

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

CR-1438-2021 (O&M)

Date of decision: 03.08.2021

Shankar Lal

...Petitioner

Versus

Sunil Kumar and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Kunal Mulwani, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The plaintiff-petitioner assails the correctness of the concurrent orders passed by both the courts below while dismissing the application under Order 39 Rule 1 and 2 CPC for grant of injunction to restrain defendant no.2 from constructing and alienating the suit property.

Some facts are required to be noticed. The plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 16.06.2020, allegedly executed by defendant no.1 in his favour with respect to two constructed shops located in Village Pana Lohdi, Tehsil Siwani, District Bhiwani. The plaintiff claims that defendant no.1 on receipt of Rs.12,50,000/- as earnest money, out of the total sale consideration of Rs.25,01,000/- executed a agreement to sell. It was agreed between the parties that the agreement would be executed and registered on 09.09.2020. The petitioner-plaintiff has prima facie failed

to show that he was prepared to honour the agreement to sell on 09.09.2020. Defendant no.1 sold the property in favour of defendant no.2 vide a registered sale deed dated 27.11.2020. The plaintiff alleges that he had sent a notice to defendant no.1 on 04.12.2020. In the written statement, defendant no.1 admitted the fact that there was a discussion regarding the execution of an agreement to sell and he had received Rs.50,000/- as token money. However, the plaintiff did not come forward to execute the agreement to sell as promised. Defendant no.1 further denied the receipt of Rs.12,00,000/- as earnest money, as alleged by the plaintiff. Both the courts, on perusal of the material available on record, have found that in fact, two copies of the agreement to sell have been brought on record. One is signed by defendant no.1 and others whereas the other is without signatures of the plaintiff and that of the witnesses. Still further, both the courts have held that rule of lis pendens applies and therefore, at this stage, it would not be appropriate to restrain defendant no.2 from raising any construction.

The learned counsel representing the petitioner while relying upon '**M/s Julien Educational Trust vs. Sourendra Kumar Roy and others**' (2010) 1 SCC 379 contends that in a suit for specific performance of the agreement to sell, the court should have granted injunction. He relies upon the observations made in para 24 and 25, which are extracted as under:-

“**24.** We are satisfied from the materials on record that a prima facie case has been made out by the appellant Trust as to the agreement for sale, which

has to go to trial. Whether there was a concluded contract or not between the appellant Trust and Respondents 1 to 8 is a matter of evidence and can only be gone into during the trial of the suit. This brings us to the all important question as to whether the balance of convenience and inconvenience lay in favour of the grant of an interim order of injunction in favour of the appellant Trust and as to whether the appellant Trust would suffer irreparable loss and injury, if no such interim order was passed.

25. Although, it has been submitted by Mr Nariman as well as Mr Bandopadhyaya that loss, if any, to the appellant Trust could be compensated in terms of money, the said submission does not appear to hold good in the instant case. Equally important is the question of balance of convenience and inconvenience since the principal object of the appellant Trust in wanting to acquire the suit property was to extend its school unit at Kolkata. If the suit property is allowed to be commercially exploited by raising multi-storeyed structures thereupon, the entire object of the suit filed by the appellant Trust will be rendered meaningless and the purpose for which the suit had been filed would be completely defeated.”

It is apparent that the Hon'ble Supreme Court, in the facts of

the case, held that the balance of convenience is in favour of the plaintiff. However, in the present case, both the courts have found that the plaintiff has failed to make out a prima facie case. He has also failed to prove the balance of convenience in his favour. Further, no irreparable loss will be caused to him, if the injunction as prayed for, is not granted, which are the necessary ingredients in order to get an injunction.

In view thereof, no ground to interfere is made out.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

03.08.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE