

**IN THE COURT OF SH. RUPINDER SINGH DHIMAN, CIVIL JUDGE-06**  
**(CENTRAL)/DELHI**

**BABY SAINA KAPOOR & ANR. Vs AMIT KAPOOR & ANR.**

**23.06.2020**

**Present:**      **Shasak Jain, Counsel for Plaintiff (Through VC)**

1).      Matter is fixed for consideration. The present suit for permanent injunction has been filed by the plaintiffs through e-filing facility seeking urgent relief of prohibitory injunction. The suit was received on 22.06.2020 and consent of the counsel was sought for listing through Video conferencing on the same day itself. However, counsel expressed his inability to advance arguments on 22.06.2020. At his request, therefore, the matter was adjourned and notified for today.

2).      Brief facts of the case, shorn of unnecessary details which are germane, as culled out from a bare perusal of the plaint is as under:-

*The plaintiffs are minors and suit has been filed on their behalf by their mother. The plaintiffs submit that the suit properties are ancestral property. The Grandfather of the plaintiffs was the owner of the property bearing No. 8A/3G measuring 86.71 Sq. yard built up Basement, Upper Ground Floor, 2nd Floor, 3rd floor with roof right, situated in WEA, Karol Bagh, New Delhi (hereinafter referred to as **house**). The house was purchased after sale of house building measuring of 95 sq. yard, Block No 9, Gali No. 1, House No. 6536 situated in Dev Nagar which belonged to great grandfather of the plaintiffs and after his death devolved on the grandfather. The Grandfather of the plaintiffs was also the owner of one shop in the properties No. 9/6539 situated in Dev Nagar, Karol Bagh, New Delhi (hereinafter referred to as **shop**) which devolved on him after the death of great grandfather. Mother of the plaintiffs was married to defendant no 1 on 04.12.2008 according to*

*Hindu rites and ceremonies and cohabitated with the defendant no 1 till September 2019. After the death of grandmother of plaintiffs on 17.09.2017, defendants no 2 and 3 (**Bua** of the plaintiffs) started to poison the mind of the grandfather and father of plaintiffs which resulted in marital discord between the parents of the plaintiffs. Since September 2019, plaintiffs along with their mother are living separately from their father at Noida. Divorce petition is pending between them. Mother of the plaintiffs has also filed petition under Domestic Violence Act. Further one complaint of sexual abuse with plaintiff no 1 is also pending against defendant no 1. Due to disputes between the mother of plaintiffs and defendants, defendants have become dishonest and wish to dispose off the suit properties (**i.e. House and shop**). The properties however are ancestral and plaintiffs have share in the same. Further, grandfather of the plaintiffs also made will in favour of the plaintiffs on 27.02.2018 and after his death in May 2020, defendants have inherited his share. However defendants wish to usurp the same. On 13.06.2020, mother of the plaintiffs visited the suit property and came to know from neighbors that defendants are trying to dispose off the suit property. **Left with no other remedy, plaintiffs have been constrained to file the present suit for permanent injunction thereby restraining the defendants from disposing off the suit properties.***

3). Along with the plaint, plaintiffs have also filed application for ad interim *ex parte* injunction against the defendants thereby praying for restraining them from disposing off the suit properties during the pendency of the suit. In the application at hand, it is contended that a *prima facie* case is made out in favour of the plaintiffs. It is further submitted that even the balance of convenience exist in their favour and in case the injunction is not allowed, irreparable and monetarily irreparable harm shall ensue to the plaintiff.

4). I have heard the submissions made by the plaintiff's counsel and perused the pleadings, the interim application under Order XXXIX Rules 1 and 2 CPC and the various documents on record in entirety. At the very outset, it is important to refer the law governing the grant of injunctions.

5). In the case of "**Gujrat Bottling Co. Ltd. v. Coca Cola Co.**" reported in [(1995) 5 SCC 545], the Hon'ble Supreme Court, while discussing the factors to be considered by the Courts in exercise of the discretion under Order XXXIX Rules 1 & 2 CPC, has observed as follows:

***"The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion, the Court applies the following tests:***

- i. Whether the plaintiff has a prima facie case in his or her favor;***
- ii. Whether the balance of convenience is in favour of the plaintiff;***
- iii. Whether the plaintiff would suffer an irreparable injury if his or her prayer for interlocutory injunction is disallowed.***

*The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation, are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against*

*injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated. The court must weigh one need against another and determine where the “balance of convenience” lies. In order to protect the defendant while granting an interlocutory injunction in his favour the Court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.”*

