IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

MA No. 31/2024

Reserved on: 13.11.2024
Pronounced on: 21 .11.2024

Om Parkash and others

...appellants

Through: - Mr. M.K.Bhardwaj Sr. Advocate with

. Mr. Gagan Kohli Advocate.

Vs.

Khazoor Singh and another **…respondents**

Through: - Mr. R.S.Thakur Sr. Advocate with

Mr. Vasharan Thakur Advocate.

<u>CORAM:</u> HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

<u>JUDGMENT</u>

1 The appellants have challenged order dated 31.08.2024 passed by the learned Principal District Judge, Udhampur ('trial Court' for short) in the suit filed by the respondents, seeking specific performance of Agreement to Sell dated 07.10.2021, in respect of land measuring 80 kanals, comprised in various khasra numbers, situated at Bharnara Tehsil Majalta, District Udhampur. Vide the impugned order, the application of the respondents/plaintiffs, filed under Order 39, Rule 1 & 2 CPC has been allowed and the parties to the suit have been directed to maintain status quo on spot with respect to the existing position of the suit land.

2 In the suit filed by the respondents/plaintiffs against the appellants-defendants, it was pleaded that an Agreement to Sell came to be executed between respondent No.1 and the appellants/defendants

on 07.10.2021 whereby the appellants/defendants agreed to sell land measuring 225 kanals comprised in various khasra numbers, situated at village Bharnara, Tehsil Majalta, District Udhampur, for a total sale consideration of Rs.4.50 lacs, out of which, an amount of Rs.20.00 lacs was received by the appellants/defendants from respondent No.1 and balance amount of Rs.4.30 lacs was to be paid after execution of the sale deed in favour of respondent No.1/plaintiff on 03.07.2022. It was pleaded by the plaintiffs that the defendants made a false representation to them that they are co-owners of land measuring 225 kanals, whereas, fact of the matter is that the share of defendants is only 80 kanals, out of 225 kanals of land. It was also pleaded that, out of Rs.20.00 lacs received by the defendants, an amount of Rs.10 lacs was paid to them by plaintiff No.2/respondent No.2 and it was agreed that 50% of the balance sale consideration shall be paid by the said plaintiff at the time of registration of sale deed. According to the plaintiffs, they made several requests to the defendants for execution of the sale deed. but the defendants, on one pretext or the other, avoided to execute the sale deed and even after 03.07.2022, the date fixed for execution of a sale deed, the defendants have not completed the formalities which prompted the plaintiffs to serve a legal notice upon them. It has been pleaded that the plaintiffs are ready and willing to perform their part of contract and they are offering to pay the sale consideration for 80 kanals of land, but the defendants have continuously avoided to receive the amount. According to the plaintiffs, they have come to know that the defendants have entered into an Agreement to sell the suit land to defendant No.5 and have also received some earnest money from the said defendant. It has also been pleaded that the plaintiffs have taken over the possession of the suit land and have even incurred expenses on its improvement and, as such, the defendants are liable to pay Rs.60.00 lacs along with interest to the plaintiffs as an alternative relief.

3 The defendants/appellants herein contested the suit by filing their written statement. In their written statement, they have contended that Agreement to Sell dated 07.10.2021 is neither enforceable, nor admissible in evidence because the same is an unregistered document. It has been contended that the plaintiffs have filed the suit after a lapse of two and a half years from the date of execution of the Agreement to Sell and, as such, the suit is not maintainable. The defendants have further contended that plaintiff No.1 has not paid the balance sale consideration as per the terms and conditions of the Agreement to Sell. The defendants have contended that they are not the only co-sharers of the land measuring 225 kanals, which is subject matter of the Agreement to Sell, but there are 14 other co-sharers of the said land, as such, the Agreement to sell cannot be specifically enforced. It has been contended that the defendants have executed a subsequent Agreement to Sell in respect of the suit land in favour of defendant No.5 on 19.10.2023, pursuant whereto, the said defendant has taken over possession of 160 kanals of land. It has been pleaded by the defendants that land measuring 80 kanals, over which the plaintiffs lay their claim, has not been properly described in the plaint. While the defendants/appellants admitted the execution of the

Agreement to Sell dated 07.10.2021, they denied having received the amount of Rs.20.00 lacs from plaintiff No.1. It has been contended that the execution of the Agreement to Sell is with respect to 225 kanals of land, but the plaintiffs have restricted their suit to 80 kanals of land only, which clearly shows their *mala fide* intentions.

