**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.1563 of 2015 (O&M)
Date of decision: 25.03.2015

Rajiv Kumar

..... Petitioner

Versus

Gurjot Singh Walia and others

......Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. M.L. Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate for the petitioner.

Mr. Akshay Bhan, Senior Advocate with
Mr. Gurinder Singh Sandhu, Advocate for respondent No.1/caveator.

RAJESH BINDAL, J

The petitioner-plaintiff is before this Court impugning the order dated 8.1.2015 passed by the learned lower appellate court, whereby the order passed by the trial court in an application filed by the petitioner-plaintiff under Order 39 Rules 1 and 2 CPC, was reversed.

Learned counsel for the petitioner-plaintiff submitted that the petitioner is owner of a big chunk of area forming part of his residential house. To raise funds for immediate need, on a portion of land, he carved out four plots and agreed to sell plot No.3 measuring 245 square yards to Gurjot Singh Walia son of Jasbir Singh vide agreement to sell dated 3.6.2013. Total sale consideration of ₹ 2,80,00,000/- was settled between the parties. A sum of ₹ 1,50,00,000/- was paid at the time of execution of agreement to sell. Balance was to be paid at the time of getting the sale deed registered. The possession of the plot was handed over to the vendee on 3.6.2013. Special power of attorney was executed by the petitioner in favour of Navjot Singh son of Kedar Nath for getting the sale deed registered.

Navjot Singh is admittedly a relative of vendee. After entering into the agreement to sell, the petitioner-plaintiff deposited a sum of ₹ 10,80,747/- on account of copy fee, development charges, water fee, local fee, cess, and land use change fee for area measuring 245 square yards with the Municipal Corporation, Patiala. The balance was to be paid after deducting the amount spent for getting permission for sale etc. from the Municipal Corporation, Patiala, which respondent No.2, father of the vendee being Tehsildar had promised. A sum of ₹ 55,00,000/- was spent in total for taking permissions for all the four plots. Out of sale consideration of ₹ 2,80,00,000/-, ₹ 75,00,000/- were still to be paid, hence, a mutual compromise was signed between the vendee and the petitioner on 24.3.2014 to that effect. It was duly signed by both the parties. Immediately after signing the aforesaid mutual compromise and having due knowledge thereof, the vendee got the sale deed of the plot in question, registered through power of attorney holder, namely, Navjot Singh on 7.4.2014. It was despite the fact that while executing the aforesaid mutual compromise, the power of attorney for agreement executed earlier stood cancelled. The factum of execution of the compromise agreement is duly established even from the facts recorded in the sale deed, where the total sale consideration was shown to be ₹ 1,83,15,000/- as against ₹ 1,50,00,000/- shown in the agreement to sell. It was mentioned in the sale deed that the a sum of ₹ 33,15,000/- was paid to the owner in cash, for which no proof was produced. There was no good reason for paying this amount if the entire sale consideration as mentioned in agreement to sell had already been paid.

Having come to know about execution of the sale deed on the basis of the power of attorney, which already stood cancelled, the petitioner-plaintiff immediately filed a suit challenging the sale deed. The sale deed pertained to sale of a show room, whereas, the agreement to sell was pertaining to a plot. Along with the suit, application under Order 39 Rules 1 and 2 CPC for interim injunction was filed restraining the defendants from raising construction and also from creating any third party right by letting out or mortgaging the property in dispute. It was further submitted by learned counsel for the petitioner that vide interim order dated 27.1.2014, after the agreement to sell was executed by the petitioner, Debts Recovery

Tribunal-II, Delhi had restrained the petitioner from alienating the property in dispute. Hence, even the sale deed could not be executed.

Considering the aforesaid factual matrix, submission of learned counsel for the petitioner is that the basic settled principles for grant of interim injunction are prima facie case, balance of convenience and irreparable loss. The trial court after considering these aspects had granted interim injunction. Learned lower appellate court without reversing those findings, has set aside the order. Once, the trial court had exercised the discretion on the basis of material facts on record, the same did not deserve to be interfered with by the learned lower appellate court, merely because a second view was possible. The order of the trial court was not perverse.

