

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
&
THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

CIVIL MISCELLANEOUS APPEAL Nos.43 & 45 of 2021

COMMON JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri O.Manohar Reddy, learned counsel for the appellant/1st defendant in CMA.No.45 of 2021, Sri Y.Ratna Prabha, learned counsel for the appellants/defendants Nos.2 & 3 in CMA.No.43/2021 and Sri P.Nagendra Reddy, learned counsel for the 1st respondent/plaintiff in CMA.No.45 of 2021 and perused the material on record.

2. The appellants in CMA.No.43 of 2021 are defendants Nos.2 & 3 and the appellant in CMA No.45 of 2021 is the 1st defendant. The plaintiff is shown as 1st respondent in both the appeals. These two Civil Miscellaneous Appeals are filed under Order 43 Rule-1 of Code of Civil Procedure (for short "CPC") challenging the judgment and order, dated 04.12.2020, passed by the IV Additional District Judge, Kurnool in I.A.No.334 of 2017 under Order 39 Rules 1 and 2 CPC in O.S.No.108 of 2017 (*G.Giridhar v. S.Chandra Mohan Reddy and others*), by which, I.A.No.334 of 2017 was allowed granting interim injunction restraining the respondents therein, their agents, successors or anybody on their behalf from executing or creating any registered document of alienation or encumbrance in respect of petition schedule property pending disposal of the suit.

3. The facts of the case, briefly stated are that the plaintiff/1st respondent filed O.S.No.108 of 2017 seeking a decree for specific performance of the agreement of sale, dated 11.03.2014 against the 1st defendant directing him to perform his part of the agreement by receiving the entire balance of sale consideration in respect of the suit schedule

property and in case of his failure to do so, to enable the plaintiff/1st respondent to get the same performed through the process of court and to deliver vacant possession of the property.

4. The suit has been filed on the pleadings *inter alia* that the 1st defendant is the absolute owner of the suit schedule land and he had executed agreement of sale, dated 11.03.2014 in plaintiff's favour. Out of total sale consideration of Rs.75,00,000/-, the 1st defendant received a sum of Rs.1,00,000/- on the date of execution of the agreement of sale towards advance and had agreed to receive the balance of sale consideration of Rs.74,00,000/- in two instalments, viz., Rs.18,50,000/- within 25 days, i.e., on or before 05.04.2014, and Rs.55,50,000/- within 5 months, i.e., on or before 05.09.2014 from the date of agreement of sale. The plaintiff offered to pay the balance of sale consideration as per the schedule fixed under the agreement of sale, but on one or other reason the 1st defendant was not ready to receive the same, however, the 1st defendant collected a sum of Rs.2,00,000/- on 30.06.2014, Rs.5,00,000/- on 05.04.2016 and Rs.1,00,000/- on 07.04.2016 from the plaintiff towards part of balance sale consideration by making necessary part payment endorsements on the respective dates of receipt on the reverse of the first page of the agreement of sale. The plaintiff had been repeatedly asking the 1st defendant to receive the remaining balance sale consideration and to execute the registered sale deed in his favour, but in spite thereof as also the legal notice, dated 29.10.2017, issued and served, the 1st defendant continued postponing execution of the sale deed on one or other pretext. The plaintiff pleaded that he had always been ready and willing to perform his part of the contract.

5. During pendency of the suit, the 1st defendant alienated the suit schedule property in favour of defendants Nos.2 & 3/the appellants in CMA No.43 of 2021 under a registered sale deed, dated 26.10.2019. Consequently, the plaintiff amended the plaint and impleaded the defendants Nos.2 and 3 as party in the suit.

6. Along with the plaint, the plaintiff/1st respondent also filed an application under Order 39 Rules 1 and 2 CPC for grant of interim injunction, restraining the 1st respondent, his representatives, successors or anybody on his behalf from executing or creating any registered document of alienation or encumbrance in respect of petition schedule property pending disposal of the suit.

7. The 1st defendant/appellant in CMA.No.45/2021 filed objection/counter, denying the averments of the petition and contending that the plaintiff is falsely pleading that the respondent is selling the property and that there is no necessity for restraining the alienation of the property as the plaint filed by the plaintiff is registered and notice has been on the said respondent. He further pleaded that in view of specific provision of Section 52 of Transfer of Property Act (for short "T.P.Act"), there is no necessity for expressive order as provided in the civil procedure code. Such a pre-emptive restraining order would affect the right to property conferred on the respondent, who will be well within his right to sell the property to the prospective buyers after informing and appraising about the pendency of the suit.

8. Defendants Nos.2 & 3/appellants in CMA No.43/2021 also filed counter denying the averments of the plaint/petition and contending that the said respondents were not aware of the suit filed by the plaintiff seeking for specific performance of the agreement of sale, dated

11.03.2014, against 1st defendant and that they purchased the suit schedule property under a registered sale deed, dated 26.10.2019, vide Doc.No.12694 of 2019. The claim of the petitioner was barred by limitation. They also contended that in pursuance of the sale deed, dated 26.10.2019, the physical possession of the plaint schedule property had been handed over to them and they, in turn, sold part out of the suit schedule property to an extent of Ac.24.00 cents, located in Sy.No.97/A2 of Kallur village limits to others.

9. The learned IV Additional District Judge, Kurnool vide order, dated 04.12.2020, allowed the petition and granted the interim injunction, as mentioned above, against which the present appeal has been filed.

10. The learned counsel for the appellants/defendants submits that in view of Sec.52 of T.P.Act, the appellant will be well with his right to sell the property even during pendency of the suit before the court which right cannot be taken away by grant of temporary injunction. Any transfer made *lis pendens* before the court shall abide by Sec.52 of T.P.Act and consequently, there was no occasion for the court below to have passed the order of temporary injunction. The further submission is that when a registered sale deed, dated 26.10.2019, had already been executed in favour of defendant Nos.2 & 3 by the 1st defendant, no injunction should have been granted.

11. Per contra, Sri P.Nagendra Reddy, learned counsel for the 1st respondent/plaintiff, submits that Sec.52 of T.P.Act is not a bar to the exercise of the power to grant temporary injunction under Order 39 Rules 1 and 2 CPC. He further submits that the learned court below while granting temporary injunction has recorded a specific finding that the plaintiff established *prima facie* case and balance of convenience in his

favour, and also that if the defendants were not restrained by order of injunction from making any further alienation, they might execute further sale deeds in favour of third persons, giving rise to multiplicity of proceedings and causing irreparable loss and injury to the plaintiff. He further submits that the appellant/1st defendant had admitted that he had transferred part of the suit property in favour of appellants/respondents Nos.2 and 3, who in turn had also transferred part of the property in favour of third persons, and when taking note of these facts, the learned trial court granted the temporary injunction, such order needs no interference by this court in the exercise of appellate jurisdiction.

12. In reply, the learned counsel for the appellants/defendants submits that by the time the transfer was made by the 1st defendant in favour of defendants Nos.2 & 3 there was no order of temporary injunction. Such transfer would abide by the ultimate decree in view of Sec.52 of T.P.Act.

13. We have considered the submissions advanced by the learned counsel for the parties and perused the material on record.

14. In view of the submissions advanced, the following points arise for consideration and determination;

- i) Whether Section 52 of the Transfer of Property Act operates as a bar to the grant of temporary injunction under Order 39 Rules 1 and 2 CPC?
- ii) Whether the impugned order granting temporary injunction suffers from any error of law or of jurisdiction and calls for interference in the exercise of appellate jurisdiction?

15. So far as the first point is concerned it would be appropriate to consider the relative scope of Section 52 of the Transfer of Property Act and Order 39 Rules 1 and 2 CPC.

16. Section 52 of the Transfer of Property Act reads as under:

“52. Transfer of property pending suit relating thereto - During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.-- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

17. In ***A.Nawab John v. V.N.Subramaniam***¹ the Hon'ble Supreme court held that Section 52 of the Transfer of Property Act incorporates the doctrine of *lis pendens*, and it stipulates that during the pendency of any suit or proceeding in which any right to immovable property is, directly or specifically, in question, the property, which is the subject matter of such suit or proceeding cannot be transferred or otherwise dealt with, so as to affect the rights of any other party to such a suit or proceeding. It has further been held that it is also settled legal position that the effect of Section 52 is not to render transfers effected

¹ (2012) 7 SCC 738

during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject to the result of the suit. The *pendent lite* purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court. It is relevant to reproduce paragraphs Nos.16, 17 and 18 as under:

“16. This Court in *Jayaram Mudaliar v. Ayyaswami*³ (paras 42 to 44) quoted with approval a passage from *Commentaries on the Laws of Scotland*, by Bell, which explains the doctrine of *lis pendens*: (SCC p. 217, para 43)

“43. ... Bell, in his *Commentaries on the Laws of Scotland*, said that it was grounded on the maxim: ‘*Pendente lite nihil innovandum*’. He observed:

‘It is a general rule which seems to have been recognised in all regular systems of jurisprudence, that during the pendency of an action, of which the object is to vest the property or obtain the possession of real estate, a purchaser shall be held to *take that estate as it stands in the person of the seller*, and to be bound by the claims which shall ultimately be pronounced.’”

