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the decision was given in an entirely different set of circumstances. Firstly, it was found as a fact that there was discrimination. Secondly, the petitioners in the case before the Division Bench had produced evidence in the form of ration cards and electricity bills etc. to prove that they had been residing at the particular places for long durations of time. In the present case, nothing of the sort has been done. In fact, the perusal of the case file shows that the factual position is entirely different. No evidence indicating long residence has been placed on record. Totally baseless claim that the land had been purchased or taken on lease has been made. It has also been falsely alleged that the petitioners are licensees and had been accommodated by the Administration. These pleas have been categorically denied and no evidence to support the averments in the petitions has been produced. Thus, the submission cannot be sustained.

(22) No other point has been raised by any of the counsel.

(23) In view of the above, we find no merit in any of these petitions. These are, consequently, dismissed. However, the petitioners are given one month's time to make alternative arrangement and vacate. There will be no order as to costs.

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R.N.R.

*Before M. L. Singhal, J.*

SMT. NIRMAL—*Plaintiff/Petitioner*

*versus*

LAKHPAT SINGH & OTHERS—*Respondents/Defendants*

C.R. No. 938 of 1999

11th July, 2001

*Code of Civil Procedure, 1908—0.39 Rls.1 & 2—Agreement to sell—Land sold to another in breach of the agreement—Questions of evidence—Courts below declining injunction against the purchaser—Temporary injunction—Discretion—Exercise of—High Court has jurisdiction to interfere with the exercise of discretion if the Courts below*

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*have not exercised their discretion properly—Court cannot pre-judge the case at the stage of grant of temporary injunction—All ingredients like irreparable injury, prima facie case, balance of convenience in favour of the petitioner—Petition allowed while granting injunction against the purchaser.*

Held, that existence of a *prima facie* case does not mean that the plaintiff should have a cent per cent case. What it means is that the plaintiff should have come which requires to be gone into and is not liable to be thrown at the threshold. Principle of balance of convenience is also in favour of the plaintiff. If an interim injunction is not allowed to her and the property is conveyed still further, plaintiff will have to involve herself in litigations with defendants to get back the property from them. If an interim injunction is not granted to her, plaintiff will suffer irreparable injury. At the stage of grant of temporary injunction, court cannot pre-judge the case of either party but the court has to go on the pleadings of the parties and the material brought on record in support of the grant of temporary injunction/or against the grant of temporary injunction.

(Paras 9)

Shri S.C. Kapoor, Senior Advocate with Lokesh Singhal,  
Advocate for the Petitioner.

I.K. Mehta, Senior Advocate with K.K. Mehta, Advocate for  
respondents 1 and 3 to 6.

Manoj Bajaj, Advocate for respondent No. 2.

### JUDGMENT

*M.L. Singhal, J.*

(1) On 29th March, 1997, Smt. Nirmal wife of Manage Ram filed suit for specific performance with consequential relief of permanent injunction against Lakhpat Singh son of Chet Ram, Smt. Kalawati widow of Bhim Singh and her sons Yudhvair Singh, Girraj Singh, Tejvir Singh and Nand Kishore, on the allegations, that Smt. Kalawati is the owner in possession of 1/2 share of land measuring 34 kanal 17 marla situated in the revenue estate of village Saran as detailed in para 1 of the plaint. Smt. Kalawati entered into an agreement of sale on

