

A LAKSHMI ALIAS BHAGYALAKSHMI AND ANR.

v.

E.JAYARAM (D) BY LR.  
(Civil Appeal No. 1004 of 2013)

B

FEBRUARY 7, 2013

**[SURINDER SINGH NIJJAR AND M.Y. EQBAL, JJ.]**

*Code of Civil Procedure, 1908 – Or. 39, rr.1 and 2 – Suit for permanent injunction – Plaintiff no.1 claimed ownership rights in respect of the suit property stating that it had purchased the same from defendant no.1, and though the sale deed was not registered, the entire sale consideration had been paid to defendant no.1 – Separate application filed by plaintiffs-appellants u/Or.39, rr.1 and 2 CPC seeking ad-interim relief – Interim injunction granted by trial court – Appeal – High Court instead of considering the legality and propriety of the order of interim injunction, proceeded to decide the effect of s.53A of the Transfer of Property Act, 1882 – Further, taking note of the fact that the suit for bare injunction was filed without seeking leave u/Or.2, r.2 CPC reserving the right to sue for any other relief, the High Court held that in light of the same if the plaintiffs were barred from claiming any relief of specific performance, the incidental relief of injunction would also be unavailable to them, and thereafter set aside the order of trial court – Held: High Court completely misconstrued the provisions of Or. 39, rr.1 and 2 CPC and committed serious error in deciding the scope of s.53A of Transfer of Property Act, 1882 and Or.2, r.2 CPC – Trial court while granting ad-interim injunction very categorically observed in the order that respective rights of the parties shall be decided at the time of final disposal of the suit – The very fact that plaintiff no.2 was in possession of the property as a tenant under plaintiff no.1 and possession of plaintiff no.2 was not denied, interim protection was given to plaintiff no.2 against*

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*the threatened action of the defendants-respondents to evict her without following the due process of law – Order passed by High Court cannot be sustained in law.*

The plaintiffs-appellants filed a suit for permanent injunction restraining the defendant-respondents from interfering with their peaceful possession and enjoyment of the suit property *inter-alia* pleading that plaintiff no.1 was the absolute owner of the suit property which was purchased from defendant no.1 and that though the sale deed was not registered, the entire sale consideration had been paid to defendant no.1. The plaintiffs-appellants further filed a separate application under Order 39 Rule 1 and 2 CPC seeking ad-interim relief restraining the defendants from interfering with their peaceful possession and enjoyment.

The defendant-respondents denied the purchase of suit property by the plaintiff-appellants from defendant-respondent no.1. They pleaded that plaintiff no.1 was a stranger; that defendant no.1 was the owner of the property and plaintiff no.2 was a tenant under him.

The trial court allowed the application of the plaintiffs under Order 39 Rule 1 and 2 CPC and granted ad-interim temporary injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by plaintiff no.2 till disposal of the suit. Aggrieved by the said order, the defendants preferred appeal before the High Court. The High Court instead of considering the legality and propriety of the interim injunction granted by the trial court, proceeded to decide the effect of Section 53A of the Transfer of Property Act, 1882. Further, taking note of the fact that the suit for bare injunction was filed without seeking leave u/Or.2, r.2 CPC reserving the right to sue for any other relief, the High Court held that in light of the same if the plaintiffs were barred from claiming any relief of specific performance,

A the incidental relief of injunction would also be  
unavailable to them. The High Court thereafter set aside  
the order passed by the trial court holding that defendant-  
respondents were entitled to initiate action for ejection  
of the plaintiff-appellants from the suit property. Hence  
B the present appeal.

Allowing the appeal, the Court

HELD: The High Court completely misconstrued the  
provisions of Order 39 Rule 1 and 2 CPC and committed  
C serious error in deciding the scope of Section 53A of  
Transfer of Property Act, 1882 and Order 2 Rule 2 of CPC.  
The trial court while granting ad-interim injunction very  
categorically observed in the order that respective rights  
of the parties shall be decided at the time of final disposal  
D of the suit. The very fact that Plaintiff No.2 was in  
possession of the property as a tenant under Plaintiff  
No.1 and possession of Plaintiff No.2 was not denied, the  
interim protection was given to Plaintiff No.2 against the  
threatened action of the defendants to evict her without  
E following the due process of law. The order passed by  
the High Court cannot be sustained in law. [Para 7] [800-  
A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.  
1004 of 2013.

F From the Judgment & Orders 29.08.2005 of the High  
Court of Karnataka at Bangalore in M.F.A. No. 524 of 2003  
(CPC).

G Raghavendra S. Srivatsa, Subramonium Prasad for the  
Appellant.

E.C. Vidya Sagar, Kheyali Sarkar, Sanjay R. Hegde for  
the Respondent.

H The Judgment of the Court was delivered by

LAKSHMI ALIAS BHAGYALAKSHMI AND ANR. v. 797  
E.JAYARAM (D) BY LR.

