

Regular Civil Suit No. 25/2014
Gulab & other vs. Usha & another
ORDER PASSED BELOW EXH.No.5
(Passed on this 17th July, 2017)

Before dwelling deep into the matter, the undisputed facts which are reflected from the pleading and the documents placed on record, are required to be mentioned here for cumulative effect.

2. These admitted facts are as under :-

- (i) *One Segoo was the common ancestor of the property in dispute.*
- (ii) *Said Segoo had two sons by name Chhotu and Ramaji.*
- (iii) *After the death of said Segoo, the said property i.e. land of CTS. No.1893 (area 87.6 Sq.Mt.) and 1894 (area 73.1 Sq.Mt.) situated at Ramtek came to be partitioned between his two sons.*
- (iv) *The house property bearing Nagar Parishad House No. 310 is situated in CTS. No. 1893 and the house bearing Nagar Parishad House No. 311 is located in the CTS. No.1894*
- (v) *The defendant No.1 is legal heir of said Chhotu who got the land of CTS. No. 1894 by way of inheritance.*
- (vi) *Said Rama had one son by name Manohar and the plaintiffs No.1 and 2 are legal heirs of said Madhukar. The plaintiffs No.1 and 2 got the land of CTS. No. 1893 by way of inheritance.*
- (vii) *The defendant No.1 entered into an agreement with the defendant No.2 in respect of the property in dispute i.e. CTS.No.1894.*

3. The crux of the suit is that the plaintiffs were intending to purchase the land CTS. No.1894 which is owned by defendant No.1. According to the plaintiffs, the said land i.e. CTS. No.1894 is in their possession. So also, they have perfected their right of pre-emption and they are entitled to exercise their rights of purchasing the land CTS. No. 1894. The land of CTS. No. 1894 is hereinafter referred as the "suit land".

4. It is the case of the plaintiffs that defendant No.1 intentionally entered into an agreement with the defendant No.2 to alienate the suit land for the consideration amount. Having got knowledge about this transaction, the plaintiffs immediately issued the notice to the defendant No.1 and thereby requested her to cancel the said agreement and expressed their willingness to purchase the same. But in order to deprive the plaintiffs from exercising their right or pre-emption, the defendant No.1 is planning to alienate the suit property to the defendant No.2 who is neither their family member nor he has any right or interest in respect of the suit property. The defendant No.1 is alleged to have threatened the plaintiffs. The defendant No.1 has asked the plaintiffs to vacate the house property which is situated in the suit land. Thus in short, the property in question i.e. suit land is in danger of being damaged and being alienated by the defendant No.1 wrongfully. Therefore, in order to protect the suit property from being damaged and being from alienated to the third person, the plaintiffs had no option, but to knock the door of this Court by filing this interlocutory application.

5. The defendant No.1 and 2 filed their joint reply vide Exh.No.19 and thereby resisted the claim of the plaintiffs. Though the relations between the plaintiffs and the defendants are admitted, yet it is the stand of the defendants that the plaintiffs used to harass the father of the defendant No.1. They used to beat and abused him. Several complaints were registered against the plaintiffs in this regard and therefore, according to the defendants, the plaintiffs cannot exercise the right of pre-emption as alleged. The defendant No.1 has admitted the fact that the she had entered into an agreement with the defendant No. 2 and

thereby she intends to alienate the property in question to the defendant No.2. The defendant No.1 and 2 raised the dispute in respect of the consideration amount. The defendant No.2 has come with the stand that he is bonafide purchaser and he cannot be restrained by way of injunction. So also, the defendant No.1 has pleaded that the plaintiffs have no right or interest in the property in dispute and therefore, they have no locus-standi to seek the discretionary relief of injunction on the false and baseless grounds.

6. In the backdrop of the pleadings and documents filed on record, following points arise for my determination and I record my findings against them for the reasons mentioned as under :-

	<u>POINTS</u>	<u>FINDINGS</u>
1	Do the plaintiffs prove that they have made out prima-facie case ?	Yes.
2	Whether balance of convenience lies in favour of the plaintiffs ?	Yes.
3	Whether plaintiffs would suffer irreparable loss in case of rejection of the temporary injunction application ?	Yes.
4	What order ?	The application is allowed as per final order.

