

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 89 of 2015**

Gajanand Jaiswal S/o Shri Ram Gopal Jaiswal, Aged About 24 Years Occupation- Agriculturist As well As Business, R/o Bhaiyathan Road, Post, P. S. & Tehsil- Surajpur, Revenue & Civil District- Surajpur, Chhattigarh(Plaintiff)

---- Appellant

Versus

1. Lallan S/o Gopal, Aged About 42 Years
2. Govind S/o Gopal, Aged About 36 Years

Both by Caste- Teli, R/o Sahu Gali, Surajpur, P. S. & Tahsil- Surajpur, Revenue & Civil District- Surajpur, Chhattisgarh

3. State Of Chhattisgarh, Through Collector Surajpur, Revenue & Civil District- Surajpur, Chhattisgarh(Defendants)

---- Respondents

For Appellant	:	Shri Surfaraj Khan, Advocate
For Respondents No. 1 & 2	:	Shri Rajendra Kumar, Advocate
For Respondent No.3/State	:	Shri Neeraj Sharma, Dy. Govt. Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board**08/12/2015**

With the consent of learned counsel appearing for the parties, the matter is heard finally.

1. This appeal arises out of order dated 20.8.2015 passed in Civil Suit No.47-A/14 by which the Court below has rejected plaintiff/appellant's application for grant of temporary injunction under Order 39 Rule 1 & 2 CPC.

2. Plaintiff/appellant filed a suit for specific performance of contract based on registered agreement to sell the land in dispute comprised in kh. No.1266 for an area of 22 decimal. The case of the plaintiff is that there was an agreement to sell between the plaintiff and defendants No. 1 & 2. The agreement in writing was executed between the parties which was duly registered. It contains the recital of payment of Rs.1 lakh as advance. Plaintiff was ready and willing to perform his part of contract but the defendants are avoiding to execute sale deed and after execution of agreement, the joint property has now been partitioned and the defendants may proceed to either sell of the property or frustrate the suit by creating third party interest in any other manner. Therefore, prayer for injunction was made.
3. The learned trial Court, however, found that prima facie case is not made out. Therefore, application has been rejected.
4. Learned counsel for the appellant argues that the learned trial Court committed illegality and impropriety in rejecting application even though the appellant made out serious question to be tried. He submits that at the time of agreement, the defendants No. 1 & 2 and other share holders were joint and the agreement is only in respect of 22 decimal of land whereas the joint holding of the two defendants and other share holders is to the extent of 1.37 acres. The recital itself shows that an advance of Rs.1 lakh was paid and specific pleadings have been made that the plaintiff at all time was ready and willing to perform his part of contract.
5. Learned counsel for respondents No. 1 & 2 submits that the Court below rightly held that no prima facie case is made out because there are five other sharers of the property and the agreement has been executed only by two defendants. There is no consent of the other share holders in writing. Therefore, the agreement itself cannot be made a basis to seek specific performance of contract.
6. The suit of the plaintiff is based on an agreement to sell in writing which is registered. It contains recital of payment of Rs.1 lakh. At the time when agreement was executed, prima facie, it appears that the parties were joint. In the agreement, Kh. No.1266 alone has been mentioned. The case of the plaintiff has been that subsequent to the agreement, there has been partition of the holdings but two

defendants along with other share holders are jointly recorded in respect of a total land admeasuring 1.37 acres of land.

7. The above material on record do make it prima facie case as there is serious question to be tried. It is well settled that at the stage of considering application for grant of temporary injunction, the Court is required to examine whether a serious question is to be tried which is not to be confused with prima facie title. If the case is viewed by application of aforesaid settled principle, the plaintiff, in whose favour there is an agreement in writing, was entitled to an appropriate interim order at least to preserve the property till decision of the civil suit. The Court below, therefore, was not justified in rejecting the application.
8. In the result, the appeal is allowed. Appellant's application for grant of temporary injunction is allowed and it is ordered that during the pendency of the suit, the defendants shall not create any third party interest in respect of property in dispute.

Sd/-
(Manindra Mohan Shrivastava)
Judge