17. Section 52⁴ of the Transfer of Property Act, 1882 (for short “the TP Act”) incorporates the doctrine of *lis pendens* and it stipulates that during the pendency of any suit or proceeding in which any right to immovable property is, directly or specifically, in question, the property, which is the subject-matter of such suit or proceeding cannot be “transferred or otherwise dealt with”, so as to affect the rights of any other party to such a suit or proceeding. The section is based on the principle:

“41. ... ‘... that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations *pendente lite* were permitted to prevail. The plaintiff would be liable in every case to be defeated by the defendant’s alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceeding.’” (*Bellamy v. Sabine*⁵, ER p. 849)

Quoted with approval by this Court in *Vinod Seth v. Devinder Bajaj*⁶.
(SCC p. 20, para 41)

18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court.

“12. ... The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.” (*Sanjay Verma v. Manik Roy*⁷, SCC p. 612, para 12.)

18. In ***Jagan Singh v. Dhanwanti***² the Hon'ble Supreme Court held that the broad principle underlying Section 52 of the Transfer of Property Act is to maintain the *status quo* unaffected by the act of any party to the litigation pending its determination. Even after the dismissal of a suit, a purchaser is subject to *lis pendens*, if an appeal is afterwards filed. The doctrine of *lis pendens* is founded in public policy and equity.

19. In ***Madhukar Nivrutti Jagtap v. Pramila Bai Chandulal Parandekar***³ the Hon'ble Supreme Court reiterated that the effect of Section 52 of T.P.Act would not be that every transaction on being hit by Section 52 of T.P.Act is illegal or *void ab initio*. The effect of doctrine of *lis pendens* is not to annul all the transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit. Its effect is only to make

² (2012) 2 SCC 628

³ (2020) 15 SCC 731


the decree passed in the suit binding on the transferee i.e., the subsequent purchaser. The transfer remains valid subject to the result of the suit. It is relevant to reproduce paragraph No.14 with its sub-paras as under:

“14. The third question as regards the sale transactions in favour of the present appellants (the subsequent purchasers) need not detain us longer, except to correct an error on the part of the High Court where it is observed that such sale deeds are to be treated as illegal.

14.1. The suit in question was filed on 26-8-1968. So far the sale transaction in favour of Defendants 4 & 5 (Appellants 1 & 2 herein), in relation to 25 acres of land out of the suit property, is concerned, the same was effected by way a sale deed registered only on 10-7-1978 i.e. nearly 10 years after filing of the suit. So far the sale transaction in favour of Defendant 6 (Appellant 3 herein), in relation to other 25 acres of land out of the suit property, is concerned, though it is suggested that there had been an agreement (dated 8-5-1968) in his favour before filing of the suit but then, admittedly, the sale transaction was effected by way of a sale deed registered only on 18-9-1968, that had also been after filing of the suit. The suggestion about want of knowledge of the subsequent purchasers about the transaction of the vendors with the plaintiffs and about the pendency of the suit has been considered and rejected by the High Court and even by the subordinate court after due appreciation of evidence on record; and we are unable to find any infirmity in these findings. Both the sale transactions in favour of the present appellants, purporting to transfer the suit property in part, having been effected after filing of the suit, are directly hit by the doctrine of lis pendens, as embodied in Section 52 of the Transfer of Property Act, 1882 that reads as under:

“52. *Transfer of property pending suit relating thereto.*—During the pendency in any court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under

any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.


 ⁷⁵⁸ *Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

14.2. In *Guruswamy Nadar*¹², this Court has held as under: (SCC p. 800, para 13)

“13. Normally, as a public policy once a suit has been filed pertaining to any subject-matter of the property, in order to put an end to such kind of litigation, the principle of lis pendens has been evolved so that the litigation may finally terminate without intervention of a third party. This is because of public policy otherwise no litigation will come to an end. Therefore, in order to discourage that same subject-matter of property being subjected to subsequent sale to a third person, this kind of transaction is to be checked. Otherwise, litigation will never come to an end.”

