



2024:JKLHC-JMU:667

Serial No. 01

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- OW104 No. 75/2015
c/w
CCP(S) No. 83/2020

1. Shani Devi Age 68 years (wife)
2. Lok Nath Age 51 years (son)
3. Rajinder Age 41 years (son)
4. Lakh Raj Age 39 years (son)
5. Mohal Lal Age 38 years (son)

All residents of Village Lamberi Tehsil Nowshera District Rajouri.

6. Pipal Devi 46 years (daughter) W/o Yog Raj
R/o Village Hanjana Tehsil Nowshera District Rajouri.
7. Pitto Devi Age 32 years (Daughter) W/o Bushan Kumar
R/o Kheri Tehsil Nowshera District Rajouri.

.....Appellant(s)/Petitioner(s)

Through: Mr. K. S. Puri, Advocate.

Vs

1. Fr. Tomi Principal Christ School Lamberi, Tehsil Nowshera District Rajouri.
2. Fr. Peter Principal Christ School Lamberi, Tehsil Nowshera District Rajouri.

.....Respondent(s)

3. Sardar Iqbal Singh S/o Sardar Lakhmir Singh
R/o Ward No. 6, Poonch Tehsil and District Poonch
4. Joginder Paul S/o Sh. Sadhu Ram R/o Village Dandesar,
Tehsil Nowshera District Rajouri.
5. Harjeet Kumar S/o Milkhi Ram
R/o Lamberi, Tehsil Nowshera, District Rajouri.
6. Pritam Dass S/o Ranga Ram
R/o Lamberi, Tehsil Nowshera, District Rajouri
7. Gurmeet Singh S/o Sardar Lakhmir Singh
R/o Ward No. 8, Poonch, Tehsil and District Poonch.

.....Proforma Respondent(s)

Through: Mr. Vivek Sharma, Advocate.
Mr. Abid Khan, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
(02.03.2024)



(ORAL)

OW104 No. 75/2015

- 01.** In the instant petition filed under Article 227 of the Constitution of India, initially the predecessors-in-interest of the present petitioner herein, namely, Jai Ram challenge to order dated 24.04.2015 passed by the court of Principal District Judge, Rajouri (for short "***the appellate court***") in an appeal titled as "***Father Tomi Principal Christ School Vs Sardar Iqbal Singh and Ors.***" arising out of an order dated 05.09.2014 passed by the court of Sub-Judge, Nowshera (for short "***the trial court***") in suit titled as "***Father Tomy Principal Christ School Vs Iqbal Singh & Ors.***".
- 02.** Facts emanating from the record reveal that the suit *supra* for declaration and permanent prohibitory injunction came to be filed by the plaintiffs-respondents 1 & 2 herein against the deceased-petitioner including the proforma respondents herein stating therein that they came into possession of land measuring 04 Kanals 02 Marlas falling under Survey No. 121 min situated at Village Lamberi Tehsil Nowshera by virtue of an agreement executed by the deceased-petitioner in favour of Malabar Vice Province Saint Thomas Kozbikode, Kerala, a society registered under the Societies Registration Act through one Father Joseph



and duly registered before Sub-Registrar, Nowshera (for short "**the society**"), whereafter the said land came to be fenced by barbed wire and also a gate erected thereon and that the defendant 1/deceased-petitioner had executed an agreement in respect of the land in question without any right and along with other defendants/proforma respondents herein are interfering in the suit land without any right and title or to remove the barbed wire and the gate installed thereon.

03. The defendants including the deceased-petitioner in the suit filed written statement to the suit stating therein that the defendant 1 had executed an agreement with the plaintiffs/respondents 1 & 2 herein which was not enforced after a lapse of more than 17 years and, thus, lost its significance and that the plaintiffs/respondents 1 & 2 herein are not in the possession of the suit land and have no right thereon on the said land.

