2025:AHC:187262

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No. - 2422 of 2025

Mahesh Kumar And 3 Others

.....Appellant(s)

Versus

Omaira Buildcon Proprietor Lalit Gogia

.....Respondent(s)

Counsel for Appellant(s) : Aishwarya Pratap Shahi, Nipun Singh
Counsel for Respondent(s) : Krishna Mohan Garg

Court No. - 38

A.F.R.

HON'BLE SANDEEP JAIN, J.

1. The instant appeal under Order 43 Rule 1(r) of the C.P.C. has been preferred by the plaintiffs against the impugned order dated 17.09.2025 passed by the court of Civil Judge (Senior Division), Gautam Buddha Nagar in Original Suit No.751 of 2023 (Mahesh and others vs. Omaira Buildcon Proprietor Lalit Gogia) wherein plaintiffs' interim injunction application under Order 39 Rule 1 & 2 C.P.C. has been rejected on merits.

2. Factual matrix is that the plaintiffs have filed Original Suit No.751 of 2023 against the defendant with the averments that the defendant is owner of land situated in khet No.114M, area 3250 square yard, village Mirzapur, Pargana Dankaur, Tehsil and District Gautam Buddha Nagar which was agreed to be sold to plaintiffs for a consideration of Rs.2.05 crores, regarding which there were talks between him and the defendant in November, 2021 and in furtherance of that, a registered agreement to sell in presence of the witnesses was executed by the defendant in favour of the plaintiffs on 28.07.2022. According to which, the defendant had already received consideration of Rs.1.85 crores prior to the execution of the agreement and it was agreed that after paying the remaining consideration of Rs.20 lacs within a period of three months till 28.10.2022, the defendant will execute the sale deed in favour of the plaintiffs, but inspite of the plaintiffs readiness and willingness to fulfill the terms and conditions of the above agreement, the defendant defaulted and failed to execute the sale deed in favour of the plaintiffs, inspite of the legal notice by the plaintiffs to appear on 28.10.2022 before the concerned Sub-Registrar, Gautam Buddha Nagar. It is the case of the plaintiffs that when the defendant

failed to execute the sale deed in their favour, then they was compelled to file the suit for the relief of specific performance of registered agreement to sell dated 28.07.2022.

3. During the pendency of the suit, the plaintiffs filed an interim injunction application under Order 39 Rule 1 & 2 C.P.C. on the ground that the defendant be restrained from selling the disputed land in favour of third parties. The application was supported by an affidavit of plaintiff Mahesh Kumar, which reiterated the plaint averments and further mentioned that the defendant's intention had turned malafide and he was intending to sell the disputed land to other persons, which will complicate the issue, as such, the defendant be restrained from alienating and selling the property.

4. The defendant opposed the above interim injunction application by filing his written objections in which it was averred that the defendant was the owner in possession of the disputed land and he was recorded as a tenure holder in the revenue record. It was further averred that no agreement to sell was executed by the defendant in favour of the plaintiffs and an amount of Rs.1.85 crores was taken as loan by the defendant. The plaintiffs wanted to usurp the disputed land.The defendant was ready to return the amount of Rs.1.85 crores to the plaintiffs, but plaintiffs were unwilling to accept it. The alleged agreement to sell was executed as a security for the loan taken by the defendant from the plaintiffs. The defendants never sold the disputed property to the plaintiffs. It was further submitted that two months after the execution of alleged agreement to sell, the defendant had arranged the money and offered it to the plaintiffs in lieu of cancelling the agreement to sell but the plaintiffs refused. The plaintiffs were not ready and willing to fulfill the terms of the agreement to sell. It was further averred that the market value of the disputed land was at least Rs.8 crores.

5. The trial court by impugned order dated 17.09.2025 has rejected the plaintiffs' interim injunction application on the ground that the plaintiffs were neither in possession of the disputed land nor registered as tenure holder in the revenue records. It was further opined by the trial court that on the basis of the alleged agreement to sell, plaintiffs were not owners of the disputed land, which belonged to several co-owners and the specific land was unidentifiable. Further, the plaintiffs were not in possession of the disputed land. On the basis of the above reasoning, the trial court concluded that a prima facie case was not made

out in favour of the plaintiffs and as such, the balance of convenience was also not in their favour. It was further opined that if any transfer of the disputed land was made by the defendant during the pendency of the suit, then it will barred by the principle of *lis-pendens* which will remain binding on the transferee and as such, no irreparable injury will be caused to the plaintiffs. With this reasoning, the trial court has rejected the plaintiffs' application, aggrieved against which, the plaintiffs has filed this appeal.