14.3. The aforesaid observations in no way lead to the proposition that any transaction on being hit by Section 52 *ibid.*, is illegal or void *ab initio*, as assumed by the High Court. In *Sarvinder Singh*⁶, as relied upon by the High Court, the subsequent purchasers sought to come on record as defendants and in that context, this Court referred to Section 52 of the TP Act and pointed out that alienation in their favour would be hit by the doctrine of lis pendens. The said decision is not an authority on the point that every alienation during the pendency of the suit is to be declared illegal or void. The effect of doctrine of lis pendens is not to annul all the transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit. In other words, its effect is only to make the decree passed in the suit binding on the transferee i.e. the subsequent purchaser. Nevertheless, the transfer remains valid subject, of course, to the result of the suit. In *A. Nawab John*¹⁰, this Court has explained the law

in this regard, and we may usefully reiterate the same with reference to the following: (SCC p. 746, para 18)

“18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal 759 rights and obligations of his vendor as may be eventually determined by the court.”

14.4. Hence, the effect of Section 52 *ibid.*, for the purpose of the present case would only be that the said sale transactions in favour of the appellants shall have no adverse effect on the rights of the plaintiffs and shall remain subject to the final outcome of the suit in question. However, the High Court, while holding that the said transactions were hit by *lis pendens*, has proceeded to observe further that the sale deeds so made in favour of the present appellants were illegal. These further observations by the High Court cannot be approved for the reasons foregoing.”

20. Order 39 Rules 1 and 2 of CPC reads as under:

“Order-XXXIX, Rule-1. Cases in which temporary injunction may be granted.- Where in any Suit it is proved by affidavit or otherwise—

(a) that any 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, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the court thinks fit, until the disposal of the suit or until further orders.”

“Order-XXXIX, Rule-2. Injunction to restrain repetition or continuance of breach.- (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The court may by Order grant such injunction, on such terms, as to the duration of the injunction, keeping an account, giving security, or otherwise, as the court thinks fit.”

21. In *Dalpat Kumar v. Prahlad Singh*⁴ the Hon'ble Supreme Court has held that grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it. The Hon'ble Apex Court further held that there should be *prima facie* case in favour of the applicants which needs adjudication at the trial. The existence of the *prima facie* right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. *Prima facie* case is not to be confused with *prima facie* title which has to be established, on evidence at the trial.

⁴ (1992) 1 SCC 719

Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. 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 which is likely to be caused to the other side if the injunction is granted.

22. In ***Wander Ltd. v. Antox India P.Ltd.***⁵ the Hon'ble Supreme Court has held that usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary and is intended to preserve in *status quo*, the rights of parties which may appear on a *prima facie* case.

⁵ 1990 (Supp) SCC 727

23. In ***Shiv Kumar Chadha v. Municipal Corpn. of Delhi***⁶ it has been held by the Hon'ble Supreme Court that the grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the *status quo*. The court grants such relief according to the legal principles – *ex debito justitiae*. Before any such order is passed the court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him. Paragraph No.30, in which the Hon'ble Supreme Court has held as under, is being reproduced:-

“30. It need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such demolition with the intervention of the court. In such a suit the plaintiff is more interested in getting an order of interim injunction. It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles — *ex debito justitiae*. Before any such order is passed the court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him.”

⁶ (1993) 3 SCC 161

24. From the aforesaid, we are of the considered view that Section 52 of T.P.Act although provides protection to the parties from transfers *pendent lite*, in as much as it makes such transfers subservient to the decree that may be passed in the suit, but it does not come in the way of passing an order of temporary injunction restraining alienation of the suit property during the pendency of the suit on the applicant satisfying all the three ingredients of *prima facie*, balance of convenience and causing irreparable loss or injury in his favour.