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13th December, 1995 qua land measuring 12 kanal 6 marla out of the aforesaid land measuring 34 kanal 17 marla being owner in possession of the land by virtue of civil court decrees dated 20th July, 1982 and 6th August, 1982 with her (Nirmal) for a sum of Rs. 6,15,000 i.e. at the rate of Rs. 4 lacs per acre. According to the terms and conditions of the agreements of sale dated 13th December, 1995, sale deed was to be executed and registered upto 30th March, 1997 on receipt of the balance sale consideration. Smt. Kalawati received Rs. 50,000 at the time of execution of the said agreement of sale as an advance. She further received Rs. 30,000 as part payment on 19th April, 1996. Kalawati thus received Rs. 80,000 from her in all. On 5th March, 1997, Nirmal went to the house of Kalawati defendant and requested her to be ready to execute sale deed in her favour in pursuance of the said agreement on 30th March, 1997 as stipulated in that agreement. Kalawati put her off on one pretext or the other. She came to know that land measuring 12 kanal 6 marla which was the subject matter of the agreement of sale was being transferred by Kalawati in favour of her sons Yudhvir Singh and others in collusion with her sons. With that thing in view, her sons filed suit against her for declaration titled Tejvir Singh and others vs. Smt. Kalawati in the court of Civil Judge (Senior Division), Faridabad on 10th March, 1997. Nirmal made an application under Order 1 Rule 10 read with section 151 CPC for being impleaded in that suit. That suit was withdrawn by Tejvir Singh and others on 12th March, 1997. Kalawati deviated from honouring that agreement in collusion with her sons and sold that land measuring 7 kanal 2 marla out of the land detailed in para 1 and 2 of the plaint (it may be mentioned here that in para 2 of the plaint, she has described the land she had agreed to be sold to her,—*vide* agreement dated 13th December, 1995),—*vide* registered sale deed dated 13th March, 1997, 14th March, 1997 for Rs. 4,44,000 to defendant No. 1, Lakhpat Singh. She has always been ready and willing to perform her part of the agreement. Sale deed dated 13th/14th March, 1997 in respect of the land measuring 7 kanal 2 marla is illegal, null and void, inoperative so far as her rights are concerned. After the execution of the agreement of sale dated 13th March, 1995, Kalawati also executed/registered 3 sale deed dated 19th April, 1996 with regard to area measuring 62, 75 and 74 square yards for a sum of Rs. 52,750. She also executed/registered 3 sale deeds to different persons respecting area measuring 64, 64 and 580 square yards on 23rd July, 1996 at the rate of Rs. 250.00 per square yard for a total sum of Rs. 1,77,000 through her general power of attorney Smt. Nemawati wife of Joginder Singh

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with the consent/in consultation with the plaintiff. Smt. Kalawati has received a total sale consideration of Rs. 2,29,750.00 in the presence of the plaintiff and the genreal power of attorney Smt. Nemawati. In this manner, Kalawati has transferred/alienated 919 square yards i.e. 1 kanal 10-1/2 marlas of land with the consent of the plaintiff and 7 kanal 2 marlas to Lakhpat Singh on 13th/14th March, 1997 without the knowledge and notice of the plaintiff, as such, sale deed dated 13th/14th March, 1997 is not binding on the rights/interests of the plaintiff. She is entitled to enforce the contract/agreement dated 13th March, 1995 qua the remaining land measuring 10 kanal 15-1/2 marlas including 7 kanal 2 marla sold to Lakhpat Singh defendant on payment of the remaining sale money @ Rs. 4 lacs per acre. Alongwith the plaint, the plaintiff made an application under Order 39 Rule 1 and 2 read with section 151 CPC for the grant of temporary injunction restraining Lakhpat Singh and others defendants 1 to 5 from alienating suit property i.e. 10 kanal 15-1/2 marlas of land which includes land measuring 7 kanal 2 marla sold to Lakhpat Singh defendant.

(2) *Vide* order dated 19th May, 1998, Civil Judge (Senior Division), Faridabad declined the grant of temporary injunction so (far as land measuring 7 kanal 2 marla purchased by Lakhpat Singh defendant is concerned. Temporary injunction was granted restraining Kalawati and others defendants from alienating the remaining land. It was also mentioned that in case suit property is alienated during the pendency of the suit, the principle of *lis pendens* shall be applicable on the party alienating the suit property. Smt. Nirmal (plaintiff) went in appeal which was dismissed by Additional District Judge, Faridabad *vide* order dated 16th November, 1998. Still not satisfied, Smt. Nirmal has come up in revision to this court whereby she has prayed that the application under Order 39 Rule 1 and 2 CPC be allowed in toto and temporary injunction be granted restraining the defendant respondents from further alienating land in dispute.

(3) It was submitted by the learned counsel for the petitioner that she holds an agreement to sell dated 13th December, 1995 whereby Kalawati had agreed to execute sale deed in her favour qua 12 kanal 6 marlas of land @ Rs. 4 lacs per acre out of which Kalawati received a sum of Rs. 50,000 as advance on 13th December, 1995 and another Rs. 30,000 on 19th April, 1996. She was to execute sale deed on or before 30th March, 1997 on receipt of the remaining sale consideration. It

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was submitted that the petitioner was put in possession of the land measuring 12 kanal 6 marla and in breach of that agreement to sell, she sold land measuring 7 kanal 2 marla to Lakhpat Singh defendant - respondent,—*vide* sale deed dated 13th/14th March, 1997 though she was always ready and willing to pay the remaining sale consideration to Kalawati and obtain sale deed from her and on 5th March, 1997, she visited Kalawati and requested her to be ready to execute sale deed in her favour on or before 30th March, 1997 and receive the remaining sale money. It was submitted that the sale deed executed by Kalawati in favour of Lakhpat Singh is not binding on her. It was submitted that Kalawati sold land,—*vide* 6 sale deeds with her consent, to different persons which covers an area measuring 1 kanal 10-1/2 marla out of the land measuring 12 kanal 6 marla which she had agreed to sell to her. It was submitted that the sale of land measuring 7 kanal 2 marla by Kalawati in favour of Lakhpat Singh defendant was not binding on her as it was in breach of the agreement dated 13th December, 1995. It was submitted that Smt. Nirmal had a right to specifically enforce agreement dated 13th December, 1995 with regard to land measuring 10 kanal 15-1/2 marla which includes 7 kanal 2 marla sold by Kalawati to Lakhpat Singh defendant. It was submitted that she was within her right to claim injunction against Lakhpat Singh etc. defendants 1 to 6 i.e. Lakhpat Singh, Kalawati and her sons from alienating/transferring the suit land i.e. land measuring 10 kanal 15-1/2 marla in any manner whatever.

(4) Learned counsel for the petitioner submitted that if Lakhpat Singh and others are allowed to alienate land measuring 10 kanal 15-1/2 marla during the pendency of the suit, that would give rise to multiplicity of litigation if Lakhpat Singh and others alienate land measuring 10 kanal 15-1/2 marla, that would be in breach of agreement dated 13th December, 1995 and also Smt. Nirmal will have to bring suits against the alienees from them with a view to get back that land from them. It was submitted that the equities of the case and the interest of justice demand the grant of such temporary injunction and if such temporary injunction is not granted, people can run away with impunity and refuse to perform the agreement solemnly entered by them. It was submitted that the property should be preserved as it is.

(5) Learned counsel for Lakhpat Singh, on the other hand, submitted that he is a *bona fide* purchaser for consideration of

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Rs. 4,40,000. At the time when he purchased this land measuring 7 kanal 2 marla, he did not have any knowledge or notice of the alleged agreement dated 13th December, 1995 in favour of Smt. Nirmal alleged to have been executed by Kalawati. It was further submitted that Smt. Nirmal is the daughter's daughter of Kalawati, as such, she set up false agreement alleged to have been executed by her Nani in her favour. It was also submitted that assuming that there was agreement in favour of Smt. Nirmal, Smt. Nirmal has no right to restrain Lakhpat Singh from dealing with the property which he has *bona fide* and for consideration purchased. It is only an agreement to sell. Till sale deed is ordered to be executed in favour of Smt. Nirmal by Kalawati and transferee(s) from her, she cannot become clothed with the ownership of this property and no right passes on to her.

(6) It was submitted by the learned counsel for Kalawati that she never executed any agreement set up by Smt. Nirmal. She is aged 80 years and is totally blind. Besides, she is illiterate. She never executed any agreement in favour of Smt. Nirmal nor did she receive any consideration. It was further submitted that she has sold land measuring 7 kanal 2 marla to Lakhpat Singh for a sum of Rs. 4,44,000,— *vide* sale deed dated 13th March, 1997 in her presence with the consent of her sons Tejvir Singh, Yudhvir Singh and Girraj Singh. It was submitted that in fact her younger son Nand Kishore was not happy with the sale made by her. She made a statement in the police station that her younger son had taken her to his house and with a view to grab her property used to obtain her thumb impressions on various papers and had been exercising undue influence on her. She also informed the police that she was happily residing with her sons Tejvir Singh, Girraj Singh and Yudhvir Singh and that she had sold land measuring 7 kanal 2 marla willigly to Lakhpat Singh. It was further submitted that this court should not interfere with the exercise of discretion vesting in the courts below till it is found that the exercise of discretion vesting in the courts below has been exercised by them in a manner that injustice has been done.

