IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 58 OF 2025
WITH
INTERIM APPLICATION NO. 1022 OF 2025
IN
APPEAL FROM ORDER NO. 58 OF 2025

Pawan Chandulal Khemani .....Appellant

Vs.

Mr. Ritesh Raj Chawla and Ors .....Respondents

Mr. Y. S. Jahagirdar, Senior Advocate a/w Mr. Nitin Gaware Patil for the appellant
Mr. A. Y. Sakhare, Senior Advocate i/b Mr. Devmani Shukla for respondent nos. 6 and 7
Mr. Bhavesh Parmar a/w Ms. Reshma Nair a/w Mr. Rajesh Sahani for respondent nos. 1 to 3

CORAM : GAURI GODSE, J.

DATE : 31st JANUARY 2025

ORDER:

1. Heard learned senior counsels for the parties. This appeal is preferred by the plaintiffs to challenge the refusal of grant of interim injunction during the pendency of the suit. The suit is instituted by the appellant to seek specific performance of an agreement for sale executed by one deceased Raj Chawla. The agreement is executed in

respect of a property owned by defendant no. 7-partnership firm. Defendant nos. 1 to 3 are heirs and legal representatives of deceased Raj Chawla who signed the suit agreement. Rest of the defendants are partners of defendant no. 7. In addition to the prayer for specific performance, there are prayers seeking decree of partition, dissolution of partnership firm and payment of damages. In the said suit, the application was filed seeking interim injunction during pendency of the suit. The application for temporary injunction seeks to restrain the defendants from creating third party rights in respect of the suit property or from carrying out any construction or development work or changing the status of the suit property. This application is rejected by the trial Court. Hence, this appeal by the original plaintiff.

2. Learned senior counsel for the appellant submits that admittedly deceased Raj Chawla had 15% share in the partnership firm. He submits that based on his rights in the partnership firm, he executed the said agreement to transfer his undivided right in the properties of the partnership firm in favour of the plaintiff. He further submits that the clauses of the agreement indicates that the plaintiff was informed that this transaction is known to all the partners of the partnership firm and it would bind all the partners. He submits that deceased Raj Chawla

being partner of the partnership firm who owns the property had every right to transfer his undivided right as partner in favour of the plaintiff.

3. To support his submissions on the rights of the plaintiff to seek specific performance, learned senior counsel for the appellant relied upon the unamended Section 14 of the Specific Relief Act. He submits that sub clause (ii) of clause (b) of sub-section (3) of Section 14 of the Specific Relief Act permits the purchaser to seek specific performance for purchasing a share of a partner in a firm. He, thus, submits that deceased Raj Chawla who admittedly was partner having 15% share in the partnership firm had every right to execute the suit agreement. He, thus, submits that the plaintiff, if succeeds in the suit, would be entitled to seek specific performance for transferring 15% undivided right, title and interest in the suit property and also seek partition of the suit property based on the rights created in favour of the plaintiff pursuant to the suit agreement. He submits that based on the agreement, the plaintiff would also be entitled to seek dissolution of the partnership firm on his right of being added as a partner based on the suit agreement which is executed by partner of defendant no. 7-partnership firm.

4. Learned senior counsel for the appellant raises objection on

reasons recorded by the trial Court in refusing the prayer of injunction. He submits that the trial Court at a preliminary stage has recorded findings on the merits of the suit agreement and the plaintiff's right to seek specific performance. He points out the observations of the trial Court from paragraph 29 to paragraph 32 of the impugned order. He submits that the trial Court has erroneously considered non filing of the promissory note referred to in the agreement as suppression of material facts. He submits that promissory note executed by deceased Raj Chawla are referred to in the plaint and thus, there is no suppression. He raises objection on the observations of the trial Court that since the suit property would be affected in view of the proposed acquisition for public purpose, no prudent man would have entered into such an agreement. He submits that said observations are erroneous at the stage of deciding the application for interim relief. He submits that the trial Court has not considered the basic principles of balance of convenience and irreparable loss. He, thus, submits that the application for interim relief is dismissed on erroneous findings.

