

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

CR-1971-2019

Date of decision:-10.7.2019

Mrs. Murti Devi

...Petitioner

Versus

Sher Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Aman Pal, Advocate
for the petitioner.

Mr.G.S. Sandhu, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Smt.Murti Devi wife of Sh.Roshan Lal, aged about 66 years, resident of Purani Anaj Mandi, Assandh, Tehsil Assandh, District Karnal had brought a suit for declaration and permanent injunction against defendant Sher Singh son of Sh.Gurmeet Singh, resident of village Mardan Khera, Jind Road, Assandh, District Karnal, *inter alia* contending that she is owner in possession of land measuring 4 kanals – 12 marlas situated at Assandh; that in the year 2015, the defendant offered the plaintiff to get a gas connection issued in the name of her son after completing necessary formalities by executing certain documents and on that pretext, the defendant took the plaintiff to Tehsil Office, Assandh and got executed certain documents and fraudulently got transferred the suit property in his

name vide sale deed bearing No.3378/1 dated 21.1.2015 registered in the office of Sub Registrar, Assandh; that mutation No.22062 was also entered and sanctioned in the name of defendant; that on the basis of said sale deed and mutation, the defendant threatened to dispossess the plaintiff from the suit property illegally and forcibly, not listening to the repeated requests of the plaintiff. Feeling aggrieved, the plaintiff knocked at the door of this Court by filing the suit in question. Along with the suit, she had filed an application for grant of ad-interim injunction.

On getting notice, the defendant appeared and filed written statement contesting the suit submitting that he is in actual physical possession of the suit land, so the question of taking forcible possession of the same from the plaintiff does not arise; that Babu Ram has been looking after the land on behalf of defendant since 2015 and executing an agreement every year. The defendant came up with a version that plaintiff has executed a legal and valid sale deed in his favour delivering possession of the suit land to him. He denied the entire story as set up by the plaintiff to the effect that defendant had obtained the signature of plaintiff on the sale deed by making misrepresentation under the pretext of getting issued a gas connection in favour of son of the plaintiff. According to him, the sale deed is a legal and valid document executed by the plaintiff in favour of the defendant for consideration. He craved for dismissal of the suit. The defendant contested the application for grant of ad interim injunction praying for its dismissal.

After hearing arguments, the learned trial Court vide a detailed order dated 30.11.2018 dismissed the application for ad interim

injunction.

Feeling aggrieved the plaintiff had approached the Court of District Judge, Karnal by way of filing an appeal, which was assigned to Additional District Judge, Karnal, who vide detailed order dated 13.3.2019 upheld the order passed by the trial Court and dismissed the appeal.

Still feeling aggrieved, the plaintiff has approached this Court by way of filing the instant revision petition, notice of which was given to the defendant/respondent, who has appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

Ad interim injunction dealt with by Order 39 Rules 1 & 2 CPC is a discretionary equitable relief, which is to be granted by the Court considering all facts and circumstances including the conduct of the parties and no person can claim this relief as a matter of right. Three necessary ingredients, which are required to be taken into consideration in such type of cases, while determining the entitlement of a plaintiff for grant of ad interim injunction are, as to whether the plaintiff has got a good prima facie case in his favour; whether balance of convenience lies in his favour and whether the plaintiff would suffer irreparable loss or injury in case of denial of ad interim injunction. All these ingredients must be there conjunctively and if one of them is missing, then that seriously affects the case of plaintiff for grant of ad interim injunction. At the same time for making out a case for grant of ad interim injunction, a person approaching the Court must come to the Court with clean hands,

disclosing all the material facts and if such person is found to conceal any material fact and make misrepresentation that would result in denial of ad interim injunction. Furthermore, if a Court below exercise the discretion of grant or refusal of ad interim injunction in a judicious manner, then such order is not to be lightly interfered with. The revisional jurisdiction of this Court is quite limited. This Court is to intervene only if the orders passed by the Courts below are perverse, arbitrary or in gross violation of settled legal principles or in contravention of the legal provisions.

In this case the orders passed by the Courts below dismissing the application for grant of ad interim injunction to the plaintiff are not found to suffer from any illegality or infirmity, much less apparent on the face of such orders, which might have called for interference by this Court while exercising revisional jurisdiction. The case of the plaintiff is that the sale deed set up by the defendant purportedly executed by her, is result of fraud and misrepresentation and is without consideration, therefore not binding upon her, whereas the sale deed is defended vehemently by defendant Sher Singh stating that it is a legal and valid document from which the plaintiff is trying to wriggle out for extraneous reasons. The sale deed is a registered document, to which presumption of due execution is attached. The sale deed bears photograph of the plaintiff/vendor as well as attesting witnesses and purchaser. Sub Registrar, a responsible officer and a public servant acting in discharge of his official duties would not have registered the sale deed unless he was satisfied that it was being executed by the vendor out of free will and without any pressure. A perusal of the sale deed goes to show that it bears endorsement of Sub

Registrar to the effect that the sale deed had been read over to both the parties and they understood the contents accepting those to be correct. Though no amount of consideration money is shown to have changed hands before the Sub Registrar but that by itself is not a ground to discard the sale deed since as per recital of the sale deed, the entire consideration amount had been paid to the vendor earlier at home. Even otherwise, as the things stand, the sale deed in question is still in existence and has not been set aside. As observed earlier, the sale deed is a document of title. As per recital in the sale deed the possession of the sold land had been delivered by the seller to the purchaser at the spot, as such, the plaintiff claiming possession on the basis of electricity bills, photographs and any other document does not make any sense. If it is taken that the plaintiff had lodged an FIR against the purchaser for having procured the sale deed by fraud and misrepresentation, the registration of FIR itself does not help the case of the plaintiff much. However, if the purchaser after being challaned and tried is ultimately convicted by the Court of competent jurisdiction that may help the plaintiff in proving her case in the civil suit. Therefore, at this stage, it cannot be said that she has got a good prima facie case. It being specifically mentioned in the recital of sale deed that the possession of the sold land had been handed over by the seller to the purchaser at the spot, the possession is to be taken as that of the purchaser. Therefore, balance of convenience does not lie in favour of the plaintiff. As regards her suffering irreparable loss and injury in case of denial of ad interim injunction, it is also not so. If the plaintiff ultimately succeeds in the civil suit, the possession of the suit land can be got delivered to her.

Therefore, the plaintiff had failed to make out a case for grant of ad interim injunction. Both the Courts below were justified in refusing ad interim injunction to the plaintiff. The conduct of the plaintiff also does not come out to be fair. She claims that the sale deed in question was procured from her by defendant by playing fraud and making misrepresentation. However, as it comes out from the record, she had executed several other sale deeds, as such she is supposed to be acquainted with the process of execution of the sale deed and therein also no consideration amount had changed hands before Sub Registrar.

With regard to the authority referred to by learned counsel for the revisionist i.e. *Surjit Singh and another Versus Jagir Kaur and others, 2007(1) PLJ 216*, the same does not find application here due to different facts and circumstances and the context in which such observations had been made.

Finding no merit in the revision petition, the same stands dismissed.

10.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No