IA No. GA 1 of 2019
(Old No. GA 2521 of 2019)
In
CS 193 of 2019

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
Original Side
ERA BANTHIA
V.
M/S. SHIVSONS & ORS.

For the Petitioner	:	Mr. Debdut Mukherjee, Advocate Mr. U. Raja Rao, Advocate Ms. P. Gandhi, Advocate
For the Respondents	:	Mr. S. Ghosh, Advocate
Hearing concluded on	:	March 3, 2021
Judgment on	:	March 10, 2021

DEBANGSU BASAK, J. :-

1. In a suit for specific performance of an agreement for sale in respect of an immovable property, the plaintiff has sought interim protection of injunction against the defendants.

2. Learned advocate appearing for the plaintiff has submitted that, the defendant No.1 is a partnership firm and the defendant Nos. 2 and 3 are the partners thereof. The plaintiff had become interested in purchasing an immovable property owned by the defendant No. 1. The plaintiff and defendants Nos. 1 to 3 had held

negotiations and discussions with regard thereto. In such discussions, the defendant Nos. 1 to 3 had informed the plaintiff that the defendant Nos. 1 to 3 had taken a loan against property from Hinduja Leyland Finance Ltd. The defendant No. 4 had been inducted as a lesee in respect of such immovable property by virtue of a lease agreement dated August 20, 2016. The defendant Nos. 1 to 3 did not enter into any other agreements in respect of such immovable property.

3. Learned advocate appearing for the plaintiff has submitted that, the plaintiff had agreed to purchase the immovable property for a total consideration of Rupees 90 lakhs. The plaintiff and the defendant Nos. 1 to 3 had entered into an agreement for sale in respect of the immovable property on March 5, 2019. The plaintiff had paid a sum of Rupees 5 lakhs to the defendant No. 1 by a cheque dated March 5, 2019 as part consideration. He has submitted that, the plaintiff and defendant Nos. 1 to 3 had agreed that, the conveyance will be executed and registered by April 15, 2019. Acting on the basis of the agreement for sale, the plaintiff, at the instance of the defendant Nos. 1 to 3 had paid a sum of Rs. 45,23,282/- to Hinduja Leyland Finance Ltd. Such payment had

been made by a cheque dated March 28, 2019. He has contended that, despite the plaintiff taking steps in terms of the agreement for sale, the defendant Nos. 1 to 3 had failed and neglected to have the Kolkata Municipal Corporation tax assessed to comply with the agreement for sale dated March 5, 2019. He has submitted that, the plaintiff had paid a sum of Rs. 50, 333/- as tax deducted at source. Consequently, the plaintiff had paid an aggregate sum of Rs. 50,73,5152/- as part payment of the consideration in terms of the agreement for sale.

4. Learned advocate for the plaintiff has submitted that, on the failure of the defendant Nos. 1 to 3 to have the Kolkata Municipal Corporation tax assessed in respect of the immovable property concerned, the plaintiff had done so. The plaintiff had obtained a Letter of Intent from the Kolkata Municipal Corporation from which it appeared that, the outstanding property tax in respect of the immovable property was Rs. 38,07,749/-. The plaintiff had called upon the defendant Nos. 1 to 3 to honour the commitments under the agreement for sale dated March 5, 2019 which the defendant Nos. 1 to 3 failed and neglected to honour.

5. Learned advocate appearing for the plaintiff has submitted that, the defendant Nos. 1 to 3 had taken the point of the agreement for sale dated March 5, 2019 being unregistered. He has submitted that, simply because an agreement for sale is unregistered, does not make such agreement for sale void. He has submitted that, Court can look into an unregistered agreement for sale. Be that as it may, he has submitted that, the plaintiff is ready and willing to have the original agreement for sale dated March 5, 2019 impounded and pay the stamp duty necessary in respect thereof as assessed by the appropriate authority. In support of his contentions he has relied upon ***2009 Volume 4 Calcutta High Court Notes 415 (M/s. GTZ India Private Limited versus Power Electronic Engineers and others)***, ***2010 Volume 4 Calcutta High Court Notes 18 (Sri Gopal Kumar Bhalotia and Another versus Anirudh Trade and Agencies Private Limited and Another)***.

6. Learned advocate appearing for the defendant Nos. 1 to 3 has submitted that, the agreement for sale dated March 5, 2019 being in respect of an immovable property and the same being unregistered and appropriate stamp duty not been paid thereon,

the Court should not take any notice of the same for the purpose of granting any interim relief to the plaintiff. He has submitted that, an unregistered document with regard to an immovable property cannot be taken in evidence. Therefore, the plaintiff has not made out a prima facie case for grant of an interim order of injunction. In support of his contentions, he has relied upon ***2009 Volume 2 Supreme Court Cases 532 (Avinash Kumar Chauhan v. Vijay Krishna Mishra)***, ***2011 Volume 14 Supreme Court Cases 66 (SMS Tea Estates Private Limited v. Chandmari Tea Company Private Limited)***, ***2014 Volume 6 Maharastra Law Journal 156 (Jayraj versus Nilesh)*** and ***2017 Volume 1 WBLR (Cal) 688 (Darothi Mukherjee versus Sri Ajoy Kumar Ghosh and others)***.

