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LAW OF INJUNCTION

“WHETHER TRANSFER OF PROPERTY MADE IN VIOLATION OF INJUNCTION ORDER PASSED BY COURT CAN BE HELD VALID OR NOT”

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ABSTRACT

India's prohibition law originated from the British Equity Law, from which we inherited the current legal management. Injunction litigation is a crazy journey, including lows, highs, twists, turns and challenges. The name of the injunction means preventive relief. It focuses on the role of injunctions in cases involving wrongful adventurous behaviours, and through a petition granting an injunction, the court effectively converts the ex-party compensation request into the main duty of performance or omission. An injunction is considered to be a fair remedy determined in the manner of a court order that makes someone obligated or refuses to take specific actions. This restrictive order is an instruction of the court to make each party restraint for fairness or non-action, which causes injustice to the other party. In the case of an injunction, the court will also consider the issue of honesty and fairness. This article will discuss the injunctions issued on property transfers and whether they are effective.

Keywords: *impartial remedy, property transfers, interim remedy, ex-party compensation, fair remedy determined.*

INTRODUCTION

In the Indian law, an injunction is considered as the impartial remedy identified in the manner of the court order that obliges a person or refrains them to do a specific act. This restrictive order is kind of direction from court that refrain one of the respective parties for the purpose of equity or refraining from act, which is causing injustice to the other party. Therefore, a certain type of the conduct is forbidden through the injunction.

Evidences have shown that injunction is considered as the equity that originated from the English courts of equity and traditionally this remedy is awarded when the wrong could not be remedied through the money. Injunction is to provide the right to someone, whose right have been violated by the other party.

Therefore, while providing injunction the question of good faith and fairness are also considered by the court. Injunctions given in the case of transfer of property will be discussed in this article and whether they are valid or not.

Literature Review of the Topic

- P.P. Joshi, RULE OF INJUNCTIONS: Temporary Injunction comprising Ex-parte Injunction, Perpetual Injunction and Mandatory Injunction, (2015)

In this research article author has briefly explained about the Injunction and different types of injunction that court can pass. The article talks about different situations these injunctions can be passed. The authors in the present case have relied on the research paper to understand the meaning of injunction and the characteristic of these injunctions.

- Thammaiah Ramakrishna, An India Perspective on Establishing a Prima-Facie Case in Patent Suits, Available at SSRN 3047057 (2017).

In this article authors have talked about patent injunction but the paper also focuses on general concept of injunction. The author has talked about application of equitable principle in granting the injunction. These inputs were used in article to explain as to when injunction can be granted and what are essential factors leading to grant of injunction and article has explained how

injunction is interim remedy which can be claimed by the plaintiff and also helps in order to prevent the dissolution of the rights of the plaintiff.

- PuneetGarg, India: Law of Injunction: Temporary Injunction, Singh & Associates (Aug 13th2013),

[In this Article the author has summarized the condition prevailing before passing of injunction and which has helped in the paper in further understanding the condition for the plaintiff to seek the remedy of injunction.](#)

- Jean Murray, what is Injunction, small business, (Sept 17 2020)

In this article the researcher has talked about working of injunction order and its application in civil disputes. The researcher has also explained about the various kinds of injunction. The article has included from the said article consequence of not adhering to the order of injunction.

- Shweta, what to do when an Injunction is not enough to stop the infringement, Selvam&Selvam (March 11 2016)

This article has specifically talked about the penalties for not adhering to the injunction order and remedies that are available for the breach of injunction. The article tells us about how law does not provide enough protection to stop breach of injunction. The article also tells us as to how act of contempt is more common.

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Classification of Injunction:

In the Indian Legal System, laws pertaining to Injunction is administered by the Specific Relief Act, 1963. Talking about remedy of Injunction has been characterized into two types i.e. Permanent Injunction and Temporary Injunction.

The provision of Temporary Injunction has been given in Sec-37 of the Specific Relief Act, 1963 which states that *“Temporary Injunction remains in continuation till the further order of the court and this can be granted at the any stage of the suit”*

Whereas the procedure for this is given under Order XXXIX of the Code of Civil Procedure, 1908. This remedy being discretionary equitable relief it cannot be granted when equal effective relief is available in any other usual proceeding. The relief of restrictive order can be granted by

the various courts in order to prevent the future violation of the law and to prohibit that particular person from the violating the rights of any other person in the society, this can include cases like where factory is producing waste chemicals, if somebody is creating noise pollution by loud speakers etc.

An Injunction in which certain act or conduct must necessarily be done is known as Mandatory Injunction where as an Injunction where person is prevented from doing that particular conduct or act is called Propitiatory Injunction. However, there are certain cases in which both the Injunctions are pronounced, because such cases require both conduct and prohibition from that conduct by the defendant.

