



CNR No.-MHNG100013442019

Spl.C.S.No.33/2019

Lalita Vs. Shirin

ORDER BELOW EXH. 05

(Order passed on 07th day of March, 2020)

[01] Plaintiff has filed present application as per Order 39 Rule 1 and 2 R/w. Section 151 of the Code of Civil Procedure for grant of temporary injunction and thereby restraining the defendant from alienating or creating third party interest over the suit field bearing survey no.674/1, Adm. Area 0.67 H.R., Class-I occupancy, bounded by towards east field survey no.678, towards west Shiv, towards north field survey no.675 and towards south field survey no.674/2, situated at mauza Bela, Tah. Umrer, Dist. Nagpur till final decision of the suit. *(for the sake of brevity the property described above would hereinafter be referred to as “the suit field”)*.

[02] The points for determination along with my findings thereon are as there under.

| Sr.No | Points | Findings |
|--------------|---|--------------------------------|
| 1 | Whether prima-facie case lies in favour of plaitniff ? | In the affirmative |
| 2 | Whether balance of convenience lies in favour of plaitniff ? | In the affirmative |
| 3 | Whether irreparable injury would occassion to plaintiff, if temporary injunction is not granted ? | In the affirmative |
| 4 | What order ? | Application is Allowed. |

REASONS.

As to point no.1 to 4 :-

[03] The above points are interlinked to each other, hence are taken for discussion and determination at once. In order to entitle for injunction it is incumbent upon the plaintiff to show that she has prima facie case and further also to show that the balance of convenience lies in grant of the temporary injunction application. Again the plaintiff is duty bound to show that if the temporary injunction is not granted then irreparable injury would occasion to her. Prima facie case means a case that there is serious question to be tried in the suit and that on the facts before the court, there is possibility of the plaintiff being entitled to the relief ask by her. Likewise it must be shown that the courts interference is necessary to protect the plaintiff from that species of injury which the court feels irreparable.

[04] Perused the application. Despite of receiving summons and notice Exh.7 and 8 respectively the defendant didn't turn up before the court and hence the suit proceeds ex-parte against the defendant. Heard Ld. Counsel Shri. B.B. Raut for plaintiff. After proceeding the suit ex-parte defendant along with her counsel Shri. B.C. Pal appeared before the court, however surprisingly no step has been taken by defendant to set aside the order of ex-parte proceeding. During pleading, it has been contended by plaintiff that she was the owner and possessor of suit field. By virtue of registered

sale deed bearing no.2284/2016 dt.14.06.2016 defendant has purchased the suit field from plaintiff. As per decided terms out of total consideration of Rs.5,30,000/- an amount of Rs.1,30,000/- had been paid to the plaintiff in cash. For remaining consideration of Rs.4,00,000/- a cheque bearing no.053175 dt.18.09.2016 for Rs.1,00,000/-, a cheque bearing no.053176 dt.20.09.2016 for Rs.1,00,000/- and a cheque bearing no.053200 dt.25.09.2016 for Rs.2,00,000/- were issued in the name of plaintiff.

[05] It is averred that as per assurance given by defendant the plaintiff had presented aforesaid cheques for its encashment, however due to insufficiency of fund in account of defendant all aforesaid cheques worth of Rs.4,00,000/- came to be dishonored. It is averred that thereafter despite of repeated demand the defendant failed to pay the cheque amount of Rs.4,00,000/-. The defendant despite of receiving legal notice dt.03.01.2019 did not make payment of balance consideration amount of Rs.4,00,000/-. By virtue of registered sale deed bearing no.2284/2016 dt.14.06.2016 the defendant has got executed the document of ownership, however the huge part consideration amount is yet to be received from defendant.

[06] It is averred that defendant intentionally is avoiding to pay remaining consideration amount of Rs.4,00,000/- and therefore possibility cannot be denied that she will alienate the suit field for defrauding the plaintiff. It is averred that the defendant has illegal

intention to deceive and cheat the plaintiff. The defendant wants to grab the suit field without paying remaining consideration amount of Rs.4,00,000/-. Hence, plaintiff prayed for restraining the defendant from alienating and creating third party interest over the suit field.

[07] Considering the submission put fourth by plaintiff, if we go through the documents on record, as contended by plaintiff vide registered sale deed bearing no.2284/2016 dt.14.06.2016, a sale deed regarding the suit field is seems to be executed in favour of the defendant. Same is seems to be executed for valuable consideration of Rs.5,30,000/-. Likewise, as contended by plaintiff, it has been mentioned in the sale deed that for payment of the consideration amount of Rs.4,00,000/-, three cheques described above were handed over to the plaintiff. It has been contended by plaintiff that the aforesaid cheques for Rs.4,00,000/- have been dishonored. It is the contention of plaintiff that despite of repeated demand the defendant failed to pay the consideration amount of Rs.4,00,000/- i.e. the cheque amount.

[08] The contention put fourth by plaintiff remains unchallenged. Despite of knowledge the defendant failed to challenge the pleading put fourth by plaintiff. Thus, the dispute regarding huge consideration amount is seems to be pending between plaintiff and defendant. Hence, during pendency of suit if defendant succeeded in alienating or creating third party interest in

respect of suit field then it may be result in multiplicity of the proceeding and the very purpose of filing this suit will be frustrated.

[09] Thus, on scrutiny of the entire material placed on record, I came to the conclusion that there is serious question with the plaintiff which she wants to try on merit. Thus, prima facie case seems to be lies in favour of the plaintiff. Prima facie case follows balance of convenience. So far as irreparable injury is concern, as discussed above during pendency of suit if defendant succeeded in alienating or creating third party interest in respect of suit field, then it may result in multiplicity of the proceeding and the very purpose of filing of present suit will frustrated. Hence, in view of the discussion given supra I answer point no.1 to 3 in affirmative and in answer to point no.4 I proceed to pass following order.

ORDER

[01] The application (Exh.05) is allowed.

[02] The defendant is hereby temporarily restrained from alienating, transferring or creating any interest in respect of suit field till final decision of this suit.

[03] Costs in cause.

[04] Dictated and pronounced in open court.

Umrer.
Date : 07/03/2020

(S. K. Fokmare)
Civil Judge Senior Division,Umrer.

Certificate

"I affirm that the contents of this P.D.F. file order are word to word same as per original Order".

Name of Stenographer : **Mr. Mahendranath D. Nagpure.**
Stenographer (Grade III)

Court Name : Civil Judge Senior Division, Umrer

Order dictated on : 06/03/2020

Transcription ready on : 06/03/2020

Order checked and signed on : 07/03/2020

/home/ubuntu/1-C.J.S.D./ORDERS/2-ORDER BELOW EXH.5/2-SPL.
CIVIL SUITS/