

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 1705 of 2015

Date of Decision: April 1, 2015

Mohan Singh

.....Petitioner

Vs.

Bikramjit Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.B.B.S. Sobti, Advocate
for the petitioner.

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M.M.S. BEDI, J. (ORAL)

Plaintiff- petitioner has preferred this revision petition against the order passed by the trial Court dated October 5, 2012 and affirmed by the lower Appellate Court dated January 5, 2015, dismissing the application under Order 39 Rules 1 and 2 CPC restraining the defendant- respondents from alienating the property in dispute during the pendency of the suit.

Briefly stated, the case of the plaintiff- petitioner as per his pleadings is that he had entered into an oral agreement of sale with defendant-respondent No.1, a minor, to sell 4 kanal 12 marla of land for sale consideration of Rs.8.50 lacs and received a sum of Rs.1 lac as earnest

money and had agreed to execute the registered sale deed in favour of the defendant- respondent No.1. He claims that on January 24, 2008, the defendant- respondent No.2 asked the plaintiff- petitioner to get the sale deed registered on January 25, 2008, having been prepared by him. The sale deed was executed for 7 kanals 2 marla of land mentioned in the heading of the plaint. The claim of the plaintiff- petitioner is that a fraud has been played upon him and that his share in the property in dispute is only to the extent of 4 kanals 12 marlas as such the sale deed of 7 kanals 2 marlas of the khasra numbers mentioned in the plaint, is illegal.

The claim of the defendant- respondents in the written statement is that the suit has not been valued properly and the same is liable to be rejected under Order 7 Rule 11 CPC. The defendant- respondent No.1 has claimed to be owner in possession of the suit property as per the sale deed dated January 25, 2008 executed and registered in his favour in the office of Sub Registrar.

The application for interim relief for restraining the defendant- respondents from further alienating the property in dispute has been dismissed by safeguarding the rights of the plaintiff- petitioner by observing that in case the minor respondent has to alienate the property he would be required to file an application before the Court to inform the particulars of the proposed buyer to enable the plaintiff- petitioner to file an application under Order 39 Rules 1 and 2 CPC.

Learned counsel for the petitioner has vehemently contended that the plaintiff- petitioner has got prima facie a strong case in his favour and that in case the alienation of the property is not stayed, it will result in multiplicity of litigation besides causing an irreparable loss to the plaintiff- petitioner.

I have heard learned counsel for the plaintiff- petitioner and gone through the revenue record shown by the counsel in the Court and considered the claim of the plaintiff- petitioner vis-à-vis the possessory title of the defendant- respondent No.1 who has become owner by way of registered sale deed. The plaintiff- petitioner admits the agreement of sale regarding a part of the property sold but his grievance is that the defendant- respondents have fraudulently got the sale deed of 7 kanals 2 marlas executed in place of 4 kanals 12 marlas agreed to as per the oral agreement of sale. A presumption of truth is attached to registered document. The title prima facie stands transferred to defendant- respondent No.1 Bikramjit Singh. The objective of restraining the further alienation is to curtail the multiplicity of litigation. The rights of the plaintiff- petitioner seem to have been safeguarded by the trial Court while dismissing the application under Order 39 Rules 1 and 2 CPC by issuing a direction that in case the property in dispute is to be further alienated, the defendant - respondents would be required to file an application with particulars of the proposed buyer. In case any such application is filed, it will be open to the plaintiff- petitioner to implead the subsequent buyer/ proposed buyer and to file a fresh application

under Order 39 Rules 1 and 2 CPC. The balance of convenience, in view of the above circumstances, do not lie in favour of the plaintiff- petitioner.

Learned counsel for the petitioner has vehemently contended that the claim of the plaintiff- petitioner is that he has been in physical possession of the property alienated to defendant No.1 by registered sale deed.

I have gone through the order passed by the lower Appellate Court wherein counsel for the plaintiff- petitioner had raised a plea that his right to remain in possession of the suit property had not been considered. The lower Appellate Court had taken into consideration the plea of the plaintiff- petitioner to be in possession of the property which is the subject matter of the registered sale deed and has held as follows:-

“11. However, in case, the appellant was illiterate and could not read the contents of the sale deed, but when both of his sons namely Teja Singh and Amrik Singh also reached in the office of Sub Registrar, Koom Kalan, who were not illiterate, they could have stopped their father from signing the sale deed, without obtaining sale consideration amount and apprised him about real facts that instead of 4 kanals, agreed to be sold by him, in sale deed, area of land is typed as 7K-2M but they did not. Meaning thereby, the appellant knew each and every content of the sale deed and on receipt of sale

consideration amount, not only executed sale deed of 7K -2M of land but also delivered its possession at the spot to them. Now the appellant is estopped by his own act and conduct from saying that he has been cheated by the respondent. So, the case laws referred by Ld. Counsel for the appellant is of no avail to him and the facts of said case law are totally different from the fact of present case in hand. Therefore, submitted that Ld. Trial Court has rightly dismissed stay application of the appellant and prayed for dismissal of appeal also.

