

CS No.656/2017

Nirmala Gupta
versus
Rajesh Kumar Garg & Ors.

14.11.2017

Present: Sh. Gaurav Gaur, counsel for the plaintiff.
Sh. Sandeep Chaudhary, counsel for
defendant nos.1 & 2.
Sh. Satender Singh, counsel for defendant
nos.3 & 4.

Today, the matter is coming up for reply
and arguments on application filed by plaintiff under
Order 8 Rule 10 CPC.

Reply to application under Order 8 Rule 10
CPC filed today by the defendant nos.1 & 2.

At this stage, defendant nos.1 & 2 filed
today an application under Order 8 Rule 1 & 9 read with
Section 151 CPC for extension of time in filing the written
statement along with written statement and certain
photocopies of documents as per list of documents.
Copy given.

I have heard arguments from both sides on the aforesaid two applications i.e. one under Order 8 Rule 10 CPC filed by plaintiff and second under Order 8 Rule 1 & 9 read with Section filed by defendant nos.1 & 2. Record perused.

Vide separate common order announced today, both these applications- one under Order 8 Rule 10 CPC filed by plaintiff and second under Order 8 Rule 1 & 9 read with Section filed by defendant nos.1 & 2 are disposed off. Written statement of defendant nos.1 & 2 along with documents as per list of documents are taken on record, however, subject to payment of cost of Rs.5000/- to be paid by defendant nos.1 & 2 to plaintiff on the next date.

At this stage, counsel for the plaintiff presses his application under Order 39 Rule 1 & 2 read with Section 151 CPC. Reply to the said application filed today by defendant nos.1 & 2. Copy given.

The present suit has been filed by the plaintiff seeking declaration, possession, etc. on the basis of registered sale deed dated 02.05.2014 of the property i.e. flat on the first floor (back side) on the plot no. RZ-88, Manas Kunj, Uttam Nagar, Delhi (herein after referred to as suit property).

On the summons of the suit having been served on defendants, defendant nos.3 & 4 filed written statement claiming that they are the bonafide purchasers of suit property by virtue of registered sale deed dated 22.07.2014 and thereafter they are in continuous peaceful possession of the suit property since the date of purchase and also the electricity connection/meter is installed in the names of the answering defendants.

Further, defendant nos.1 & 2 in their written statement admitted that the plaintiff is in possession of the flat on the back side of the upper ground floor and the flat on the back side of the first floor has been sold and conveyed by defendant no.1 to defendant nos.3 & 4 only vide registered sale deed dated 22.07.2014 and flat on the back side of the upper ground floor, which was the actual flat conveyed and sold to the plaintiff by defendant nos.1 & 2 .

I have heard arguments from both sides on the application under Order 39 Rule 1 & 2 read with Section 151 CPC and record perused along with written arguments filed by plaintiff today.

It is no longer *res integra* that while deciding an application under Order XXXIX Rule 1 and 2 CPC the Court must apply the following three established tests of *prima facie* case, balance of convenience and whether the plaintiff would suffer an irreparable loss and injury if an injunction is declined. It is also a well established principle that while deciding an application for injunction the Court must not deal with the matter as if it were finally deciding the suit. It is also a well established principle that the Court must also consider as to whether grant of injunction is likely to cause inconvenience to the defendant.

Principles laid down for grant of interlocutory injunction have been discussed by the Hon'ble Supreme Court in **Hindustan Petroleum Corpn. Ltd. v. Sriman Narayan & Anr. (2002) 5 SCC 760**. Relevant paragraphs of the judgment read as under:--

"7. It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the court. While exercising the discretion the court normally applies the following tests:

(i) whether the plaintiff has a prima

facie case;

(ii) whether the balance of convenience is in favour of the plaintiff; and

(iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

8. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where "the balance of convenience" lies.

9. In *Dorab Cawasji Warden v. Coomi Sorab Warden* (1990) 2 SCC 117 the Hon'ble Delhi

High Court, discussing the principles to be kept in mind in considering the prayer for interlocutory mandatory injunction, observed:

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be

compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

(4) Being essentially an equitable relief the grant or refusal of an interlocutory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised" in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as a prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

In the present case, the plaintiff has placed on record, the registered sale deed of the suit property in her favour for which defendant nos.1 & 2 are claiming that the other flat was in fact sold to plaintiff. I am of the considered view that the plaintiff has been *prima facie* able to show her case in her favour as she possesses registered sell deed in her favour. Balance of convenience also lies in favour of the plaintiff. Moreover, if the defendants are not restrained, irreparable injury would be caused to the plaintiff. In view of the aforesaid, all the defendants are directed to maintain the status qua the suit property i.e. at first floor and defendant nos.3 & 4 are directed not to part with the possession or create any third party interest therein, till final disposal of the present case. Application under Order 39 Rule 1 & 2 read with Section 151 CPC stands disposed of accordingly. It is finally observed that nothing contained in the present order is in any manner reflection on the merits of the cases of the respective parties in the suit and which merits will be decided in accordance with the issues framed and the evidence to be led by the parties in the suit .

At this stage, counsel for the plaintiff seeks time to file replication to written statement of defendant nos.1

& 2. Replication is not part of the pleadings as observed by the Hon'ble Delhi High Court in **Anant Construction Pvt. Ltd. vs. Ram Niwas** MANU/DE/0407/1994 wherein it has laid down that every material averment in the written statement is presumed to be denied by the plaintiffs and for that purpose he need not file the replication and the filing of replication and rejoinder without the leave of the court is not permissible. In view of above settled law, request of plaintiff to file replication is declined.

Admission/denial of documents could not be conducted as neither parties have filed their respective original documents.

Pleadings in the matter are complete.

After conferring with the parties, I find no element of settlement between the parties.

On the pleadings of the parties, following issues are framed:-

ISSUES

(1) Whether the suit property/flat on the first floor (back side) on the plot no. RZ-88, Manas Kunj, Uttam Nagar, Delhi was not actually conveyed and sold to the plaintiff by defendant nos.1 & 2 ?OPD1&2

(2) Whether defendant no.3 & 4 are bonafide purchasers of the suit property by virtue of the sale deed dated 22.07.2014 ?OPD3 &4.

(3)Whether the plaintiff is entitled to decree of declaration thereby declaring the sale deed dated 22.07.2014 executed by defendant no.2 in favour of defendant nos.3 &4, as null and void?OPP

(4) Whether the plaintiff is entitled to decree of possession of the suit property in her favour and against the defendants?OPP

(5) Whether the plaintiff is entitled to decree of permanent injunction, as prayed?OPP

(6) Whether the plaintiff is entitled to recovery of Rs.50,000/- on account of damages/use and occupation charges/ mesne profits in her favour and against the defendants jointly or severally for a period of two months preceding the filing of the suit? OPP

(7) Whether the plaintiff is entitled to pendente lite and future interest, if so, at what rate and for which period?OPP

(8) Relief.

No other issue arises or is pressed for.

Put up for PE on 13.12.2017. List of witnesses be filed by both the parties within a week from today. Affidavit in PE be filed in one go under advance copy thereof to opposite party at least a week prior to next date.

(MOHD. FARRUKH)
ADJ- SW:PILOT COURT
DWARKA COURT/NEW DELHI