04. In the application for interim relief accompanying the suit filed by the plaintiffs/respondents 1 & 2 herein, the defendants including the deceased-petitioner have had filed objections thereto wherein the defendants came to be restrained from interfering or dispossessing the plaintiffs from the suit property besides keeping in abeyance the



operation of the agreement dated 29.08.2011 executed by defendant 1 with the deceased petitioner.

05. The trial court upon considering the application in terms of order dated 05.09.2014, *dismissed* the same and vacated the *ex-parte* interim injunction dated 22.10.2011 holding that the plaintiffs/respondents 1 and 2 herein have failed to establish the principles governing and regulating the grant of injunctions being '*prima facie* case', 'balance of convenience' and 'irreparable loss and injury' besides observing that the agreement dated on 02.06.1994 relied upon by the plaintiffs/respondents 1 and 2 herein for maintaining the suit is executed between one Sardar Iqbal Singh and the society and not with the plaintiffs/respondents 1 and 2 herein.

06. Aggrieved of the order of the trial court dated 05.09.2014, the plaintiffs-respondents 1 & 2 herein filed the appeal *supra* before the appellate court on 11.09.2014 challenging the said order of trial court which appeal came to be *allowed* by the appellate court in terms of the impugned order holding that the appellants/plaintiffs/respondents 1 and 2 herein are in possession of the suit land, thus, directed that they shall not be forcibly evicted without adopting due course of law primarily basing its view on the agreement claimed to have been executed by one Sardar



Iqbal Singh with the society *qua* the land in question dated 02.06.1994 as also upon Section 53-A of the Transfer of Property Act, 1882 (for short "***the Act of 1882***") while framing four points for determination of the appeal.

- 07.** The deceased-petitioner herein questioned the impugned order on the grounds urged in the petition.

Heard learned counsel for the parties and perused the record.

- 08.** Perusal of the record of the trial court reveals that while deciding the application for interim relief accompanying the suit filed by the plaintiffs-respondents 1 & 2 herein, the trial court besides holding that the plaintiffs/respondents 1 & 2 herein have failed to demonstrate the existence of the principles of '*prima facie case*', '*balance of convenience*' and '*irreparable loss and injury*' in their favour has also taken cognizance of the fact that the suit stands filed by the plaintiffs/respondent 1 and 2 herein on the basis of agreement dated 02.06.1994, which agreement stands executed by defendant 1 – Sardar Iqbal Singh with a society which society never filed the suit, thus, plaintiffs/respondents 1 & 2 herein have had no *locus* to maintain the suit.

Be that as it may, the said plea/issue, however, stands got cured by the plaintiffs/respondents 1 & 2 herein before the



trial court upon laying a motion for making table amendment in the suit for substituting the society as a plaintiff besides seeking impleadment of the legal heirs of the present deceased-petitioner which application came to be *allowed* by the trial court in terms of order dated 30.10.2018 read with order dated 21.12.2018 and 11.02.2019 permitting the plaintiffs/respondents 1 & 2 herein to substitute the name of the society as plaintiff in the suit subject to the payment of costs of Rs. 3000/-.

- 09.** As has been noticed in the preceding paras, the appellate court passed the impugned order while framing four points for determination of the appeal which for brevity and convenience are reproduced hereunder:

- (a) Whether the suit of the plaintiff for permanent injunction and the application for temporary injunction are prima facie maintainable,**
- (b) Whether the possession of the property in dispute was delivered to the plaintiff on the date of execution of the agreement of sale and it was in its possession on the date of the institution of the suit,**
- (c) Whether the plaintiff was ready and willing to perform its part of the contract, and**
- (d) Whether the plaintiff has a strong prima facie case and balance of convenience in its favour and it would suffer irreparable injury if the application for temporary injunction is not allowed.**

- 10.** Insofar as points **(a)**, **(b)** & **(c)** are concerned, the said points admittedly have been decided by the appellate court



while referring and placing reliance on Section 53-A of the Act of 1882.

