



## WHETHER TRANSFER OF PROPERTY MADE IN VIOLATION OF INJUNCTION ORDER IS VALID?

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### INTRODUCTION

In the Indian law, an injunction is considered as the equitable remedy identified in the form of the court order that compels a party or refrains them from doing a specific act. It is a kind of court order that refrain one of the 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.

### II.2 TYPES OF INJUNCTIONS

Injunctions can be given by the court in different cases, in order to prohibit the further violation of the law and the rights of the people. Such cases may include, the trespass to the personal property, infringement of a patent or transfer of the property.<sup>1</sup> On the basis of the conditions, situations and time, injunctions can be classified as the “temporary injunctions” or “perpetual injunctions”. An injunction that requires a certain conduct to be conducted by the parts are classified under the “mandatory injunctions” and one that prohibits the conduct are considered as the “prohibitory injunction”. Some of the injunctions are both, which means mandatory as well as prohibitory, because they may require certain conduct or act to be conducted and some to be forbidden. “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”<sup>2</sup>. Therefore, these are some significant features of the injunctions that allow the courts to manage the actions and behaviour of different parties. The law of injunction in the Indian legal system are mainly governed under the Order XXXIX, as well as under the section 36 and 42 of the Specific relief Act. The supplemental provision for granting a temporary injunction is also considered under the Section 94(c) of the Civil Procedure Code<sup>3</sup>.

<sup>1</sup>P.P. Joshi, LAW OF INJUNCTIONS: Temporary Injunction including Ex-parte Injunction, Perpetual Injunction and Mandatory Injunction, (2015) (<http://mja.gov.in/Site/Upload/GR/Consolidate%20Workshop%20Paper%20Ratnagiri%20Civil-15032015.pdf>)

<sup>2</sup>P.P. Joshi, LAW OF INJUNCTIONS: Temporary Injunction including Ex-parte Injunction, Perpetual

Injunction and Mandatory Injunction, (2015) (<http://mja.gov.in/Site/Upload/GR/Consolidate%20Workshop%20Paper%20Ratnagiri%20Civil-15032015.pdf>)

<sup>3</sup>What is an Injunction?, Indian Findings (2019) <https://www.indiafilings.com/learn/what-is-an-injunction/>.



A plaintiff can obtain the temporary injunction in the case, when the defendant threaten to dispose the property, harm the plaintiff or transfer the property in violation to the right of the plaintiff. In the case of the immovable property, the Court may refrains the act and prevent the dispossession of the property of the plaintiff in order to prevent any kind of harm that can be cause to plaintiff in relation to the property and the property dispute. Therefore, a temporary injunction is considered as the provisional remedy that can be claimed by the plaintiff and also helps in preventing the dissolution of the rights of plaintiff<sup>4</sup>. In the landmark judgment of a case, the Court had established certain guidelines that are to be considered for granting temporary injunctions<sup>5</sup>. In this case the court had established that it is 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 suffer the irreparable injury if the temporary injunction is disallowed<sup>6</sup>. It has also been identified that temporary injunction cannot be sought from some right that may arise in the coming future, which means that injunction could not be prohibit a party from filling a suit<sup>7</sup>.

### III.3 INGREDIENTS FOR GRANT OF TEMPORARY INJUNCTION

The Respected and concerned Court has to keep in mind the various factors before grant of an temporary injunction in any case

pending before the Court. The property is an hard earned asset and an investment for life for any person. Section 94 of Civil Procedure Code also makes it very clear from the wordings of the section itself that such powers are given to prevent the ends of justice from being defeated. Hence, if there is any apprehension or trepidation that the defendant may by his action change a state of things in respect of the subject matter of dispute in such a way that a decree eventually passed would become meaningless or ineffective or difficult to execute the Court can exercise the power of granting an injunction to prevent such an intended on apprehended action. For example, in the cases of specific performance of an agreement for the sale of an immovable property, the court may grant an temporary injunction on the sale of the property or alienation of the property in any manner by the parties involved in the case. These situations were considered by the Hon'ble Apex Court in the case of Dalpat Kumar V/s Pralhad Singh<sup>8</sup> and the Hon'ble Court laid down the guidelines as to what are the three ingredients that have to be present and satisfied in order to grant an temporary injunction, which are prima facie case, balance of convenience and irreparable loss.

