

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1672 of 2019

In
Miscellaneous Appeal No.145 of 2018

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The Managing Director, Vastu Bihar through Vinay Kumar Tiwary, son of Late Baleshwar Tiwary, Resident of Flat No.419, Ashiyana Tower, 4th Floor, Exhibition Road, Patna-1.

... .. Petitioner

Versus

1. Jitendra Mohan Sahay Son of Late Kamla Sahay Resident of Bagicha, A-58, Sector-39, Noida-201301, State Uttar Pradesh.
2. (i) Sandeep Sahay, son of Late Surendra Mohan Sahay, resident of 847, A1Vermor Ridge Melaan VA22102, U.S.A.

(ii) Manish Sahay, son of Late Surendra Mohan Sahay, resident of 723 IELA Junta Road Scotts Dale, AZ 85255, U.S.A.

(iii) Sumila Verma, wife of Sanjay Verma, daughter of Late Surendra Mohan Sahay, resident of E/MS, 468/London Road, Leicester LE 22PP, U.K. (United Kingdom)
3. Nripendra Mohan Sahay Son of Late Kamla Sahay Resident of 29 A, Sri Krishnapuri, Patna 800001, Bihar
4. Ravindra Mohan Sahay Son of Late Kamla Sahay Resident of-D.95, Sector-40, Noida-201301, State Uttar Pradesh.
5. Smt. Indu Srivastava D/o Late Kamla Sahay, W/o Late Ambey Prasad Srivastava Resident of B-2002, Imperial Heights of Andheri Goregaon Link Road, Goregaon (West) Mumbai-400104, State Maharashtra.
6. Smt. Vimla Verma D/o Late Kamla Sahay, W/o Late Nirmal Kumar Verma Resident of 1902 B Wing, Raheja Heights, Malad, Goregaon, Mumbai-400097, State Maharashtra.
7. Anita Vidyarthi D/o Late Girindra Mohan Sahay, W/o V.K.Vidyarthi Resident of 1264 N.W. Eli Elizabeth City, Portland 97229, United States of America.
8. Shevanti Verma D/o Late Girindra Mohan Sahay, W/o Justice Sri Deepak Verma (retired) R/o B-4 Gitanjali Enclave, Ground Floor, Main Shivalik Road, New Delhi-110017.
9. Punam Verma D/o Late Girindra Mohan Sahay, W/o Alok Verma Resident of Flat No.402, Pushpanjali Maya Mahesh Apartment, near Jamuna Apartment, Boring Road, Patna-800013.
10. Rajni Sahay D/o Late Girindra Mohan Sahay, W/o Justice Sri Janardan Sahay (Retired) R/o House No.7, High Court Judge Colony, Sector-105, Noida-201301, State Uttar Pradesh.
11. Anjula Sahay D/o Late Girindra Mohan Sahay, D/o Pandey Vimal Sahay Resident of Parasmani, 28A, Sri Krishnapuri, Patna-800001.
12. Rajnish Sahay Son of Late Girindra Mohan Sahay Resident of Flat No.514,



Building No.1, Kamdhenu Apartment, Cross Lane No.1, Lokhandwala, Andheri East, Mumbai-400053, State Maharashtra.

13. Prakash Mohan Sahay Son of Late Brajendra Mohan Sahay Resident of D-169, Sector 63, Noida, State Uttar Pradesh.
14. Smt. Saloni Kishore D/o Late Brajendra Mohan Sahay, W/o Rajesh Kishore R/o Plot No.9B, Sector 2A, Gandhi Nagar-382007, State Gujrat.
15. Praveen Swaroop Son of Late Prity Swaroop and Pramod Swaroop R/o 13 DDA Flats, Panchshil Enclave, New Delhi.
16. Smt. Parina Swaroop D/o Late Prity Swaroop and Pramod Swaroop, W/o Amit Singh Resident of 23 Siri Fort Road, New Delhi-110049.
17. Pramod Swaroop Son of Late Jagdish Swaroop, W/o Late Prity Swaroop Resident of DDA Flats, Panchshil Enclave, New Delhi.
18. The Executive Director, Vastu Vihar through Ajay Kumar Jha (name of Ajay Kumar Jha wrongly mentioned), s/o not known, R. Bhawan-2 Plot P.S. Sadar Hajipur (Ramashish Chowk), District Vaishali (address of the Executive Director has wrongly mentioned as above but the real address of the Executive Director, Vastu Vihar is Brajesh
19. The Manager, Vastu Vihar near HDFC Bank Mohalla Ramchandrapur, P.S. Laheri Biharsharif, District Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Senior Advocate Mr.Surendra Kishore Thakur Mr. Ravi Shankar Kumar
For the Opposite Party/s :		Mr.Anil Chandra

