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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO 95/2016 & CM No.7136/2016

HEMANT DUTTA ..... Appellant

Through: Mr.Gautam Dutta & Mr.Sanjay Dhawan, Advocates

versus

RAMANDEEP SINGH AHLUWALIA & ORS ..... Respondents

Through: Mr.Karan Jain, Advocate for respondent No.1

Mr.Manish Singhal, Advocate for respondent Nos.2 to 4

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% **03.08.2016**

In a suit seeking declaration that illegal documents i.e. Agreement to Sell of 31st December, 2013, Agreement of 11th January, 2014 and Sale Deed of 8th January, 2014 transferring the suit property in favour of respondent No.1 herein, are void *ab-initio,* with a prayer for possession of the suit property, an application for interim relief filed by the appellant/plaintiff which stands declined by trial Court vide impugned order of 1st February, 2016, while noting that appellant/plaintiff was ousted from the suit property in June, 2015 and he had approached the trial Court in February 2016 and so there was no urgency for any interim injunction.

In the impugned order (Annexure A-1), the factual background of this case stands noted in detail. It would suffice to note that although there is no written agreement between appellant and respondents 2 to 4 who were the original owners of the suit property, but the sequential facts as disclosed in the opening paragraph of the impugned order do reveal that appellant and respondent No.1 were old friends and appellant had reposed trust in his friend i.e. respondent No.1 and considerable sale consideration was paid in cash to the owners of the suit property i.e. respondents 2 to 4 through respondent No.1 and three drafts totalling to ₹18.90 lakhs were handed over by appellant himself to respondents 2 to 4. However, it is a case of the respondents that the said payments by draft was tendered by appellant on behalf of first respondent as there was some loan transaction between appellant and the first respondent. The earnest money for the purchase of the suit property was purportedly paid in cash by appellant through respondent No.1 in December, 2013 and now it transpires that the Agreement to Sell of 31st December, 2013 is *inter se* respondent No.1 and respondents No.3 and 4. Alleging fraud and misrepresentation, appellant had lodged a criminal complaint in May, 2015 and thereupon an FIR has been registered against the first respondent.

It is the case of the appellant that he was put in possession of the suit property by respondents 2 to 4 after the sale consideration was received by them and this had happened in February, 2014. It is asserted by appellant that he was ousted from the suit property by respondent No.1 who had got a criminal case under Section 354 of IPC registered against him through his maid. It is also the case of appellant that he was employed in Meerut and other places and he was off and on coming to Delhi and was staying with respondent No.1 as he was his friend then, and according to learned counsel for appellant, this by itself is not sufficient to raise a reasonable inference that respondent No.1 who was the owner of the suit property. During the course of hearing, it was vehemently urged by learned counsel for appellant that the appellant is in possession of bank documents to show that the money for entire purchase transaction was given by appellant after selling the properties located outside Delhi. The stand of appellant/plaintiff is that the delay of about 7 or 8 months in approaching the Court for relief was because of his employment outside Delhi and this by itself is not a good ground to deny the interim relief to appellant as the appellant has a good case on merits.

The resistance to this appeal by learned counsel for the respondents is on the ground that trial Court vide impugned order has rightly declined interim relief to the appellant because respondent No.1 is already in possession of the property and the sequence of facts as noted in the impugned order clearly reveal that appellant has no case on merits and so this appeal deserves dismissal.

After having heard learned counsel for the parties and on perusal of the impugned order and the material on record, I find that appellant is not in possession of the suit property and merely because he did not resort to legal proceedings for 6 to 8 months would not justify rejection of his application for interim relief. Trial Court in the impugned order has erred in declining interim relief to appellant on this ground. Pertinently, impugned order does not state that appellant has no case on merits or that the balance of convenience is in favour of respondent No.1, who is in possession of the suit property. In the considered opinion of this Court, the facts and circumstances of this case justify to restrain the first respondent from alienating the suit property or to create any third party interest in the suit property during the pendency of the suit.

In view of the aforesaid, impugned order is set aside and appellant's application for interim relief is allowed to the extent of restraining respondent No.1 from alienating the suit property and from creating third party interest in the suit property.

This appeal and application are disposed of while refraining to comment on the merits of the case lest it may prejudice either side before the trial Court.

(SUNIL GAUR)
JUDGE

AUGUST 03, 2016
gm