

(2014) 07 AHC CK 0166

Allahabad High Court (Lucknow Bench)

Case No: F.A.F.O. No. 294 of 2014

Rupali Saran

APPELLANT

Vs

Amit Saran

RESPONDENT

Date of Decision: July 22, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151

Hon'ble Judges: Zaki Ullah Khan, J; Rajiv Sharma, J

Bench: Division Bench

Advocate: D.C. Srivastava, Advocate for the Appellant; Surya Prakash Upadhyay, Counsel, Advocate for the Respondent

Final Decision: Partly Allowed

Judgement

1. Heard Mr. D.C. Srivastava, Counsel for the appellant-plaintiff and Mr. Surya Prakash Upadhyay, Counsel for the respondent-defendant.
2. This First Appeal From Order under Order XLIII Rule (I)(r) of the CPC arises from the order dated 13.2.2014 passed by the I/c II Additional Civil Judge (Senior Division), Court No. 21, Lucknow in Regular Suit No. 727 of 2013: Rupali Saran Vs. Amit Saran, whereby learned Additional Civil Judge (Senior Division), Court No. 21, Lucknow rejected the application (6-Ga) preferred by the appellant/plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure.
3. Appellant/plaintiff (Rupali Saran) filed a suit for prohibitory injunction in the Court of Civil Judge (Senior Division), Lucknow, which was registered as Regular Suit No. 727 of 2013. Along with the suit, appellant/plaintiff had also filed an application under Order XXXIX Rules 1 and 2 of the CPC (hereinafter referred to as the "CPC"], which was marked as 6-Ga. Notice was issued and in response thereof, respondent/defendant appeared and filed objection. The court below, after hearing

the parties, rejected the application preferred by the appellant/plaintiff by means of the impugned order.

4. While assailing the impugned order, Mr. D.C. Srivastava, Counsel for the appellant submits that the property in question is a joint property. After the death of her father, property in question was also devolved upon legal heirs including the appellant and no partition has taken place between the parties but even then, under the garb of in possession over the property in question, the respondent/defendant has started to alienate the property in question and as such, appellant preferred aforesaid suit along with an application for temporary injunction but the Court below erred in rejecting the appellant's application for temporary injunction by means of the impugned order.

5. Per contra, Mr. Surya Prakash Upadhyay, Counsel for the respondent-defendant submits that the appellant is living separately from property in dispute after the marriage and as such, there is no legal and physical possession over the property in dispute and as such, decree of injunction is not maintainable in the eyes of law. He submits that Flat No. 304, IIIrd Floor Tower-F, Rohtas Plamaria, Vibhuti Khand, Gomti Nagar, Lucknow is a self acquired property of the respondent as this property has been purchased by his father and the respondent himself and after the death of his father, the respondent is residing in the said property. Therefore, the appellant/plaintiff has no concern of the said property. Thus, there is no illegality and infirmity in the impugned order. In support of his submission, he has placed reliance upon the judgment of this Court in Virendra Kumar Vs. Addl. District Judge Court No. 1, and the judgment rendered by the Apex Court in Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others,

6. Having heard Counsel for the parties and perusing the impugned order and also the allegations made in the application for injunction and the objections thereto, we are of the considered view that the appellant, in the facts and circumstances of the case, had successfully made out a *prima facie* case for grant of injunction insofar as if an order restraining the respondent from creating any third party interest or from transferring the property in dispute is not granted till final order is passed, the appellant shall suffer irreparable loss and injury and the entire order if passed in his favour, would become totally negated. In this connection, it is imperative to refer to a judgment of the Apex Court in the case of Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, which observed as follows:

Unless and until a case of irreparable loss or damage is made out by a party to a suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled

property to better use. We do not think that in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be conditions on which the same is done.

7. Going by the ratio of the abovementioned decision, it is clear that the trial Court was not justified in rejecting the appellant's application for temporary injunction as *prima facie* it has been proved that the respondent was trying to sell the property in dispute to a third party, thus alienating the rights of the property in dispute, which would have caused irreparable damage to the appellant.

8. From a bare perusal of the findings of the trial Court rejecting the application for injunction, it would be evident that the trial Court erred in recording the finding that the appellant had failed to make out a *prima facie* case for grant of an order of injunction in his favour. But in view of our discussions made hereinabove, we are of the view that if the order of the *status quo* is not granted and respondent is permitted to sell the property in dispute to a third party, complications will arise and the third party interest will be created, for which the final order/decree, if any, passed in favour of the appellant ultimately, would become nugatory.

9. It is relevant to add here that the judgments, which have been relied by the Counsel for the respondent, are not applicable to the facts and circumstances of the case. Further, during the course of arguments, a specific query was put to the Counsel for the respondent as to whether the respondent is trying to alienate the property in question or not, the answer was in negative.

10. In the light of the discussions made hereinabove, we set aside the impugned order dated 13.2.2014 passed in Regular Suit No. 727 of 2013. It is provided that till the final decision of the suit, parties shall maintain *status quo* with regards to the alienation of the property in question.

11. It is clarified that while deciding the suit, the trial Court will not be guided by the observations made hereinabove.

12. For the reasons aforesaid, the appeal is allowed to the extent indicated above.

13. There will be no order as to costs.