

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 37 of 2017

1. Ratan Jain, S/o - Late Shri Shivraj Jain, Aged about - 45 years, R/o - Indira Nagar, Rajnandgaon, District - Rajnandgaon, (C.G.)
 2. Damodar Bhutada, S/o - Shri Sitaram Bhutada, Aged about - 44 Years, R/o -Ramadhin Marg, Rajnandgaon, Tahsil and District- Rajnandgaon (C.G.)
- Appellants**

Versus

1. Ashish Patel, S/o - Shri Ashok Patel, Aged about - 37 Years, R/o- Kailash Nagar, Ward No.27, Rajnandgaon, District – Rajnandgaon (C.G.)
 2. Smt. Parul Patel, W/o - Shri Ashish Patel, Aged about - 34 Years, R/o - Kailash Nagar, Ward No. 27, Rajnandgaon, District- Rajnandgaon (C.G.)
 3. Smt. Sharanjeet Kaur, W/o - Shri Balvinder Singh Bhatiya, R/o- G.E. Road, Near M.P. Petrol Pump, Tahsil and District- Rajnandgaon (C.G.)
- Respondents**

For Appellants	: Shri Rajat Agrawal, Advocate.
For Respondents	: Shri Rakesh Thakur, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

09/07/2019

1. This miscellaneous appeal is preferred under Order 43 Rule 1 of the Code of Civil Procedure, 1908 against the order dated 2nd March, 2017 passed by District Judge, Rajnandgaon (C.G.) in Civil Suit No. 50-A/2015 wherein the said Court dismissed the application filed under Order 39 Rule 1 and 2 of C.P.C. (I.A. No. 01/2017) for granting interim injunction against the respondents.
2. The property in question is situated at State Bank Colony, Ward No. 27 at Khasra No. 297/121/Ka, 297/123, 297 and 124 area 24.7 decimal or 10,700 Sq. ft. The appellants entered into an agreement to purchase the aforesaid land from respondents No. 1 and 2 on 5th December, 2014 and rate of per sq. ft land is fixed as Rs. 541/-. As per the appellants, Rs. 25 lakhs was paid to respondents No. 1 and 2 as earnest money and remaining

money was to be paid at the time of execution of sale-deed within six months from the date of agreement. It is alleged that on behalf of the appellants that paper publication regarding this agreement was done on 30th March, 2015 and on some subsequent dates. On 10th August, 2015, the land was sold to respondent No. 3 by respondents No. 1 and 2. As per written statement filed by respondent No. 3, the land is purchased for cash consideration of Rs. 74,59,000/- which was paid by four cheques.

3. Learned counsel for the appellants submits that respondents No. 1 & 2 were under obligation to execute sale-deed in his favour, but that is not done, therefore, an interim injunction should be granted in his favour.
4. On the other hand, learned counsel for the respondents submits that respondent No. 3 is in possession of the land after execution of sale-deed, therefore, no injunction can be passed against respondents and case of the appellants before the trial Court shall be decided on merit.
5. The first question for consideration before this Court is whether any right is conferred on any appellant on the basis of agreement to sell dated 5th December, 2014. From averment of agreement, it appears that the parties entered into agreement to sell the land in question on 5th December, 2014 and period for execution of sale-deed was six months from the date of entering into agreement. The sale-deed is not executed that is why suit is filed before the trial Court.

6. Admittedly, the land is sold to respondent No. 3 by respondent No. 1 and 2 on 10th August, 2015, therefore, respondent No. 3 is owner of the property after sale-deed and admittedly she is in possession of the land in question. After execution of sale-deed in favour of respondent No. 3, the title is passed to her as per provisions of Sections 54 & 55 of the Transfer of Property Act, 1882. The appellant had agreement with respondent No. 1 and 2 for which he has filed the suit and the suit will be decided on merit, but the point is the appellant had no agreement with respondent No. 3 who is now in possession of land after execution of sale-deed, therefore, respondent No. 3 is owner of the land on the date of filing of the suit and appellant is having no right because no sale-deed is executed in his favour, therefore, the trial Court opined that prima facie case in favour of appellants is not established. As the appellants are not in possession of the land in question, balance of convenience or question of irreparable injury is not in their favour.
7. The appellants may get relief after decision of the trial Court and before that no interlocutory order can be passed in his favour. It is not a case where order of the trial Court requires any interference of this Court.
8. Accordingly, this appeal is liable to be and is hereby dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge