

111.

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

Civil Revision No.3560 of 2016

Date of decision:23.05.2016

M/s. S.P. Construction

... Petitioner

versus

Raman Mann

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Suvir Sehgal, Advocate, and
Mr. Dama Dhir, Advocate,
for the petitioner.

Mr. Harsh Manocha, Advocate,
and Mr. R.S. Athwal, Advocate,
for the Caveator/respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The petitioner is aggrieved against the directions given at the stage of interlocutory application seeking for certain recoveries alleged to be due under the agreement and seeking also for the relief of recovery of property from the defendant. The plaintiff admittedly was not the owner but had an agreement of sale with possession having put up some constructions. He had assigned that right in favour of the defendant and admittedly delivered

possession of property. It would appear that the original owner has actually sold the property and in that sale, the plaintiff has himself been a party as a witness.

2. Through the interim directions, an Engineer has been appointed to identify the nature of construction at the property which according to the plaintiff will serve no purpose. According to him, the nature of additional construction put over the plaintiff's own construction cannot be ascertained by an Engineer's inspection. The petitioner is aggrieved that the court has not granted the relief that the respondent-defendant shall not be permitted to sell the property during the pendency of the suit and create third party interest.

3. If the plaintiff is seeking for recovery of the property as amongst the reliefs sought for, it will be only just that the court makes an assessment of what is the actual construction that has been put up by the defendant and make room for equities to be adjusted if the reliefs sought for by the plaintiff were to be granted. The direction is proper and the plaintiff will be at liberty to give such evidence as he thinks as essential to justify his prayer for recovery of possession in the manner in which the property stands now. Even a relief that constitutes fetter against alienation will not be justified in a case where the plaintiff is admittedly not the owner and if the sale has been executed by the owner in favour of the defendant and the

plaintiff has been a privy to the transaction in the sense that he has witnessed the deed of sale. Right of alienation is a necessary incident of ownership and that cannot be fettered unless extraordinary situation arises and the plaintiff's right of recovery of the reliefs claiming in the suit will in any way affected. The counsel for the defendant who is on caveat, points out that there is not even a prayer for assailing the sale effected in favour of the defendant in suit. The counsel for the plaintiff responds to this argument by pointing out that there is a clause in the agreement itself which allows for a right of recovery of the amount on the property if there had been any breach of terms of the agreement. The plaintiff will have the benefit of enforcement of such a clause and secure the reliefs with charge on the property, if such a right is available under the terms of the agreement. I do not think there should be a fetter against alienation if the plaintiff's own right could be protected by recourse to the property by enforcing of what is provided for through the terms of the agreement.

4. There is also a ground made by the revision petitioner that the order passed by the court was not sought for by the plaintiff. In my view, the nature of order that has been passed is such that it was appropriate and within the discretion of the court and I find no reason for interference with the same.

5. The order already passed is maintained and the revision petition is dismissed.

6. At this stage, the counsel seeks for permission to withdraw the application under Order 39 Rules 1 and 2 CPC in which the impugned decree has been granted. I decline the prayer and state that the order already passed as concluding the rights of parties at this stage. There can be no withdrawal of the application to annul the effect of interim direction already given.

(K.KANNAN)
JUDGE

23.05.2016
sanjeev