25. The distinction between Section 52 of T.P.Act and Order 39 Rules 1 and 2 CPC, is that an order of temporary injunction is of pre-emptive nature restraining the act of alienation by party to the suit where there is such a danger, whereas Section 52 of T.P.Act comes into play after the alienation takes place during pendency of the suit. Section 52 of T.P.Act provides for the consequences of a transfer taking place pending litigation, i.e., that the *pendent lite* purchaser would be entitled to or suffer the same legal rights and obligations of his vendor(s) that may be finally determined by the court. Section 52 of T.P.Act does not come in the way of applicability of Order 39 Rules 1 & 2 CPC. In other words, notwithstanding Section 52 of T.P.Act making the transfers during pendency of the suit subject to the ultimate decree that may be passed in the suit, the court may, pass an order of temporary injunction, if all the requisite pre-conditions for such grant are satisfied. If an order is passed and transfer is restrained, the question of applicability of Section 52 of T.P.Act will not arise as then there will be no transfer pending litigation. On the other hand, if the party does not apply for temporary injunction or if the application is rejected and the suit property is transferred pending

litigation, Section 52 of T.P.Act shall come into play and those transfers would abide by the ultimate result of the suit.

26. In ***Sm.Muktakesi Dawn and others v. Haripada Mazumdar and another***⁷ the contention raised that an injunction restraining the defendant from transferring the suit property was absolutely unnecessary as no post-suit transfer by the defendant can adversely affect the result of the suit because of Section 52 of the T.P.Act whereunder all such transfers abide by the result of the suit, was rejected by the Division Bench of the Calcutta High Court holding that the court will in many cases interfere and preserve property in *status quo* during the pendency of a suit in which the rights to it are to be decided and though the purchaser *pendent lite* would not gain title. It is relevant to reproduce paragraphs Nos.4 and 5 as under:

“4. Mr. Roy Chowdhury has secondly urged that an injunction restraining the defendant from transferring the suit property was absolutely unnecessary as no post-suit transfer by the defendant can adversely affect the result of the suit because of the provisions of Section 52 of the T. P, Act whereunder all such transfers cannot but abide by the result of the suit. It is true that the doctrine of *lis pendens* as enunciated in Section 52 of the T. P. Act takes care of all *pendente lite* transfers; but it may not always be good enough to take fullest care of the plaintiffs interest vis-a-vis such a transfer. The suit giving rise to the impugned order is one for specific performance of sale in respect of the suit property and if the defendant is not restrained from selling the property to a third party and accordingly a third party purchases the same bona fide for value without any notice of the pending litigation and spends a huge sum for the improvement thereof or for construction thereon, the equity in his favour may intervene to persuade the Court to decline, in the exercise of its discretion, the equitable relief of specific performance to the plaintiff at the trial and to award damages only in favour of the plaintiff. It must be noted that Rule 1 of Order 39 of the Code clearly provides for interim injunction restraining the alienation or sale of the suit property and if the

⁷ 1987 SCC Online Cal 51

doctrine of *lis pendens* as enacted in Section 52 of the T. P. Act was regarded to have provided all the panacea against *pendente lite* transfers, the Legislature would not have provided in Rule 1 for interim! injunction restraining the transfer of suit property. Rule 1 of Order 39, in our view, clearly demonstrates that, notwithstanding the Rule of *lis pendens* in Section 52 of the T. P. Act, there can be occasion for the grant of injunction restraining *pendente lite* transfers in a fit and proper case.

5. Mr. Mukherjee, appearing for the respondents has drawn our attention to an old Division Bench decision of this Court in *Promotha Nath v. Jagannath*, (1913) 17 Cal LJ 427 where it has been observed that a Court will in many cases interfere and preserve property in *status quo* during the pendency of a suit in which the rights to it are to be decided and though the purchaser *pendente lite* would not gain title, the Court will prevent by injunction the embarrassment that would be caused to the original purchaser in his suit against the vendor. And it has been ruled there on the authority of Turner, LJ in *Hadley v. London Bank of Scotland*, (1865) 3 De GJ & S 63 at 70 that if there is a clear valid contract for transfer, the Court will not permit the transferor afterwards to transfer the legal estate to third person, although such third person would be affected by *lis pendens*. Mr. Mukherjee has drawn our attention to Dr. S. C. Banerji's Tagore Law Lectures on Specific Relief (2nd Edition, page 592) where the decision in *Promotha Nath* (supra) has been approvingly referred to and also to Fry's Treatise on Specific Performance (6th Edition) where the same rule has been enunciated as a general principle on the authority of Turner, L.J., in *Hadley v. London Bank of Scotland* (supra). **We accordingly reject this contention of Mr. Roy Choudhury that the impugned order of injunction restraining *pendente lite* transfer ought not to have been granted as the rule of *lis pendens*, as enacted in Section 52 of the T. P. Act, is there to take care of such transfer."**