“When an injunction is given, it can be enforced with equitable enforcement mechanisms such as contempt. It can also be modified or dissolved (upon a proper motion to the court) if circumstances change in the future”¹.

Therefore, above are some significant characteristics of Injunction which allows Hon’ble court to manage the action and behaviour of different parties in the different cases. As mentioned above that such laws of relating to the remedy of Injunction are governed by under Order 39 of Code of Civil Procedure, 1908 and the section 36 and 42 of the Specific Relief Act, 1962, but along them in our legal system we have section 94(c) of the CPC, 1908 as the supplemental provision which is used while granting temporary injunctions.²

The relief of temporary Injunction can be availed by the plaintiff from the court in the cases where the defendant is violating the rights of that plaintiff i.e. threat to dispose the property, unauthorised trespass etc. Cases where property is of immovable nature, in such a scenario Hon’ble court may refrain the act and prevent the dispossession of the property of the plaintiff in order to prevent any kind of harm that can be caused to plaintiff in relation to the property and the property dispute.

Hence, the remedy of the temporary injunction is considered as the interim remedy which can be claimed by the plaintiff and also helps in order to prevent the dissolution of the rights of the

¹P.P. Joshi, LAW OF INJUNCTIONS: Temporary Injunction including Ex-parte Injunction, Perpetual Injunction and Mandatory Injunction, (2015).

² What is an Injunction?, Indian Findings (2019) <https://www.indiafilings.com/learn/what-is-an-injunction/>.

plaintiff.³ In the landmark case of Gujarat Botting Co.Ltd. V. Coca Cola Co. the Hon'ble court gave certain guiding principles which must be taken into consideration while granting the relief of temporary injunctions.⁴

While pronouncing the judgment apex court held that firstly, what is essential and significant to apply the test of prima facie, secondly whether the balance of convenience is in favour of plaintiff and thirdly, whether the plaintiff may undergo the irreparable injury if the temporary injunction is no provided.⁵

Considering and analysing the number of cases it can be easily understood that temporary injunction cannot be sought for those right may come in to force in future, which signifies the fact that injunction can injunction could not be prohibit a party from filling a suit.⁶

Analysis and Critical Thinking

While granting the relief of temporary injunction hon'ble court has to keep in mind various essentials factors, as we know any property is a hard-earned asset and an investment for life for any person. Section 94 of the Code of Civil Procedure, 1908 makes it very clear from its text itself i.e. *"such powers given to prevent the ends of the justice from being get diluted."*

In any case if there is a minor apprehension or some element of doubt that the defendant may by his action alter the state of the subject matter of the dispute, in such a case a decree ordered would be of no meaning and it will ineffective or impossible to execute the actual meaning of the decree then in such a scenario hon'ble court would be having power to grant an injunction with a view to prevent such an apprehended action of the defendant.

For Instance, in the matter of the specific performance of an agreement for the sale of an immovable property, the hon'ble court may grant a decree of temporary injunction as a relief to the plaintiff on the sale of the property in any manner as per the law, by the concerned parties and for concerned subject matter involved in the particular case.

³Thammaiah Ramakrishna, An India Perspective on Establishing a Prima-Facie Case in Patent Suits, Available at SSRN 3047057 (2017).

⁴ AIR 1995 SC 2372

⁵PuneetGarg, India: Law Of Injunction: Temporary Injunction, Singh & Associates (13 August 2013)

<http://www.mondaq.com/india/x/257586/Civil+Law/LAW+OF+INJUNCTION+TEMPORARY+INJUNCTION>

⁶Seema Arshad Zaheerv&Ors.V., Municipal Corporation of Greater Mumbai &Ors., (2006) 5 Scale 263.

The above facts and circumstances were taken into consideration by the hon'ble Supreme Court and held that *“the guidelines as to what are three essential ingredients that have to be present and fulfilled in order to grant a temporary injunction, which are prima facie case, balance of convenience and irreparable loss.”*⁷

Now let us understand the all these essential ingredients given in the case of Dalpat Kumar V/s Prahlad Singh:

Prima Facie Case:

The phrase Prima Facie is nothing but anything which seems to be the truth when it is seen or heard for the first time i.e. at the first sight, in other words it that apprehension or mental thinking which comes in the mind without examining the facts and circumstances. Our hon'ble Supreme Court on various occasions has defined the meaning of the term *“Prima Facie.”*

However, in the leading case it was held that the meaning of the term *“prima facie”* would not suggest that concerned aggrieved person should be having clear and direct case which in his apprehension and in all possible outcomes will succeed in the court and at the end of the trial order of will be given in his favour only.⁸

This is nothing but the contention which the aggrieved person is asking, and require deliberation in quality and in his mind this contention can never be rejected, as doing this would be unjust and against the basic principles of law. Hon'ble court while dealing matters has to consider whether the concerned party who has approached the court by filing a suit has a valid and reasonable case and at the same time it must also take care of the fact that is what is the reasonable and probable status of the such suits succeeding, if the suit is process in the trial.