4 The learned trial Court, after analysing the pleadings of the parties and after hearing the parties, came to the conclusion that there is a *prima facie* case in favour of the plaintiffs and that balance of convenience also lies in their favour. The trial Court has observed that in case there is any change in the structure of the suit property, the right of the plaintiffs would get defeated. Accordingly, in terms of order dated 31.08.2024, the trial Court allowed the application of the plaintiffs under Order 39, Rule 1 & 2 CPC and directed the parties to maintain status quo with respect to the suit land measuring 80 kanals to the extent of the share of defendants 1 to 4.

5 The appellants have challenged the impugned order dated 31.08.2024 passed by the trial Court on the ground that plaintiff No.1 has failed to adhere to the schedule of payment as contained in Agreement to Sell dated 07.10.2021 and, as such, he was not entitled to decree of specific performance of the said Agreement. It is also contended that the relief of decree of specific performance of Agreement to Sell is discretionary in nature and once, a party fails to approach the Court for enforcement of an Agreement to Sell within a reasonable time, the Court has to refuse the said relief. It has been

contended that, in the instant case, the plaintiffs have approached the Court after two years of the date fixed for making of final payment and as such, the plaintiffs are not entitled to decree of specific performance. It has been further contended that the Agreement to Sell is not registered and, as such, in view of the provisions contained in Section 17(1-A) of the Registration Act, the same is inadmissible in evidence and a suit on the basis of such an Agreement cannot be entertained. It has been contended that the plaintiffs were never ready and willing to perform their part of the contract and on this ground also, they are not entitled to decree of specific performance.

6 I have heard learned counsel for the parties and perused record of the case as well as the impugned order.

7 Before testing the merits of the contentions raised by the learned counsel for the appellants, it would be apt to notice the legal position as regards the principles for grant of temporary injunction.

8. Section 94 of the Code of Civil Procedure (CPC) relates to supplemental proceedings. It, *inter alia*, provides that in order to prevent the ends of justice from being defeated, the court may grant temporary injunction or makes such other interlocutory orders as may appear to the court to be just and convenient. Order XXXIX Rule 1 of the CPC enumerates the cases in which interim injunction may be granted. As per this provision, temporary injunction may be granted if property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a

decree. It can also be granted if the defendant threatens or intends to remove or dispose of his property with a view to defrauding his creditors. Temporary injunction can be granted in a case where defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

9. Thus, the legal position is that for a civil court before which a suit has been filed in respect of the property, it will be open to it to pass appropriate orders for protecting the subject matter of the lis. To that extent there cannot be any dispute about the powers of the civil court to pass orders during the pendency of the suit. A question arises as to what are the principles that would govern a civil court while considering grant of an interim protecting order in the nature of section 94 of the CPC read with Order 39 Rule 1 CPC. The issue has been a subject matter of discussion in a number of cases decided by the Supreme Court and various High Courts of the country. It would be apt to refer to one of such cases decided by the Supreme Court to understand the position of law on the subject. The Supreme Court in the case of **Dalpat Kumar vs Parladh Singh, (1992) 1 SCC 719** has laid down the cardinal principles for grant of interim injunction in the following manner:

> *"5......Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must*

> *be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad-interim injunction pending the suit."*

10. From the above analysis of law on the subject, it is clear that for a plaintiff to make out a case for grant of interim injunction, he has to show that there is a *prima facie* case in his favour and that withholding the relief of interim injunction would result in irreparable injury to him. The plaintiff has also to show that the balance of convenience lies in his favour and for determining this, the court would have to compare the amount of mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to the other side, if the injunction is granted.

