

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.2672 of 2023 (O&M)

Date of Order:21.12.2023

Nirmla Devi

.Petitioner

Versus

Shaiffee Setia and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gursher Singh Bhandal, Advocate
for the petitioner.

Mr. Baljeet Beniwal, Advocate
for respondent no.1.

Mr. Sunny Tyagi, Advocate
for respondent no.5.

ANIL KSHETARPAL, J

1. Defendant no.4, assails the correctness of certain observations made in paragraph 22 (bold portion) of the order dated 31.01.2023, passed by the Additional District Judge, Panipat, which reads as under:-

“22. When the plaintiff had come to know regarding the intention of the defendant, the plaintiff should have initially brought a suit for specific performance. The delay on the part of the plaintiff also reflects upon his readiness and willingness to perform his part of contract. Defendant no.4 has claimed an agreement to sell in its favour which was prior in time to that in favour of the plaintiff. Registered document stands in favour of the defendant no.4 at this stage. The validity of the sale deed has been challenged by the plaintiff and the defendant no.4 shall be bound by the final decision of the Court. At this stage, no prima facie case is made out in favour of

the plaintiff. The application under Order 39 Rule 1 and 2 read with Section 151 of CPC has been rightly dismissed. However, in order to preserve the suit property during the pendency of the suit and to avoid multiplicity of litigation, it is expedient in interest of justice of all the parties that defendant no.4 shall not alienate the suit property during the pendency of the suit without prior permission of the Court. It is ordered so accordingly.”

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief are required to be noticed.

3. The plaintiff filed a suit for possession by way of specific performance of the agreement to sell. It is the case of the plaintiff that the defendants executed an agreement to sell in her favour on 27.07.2020. however, the defendants are not honouring the same. Along with the suit, an application under Order 39 Rule 1 & 2 CPC was also filed. The trial court dismissed that application by a detailed order, passed on 06.09.2022. The plaintiff filed appeal before the First Appellate Court. From paragraphs 1 to 21, the court held that the plaintiff has failed to make out a case for grant of temporary injunction. However, in the last part of paragraph 22 of the order, which has been extracted above, the court directed defendant no.4 not to alienate the property during the pendency of the suit without prior permission of the Court. It is this part of the order which is challenged before this Court.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

5. Before granting temporary injunction, the Court is required to apply three well known tests, namely, (i) prima-facie case; (ii) balance of

convenience and (iii) irreparable loss and injury which the party shall suffer if an injunction is not granted.

6. Unless, these three tests are established prima-facie, the court is not expected to grant an injunction. In fact, the First Appellate Court on the one hand, upheld the order passed by the trial court resulting in dismissal of the appeal filed by the plaintiff, however, the court strangely made observations which were not required.

7. The learned counsel representing the respondents submits that such observations would avoid multiplicity of the litigation.

8. This court has considered the submissions of the learned counsel representing the parties.

9. Section 52 of the Transfer of Property Act, 1882, provides for the applicability of Rule of lis-pendens during the pendency of the suit. In such circumstances, the rights of the parties are protected from further alienation of the suit property in any manner. All the alienations made during the pendency of the suit become subservient to the result of the litigation. In these circumstances, this Court is left with no choice but to set aside the following portion of the impugned order:-

“However, in order to preserve the suit property during the pendency of the suit and to avoid multiplicity of litigation, it is expedient in interest of justice of all the parties that defendant no.4 shall not alienate the suit property during the pendency of the suit without prior permission of the Court. It is ordered so accordingly.”

10. With these observations, the revision petition is allowed.

11. The Registrar (General) of this Court is requested to forward a copy of the order to the Presiding Judge who had passed the impugned

order.

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

December 21, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO