

Order No. 67  
dated 17.08.19

Both parties file haziras.

The record is taken up for passing order in respect of petition under Order 6 Rule 17 read with Section 151 of CPC.

By filing the instant application the plaintiff/appellant has prayed for amendment of the plaint as per schedule of the application on the ground that Anjana Chanda and Amit Kumar Das during pendency of the Appeal has transferred the suit property to Arati Das and Arati Das transferred the lease in respect of the suit property to the added respondents. Such transfers are illegal, arbitrary and not binding upon the plaintiff/appellant.

Respondent No.3 /Amit Kumar Das through his constituted attorney Shanti Ranjan Paul filed written objection against the application and stated, inter alia, that the transfer made by Arati Das is beyond his knowledge and if the amendment is allowed no purpose will be served which will be made unanswered. He further stated that there is no such provision by which the prayer sought for in para-7 can be allowed and the nature and character of the suit will also change which is preferred on the basis of an agreement and was dismissed ex parte. Lastly, he stated that the suit as well as the injunction petition is barred under the provision of Section 34 and 41(h) of Specific Relief Act. With all these he prayed for rejection of the application.

Perused the materials on record, the application and objection filed therein. By filing the amendment petition the appellant has prayed for amendment of the plaint. In that petition the plaintiff/appellant has prayed for cancellation of subsequent transfer of lease /deed of assignment dated 05.04.13 being No.01096 of Rs.1000/- and also that the alleged transfer is void, inoperative, illegal, arbitrary and not binding upon the appellant/plaintiff and lastly, injunction restraining the subsequent transferees/ assignees from doing any work over the suit property on the strength of such transfer. Initially the suit was filed before the Id Court below for declaration and injunction only. From the prayer portion of the amendment application the relief claimed by the appellant requires evidence to be taken for determining regarding the cancellation of the said transfer and as to

whether the said transfer is void and not binding upon the appellant or not is framing fresh issues on this point. Therefore, this question is to be decided by the parties before the Trial Court and the controversy between the parties regarding the transfer cannot be decided by this Court in this Appeal case. It is a matter which is for the Trial Court to consider.

Having regard to the controversy between the parties and also the facts and circumstances appearing from the materials before this Court, I am of the opinion that the application for amendment of the plaint filed by the appellant/plaintiff in this Court is required to be allowed in the interest of justice. Accordingly, the amendment is allowed and let the plaint be amended as per schedule of the application under Order 6 Rule 17 read with 151 of C.P.C.

Plaintiff/appellant has filed another application under Section 151 of CPC for amendment of injunction application as per schedule of the application on the self-same ground as stated in the application under Order 6 Rule 17 of CPC.

Written objection was filed by respondent No.3 stating same facts as stated by him in his written objection filed against the application under Order 6 Rule 17 of CPC.

As the matter relates to the same subject, I am of the opinion that the injunction application is required to be allowed as per the schedule of the amendment of the application under Section 151 of CPC and the same be disposed of by the Ld Court below afresh on merit after giving an opportunity to the other side to file Written Objection.

Now the application under Order 39 Rule 4 read with 151 of CPC filed by respondent No.4 & 5 is taken up for passing order.

By filing the application the above respondents have prayed for vacating the order dated 15.03.14 passed in this Appeal on the ground that the order dated 15.03.14 was allowed ex parte and the said interim order passed on 05.06.12 was extended till disposal of the present Appeal. The said ex parte order was obtained by misleading the Court on facts as it will appear from the plaint that the plaintiff has no case on merits and the entire case has been made out on the basis of a purported Power of Attorney. Plaintiff/Appellant has neither got any title nor he is in possession in the property. On the contrary, these applicants have purchased the suit property on 05.04.13 and are in possession. A person cannot enjoy an order of

Injunction who is neither the owner in accordance with law and also not in possession and the suit is barred by law of limitation and also by Section 21 of Specific Relief Act. The Appellant has not been able to prove a prima facie case and also a balance of convenience is also not in favour of the appellant and he will not suffer any irreparable loss or injury, at best, he can claim damages, if at all, against the respondent Nos. 1, 2 & 3.

The appellant has contested by filing written objection wherein he stated that the injunction order passed by the Ld District Judge's Court and by this Court was duly informed to the Urban Development in writing and the appellant was called upon for hearing on 14.09.10 and 27.09.10. Subsequently on 05.09.13 the appellant served one legal notice to the Urban Development. In the mean time, there has been transactions in between Respondent No.1, 2 & 3 and after getting the whole share of the suit property when respondent No.1 went to mutated her name, the Urban Development Department stated to her that mutation is dependent upon the result of T.S. No.205 of 2010. Subsequently on 05.04.13 the suit property was transferred to respondent No.4 and 5 by executing a deed of assignment/ deed of lease by respondent No.1. The original respondents never filed any such petition against the Order of Injunction and all of a sudden these respondents have come up with an application which is illegal and baseless. They have got no local standi in the subject matter of the instant suit under Appeal. A Misc.case has already been filed under Order 39 Rule 2A read with Section 151 of CPC being No.125 of 2018 regarding the transfer made while the order of injunction was still in force and well within the knowledge of the respondents. With all these the appellant has prayed for rejection of the application with cost.

Perused the materials on record, the application and the objection. From the record it reveals that on 05.06.12 Ld District Judge, North 24 Pgs was pleased to pass an ad- interim order of injunction against the respondent No.1 to 3 and the said ad- interim order was duly extended and lastly on 15.03.14 this Court was pleased to extent the said Order till disposal of the Appeal. It is an admitted fact that respondent No.4 and 5 had purchased the property on 05.04.13 when the ad-interim order of injunction was prevailing and they were not in the picture when the order was passed on 05.06.12. These respondents have stepped into the shoes of respondent No.1 to 3 and so, they are blinded by the said order of ad-interim injunction. After a

lapse of more than 4 1/2 years respondents No 4 & 5 cannot come up with this petition praying for vacating the said order as they had already stepped into the shoes of other respondents. After considering all the facts and circumstances, the said order was passed and nothing new fact has cropped up regarding the status of the appellant which is required to be considered and the order of ad-interim injunction dated 05.06.12 be vacated. Accordingly, the application filed by respondent No 4 & 5 under Order 39 Rule 4 read with Section 151 of CPC is rejected.

Thus the Appeal is allowed on contest.

Therefore, the original suit is required to be sent back to the Trial Court on open remand and the 1st Trial Court will dispose of the suit afresh along with injunction application after framing issues on the point of the prayer of the appellant/plaintiff.

Let the records of Title Suit No.205 of 2010 together with the application under Order 6 Rule 17 read with Section 151 of CPC and the application under Section 151 of CPC filed by the plaintiff/appellant in this Court on 28.03.17 be sent down to the Trial Court at once along with a copy of this Order.

Dict. & corrected by me,

3rd Addl. District Judge

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Barnsat