

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- RFA No.37/2024
CM No.4856/2024
Cav No.1487/2024

Bhanu Partap

.....Appellant(s)/ Petitioner(s)

Through: Mr. Pawan Kumar Khajuria, Advocate

Vs

Kuldeep Singh

.....Respondent(s)

Through: Mr. G.S. Thakur, Advocate for the
Caveator.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(24.11.2025)

Cav No.1487/2024

Discharged.

RFA No.37/2024

1. This is a civil miscellaneous appeal preferred in terms of order 43 rule 1 (r) of the Code of Civil Procedure, 1908 by the appellant, who is a plaintiff in a civil suit filed by him before the court of learned 1st Additional District Judge, Jammu wherein he has suffered dismissal of his temporary injunction application preferred under Order 39 rule 1 & 2 of the Code of Civil Procedure, 1908 against which the appellant has come to this Court with present appeal.

2. The appellant's suit before the court of learned 1st Additional District Judge, Jammu is for specific performance of the contract with respect to an alleged agreement to sell dated **22.08.2018** which the appellant claims to have been executed by the respondent-Kuldeep Singh with respect to land measuring 7 kanals 12 marlas comprised in khasra No.1103, khata No.370 and khewat No.25 situated at village Jagti Nagrita, Jammu, for an alleged sale consideration of Rs.1,14,00,000/-, in which connection the appellant is alleged to have made an advance payment of Rs. 40 lacs with possession of the land forming subject matter of the alleged agreement being handed over to him whereupon he is said to have invested an amount of Rs. 20.50 lacs in the development.
3. With respect to the alleged agreement to sell dated **22.08.2018**, the appellant called upon the respondent to carry out the execution of the sale deed by serving a legal notice dated **09.05.2024** followed by the institution of the civil suit by him on **07.06.2024** before the court of learned 1st Additional District Judge, Jammu on file No.**73/2024**.
4. Upon institution of the civil suit, the court of learned 1st Additional District Judge, Jammu came by virtue of an ex parte ad interim order dated **07.06.2024** directed status quo with respect to the suit property, ultimately leading to passing of order dated **12.07.2024** dismissing the

temporary injunction application filed by the appellant, against which the appellant first approached this Court under article 227 of the Constitution of India with filing of **CM(M) No.171/2024** which was allowed to be withdrawn thereby leading to the institution of the present civil miscellaneous appeal filed on **13.08.2024**.

5. When this Court peruses the averments made in the plaint, this Court finds that the exercise of the discretion by the court of learned 1st Additional District Judge, Jammu in refusing the temporary injunction in favour of the appellant is very fit, both by reference to the facts and legal position attending the case.
6. The alleged agreement to sell being the suit document at the first instance is an unregistered one and its alleged execution is said to be notarized.
7. The respondent has come out in his written statement vehemently denying ever having executed the alleged agreement to sell.
8. In the plaint, the appellant does not spell out as to how payment of Rs.40 lakhs, as part consideration payment, came to be made be it in cash or cheque or draft, in order to receive in return the possession of the land forming subject matter of the agreement. The agreement to sell in reference does not bear any such recital.

9. The respondent in his written statement came forward exposing the *mala fides* at the end of the appellant by stating that the appellant is acting in connivance with one Davinder Singh, who has already filed a civil suit for permanent prohibitory injunction pending before the court of 3rd Additional Munsiff, Jammu, relating to the same very land forming subject matter of the agreement to sell.
10. In the face of the said factual position drawn from the plaint as well as from the written statement, the court of learned 1st Additional District Judge, Jammu, was not able to find out any *prima facie* case made out by the appellant and that resulted in the other two parameters i.e., balance of inconvenience and irreparable injury, being missing in connection with the temporary injunction application of the appellant.
11. An appeal under Order 43 rule 1 (r) of the Code of Civil Procedure, 1908 is reckoned to be an appeal on principles in the sense that this Court, as an appellate court, is supposed to examine only as to whether the discretion exercised by the trial court is in conformity with the facts set up in the case and the principles governing the grant of temporary injunction.
12. This Court, as an appellate court, does not have the jurisdiction to get under the skin of the discretion

exercised by the trial court and replace it by superimposing its appeal side discretion.

13. Therefore, this Court finds no illegality, factual or legal, with respect to the impugned order passed by the court of learned 1st Additional District Judge, Jammu, and accordingly, the present civil miscellaneous appeal of the appellant is ***dismissed***.

14. Copy of this order be provided to learned 1st Additional District Judge, Jammu for being taken on record.

JAMMU
24.11.2025
Sneha