#### PRIMA FACIE CASE

Prima facie case has been given various definitions by various courts. But, in the case of Prakash Singh V/s State of Haryana<sup>9</sup>, it was explained by the Court that Prima facie

<sup>4</sup>Thammaiah Ramakrishna, An India Perspective on Establishing a Prima-Facie Case in Patent Suits, Available at SSRN 3047057 (2017).

<sup>5</sup>Gujarat Bottling Co. Ltd. V. Coca Cola Co. , AIR 1995 SC 2372.

<sup>6</sup>PuneetGarg, 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>

<sup>7</sup>Seema Arshad Zaheerv& Ors.V., Municipal Corporation of Greater Mumbai & Ors., (2006) 5 Scale 263.

<sup>8</sup> AIR 1993 SC 276.

<sup>9</sup> 2002 (4) Civil L.J. 71 (P.H.).



case does not mean that the plaintiff should have a very clear and direct case which will in all probability succeed in trial and will be in the favour of the plaintiff. Prima facie case means that the contentions which the plaintiff is raising, require consideration in merit and are not liable to be rejected summarily as that would be unjust and against the principles of law.

The court has to consider whether the party who has approached to court has a valid and plausible case and what is the possibility of such a case succeeding at a trial. Therefore, the case of the plaintiff should be free of any technical flaws and also have merit in it. For example, the initial plaint before the court should be free of any flaws and technical aspects like jurisdiction, maintainability, limitation, court fees etc has to be taken care of.

### BALANCE OF CONVENIENCE

In Agricultural Produce Market Committee Case<sup>10</sup>, the Hon'ble Apex Court has held that "a temporary injunction can be granted only if the person seeking injunction has a concluded right, capable of being enforced by way of injunction and there has to be an balance between the remedy sought by the plaintiff and the situation and condition of the defendant." It is very important to maintain an balance between the relief given to the plaintiff against the injury that will be done to the defendant. Also in order to ensure an balance of convenience, it is necessary that the case of parties is compared and an comparative balance has to be made between the mischief or inconvenience which is likely to be caused will be greater or the

withholding of injunction will cause greater loss to the party than granting it.

### IRREPERABLE LOSS

In the case of Best Sellers Retail India , The Hon'ble Supreme Court of India observed that the court will first of all have to examine what is the amount of loss that would be caused to the applicant if the order is not passed and also whether it is repairable by monetary compensation i.e. by payment of cost. Then it will examine the damage suffered by respondent if the order is passed and thereupon it has to see which loss will be greater and irreparable. The party who would suffer greater loss would be said to be having balance of convenience in his favour and accordingly, the court will pass or refuse to pass the order.<sup>11</sup>

There are many damages which cannot be repaired but every court do not regard them as 'irreparable'. For example any act which outrage the feeling or cause an loss of thing of sentimental value can be said to have caused a mental injury or loss. On the other hand there are injuries which in their nature may be repaired but still treated as irreparable. Ordinarily injury is irreparable when without fair and reasonable address of Court, it would be denial of justice. Irreparable damage does not mean that the damage can never be repaired or brought in the original state. It only means that the damage caused cannot be adequately compensated by money.<sup>12</sup>

Further, an injury is irreparable where it is continuous and repeated or where an remedy

<sup>10</sup> Agricultural Produce Market Committee V. Girdharbhai Ramjibhai Chhaniyara, AIR 1997 SC 2674.

<sup>11</sup> Best Sellers Retail India (P) Ltd. v. Aditya Nirla Nuvo Ltd., (2012 ) 6 SCC 792.

<sup>12</sup> M. Gurudas and Ors. V. Rasaranjan and Ors., AIR 2006 SC 3275.



can be sought of under law by a multiplicity of suits. Sometime, the term irreparable damage also refers to the difficulty of measuring the amount of damages inflicted. However, a mere difficulty in proving injury does not establish irreparable injury.

#### IV.4 ANALYSIS OF THE VALIDITY OF TRANSFER

Whether the transfer of property, after the injunction order has been passed, can be justified under the court of law or not as a question was considered by the court in the case of Keshrimal Jivji Shah And Anr. vs Bank Of Maharashtra And Ors.<sup>13</sup> The questions to be considered by the Division Bench in this case was exactly 'as to whether the transfer of an immovable property in contravention of a prohibitory or injunction order of a Court is illegal or void? Various contentions were brought forth by the learned counsels of both the parties and one of the contention brought forward by the counsel of petitioners was this that once the law do not make such provision, then it is not permitted for the Courts to hold that transfer in favour of petitioners is void. Now it had to be decided by the court that does the right, title and interest in the immovable property come to an end merely because a restraint is placed by Court of law on its alienation or disposal. Further it was also an issue that transaction, which is entered into either to defeat the order of Court of law or to violate it cannot confer any right, title or interest in favour of the transferee.

