

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

Civil Revision No.6229 of 2015

Date of decision: 22.09.2015

Anoop

.....Petitioner

Versus

M/s Sriyam Estates Pvt. Ltd. and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vineet Chaudhary, Advocate,
for the petitioner.

Mr. Sachin Puri, Advocate,
and Ms. Manu Chaudhary, Advocate,
for respondent No.5-caveator.

Ritu Bahri, J.

Challenge in this petition is to the orders dated 28.05.2015 and 10.08.2015 (Annexures P-10 and P-12) passed by the Additional Civil Judge (Senior Division), Sohna and Additional District Judge, Gurgaon respectively, whereby application filed by the plaintiff-petitioner under Order 39 Rules 1 and 2 CPC read with Section 151 CPC has been dismissed.

The plaintiff-petitioner has filed a suit for setting aside the sale deeds dated 05.10.2005 and 15.01.2007 as null and void on the ground that his grandfather has executed a release deed dated 11.12.2002 in his favour, with consequential relief of permanent injunction restraining defendant No.1 from interfering in the peaceful possession of the plaintiff. Both the Courts below have given a consistent finding that neither the plaintiff-petitioner is reflected as owner in the revenue record nor he is in possession over the land in dispute. Pursuant to the above sale deeds, the defendants were given their possession and mutation Nos.1725 and 1808 were sanctioned in their

names. Pursuant to the sale deed dated 15.01.2007 in favour of defendant

No.1, he entered into a collaboration agreement with defendant No.5 and after taking licence from the State Government, started a project for construction of 450 flats. Bookings of the flats have now been concluded and the project is at the final stage.

While dismissing the application, further observation has been made that the plaintiff-petitioner has filed the suit when the alleged release deed dated 11.12.2002 came to his knowledge. Since the plaintiff was not found to be in possession of the suit land, his application has been rightly dismissed by both the Courts below keeping in view the object of Section 38 of the Specific Relief Act.

Learned counsel for the petitioner has referred to the judgment delivered by the Hon'ble Supreme Court in **Gurbax Singh Vs. Kartar Singh**, AIR (SC) 959, to contend that when two documents are executed on same day, time of their execution would determine their priority irrespective of time of their registration. This would be a question, which shall be considered at the final stage of the trial Court. Hence, for the purpose of deciding an application under Order 39 Rules 1 and 2 CPC, the aforesaid judgment of the Hon'ble Supreme Court is not helpful to the case of the petitioner.

Learned counsel for the petitioner has referred to another judgment passed by the Hon'ble Supreme Court in **Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass**, 2004 (4) RCR (Civil) 760. However, the facts of the said case will not be applicable to the present case because the injunction is being sought by the petitioner on the ground that he is in possession of the suit property. A specific finding has been given by the Courts below that plaintiff-petitioner is not in possession of the suit property after the sale deeds were executed in the years 2005 and 2007.

Even the construction, which was started by defendant No.1 in collaboration with defendant No.5 in the year 2010, is at the final stage of its completion. At this stage, in case injunction is granted in favour of the plaintiff-petitioner, it would lead to multiplicity litigation, as there are 450 allottees, who will be affected by the interim order.

In view of the above, no ground is made out to interfere in the impugned orders.

Dismissed.

22.09.2015
ajp

(RITU BAHRI)
JUDGE