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
ORAL

Date : 13-04-2022

The present application has been filed for modification in the order, dated 06.02.2019, passed in M. A. No. 145 of 2018, by a co-ordinate Bench of this Court, to the extent that the petitioner (appellant in M. A. No. 145 of 2018 and defendant in Title Suit No. 182 of 2017) be permitted to execute sale deed(s) with permission of the Court and further the Court below be



directed to dispose the Title Suit No. 182 of 2017 within a period of one year from today without granting any adjournment on day-to-day basis and further in view of the fact that I. A. No. 7682 of 2018, filed in M. A. No. 145 of 2018, has been allowed, the legal heirs of respondent no. 2 in the M. A. No. 145 of 2018 be incorporated and the name of respondent no. 13 be struck off in the cause title of the order, dated 06.02.2019, as the legal heirs of respondent no. 13 are already on record as respondent nos. 14 and 15.

2. The petitioner is a company, registered under the Companies Act, had filed M. A. No. 145 of 2018, under Order 43 Rule 1 (r) of the Civil Procedure Code, challenging the order, dated 09.01.2018, passed by the learned Sub Judge-1, Nalanda, at Biharsharif, in Title Suit No. 182 of 2017, by which the petitioner was restrained by an order of temporary injunction to make any construction over the suit land or to transfer the suit land or change the nature of the suit land.

3. The respondents, in M. A. No. 145 of 2018 (plaintiffs in Title Suit No. 182 of 2017) have filed Title Suit No. 182 of 2017, *inter alia*, on the fact that the suit land was their ancestral property and some fictitious person has transferred the said suit land in favour of the petitioner. The petitioner is going to make



construction over the suit land. The relief prayed for in the suit by the respondents of M. A. No. 145 of 2018 was for declaration of the title of the suit land in favour of the respondents and also for a decree of recovery of possession. The respondents have also prayed for temporary injunction in the suit.

4. The petitioner contested the suit, *inter alia*, on the fact that the petitioner, being a company under the Companies Act, has purchased the suit land, through different sale deeds, executed in the year 2016 and 2017, from the recorded tenant for valuable consideration and they have been constructing duplexes/multi-storied building over the suit land and almost 80 per cent of the construction of the project has already been completed as per the sanctioned plan.

5. A co-ordinate Bench of this Court, after recording, in paragraph 11 of the order, dated 06.02.2019, passed in M. A. No. 145 of 2018, the submission of the petitioner that “*However, the appellant is agreeable that if the appellant is allowed to continue with construction, it is not going to sale any of the constructed portion to anyone till disposal of the suit*”, set aside the impugned order, dated 09.01.2018, passed in Title Suit No. 182 of 2017, to the extent it has restrained the petitioner from making any construction over the suit land and made it clear, in paragraphs 13



and 14, that “*any construction by the appellant on the suit land would be subject to the result of the suit*” and “*the restraint order to the extent that the appellant would not transfer the constructed portion to anyone shall remain intact till disposal of the suit*”. The co-ordinate Bench, while disposing M. A. No. 145 of 2018, has directed the learned Court below to expedite the disposal of the suit preferably within one year.