REASONS

AS TO POINT NOS.1 TO 3 :-

7. Having gone through the relevant documents placed on record, I heard the learned advocates for both the sides. Shri Bante, the learned advocate for the plaintiffs/applicants argued that the facts of the execution of the alleged agreement is admitted by the defendants. According to him, the plaintiffs are legal heirs of the common ancestor

and therefore, they have preferential rights to purchase the property in dispute.

8. Per contra, Mr. Naware the learned advocate for the defendants vehemently submitted that the plaintiffs ill-treated the father of the defendant No.1 and therefore, they have no locus-standi to exercise their alleged rights. He further contended that the defendant No.2 invested huge amount in the transactions and therefore, he will suffer irreparable loss if the injunction is allowed.

9. Having regard to the undisputed facts as noted in the aforesaid para No.1, it is crystal clear that one Segoo was the common ancestor of the both lands bearing CTS No.1893 and 1894. Moreover, the defendant No.1 and 2 have specifically admitted in their written statement that the property in dispute had been partitioned between the legal heirs of said Segoo. In such circumstances, it can be said that the plaintiffs are legal heirs of said Segoo. Therefore, in view of Section 22 of the Hindu Succession Act, it can be safely held that the plaintiffs have got the preferential right to acquire property in dispute. Now whether the plaintiffs satisfy the material ingredients of Section 22 of the Hindu Succession Act is the matter of evidence. But prima facie, it can be said that the plaintiffs have right and interest in the property in dispute.

10. Apart from this, the defendants have specifically admitted that the agreement in respect of sell of the suit property have been executed. Thus from these premises, it can be inferred that the defendant No.1 is intending to alienate the property in question. In fact, whether the defendant No.1 is competent to alienate the property in dispute is the matter of dispute. But at this juncture, when it has been established on record that the plaintiffs are legal heirs of the common ancestor, then in

my opinion, unless and until the rights of the plaintiffs are adjudicated the property in question is required to be protected from being damaged and from being alienated. The application for temporary injunction is supported by the affidavit of the plaintiffs. The plaintiffs alleged that the defendant No.1 threatened them to dispossess and she intended to dispose of the suit property. Thus it can be said that the property in question is in danger of being damaged or being alienated. In short, the material ingredients of Order 39 Rule 1 and 2 of the Code of Civil Procedure are established.

11. It is needless to say here that prima facie case should be such that it should appear on record that there is bonafide contest between the parties and the serious question is required to be tried. So also, while contesting the application for temporary injunction, plaintiffs/applicants must show that he has right, title or interest in the property. Having regard to these settled principles, let us scan the material documents placed on record in this regard.

12. As discussed above, the applicability of Section 22 of the Hindu Succession Act is involved in this matter. Thus prima facie, it appears that there is a serious dispute which requires full fledged trial. In short, having regard to the facts and circumstances of the case, this Court is of humble view that there is a bonafide contest between the parties.

13. It is settled that one of the objects of grant of injunction is to maintain the status-quo as on the date of the suit so that the parties can go to the trial and after recording the evidence, the trial Court can decide the suit.

14. In the backdrop of the discussion noted above, I am of the considered view that the property in question needs to be protected from being alienated and being damaged. If the defendant No.1 is not restrained at this stage, then there would be multiplicity of law. Therefore, the discretionary relief of the injunction needs to be granted in favour of the plaintiffs.

15. Though it is the stand of the defendant No.2 that he had invested a huge amount, yet at this juncture, there is no material on record to come to the conclusion that the defendant No.2 is bonafide purchaser. On the other hand, the plaintiffs have succeeded to establish the fact that they have preferential right in respect of the suit property. In such circumstances, when the plaintiffs have prima facie right and interest in the suit property, the present application deserves to be allowed. As the plaintiffs have satisfied the triple test i.e. prima facie balance of convenience and irreparable loss, I record my findings in affirmative for point No. 1 to 3 and proceed to pass the following order.

ORDER

- (i) The application(Exh.5) for temporary injunction is hereby allowed.
- (ii) The defendants, their agent, their relatives or any other person working on behalf of them are hereby restrained from disturbing peaceful possession of the plaintiffs over the suit property i.e. CTS. No. 1894 as mentioned in the plaint till disposal of this suit.
- (iii) The defendant No. 1 and 2 are hereby restrained from creating any third party interest regarding the suit land during the pendency of the suit.
- (iv) Costs in cause.

Ramtek
Dated : 17/07/2017

(Sujitkumar C. Taide)
Civil Judge Junior Division,
Ramtek

