

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

Civil Revision No.4617 of 2017

Date of Decision: 19.07.2017

Smt. Parkash Kaur

. . . Petitioner

Versus

Sushma Lata and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.C. Shahpuri, Advocate
for the appellant.

Mr. Diwan S. Adlakha, Advocate
for the caveator/respondent No.5.

Anil Kshetarpal, J. (Oral)

Plaintiff has filed present revision petition under Article 227 of the Constitution of India, challenging the order dated 24th April, 2017 passed by learned Civil Judge (Junior Division) Yamunanagar at Jagadhri, affirmed that appeal by Addl. Civil Judge, Yamunanagar at Jagadhri.

Vide order dated 10th May, 2017, along with the suit plaintiff has also filed an application under Order 39 Rules 1 and 2 CPC for grant of injunction. Of course at that time, plaintiff was claiming that she is in possession and the defendant should be restrained from interfering the possession of the plaintiff as also further alienation. Record shows that the application filed under Order 39 Rules 1 and 2, CPC was dismissed by the

trial Court. Once again the plaintiff has filed another application asserting that after dismissal of the first injunction application, the plaintiff has been dispossessed and now the prayer made is that the defendants be restrained from changing the existing nature of property by raising further construction and defendant No. 5 be restrained from further alienating the property.

The First Appellate Court has specifically recorded that the suit of the plaintiff is based on an agreement to sell dated 19.12.2011. The Court is still to adjudicate upon the validity of the aforesaid agreement. Whereas Defendant No. 5 is claiming right on the basis of the registered sale deed dated 03.12.2014.

I have heard the learned counsel for the parties.

In my opinion there is hardly any scope for interference in the orders passed by two courts below. Plaintiff-petitioner has prayed for two reliefs, firstly, restrained order, restraining the defendants from raising any construction and secondly alienation of the property in dispute be stayed.

Construction, if any, is always subject to the decision in a suit. It is ordered that if any construction is raised during the pendency of the suit, defendants shall not claim any equity and plaintiff would be entitled to the constructed portion without payment of any construction charges.

As far as second prayer is with regard to restraining the defendants from alienating the suit property, such alienation is always subject to the rule of *lis pendens*. Any alienation during the pendency of

Civil Revision No.4617 of 2017

the suit would not affect the rights of the plaintiff. Therefore, both the contentions of the learned counsel for the petitioner do not have any force and hence, rejected.

Still further, there was an earlier application filed by the plaintiff for grant of temporary injunction under Order 39 Rule 1 and 2 CPC, the said application was dismissed. Immediately thereafter, the plaintiff chose to file the application alleging dispossession to assert that there is a change in circumstances.

In my view, since one of the prayer has already been rejected, therefore, it would not be possible to take a different opinion at this stage.

Petition stands dismissed.

[ANIL KSHETARPAL]
JUDGE

19.07.2017
Sachin/seema

Whether Speaking/reasoned	:	Yes
Whether Reportable	:	Yes