On the other hand, learned counsel for respondent No.1/caveator submitted that the facts that the petitioner was owner of the property in dispute and agreed to sell the same to respondent No.1, is not in dispute. ₹ 1,50,00,000/- were admittedly received by the petitioner, that was the final amount. Nothing more was to be paid. Even possession was also taken by the vendee. Execution of registered power of attorney was also admitted. The sale deed was executed by the general power of attorney holder. The registered power of attorney could not be cancelled merely by signing a mutual agreement, to which the power of attorney holder is not a party. No notice of cancellation of power of attorney was given to the power of attorney holder. Power of attorney was revoked by the petitioner only after the sale deed had already been got registered. After registration of the sale deed, the petitioner transferred his rights in the property to the vendee. If settled principles for grant of interim relief are considered, it is a case in which, entire agreed sale consideration has been paid to the vendor. The possession of the property has been handed over to the vendee, on which construction has also been raised. Hence, he cannot be deprived of his right to enjoy the fruits of the property, merely because the vendor has raised dispute regarding sale consideration lateron. He further submitted that even a subsequent communication from the Municipal Corporation, Patiala in the name of the petitioner will not make any difference, as the property had already been sold. Additional sum of ₹ 33,15,000/- was paid, as certain construction had been raised thereon by the petitioner, which is nearing completion now. However, learned counsel for respondent No.1/caveator was fair enough to state that no receipt for payment of ₹ 33,15,000/- is available. The vendee has raised loan from the Bank for raising construction, the instalments of which, have to be paid. In fact, the trial court had considered irrelevant material and documents while granting interim stay, which has been set aside by the learned lower appellate court. Once, the vendor is utilising the money why the vendee should not be allowed to use the property. The order passed by the learned lower appellate court does not call for any interference.

In response to the submissions made by learned counsel for respondent No.1/caveator, learned counsel for the petitioner submitted that ₹ 33,15,000/- as the vendee is claiming to have been paid to the petitioner were never paid, as he was not associated with the sale. He did not dispute the fact that as on today structure of the building is complete, however, internal fittings are still to be completed.

Heard learned counsel for the parties and perused the paper book.

What has come out on record in the present case is that on the basis of agreement to sell, the plot in question was sold by the petitioner to respondent No.1-Gurjot Singh Walia. A sum of ₹ 1,50,00,000/- were paid. Possession of the property was delivered to the vendee. The case set up by the petitioner is that another sum of ₹ 1,30,00,000/- was to be paid, after deducting therefrom, the amount spent on payment of requisite fee and other expenses for necessary permission from the Municipal Corporation, Patiala with reference to the plots sold by the petitioner including the plot in question. It was yet to be paid. It is claimed by the petitioner that mutual compromise was signed between the parties on 24.3.2014, in terms of which, vendee was yet to be paid ₹ 75,00,000/- after reducing ₹ 55,00,000/-, spent on obtaining the necessary permissions. The aforesaid document is the bone of the contention, as vendee is disputing the execution thereof. The structure of the building is complete, however, internal work is going on.

Keeping in view the aforesaid factual matrix, in my opinion, the present petition can be disposed of while modifying the order passed by the learned court below with the observation that the dispute in the present case being for payment of balance sale consideration of ₹ 75,00,000/-, as is claimed by the petitioner/vendor, which is being disputed by the vendee; the vendee having already been delivered the possession of the plot and raised construction thereon, it would not be in the fitness of things to keep the property as such/unused, which may dilapidate its condition. The interest of both the parties can be well protected, if vendee is permitted to use the property, however, with the rider that he will not alienate the same. In case, it is rented out, the intimation thereof shall be furnished to the court. First charge for ₹ 75,00,000/- of the petitioner will remain on the property, in case it is sought to be alienated/mortgaged by the vendee, so as to safeguard the interest of the petitioner, in case he succeeds in the suit filed by him.

With the aforesaid observations, the present petition stands disposed of.

(RAJESH BINDAL)
JUDGE

25.03.2015
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