

In the matter of :-

Prakash Chand Gupta & Ors.

.....plaintiffs

vs.

Ajay Gupta & Ors.

.....Defendants

Dated : 28/07/2022

- 1) By this order, I shall dispose of the application filed under Order 39 Rule 1 and 2 CPC on behalf of the plaintiff for the relief that the defendants be restrained from selling, transferring, alienating, or parting with possession or creating any 3rd party interest in the suit property till the disposal of the suit.
- 2) The plaintiffs have filed the subject suit for recovery of ₹43,68,000/-, along with interest @ 24% per annum or **in the alternative** a decree of possession with respect to the entire first floor portion of the property and roof rights of the 3rd floor of the property bearing no. A- 23, Ganesh Nagar, Pandav Nagar, Delhi- 110092 as shown in red colour in the site plan.
- 3) The plaintiffs are also seeking the relief that the defendants be directed by way of mandatory injunction to execute the sale deed with respect to the said property in favour of the plaintiffs. The plaintiffs are also seeking the decree of permanent injunction thereby restraining the defendants their agents, etc. from creating 3rd party interest in the suit property.
- 4) It is stated in the application that the plaintiff along with

the suit had filed an application under the same provision. However the same was not pressed for. The reason as given for moving the present application is that recently the plaintiffs got suspicious about the intentions of the defendants because many people were visiting and inspecting the property along with the defendants. The plaintiffs saw a poster stating "URGENTLY PROPERTY FOR SALE – 1st FLOOR, 100 SQYDS TWO ROOM SET WITH HALL & 3rd FLOOR, TERRACE WITH ONE ROOM SET A-23, GANESH NAGAR", which was affixed in the suit property as well as in the local area.

5) It is the say of the plaintiffs that if the defendants are not restrained and in case the plaintiffs did succeed to get the relief as sought, the plaintiffs will suffer irreparable loss and injury and it would also lead to multiplicity of suits and litigation.

6) By way of reply to the present application, the defendants have opposed the application in hand on various grounds. Same shall be taken note of if found relevant.

7) I have heard the arguments and perused the record.

8) Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the Court in exercise of the power of granting *ad interim* injunction is to preserve the subject matter of the suit in the *status quo* for the time being. It is settled law that the grant of an injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that:

- (1) There is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is a probability of his being entitled to the relief asked for by the plaintiff/defendant;

(2) The court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established by trial; and

(3) That the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. Therefore, the burden is on the plaintiff by evidence *aliunde* by affidavit or otherwise that there is "a *prima facie* case" in his favour which needs adjudication at the trial.

(9) The existence of the *prima facie* right and infraction of the enjoyment of his property or the right is a condition for the grant of a temporary injunction. *Prima facie* case is not to be confused with *prima facie* title which must be established, on evidence at the trial. Only *prima facie* case is a substantial question raised, *bona fide*, which needs investigation and a decision on the merits.

(10) Satisfaction that there is a *prima facie* case by itself is not sufficient to grant an 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 an 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 an injunction. The Court while granting or refusing to grant an 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 it 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 the status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of an interim injunction pending the suit. (See **Dalpat Kumar v. Prahlad Singh**; AIR 1993 SC 276).

(11) If the plaintiff has *prima facie* case on balance of convenience in favour even then the plaintiff would have to satisfy the Court that if the relief as sought by the plaintiff is not granted by the Court the plaintiff would suffer an injury which would be irreparable i.e., which cannot be compensated in the financial terms or otherwise. In this context it is apposite to take note of Section 52 of Transfer of Property Act.

(12) Section 52 of the Transfer of Property Act provides for the doctrine of *lis pendens* which is expressed in the maxim "*ut lite pendente nihil innovetur*." It imposes a prohibition on transfer or otherwise dealing of any property during the pendency of a suit, provided the conditions laid down in the Section are satisfied. The principle of "*lis pendens*" is in accordance with the equity, good conscience, or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienation is permitted to prevail.

(13) A transferee *pendente lite* is bound by the decree just as much as he was a party to the suit.

(14) The litigating party is exempted from taking notice of title acquired during the pendency of litigation.

(15) Any alienation of the property which is the subject matter of the suit during the pendency of the suit would be subject to the decision of the suit.

(16) The Supreme Court in catena of cases has held that transfer *pendente lite* is neither illegal nor void *ab initio* but remains subservient to right eventually determined by court in pending litigation. The decision of the court in a suit is binding not only on litigating parties but also on those who derive title *pendente lite*.

(17) Transferees *pendente lite* are not entitled to claim rights in the suit property by claiming to be bona fide purchaser for value without notice, because, there is an absolute bar to transfer of a suit property *pendente lite* by virtue of Section 52 of Transfer of Property Act. Merely because a person did not know of pendency of a suit, and therefore did not or could not seek to be impleaded, it cannot mean that the bar of Section 52 will not operate. The transferee *pendente lite* cannot use the provision pertaining to filing objections under Order XXI Rule 97, rule 99 etc. of Code of Civil Procedure, against the judgment and decree.

(18) Because of the doctrine of *lis pendens* as enacted in Section 52 of the Transfer of Property Act even if the apprehensions of the plaintiffs turn out to be true that is the defendants, their agents, etc. are successful in transferring, alienating and/or parting with the possession of the suit property acquires any 3rd party interest in the suit property no irreparable injury of any kind is going to be caused to the plaintiffs.

(19) It may also be noted that if the defendants are intending to create any 3rd party interest in the suit property the defendants would be obligated to disclose about the pendency of the present suit; if the defendants do not disclose they will be guilty of fraud, it is very unlikely that any person would try to take a property with respect to which the proceeding is pending in the Court in view of doctrine of *lis pendens* which would be applicable even if such persons are not informed about the pendency of the present suit by the defendants.

(20) In the light of discussion herein above, the Court does not find any merit in the application. Hence, the same is dismissed. In the circumstances of the case, there is no order as to costs.

(VIJAY KUMAR JHA)
Addl. District Judge-02 (East)
Karkardooma Courts/ 28/07/2022