

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

FAO No.05/2019

Pronounced on:09.06.2020

Syed Mubeen & Ors.

...Appellant(s)

Through: - Mr. M. Sultan, Advocate.

V/s

Mst. Hakima Bano & Ors.

...Respondents

Through: - Mr. S. A. Khan, Advocate.

CORAM:

**HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR,
JUDGE**

(JUDGMENT)

1) This is a Civil Miscellaneous Appeal preferred against the judgment and order dated 22.06.2019 passed by the Court of Additional District Judge, Srinagar, in a suit filed by the plaintiffs (appellants herein), whereby the interim injunction, as prayed for by the plaintiffs has been refused although the defendants (respondents herein) have been prohibited from creating third party interest over the suit land pending final disposal of the suit.

2) Briefly stated, the material facts are as under:

i) A suit for declaration was filed by the appellants in the Court of learned Additional District & Sessions Judge, Srinagar, praying for a Decree of Declaration for declaring the sale deed dated 3rd

June, 2019, executed by respondent No.1 in favour of respondent No.2 and 3 in regard to land measuring 4 marlas under Survey No.1288 in village Brari Nambal as illegal and invalid.

- ii) The case set up by the appellants before the court below was that they were the lawful owners of the land in question to which they had succeeded on the demise of their father, late Syed Assadullah. It was claimed that the said plot of 4 marlas was a part of larger strip of land measuring 15 marlas out of which 11 marlas stood acquired for road widening, with regard to which multiple petitions had been filed.
- iii) It was also alleged that a writ petition bearing OWP No.664/2003 had been filed for grant of permission from Srinagar Municipal Corporation for raising construction over the land in question, which stood declined. However, building permission for raising a wall was granted vide order dated 3rd July, 2007, issued by the Municipal Corporation.
- iv) The plaintiffs claimed that they were in possession of the plot in dispute and the same could never have been sold to the defendants. It was alleged in paragraph 4 of the plaint that the defendant No.1, who had executed a sale deed in favour of defendants 2 and 3, was, in fact, successor of Late Syed Rasool along with his sister Saima Rasool. It was alleged that since Syed Rasool had migrated to Pakistan in the year 1958, the entire land holding belonging to that family had vested in the Custodian as evacuee property. Their property, it was alleged, had even been

notified in the notification on 31.05.1958 as evacuee property by the Custodian Evacuee Property. It was also alleged that since the property was an evacuee property, same could not have been sold at all.

- v) The issue for grant of interim injunction was considered by the court in detail. The court below held that if the case of the plaintiff was that the property was an evacuee property as the father of the vendor, the defendant No.1, had migrated to Pakistan in the year 1958, then the question of vesting of ownership in the plaintiffs was doubtful. It was held that if the property was evacuee property, as per the stand taken by the plaintiffs, then the authority lay in the Custodian Evacuee Property and the authorities under the Evacuees Property Act to determine the legality or otherwise of the transfer and further that the Administration of Evacuee Property Act envisaged a comprehensive mechanism not only for administration of evacuee property but also restoration of the property to the evacuee or his legal heirs.
- vi) The court below also noticed the argument of the defendant No.1 that the erstwhile owner although had migrated to Pakistan in the year 1958 yet had returned to the State and had died in the State and, therefore, the property in question could not be said to be an evacuee property and that lawful title had vested to her upon the death of her father. The court below in the background of these facts, doubted the very maintainability of the suit.

vii) In that view of the matter, considering the fact that the sale deed had been executed in favour of defendant No.2 and 3 by defendant No.1 and considering the principles of balance of convenience and irreparable loss and injury, the court below held that the possession would travel with title and until the presumption was rebutted, the defendants could not be deprived of use and possession of the land in question especially when the plaintiffs in the eventuality of success in the suit could be adequately compensated. The court below, however, prohibited the defendants from creating any third party interest over the suit land pending final disposal of the suit.

3) Counsel for the appellants urged that the court below had not appreciated the controversy in its correct perspective and committed a gross error in refusing the injunction as had been prayed for in the suit. It was also asserted that the court below had failed to notice that the plaintiffs were in possession of the property which was the subject matter of sale through the sale deed impugned in the suit and that the court below ought to have issued an injunction against the defendants on that basis.

4) I have heard counsel for the parties at length. In my opinion, the reason for refusing the injunction in favour of the plaintiff was that the court below appeared to be not convinced with the stand taken by the plaintiffs in the suit which appeared to be contradictory, inasmuch as on the one hand, the plaintiffs had asserted that the subject matter of sale was, in fact, an evacuee property over which the defendant No.1

had no right or title as against the stand taken that the property, which was the subject matter of sale, was, in fact, inherited by the plaintiffs on succession from her father. The court below, therefore, held that the plaintiffs would have to establish, by leading cogent evidence, that the plaintiffs, in fact, were the owners of the suit property and till that was established, the defendants could not be prevented from enjoying the property in question, subject, of course, to the prohibition of creating third party interest.

5) In my opinion, the view expressed by the court below does not appear to be, in any manner, illegal or perverse. The order impugned is self explanatory. It is settled law that the appellate court cannot substitute its view over the view taken by the court below in granting or rejecting an injunction unless the same suffers from patent error on the face of record or is perverse or illegal.

6) For the reasons mentioned above, the appeal fails and is, accordingly, dismissed.

(DHIRAJ SINGH THAKUR)
JUDGE

Srinagar
09.06.2020
“Bhat Altaf, PS”

<i>Whether the order is speaking:</i>	<i>Yes/No</i>
<i>Whether the order is reportable:</i>	<i>Yes/No</i>