6. Learned counsel for the plaintiffs-appellant submitted that the reasoning of the trial court is perverse and is liable to be set aside because the plaintiffs never averred that they have got any title in the disputed land nor the plaintiffs were in possession. The title and possession of the disputed land was never in issue. Learned counsel submitted that only issue was that defendant was intending to sell the disputed land and if that occurred, then it will create complications in the suit, as such, interim injunction application was moved to restrain the defendant from alienating or creating third party rights in the disputed land. Learned counsel submitted that the Apex Court in the case of ***Ramakant Ambalal Choksi vs. Harish Ambalal Choksi & Others(2024) 11 SCC 351*** , has specifically dealt with this contention and held that notwithstanding the Rule of *lis-pendens* in Section 52 of the Transfer of Property Act, injunction under Order 39 CPC, restraining the *pendente lite* transfers can be granted. With these submissions, it was prayed that the appeal be admitted and decided on merits.

7. Per contra, learned counsel for the defendant-respondent submitted that there is no illegality in the impugned order because no such agreement to sell was executed by defendant in favour of the plaintiffs. Learned counsel further submitted that the doctrine of *lispendens* enumerated in Section 52 of Transfer of Property Act is applicable and if the defendant sells the disputed land then the subsequent purchaser will be bound by the decision passed in the original suit. Learned counsel submitted that in view of Section 52 of the Transfer of Property Act, the plaintiffs are not entitled to get interim injunction in their favour. Learned counsel further submitted that merely on the basis of registered agreement to sell, no right, title and interest was created in favour of the plaintiffs, the plaintiffs also are not in the possession of the land, as such, neither there was any title in favour of the plaintiffs nor they are in possession, as such, the plaintiffs are not entitled to get the relief of interim injunction from the Court. In support of his contention, learned counsel has relied upon the

following case law:-

1. Guruswamy Nadar vs. P. Lakshmi Ammal (Dead) Through Lrs. and others, (2008) 5 SCC 796.

2. Rambhau Namdeo Gajre vs. Narayan Bapuji Dhotra (Dead) Through Lrs., (2004) 8 SCC 614.

3. Shivshankara & Another vs. H.P. Vedavyasa Char, (2023) 13 SCC 1.

4. Madhukar Nivrutti Jagtap & Others vs. Pramilabai Chandulal Parandekar (Dead) through Lrs. & Others, (2020) 15 SCC 731.

5. Raheja Universal Limited vs. NRC Limited & Others, (2012) 4 SCC 148.

6. Vijay A. Mittal & Others vs. Kulwant Rai (Dead) through Lrs. & Another, (2019) 3 SCC 520.

7. Durga Prasad & Another vs. Deep Chand & Others, AIR 1954 SC 75.

8. Dharma Naika vs. Rama Naika & Another, (2008) 14 SCC 517.

9. Bina Murlidhar Hemdev & Ors. vs. Kanhaiyalal Lokram Hemdev & Ors. AIR 1999 SC 2171.

10. Elitom Manne Mallesh vs. Elitom Manne Kistaiah & Ors. 2020 SCC OnLine TS 3049

8. With these submissions, it was prayed that the appeal has got no merits and is liable to be dismissed at the admission stage.

9. I have heard learned counsel for the parties and perused the impugned judgment and the documents annexed with the appeal.

10. Appeal is admitted.

11. It is apparent that the plaintiffs have filed the suit for specific performance of registered agreement to sell dated 28.07.2022, according to which, the disputed land was agreed to be sold to the plaintiffs by the defendant for a consideration of Rs.2.05 crores, out of which Rs.1.85 crores have already been paid by the plaintiffs to the defendant and the remaining amount of Rs.20 lakhs is to be paid within three months from the date of execution of the agreement, failing which the plaintiffs have filed the instant suit.

12. It is evident that in the registered agreement to sell, it is itself mentioned that the disputed land was in possession of the defendant and its possession will be given to the plaintiffs at the time of execution of sale deed in their favour. It is also well settled that on the basis of the registered agreement to sell, no right, title and interest is created in favour of the vendee. It is apparent that the plaintiffs are not protecting their possession of the disputed land. They are only claiming the interim relief that the defendant be restrained from alienating or

transferring the disputed land in favour of the third party, which is perfectly in accordance with law.

