

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 106 of 2015

1. Smt. Payal W/o Mahendra Singh Dureja, Aged About 33 Years R/o House No. L I G 52, Dr. Rajendra Prasad Nagar, Phase - 2, Korba, Tahsil And District Korba (Chhattisgarh).....(Plaintiff)

---- Appellant

Versus

1. Sawan Singh S/o Late Chiman Singh, Aged About 73 Years R/o 224/2 A, Adarsh Vihar, Laluram Colony, Korba, Tahsil And District Korba (Chhattisgarh)
2. Sanjay Budhiya S/o Late Shyamsunder Budhiya, Aged About 49 Years R/o Sai Kunj, First Floor, Near Agrasen Bhawan, Korba, Tahsil And District Korba (Chhattisgarh)
3. Municipal Corporation Korba, Through Municipal Commissioner, Municipal Corporation, Saket Bhawan, Korba, Tahsil And District Korba (Chhattisgarh).....(Defendants)

---- Respondents

For Petitioner. : Shri P. P. Sahu, Advocate.
For Respondent No 3/ Corporation. : Shri B. D. Guru, Advocate on advance copy.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

18/11/2015

Heard on admission.

(1) This appeal has been filed under Order 43 Rule 1(r) of the Code of Civil Procedure (hereinafter referred to as 'CPC') against the order dated 14.10.2015 passed by Additional District Judge (FTC), Korba, in Civil Suit No. 21-A/2015 by which petitioner/plaintiff's application filed under Order 39 Rule 1 and 2 of CPC for

grant of temporary injunction has been rejected.

(2) Learned counsel for the appellant submits that a strong *prima facie* case was made out by the petitioner/plaintiff on the pleadings and also on affidavit that there was an oral agreement entered into between the appellant and respondent no. 1 for sale of 844 sq. ft. of land held under lease from Special Development Authority, Korba by respondent no. 1 for a total consideration of Rs. 36 lakhs, against which Rs. 10 lakhs were paid in advance. Without notice and knowledge of the plaintiff, respondent No. 1, by defrauding the petitioner dishonestly, subsequently entered into an agreement to sell the disputed land to respondent No. 2 on 04.07.2015 for a sale consideration of Rs. 12 lakhs. Petitioner is daughter-in-law of respondent No. 1 and, therefore, at this stage plea of oral agreement to sell as between the members of the same family can not be said to be imaginary. It is also submitted that in order to lay strength to the claim of the plaintiff and to make out a *prima facie* case, the account statement of petitioner's husband –Mahendra Singh Dureja was also filed, which shows that her husband had obtained a loan of Rs. 8 lakhs from Shriram Finance Company. However, the learned trial Court has ignored these material pleadings, documents and affidavit and rejected the application for temporary injunction. If the respondent No. 1 is allowed to execute the sale deed and transfer the title in favour of respondent No. 2, purpose of filing this petition would be frustrated and various complication would arise in future even if suit is decreed in plaintiff's favour.

(3) In order to come to the conclusion that the plaintiff has no *prima facie* case for grant of temporary injunction, learned Trial court has taken into consideration that the plaintiff's case is based on oral agreement as against an agreement to sell in writing executed between defendant No. 1 and defendant No. 2. The petitioner/plaintiff has also not come out with any documentary evidence either in form of cheque of Rs. 10 lakhs as advance issued in favour of defendant No. 1 nor is there any acknowledgement of Rs. 10 lakhs by respondent No. 1 either from the

plaintiff or from her husband. On these consideration, learned trial Court found that no prima facie case is made out in favour of the plaintiff.

(4) In the conspectus of aforesaid pleadings affidavit and documents available on record and the finding recorded by the learned trial Court that no prima facie case is made out does not warrant any interference by this Court particularly when neither there is agreement in writing nor any proof of payment of advance by the plaintiff to defendant No. 1 which is paid against an agreement to sell in writing executed by defendant No. 1 in favour of intended purchaser/defendant No. 2. Therefore, I do not find any illegality in the order impugned warranting interference of this Court in the instant appeal.

(5) Consequently, the miscellaneous appeal fails and is hereby dismissed.

(6) There shall be no order as to costs.

Sd/-

Manindra Mohan Shrivastava

Judge

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