

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2023
(Arising out of Special Leave Petition (C) No. 22742/2023)

SUVALAL JAIN & ANR.

Petitioner(s)

VERSUS

K.N. PUNEETH & ORS.

Respondent(s)

O R D E R

1. Leave granted.

2. This appeal is directed against the order dated 21.07.2023 passed by the High Court of Karnataka at Bengaluru in M.F.A. No.2082 of 2023 (CPC). The impugned order was passed in I.A. No.1 in O.S. No.4731 of 2022 instituted by the respondents herein in which the appellants-herein are defendant Nos.1 and 2. The said suit is one for partition of the plaint schedule property. The plaintiffs also seek for a declaration that sale deed dated 18.05.1987 is not binding on them and also that the alleged sale deed is obtained by fraud by defendant Nos.1 and 2. In the suit, they moved the above mentioned Interlocutory Application seeking temporary injunction against the appellants herein restraining them from encumbering or creating third party interest or charge in respect of 50% of developed sites of the plaint schedule property.

3. After hearing both sides, the Trial Court passed an order injuncting the appellants-herein from encumbering or creating third party interest or charge in respect of 50% of developed sites of

schedule property pending the suite. Aggrieved by the same, the appellants-herein approached the High Court by filing M.F.A. No.2082 of 2023 (CPC) which culminated in the impugned order. However, the High Court declined to interfere with the order passed by the Trial Court and hence, this Appeal.

4. Heard Mrs. V. Mohana, learned Senior Counsel appearing for the appellants, and Mr. Yatindra Singh, learned Senior Counsel appearing for the respondents.

5. Though, we have heard the learned counsel on both sides in extenso and they have taken us through the merits of the case, taking note of the fact that the suit is pending, we are of the considered view that it is absolutely unessential and unwarranted to delve into the rival contentions. There can be any doubt with respect to the position that the very purpose of passing an interim injunction pending suit is to ensure that during the pendency of suit, property which is subject matter of the suit is protected. Pithily stated, it is to ensure that such person, if succeeds, should be able to enjoy the fruits of the verdict. The following propositions are to be established in order to make the court to invoke the jurisdiction under Order XXXIX, Rules 1 and 2:

- (i) Existence of a prima facie case;
- (ii) Interim injunction, if refused, will cause irreparable injury;
- (iii) The balance of convenience is in favour of the applicant.

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In the case on hand, the sale deed in respect of which the declarations, as mentioned above, are sought for was allegedly executed on 02.03.2005 and the original suit has been filed only in the year 2022. Taking note of the prayers referred hereinbefore, we are of the considered view that to achieve the very purpose of passing an interlocutory order in a suit of this nature and that too, in the aforesaid circumstances, the appellants-herein ought not to have been injuncted in the manner it was ordered, in view of the applicability of the principles of *lis pendens* enshrined under the Section 52 of the Transfer of the Property Act, 1882. We took such a view on a careful consideration based on comparison between the convenience of two sides and upon finding that it is sufficient to safeguard interests of the respondents-plaintiffs. The effect of the doctrine of *lis pendens* is that it will make creation of a third party right of any kind subject to the decree or order to be passed in the suit.

6. In the said circumstances, we vacate the order passed by the Trial Court in I.A. No.1 in O.S. No.4731/2022 which was confirmed by the High Court under the impugned order and at the same time, making it clear that in case the appellants-herein effect any construction or create third party rights, interest or charge all those would be subject to the outcome of the suit. We also make it clear that in case the plaintiffs/ the respondents-herein succeed in the litigation, the appellants-herein would not be entitled to claim any equity.

7. The Appeal stands disposed of, as above.

8. Pending application(s), if any, shall stand disposed of.

....., J.
(C.T. RAVIKUMAR)

....., J.
(SANJAY KUMAR)

NEW DELHI;
NOVEMBER 24, 2023.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 22742/2023

(Arising out of impugned final judgment and order dated 21-07-2023 in MFA No. 2082/2023 passed by the High Court of Karnataka at Bengaluru)

SUVALAL JAIN & ANR.

Petitioner(s)

VERSUS

K.N. PUNEETH & ORS.

Respondent(s)

(FOR ADMISSION and I.R.)

Date : 24-11-2023 This petition was called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE SANJAY KUMAR**

For Petitioner(s) Mrs. V. Mohana, Sr. Adv.
Mr. Gautam S. Bharadwaj, Adv.
Mr. Ashwin Kumar D.S., Adv.
Mr. Karthik Sundar, Adv.
Ms. Sneha Botwe, Adv.
Ms. Sneha Pande, Adv.
Ms. Surbhi Mehta, AOR

For Respondent(s) Mr. Yatindra Singh, Sr. Adv.
Mr. Anand Sanjay M. Nuli, Adv.
Mr. M Shiva Prakash, Adv.
Ms. Akhila Wali, Adv.
Mr. Shiva Swaroop, Adv.
M/S. Nuli & Nuli, AOR

Mr. Shailesh Modiyal, Adv.
Mr. Mahesh Thakur, Adv.
Mr. Vaibhav Sabharwal, Adv.
Mr. Ranvijay Singh, Adv.
Mr. Akshay Kumar, Adv.
Ms. Divija Mahajan, Adv.

Mr. S.K. Kulkarni, Adv.
Mr. M. Gireesh Kumar, Adv.
Mr. Ankur S. Kulkarni, Adv.

Ms. Uditha Chakravarthy, Adv.
Ms. Priya S. Bhalerao, Adv.
Mr. Varun Kanwal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The Appeal stands disposed of in terms of the Signed Order placed on the file.
2. Pending application(s), if any, shall stand disposed of.

(VIJAY KUMAR)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)