

Neutral Citation No. - 2024:AHC-LKO:13664

Court No. - 29

Case :- FIRST APPEAL FROM ORDER No. - 321 of 2023

Appellant :- Saurabh Gupta

Respondent :- Smt. Archana Gupta And 2 Others

Counsel for Appellant :- Vipul Gupta, Pritish Kumar

Counsel for Respondent :- Ankit Srivastava, R.B.S. Rathaur, Rajneesh Maurya

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Pritish Kumar, learned counsel for the appellant as well as Sri Ankit Srivastava and Sri R.B.S. Rathaur learned counsel for respondent no.2.

2. No one appears on behalf of respondent no.3 despite service of notice.

3. Present appeal has been filed against the order dated 25.07.2023 passed by Civil Judge (S.D.), Hardoi in Civil Suit No.23 of 2023 (Saurabh Gupta vs Smt. Archana Gupta and others) by which the injunction application filed by the appellant under Order 39 Rule 1 and 2 of C.P.C. (application no.13(g) has been rejected.

4. The crux of the matter is that the appellant filed a Civil Suit No.23 of 2023, impleading the respondents as defendants, for a declaration that he is the co-sharer of 1/4th part of the property in dispute as the property belongs to joint family property because it was purchased by the father of the appellant, who is also the husband of respondent no.1 in the name of respondent no.1. In the suit above, the specific plea was taken that respondent no.1 was the house maker and did not have any independent source of income. Through a sale deed dated 20.10.1986, the appellant's father purchased the property in

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dispute from Ram Ratan Gupta. It was further mentioned in the plaint that the appellant also made construction over that plot, and thereafter, the entire family has been running a business therein, and this complex is also known as R.C. Complex. Therefore, an application under Order 39 Rule 1 and 2 C.P.C. was filed during the pendency of the present suit with a prayer that the respondent may be restrained from transferring the same. In the written statement, respondents have stated that the aforesaid property has been gifted by respondent no.1 to respondent no.2. The application above for interim injunction has been dismissed by the Court below vide order dated 25.07.2023.

5. Contention of counsel for the appellant is that respondent no.1 was a homemaker and did not have any independent income, and his father purchased the property in dispute in the name of respondent no.1 (wife), therefore property belongs to the joint family property and not an individual property of respondent no.1. It is further submitted that the appellant as well as respondent no.2, have been jointly running a business of selling toy in the property above.

6. It is also submitted by counsel for the appellant that in the gift deed, respondent no.1 admitted that she is homemaker and had she been a working women and having source of income, then this fact would have been mentioned in the gift deed itself, but she chose to mention herself as a homemaker.

7. In support of his contention, counsel for the appellant has also relied upon the judgment of Co-ordinate Bench of this Court in the case of **Kuldeep Sharma and others vs Satyendra Kumar Sharma and others; AIR 2001 Alld 366**, wherein it was observed that if Hindu husband purchases a property in the name of his wife, who is homemaker then it is to

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be presumed that it is a benami transaction unless otherwise shown to be purchased by the wife from her source of income. He further relied upon the judgement in the case of **Dalpat Kumar and another vs Prahlaad Singh and others; AIR 1993 SC 276**, in which the Hon'ble Supreme Court observed in para 5 that for the purpose of injunction, a *prima facie* case is not to be confused with a *prima facie* title, which has to be established, on evidence at the trial and while granting injunction, the Court should consider the party seeking relief does not have any remedy available except one to seek an injunction and he needs protection from the consequence of apprehended injury or dispossession.

8. Counsel for the appellant further relied upon the judgement of Apex Court in the case of **Smt. Ranibai alias Mannubai vs Smt. Kamla Devi and others; AIR 1996 Supreme Court 1946**, in which Hon'ble Apex Court observed that the injunction should be granted in the suit for a declaration if the Court feels protection is to be given in the pending suit. Therefore, he lastly submitted that a *prima facie* case for granting injunction has not considered by the Court below. Thus, considering this fact, as well as the legal position that the property purchased in the name of the homemaker by the husband will be deemed to be the property of joint family property, the appellant is entitled to 1/4 share in the property in dispute, therefore his right should be protected by restraining the respondents from creating any 3rd party's right.

9. Per contra, learned counsel for the respondent nos. 1 and 2 has submitted that in present case application for an injunction under Order 39 Rule 1 and 2 C.P.C. itself is not maintainable as no final relief was claimed in the plaint, which is in nature of permanent injunction.

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10. In support of his contention, learned counsel for the respondent nos.1 and 2 has relied upon the judgement of the coordinate Bench of this Court in the case of **V.D. Tripathi and others vs Vijai Shanker Dwivedi and other; AIR 1976 Allahabad 97**, in which Court observed that there was no prayer for permanent injunction restraining the defendant from suspending the plaintiff, then prayer for interim injunction cannot be granted under Order 39 Rule 1 and 2 C.P.C. because prayer for an interim injunction should not be different from final prayer in the plaint and also the judgement of Apex Court in the **Cotton Corporation of India Limited vs United Industrial Bank Limited; 1983(4) SCC 625** in which Hon'ble Apex Court observed that the power to grant a temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms, as prayed for, temporary relief in the same terms can hardly be ever granted. In another judgement relied by the respondent in the case of **Manohar Lal Sharma and others vs Pyare Lal and others in Second Appeal No.2627 of 1974** decided on 21st October, 1986, this Court observed that there is no presumption that a Hindu joint family owns the joint properties unless it is established that it had sufficient nucleus to acquire that property. In another judgement relied upon him in the case of **Kuppala Obul Reddy vs Bonala Venkata Narayana Reddy (dead) through Lrs; AIR 1984 Supreme Court 1171**, in which Hon'ble Apex Court observed that there may be a presumption that the joint family but not for the possessing of joint family property. In another judgement of the Supreme Court in **Bhagwat Sharan (Dead Thr. Lrs) vs Purushottam; AIR 2020 SC 2361**, the Hon'ble Supreme Court observed that unless the material is produced to show that payment was made to purchase the property out of the fund of

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HUF, the property cannot be said to belong to HUF.