13. The Apex Court in the case of ***Ramakant Ambalal Choksi vs. Harish Ambalal Choksi and others, 2024 (11) SCC 351***, has held as under:-

"*44. Quite often, in these types of litigations, it is sought to be argued that an injunction restraining the defendant from transferring the suit property was absolutely unnecessary as no post-suit transfer by the defendant can adversely affect the result of the suit because of the provisions of Section 52 of the TP Act whereunder all such transfers cannot but abide by the result of the suit. It is true that the doctrine of lis pendens as enunciated in Section 52 of the TP Act takes care of all pendente lite transfers; but it may not always be good enough to take fullest care of the plaintiffs interest vis-à-vis such a transfer. We may give one appropriate illustration of a suit for specific performance of contract based on an agreement of sale. In a suit wherein the plaintiff prays for specific performance and if the defendant is not restrained from selling the property to a third party and accordingly a third party purchases the same bona fide for value without any notice of the pending litigation and spends a huge sum for the improvement thereof or for construction thereon, the equity in his favour may intervene to persuade the Court to decline, in the exercise of its discretion, the equitable relief of specific performance to the plaintiff at the trial and to award damages only in favour of the plaintiff. It must be noted that Rule 1 Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the doctrine of lis pendens as enacted in Section 52 of the TP Act was regarded to have provided all the panacea against pendente lite transfers, the legislature would not have provided in Rule 1 for interim injunction restraining the transfer of suit property. Rule 1 Order 39, in our view, clearly demonstrates that, notwithstanding the Rule of lis pendens in Section 52 of the TP Act, there can be occasion for the grant of injunction restraining pendente lite transfers in a fit and proper case. (See Muktakesi Dawn v. Haripada Mazumdar [Muktakesi Dawn v. Haripada Mazumdar, 1987 SCC OnLine Cal 51 : AIR 1988 Cal 25] .)"*

14. The Apex Court in the case of ***Ramakant Ambalal Choksi*** (supra) has held that interim injunction under Order 39 Rule 1 of the C.P.C. can be granted in favour of the plaintiff for restraining the defendant from alienating or selling of

the disputed property and a plea of Section 52 of the Transfer of Property Act cannot be taken for not granting the above relief. The Apex Court has specifically held that if Section 52 of the Transfer of Property Act was regarded to have provided, all the panacea against the *pendente lite* transfer then legislature would not have provided the remedy of interim injunction under Order 39 C.P.C.. The Apex Court has specifically held that in a particular case, a relief of injunction can be granted in favour of the plaintiffs for restraining *pendente lite* transfers in an appropriate case.

15. I have considered the case laws submitted by learned counsel for the respondent, which are not applicable on the facts of the case. All the case laws deal with an agreement to sell, which reiterate the settled legal position that the agreement to sell does not confer any right, title or interest in the disputed property. Further, it has been mentioned that for obtaining the decree of specific performance in its favour, the plaintiff has to prove readiness and willingness to perform its part of the agreement.

16. In the case of ***Guruswamy Nadar*** (supra), the Apex Court has considered the effect of *lispendens* between the original parties and has held that party purchasing the property after the suit had been filed by the original purchaser, does not get good title. It was further held that the benefit of exception was not available to that party in view of doctrine of *lispendens*. There is no quarrel with the above proposition of law.

17. It is apparent that the plaintiffs, apprehension is that the defendant is intending to sell the disputed land and if the defendants succeeds in doing so, it will create complications in the suit and it will create third party rights and for avoiding this, the plaintiffs have filed the interim injunction application before the trial court, which has been rejected on the erroneous reasoning that neither the plaintiffs are the owner of the disputed land nor in possession, which is an admitted position of the plaintiffs, but the plaintiffs are not protecting their possession of the disputed land. As such, the above reasoning of the trial court is perverse and is liable to be set aside.

18. It is apparent that in given circumstances, the relief of interim injunction can be granted in favour of the plaintiffs against the defendant for preventing the defendant from alienating or transferring the disputed property, even if the principle of lispendens enumerated in Section 52 of the Transfer of Property Act is applicable, as held by the Apex Court in the case of ***Ramakant Ambalal***

Choksi (supra).

19. In view of the aforesaid facts, the trial court has certainly erred in rejecting the plaintiffs' interim injunction application under Order 39 Rule 1 & 2 C.P.C., which deserves to be allowed.

20. Accordingly, this appeal is **allowed**. The impugned order dated 17.09.2025 is set aside. The plaintiffs' application 6C-2 under Order 39 Rule 1 & 2 C.P.C. stands allowed. Consequently, the defendant is restrained from alienating, transferring or creating third party rights in the disputed land, during the pendency of the suit.

21. The trial court is directed to decide the original suit preferably **within a period of six months** from the date of production of certified copy of this order, without affording unnecessary adjournments to the parties, on merits, in accordance with law.

(Sandeep Jain,J.)

October 15, 2025
Jitendra