

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

**CIVIL REVISION No.2022 of 2022 (O&M)
RESERVED ON : 20.05.2022
DATE OF DECISION : 26.05.2022**

Phool Singh and AnotherPetitioners

versus

Amit Kumar and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep K. Sharma, Advocate for the petitioners

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ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed challenging the impugned orders dated 05.04.2022 and 08.03.2022 passed by the Courts below dismissing the application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) filed by the plaintiff-petitioners herein.

The brief facts relevant to the present *lis* are that the plaintiff-petitioners filed a suit for permanent injunction averring therein that they were the owners in possession of Residential Plot No.2 measuring 394 sq. yards comprised in Killa No.216//10/1, 11, 12, 20, 22

min, Mauja Garhi Bohar, Tehsil and District Rohtak. It was further averred that the plaintiff-petitioner No.1 had paid an amount of Rs.15 lakhs on 27.08.2013 and an amount of Rs.20 lakhs on 25.10.2013 to one Wazir Chand who had thereafter executed a written agreement to sell in their favour on 03.09.2015 for a total sale consideration of Rs.66,98,000/- which included Rs.35 lakhs as mentioned above. It was further averred that the said Wazir Chand handed over possession to the plaintiff-petitioners and the plaintiff-petitioners had constructed a boundary wall on the plot and had installed a gate and the same was in their possession since then. It was further averred that Wazir Chand did not execute the sale deed despite being requested numerous times and a suit for specific performance was also pending qua the same.

The suit was contested by the defendant-respondents who took the plea that the suit property was initially owned by Kitabo (defendant-respondent No.3) and Rajesh and Rakesh (defendant-respondent Nos.4 and 5) who had sold the suit property to Sumitra Devi (defendant-respondent No.2) vide a registered sale deed dated 24.07.2018 who further sold the same vide a registered sale deed dated 17.07.2019 in favour of defendant-respondent No.1.

The Trial Court dismissed the application filed by the plaintiff-petitioners under Order 39 Rules 1 and 2 CPC vide the impugned order dated 08.03.2022 holding therein that the plaintiff-petitioners were not able to make out a *prima facie* case in their favour and nor the balance of convenience was in their favour. Aggrieved by

the said order, an appeal was preferred by the plaintiff-petitioners which was also dismissed vide the impugned order dated 05.04.2022. Hence, the present revision petition.

The learned counsel for the plaintiff-petitioners states that in a suit for permanent injunction the plaintiff-petitioners were required to show that they were in possession of the suit property and their possession of the suit property was clearly discernible from the recital in the agreement to sell dated 03.09.2015 executed by Wazir Chand in their favour. It is further the contention of the learned counsel that the plaintiff-petitioners had purchased the suit property for a consideration of Rs.66,98,000/- and had hence become the owners in possession.

Heard.

In the present case the stand of the plaintiff-petitioners is that they had become owners in possession of the suit property on the basis of the agreement to sell dated 03.09.2015. Admittedly, a suit for specific performance of the said agreement to sell is already pending. The defendant-respondent No.1 has a registered sale deed dated 17.07.2019 in his favour vide which the suit property was sold by Sumitra Devi (defendant-respondent No.2) who had purchased the suit property vide a registered sale deed dated 24.07.2018 from Kitabo (defendant-respondent No.3), Rajesh and Rakesh (defendant-respondent No.4 and 5). The defendant-respondents have a registered sale deed in their favour whereas the document being sought to be relied upon by the plaintiff-petitioners is an agreement to sell. On a pointed query by this

Court as to how the possession of the plaintiff-petitioners was established from the documents produced by them the learned counsel for the plaintiff-petitioners submitted that the same was discernible from the recital in the agreement to sell dated 03.09.2015 wherein it was stated that the possession had been handed over to the plaintiff-petitioners.

Prima facie there is no sale deed in favour of Wazir Chand qua the suit property which has been produced on the record. On the contrary, there is a registered sale deed in favour of defendant-respondent No.1 who had purchased the suit property in question from Sumitra Devi (defendant-respondent No.2) who was the owner of the suit property on the basis of another registered sale deed dated 24.07.2018. Besides the recital in the alleged agreement to sell dated 03.09.2015, there is no documentary evidence on the record to show the possession of the plaintiff-petitioners. The agreement to sell dated 03.09.2015 is also an unregistered document whereunder possession was purportedly handed over to the plaintiff-petitioners. Such an unregistered document cannot be accepted being in contravention of the provisions of the Registration Act, 1908. In the absence of any document showing the possession of the plaintiff-petitioners, this Court does not find any illegality or infirmity in the orders passed by the Courts below. The plaintiff-petitioners have not been able to make out a *prima facie* case for grant of injunction in their favour and neither is the balance of convenience in their favour.

In view of the above, the present petition, being devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

26.05.2022
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<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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