

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. No. 47 of 2015

M/s. Guru Engineering Works, Through Proprietor Shri Ranjit Singh, S/o. Shri Gurudayal Singh, R/o. Shyam Nagar, Polsaipara, Durg, Tahsil & District- Durg, Chhattisgarh

---- Petitioner

Versus

Sunil Kumar Jain, S/o. Late Shri Gaimdmal Ji Jain, Aged About 42 Years, R/o. Dilip Medical Stores, Shanichari Bazaar, Durg, Tahsil & District Durg, Chhattisgarh

---- Respondent

 For Petitioner : Mr. Manish Upadhyay, Advocate
 For Respondent : Dr. Kumaresh Tiwari, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

30/07/2015

1. The appeal is against the order dated 10.04.2015 passed in Civil Case No.46A/2014 by the learned Seventh Additional District Judge, Durg, whereby the application filed by the plaintiff under Order 39 Rule 1 & 2 of CPC was allowed.
2. Perusal of the record shows that the suit was filed by the Plaintiff/ Respondent Sunil Kumar Jain on the ground that he entered into an agreement of sale with the Defendant/Appellant for the land bearing Khasra No.15/4 admeasuring 0.18 hectare and the sale consideration was of Rs.20,00,000/-, which was paid to the Defendant. The prayer was made in the plaint for specific performance of agreement of sale alongwith the other relief. During pendency of the suit before the Court below, an application under Order 39 Rule 1 & 2 read-with Section 151 of CPC was filed. In such application, the prayer was made that the Defendant be restrained to raise any super-structure over the suit land

and further be restrained to execute any sale in respect of the suit property. In its reply, the Appellant contended that the construction is already completed. On the basis of such submission, the learned Court below taking into the fact that the sale consideration of Rs.20,00,000/- having been paid, the restrain order was passed not to alienate or create third party interest in respect of the suit property by the Defendant till disposal of the suit and in view of submission that construction has been completed, passed an order of injunction to raise any further constructions.

3. Perusal of the document filed along-with the appeal shows that the sale consideration of Rs.20,00,000/- in pursuance of the agreement dated 21.10.2010 has been paid. Since the Defendant/Appellant has contended that the construction has already been made, therefore, the learned Court below has further restrained the Defendant to raise any further construction over the suit property and alienate the same or create any third party interest.
4. Taking into account the facts involved in this case, since the suit for specific performance is pending and according to the averments, the entire sale consideration having been paid and the construction is completed, the order passed by the learned Court below do not appears to be illegal and unjustified. Further sale if any is made it will result into multiplicity of proceedings. Consequently, the appeal has no merit and is accordingly dismissed.
5. The learned Court below is further directed to adjudicate the Civil Suit within a period of one year from the date of receipt of the copy of this order.