6. Learned Senior Counsel for the petitioner submits that while hearing M. A. No. 145 of 2018, the Hon’ble Court had observed while dictating order, in open Court, that any sale deed would be executed only after getting permission from the learned Court below and further observed for disposal of the suit within one year without granting undue adjournment, but when the petitioner got the web copy of the order, it came to known that the observation regarding execution of the sale deed with the permission of the learned Court below was found missing in the order. He further submits that on 11.02.2019, learned Counsel for the petitioner brought to the notice of the Hon’ble Bench regarding the aforesaid observation being found missing in the order, dated 06.02.2019, at 10:30 AM, and learned Counsel for the petitioner was advised to file modification application and accordingly the present modification has been filed. He further submits that the



suit was filed on 04.07.2017, but before filing of the suit, the petitioner had already entered into registered agreements with the buyers, the names and details of whom have been stated in the supplementary affidavit filed on behalf of the petitioner. He further submits that before the order of injunction was passed by the learned Court below, the registered agreement with some of the buyers have also been entered into by the petitioner and at present, 75 duplex houses are under construction and more than 50 agreements have already been entered into with the buyers before and after filing of the suit. He further submits that some of the buyers have got housing loan sanctioned from different financial institution, including banks, and the said financial institutions have issued letter for realizing penal interest from the buyers after converting the housing loan into personal loan and if the petitioner is not permitted to execute sale deeds in favour of the buyers with the permission of the Court subject to the final outcome of the suit, the petitioner company shall suffer a great hardship and irreparable loss inasmuch as crores of rupees have already been invested by the petitioner.

7. Learned Senior Counsel for the petitioner relied on the decision of the Supreme Court, in the case of **T. Ravi and Another v. B. Chinna Narasimha and Others**, reported in (2017)



7 SCC 342, in which the Supreme Court, after discussing Section 52 of the Transfer of Property Act, has held that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite and the provision of Section 52 of the Transfer of Property Act does not indeed annul the conveyance or transfer otherwise, but to render it subservient to the rights of the party to a litigation. Paragraphs 41 and 42 of **T. Ravi** (supra) are being quoted herein below:

“41. Reliance has been placed by the learned Senior Counsel for the respondents on *Vinod Seth v. Devinder Bajaj* [*Vinod Seth v. Devinder Bajaj*, (2010) 8 SCC 1 : (2010) 3 SCC (Civ) 212] in which this Court has laid down that the doctrine of lis pendens does not affect the conveyance by a party to the suit but only renders it subservient to the rights of other parties to the litigation. Section 52 will not therefore render a transaction void. This Court has laid down thus : (SCC p. 20, paras 42-43)

“42. It is well settled that the doctrine of lis pendens does not annul the conveyance by a party to the suit, but only renders it subservient to the rights of the other parties to the litigation. Section 52 will not therefore render a transaction relating to the



suit property during the pendency of the suit void but render the transfer inoperative insofar as the other parties to the suit. Transfer of any right, title or interest in the suit property or the consequential acquisition of any right, title or interest, during the pendency of the suit will be subject to the decision in the suit.

43. The principle underlying Section 52 of the TP Act is based on justice and equity. The operation of the bar under Section 52 is however subject to the power of the court to exempt the suit property from the operation of Section 52 subject to such conditions it may impose. That means that the court in which the suit is pending, has the power, in appropriate cases, to permit a party to transfer the property which is the subject-matter of the suit without being subjected to the rights of any part to the suit, by imposing such terms as it deems fit. Having regard to the facts and circumstances, we are of the view that this is a fit case where the suit property should be exempted from the operation of Section 52 of the TP Act, subject to a condition relating to reasonable security, so that the defendants will have the liberty to deal with the property in any manner they may deem fit, in spite of the pendency of the suit.”

42. Reliance has also been placed on *A. Nawab John v. V.N. Subramaniam* [*A. Nawab John v. V.N. Subramaniam*, (2012) 7 SCC 738 : (2012) 4



SCC (Civ) 324] in which this Court has laid down thus : (SCC p. 746, para 18)

“18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendente lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court.

