

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 119 of 2015**

- A.C.M. Enterprises Through Partner Shri Harshdeep Singh Juneja, Aged About 33 Years, S/o Late Shri Mangat Singh Juneja, R/o Civil Lines, Raipur, Tehsil And District Raipur ChhattisgarhPlaintiff

---- Appellant**Versus**

- Prakash Chand Baid S/o Late Bhikhamchand Baid, Aged About 59 Years R/o Sadar Bazar, Raipur, Tehsil And District Raipur Chhattisgarh.....Defendant,

---- Respondent

For Appellant	:	Shri Anumeh Shrivastava, Advocate
For Respondent	:	Shri Amit Kumar, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****06/09/2018**

1. Heard.
2. The present appeal is against the order dated 03.10.2015 whereby an application filed under Order 39 Rule 1 & 2 CPC preferred by the appellant/plaintiff was dismissed.
3. The short facts of this case as pleaded are that the plaintiff has entered into an agreement of sale for purchase of a house bearing No.8/485, admeasuring 1800 sq. feet situated at Moja Raipur Khas (Chotapara) P.H. No.106. Pursuant to it agreement of sale was executed on 16.05.2014, which was registered with

the Sub-Registrar, Raipur. It is contended by the appellant/plaintiff that out of the sale consideration of the amount, an amount of Rs.2,34,00,000/- were paid, whereas only 1,35,000/- remained outstanding amount which was to be paid at the time of registration of deed. It is contented that after agreement of sale was executed, another publication for the sale of the same house was made in the news-paper, which compelled the appellant to file civil suit for specific performance of the property. In such suit, an application under Order 39 Rule 1 & 2 CPC was also preferred. It is the further case of the plaintiff/appellant that if the subsequent right is created over the property of the third party, though the entire amount has been paid it will lead to irreparable injury as also the balance of convenience lies in favour of the plaintiff. Learned counsel further submits that prima facie case exists in favour of the plaintiff/appellant for the existing agreement therefore refusal to allow the application under Order 39 Rule 1 & 2 CPC by such order impugned is completely illegal as it will lead to multiplicity of the proceedings. Consequently, it is prayed that the order impugned may be set aside.

4. Per contra, learned counsel for the respondent submits that the agreement was not at all executed and it was only acted upon as a security of loan in respect of transaction in between the respondent's son and the plaintiff/appellant and there was no intention of the parties to execute the agreement. Consequently, the order dismissing the application under Order 39 Rule 1 & 2 CPC is well merited.
5. Perused the documents connected with this appeal. The agreement is also

enclosed. The agreement purports that on 16th of May, 2014, the plaintiff/appellant entered into an agreement with the respondent for purchase of a house bearing No.8/485, admeasuring 1800 sq. feet at Moja Raipur Khas (Chotapara) P.H. No.106. The particulars of the property is also shown. The agreement also engrafts that an amount of Rs.2,34,00,000/- was paid and three transactions were made through the Bank and amount of Rs.89 Lakhs was paid in cash and the said agreement was registered with the Sub-Registrar, Raipur. Subsequent document shows that another publication was made dated 28.07.2014 i.e. after the sale agreement that the respondent wanted to sale the same property. The reply of the respondent perused. In the reply it has been contended by the respondent that the agreement was an outcome of a fraud and the coercion was applied to get the agreement executed as there was certain outstanding dues were existing in between the son of the respondent/defendant and the appellant/plaintiff. The reply further contains a document that agreement though was executed but there was no intention to act upon such agreement. The agreement is a registered one with the Sub-Registrar. The said agreement do not contain the fact that it was for a loan transaction it is a simplicitor agreement of sale.

6. Section 58 (c) of The Transfer of Property Act, 1882 provides that in mortgage by conditional sale, mortgage cannot be deemed, unless the conditions are engrafted in the same document i.e. of sale. The agreement having been registered with the Sub-Registrar, prima facie the existence of the agreement cannot be denied. The agreement also contains the part of the sale

consideration of Rs.2,34,00,000/- was paid. The contents of the agreement at this stage cannot be sidelined, therefore, prima facie the case appears to exist in favour of the plaintiff/appellant. In respect of the balance of convenience and irreparable loss, the agreement purports that the part of the sale consideration has already been paid and accepted. In this case the amount of Rs.2,34,00,000/- is shown to have been paid. In such eventuality, if other third party interest is created in respect of the suit, it will lead to multiplicity of the proceedings as the suit itself is pending for specific performance of the same property. Under the circumstances, the balance of convenience and irreparable loss leans in favour of the appellant/plaintiff for grant of injunction. Accordingly, the order dated 03.10.2015 is set aside. It is directed that till the suit is decided on merits, no third party interest shall be created in respect of the suit property in question i.e. house No.8/485, admeasuring 1800 sq. feet at Moja Raipur Khas (Chotapara), Raipur.

7. Accordingly, the appeal stands allowed.

Sd/-

Goutam Bhaduri
Judge

Ashu