

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

CR No.7298 of 2017(O&M)

Date of decision: 22.11.2017

Tarsem Singh

.....Petitioner

VERSUS

Gurmej Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.S. Hira, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 13.09.2017 (Anenxure P-2) passed by the Additional District Judge, Hoshiarpur whereby application for ad interim injunction under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') against forcible dispossession of the petitioner from the disputed plot during pendency of appeal has been dismissed.

Counsel for the petitioner has submitted that the petitioner examined as many as six witnesses to prove the agreement dated 22.01.2007 purported to be executed by Gurmej Singh for sale of the property in question in regard whereof the petitioner filed a suit for confirmation of possession as owner by way of specific performance of aforesaid agreement to sell. It is further argued that during pendency of the suit there was an interim stay in favour of the petitioner, therefore, till the appeal is decided against the judgment and decree dated 27.07.2017 passed by the trial Court, interim injunction may be allowed in favour of the petitioner so that the existing status of the suit property can be maintained

till decision of the appeal on merits. It is further argued that the execution filed by Gurmej Singh for recovering possession of the property in question on the basis of decree passed in his favour is still pending adjudication before the Court.

Indisputably, Gurmej Singh filed a suit for possession qua the disputed property and in the said case, the petitioner set up an agreement of sale dated 30.04.1984 and filed a counter claim on the basis of said agreement seeking specific performance thereof. The agreement to sell propounded by the petitioner in the earlier litigation was held to be forged and fabricated and the counter-plea filed by the petitioner was dismissed whereas claim of the respondent for possession was decreed and the said litigation has attained finality up to this Court. The respondent/decreed holder filed an application for execution of decree of possession and the petitioner has now set up another agreement to sell dated 27.01.2007 purported to be executed by Gurmej Singh during pendency of the execution proceedings. It is also not denied that no payment under the present agreement has been made through any banking transaction like a cheque/draft. The trial Court has recorded findings that the agreement dated 22.01.2007 is a forged and fabricated document. No doubt, findings recorded by the trial Court have not attained finality and the matter is subjudice before the Court of appeal, keeping in view the earlier conduct of the petitioner having set up an agreement which was held to be forged and fabricated coupled with the findings recorded by the trial Court in the present case, in the face of situation that the parties remained litigating up to this Court for recovering possession by the respondent/decreed holder who has filed an application for execution of the decree for possession, it is difficult to accept contention of the petitioner that there is a prima facie

case in his favour for grant of discretionary relief of injunction pending disposal of appeal before the Additional District Judge, Hoshiarpur. This apart, Gurmej Singh has already filed an application for execution of decree of possession, therefore, he seeks to recover possession through process of the Court. In case the petitioner is successful in the appeal he may take recourse to appropriate remedy for seeking restoration of possession. With the aforesaid observations, I do not find any error much less perversity in the order impugned warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. Nothing stated hereinbefore shall cause prejudice to the petitioner at the time of final adjudication of the appeal on merits.

NOVEMBER 22, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no