

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 80 of 2018**

Kishore Kumar Das S/o Shri Nishikant Das Aged About 40 Years R/o House No. Lig-52, Pandit Ravishankar Shukla Nagar, Korba, Tahsil And District- Korba, Chhattisgarh....(Plaintiff), District : Korba, Chhattisgarh
--- Appellant

Versus

1. Smt. Suman Jaiswal W/o Shri Jagat Ram Jaiswal R/o House No. 62, Pandit Ravishankar Shukla Nagar, Korba, Tahsil & District- Korba, Chhattisgarh.
2. State of Chhattisgarh through Collector, Korba, District- Korba, Chhattisgarh.....(Defendants).
--- Respondents

For the applicant	:	Mr. Manoj Paranjpe Advocate
For Respondent No.2	:	Mr. Parag Kotecha, Advocate
For the State	:	Mr. Aditya Sharma, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****28.11.2018**

1. Heard.
2. The present appeal is against the order dated 07.08.2018 passed in Civil Suit No.6A/2017 whereby the 2nd Additional District Judge, Korba, Distt. Korba dismissed the application filed under Order 39 Rule 1 & 2 of CPC.
3. It is contended that an agreement dated 28.05.2016 was entered into between the parties for sale of House i.e., LIG No.62 for a sale consideration of Rs.19 lakhs. It is stated that earnest money of Rs. 4,00,000/- was paid on 15.04.2016 and the remaining amount of Rs.15,00,000/- was to be paid at the time of execution of the sale deed.
4. Learned counsel for the appellant submits that pursuant to

such agreement since the property was a lease hold property of the Municipal Corporation, the permission was obtained which was given by the Municipal Corporation for transfer of property by a letter dated 30.07.2016. However, when the application for specific performance was filed and the prayer was made to restrain the defendant to create third party interest, the the same was dismissed. It is stated that if the third party interest is created in respect of property then the plaintiff would suffer irreparable loss. Therefore, till the suit is decided on merits the defendants be restrained to create any third party interest.

5. Per contra, learned counsel for the respondent no.1 vehemently opposes the arguments and submits that the entire suit was based on false averments. It is stated that initially an agreement was entered on 15.04.2016 whereby the sale consideration of suit house was fixed at Rs.32,00,000/-. However, subsequently in order to avoid the stamp duty, another mutual agreement was executed wherein sale consideration was shown much less. Further to avoid payment of the original sale consideration, the suit is filed to get the specific performance of property on the basis of the subsequent so called agreement dated 28.05.2016. It is further contended that the statement of plaintiff Kishore Kumar Das was recorded which would show that prior to agreement dated 28.05.2016, an initial agreement was executed on 15.04.2016 in respect of the sale of the property for Rs.32,00,000/-, therefore, the plaintiff has resorted to arm-twisting method and has filed the suit for specific performance on the basis of agreement dated 28.5.2016.

6. Perused the order as also the respective documents connected to this petition. The statement of plaintiff is also annexed wherein prima facie reading shows that the plaintiff has admitted about the existence of agreement dated 15.04.2016. The suit is filed for execution of specific performance of the contract on the basis of subsequent agreement dated 28.05.2016 which was said to be for sale consideration of Rs.19 lakhs whereas the copy of agreement dated 15.04.2016 is also placed on record wherein the sale consideration is said to be Rs.32,00,000/-. Therefore, the finding of the court below that the plaintiff in order to avoid the stamp duty, certain agreement was executed on subsequent date and is avoiding to pay the original sale consideration of Rs.32,00,000/- appears to be prima facie correct.
7. In these circumstances if the injunction is granted, irreparable loss would be caused to the defendant/respondent as prima facie it appears that suppression of facts has been made by the plaintiff. Therefore, I am not inclined to interfere in the appeal. In the result, the appeal has no merit and is dismissed. Consequently, I.A.No.1/2018 also stands rejected.

Sd/-
GOUTAM BHADURI
JUDGE