

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

(235)

CR No.6632 of 2014

Decided on: March 30, 2015.

Salochna and others

.... Petitioners

Versus

Nathi Ram

..... Respondent

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

Present: Mr. Baldev Singh Dhillon, Advocate,
for the petitioners.

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

This is a revision petition filed by the plaintiffs aggrieved by the order passed by the Courts below dismissing their application under Order 39 Rules 1 & 2 CPC to restrain the defendant-respondent from alienating the property during pendency of their suit for specific performance pertaining to the agreement of sale regarding 1/4th share in the property mentioned in the agreement of sale and in the heading of the plaint.

Learned counsel for the petitioners has vehemently contended that the possession of the land in dispute has already been transferred to the plaintiffs on the basis of agreement of sale. Counsel for the petitioners has referred to the averment in the endorsement of receipt of money at the back of first page of agreement of sale wherein it has been mentioned that on payment of earnest money of Rs. 3.5 lacs, the possession of the land which is subject matter of the agreement of sale has been handed over to the purchasers.

I have carefully gone through the copy of the agreement of sale. As per the agreement of sale, 1/4th share in different khasra numbers of the land in dispute has been agreed to be sold. It is claimed in the agreement of sale that the seller would be liable to hand over the possession to the buyer. There is no

avermment in the agreement of sale regarding transfer of possession. Even otherwise had the possession been transferred on the basis of agreement of sale, then the agreement is compulsorily registrable in view of the provisions of Section 17 (A) of the Registration Act 1908. The plaintiffs-petitioners have not been able to produce any other document indicating that pursuant to the agreement of sale the actual physical possession has been delivered to the petitioners.

Learned counsel for the petitioners has submitted that the defendant has filed a suit in July, 2011 for a decree for possession of the property in dispute as well as claiming an alternative relief to claim possession on the ground that on 10.07.2011 unauthorized possession has been taken by Vinod Kumar and Vikas Kumar sons of Zile Singh.

After hearing counsel for the petitioners and going through the orders on the application, it appears that interim relief has been sought by the plaintiffs-petitioners for stay of the alienation, during pendency of their suit for specific performance. It goes without saying that if a property is alienated during pendency of litigation, the rule of lis-pendence would be applicable. Any sale of the property in dispute or share in the property in dispute would be subject to the final decision of the suit for specific performance.

No ground is made out for interference in the orders passed by the Courts below.

Dismissed.

(M.M.S. BEDI)
JUDGE

March 30, 2015
harsha