7. In reply, learned advocate for the plaintiff has relied upon ***2021 Supreme Court Cases OnLine SC 13 (M/s. N.N. Global Mercantile Private Limited versus M/s. Indo Unique Flame Ltd. and others)*** and submitted that, ***SMS Tea (supra)*** has been overruled.

8. The plaintiff has filed the instance suit for specific performance of the agreement for sale dated March 5, 2019 in respect of an immovable property. The copy of the agreement for sale dated March 5, 2019 that has been annexed to the interim application is unregistered bearing a stamp duty of Rs. 100/-. The plaintiff and the defendant Nos. 1 to 3 had acted in terms of the agreement for sale dated March 5, 2019. The plaintiff had paid a sum of Rs. 50,73,515/- to the defendant Nos. 1 to 3 either to the defendant Nos. 1 to 3 directly or on their behalf to their nominees out of the agreed consideration of Rupees 90 lakhs. There has been part performance of the agreement for sale.

9. ***Dorothi Mukherjee (supra)*** has considered an appeal against an ad interim order of status quo passed in a suit for specific performance of an unregistered agreement for sale in respect of an immovable property. The Division Bench has held that, the agreement was typed out on insufficient stamp paper. Such an agreement for sale per se cannot be enforced unless the document is impounded. In such context, the Division Bench has held that, the plaintiff therein did not make out a prima facie case for going to trial.

10. ***Jayraj Devidas (supra)*** has considered an appeal against an order passed under Section 9 of the Arbitration and Conciliation Act, 1996. It has found that, the instrument containing the arbitration agreement was insufficiently stamped and thus the Court could not have acted upon such instrument and granted interim measure under Section 9 of the Act of 1996.

11. In ***Avinash Kumar Chauhan (supra)*** the Supreme Court has considered the provisions of Sections 33 and 35 of the Stamp Act, 1899. It has held that, Section 33 of the Act of 1899 cast a statutory obligation on all the authorities to impounded a document insufficiently stamped. It has held that, the Court being an authority to receive a document in evidence is bound to give effect thereto. When an unregistered deed of sale is inadequately stamped, the court was empowered to pass an order in terms of Section 35 of the Act of 1899.

12. ***SMS Tea Estates Private Limited (supra)*** has been overruled in ***M/s. N. N. Global Mercantile Private Limited (supra)***.

13. In ***Sri Gopal Kumar Bhalotia (supra)*** the Division Bench has granted an ad interim order of injunction for a limited period provided the plaintiff secured sufficient amount of security to safeguard the interest of the state revenue, in a case where, the deed on the basis of which the plaintiff was relying upon, was insufficiently stamped. It has considered ***GTZ India Private Limited (supra)***.

14. In ***GTZ India Private Limited (supra)*** the Division Bench has noted the readiness and willingness of the plaintiff to furnish a bank guarantee. In that case, the plaintiff had filed a suit for specific performance of a contract. In such suit, the plaintiff had applied for temporary injunction which was initially refused on the ground that the agreement for transfer was written on an insufficiently stamped paper of Rs. 10/-. It has noted that, failure to stamp a document properly does not affect the validity of the transaction embodied therein but merely renders the document inadmissible in evidence. It has noted the provisions of Section 35 of the Act of 1899 and held that, the Court before which such document is produced has the right to regularise such defect on realisation of the appropriate stamp duty and the penalty

prescribed in the Act of 1899. It has held that, at the ad interim stage, the court could demand from the plaintiff sufficient amount of security to safeguard the interest of the state revenue.

15. In the facts of the present case, the plaintiff has offered to follow the rigours of Sections 33 and 35 of the Act of 1899. It has offered to pay the stamp duty payable on impounding of the agreement for sale.

16. In view of the stand of the plaintiff, an opportunity has to be afforded to the plaintiff to regularise the defect in terms of the provisions of the Act of 1899, if there be any. There will be an order of unconditional injunction restraining the defendants from creating third-party rights over and in respect of the immovable property concerned for a period of four weeks from date. The plaintiff shall produce the original agreement dated March 5, 2019, before the Registrar, Original Side of this Court within a week from date whereupon such agreement dated March 5, 2019 shall be impounded. The Registrar, Original Side shall forward the agreement dated March 5, 2019 to the Collector for the purpose of assessment of the stamp duty and fixation of penalty, if any. The

Collector shall complete the above exercise within two weeks from the date of receipt of the original agreement dated March 5, 2019.

17. The plaintiff shall deposit a sum of Rs. 10 lakhs with the Registrar, Original Side as security for the stamp duty and penalty, if any, payable in respect of the original agreement dated March 5, 2019. Such deposit shall be made within a fortnight from date. In the event of the plaintiff depositing the sum of Rs. 10 lakhs as directed, the injunction granted for four weeks shall continue until further orders of the Court.

18. List the application as Adjourned Motion four weeks hence.

[DEBANGSU BASAK, J.]