6). In “*Colgate Palmolive (India) Pvt. Vs. Hindustan Lever Ltd.*”, AIR 1999 SC 3105, the Hon'ble Supreme Court observed that the other considerations which ought to weight with the Court hearing the application or petition for the grant of injunctions are as below:

- (i) *Extent of damages being an adequate remedy;*
- (ii) *Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason thereof;*
- (iii) *The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;*
- (iv) *No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case- the relief being kept flexible;*
- (v) *The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;*
- (vi) *Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;*
- (vii) *Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.”*

7). From the aforesaid judgments, it is clear that the grant of injunction is a discretionary relief which is granted on the basis of settled guidelines. Now coming to facts of present case as alleged by the plaintiffs. Plaintiffs have claimed that the suit properties are ancestral properties and therefore, they have share in the

same. Further on the death of their grandfather in May 2020 and by virtue of his will, plaintiffs inherited his share in the suit property. During arguments, I specifically put a query to the Counsel for Plaintiff regarding whether the plaintiffs are in possession of the suit property. To this query, it was stated that the father of plaintiff has deserted the mother and the plaintiffs are staying with their mother in Noida and not residing in the suit property. Further query was also put to the counsel, regarding the maintainability of present suit for injunction simplicitor if the plaintiffs are not in possession. However, no arguments were advanced on this aspect and it was simply reiterated that the permanent injunction has been sought. The principles as to when a mere suit for permanent injunction will lie and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief are well settled and have been reiterated by the Hon'ble Apex Court in **Anathula Sudhar Vs. P Buchi Reddy (2008) 4 SCC 594:**

- i. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.*
- ii. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.*
- iii. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.*

In the present suit, admittedly plaintiffs are not in possession of suit properties either  
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themselves or through their mother who has filed the suit on their behalf. Claim has been preferred against their father (defendant no 1) who is admittedly in possession of the suit property. Defendant no 1 (their father) is also a co sharer in the suit property as the plaintiffs have alleged the suit properties are ancestral property.

8). In “**Dalpat Kumar v. Prahlad Singh**”, (1992) 1 SCC 719, the Hon’ble Supreme Court held that the phrases “Prima facie case,” “balance of convenience” and “irreparable loss” are not rhetoric phrases for incantation but words of width and elasticity, intended to meet myriad situations presented by men’s ingenuity in given facts and circumstances and should always be hedged with sound exercise of judicial discretion to meet the ends of justice. The Courts should be circumspect before granting the injunction and look to the conduct of the party, the probable injury to either party and whether the plaintiff could be adequately compensated if injunction is refused. In the present case, plaintiffs have failed to show a prima facie case. Prima facie case is a substantial question raised, bona fide, which need investigation and a decision on merits.

9). A prohibitory injunction simplicitor relating to immoveable property is concerned with possession only. But in the present case, plaintiffs are not in possession. Their shares in the suit properties are yet to be determined. Defendant no 1, their father is also a co-sharer in the suit property. Hence, without seeking partition and possession, mere prohibitory injunction is not maintainable. There is no gainsaying that if the final relief is not maintainable, question of granting interim relief then does not arise. Further non-interference by the Court would not result in “irreparable injury” to the plaintiffs. Adequate remedy of seeking partition and possession of there is available to them. On weighing competing possibilities or probabilities of likelihood of injury, the balance of convenience though exist in favour of the plaintiffs as multiplicity of litigation would be avoided. But in the absence of pleadings, claiming partition and separate possession, mere suit for

injunction is not maintainable in view of Apex court's judgment in **Anathula Sudhakar (Supra)**.

10). Therefore in light of the preceding discussion, the present application for ad-interim *ex-parte* injunction is hereby disposed off as dismissed. No order as to costs.

11). Further, I find that simplicitor suit for injunction as filed by the plaintiffs is not maintainable. Rather it should have been comprehensive suit, including the relief of partition and separate possession of share in the suit properties. **The plaint therefore stands rejected under Order 7 Rule 11 of Civil Procedure Code being barred by law** as settled in case law titled as Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs and Others (2008) 4 SCC 594. Further, it was also held by the Hon'ble Apex Court that in case, after going through the pleadings, court is of the opinion that simplicitor suit for injunction is not maintainable rather plaintiff should have filed comprehensive suit, then, court should relegate parties to bring fresh comprehensive suit. Accordingly, in view of the said directions, liberty is granted to the plaintiff to file fresh comprehensive suit, inclusive of reliefs of possession and injunction, amongst other reliefs before competent court.

**Sh. Rupinder Singh Dhiman**  
Civil Judge -06 (Central)/THC  
Delhi/23.06.2020