

M/S. JULIEN EDUCATIONAL TRUST

v.

**SOURENDRA KUMAR ROY & ORS.
(Civil appeal No. 8081-8082 of 2009)**

DECEMBER 02, 2009

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

[2009] 15 (ADDL.) S.C.R. 1260

The following Order of the Court was delivered

ORDER

1. Leave granted.

2. The appellant herein, Julien Educational Trust, claims to be a benevolent trust created by a registered Deed of Trust dated 30.07.1970 for the purpose of encouraging education and other allied activities. It claims to be registered under Section 12A of the Income Tax Act, 1961, and has its registered office at 35E, Elgin Road, P.S. Bhowanipore, Kolkata-700020. The appellant runs a reputed school, known as Julien Day School, at premises No. 4, Umananda Road and 35E, Elgin Road, P.S. Bhowanipore, Kolkata-700020, which are two adjacent premises. The respondents are the joint owners of 15 Cottahs 8 Chittaks 29 square feet of land, including a three-storied old dilapidated structure and garage and outhouses constructed thereon, being premises No. 3/1, Heysham Road, Police Station Bhowanipore, Kolkata.

3. Since the said land was adjacent to the school premises, the appellant Trust was interested in purchasing the same for the purpose of expansion of the school. Pursuant thereto, the appellant Trust entered into negotiations with the Respondents for purchase of the property, which was orally accepted by the Respondents jointly and severally and the parties agreed that the sale transactions would be completed in the following manner:—

- (i) That the defendants will sell the suit property and the plaintiff shall purchase the same on a total consideration price of Rs. 4,15,00,000/- (Rupees Four Crores fifteen Lakhs only).
- (ii) That the defendant No. 1 shall get a sum of Rs. 1,55,00,000/- (Rupees One Crore and fifty five lakhs) only towards the full and final consideration price for sale of his undivided 1/3rd share in the suit property upon execution and registration of the Deed of Conveyance in respect of his undivided share in the suit property.
- (iii) That the defendant Nos. 2 and 3 shall jointly get a sum of Rs. 1,30,00,000/- (Rupees One Crore and Thirty Lakhs) only towards the full and final consideration price for sale of their undivided 1/3rd share in the suit property upon execution and registration of Deed of Conveyance in respect of their undivided share in the suit property.
- (iv) That the defendant Nos. 4,5 and 6 shall jointly get a sum of Rs. 78,00,000/- (Rupees Seventy eight Lakhs) only towards the full and final consideration price for sale of their undivided 3/15th share in the suit property upon execution and registration of Deed of Conveyance in respect of their undivided share in the suit property.
- (v) That the defendant Nos. 7 and 8 shall jointly get a sum of Rs. 52,00,000/- (Rupees fifty two lakhs) only towards the full and final consideration price for sale of their undivided 2/15th share in the suit property upon execution and registration of Deed of Conveyance in respect of their undivided share in suit property.”

4. It appears that on account of an interim order of status-quo passed in a First Appeal filed by one of the co-sharers, no written agreement for sale was extent where the Respondents made over certified copies of their title deeds to the appellant Trust in order to establish their right, title and interest over the suit property. Thereafter, in terms of the oral agreement which had been finalised between the parties, separate draft Deeds of Conveyance were sent

by the appellant to the respondents in respect of their undivided shares in the suit property for their approval. It also appears that it was the further case of the appellant that they had been informed by the respondents jointly and severally that when the appellant was ready with the consideration amount, appropriate steps would be taken to get the order of *status quo* vacated to enable the parties to complete the transaction by executing and registering the several Deeds of Conveyance, drafts whereof had already been forwarded to the respondents. It is on such account that the order of *status quo* was vacated by the Court of 8th Civil Judge (Senior Division) at Alipore by his order No. 205 dated 7th June, 2006.

5. The appellant also applied to the Inspector General and Commissioner of Stamp Revenue, West Bengal, on 21st June, 2006, for exemption from payment of stamp duty in registering the Deeds of Conveyance in respect of the suit property. According to the appellant, the respondent No.1 approved the draft Deed of Conveyance sent to him by putting his signatures thereon, subject to some rectifications made by him in the said draft. Thereafter, the final Deed of Conveyance in respect of the share of the Respondent No.1 was engrossed on stamp paper on 22nd June, 2006, but the said respondent did not execute and register the same on the plea that in order to avoid controversies amongst all the co-sharers, all the deeds of conveyance should be executed simultaneously. Soon thereafter, the defendant Nos. 2 to 6 also approved their respective draft Deeds of Conveyance which were also engrossed on stamp paper, but again the same could not be executed and registered as the respondent Nos. 7 and 8 delayed giving their approval to the draft Conveyance Deeds sent to them.

