

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

Civil Revision no.7420 of 2015 (O&M)

Date of Decision: 03.07.2018

Avtar Singh

...Petitioner

Vs.

Jagjit singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Jai Bhagwan, Advocate, for the petitioner.
Mr. S.S. Tiwana, Advocate, for the caveator-respondent.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner has challenged the order of the learned Civil Judge (Jr. Divn.), Patiala, dated 07.11.2014, by which the application filed by the petitioner (plaintiff before that Court) under Order 39 Rules 1 and 2, seeking a stay on alienation of the suit property, has been dismissed.

The brief conspectus of the facts, as per the case of the plaintiff, is that defendant no.1 (present respondent no.1, Jagjit Singh), through his General Power of Attorney, Rakesh Kumar, agreed to sell land measuring 5 kanals 7 ½ marlas, as fully described in the plaint, vide an agreement of sale dated 04.01.2006, for a total consideration of Rs.27 lacs; of which Rs.9 lacs is stated to have been received by the aforesaid attorney on the date of the agreement.

It is further contended by the plaintiff that as per the agreement, defendant no.1 would get the suit land partitioned and execute the sale deed on or before 04.07.2008, on payment of the remanning

consideration. However, that not having been done, the aforesaid attorney is contended to have told the plaintiff that since the land could not be partitioned, a sum of Rs.2 lacs more may be paid, with the date of registration extended to 31.10.2010, which was agreed to in writing (as per the suit of the plaintiff).

The writing is stated to have been signed by the aforesaid attorney, Rakesh Kumar, on behalf of respondent-defendant no.1, Jagjit Singh, witnessed by one Gurpreet Singh, and also signed by the plaintiff.

The registration still not having been taken place, the date was extended till 25.06.2013, on which date the plaintiff is stated to have remained present in the office of the Sub-Registrar, Patiala, for the whole day, with the requisite funds, for the stamp papers and registration charges etc., with defendant no.1 failing to turn up.

It is the further case of the plaintiff that he got an affidavit attested from an Oath Commissioner as regards his presence before the Sub-Registrar, after which he is stated to have gone to the Revenue *Patwari* on 08.07.2014, to get a copy of the '*Jamabandi*' of the suit land; and on enquiry he was told that 5 kanals 13-2/3 marlas of the suit land, as was agreed to be sold to the plaintiff, had actually been transferred by defendant no.1 in favour of defendant no.2 (Gold Hut Colonizers & Developers Pvt. Ltd.), vide sale deeds dated 19.04.2006 and 20.04.2006, which, as per the case of the plaintiff, amounted to a fraud upon him.

On the aforesaid averments, the suit having been filed and the application under Order 39 Rules 1 and 2 also having been filed, the

learned Civil Judge declined an interim injunction in favour of the plaintiff, on the ground that “it is admitted on the part of the plaintiff that agreement to sell was executed on 4.1.2006 and even date for execution of the sale deed were extended up to 25.6.2013 but extension of date of execution on the vague contentions is not believable and specially when there is nothing mentioned that partition proceedings are pending or not, and in these circumstances no prima facie case is being made out in favour of the applicant especially when the period of three years has elapsed from the date 25.10.2014 to 15.7.2014 i.e. the date of institution of the present suit.”

(Taken *ad verbatim* from the impugned order)

It was further held in the impugned order that there was no explanation given for the extension of the date of registration, when a major portion of the suit property had already been sold to defendant no.2; and as such balance of convenience did not lie in favour of the applicant-plaintiff.

Still further, the Civil Judge held that it would be a matter of evidence as to whether defendant no.2 is a *bona fide* purchaser or not, and once the pleadings of the “plaintiff had become suspicious”, it could not be said that he would suffer an irreparable loss upon the application not being allowed. Consequently, the application was dismissed.

An appeal having been preferred by the plaintiff against that order, the learned Additional District Judge, after noticing the facts as also the arguments, eventually dismissed the appeal simply on the ground that the lower court had rightly appreciated the pleadings and documents and therefore there is no illegality and infirmity in the order.

Before this Court, Mr. Jai Bhagwan, learned counsel for the petitioner, has reiterated that with respondent no.1 not denying the factum of the agreement of sale nor even the extension of the dates for execution of the sale-deed, or that a part of the consideration having been paid, there was no reason for the application seeking interim relief on further alienation of the suit property to have been declined.

Learned counsel for the defendants-respondents, on the other hand submits that the suit having been filed in the year 2014, with the agreement of sale being of the year 2006, the learned Courts below have correctly appreciated the fact that there was no balance of convenience in favour of the plaintiff and therefore, the impugned order does not required to be interfered with.

Having considered the aforesaid arguments as also the facts of the case as per the pleadings before this Court and as reproduced in the impugned order, in the opinion of this court, the date for extension of registration of the sale deed having been, at least as per documentary evidence so far relied upon, was by mutual consent till 26.06.2013, with the allegation of the plaintiff being that the suit land/a part thereof, had already been sold in the year 2006 itself by respondent-defendant no.1 to respondent-defendant no.2. In my opinion, the learned Courts below wholly erred in appreciating the fact that during pendency of the suit, further alienation of the suit land would obviously create unnecessary third party rights and therefore, such alienation should be stayed even on the aforesaid contention.

Consequently, this petition is allowed and the respondents-defendants are restrained from alienating the suit land as is subject matter of the agreement of sale. They are also restrained from changing the nature of the suit land, in any manner, during the pendency of the suit.

However, nothing stated herein afore will affect the outcome of the suit, which would be adjudicated upon, naturally, by the learned court below wholly on the basis of the evidence led by either side.

The learned court of the Civil Judge is also directed to ensure that the suit is decided expeditiously, not later than 9 months from today, it having remained pending for more than 4 years.

03.07.2018
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking : Yes
Whether reportable: Yes