5. I have perused the papers of the appeal. There is no dispute that the suit agreement was executed by deceased Raj Chawla in his individual capacity and not as a partner of the partnership firm or on

behalf of the partnership firm. It is also not disputed that the property which is subject matter of the suit agreement is exclusively owned by defendant no. 7-partnership firm. Nothing is shown on record to indicate that deceased Raj Chawla had any undivided share in the suit property, being a partner. A perusal of the terms and conditions of the agreement indicates that the agreement is executed for sale of 15% undivided share of deceased Raj Chawla in the suit property. None of the clauses in the agreement indicates that deceased Raj Chawla intended to transfer his 15% share in the partnership firm. In the absence of any clause agreed between the parties for transferring any share in the partnership firm of a partner, the provision of the unamended Section 14 of the Specific Relief Act, relied upon by the learned senior counsel for the appellant would not be relevant for deciding the application for interim relief in the present suit.

6. Apart from the suit agreement, no other right is claimed by the plaintiff in respect of the suit property. The prayers in the suit is for specific performance of the suit agreement based on an agreement executed by a person who admittedly has no individual right in the suit property admittedly owned by the partnership firm. Therefore, the prayer for a decree for partition based on the suit agreement would at

this stage cannot be said to be creating any right in favour of the plaintiff. In the absence of any agreement for transferring any right in the partnership firm as partner of the partnership firm, none of the arguments show any prima facie right in favour of the appellant. All the submissions can be examined only after a full fledged trial. Hence, in the absence of any prima facie right, interim injunction as prayed cannot be granted.

7. For deciding an application for grant of interim injunction as contemplated under Order XXXIX of Code of Civil Procedure, 1908, three basic principles are required to be considered i.e. prima facie case, balance of convenience and irreparable loss. So far as prima facie case is concerned, in view of the aforesaid facts, I see no error in the opinion recorded by the trial Court that the agreement relied upon by the plaintiff prima facie does not indicate any right in favour of the plaintiff. With regard to irreparable loss, the trial Court has referred to the terms of the suit agreement which indicates promissory notes signed by deceased Raj Chawla for securing the total consideration as agreed in the suit agreement. Hence, the trial Court has rightly considered that the plaintiff would not suffer irreparable loss upon rejection of the application for interim relief. Since there is no dispute

that defendant no. 7-partnership firm is the absolute owner of the suit property, balance of convenience would obviously be in favour of defendant no. 7 as admittedly there is no agreement executed by defendant no. 7 or on behalf of defendant no. 7 in favour of the plaintiff. Except for the suit agreement executed by deceased Raj Chawla in his individual capacity, there is no other right claimed by the plaintiff.

8. In view of these facts, prima facie opinion recorded by the trial Court in the impugned order cannot be faulted. In the absence of any prima facie right in favour of the plaintiff, injunction as prayed in the application in the suit cannot be granted. The grant of any such injunction would cause prejudice to the rights of defendant no. 7 who is admittedly owner of the suit property. Considering the nature of the prayers in the suit, it cannot be said that there will be any irreversible injury to the plaintiff, that cannot be compensated in terms of money. Granting injunction is an extraordinary power vested to grant a discretionary relief, by weighing the risk of injustice. Thus, in the present case, defendant no. 7 is likely to suffer higher prejudice if injunction is granted.

9. The grounds raised in the appeal does not indicate that there is

any prima facie right created in favour of the plaintiff. Thus, the appeal is devoid of any merit. Hence, the appeal is dismissed.

10. In view of dismissal of the appeal, Interim Application No. 1022 of 2025 is disposed of as infructuous.

11. Learned senior counsel for the appellant at this stage requests for extension of the order directing the parties to maintain status-quo granted by the trial Court on 5th April 2024.

12. Learned senior counsel for respondent nos. 6 and 7 vehemently opposes the extension of any such order of status-quo. He submits that the prayer for extension was rejected by the trial Court on 10th December 2024. He submits that there is no such extension granted even by this Court.

13. In the facts and circumstances of the case and considering that there was order of status-quo during pendency of the interim application before the trial Court, I find it appropriate that to enable the plaintiff to approach the Hon'ble Apex Court, respondents shall not create any third party rights for a period of four weeks.

[GAURI GODSE, J.]