6. On the other hand, the appellant Trust came to learn in the second week of January, 2007, that the respondents were preparing to sell the suit property to third parties. The appellant, thereupon, filed an application under Section 144 (2) of the Code of Criminal Procedure before the First Executive Magistrate, at Alipore, being M.P. Case No. 82 of 2007, where an order was

passed on 17th January, 2007 directing the Officer-in-Charge of the Police Station to see that no untoward incident was perpetrated by the respondents on the suit premises. In addition to the above, the appellant also filed a suit for specific performance, being Title Suit No. 10 of 2007, in the Court of the 4th Civil Judge (Senior Division) at Alipore, District 24 Parganas (South), West Bengal, inter alia, for the following reliefs:

“(a) a Decree of Specific Performance of the Agreement for sale between the Plaintiff and Defendants and added Defendants by directing the Defendants and added Defendants to execute registered Deed of Conveyance in respect of the suit schedule property.

(b) a Decree of possession of the suit property.”

7. In the said suit, the appellant filed an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure for an order of injunction to restrain the defenants/respondent from selling, encumbering and/or otherwise alienating and/or changing the nature and character of the suit schedule property during the pendency of the suit. An ad-interim order on the said terms was prayed for which was refused by the trial Court. Against such refusal, the appellant preferred appeal in the High Court, being FMAT No. 490 of 2007. Initially, on 9th March, 2007, the High Court passed an ad-interim order of injunction against the Respondent Nos. 1 to 8. Subsequently, on being informed by the said respondents that the suit properties had been transferred to the Respondent Nos. 9 to 11 by registered Deeds of Conveyance dated 11th December, 2007, and 3rd January, 2008, the Division Bench upon holding that the order of injunction had become infructuous against the said respondents, vacated the same.

8. Thereafter, the plaint was sought to be amended by adding the Respondent the Respondent Nos. 9 to 11 as parties and a fresh application was made on behalf of the appellant to restrain the said added respondents from alienating, encumbering and/or changing the nature and character of the

suit property. Simultaneously, an application was filed by the added respondents under Order 7 Rule 11 of the Code of Civil Procedure, which came to be dismissed, while the application of the appellant Trust under Order 39 Rules 1 and 2 CPC was allowed on contest on 16th January, 2008, against which an appeal was preferred by the respondents on 15th May, 2008. In appeal, the High Court set aside the order of injunction passed by the Trial Court with the result that the suit for specific performance filed by the appellant was rendered practically infructuous. This appeal has been filed against the order of the High Court setting aside the order of injunctions passed by the Trial Court.

9. Appearing for the appellant Trust, Mr. Pradip Kumar Ghosh, learned Senior Advocate, submitted that Division Bench of the High Court had erred in holding that the appellant had failed to prove the existence of a concluded contract which was capable of being specifically enforced. Mr. Ghosh submitted that taking advantage of the order of *status quo* which had been passed upon an appeal filed by one of the co-sharers, the respondents had persuaded the appellant Trust not to insist upon a written agreement of the terms agreed upon for sale of the suit property. However, enough material had been produced before the Court to establish the case of the appellant that an oral agreement for sale had been arrived at and finalised between the parties. Mr. Ghosh urged that pursuant to the finalisation of the terms and conditions of the sale, draft deeds of conveyance were prepared in respect of each co-sharer and sent by the appellant Trust to the said respondents for approval. Except for the Respondent Nos.7 and 8, the other Respondent Nos. 1 to 6 had duly approved and consented to the draft which had been sent to them. As a result whereof, the same were engrossed on stamp paper for the purpose of execution and registration. Although, the Deed of Conveyance of the Respondent No.1 was finalised first, he did not execute and register the same on the plea that the Deeds of Conveyance of all the co-sharers should be executed and registered simultaneously. However, because of the failure

of the Respondent Nos.7 and 8 to return the approved drafts, the sale deeds were not executed, and, on the other hand, the appellant came to learn that the Respondents were planning to sell the property to the third parties.

