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

**Civil Revision No.2785 of 2019
Date of Decision: 01.05.2019**

Parag Agnihotri

.....Petitioner

Vs

Mohan Singh Dagar and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Balwinder Singh, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petitioner against the order dated 06.07.2018 passed by the Addl. Civil Judge (Sr. Divn.) Faridabad and order dated 13.12.2018 passed by the District Judge, Faridabad vide which the application under Order 39 Rules 1 and 2 CPC was dismissed concurrently.

[2]. Plaintiff filed a suit for declaration by way of cancellation of sale deed with consequential relief of permanent injunction and for possession and in alternative for recovery of Rs.69,69,000/-. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was filed.

[3]. The trial Court dismissed the application vide the

impugned order on the ground that all the three essential ingredients for grant of temporary injunction are missing in the present case.

[4]. It was observed by the trial Court that the plaintiff had challenged the sale deed dated 30.08.2016 and consequent mutation sanctioned in favour of the defendant on the ground of fraud. Plaintiff claimed himself to be mentally retarded and the defendant got executed the sale deed by taking benefit of his state of health.

[5]. Plaintiff has alleged fraud in execution of the sale deed. The civil cases are to be decided on the basis of preponderance of probability and the plea of fraud has to be proved like a trial of criminal case. Both the parties would get opportunity to lead their evidence. The sale deed was executed on 30.08.2016 and the same was assailed on 04.01.2018. Even if the sale deed was executed without consideration, the remedy available to the petitioner is to seek recovery of amount, rather to seek cancellation of sale deed. The cancellation of sale deed on the basis of fraud requires leading of evidence. Therefore, when the case of the plaintiff was tested at the threshold of three golden principles for grant of temporary injunction, the same was found to be lacking on material particulars and the case did not fall within the ambit of existence of *prima facie* case, balance of

convenience and causing irreparable loss to the plaintiff in the event of not granting temporary injunction.

[6]. Triable issues are involved in the present case. In the event of alienation of the property during pendency of the trial, the transaction would be hit by doctrine of *lis pendens*. By virtue of sale deed, the defendants have become owner of the property. True owner cannot be restrained by means of temporary injunction. If the sale deed was without any consideration, different course is available to the plaintiff to seek redressal and if the sale deed is challenged on the basis of fraud, then fraud has to be pleaded and proved during the trial.

[7]. Since triable issues are involved, therefore, dismissal of the application under Order 39 Rules 1 and 2 CPC by the Courts below cannot be faulted with. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

May 01, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No