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HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 86 OF 2017**

Smt. Poonam Pushpkar W/o Shri O. P. Pushpkar, Aged About 41 Years R/o House No. 1567, Ward No. 63, Durga Chowk, Mathpuraina, P. O. Sundar Nagar, Tahsil And District Raipur, Chhattisgarh....(Instant Appeal Is Being Filed In Personal Capacity)

---- Appellant**Versus**

1. Smt. Krishna Devi Baghel W/o Shri A. K. Baghel, Aged About 56 Years R/o Baghel Badi, R/o Village Doma, Police Station Mujgahan, Tahsil And District Raipur, Chhattisgarh.
2. Shyam Kumar Baghel W/o Shri Shri K. R. Baghel, Aged About 60 Years R/o Baghel Badi, R/o Village Doma, Police Station Mujgahan, Tahsil And District Raipur, Chhattisgarh.
3. Gajendra Kumar Baghel, S/o Shri Shyam Kumar Baghel, Aged About 29 Years R/o Baghel Badi, R/o Village Doma, Police Station Mujgahan, Tahsil And District Raipur, Chhattisgarh.
4. Baliram Dharmani S/o Shri Khushiram, Aged About 53 Years R/o House No. 54, Hanuman Nagar, Colony, Kalibadi, Tahsil And District Raipur, Chhattisgarh.
5. Tamilnadu Bank, Raipur District Raipur, Chhattisgarh.
6. State Of Chhattisgarh, Through Collector, Raipur District Raipur, Chhattisgarh.

---- Respondents

For Appellant	:	Mr. Malay Kumar Bhaduri, Advocate
For Respondent No. 6/State	:	Mr. V.B. Singh, Panel Lawyer

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****07/11/2017**

1. This is a miscellaneous appeal preferred by the plaintiff/appellant under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') against the order dated 18.8.2017 passed by the Additional District Judge, Raipur, District Raipur (C.G.) in Civil Suit No. 32-A/2017, by which, the

learned trial Court has rejected the plaintiff's application filed under Order 39 Rule 1 & 2 of the CPC.

2. The undisputed facts of the case are that the plaintiff Smt. Poonam Pushpkar instituted a suit claiming specific performance of the contract and also for permanent injunction by submitting *inter alia* that an agreement to sale dated 3.6.2016 has been executed in her favour by defendant No.1 Smt. Krishna Devi Baghel agreeing to sale the suit property at the rate of Rs.37,50,000/- (Rupees Thirty Seven Lacs Fifty Thousand only) per acre and it stipulates further in the alleged agreement that the registered deed of sale has to be executed within a period of one year. It is pleaded further in the plaint that a sum of Rs.10,00,000/- (Rupees Ten Lacs only) was given to defendant No.1. It is pleaded further that defendant No.1 even prior to the expiry of said period of one year has sold the suit property to defendant No.4 by executing a registered deed of sale on 16.8.2016. Therefore, the plaintiff has constrained to file the suit in the instant nature on 20.6.2017. Alongwith the aforesaid claim, an application enumerated under Section 39 Rule 1 and 2 of the CPC has also been filed praying for restraining defendant No.4 from further alienation of the suit property in order to avoid the multiplicity of the suit.

3. The defendants have contested the aforesaid claim. It was pleaded that the terms and conditions as stipulated in the alleged agreement to sale was not complied with by the plaintiff and also pleaded that a sum of Rs.10,00,000/- was also refunded to the plaintiff as per her own request.

4. The trial Court after considering the material available on record has come to the conclusion that the plaintiff was not ready and willing to perform her part of the contract as the amount of Rs.10,00,000/- as advanced by the plaintiff, was returned back to her by defendant No.1 as per her own oral request. In view of this fact, the trial Court has come to the conclusion that no *prima facie* case lies

in favour of the plaintiff and accordingly, application filed under Order 39 Rule 1 and 2 of the CPC has been rejected.

5. Being aggrieved, plaintiff has preferred this miscellaneous appeal.

6. Mr. Malay Kumar Bhaduri, learned counsel for the appellant submits that the order impugned as passed by the trial Court rejecting her application filed under Order 39 Rule 1 and 2 of the CPC for issuance of temporary injunction is apparently contrary to law. He submits further that the trial Court ought to have seen that immediately after execution of the alleged agreement to sale, a notice was issued by the plaintiff on 3.9.2016 immediately upon knowing the fact that defendant No.1 has sold the suit property to defendant No.4 on 16.8.2016. Without considering the said material facts in its proper perspective, the trial Court has erred in rejecting her application for issuance of temporary injunction. He therefore submits that the order impugned deserves to be set aside.

7. I have heard learned counsel for the appellant and perused the entire record annexed with this appeal carefully.

8. The plaintiff's suit is mainly based upon the alleged agreement to sale dated 3.6.2016. According to the plaint averments, registered deed of sale was required to be executed with regard to the suit property at the rate of Rs.37,50,000/- per acre within the period of one year and plaintiff has paid a sum of Rs.10,00,000/- to defendant No.1. From perusal of the record would however show that the alleged amount of Rs.10,00,000/- as paid by the plaintiff to defendant No.1 was refunded back as per her own request. Besides, the terms and conditions as stipulated in the alleged agreement to sale are prima facie not complied with by the plaintiff as per the contention of the defendants. In such circumstances, it cannot be held at this stage that the plaintiff was ready and willing to perform her part of the contract in pursuance to the alleged agreement to sale dated 3.6.2016. Therefore, by taking into consideration the prima facie

material facts available on record, the trial Court has rightly come to the conclusion that three essentials as required for issuance of temporary injunction are not in favour of the plaintiff. Consequently, prima facie findings so recorded deserves to be and is hereby affirmed.

9. In view of the aforesaid discussion, I do not find any substance in this appeal. Accordingly, the same deserves to be and is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge