

HIGH COURT OF DELHI**Bench: Hon'ble Mr. Justice Tushar Rao Gedela Hon'ble Mr. Justice Ravinder Dudeja****Date of Decision: 05 January 2024**

FAO(OS) 142/2023 & CM APPL. 67147/2023 (Stay)

RAMESH KUMAR SHARMA AND ANR **Appellants****Vs****USHA NINDAWAT**..... **Respondent****Sections, Acts, Rules, and Articles Mentioned:**

Order 43 read with Section 104 of the Code of Civil Procedure, 1908 (CPC)

Section 10 (1) of the Delhi High Court Act, 1966

Order 39 Rule 1 & 2 of CPC

Subject:

The subject of the judgment is an appeal against a temporary injunction restraining the sale of disputed property in an ongoing suit for partition, declaration, and permanent injunction.

Headnotes :

Injunction – Restraining Sale of Property – Appellants restrained from selling disputed property till further orders – Appeal against Single Judge's order in Original Suit for partition, declaration, and permanent injunction – Court maintaining status quo to protect property rights during litigation. [Para 1, 7, 8]

Property Rights – Sale of Property in Dispute – Challenge to the legality of sale based on claims of fraud and collusion in execution of relinquishment deed – Consideration of legal heir's rights in property inherited from deceased father. [Para 2, 3]

Appellate Jurisdiction – Interference with Discretionary Orders – Appellate court's approach to discretion exercised by trial court in granting temporary injunction – Appellate court not to substitute its discretion except in cases of arbitrary, capricious or perverse exercise of discretion. [Para 5, 6]

Temporary Injunction – Principles for Grant – Prima facie case, balance of convenience, and irreparable loss – Upholding Single Judge's findings on all three considerations for granting injunction to protect property during litigation. [Para 7, 8]

Decision – Dismissal of Appeal – Upholding Single Judge's order, maintaining injunction against appellants from selling disputed property – Appeal and pending application dismissed. [Para 9]

Referred Cases with Citations:

Not specifically mentioned in the provided judgment excerpt.

Representing Advocates:

Appellants: Mr. Kartickay Mathur, Advocate.

Respondent: Mr. Nishant Shokeen, Mr. Rahul Singh, Mr. Sahil Nindawat, Ms. Varitka Singh, and Ms. Sumita Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The appellants herein are the defendants No. 6 & 7 in the Original Suit bearing No. CS (OS) No. 109/2023 titled "Usha Nindawat Vs. Ginno Gothwal & Ors." The present appeal has been filed by them under Order 43 read with Section 104 of the Code of Civil Procedure, 1908 [hereinafter referred as "CPC"] and Section 10 (1) of the Delhi High Court Act, 1966, assailing the order dated 19.10.2023 passed by the learned Single of this Court in IA No. 2998/2023 in the aforesaid Suit, whereby, the appellants were restrained from selling the subject suit property bearing No. A-77, Phase-III, Ashok Vihar, Delhi till further orders. The relevant portion of the said order is reproduced hereunder:-

"1. Plaintiff claims that upon the death of her father, the suit property devolved upon her and defendant Nos.1-5. It is further claimed that the said defendants, in collusion, fraudulently got executed from the plaintiff a relinquishment deed dated 27.02.2018 in favour of defendant No.1 and using the said deed, entered into a sale deed dated 04.12.2020 with defendants Nos.6 & 7 w.r.t the suit property. The plaintiff apprehends that defendant Nos.6 & 7 may create third-party rights in the suit property, thereby depriving plaintiff of her lawful share.

2. *On a prima facie consideration of the facts and materials placed on record, as well as the submissions made, this Court is of the opinion that the plaintiff has made out a case in her favour. The balance of convenience lies in her favour and irreparable injury would be caused to her if some relief is not granted.*

3. *In view of the above, defendant Nos.6 & 7 are restrained from selling the suit property till further orders."*

2. The facts of the case, briefly, are that it is the claim of the plaintiff that upon the death of her father, the suit property devolved upon her and defendants No. 1 to 5, being the legal heirs. It has been further claimed that the said defendants, in collusion had fraudulently, got executed a relinquishment deed dated 27.02.2018 from her in favour of her mother i.e. defendant No. 1 and using the said deed, defendant No. 1 sold the suit property to defendants No. 6 & 7 vide sale deed dated 04.12.2020. Hence,

original CS (OS) No. 109/2023 titled “Usha Nindawat Vs. Ginno Gothwal & Ors.”, seeking partition, declaration and permanent injunction has been filed.

3. The learned counsel of the appellants has argued that being the bonafide purchasers of the property from defendant No. 1, who became the owner of the same by virtue of the relinquishment deed executed by the other legal heirs, cannot be restrained from selling the suit property. It is submitted that such a preemptive restraint order would affect the right to property conferred on the appellants who are well within their rights to sell the suit property even during the pendency of the suit before the Court and this right cannot be taken away by the grant of temporary injunction.

4. *Per contra*, the learned counsel for the respondent (plaintiff in Original Suit) submits that there is no bar to the exercise of power to grant temporary injunction under Order 39 Rule 1 & 2 CPC. He further submits that the learned Single Judge while granting temporary injunction has recorded a specific finding that the plaintiff has established a prima facie case, balance of convenience in her favour and also that if the defendants are not restrained by an order of injunction from making any further alienation, there would be irreparable loss to the plaintiff and as such the order dated 19.10.2023 of the learned Single Judge needs no interference by this Court in the exercise of its appellate jurisdiction.

5. We have considered the submissions advanced by the learned counsel for the parties and have given our anxious consideration to the same. Further, we have also perused the entire material on record. In view of the submissions advanced, the only question which needs consideration and determination is whether the impugned order dated 19.10.2023 passed by the learned Single Judge restraining the appellants herein (defendants No. 6 & 7 in the Original Suit) from selling the suit property till further orders, suffers from any error of law or jurisdiction and calls for interference in the exercise of the appellate jurisdiction.

6. With respect to the exercise of the appellate powers in relation to the exercise of the discretion by the trial court in deciding an application for temporary injunction, it is no longer *res-integra* that the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, capriciously or perversely or where the court had ignored the said principles of law regulating the grant or refusal of interlocutory injunctions.

7. In the case before us, the appellants herein (defendants No. 6 & 7 in the Original Suit) have been restrained by the learned Single Judge from selling the suit property till further orders. The primary object of grant of temporary injunction is to maintain status quo, protecting the suit property till the adjudication of the rights of the litigating parties on satisfaction of the court regarding the existence of three golden principles of prima facie case, balance of convenience and causing irreparable loss and injury in favour of the applicant.

8. The learned Single Judge granted temporary injunction in favour of the respondent after recording his findings on all the three considerations in favour of the respondent. The discretion apparently has been exercised for protecting the suit property and in order to discourage that the suit property is not subjected to subsequent sale to the third party. Else, the rights of the respondent may get frustrated and the litigation may get delayed. There is nothing on record to show that the discretion was exercised by the learned Single Judge arbitrarily, capriciously or perversely or by ignoring the settled principles of law regulating the grant of injunction, and therefore, calls for no interference in the exercise of our appellate jurisdiction. Accordingly, we do not find any legal infirmity in the order passed by the learned Single Judge restraining the appellants herein from selling the suit property till further orders.

9. Appeal is accordingly dismissed along with the pending application bearing CM No. 67147/2023.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.