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

+ **FAO 12/2015 & C.M. No.670/2015**

SANJAY KUMAR

..... Appellant

Through: Mr. Sacchin Puri, Senior Advocate
with Mr. Vivek Luthra &
Ms. Mehak Tanwar, Advocates

Versus

JAI DUTT

..... Respondent

Through: Mr. Naushad Alam, *Amicus Curiae*
Counsel from Delhi High Court
Legal Services Committee with
Respondent-in-person

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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28.09.2016

In a suit for specific performance in respect of Agreement to Sell of 29th December, 2011, appellant-plaintiff's application for interim injunction to restrain the respondent-defendant from creating third party interest and to maintain *status quo* in respect of the suit property, is declined by the trial court vide impugned order of 1st November, 2014 by observing that *prima facie* case is not made out as the existence of the Agreement to Sell is disputed by respondent-defendant in the written statement and because the Agreement in question is on ₹50 stamp paper and is unregistered.

Learned senior counsel for appellant assails the impugned order on the ground that as per Section 49 of *The Registration Act, 1908*, an Agreement to Sell is not required to be registered for the purpose of obtaining specific performance and has shown to the Court the original Agreement to Sell of 29th September, 2011 to assert that it not only bears the signatures of respondent-defendant but also bears his thumb and finger impressions and that mother of respondent-defendant is a witness to this Agreement and even she has thumb marked it and so, the question of mother of respondent-defendant being not a party to the suit does not justify denial of interim injunction, for the reason that even if this suit is maintained against respondent, still 50% of the suit property belongs to respondent-defendant.

It is pointed out by learned counsel for respondent-defendant that apart from the mother, three sisters also have a share in the suit property in question and since the Agreement in question was never executed by defendant, therefore, interim injunction has been rightly declined by the trial court.

Upon hearing and on perusal of impugned order, original Agreement to Sell dated 29th December, 2011 (*original seen and returned*) and the material on record, I find that the question of existence of Agreement to Sell is required to be gone into during the trial and in view of Receipt of 29th December, 2011, showing payment of ₹11,00,000/- i.e. part payment of sale consideration to respondent-defendant, I find that respondent/defendant is required to maintain *status quo* as of today in respect of the suit property. To a query put to respondent-defendant, who appears in person, it was stated by him that

neither he nor his mother intends to sell the suit property.

Be that as it may. Impugned order is hereby set aside and appellant's application for interim relief is allowed with direction to the respondent to maintain *status quo* as of today in respect of the suit property.

With aforesaid directions, this appeal and application are disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 28, 2016

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