

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 6 of 2016

Smt. Rekha Patel W/o Vijay Prakash Patel, Aged About 53
Years R/o Near Kachchhi School, Chhota Bazaar, Chirmiri,
District Korea, Chhattisgarh(Defendants)

---- Appellant

Versus

Sanjeet Puri Goswami S/o Digabbar Puri Goswami, Aged
About 38 Years R/o Near Idgah Chowk, Police Station Civil
Lines, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh
(Plaintiff)

---- Respondent

For Appellant	:	Shri V.P. Patel, Advocate with Shri Vimlesh Bajpai, Advocate
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Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

22/01/2016

Heard on admission.

1. This appeal is directed against order dated 18.12.2015 passed in Civil Suit No.134-A/2015 by which the learned Trial Court has granted temporary injunction in favour of the plaintiff to the effect that the appellant/defendant shall not create third party interest over the property in dispute.

2. Assailing the correctness and validity of the impugned order, learned counsel for the appellant vehemently contended that the Courts below committed patent illegality and perversity in granting injunction ignoring that the appellant had already sent a notice of cancellation of agreement which was duly received by the respondent plaintiff. He submits that the defendant came out with a specific case that the plaintiff is not ready and willing to perform his part of contract.

The injunction is likely to seriously prejudice the defendant in exercise of his right of enjoyment to property as he may not be able to dispose off the property which he needs in order to get money for his other requirement at the earliest.

3. Taking into consideration that there exists written agreement between the parties under which the appellant defendant is stated to have received Rs.2,51,000/- as advance and agreed to sell the land admeasuring 1950 sq.ft and further taking into consideration that the cancellation letter has been sent by the defendant instead of complying with his own part of contract, further taking into consideration that the Court has only restrained the defendant from creating third party interest without actually putting any fetter on enjoyment of possession of land in dispute, I am not inclined to interfere with the order. It is well settled legal position that grant of injunction is a discretionary exercise by the Courts below. Unless the order is tainted with patent illegality or perversity, interference with the discretionary exercise may not be warranted in appeal.

4. However, considering the submission that the fetters on appellant's right to dispose off the property for long time may adversely and prejudicially effect his right of enjoyment in case of delay, it is observed that the Trial Court shall expeditiously dispose off the suit.

5. With the aforesaid observation, this appeal is dismissed.

Sd/-
(**Manindra Mohan Shrivastava**)
J U D G E