A similar condition was brought before the Hon'ble Supreme Court in the case of Sujit Singh & Ors. Vs. Harbans Singh & Ors.<sup>14</sup>, Wherein it was held by the Hon'ble Court 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 the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in *seisin of a lis*, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise"<sup>15</sup>

Further it has also been observed by the division bench of Maharashtra court in the case of Ramchandra Ganpat Shinde Vs. State of Maharashtra<sup>16</sup>, that "it is the courts and not in the legislature that our citizens primarily feel the keen, the cutting edge of the law. If they have respect for the work of their courts, their respect for law will survive the short comings of every other branch of the Government; but if they lost their respect for the work of the courts, their respect for the law and order will vanish with it to the greater detriment of society".<sup>17</sup>

Therefore to summarise the contentions put forward by the various counsels and the judgements given by other division benches of various high courts, the Apex Court in the case of Satya Brata Biswal Vs. Kalyan Kumar Kisku & Ors.<sup>18</sup>, It was held that if the transfer of property made even after the injunction order has been passed against the same property is held as valid, the consequences of nullifying such transaction not being provided by the statute, would lose

<sup>13</sup> IV (2004) BC 6, 2004 122 CompCas 831 Bom, (2005) 193 CTR Bom 229, 2005 273 ITR 451 Bom, 2004 (3) MhLj 893.

<sup>14</sup> 1995 (6) SCC 50.

<sup>15</sup> Punchhi, M.M, Sujit Singh & Ors. Vs. Harbans Singh & Ors.

<sup>16</sup> 1994 (1) Bom.C.R. 460.

<sup>17</sup> Mr. Justice Arthur J. Venderbilt.

<sup>18</sup> AIR 1994 SC 1837.



its legal efficacy and would be considered as an utter disregard to or in violation of or breach of prohibitory order or order of injunction issued by a Court of law. Such an act would reflect that parties can breach and violate Court orders openly and neither they nor the beneficiaries shall suffer any consequences. It is high time that principle that transfer of immovable property in violation of an order of injunction or prohibition issued by Court of law, confers no right, title or interest in the transferee, as it is no transfer at all is recognised and is made an legal norm by issuing an valid legal sanction for the same. It shall be made an compliance guideline that the transferee cannot be allowed to reap advantage or have any benefit from such transfer merely because he is not party to the proceedings in which order of injunction or other prohibitory direction or restraint came to be issued. It shall assumed to be enough if the transferor is a party to the current case and the order was in force. These two conditions being satisfied, the transfer must not be upheld. If this means is not adopted, then the tendency to disregard the orders of courts which is increasing its pace day by day can never be cured or curbed. It shall be understood that the Court exercises its powers on the foundation of reverence for its authority by people who come to the Court with their grievance and opt the course of litigation. Further this shall be kept in mind that people will lose faith and trust completely if the Court does not control and take steps and measures to control this tendency. The note of caution of the Supreme Court must be consistently at the back of everybody's mind.

### V.5 PROBLEM WITH INJUNCTION AND TRANSFER OF PROPERTY

In the case of Shri. Prakash Gobindram Ahuja vs. Ganesh Pandharinath Dhonde & Ors, the Court focused on understanding if the transfer of the property in violation of the injunctions is void or not and whether the section 52 of the Transfer of Property Act is sufficient to protect the parties from such violation<sup>19</sup>. In the case of Keshrimal Jivji Shah And Anr. vs Bank Of Maharashtra And Ors, it was argued by the counsel that there is no provision in the Indian legal system or the Civil Procedure Code (CPC) through which the transfer of a immovable property done in violation of an injunction can be considered as null and void<sup>20</sup>.

It was also identified in the case that the parties may have to face the penalties for the violation of the court orders. For example, according to the Code Of Civil Procedure, 1908-Order-XXXIX, Rule 1, the temporary injunction can be obtained, if the suit is in danger, property being wrongfully sold or damaged, or the defendant threatens to sell the property and cause injury to plaintiff. According to Rule 2, injunction can restrain the defendant from such act, while according to Rule 2A the breach of the injunction granted under the Rule 1 and 2 can result in considered defendant as the guilty and can be detained in civil prison<sup>21</sup>. However, the main problem is that transfer of the property or the

<sup>19</sup>Shri. Prakash Gobindram Ahuja v. Ganesh PandharinathDhonde&Ors. [04.10.2016]

<sup>20</sup>Keshrimal Jivji Shah And Anr. v. Bank Of Maharashtra And Ors., IV (2004) BC 6, 2004 122

CompCas 831 Bom, (2005) 193 CTR Bom 229, 2005 273 ITR 451 Bom, 2004 (3) MhLj 893, [22.04.2004].

<sup>21</sup>Code Of Civil Procedure, 1908-Order-XXXIX.



transaction is not considered as null and void or have no legal effect<sup>22</sup>.

Therefore, it can be argued that when the law do not null or void or reject such transfer of the property in violation of the injunction, then the Court could not hold such transfer in the favour of the plaintiff. In the case of *Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.*, (2013), the court had also held that there is no reason that violation of the injunction could make the transfer or sell of the property as ineffective<sup>23</sup>. Therefore, in the case of *Keshrimal Jivji Shah And Anr. vs Bank Of Maharashtra And Ors*, the learned counsel had stated that the interest, title or the right in any kind of immovable property could not be considered as void or could not be ended because of the injunction or the restraint placed by the Court on the transfer or the disposal of the property.

## VI. 6 REMEDIES

The evidences and the case examples have informed that Section 52 of the Transfer of Property Act does not place any kind of restriction on the subsequent transfer of the property not this section in any form declares that such transaction is null and void. But, this section states any kind of the equitable claims are subjected to the authority of the court<sup>24</sup>. However, it has been established that Court can deny the impleadment of the applicant, who has entered the transaction o the transfer of property even after knowing

that the Court had injunction in the pending suit and had prohibited or restrained further transaction. However, in the case of *Kasturi v. Iyyamperumal & amp; Ors.* 2005(6) SCC 733, “*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*”<sup>25</sup>.

Therefore, in the case of violation of the injunction, the defendant can be considered as liable for the violations and can also be placed with penalties, but could not take action for the transferee. The party committing the breach under the CPC and the Transfer of Property Act are liable for the punishment, but the sale of the property or the transfer of the property would be considered as legal and void. However, one significant suggestion has been identified in the case of *Savitri Devi v. District Judge, Gorakhpur and Others* (1999) where the Court considered that conducting the transfer of property even after knowing the temporary injunction can result in causing the transferee as the defendants in the suit and case will be heard against them<sup>26</sup>. The Transfer of the Property in violation of the injunction could be considered as null and void if the transferee knows about the temporary injunction over the property and that there are relevant facts for establishing it. Section 52 of the Transfer of Property Act takes care of the *pendentelite* transfers, but may not

<sup>22</sup>*Sharad Jamnadhariji Mor v. Arjun Yeshwant Dhanwatey*, 2009 (4) Bom.C.R 523.

<sup>23</sup>*Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd*, (2013) 5 SCC 397.

<sup>24</sup>The Transfer of Property Act, 1882, Section 52.

<sup>25</sup>Whether transfer of property made in violation of injunction order is valid?, Law Web (Friday, 23 August

2013)<https://www.lawweb.in/2013/08/transfer-of-property-made-in-violation.html>.

<sup>26</sup>*Savitri Devi v. District Judge, Gorakhpur*, (1999) 2 SCC 577.



completely consider plaintiff's interest. Therefore, the Court can provide the equitable relief.

### VII.7 CONCLUSION

In the Indian legal system the law related to the Injunction are specified under the Specific Relief Act, 1963. Section 37 of this act informs about the temporary injunction. This article discussed whether the transfer of property under the violation of the injunction order is valid or not. He evidences informed that transfer of the property in violation of the injunction can be considered as valid because there is no rule or Law that could void such transfer of property. However, under the example of various cases, it has been identified that although the transfer or sale of the property in injunction is restricted, but the transferee who do not have knowledge regarding the injunction are not liable and the transfer or property could not be cancelled. Therefore, the Court have to decide the interest of the plaintiff and the transferees. Further, it can also be concluded that an injunction is an equitable remedy and as such attracts the application of the maxim that he who seeks equity must do equity. Granting of injunction is entirely in the discretion of the Court, though the discretion is to be sound and reasonably guided by Judicial Principles.

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