The instant appeal arises from an order no. 6 dated 7th July 2021 passed in Title Suit No. 81 of 2021 by which a prayer for ex parte ad interim order of injunction was refused.

The plaintiff/appellant filed a suit for specific performance of an agreement for sale in respect of the suit properties entered into by and between the plaintiff/appellant and the defendant no. 1/respondent. It is alleged in the plaint that despite performing his part on an obligation under the said agreement, the defendant no. 1/respondent surreptitiously transferred the suit premises in favour of the defendant no.2/respondent.

The suit was filed impleading both the original owner as well as the subsequent purchaser as party. In the said suit, an application for temporary injunction was taken out restraining the defendants/respondents from changing the nature and character of the suit premises and also alienating the suit properties in favour of a third party.

The trial court refused to pass an ex parte ad interim order of injunction solely on the ground that the moment the defendant no. 2/respondent has purchased the said property from the defendant no. 1/respondent

and in possession of the same, it would not be proper to pass an ex parte ad interim order of injunction without giving a notice to the said defendants.

At the time of admission of the instant appeal, this Court passed an interim order to the effect that if any transfer is made by the defendant no. 2/respondent, it would abide by the result of the instant appeal. The said order was passed as far back as on 29th September 2021 and is still operative.

It is no doubt true that in a suit for specific performance of an agreement for sale, if the defendants are allowed to alienate and/or transfer the subject property in favour of a third party, it would invite the impleadment of the said party and would delay the disposal of the suit. Sometimes it may augment the multiplicity of the proceedings. Apart from the same, the transferee pendente lite may take an equitable defence as a bona fide purchaser for value without notice, which may sometimes frustrate the decree for specific performance of an agreement for sale.

Though after the radical amendment has been brought under Section 10 of the Specific Relief Act, it is no longer the discretion of the court in passing a decree for specific performance of an agreement yet it does not whittled down the right of the bona fide purchaser to take equitable defence.

Such being the vexed question, we do not intend to go into the above aspect, more particularly, after noticing that the interim order passed by our predecessor in Bench is operating for nearly two years, we feel that it would be beneficial for both the parties if the application for temporary injunction is disposed of within the limited time.

Since the defendant no. 2/respondent, who is a purchaser pendente lite is appearing before us, there is no difficulty in disposing of the application for temporary injunction as the defendant no. 1/respondent has walked

out after transferring the said property in his favour.

We, therefore, direct the defendant no. 2/respondent to file an affidavit-in-opposition to the application for temporary injunction within three weeks from date; reply thereto, if any, shall be filed within a week thereafter. The trial court is requested to dispose of the application for temporary injunction within two weeks from the date of expiry of period for exchange of affidavits in accordance with law.

Pending the disposal of the temporary injunction application, the defendant no. 2/respondent is restrained from alienating, transferring and/or selling the suit property to a third party in any manner whatsoever.

For abandon precaution it is hereby made clear that consideration at the time of passing an ad interim order of injunction is different than the consideration at the time of passing temporary injunction after exchange of affidavits and, therefore, the trial court shall not be swayed by the fact that this Court has passed an ad interim order of injunction and decide the same on merit. It is further made clear that all points available to the defendant no. 2/respondent are kept open and if taken, shall be decided by the Court in accordance with law.

The appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