- 11.** It would be significant to note here that Section 53-A of the Act of 1882 admittedly was not applicable to the case in hand on the date of passing of the impugned order by the appellate court, instead Transfer of Property Act, Svt., 1977 (for short "**Act of 1977**"), in fact, was applicable wherein there has been no such provision of Section 53-A in place. The appellate Court, thus, has patently and grossly misdirected itself while referring to and placing reliance on Section 53-A of the Act of 1882. In terms of the Act of 1977 under Section 54 sale is defined a transfer of ownership in exchange for price paid or promised or part paid and part promised, and a contract for sale/agreement to sell has been provided to mean a contract that a sale of such property shall take place on terms settled between the parties, but no such contract shall be valid, unless it is in writing and signed by the parties and such contract of sale/agreement to sell does not, of itself, create any interest in or charge on such property.
- 12.** Thus, under the Act of 1977 after the execution of a contract for sale/agreement to sell, title clearly resides in the vender and even though he may have parted with possession, the possession of the proposed vendee is under



the agreement and not being a transfer of interest and in fact is permissive.

A reference herein to Section 138 of the Act of 1977 also becomes imperative which provides for transfer of immovable property after due registration suggesting clearly that there cannot be a valid transfer of immovable property unless and until it is in writing and registered in accordance with the provisions of the Registration Act.

13. Thus, what emerges from aforesaid is that under the Act of 1977 applicable to the case in hand neither the principle of **part performance** as contained in Section 53-A of the Act of 1882 nor the principle of **equitable estoppels** akin to it could be invoked by a party to its aid seeking relief against third-party.

14. The aforesaid being the position obtaining in the matter and risking repetition, the appellate court has fallen in grave error while wrongly passing the impugned order not only while placing reliance on Section 53-A of the Act of 1882, but also while expressing opinion to the merits of the case which the appellate court could not have done while deciding a miscellaneous appeal arising out of an order passed in an application for interim relief, in that, the powers of an appellate court deciding a miscellaneous appeal are limited and circumscribed.



15. Law is no more *res integra* and stands settled that the primary purpose of granting interim relief is the preservation of property in dispute till legal rights and conflicting claims of the parties before the Court are adjudicated upon suggesting thereby to evolve a workable formula required in a particular situation keeping in mind the '*pros and cons*' of the matter while striking a delicate balance between two conflicting interests.

Keeping in mind the aforesaid principle of law and having regard to the facts and circumstances of the case in presence of the rival claims of the parties lodged in their respective pleadings before trial court, the appellate court could not have granted injunction in terms of the impugned order in favour of the plaintiffs/appellants/respondents 1 & 2 herein, but to preserve the subject matter in *status quo*.

16. What has been considered, analyzed and observed hereinabove, the impugned order is not legally sustainable being patently perverse having resulted into gross and manifest failure of justice, thus, warranting exercise of Supervisory Jurisdiction of this Court enshrined in Article 227 of the Constitution of India.

Resultantly, the petition **succeeds** and impugned order of the appellate court dated 24.04.2015 is **set-aside**. The parties, however, are directed to maintain *status quo* with



regard to the possession and present position existing over the suit land till final *disposal* of the suit.

17. The trial court shall proceed with the trial of the suit in accordance with law.

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18. In view of the *disposal* of the appeal, the ***contempt proceedings shall stand closed.***

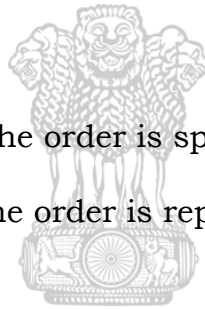
(JAVED IQBAL WANI)
JUDGE

JAMMU
02.03.2024

Bunty

Whether the order is speaking: **Yes**

Whether the order is reportable: **Yes**



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HIGH COURT
OF JAMMU & KASHMIR AND LADAKH