10. Mr. Ghosh urged that all the steps that were required to be taken for the completion of the sale transaction had been taken by the appellant, but it was because of the avoidance of the respondents that ultimately the sale deeds were not executed, although, they had been approved and were ready for execution and registration. Mr. Ghosh urged that on the basis of the evidence on record, a prima facie case had been made out to go to trial and if the nature and character of the suit properties were allowed to be altered during the pendency of the suit, the very purpose for which the appellant had filed the suit for specific performance would be rendered nugatory. Mr. Ghosh emphasized that unless specific orders were passed to restrain the respondents, and in particular Respondent Nos. 9 to 11, from altering the nature and character of the suit property, including the erection of constructions thereupon, the appellant Trust would suffer irreparable loss and injury which, in this particular case, could not be compensated in terms of money.

11. Mr. R.F. Nariman, learned Senior Advocate, who appeared for the subsequent purchasers and later on impleaded as Respondent Nos. 9 to 11, submitted that at this stage of the proceedings, in the absence of any evidence of would not be possible for this Court to arrive at a conclusion that a concluded contract had been arrived at between the parties, particularly when the case made out on behalf of the appellant that the draft deeds of conveyance had been approved by the respondents, was strongly disputed. Mr. Nariman urged that till such time as it was not established that the handwriting and the signatures on the draft were those of the respondents, no reliance could be placed on them. Mr. Nariman urged that had there been any agreement between the appellant and the Respondent Nos. 1 to 8, there would have been evidence of at least some amount being paid by way of

earnest money. In this case, however, there is no evidence that even a single farthing was paid by the appellant Trust to the respondents in pursuance of the proposed agreement for sale.

12. Apart from the above, Mr. Nariman also submitted that even the balance of convenience and inconvenience lay in favour of the respondents since if an order of injunction was passed, as prayed for by the appellant, the respondents would not be able to utilise the land which they had purchased till the disposal of the suit. On the other hand, if ultimately the appellant succeeded, it could always be compensated in terms of money.

13. Mr. Kalyan Bandopadhyaya, learned Senior Advocate appearing for the Respondent Nos. 1 to 8, adopted the stand taken by Mr. Nariman and added that the appellant Trust had shown no interest in purchasing the suit property since at no point of time had shown their readiness and willingness to complete the sale transaction. The appellant Trust neither paid any amount by way of earnest money nor had it ever intended to do so. As a result, it did not lie in the mouth of the appellant Trust to seek a decree for specific performance when it had failed to take any positive steps in that regard.

14. Since the suit for specific performance is pending before the trial Court, we can consider the materials before us and the arguments advanced only for the limited purpose of deciding the question of granting interim orders during the pendency of the suit.

15. We are satisfied from the materials on record that a prima facie case has been made out by the appellant Trust as to the agreement for sale which has to go to trial. Whether there was a concluded contract or not between the appellant Trust and the Respondent Nos. 1 to 8 is a matter of evidence and can only be gone into during the trial of the suit. This brings us to the all important question as to whether the balance of convenience and inconvenience lay in favour of the grant of an interim order of injunction in

favour of the appellant Trust and as to whether the appellant Trust would suffer irreparable loss and injury, if no such interim order was passed.

16. Although, it has been submitted by Mr. Nariman as well as Mr. Bandopadhyaya that loss, if any, to the appellant Trust could be compensated in terms of money, the said submission does not appear to hold good in the instant case. Equally important is the question of balance of convenience and inconvenience since the principal object of the appellant Trust in wanting to acquire the suit property was to extend its school unit at Kolkata. If the suit property is allowed to be commercially exploited by raising multi-storied structures thereupon, the entire object of the suit filed by the appellant Trust will be rendered meaningless and the purpose for which the suit been filed would be completely defeated.

17. In such circumstances, we are of the view that this is one such case where an interim order is required to be passed to maintain the *status quo* of the suit for specific performance filed by the appellant Trust, but at the same time appropriate directions should also be given so that the suit is disposed of expeditiously. At this stage, it would not be appropriate on our part to express any further opinion on the merits and demerits of the suits.

18. Having found a *prima facie* case in favour of the appellant Trust, it is our view that in the light of the principles of balance of convenience and inconvenience, interim relief should be granted to the appellant Trust. Accordingly, we allow the appeals and set aside the order of the High Court and direct that the respondents shall not alienate or encumber the suit property or change the nature and character thereof till the disposal of the suit for specific performance filed by the appellant Trust.

19. Having regard to the peculiar facts of the case, we would also request the Trial Court to dispose of the suit as early as possible, but positively within one year from the date of communication of this order. No unnecessary

adjournments will be sought for or granted, so that the suit is disposed of within the stipulated period.

20. We also make it clear that the observations made in this judgment have been made only for the purpose of disposal of the application for interim orders and should not influence the Trial Court in deciding the suit.

21. There will be no order as to costs.

