

CR-7786 of 2023

2023:PHHC:165699

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

CR-7786 of 2023

Date of decision: 22.12.2023

Raghav

.....Petitioner

Versus

Tarun Malhotra and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Suresh Kumar Aneja, Advocate,
for the petitioner.

NAMIT KUMAR, J.

1. Instant revision petition has been preferred under Article 227 of the Constitution of India read with Section 115 CPC for setting aside order dated 20.04.2021 (Annexures P-6) passed by the Court of learned Civil Judge (Junior Division), Abohar, whereby application filed by respondent No.1/plaintiff under Order 39 Rules 1 and 2 CPC was allowed as well as the order dated 16.11.2023 (Annexure P-8) passed by the Court of learned District Judge, Fazilka, whereby appeal filed by appellant/defendant No.2 against the order dated 20.04.2021, has been dismissed.

2. Brief facts of the case, as pleaded in the petition, are that respondent No.1/plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 23.02.2018 vide which defendant agreed to sell immovable property i.e. land measuring 24 kanals comprised in Rect. No.148 Killa No.26/1 min eastern (16-0),

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Killa No.26/1(8-0) situated at village Kandwala Tehsil Abohar, District Fazilka i.e. share of land measuring 88 kanals 10 marlas comprised in Rect. No.148 Killa No.26/1 min (72-10) Killa No.26/1 (Eastern) (16-0) Khewat No.101 as per jamabandi for the year 2015-16 situated at village Kandwala Amarkot, Tehsil Abohar owned and possessed by defendants for total consideration of Rs.31,50,000/- out of which defendants had received Rs.5,00,000/- as earnest money from the plaintiff in cash and date of registration of sale deed was fixed for 23.10.2020 and with consequential relief of permanent injunction restraining the defendants from alienating land in question measuring 24 kanals in any manner in favour of anybody else by way of any more transfer contrary the agreement in question by way of sale, gift mortgage or another manner except the plaintiff. Along with the suit, respondent No.1/plaintiff filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC for grant of injunction restraining the defendants from alienating the suit land. Application was contested by the petitioner and other defendants. The said application was allowed by the Court of learned Civil Judge (Junior Division), Abohar, vide order dated 20.04.2021 restraining the defendants from alienating the suit property in any manner till the final disposal of the suit. Aggrieved against the order dated 20.04.2021, petitioner/defendant No.1 preferred an appeal, which has been dismissed by the Court of learned District Judge, Fazilka, vide order dated 16.11.2023.

3. Learned counsel for the petitioner contended that Both the Courts below have committed serious error by allowing the application

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of respondent No.1/plaintiff. He further contended that both the Courts below have failed to take into consideration the fact that respondent No.1/plaintiff is relative of Ashok Kumar and Sunil Kumar. He further contended that respondent No.1/plaintiff and respondent/defendant No.4-Ashok Kumar have played a fraud with Sunil Kumar and his LRs i.e. petitioner and proforma respondents No.2 and 3 as Ashok Kumar has not given even single penny to Sunil Kumar and his LRs. He further contended that due to accident father of the petitioner was not in a sound disposing mind and taking advantage of this condition of his father, petitioner and respondent No.4-Ashok Kumar have mis-used the power of attorney executed by father of the petitioner in favour of his brother i.e. respondent No.4 in the year 1984. Learned counsel contended that impugned order have been passed without application of judicious mind, therefore, same are liable to be set aside. He further contended that in case the impugned orders are not set aside, petitioner would suffer an irreparable injury.

4. I have heard learned counsel for the petitioner and perused the record.

5. It has come out from the record that Sunil Kumar (father of the petitioner) was the owner of land measuring 24 kanals and during his lifetime he appointed his real brother proforma respondent No.4-Ashok Kumar as his general attorney, who on 23.02.2018 agreed to sell the suit land measuring 24 kanals in favour of respondent No.1/plaintiff at the rate of Rs.10,50,000/- per acre i.e total sale consideration of Rs.31,50,000/- and 26.02.2020 was fixed the date for

execution and registration of sale deed. Respondent No.4-Ashok Kumar has admitted that being general attorney of Sunil Kumar he entered into an agreement to sell of the suit land in favour of the plaintiff and received an amount of Rs.5,00,000/- as earnest money, which was spent in the course of plantation belonging to deceased Sunil Kumar upon his instructions, however, sale deed could not be executed on the date fixed on account of death of Sunil Kumar on 22.08.2018. The validity of agreement to sell is the matter of trial. In view of averments made in the plaint and the admission made by respondent No.4 *prima facie* case and balance of convenience lies in favour of respondent No.1/plaintiff and the Courts below have rightly observed that if the application is not allowed he will suffer an irreparable loss.

6. The impugned orders passed by the Courts below are quite detailed and well-reasoned and do not suffer from any illegality or infirmity and are not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned orders by way of exercising the revisional jurisdiction.

7. Finding no merit in the revision petition, the same stands dismissed.

8. Any finding given or observation made or reasoning recorded by this Court in the present revision petition will not be considered as a conclusive and final result on the merits of the case, rather, the same is *prima facie* view only, to decide the plea of

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injunction and the learned Court below would take its final decision on any of the issue arising before it, during the pendency of the suit or at final stage, without getting impressed in any manner, with the present order.

22.12.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No