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Ct-08

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FMAT 86 of 2022
with
I.A No. CAN 1 of 2022

Sri Ashok Kumar Gopalka
Vs.
Sri Anil Kumar & Ors.

Ms. Sudeshna Basu Thakur
... For the Appellant

The respondents are not represented nor any accommodation is prayed for on behalf of the respondents. On the earlier occasion, on the prayer of the respondents the matter was adjourned.

Learned counsel appearing for the appellant submits that the post dated cheques mentioned in the memo of consideration were not presented on the request to the respondent nos. 1 & 2 and those cheques were subsequently substituted on 1st November, 2021 by issuing two cheques agreegating to Rs.24,30,000/- being the balance consideration amount payable towards sale of properties. The respondent nos. 1 & 2 issued two separate cheques of Rs.12,15,000/- each towards balance consideration amount, but the said two cheques were dishonoured on presentation due to insufficient fund.

Learned counsel for the appellant submits that a fraud has been practised by inducing the appellant to execute the registered deed of sale on a belief that the post dated cheques would be honoured on presentation and they have been further induced in November, 2021 to accept cheques when Mr. Anil Kumar issued a cheque of Rs.12,15,000/- dated November 01, 2021 and Md. Ali Nawaz issued another cheque of

Rs.12,15,000/- on 11th November, 2021.

In view of the fact that said two cheques were dishonoured on presentation, it is clear that the consideration money has not been paid, although sale deed was registered.

Learned counsel for the appellant submits that out of 87 decimal of land 13 decimal of land has been sold to respondent nos. 3 to 9.

The respondents had the opportunity to appear and rebut the said statement and contend that no amount is due and payable towards consideration amount, but they have remained conspicuously absent in spite of service of notice and in spite of their earlier appearance.

In consideration of the above order, we feel that some protective order is required to be passed in favour of the appellant.

Under such circumstances, there shall be an order restraining the respondent nos. 1 & 2 from dealing with or alienating or encumbering any of the properties mentioned in the deed of sale, save and except the properties already sold to third parties.

In view of the submission that only 13 decimal of land has been sold, the order of injunction shall operate for the rest portion of the property till the disposal of the injunction application in the court below.

On such consideration, the appeal being FMAT 86 of 2022 is disposed of.

The Trial Court is directed to dispose of the injunction application on merits as expeditiously as possible.

CAN 1 of 2022 is accordingly disposed of.

(Ajoy Kumar Mukherjee,J.) **(Soumen Sen, J.)**