(7) It is true that this court should not interfere with the exercise of discretion by the courts below, if they have exercised their discretion properly. It was held in *Guru Nank Education Trust and others vs. Balbir Singh and others* (1), that "court of appeal ordinarily

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will not interfere with the exercise of discretion by trial court and substitute for it, its own discretion. Interference is justified if lower court acts arbitrarily or perversely, capriciously or in disregard of sound legal principles or without considering all relevant records. Mere possibility of appellate court coming to a different conclusion on same facts and evidence will not justify interference.”

(8) In this case, the argument advanced by the learned counsel for Smt. Nirmal petitioner is that Kalawati agreed to sell land measuring 12 kanal 6 marla to her for a sum of Rs. 6,15,000.00 out of which she had paid Rs. 80,000.00 to her and in breach of that agreement to sell, Kalawati sold land measuring 7 kanal 2 marla to Lakhpat Singh and she was also out to sell the remaining land measuring 5 kanal 4 marla minus 1 kanal 10-1/2 marla (it may be mentioned here that 1 kanal 10-1/2 marla has been sold by Kalawati with the consent of Smt. Nirmal to her nominees).

(9) Smt. Nirmal had a *prima facie* case in her favour. Balance of convenience was also in her favour. “Principle of irreparable injury” was also in her favour. There was an agreement to sell in her favour dated 13th December, 1995 alleged to have been executed by Kalawati. It was stipulated in that agreement that Kalawati would execute sale deed in favour of Smt. Nirmal on or before 30th March, 1997. Kalawati sold land measuring 7 kanal 2 marla to Lakhpat Singh *vide* sale deed dated 13th/14th March, 1997, which *prima facie* was in breach of that agreement. Sale in favour of Lakhpat Singh would remain unaffected if Lakhpat Singh is able to prove that he was bonafide purchaser for consideration and he was not aware that the land purchased by him was subject matter of agreement to sell dated 13th December, 1995 in favour of Smt. Nirmal. It is question of evidence whether he purchased this land measuring 7 kanal 2 marla bona fide for consideration on 13th March, 1997 and he was not aware of the agreement dated 13th December, 1995. It is also question of evidence whether Kalawati really entered into an agreement to sell dated 13th December, 1995 land measuring 12 kanal 6 marla with Smt. Nirmal. It is also a question of evidence whether she received Rs. 50,000.00 as advance on 13th December, 1995. It is also question of evidence whether she received another sum of Rs. 30,000.00 on 19th April, 1996 from Smt. Nirmal. Case of Smt. Nirmal was thus not liable to be thrown at the threshold. Existence of a *prima facie* case does not mean that the plaintiff should have a cent per cent case. What it means is that the plaintiff should have

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some case which requires to be gone into and is not liable to thrown at the threshold. "Principle of balance of convenience" is also in favour of Smt. Nirmal. If *ad interim* injunction is not allowed to her and the property is conveyed still further by Lakhpat Singh or the remaining land measuring 10 kanal 15-1/2 marla minus 7 kanal 2 marla is conveyed by Kalawati, Smt. Nirmal will have to involve herself in litigations with them to get back the property from them. If *ad interim* injunction is not granted to her, Smt. Nirmal will suffer irreparable injury. At the stage of grant of temporary injunction, court cannot pre-judge the case of either party but the court has to go on the pleadings of the parties and the material brought on record in support of the grant of temporary injunction/or against the grant of temporary injunction.

(10) For the reasons given above, this revision is allowed. Temporary injunction is granted to Smt. Nirmal restraining Lakhpat Singh from alienating, in any manner, land measuring 7 kanal 2 marla which he has purchased from Kalawati,—*vide* sale deed dated 13th/14th March, 1997. Kalawati is restrained from alienating land measuring 3 kanal 13-1/2 marla which still remains with her i.e. land measuring 10 kanal 15-1/2 marla minus 7 kanal 2 marla which she has sold to Lakhpat Singh,—*vide* sale deed dated 13th/14th March, 1997. Temporary injunction shall ensure till the disposal of the suit.

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S.C.K.

*Before Jawahar Lal Gupta & Ashutosh Mohunta, JJ*

AMARJEET SINGH—*Petitioner*

*versus*

ZONAL MANAGER, FCI, NEW DELHI & ANOTHER—  
*Respondents*

C.W.P. No. 15676 of 1999

20th July, 2001

*Constitution of India, 1950—Art.226—Contract Act, 1872—S.6—Acceptance of petitioner's tender beyond the period of validity—Petitioner asking for refund of the earnest money—Denial of—Respondents failing*