27. Following ***Sm.Muktakesi Dawn and others v. Haripada Mazumdar and another*** (supra) in ***Nawal Kishore Tekriwal v. Jaya Gupta***⁸ where in a suit for specific performance of contract, the trial court had refused to grant any *ad interim* temporary injunction taking into account the doctrine of *lis pendens*, and hence the plaintiff was not to

⁸ 1997 SCC Online Cal 244

suffer out of it, the Division Bench of the Calcutta High Court allowed the appeal, observing that in view of the inbuilt legal proposition it may not always be desirable for a court of law to reject the prayer for interim injunction outright on the ground of *lis pendens*. It is relevant to reproduce paragraph No.6 as under:

“6.Turning attention to the impugned order, it is to be seen that what weighed much with the Trial Court was the doctrine of *lis pendens*. In the opinion of the Trial Court if during the pendency of the suit, the subject matter under the suit was transferred in favour of a third party, a doctrine of *lis pendens* would be attracted and such transfer would be subjected to the result of the suit and, hence the plaintiff was to suffer nothing out of it. As against this Shri S.P.Roychowdhury, Learned Counsel for the appellant sought reliance to be placed on the decision of a Division Bench of this Court in the case of *Smt.Muktakesi Dawn v. Haripada Mazumdar*, reported in AIR 1988 Cal 25. On the strength of this decision, the Learned Counsel urged that r.1 of Or.39 of the Code of Civil Procedure did clearly provide for interim injunction with respect to the suit property in spite of the fact that there was already a Rule of *lis pendens* enacted under s.52 of the Transfer of Property Act. This was for a simple reason that the said Rule of Law may not always be good enough to take full care of the Plaintiff's interest vis-à-vis such a transfer. Thus, in view of this in-built legal proposition it may not always be desirable for a Court of Law to reject the prayer for interim injunction outright on the ground of *lis pendens*.....”

28. For the aforesaid reasons, we are not inclined to accept the contention of the learned counsel for the appellant that in view of Section 52 of T.P.Act providing for the effect of transfers during pendency of the suit, the order of temporary injunction under Order 39 Rules 1 and 2 could not be passed. If such an argument is accepted, then the court cannot pass an order of temporary injunction to restrain alienation in spite of specific provision under Order 39 Rule 1(a) CPC, in any case, as in every case any alienation made pending litigation would abide by the

doctrine of *lis pendens* embodied under Section 52 of T.P.Act. This will render the provisions of Order 39 Rules 1 & 2 CPC ineffective.

29. Now coming to the second point, the impugned judgment shows that the learned IV Additional District Judge, Kurnool, on consideration of the pleadings of the parties and the material before it, viz., Ex.P1-agreement of sale and receipt of a sum of Rs.1,00,000/-, dated 11.03.2014 and subsequent receipts of Rs.2,00,000/- on 30.06.2014, Rs.5,00,000/- on 05.04.2016 and Rs.1,00,000/- on 07.04.2016, came to the conclusion that the plaintiff/1st respondent had established *prima facie* case in his favour. The balance of convenience was also found in favour of the plaintiff who obtained the agreement of sale by paying amounts mentioned above, in the years 2014 and 2016. Further, the learned court below considered that the 1st defendant admitted to have executed the sale deed in favour of defendants Nos.2 and 3 during the pendency of the suit and those defendants Nos.2 and 3 had also executed sale deed in favour of third persons with respect to part of the suit property, and came to the conclusion that if such act is repeated in future it would lead to multiplicity of proceedings and would also cause irreparable loss to the plaintiff, with respect to the decree of specific performance of contract.

30. In view of the aforesaid pronouncements of the Hon'ble Apex Court and keeping in view that the primary object of grant of temporary injunction is to maintain the *status quo* till the adjudication of the rights of the litigating parties on satisfaction of the trial court regarding existence of three conditions of *prima facie* case, balance of convenience and causing irreparable loss and injury in favour of the applicant, we do not find any illegality in the order passed by the learned court below granting temporary injunction in favour of the plaintiff/respondent, and particularly,


when the findings have been recorded on all the three considerations in favour of the plaintiff/respondent, which findings have not been put to any serious challenge as suffering from any legal infirmity except on the ground of Section 52 of T.P.Act with which we have already dealt above.