Hence, the case of the plaintiff must be out of the scope of any technical flaws and at the same time suit filed by plaintiff must have merits in it. For Instance, that the initial plaint filed before the hon'ble court should be free of any flaws and technical aspects like jurisdiction, maintainability, limitation, court fees etc must be taken care of well, as all these comes under the category of legal irregularities and they must be removed by the proper examination of the court.

⁷Dalpat Kumar V/s Prahlad Singh AIR 1993 SC 276.

⁸ Prakash Singh V/s State of Haryana 2002 (4) Civil L.J. 71 (P.H.).

Balance of Convenience:

Injunction is granted if the person suffers excessive loss. In the landmark case, hon'ble Supreme Court has said "a temporary injunction can be granted only if the who seeking injunction has a concluded right, and he is capable of being enforced by way of injunction and there has to be a balance between the remedy sought by the plaintiff and the situation and condition of the defendant." ⁹This becomes very essential to maintain a balance between the relief given to the plaintiff against the injury that will be done to the defendant.

However, in order to ensure a balance of convenience, it is necessary that the case of parties is compared and a comparative balance has to be made between the malice or problem of inconvenience which is to be caused will be greater or the withholding of injunction will cause greater loss to the party than granting it.

Irreparable Loss:

As the term it self says that any loss which can be restored back no matter how much of monetary compensation is order by the court.

In the landmark case, where hon'ble Supreme Court of India held that "Court have to analysis the amount of loss caused and suffered by defendant and plaintiff respectively, and further it will also examine the future loss incurred by the plaintiff if the order of in the favour of plaintiff is not granted. The court will also analysis the fact that whether the loss suffered by plaintiff is reparable by monetary compensation i.e. Amount of money equal or more than the value of the property. Furthermore, the court will also analysis the consequence faced by defendant if the order is passed, subsequently it has to be seen that which loss will be greater and irreparable."¹⁰

Considering above, the party which would suffer greater loss be said having balance of the convenience in the favour and accordingly, the court will pass or refuse to pass the order.

⁹ Agricultural Produce Market Committee V. GirdharbhaiRamjibhaiChhaniyara, AIR 1997 SC 2674.

¹⁰ Best Sellers Retail India (P) Ltd. v. Aditya NirlaNuvoLtd,(2012) 6 SCC 792.

However, there are endless damages which can not be repaired at any cost but for them court does not regard them as “irreparable loss.” For Instance, it is said to be caused mental injury if somebody outrages the feeling or causes loss to anything which is of sentimental value.

On the contrary, there are damages which can be repaired or restored back into its existing state which causing substantial loss to that object, but in the court of it is still considered as Irreparable loss.

Irreparable damage does not mean that the damage can never by repaired or brought in the original state.It only means that the damage caused cannot be adequately compensated by money.¹¹

Further, an injury is permanent where it is nonstop and repeated or when a remedy can be sought of under law by a number of suits.

Analysing the Validity of Transfers.

To understand whether or not the transfer of the property when the injunction order is issued is justified it is imperative read the case of KeshrimalJivji Shah Anr. v. Bank of Maharashtra.¹² In this case contention raised from end of petitioners counsel was that once law fails to make a provision on transfer of a property against prohibitory order , then court is not permitted to hold the transfer of property for petitioner is void. Now the onus was on the court to ascertain whether right, interest and ownership in the immovable property extinguish only since a restraint is order by court on its transfer. Further second conflicting contention to be decided was that transaction that is entered either against order of court or to violate it cannot confer any favourable right or interest in favour of transferee. A very identical situation was faced by the Apex court in case of Sujit Singh v. Harbans Singh ¹³, in this case court held that “ if there is no restraint on the transfer of property even after the injunction order, and it was supposed to let go as such, it would defeat ends of justice and prevent the public policy.”

¹¹ M. Gurudasand Ors. V. Rasaranjan and Ors, AIR 2006 SC 3275.

¹² (2005) 193 CTR Bom 229.

¹³ 1995 [6] SCC 50.

Also in case of RamchandraGunpatShinde v. State of Maharashtra¹⁴ division bench held that it is the court and not the legislation that people of our country entrust their trust. If people respect the working of the courts, the respect for law will also survive the lacunae of other branch of the Governments, but people abandons the respect for courts law and order will eradicate with deterrent effect to the society.¹⁵

