

106 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 7454 of 2018 (O&M)
DECIDED ON: DECEMBER 17, 2018

AJAY KAUSHAL & ORS

.....PETITIONERS

VERSUS

BALJINDER GILL & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Hardeep Singh, Advocate
for the petitioners.

AVNEESH JHINGAN, J (ORAL)

Aggrieved of the order dated 23.07.2018 passed by learned Additional District Judge, Patiala (hereinafter referred to as 'Appellate Court') allowing the appeal of the respondents/defendants and setting aside the interim injunction granted by the Additional Civil Judge (Sr. Division), Patiala (hereinafter referred to as 'trial Court'), the present civil revision petition has been filed.

The facts in brief are that an agreement to sell dated 26.05.2012 was entered between the petitioners/plaintiffs (hereinafter referred to as 'petitioners') and respondents/defendants (hereinafter referred to as 'respondents'). It was agreed that the land situated at Hira Bagh, Patiala bearing Khewat/Khatauni No. 4202/7902, Khasra No. 2585/1256 Min (1-0) i.e. 1 Bigha i.e. 1000 Sq. Yards. Khewat/Khatauni No. 4202/7902, Khasra No. 2585/1256

(1-0) i.e. 1000 Sq. Yards total 2-0 Bighas i.e. 2000 Sq. Yards would be sold at a price of ₹9000/- per sq. yard. The agreement was entered in the presence of witnesses and earnest money of ₹45,00,000/- was paid by the petitioners to the respondents. The sale deed was to be executed on or before 07.09.2012 but the same was not executed by the date fixed, as there was a dispute between the parties. The petitioners filed a suit for recovery of ₹46,68,500/-. Alongwith the suit, an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure 1908 (for short 'CPC') for granting interim injunction restraining the respondents from alienating the land in dispute was also filed. The said application was allowed by learned trial Court vide order dated 01.11.2016.

Aggrieved of the said order, the respondents filed an appeal before Appellate Court. The learned Appellate Court vide impugned order dated 23.07.2018 allowed the appeal and set aside the interim injunction granted by the learned trial Court. Aggrieved of the said order the present civil revision petition has been filed.

Learned counsel for the petitioners contends that the sale could not be executed as the respondents were not the owners in possession of the land in dispute at the time of execution and they were not even interested to execute the sale deed. He argues that the trial Court has rightly restrained the alienation of the suit property.

The contention raised by learned counsel for the petitioners lacks merit.

From perusal of the suit, it is evident that the only relief sought in the suit is regarding recovery of an amount of ₹46,68,500/- i.e. ₹45,00,000/-

earnest money alongwith interest i.e. ₹1,68,500/-. No prayer has been made for specific performance. Learned Appellate Court had noted the contention of learned counsel for the respondents that the respondents were still ready to execute the sale deed in favour of the petitioners.

The question as to what was the reason for not getting the sale deed executed is not required to be gone into at this stage. Since, there is no prayer for specific performance it would not be appropriate to restrain the alienation of the property in dispute. Learned counsel for the petitioners has not been able to substantiate any irreparable loss occurring to the petitioners in case an interim injunction under Order XXXIX rules 1 and 2 CPC is not granted.

The suit is plain and simple for recovery of earnest money, if decreed it can be executed at that stage. The petitioners are to be compensated in monetary terms only even in case of their success in the suit. The readiness and willingness shown by the respondents to execute the sale deed and non-acceptance of offer by the petitioners only point towards the fact that only dispute is with regard to recovery of money.

No case is made out for granting interim injunction and no interference is called for in the order of Appellate Court. However, it is clarified that anything stated above in the order shall not affect the merits of the case.

The civil revision petition is dismissed.

DECEMBER 17, 2018
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned ***Yes/No***
Whether reportable ***Yes/No***