31. With respect to the exercise of appellate powers in relation to the exercise of discretion by the trial court in deciding an application for temporary injunction, the Hon'ble Supreme Court in ***Wander Ltd. v. Antox India P.Ltd.*** (supra) held that in such appeals, 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, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not re-assess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

32. In ***Esha Ekta Apartments Chs Ltd. v. Municipal Corpn.of Mumbai***⁹ the Hon'ble Supreme Court again considered the scope of appellate court power to interfere in an interim order passed by the court

⁹ (2012) 4 SCC 689

at the first instance and held in paragraphs Nos.19, 20 and 21, which are re-produced, as under:

“19. We have considered the respective submissions and carefully scrutinised the record. The scope of the appellate court’s power to interfere with an interim order passed by the court of first instance has been considered by this Court in several cases. In *Wander Ltd. v. Antox India (P) Ltd.*¹, the Court was called upon to consider the correctness of an order of injunction passed by the Division Bench of the High Court which had reversed the order of the learned Single Judge declining the respondent’s  prayer for interim relief. This Court set aside the order of the Division Bench and made the following observations: (SCC p. 733, para 14)

“14. ... In such appeals, 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, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court’s exercise of discretion.”

20. In *Skyline Education Institute (India) (P) Ltd. v. S.L. Vaswani*², the three-Judge Bench considered a somewhat similar question in the context of the refusal of the trial court and the High Court to pass an order of temporary injunction, referred to the judgments in *Wander Ltd. v. Antox India (P) Ltd.*¹, *N.R. Dongre v. Whirlpool Corpn.*³ and observed: (*S.L. Vaswani case*², SCC p. 153, para 22)

“22. The ratio of the abovenoted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.”

21. In these cases, the trial court and the High Court have, after threadbare analysis of the pleadings of the parties and the documents filed by them concurrently held that the buildings in question were constructed in violation of the sanctioned plans and that the flat buyers do not have the locus to complain against the action taken by the Corporation under Section 351 of the 1888 Act. Both the trial court and the High Court have assigned detailed reasons for declining the petitioners’ prayer for temporary injunction and we do not find any valid ground or justification to take a different view in the matter.”

33. The ***Wander Ltd. v. Antox India P.Ltd.*** (supra) fell for consideration in ***Gujarat Bottling Co.Ltd. v. Coca Cola Co.***¹⁰ wherein the Hon’ble Supreme Court observed that under Order 39 CPC the jurisdiction of the court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against

¹⁰ (1995) 5 SCC 545

whom he was seeking relief. It is relevant to reproduce paragraph No.47 as under:

“47. In this context, it would be relevant to mention that in the instant case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. **His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 or Rule 2 of the Code of Civil Procedure, but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings”.**

34. In the present case, the trial court, while granting temporary injunction, has discussed that during the pendency of the suit the defendant No.1, the appellant herein, transferred the suit schedule property in favour of defendants Nos.2 and 3, and those defendants, in turn, transferred the part of the suit property in favour of third persons. The defendants/appellants invoking the jurisdiction of this court are therefore responsible for bringing about the state of things complained of by the plaintiff/respondent before the court below and cannot be *prima facie* said to be equitable in his dealings. In ***Gujarat Bottling Co.Ltd. v. Coca Cola Co.*** (supra) the Hon'ble Apex Court clearly laid down that the considerations of the conduct being fair and honest will arise not only in

respect of an applicant seeking an order of injunction but also in respect of the party approaching the court for vacating the *ad interim* or temporary injunction already granted in the pending suit or proceeding.

35. We therefore hold on point No.1 in paragraph-14 that Section 52 of the Transfer of Property Act does not operate as a bar to the grant of temporary injunction under Order 39 Rules 1 & 2 CPC, in the discretion of the trial court, on fulfilment of pre-conditions for grant of temporary injunction, which are settled in law, restraining alienations as well. On point No.2, we hold that the order granting temporary injunction does not suffer from any error of law or jurisdiction and calls for no interference in the exercise of our appellate jurisdiction.

36. The appeals are accordingly dismissed. The parties to bear their own costs of the appeals.

37. The trial court shall make endeavour to expeditiously decide the suit subject to cooperation of the parties.

38. It is clarified that any observation made herein is only to judge the validity of the judgment under challenge and shall have no effect on the adjudication on merit of the case by the trial court.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

C.PRAVEEN KUMAR,J

RAVI NATH TILHARI,J

Date: 25.01.2022
Dsr

Note:
LR copy to be marked
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