11 In light of the aforesaid legal position, let us now analyze the facts of the instant case. It is admitted by the parties that Agreement to Sell was executed between them on 07.10.2021. It has been contended by the appellants that the said Agreement to Sell is not registered, as such, in view of the provisions contained in Section

17(1-A) of the Registration Act, no suit can be filed on the basis of the said Agreement.

12 In the above context, it is to be noted that Section 17(1-A) of the Registration Act makes a document containing contracts to transfer for consideration any immovable property for the purposes of Section 53 A of the Transfer of Property Act compulsorily registrable. It further provides that if such document is not registered, it shall have no effect for the purposes of Section 53-A of the Transfer of Property Act. As per Section 53-A of the Transfer of Property Act, where any person contracts to transfer for consideration any immoveable property and the transferee has, in part performance of the contract, taken possession of the property and the transferee has performed or is willing to perform his part of the contract, then in spite of there being no instrument of transfer, the transferor would be barred from enforcing against the transferee any right in respect of the said property.

13 From a combined reading of Section 17(1-A) of the Registration Act and Section 53-A of the Transfer of Property Act, it appears that a person, who is in possession of a registered Agreement to Sell in respect of the property and has, pursuant thereto, been put in possession of the property, which is subject matter of the Agreement, and is further willing to perform his part of the contract, is protected against any action from the transferor of the property. The registration of an instrument of Agreement to Sell coupled with part performance provides a shield to a transferee against actions of the transferor.

However, Section 17(1-A) of the Registration Act makes the registration of an Agreement to Sell relating to immovable property compulsory only for the purposes of Section 53 A of the Transfer of Property Act. It further provides for consequences of non-registration by expressly stating that in case of non-registration, the said instrument would have no effect for the purposes of Section 53 A of Transfer of Property Act, meaning thereby that the non-registration of an Agreement to sell of immovable property would only affect the rights of the transferee that would have otherwise accrued to him in terms of Section 53A of Transfer of Property Act. Any other right that would flow to a transferee from such an agreement, would not get affected by non-registration of such instrument.

14 The aforesaid position of law gets clarified by the provisions contained in proviso to Section 49 of the Registration of Property Act which deals with effect of non-registration of documents required to be registered. It reads as under:

> *"49.* **Effect of non-registration of documents required to be registered.**
> *No document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall*
> *(a)affect any immovable property comprised therein,or*
> *(b)confer any power to adopt, or*
> *(c)be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:*
> ***Provided that*** *an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property*

> *Act or as evidence of any collateral transaction not required to be effected by registered instrument".*

15 From a perusal of the afore-quoted proviso to Section 49 of the Registration Act, it is clear that an unregistered document affecting immovable property can be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be affected by registered instrument. So, a suit based upon an unregistered agreement to sell of immovable property would be maintainable, though a transferee under the said Agreement to Sell would not be protected against the action(s) of transferor, because an unregistered agreement to sell of immovable property does not have any effect for the purposes of Section 53 A of Transfer of Property Act. The conclusion that can be deduced from this is that an unregistered Agreement to Sell confers a legal right upon the beneficiary under the said agreement to obtain another document viz. the instrument of sale from the transferor and for this limited purpose, he is entitled to maintain a suit on the basis of an unregistered Agreement to Sell. The contention of the appellants that the plaintiffs cannot be maintain a suit for specific performance of an unregistered agreement to sell is, therefore, without any merit.

