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

CR-3565-2023

Date of Decision:- 06.10.2023

AJIT SINGH

...Petitioner

Vs.

RANDHIR SINGH

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Saurabh Garg, Advocate for the petitioner.
Mr. Mahavir Singh Sharma, Advocate for the respondent.

AMARJOT BHATTI, J. (Oral)

1. The petitioner – Ajit Singh has filed civil revision petition under Article 227 of the Constitution of India against the impugned order dated 10.05.2023 (Annexure P-8) passed by learned Additional District Judge, Sonapat whereby the well reasoned order dated 05.01.2023, (Annexure P-6) passed by learned Civil Judge (Senior Division), Sonapat has been set aside.

2. The facts of the case are that Ajit Singh the present petitioner/plaintiff filed suit for declaration, mandatory injunction and permanent injunction under Sections 34, 37, 38 and 39 of the Specific Relief Act alleging that both the plaintiff and defendant are real brothers. The defendant is owner in possession of 44 Kanal – 19 Marla of land situated in the revenue estate of village Palra, Tehsil Rai, District Sonapat. On 22.02.2020, the defendant Randhir Singh executed agreement in favour of the plaintiff by purchasing stamp paper. The agreement was scribed from a typist by the defendant on his instructions in the presence of

witnesses and thereafter it was thumb marked by him along with the witnesses. The said agreement was a conditional agreement by which the defendant who had mortgaged 45 kanal of land belonging to the plaintiff with Mining and Geology Department, Haryana was to be redeemed by the defendant upto 22.08.2020 failing which the defendant was to transfer his land in favour of the plaintiff. The defendant failed to redeem his land. Thereafter, he served legal notice dated 29.07.2021 to him and ultimately filed the present suit. The copy of plaint is Annexure P-1.

3. The suit was contested by the defendant by filing written statement, Annexure P-2 admitting the ownership of his land but he denied the execution of agreement as stated in the plaint. It is alleged that the said document is false. There is recital in the alleged agreement that defendant shall redeem the land from the Department of Mining and Geology, Haryana till 22.08.2020. As per the jamabandi for the year 2014-15, there is entry of rapat No.102 dated 02.11.2014 according to which Ajit Singh had given his land measuring 45 kanal to Haryana Government by way of surety vide letter dated 09.10.2014. The defendant denied to have mortgaged the land of the plaintiff. The factual position is clear from the aforesaid rapat. Therefore, the defendant denied the claim of the plaintiff.

4. In this suit, Ajit Singh, the plaintiff had filed an application under Order 39 Rules 1 & 2 read with Section 151 CPC which was allowed vide order dated 05.01.2023, Annexure P-6, and the defendant was restrained from alienating the suit property till the decision of the suit. Feeling aggrieved of this order, appeal was preferred which was accepted vide order dated 10.05.2023, Annexure P-8, vide which the order passed by the trial Court was set aside and it was mentioned that in case the

defendant intends to alienate the suit property he is required to file application seeking permission to do so before the trial Court and he will also mention about the pendency of the suit in the deed of transfer. With this observation, the order passed by the trial Court was modified. Feeling aggrieved of this order, the present civil revision has been filed.

5. I have heard the arguments advanced by learned counsel for both the parties and have gone through the documents annexed with the civil revision. Both the learned counsels have argued as per the stand taken by them in the plaint as well as in the written statement thereto. The aforesaid facts clearly indicate that Ajit Singh petitioner and Randhir Singh respondent are real brothers. It is further not disputed that the land of Ajit Singh was mortgaged with Mining and Geology Department, Haryana by way of surety. There is one agreement according to which the respondent/defendant undertook to redeem the land of the plaintiff upto 22.08.2020 failing which the respondent/defendant was to transfer his own land in favour of the plaintiff. The execution of aforesaid agreement is denied by the respondent/defendant. Therefore, no definite finding can be given with regard to the existence of said agreement dated 20.02.2020 or its terms and conditions. It is matter of evidence, to be led by both the parties which can be appreciated at final adjudication of the case. However, it is further not disputed that subsequently the land was got released from Mining and Geology Department on the basis of OTS (one time settlement) amount to the tune of Rs.82,62,000/-. The amount was paid in the name of M/s Om Mineral. It is the case of appellant/plaintiff that his land was mortgaged, therefore, he made the payment whereas it is the case of respondent/defendant that the money was paid from the

account of M/s Om Minerals. Even this fact is to be determined after recording of evidence. Now at present the land of appellant/plaintiff is already redeemed and he has filed the suit on the basis of agreement claiming that the respondent/defendant violated the terms of agreement, therefore, he is required to transfer his land in favour of the appellant/plaintiff. It is rightly pointed out by learned Additional District Judge, Sonapat that it is simple suit for permanent injunction and the appellant/plaintiff has not filed any suit for specific performance of the said agreement. The matter in controversy can be decided only after recording of evidence of both the parties on merits. Under these circumstances, the subject matter in controversy is required to be preserved. In-case third party rights are created it will further lead to complication and multiplicity of litigation.

In view of these facts, in my opinion, the impugned judgment dated 10.05.2023 passed by learned Additional District Judge, Sonapat is not justified and the same is set aside and the order dated 05.01.2023 passed by Civil Judge (Senior Division.), Sonapat restraining the defendant from alienating the suit property during the pendency of suit is upheld.

The Civil Revision is accordingly accepted.

06.10.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No