**M.Y. EQBAL, J.** 1. Leave granted. A

2. This appeal is directed against the order dated 29.08.2005 passed by a single Judge of the Karnataka High Court in M.F.A. No. 524 of 2003, whereby the Learned Single Judge set aside the order passed by the VII Addl. City Civil Judge, Bangalore and held that defendant-respondent is entitled to initiate action for ejection of the plaintiff-appellants from the suit property. B

3. The facts of the case lie in a narrow compass. C

4. The plaintiffs who are the present appellants filed a suit for permanent injunction restraining the defendant-respondents from interfering with their peaceful possession and enjoyment of the suit property. The plaintiff-appellants case was that Plaintiff No.1 is the absolute owner of the suit property consisting of a building which was purchased from Defendant No.1 on a consideration of Rs.6,000/- However, sale deed could not be registered as the registration was suspended by the Government and the defendant-respondents could not get clearance from the Urban Land Ceiling Authority. The plaintiff-appellant's further case was that although the sale deed was not registered, the entire sale consideration was paid to Defendant No.1 by the plaintiff who was put in possession of the suit property. It was pleaded by the plaintiffs that Plaintiff No.1 leased out the suit property in favour of Defendant No.2 who is residing in the same suit property for the last 17 years. Plaintiff-appellants further case was that they approached the Bangalore Mahanagara Palike for change of kattas and, on enquiry, they learnt that Defendant No.1 with an intention to grab the property concocted a gift deed in favour of Defendant No.2, who is his wife and on that basis moved an application for change of kattas. Immediately, the plaintiffs caused a legal notice dated 09.09.2002 asking him to execute a sale deed in favour of Plaintiff No.1. The plaintiffs also caused a legal notice on Municipal authorities not to change the kattas in favour of Defendant No.2 as Defendant No.1 has no right whatsoever to H

A gift the suit property. The plaintiffs alleged that defendants along with their henchmen came to the suit property and threatened the plaintiff-appellants of dire consequences if they do not vacate the property within three days. On account of repeated threats from the side of defendants, the plaintiffs were compelled to file a suit for permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property. A separate application under Order 39 Rule 1 and 2 CPC seeking an ad-interim relief restraining the defendants from interfering with their peaceful possession and enjoyment was filed.

5. The defendant-respondents filed a written statement and denied the averments made in the plaint. The defendants denied the purchase of the suit property by the plaintiff-appellants from Defendant-Respondent No.1. The defendants pleaded about their family settlement whereby the suit property was allotted to the defendants who put construction and let out the same to Plaintiff No.2. According to the defendants, Plaintiff No.1 is a stranger. In a nutshell the case of the defendants is that Defendant No.1 is the owner of the property and Plaintiff No.2 is a tenant under him and that she was paying rent per month.

6. The learned Additional City Civil Judge on consideration of the pleadings made by the parties and the documents filed by them allowed the application of the plaintiffs under Order 39 Rule 1 and 2 CPC and granted ad-interim temporary injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property by Plaintiff No.2 till disposal of the suit. While granting temporary injunction the Civil Judge recorded the following reasons :-

"From the allegations and counter allegations, it can be crystallized that plaintiff no.2 is in possession of suit schedule property and as such, the documents have been produced and even defendants admit the possession of plaintiff no.2. As regards the sale deed which is alleged

to have been executed the same is seriously disputed A  
document. Hence it need not be considered at this stage.  
The respective rights of the parties will have to be decided  
at the final disposal of the suit. At this stage, it is suffice  
to state that plaintiff no.2 is in possession of the property  
who has filed an affidavit stating that she is a tenant under B  
plaintiff no.1 where as defendants have produced  
documents to show that she is tenant under them.

In view of the above, I am of the considered opinion  
that this controversy can be resolved at the final disposal C  
of the suit when parties lead their respective evidence. At  
this stage, plaintiff no.2 is entitled for injunction. Hence the  
point for consideration is answered in favour of plaintiff no.2  
only and I proceed to pass the following:

I.A. No.1 filed by the plaintiffs under Order 39 Rule D  
1 and 2 of CPC is allowed in part.

Defendants 1 and 2 are restrained by an order of ad-  
interim temporary injunction from interfering with the  
peaceful possession and enjoyment of the suit schedule E  
property by plaintiff no.2 till disposal of the suit."

6. Aggrieved by the said order the defendants preferred  
an appeal before the High Court being MFA No.524 of 2003.  
Ld. Single Judge instead of considering the legality and  
propriety of the interim injunction granted by the Civil Judge F  
proceeded to decide the effect of Section 53A of the Transfer  
of Property Act, 1882. The Ld. Single Judge is of the view that  
though the plaintiff is ready and willing to perform her part of  
the contract, the fact that suit for bare injunction is filed without  
seeking leave under Order 2 rule 2 CPC reserving their right G  
to sue for any other relief. According to Ld. Single Judge in the  
light of this, if the respondent is barred from claiming any relief  
of specific performance, the incidental relief of injunction would  
be unavailable to the respondents.

A 7. We have heard learned counsel appearing for the parties. In our considered opinion, the learned single judge has completely misconstrued the provisions of Order 39 Rule 1 and 2 CPC and has committed serious error in deciding the scope of Section 53A of Transfer of Property Act, 1882 and Order 2  
B Rule 2 of CPC. As noticed above the Civil Judge while granting ad-interim injunction very categorically observed in the order that respective rights of the parties shall be decided at the time of final disposal of the suit. The very fact that Plaintiff No.2 is in possession of the property as a tenant under Plaintiff No.1 and  
C possession of Plaintiff No.2 was not denied, the interim protection was given to Plaintiff No.2 against the threatened action of the defendants to evict her without following the due process of law. In our considered opinion, the order passed by the learned single judge cannot be sustained in law.

D 8. For the aforesaid reasons, we allow this appeal and set aside the order passed by the High Court in the aforesaid appeal arising out of the order of injunction.

E 9. However, before parting with the order we are of the view that since the suit is pending for a long time the trial court shall hear and dispose of the suit within a period of four months from the date of receipt of copy of this order. It goes without saying that the trial court shall not be influenced by any of the observation made in the order passed by the appellate court  
F as also by this court and the suit shall be decided on its own merits.

B.B.B.

Appeal allowed.