

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 25 of 2017**

- Mohd. Ayyub S/o Late Haji Ismile, Aged About 45 Years R/o Ward No.2, Simga, Tehsil Simga, District Balod Bazar-Bhatapara, ChhattisgarhPlaintiff

---- Appellant**Versus**

1. Upenra Vahinipathi S/o V.P.Rao, Aged About 43 Years R/o Nutan Chowk Sarkanda M.I.G. 11/17, Indra Vihar, Bilaspur, Tehsil And District Bilaspur, Chhattisgarh
2. Rajkumar Sharma S/o Krishn Kumar Sharma, Aged About 52 Years R/o Rachanas Maitree Vihar, Heerapur Road, Tatibandh, Raipur, Chhattisgarh
3. State of Chhattisgarh, Through Collector Baloda Bazar, Chhattisgarh

---- Respondents

For Appellant	:	Shri G.M. Hasan, Advocate
For Respondents No.1 & 2	:	Shri Abhijit Sarkar, Advocate
For Respondent/State	:	Shri D.R. Minj, Dy. GA for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****27/10/2018**

1. Heard.
2. The present appeal has been preferred against the order dated 21.10.2016 passed by the Additional District Judge, Bhatapara in Civil Suit No.H-17A/2015 whereby an application under Order 39 Rule 1 & 2 CPC moved by the plaintiff was dismissed. The plaintiff filed a suit for specific performance of a contract of sale on the ground that the land bearing Khasra Nos.05/8, 15/9, 71/12, 7/2, 6/2, 54/1, 55/2, 56/1, 61/1, 61/6, 171/12, 171/66, 171/21, 69/4, 56/12, 3/6, 189/4, 61/4, 3/3 total 22 Khasra admeasuring approximately 14 acres at village

Tulsi, R.I. Circle Simga, Tehsil Simga, District Baloda Bazar and claimed that an agreement was entered in between the plaintiff for a consideration of Rs.17,50,000/- and the defendant No.1 Upenra Vahinipathi was seller and date of agreement was on 17.07.2012. It is stated that at the time of such agreement of sale, the possession of the land was given to the plaintiff and he is in possession. Further the plaintiff has stated that since he is in possession of the land, if the land is sold to some third party, then the plaintiff would suffer irreparable injury. The learned Court below after evaluating the facts and evidence, dismissed the application under Order 39 Rule 1 & 2 CPC. Hence this appeal.

3. Learned counsel for the appellant would submit that the initial agreement was entered by the plaintiff/appellant along with defendant No.1 on 17.07.2012 and he was put to possession of the subject land and if the sale is executed in respect of the same land in favour of the third party, then in such case he would suffer irreparable injury. He further submits that subsequent to it, agreement of sale has already been made in favour of defendant No.2, therefore, the defendant No.1 be restrained to execute the sale in favour of third party.
4. Per contra, learned counsel for the respondents oppose the arguments advanced by the learned counsel for the appellant.
5. Perused the plaint. Perusal of the plaint shows that the plaintiff came out with a suit that he entered into an agreement of sale with defendant No.1 on 17.07.2012. Further the reading of the plaint would show that the plaintiff admitted that the defendant No.1 has executed sale deed of the subject suit property in favour of defendant No.2 Raj Kumar Sharma. Perusal of the plaint

shows that only simplicitor suit has been filed for specific performance of the contract. The cause-title of the plaint do not show that any declaration has been sought for cancellation of the sale deed or the prayer has been made to get the sale deed executed even from the defendant No.2. According to the plaint itself the subject suit land has already been sold to defendant No.2 then the prayer made by the plaintiff as to get a decree that the defendant No.1 be directed to execute the sale in terms of the agreement dated 17.07.2012 could not have been entertained and the relief could not have been given though the prayer has been made that the sale deed executed in favour of defendant No.2 be declared null and void but no declaration of such kind has been prayed. Further perusal of the record would show that agreement dated 17.07.2012 do not affirm the fact that the possession of the land was given to the plaintiff. It appears that there has been extension of the agreement and the plaintiff in the meanwhile entered into an agreement for sale of the same land without becoming owner with third party. The record would show that sale deed has already been executed in favour of defendant No.2 on 28.03.2013, therefore, considering the fact and the prayer made, in the opinion of this Court, no relief of injunction can be granted to the plaintiff at this stage, therefore, I am not inclined to interfere in the order passed by the Court below. Accordingly, the appeal is dismissed summarily. Registry is directed to sent back the record to the Court below forthwith.

Sd/-

Goutam Bhaduri
Judge

Ashu