11. After considering the rival submissions of learned counsel for the parties and on perusal of the record, it is clear that the father of appellant had purchased the property in dispute, who was also the husband of respondent no.1. There is nothing on record which shows that respondent No. 1 had any independent source of income. Though the husband can purchase a property in the name of his wife as a gift to her to make her absolute owner of that property, but that would come, only after the evidence is adduced. The Co-ordinate Bench of this Court has already observed that once a property is purchased by a Hindu husband in the name of his wife, who is homemaker, then the property will be deemed to be purchased by the husband himself from his source unless the contrary is proved. Secondly, it is also evident from the judgment of the Apex Court in **Smt. Ranibai alias Mannubai (supra)** that even in the suit for declaration as an application under Order 39 Rule 1 and 2 read with Section 151 C.P.C. is maintainable for the protection of property, which is the subject matter of suit if the Court finds protection of the subject matter is necessary, and if protection is not granted, the same may result in irreparable loss to the complainant.

12. Proviso (iii) of Section 2(9)(b) of Prohibition of Benami Property Transactions Act, 1988 also prescribes that if the husband purchased the property in the name of his wife or children, then the same will not be said to be Benami property but will be deemed to be purchased by the husband out of his source.

13. Law relating to granting interim injunction during the pendency of suit is well-settled which was reiterated by the Apex Court in several judgements. In the case of **Neon**

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Laboratories Ltd. vs Medical Technology Ltd. and others;

2016 (2) SCC 672, Hon'ble Apex Court observed as under;

"However, it is now entrenched in our jurisprudence that the appellate Court is not flimsily, whimsically or lightly interfere in the exercise of discretion by a sub-ordinate court unless such exercise is palpably frivolous. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence."

14. Hon'ble Apex Court in the case of **Zenith Metaplast Pvt. Ltd. vs State of Maharastra and others; 2009 (10) SCC 388**, while laying down the law relating to granting the injunction, observed that the interim order is a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become infructuous or a *fait accompli* before the final hearing. It also further observed that the grant of a temporary injunction is governed by three basic principles, i.e. *prima facie* case, balance of convenience, and irreparable injury, which must be considered in a proper perspective in the facts and circumstances of the particular case. For reference para 30, 31 and 37 of the above judgments are quoted as below;

"30. Interim order is passed based on 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 were resolved in his favour at the trial (vide Anand Prasad Agarwalla v. Tarkeshwar Prasad [(2001) 5 SCC 568] , and State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha [(2009) 5 SCC 694 : (2009) 2 SCC (L&S) 109]).

31. 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 should be granted (vide M. Gurudas v. Rasaranjan [(2006) 8 SCC 367 : AIR 2006 SC 3275] and Shridevi v. Muralidhar [(2007) 14 SCC 721]). Grant of a temporary injunction is governed by three basic principles, i.e. prima facie case, balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and

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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 [vide *S.M. Dyechem Ltd. v. Cadbury (India) Ltd.* [(2000) 5 SCC 573 : AIR 2000 SC 2114] and *Anand Prasad Agarwalla* [(2001) 5 SCC 568] , SCC p. 570, para 6].

37. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. *prima facie* case, balance of convenience and irreparable loss."

15. Be that as it may, here the appellant is claiming the declaration of only 1/4th share in the property in dispute on the ground that the property belongs to a joint Hindu family and the property was purchased during lifetime of father of the appellant in the name of respondent no.1, who was homemaker. **This Court under Section 114 of Indian Evidence Act may presume the existence of fact that the property purchased by Hindu husband in the name of his spouse, who is homemaker and does not have independent source of income, will be the property of family, because in common course of natural event Hindu husband purchases a property in the name of his wife, who is homemaker and does not have any source of income for the benefit of family.** Therefore, in such case *prima facie* the property is joint Hindu family property and protection of property from transferring to a third party is necessary, consequently this Court finds that the Court below, while passing the impugned order dated 25.04.2023 has not applied his mind despite being a *prima facie* case, and in such case protection is necessary against further transferring the property or changing the nature of same, if same is not protected, there are chances the property may be transferred or nature of property may be changed in that case even if the appellant's suit is decreed, then he will suffer irreparable loss and injury.

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16. Therefore, the order dated 25.07.2023 passed by Civil Judge (S.D.), Hardoi in Civil Suit No.23 of 2023 (Saurabh Gupta vs Smt. Archana Gupta and others) is hereby set aside. Injunction application filed by the appellant bearing Paper No.13(g) is allowed, and respondents are restrained from transferring the property in dispute during the pendency of the suit. As the dispute is between the real brothers and the suit is still pending, therefore, it would appropriate the Court below will decide the same expeditiously in accordance with law without giving any unnecessary adjournment to either of the parties.

17. With the observation above, the appeal is **allowed**.

Order Date :- 15.2.2024

A.Kr*