12. After hearing ld. Counsel for the appellant and Ld. Counsel for the respondents, I am of the view that so far as judgments referred by ld. Counsel for the appellant, in support of his arguments are concerned, the facts of said judgment are totally different from the facts of present case in hand. In the present case, the appellant himself is executant of the sale deed being transferor and he is bound by all the terms and conditions of the sale deed written in it. Sale deed, undisputedly, was entered on 25.1.2008. In case, entry in the revenue record was not got changed by the respondents, it does not mean that possession is not lying with them. Had he been not in possession, he would have certainly asked to deliver

possession by filing a separate suit but he did not, only because of the reason that possession is with him. So far as question of non-payment of sale consideration amount is concerned, in this regard, Ld. Trial Court has very rightly and truly has held that if sale consideration is not paid and the sale deed is executed, then the appellant has the remedy to file suit for recovery and not for declaration and findings of Ld. Trial Court in this regard are correctly arrived at.

13. So far as the recital of transfer of 7K-2M of land in the sale deed, instead of land measuring 4 kanals is concerned, since agreement was oral, so the court has to go by the terms and conditions of the sale deed, only signed by both the parties. Although, it is the plea of the appellant that being in friendly relations with respondent No.2, he reposed confidence and faith in respondent, so without going through the sale deed and relying upon the false assurances given by the respondent about the facts and details mentioned in the sale deed, he signed it. However, in para No.4 of his pleadings, the appellant, himself has said that before sale deed was registered, by that time, both of his sons Teja Singh and Amrik Singh had also arrived there and in their presence, respondent

No.2, submitted the sale deed in the office of Sub Registrar. Whereas, it is not the case of the appellant that both of his sons were also illiterate. So, he could have asked his sons to go through the contents of the same and only after hearing and admitting it to be correct, he should have signed the same but he did not do so only because of the reason that all the recitals in the sale deed were correct. Moreover, there is endorsement on the back of the sale deed that it was read over and explained to the appellant by the Sub Registrar.”

A perusal of the order passed by the lower Appellate Court indicates that the claim of the plaintiff-petitioner being in possession has been carefully considered by the lower Appellate Court, by observing that at the time of execution of the sale deed, his two sons, namely, Teja Singh and Amrik Singh had also reached in the office of the Sub Registrar and that it is not a case of the plaintiff- petitioner that they were also illiterate. The lower Appellate Court has observed that it will be presumed that at the time of receipt of sale consideration, the plaintiff- petitioner in presence of his two sons had been apprised about the real facts about the property sold and made subject matter of the sale deed. The recital in registered document regarding delivery of possession cannot be rejected at this stage to give a finding that the plaintiff/ petitioner prima facie has got better possessory title than the defendant- respondents.

Learned counsel for the petitioner submits that a presumptive observation has been given by the lower Appellate Court regarding the presence of the sons of the petitioner.

I have considered the said contention of Mr. Sobti very carefully in context to the pleadings of the plaintiff which have been discussed by the Appellate Court observing that in para 4, the plaintiff has admitted that his two sons had also reached the office of Sub Registrar when defendant- respondent No.2 submitted sale deed in presence of his sons. The said pleading has rightly been interpreted to arrive at a prima facie opinion that the contents of the registered document were affirmed to be correct regarding area, sale consideration and possession. It will only on appreciation of evidence that a Court can arrive at a conclusion that the averments in registered document regarding area, sale consideration and delivery of possession are wrong or that a fraud has been played upon the plaintiff.

In view of the said circumstances, the last contention of learned counsel for the plaintiff- petitioner is declined. Finding no ground to interfere in the orders passed by the Courts below on application for interim injunction, the revision petition is dismissed. However, it is observed that nothing mentioned in this order or any order passed by the Courts below will effect the merits of the case. The rights of the plaintiff- petitioner will be determined independent of any observation made by this Court or the Courts below.

April 1, 2015
sanjay

(M.M.S.BEDI)
JUDGE