Thus to finally summarize the different submission given by the counsel in aforementioned case and contentions given by the various high the Hon'ble Supreme court in case of Satya BrataBiswal v. Kalyan Kumar Kisku¹⁶ held that if transfer of property subsequent to order of injunction being passed for same property is held to be valid given the fact annulling such transfer not given under law, then in such case it would be viewed as loss of legal efficacy and would be deemed as an utter disrespect or violation of prohibitory order passed by the relevant court. Such act would be seen as parties have power to breach and abuse court instructions and none will suffer any consequences. For the second contention court of law grants no rights or title in name of transferee as no transfer is recognized by the law. It is imperative that guidelines or instruction shall be issued that transferee shall not be allowed to take advantage or any benefit from such transaction since he isn't the party of the matter. If this transfer was allowed, then the propensity to disregard the order of the courts which are ever increasing would never be stopped or done away with. It is imperative to understand that court exercises its power on the ground of respect for its authority who take court helps to cure their grievance. Also it has to be borne in mind that people would lose faith and the confidence completely, if court fails to curb or stop this propensity of violating orders. Caution note by supreme court must be revised at back of legal minds.

Problem with Injunction and Transfer of Property.

The court tried to ascertain the understanding whether transfer of the property violating injunction can be upheld or not and can section 52 of Transfer of Property Act sufficient to save parties from these violations in case of Prakash Gobindram Ahuja v. Ganesh

¹⁴ 1994 (1) Bom. C.R. 460.

¹⁵ Id.

¹⁶ AIR 1994 SC 1837.

PandharinathDhonde¹⁷ Further in case of KeshrimalJivji Shah and Anr. v Bank of Maharashtra the point put forwarded by the counsel was there is no law in CPC or in the India which can declare the transfer in violation of injunctive order as invalid.¹⁸ Thus it was logically argued since law is silent on the nullity of transfer in violation of injunction the court shall not regard such transfer favouring plaintiff. Also in case of Thomson Press Ltd. v Nanak Builders Invesntors, the court has stated there is no rational that violation of restrictive order could make respective property as ineffectual.¹⁹ Based on the above derivation in case of KeshrimalJivji it was contended that ownership or right over immovable property cannot be considered as invalid since injunction is placed by court.

REMEDIES

As by studying the different case we conclude that Section 52 –Transfer of Property Act do not put any hindrance or constraint on the transfer of property at the same time is silent about such transfers nullity or declares it void. However, this section does states that equitable claims are within the preview and authority of court.²⁰ There are cases where court denied the transferee who agreed the transfer even having prior knowledge of injunction of the suit. However, the case of Kasturi v Iyyampermual.²¹ *“an application by the subsequent purchaser for impleadment in a suit for specific performance by a prior transferee does not alter the nature and character of the suit and such a transferee has a right and interest to be protected and deserves to be impleaded in the suit.”*²²

Thus in case of injunction orders violated the defendant is liable for the violations and are subject to consequences but same cannot be taken against transferee. The party who has done wrong under CPC and transfer of property are liable to be punished but the sale is legal.²³ But one case of Savitri Devi v. District Judge Gorakhpur the court pointed that transfer of property even

¹⁷ (2016) 6 ABR 745.

¹⁸ 2004 (3) MhLj 893.

¹⁹ (2013) 5 SCC 387.

²⁰ The Transfer of Property Act 1882, No. 4 Acts of Parliament 1882.

²¹ 2005(6) SCC 733.

²² Whether transfer of property made against the injunction order is right or not?, Law-Web (Friday, 23 August 2013) <https://www.lawweb.in/2013/08/transfer-of-property-made-in-violation.html>.

²³ Shweta, what to do when an Injunction is not enough to stop the infringement, Selvam&Selvam (March 11 2016) available at: <https://selvams.com/blog/what-to-do-when-an-injunction-is-not-enough-to-stop-the-infringement/~:text=The%20CPC%20states%20that%20in,guilty%20of%20such%20disobedience%20the>.

knowing the temporary injunction can result in transferee as the defendant in the suit and cases will be framed against them.²⁴ The Transfer of Property violating the injunction can be considered as invalid if it is established that transferee knew about the restrictive order. The pendent elite transfers are taken care by section 2 but court may not entirely take plaintiff consent and thus court can provide equitable relief.

CONCLUSION.

Considering the Indian Jurisdiction law of Injunction is defined under Section 37 Specific Relief Act 1963. The section talks about the temporary injunction. The article tried to find out whether any transfer of property which violates court restrictive order can be viewed as authentic or not. The finding has suggested that any transfer of property against mandate of injunction is within law as no law which makes the transfer invalid or void. Although the different instance in multiple cases it has been established that despite the facts that exchange or transfer of property in injunction is not allowed however the 3rd party who gets the property and has no knowledge about the transfer or property such exchange cannot be annulled. Thus, it is burdened on the court to take into consideration the interest of plaintiff and person holding the property. Likewise, it can be derived that an injunction is a reasonable remedy and works on the maxim a person who comes to the court must come clean hands. Permitting injunction order is completely on the court but this independence is to be equitable based on Judicial Moralities.

²⁴Savitri Devi. v. District Judge, Gorakhpur, (1999) 2 SCC 577.