

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

CR No.3625 of 2017 (O&M).

Date of Decision: 19.05.2017.

Bohar Singh

....Petitioner.

VERSUS

Karamjit Kaur and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Rupesh Kumar, Advocate for the petitioner.

SNEH PRASHAR, J.

CM-11368-CII-2017

Allowed, as prayed for.

CR-3625-2017 (O&M)

Challenge in this petition is to the order dated 28.04.2017 passed by learned Additional Civil Judge (Senior Division), Abohar by virtue of which the application filed by respondent-defendant No.1 seeking permission to sell the suit property was allowed.

The submissions made by Mr. Rupesh Kumar, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that the suit of the petitioner is for possession by way of specific performance of an agreement to sell dated 09.06.2009. An amount of Rs.9,80,000/- was paid by the petitioner as earnest money. In case the respondent-defendant No.1 sells of

the property to some third person, the petitioner shall suffer irreparable loss and it will also result in multiplicity of litigation.

There appears no force in the argument of learned counsel for the petitioner. From the facts noticed by learned trial court in the impugned order as well as from the order dated 28.05.2015 (Annexure-P2) of learned trial Court, it transpires that the application filed by the petitioner under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure for an ad-interim injunction was dismissed by learned trial court and the operating portion of the order was as under:-

“Though it is admitted proposition of law that no party is capable of alienating the suit property during pendency of the case as per the principle of lis-pendens which is also equally applicable to the facts of the present case but in order to avoid multiplicity of litigation and in order to protect the rights of the parties, I deem it appropriate to direct the defendants that in case they want to alienate the suit property they will take prior permission of the Court and factum of pendency of the present case shall be mentioned by them in the deed of transfer. In view of the above said directions, the present application U/O 39 Rules 1 & 2 CPC is dismissed.”

It is not the case of the petitioner that he filed any appeal/revision challenging the order dated 28.05.2015 passed by learned trial court. In other words, the terms and conditions, on which the application of the petitioner for ad-interim injunction was dismissed, were accepted by him. It is in pursuance of the said terms and conditions that the respondent-

to sell the suit property and learned trial court imposing all requisite conditions necessary for protecting the rights of both the parties qua the instant suit allowed the application of the petitioner. The respondent-defendant No.1 has been permitted to sell the suit property subject to the condition that she shall mention the factum of pendency of the suit in the sale deed and shall also mention that the vendee shall be bound by the decision of the present case as per rule of lis-pendence. Another condition imposed that the vendee shall have no independent right against the petitioner-plaintiff beyond the right of respondent-defendant No.1 as in the present suit.

In the light of the conditions levied, it does not lie in the mouth of the petitioner to say that the sale of the suit property will result in multiplicity of litigation or his right in any manner will be prejudiced.

Thus, there being no illegality, perversity or jurisdictional error warranting interference in the order of learned trial Court, the petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

19.05.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**