

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

Present:

**The Hon'ble Justice Subhro Kamal Mukherjee
And
The Hon'ble Justice Subrata Talukdar**

*F.M.A. No. 2192 of 2014
with
C.A.N. No. 5284 of 2014*

Sk. Rabiul Alam

...Appellant.

Versus

Dinesh Kumar Goyal and another.

...Respondents.

For the appellant: Mr. Syama Prasanna Roy Chowdhury,
Mr. Hiranmay Bhattacharyya,
Mr. Mir Anuruzzaman.

For the respondent no. 1: Mr. Debasish Roy,
Mr. Koustav Chandra Das,

For the respondent no. 2 : Mr. Jiban Ratan chatterjee,
Mr. Partha Pratim Roy.

Judgment on: December 4, 2014.

Subhro Kamal Mukherjee, J.:

This is an appeal against judgment and order dated March 7, 2014 passed by the learned Civil Judge (Senior Division), Fourth Court at Alipore, District – South 24 Parganas, in Title Suit No. 13657 of 2013.

The learned Civil Judge, by the order impugned, allowed the application for temporary injunction and restrained the defendant no. 2 from transferring or alienating the property-in-suit to any third party till the disposal of the suit.

The defendant no. 2 is the appellant before this Court.

The appeal arises out of a suit for declaration, for cancellation of a deed executed by the defendant no. 1, who has been the power of attorney of the plaintiff, in favour of the defendant no. 2.

The suit was filed on the allegation of fraud. Admittedly, the plaintiff executed a registered power of attorney dated April 23, 2014 in favour of the defendant no. 1. By the said power of attorney the said defendant no. 1 was authorised to sign, execute and register any deed of conveyance or sell and all other instruments of transfers, undertakings, declarations, confirmations and to present the same, whether executed by the plaintiff or the said attorney, and to admit the execution thereof and present for registration before the registering authority in the name of the plaintiff and on behalf of the plaintiff. It was, however, provided that all the receivables would be paid to the principal and all the payable would be borne by the principal.

The disputed property is a *pucca* structure standing on 2 (two) Katha, 9 (nine) Chatak 11 (eleven) square feet land, at premises no. 2, Debendra Ghosh Road, Police Station – Bhabanipur Kolkata - 700025, within the limits of the Kolkata Municipal Corporation.

It is contended in the plaint of the said suit that the defendant no. 1 has been a close relation of the plaintiff being his maternal aunt (mother's sister). It is contended that the defendant no. 1 approached the mother of the plaintiff that she knew a developer and introduced the defendant no. 2 to the plaintiff. The defendant no. 1 impressed the plaintiff and his mother that the defendant no. 2 would be the best person to negotiate with the tenants and could easily obtain vacant possession of the tenanted premises. It was represented to the plaintiff that the defendant no. 2 would be able to procure a sanctioned building plan from the Kolkata Municipal Corporation as the defendant no. 2 had vast experience in development business. It was stated that the power of attorney was prepared on April 23, 2012 and it was registered on April 25, 2012. The actions of the defendant no. 1 afterwards created some suspicion in the mind of plaintiff and his mother. The plaintiff conducted searches and came to know, to his utter

surprise, that the property has been conveyed by the defendant no. 1. as the attorney of the plaintiff, in favour of the defendant no. 2 for paltry sum of Rs.10,00,000/- (Rupees ten lakh) only.

As we have, already, noted herein above, that the property is a *pucca* structure standing on 2 (two) Katha, 9 (nine) Chatak 11 (eleven) square feet land, at premises no. 2, Debendra Ghosh Road, Police Station – Bhowanipore, Kolkata – 700025.

It is suggested in course of argument that the locality is close to Ashutosh Mukherjee Road, which is an important main road in the city of Kolkata, and it is very close to Jadu Babu's Bazar, which is an important market in the southern part of the city of Kolkata.

It is true that the property was wholly tenanted, but it shocks our conscience, *prima facie*, that such property could be sold at a paltry sum of Rs.10,00,000/- (Rupees ten lakh) only, that too in cash. The deed of sale was executed on December 10, 2012. The stamp paper was purchased in the name of Sk. Zafir, an advocate of the Alipore Judges Court. The stamp paper for execution of the registered power of attorney was, also, purchased by the said Sk. Zafir.

It is, *prima facie*, established that both the power of attorney and the deed of sale were prepared by the learned

advocate for the defendant no. 2 and gives credit to the allegation of the plaintiff that the power of attorney was executed at the behest of the defendant no. 1 in collusion with the defendant no. 2.

In the deed of sale it was stated that the property was conveyed as there were various disputes and litigations.

The property was presented for registration in the office of the Additional District Sub-registrar at Alipore, district: South 24 Parganas; the registering authorities assessed the market value of the property at Rs. 1,29,06,306/- (Rupees one crore twenty nine lakh six thousand three hundred and six) only. The stamp duty assessed for execution of the said deed of sale was Rs.9,03,461/-(Rupees nine lakh three thousand four hundred sixty one) only.

The deed was executed on December 10, 2012. We are surprised by the speed with which the Kolkata Municipal Corporation acted in mutating the property in the name of defendant no. 2. The property was mutated in the name of the defendant no. 2 on the very next day, that is, on December 11, 2012.