16 That takes us to the question whether there is a, *prima facie*, case in favour of the plaintiffs. In this regard, it has to be determined as to which of the parties have, *prima facie*, defaulted in adhering to the covenants of agreement to sell dated 07.10.2021. As per the agreement to sell dated 07.10.2021, the defendants have received a sum of Rs.20.00 lacs on 07.10.2021. It further provides that the balance

amount of Rs.4.30 lacs is to be paid on 03.07.2022 provided the transfer of sale in favour of plaintiff No.1 in the record of revenue is effected by the defendants, meaning thereby that the balance amount of Rs.4.30 lacs was to be paid by plaintiff No.1 to defendants 1 to 4 on 03.07.2022 provided sale of land in question was entered in the revenue record in his name by the defendants. This has admittedly not happened. Therefore, the obligation of plaintiff No.1 to pay the balance sale consideration to the defendants had not arisen. *Prima facie*, it appears that order of performance of obligation by the parties laid down in the agreement to sell dated 07.10.2021 provides that after the payment of earnest money by plaintiff No.1, he was obliged to pay the balance amount of sale consideration only by 03.07.2022, subject to the condition that the sale of the property in question was entered in his name in the revenue record by the defendants. There is nothing in the written statement or in the appeal filed by the defendants to even remotely suggest that they have taken any steps for effecting sale of the suit land in favour of plaintiff No.1. Since the taking of steps for entering the suit land in the name of plaintiff No.1 was a step anterior to the obligation of plaintiff No.2 to pay the balance amount of sale consideration, therefore, the contention of the appellants that the plaintiffs have failed to perform their part of obligation under agreement to sell and, as such, forfeited their right to seek specific performance of the agreement, appears to be without any merit.

17 Apart from the above, the appellants have not even terminated the Agreement to Sell before entering into another

agreement to sell with defendant No.5 . It was obligatory upon the appellants to terminate the agreement to sell in favour of plaintiffs prior to entering into a fresh agreement to sell with defendant No.5. From the aforesaid conduct of the appellants, it, *prima facie*, appears that they have acted in an unreasonable manner.

18 It has been vehemently contended by learned counsel for the appellants that time was the essence of contract in this particular case and because the plaintiffs did not make the payment of balance sale consideration within time stipulated in the Agreement, therefore they have forfeited their right to seek specific performance of agreement to sell. It has been contended that the plaintiffs have remained silent for almost two years after the date fixed for payment of balance sale consideration, therefore, discretionary relief of specific performance of agreement cannot be granted in favour of plaintiffs. In this regard, reliance has been placed upon the judgment of Supreme Court in the case of **Des Raj vs. Rohtash Singh**, **(2023) 3 SCC 714.**

19 The question whether time was the essence of contract of sale of immovable property in the present case is a matter which can be decided after trial of the case and cannot be gone into at this stage. Similarly, the question whether the plaintiffs were ready and willing to perform their part of contract is also a matter which can be gone into during trial of the case and not at this stage only on the basis of pleadings of the parties. At this stage, it is clear from the pleadings of the parties that they have executed Agreement to Sell dated 07.10.2021 and plaintiff No.1, as per the covenants of the said agreement, has paid

an amount of Rs.20.00 lacs to the defendants. It also appears that the balance amount of sale consideration could not be paid by plaintiff No.1 to the defendants because no steps were taken by the defendants to execute the instrument of sale in favour of plaintiff No.1. Thus, there is a, *prima facie,* case in favour of the plaintiffs, who, as per covenants of the agreement to sell, have been put in possession of the suit property, though the same is being denied by the appellants.

20 In the face of aforesaid position, the discretion exercised by the trial Court in directing the parties to maintain status quo with respect to 80 kanals of land in question does not deserve to be interfered with by this Court in exercise of its appellate jurisdiction. It is trite law that an Appellate Court would generally not interfere with the discretion exercised by a subordinate civil Court while granting discretionary relief of interim injunction under Order 39, Rule 1 & 2 of CPC, unless the said discretion has been exercised in an arbitrary manner. The present does not fall in the category where the discretion exercised by the trial Court can be termed as 'arbitrary'.

21 For the foregoing reasons, I do not find any merit in this appeal. The same is, accordingly, dismissed. Interim direction, if any, shall stand vacated.

(Sanjay Dhar)
Judge

Jammu
21. 11.2024
"Sanjeev, *Whether the order is speaking:* ***Yes***
Whether the order is reportable: ***Yes***