

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No. 103 of 2017

Smt. Sujata Agrawal, W/o. Shri Rajkumar Agrawal, Aged About 45 Years,
R/o. Ravi Nagar, Raipur, District Raipur, Chhattisgarh

---- Appellant

Versus

1. Mukesh Sarda, S/o. Madan Lal Sarda, Aged About 35 Years, R/o. Shubhkamna Plaster, Mandi Gate, Pandri, Raipur, District Raipur, Chhattisgarh
2. Apex Bank, Through The Branch Manager, First Floor, Raipur Development Authority Building, Sharda Chowk, Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Dhirendra Prasad Mishra, Advocate
For Respondent No.1	:	Mr. Manoj Paranjpe, Advocate
For Respondent No.2	:	Mr. Atanu Ghosh & Varunendra Mishra, Advocates

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

18.09.2018

1. The present appeal is against the order dated 28.07.2017 passed in Civil Suit No.149-A/2014 whereby an application under Order 39 Rule 1 & 2 of C.P.C. has been allowed in favour of the plaintiff/respondent and the defendant has been restrained to create any third party interest in respect of the suit property.
2. Perusal of the order would show that a suit for specific performance was filed by the plaintiff in respect of a shop comprised over Khasra No.184/3, Plot No.1/9 admeasuring 362 sq.ft. The agreement in between the parties were executed for sale of the property on 09.12.2009 and part performance of contract of Rs.3,50,000/- was paid initially. Subsequently, an amount of Rs.1,50,000/- was paid on 04.03.2010. The trial Court observed that it is also not in much dispute that the suit property was mortgaged by the appellant/defendant and in order to get rid

of the mortgage an amount of Rs.5,80,402/- was paid by the plaintiff. Apart from that, an amount of Rs.25,000/- was initially deposited as security deposit by the plaintiff to the defendant.

3. Perusal of the order and the documents connected with this appeal would show that the sale agreement was executed in between the parties and in respect of the sale agreement, in part performance of the contract, an amount of Rs.5,25,000/- & Rs.5,84,402/- was paid by the plaintiff respondent. The plaintiff is also in possession of the suit property. The injunction order purports that no third party interest should be created by the defendant appellant till the civil suit is decided on merits. Taking into the part of the facts involved in this case, the defendant appears to have received the part performance of the sale consideration in terms of the agreement of sale. Therefore, any creation of third party interest over the property may lead to multiplicity of the proceeding and may defeat the right of the plaintiff. Consequently, prima facie case, irreparable loss and balance of convenience lies in favour of the plaintiff respondent; therefore, after closed examination of this fact, I am not inclined to interfere with the order dated 28.07.2017 passed by the Court below granting injunction in favour of the plaintiff.
4. In view of the above, the appeal has no merit and accordingly it is dismissed.

Sd/-
(Goutam Bhaduri)
Judge