

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

Civil Revision No.8704 of 2016.
Decided on:-March 15, 2018.

Sanjay Kumar.

.....Petitioner.

Versus

Smt. Babita and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Jai Vir Yadav, Advocate
for the petitioner.

Mr. Munish Gupta, Advocate
for respondents No.3 to 6.

HARI PAL VERMA, J. (Oral)

CM-5201-CII-2018

Prayer in this application filed under Section 151 CPC is for placing on record the affidavits of respondents No.3 to 6 as Annexures R-3/1 to R-3/4.

The affidavits of respondents No.3 to 6 as Annexures R-3/1 to R-3/4 are taken on record subject to all just exceptions.

CM stands disposed of.

CR No.8704 of 2016

The petitioner has filed the present revision petition under Article 227 of the Constitution of India impugning the order dated 01.11.2016

(Annexure P-5) passed by learned Additional District Judge, Narnaul, whereby the appeal filed by the petitioner against the order dated 15.09.2016 (Annexure P-4) passed by learned Additional Civil Judge (Senior Division), Mahendergarh, was dismissed and the order of the civil Court was affirmed.

Briefly stated, the petitioner has filed a suit for specific performance of an agreement to sell dated 05.03.2013 as executed by respondent-defendant No.1 in favour of the petitioner-plaintiff for the property as detailed in the plaint.

Apart from the prayer of specific performance of the agreement to sell, the petitioner has also assailed the sale deed dated 19.12.2013 executed by defendants No.1 and 2 in favour of defendants No.3 and 5 and the transfer deed dated 25.03.2015 executed by defendant No.3 in favour of defendant No.4 as well as transfer deed dated 25.03.2015 executed by defendant No.5 in favour of defendant No.6.

Along with the suit, the petitioner-plaintiff has filed an application under Order XXXIX Rules 1 and 2 read with Section 151 CPC to restrain the defendants No.4 and 6 from further alienating the suit property in any manner to any other person and also to create charge of any kind thereon and for demolition of the aforesaid property or its part or from raising any kind of construction thereon.

Vide impugned order dated 15.09.2016, learned civil Court has disposed of the application under Order XXXIX Rules 1 and 2 read with Section 151 CPC with a direction to defendants No.4 and 6 to mention the factum of pendency of the civil suit in the sale deed in case they further intend

to alienate and also directed to supply the particulars of alienee in the event of further alienation to the Court.

Not satisfied with the aforesaid order dated 15.09.2016 passed by learned civil Court, the petitioner-plaintiff had filed a civil miscellaneous appeal under Order XLIII Rule 1 CPC, but the same was dismissed by learned Additional District Judge, Narnaul vide impugned order dated 01.11.2016 on the ground that the petitioner-plaintiff has failed to show any extraordinary circumstances to interfere the order passed by the trial Court.

Still aggrieved, the petitioner-plaintiff has filed the present civil revision petition.

Learned counsel for the petitioner has argued that under the garb of aforesaid orders passed by the Courts below, the respondent-defendants are raising construction despite the fact that at the time when the agreement to sell was executed between the petitioner and defendant No.1, there was only a wall over the site in dispute and now, the respondents have raised construction strictly in violation of the order passed by learned lower appellate Court, wherein during pendency of the appeal, the respondent-defendants were restrained from raising construction. Therefore, against the violation of the order passed by the lower appellate Court, the petitioner has filed a contempt petition under Order XXXIX Rule 2-A CPC, which is pending adjudication.

He has further argued that even after passing of the order dated 06.03.2017 by this Court, the respondent-defendants continued to raise construction. Moreover, in case the respondent-defendants are allowed to

raise construction, it would further create multiplicity of proceedings and the defendants may claim equity despite the fact that the petitioner has a good prima-facie case in his favour. The petitioner is on the verge of completion of his evidence as only two witnesses are required to be examined.

He has further contended that interestingly, the subsequent purchaser i.e. respondents No.3 to 6 are in close relations with defendants No.1 and 2 and, therefore, the very execution of the sale/transfer deeds is nothing but to deprive the petitioner from his legal right.

On the other hand, learned counsel for respondents No.3 to 6 has argued that the respondent-defendants undertake to finish the construction of the property, which is already constructed, however, with a further undertaking that they would not claim any equity and in the event of suit having been decreed in favour of the petitioner-plaintiff, they will not claim any compensation whatsoever and they would not remove any fixtures which are attached to the building.

I have heard learned counsel for the parties.

Considering the fact that the suit was filed on 14.09.2015 and the petitioner-plaintiff has adduced his whole evidence except two witnesses and the evidence of respondent-defendants is yet to start, the trial Court is directed to conclude the trial preferably within a period of six months from today for which the petitioner-plaintiff shall be granted two more effective opportunities to conclude his evidence within outer period of two months from today, but at the same time, the respondent-defendants shall also conclude their evidence within four months thereafter. In case the respondent-

defendants intend to finish construction, that they would be doing at their own risk and responsibility for which neither they shall claim any equity nor the trial Court will grant any weightage for such finishing, if any, which would be at the risk and cost of the defendants.

With the aforesaid observations, the present civil revision petition stands disposed of.

March 15, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No