‘12. ... The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.’ (*Sanjay Verma v. Manik Roy* [*Sanjay Verma v. Manik Roy*, (2006) 13 SCC 608], SCC p. 612, para 12)”

8. Learned Senior Counsel for the petitioner next relied on a decision of the Supreme Court, in the case of **Mandali Ranganna and Others v. T. Ramachandra and Others**, reported



in (2008) 11 SCC 1. The Supreme Court, in paragraphs 26 and 27 of *Mandali Ranganna (supra)*, has held thus:

“26. Rightly or wrongly constructions have come up. They cannot be directed to be demolished at least at this stage. Respondent 7 is said to have spent three crores of rupees. If that be so, in our opinion, it would not be proper to stop further constructions.

27. We, therefore, are of the opinion that the interest of justice would be subserved if while allowing the respondents to carry out constructions of the buildings, the same is made subject to the ultimate decision of the suit. The trial court is requested to hear out and dispose of the suit as early as possible. If any third-party interest is created upon completion of the constructions, the deeds in question shall clearly stipulate that the matter is sub judice and all sales shall be subject to the ultimate decision of the suit. All parties must cooperate in the early hearing and disposal of the suit. The respondents must also furnish sufficient security before the learned trial Judge within four weeks from the date which, for the time being, is assessed at rupees one crore.”

9. On the other hand, learned Counsel for the respondents opposed the prayer for modification of the order, dated 06.02.2019, passed in M. A. No. 145 of 2018 and submits that the petitioner has failed to make out any case for modification.



10. I have heard learned Counsel for the parties concerned and have also perused the materials available on record.

11. It appears that after purchase of the suit land, the petitioner has made construction over the suit land to a great extent. The fact that the petitioner has constructed building/duplexes on the suit land and has entered into registered agreements for sale with the buyers and has also invested a huge amount, has not been controverted by the respondents. Admittedly, the petitioner is in possession over the suit land. Accordingly, in the peculiar facts of this case and in the interest of justice and the settled legal proposition that the decision of a Court in a suit shall be binding not only on the litigating parties, but on those who derive title pendente lite and the right acquired by the purchaser shall be subservient to the rights of the petitioner, the order, dated 06.02.2019, passed in M. A. No. 145 of 2018, is modified to the extent that the petitioner is allowed to execute the sale deeds in favour of the buyers with whom the petitioner has entered into registered agreement for sale with the permission of the learned Court below, with further direction that the sale deeds executed in favour of the buyers shall clearly mention that the matter is subjudice in the Court in Title Suit No. 182 of 2017 and all sales shall be made subject to final decision in the suit.



12. I further find that the respondents have assessed the suit value at Rs. 20,00,000/- (twenty lakhs only). Accordingly, keeping in mind the interest of the respondents also, I direct the petitioner to deposit a sum of Rs. 75,00,000/- (seventy five lakhs), by way of bank draft, within a period of four weeks from today, before the learned Court below and the learned Court below shall keep the said amount in interest bearing instrument with any nationalized bank. It is made clear that the aforesaid amount of Rs. 75,00,000/- shall be subject to the final outcome of the suit.

13. The learned Court below is requested to dispose of the suit preferable within a period of one year from today on day-to-day basis without granting any unnecessary adjournment to either of the parties. The parties are also directed to co-operate in the final adjudication of the trial.

14. The petitioner has also prayed for modification in the party position of the order, dated 06.02.2019, passed in M. A. No. 145 of 2018, inasmuch as respondent nos. 2 and 13 therein had died during the pendency of the appeal and I. A. No. 7682 of 2018 was filed for substituting the legal heirs of respondent no. 2 and deletion of respondent no. 13 as the legal heirs of respondent no. 13 were already on record as respondent nos. 14 and 15. By order, dated 06.02.2019, passed in M. A. No. 145 of 2018, I. A.



No. 7682 of 2018 was disposed, and prayer for substitution was allowed, but the party position was not corrected in the said order.

15. Considering the above, the order, dated 06.02.2019, passed in M. A. No. 145 of 2018, is modified to the extent that the same shall be read to have been passed as per the party position mentioned in this order. The Registry is also directed to correct the party position of this case on the website as per the party position mentioned in this case.

16. This application is, accordingly, disposed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18-04-2022
Transmission Date	N/A