In the aforesaid suit, an application for temporary injunction was filed and the learned Civil Judge (Senior

Division), as has been indicated hereinabove, granted temporary order of injunction restraining the defendant no. 2 from transferring, alienating and/or encumbering the property to any third party till the disposal of the suit.

When we confronted Mr. Syama Prasanna Roy Chowdhury, learned senior advocate appearing on behalf of the appellant, the defendant no.2 in the suit, and Mr. Jiban Ratan Chatterjee, learned senior advocate for the defendant no. 1 as to whether the consideration amount was paid to the plaintiff or not, the reply came that the consideration was obtained in cash from the defendant no. 2 from time to time and such cash amounts were handed over to the plaintiff without obtaining any receipt.

Mr. Roy Chowdhury draws our attention to the statements made in the application under rule 4 of Order 39 read with Section 151 of the Code of Civil Procedure that the sale of the property is admitted and finding that the suit property is, now, lying vacant, the plaintiff has filed this suit out of greed for more money. Mr. Roychowdhury, further, submits that the relief, if any, is against the defendant no.1. The allegation of fraud is not supported by proof. The order of injunction is inappropriate to the relief claimed in the suit and causing extreme hardship to the defendant no. 2. Mr. Roy Chowdhury submits, finally, that

excepting the allegation that the price was less and that the property was sold under value, there is no other allegation of fraud in the plaint.

Mr. Roy Chowdhury cites the decisions in the cases of **Dalpat Kumar and another versus Prahlad Singh and others reported in AIR 1993 Supreme Court 276, Bepin Krishna Sur and others versus Gautam Kumar Sur and others reported in 85 Calcutta Weekly Notes 393 and Phani Bhusan Dey versus Sudhamoyee Roy and another reported in 91 Calcutta Weekly Notes 1078.**

Mr. Jiban Ratan Chatterjee, learned senior advocate appears for the defendant no. 1 and submits that the premises was wholly tenanted and was fetching a very low income not even to meet the municipal corporation rates and taxes. Therefore, the defendant no. 1 could obtain the best deal from the defendant no. 2 and, therefore, transferred the property bona fide in favour of the defendant no. 2.

Mr. Debasish Roy, learned advocate appears for the plaintiff and submits that fraud is crystal clear from the facts and circumstances and, therefore, the learned judge, rightly, exercised his discretion in passing the order of injunction. Mr. Roy refers to the decisions of **Messrs. Begg, Dunlop and**

Company and another versus Satish Chandra Chatterjee reported in 23 Calcutta Weekly Notes 677 and Gangubai Bablya Chaudhury and others versus Sitaram Bhalchandra Sukhtankar and others reported in AIR 1983 Supreme Court 742.

We have narrated the facts sufficiently, which give, in our mind, prima facie, that the defendant no. 1 being a close relation impressed upon the plaintiff and his mother to enter into a development agreement with the defendant no. 2 and obtained a power of attorney in her favour. Taking advantage of the confidence reposed in her, the defendant no. 1 conveyed the property of the plaintiff in favour of the defendant no. 2. There is no document to show that the consideration money was passed on to the plaintiff. It is difficult to swallow, at this stage, that a valuable property could be sold at Rs. 10,00,000/- (Rupees ten lakh) only that too in cash. There is no documentary evidence to show, at this stage, that the consideration amount reached the plaintiff.

The learned judge in exercise of his discretion struck a balance. The learned judge did not restrain the defendant no. 2 from carrying out the developmental works, but restrained him

from transferring, alienating or encumbering the property-in-suit during the pendency of the suit.

We are unable to accept the contentions of Mr. Roy Chowdhury, learned senior advocate for the appellant, that the defendant no. 2 may be permitted to transfer the developed property in favour of the third parties subject to the result of the suit inasmuch as that would lead to multiplicity of proceedings and the situation will, certainly, become irreversible by the time the suit is decided finally and would preclude a fair and just decision of the suit.

The Supreme Court of India in the case of **Zenit Mataplast (Private) Limited versus State of Maharashtra** reported in **(2009) 10 SCC 388** holds that an interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty is resolved in his favour at the trial. Grant of an interim relief in regard to the nature and extent

thereof depends upon the facts and circumstances of each case as no straitjacket formula can be laid down. There may be a situation wherein the respondent-defendant may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation interim relief shall be granted. Grant of temporary injunction is governed by three basic principles, that is, prima facie case, balance of convenience and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But, it may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.

Thus, the law on the issue emerges to the effect that an interim injunction shall be granted by the Court after considering all the pros and cons. The order can be passed on settled principles taking into account the three basic grounds, that is, prima facie case, balance of convenience and irreparable loss.

The question is whether, under such circumstances, the court below was right in granting the temporary injunction. We are in agreement with the learned trial judge that the plaintiff has made out a clear case for obtaining a temporary order of injunction.

The learned trial judge exercised his discretion properly. As the Appeal Court we should be loath in interfering with such discretion.

The appeal is, therefore, dismissed.

We, however, direct the parties to bear their respective costs in this appeal.

We make it clear that we have not gone into the merits of the claims and the counter-claims of the parties involved in the suit finally and all the issues are kept open to be decided in accordance with law. We express no final opinion on the issues of the suit.

We request the learned trial judge to see that the suit is disposed of expeditiously preferably within a year from the date of communication of this order to the court below.

(Subhro Kamal Mukherjee, J.)

Subrata Talukdar, J.

I agree.

(Subrata Talukdar, J.)