

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-359-2024 (O&M)
Date of Decision:-13.03.2024

MAM CHAND ... Petitioner

Versus

RAJESH KUMAR AND ANOTHER ... Respondents

:-

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Viney Saini, Advocate
for the petitioner.

RITU TAGORE, J. (Oral)

1. The petitioner has filed this revision to set aside the order dated 20.11.2023 (Annexure P-7), passed by learned Additional District Judge, Kurukshetra, which reversed the learned trial Court's order dated 03.05.2023 (Annexure P-5), granting interim injunction in favour of the petitioner/plaintiff.
2. Considering the limited scope of prayer in this petition, issuance of notice to respondents is waived.
3. Learned counsel for the petitioner submits that petitioner (plaintiff before the learned trial Court), filed a suit for specific performance of agreement to sell dated 22.05.2019 and possession, with averments that respondents (defendants before the trial Court) had agreed to sell the suit land measuring 26 marlas pertaining to rectangle No.14, Khasra No.16 and

25 of Khewat No.328//303 (detailed in the plaint) situated in village Barwa, Hadbast No.5, Tehsil Thanesar, Distt Kurukshetra entered in the name of respondent No.2 for a sum of Rs.10,40,000/- and received Rs.5,50,000/- as earnest money under the agreement from the petitioner and fixed the execution and registration of the sale deed dated 25.10.2019 upon payment of balance sale consideration from the petitioner. It is pleaded that respondents failed to honour the terms and conditions of the agreement to sell, which constrained the petitioner to file a suit for specific performance and possession of the suit land. The petitioner also filed an application under Order 39 Rule 1 and 2 read with Section 151 CPC (Annexure P-2), praying for grant of temporary injunction, restraining respondents from alienating, transferring, mortgaging or selling the suit property or dealing with it in any manner, until decision on the merits of the case.

4. Learned counsel further submits that respondent No.1 filed a response to the main suit as well as reply to the injunction application (Annexure P-3 and P-4), admitting the execution of agreement to sell but falsely pleaded to have entered into an agreement to sell some other land and denied ever agreeing to put the petitioner in possession of the suit land.

5. Addressing further, learned counsel for the petitioner urges that the learned Trial Court has rightly granted temporary injunction in favor of the petitioner vide order dated 03.05.2023 (Annexure P-5), restraining the respondents from alienating, transferring, mortgaging or selling the suit land till the final disposal of the suit. However, learned Appellate Court in wholly and unjust manner upset a well reasoned order of the learned trial Court. Learned counsel submits that if respondents are not enjoined from dealing

with the suit land, it would lead to a multiplicity of litigation and cause irreparable loss to the petitioner, who is seeking performance of agreement to sell and possession of the suit land (the subject matter of agreement to sell). Learned counsel urges that, in the circumstances, petitioner has a prima facie case and balance of convenience in his favour as well. A prayer is made to set aside the impugned order of learned Appellate Court and to restore the order of the learned Trial Court. In support of his pleas, learned counsel referred to the authorities *Harish Ishwarbhai Patel Vs. Jatin Ishwarbhai Patel and others 2022 AIR (Supreme Court) 5412* and *M/s. Julien Educational Trust Vs. Sourendra Kumar Roy and others 2010(1) SCC 379*.

6. I have heard learned counsel for the petitioner and have gone through the paper book with his valuable assistance.

7. It is a matter of record that the petitioner has filed a suit for specific performance of agreement to sell dated 22.05.2019 and possession of the suit land against the respondents (Annexure P-1). Along with the suit, the petitioner also filed an application for interim injunction under Order 39 Rule 1 and 2 CPC, praying to restrain the respondents from dealing with the suit land by way of alienation, transfer etc. to any other person except the petitioner, who is a prospective vendee of the suit land (Annexure P-2). The petitioner has primarily urged that if the suit land is dealt with, or sold, or mortgaged before a decision on merits of the respective averments of the parties to the suit, it would cause irreparable loss to him and a multiplicity of litigation. Given these facts, it is stated that petitioner has a *prima facie* case

in his favour, and application should be allowed by protecting his right in the suit land.

8. As evident from the written statement of respondent No.1 (Annexure P-3), he admitted to have entered into an agreement to sell with the petitioner on 22.05.2019 for a land measuring 1 Kanal 6 Marla out of total land measuring 69 Kanal 16 Marla of Khewat No.140 Khatoni No.188 situated at Village Barwa Tehsil Thanesar, District Kurukshtera. He also admitted to have executed a sale deed bearing No.5978 in favour of the mother of the petitioner. However, asserted that the petitioner failed to pay entire sale consideration, constraining him to file a civil suit bearing No.CS-1022 of 2020 for cancellation of the sale deed and mutation entered and sanction based on sale deed. According to the respondent No.1, petitioner's present suit is a counter blast to his aforementioned suit and he is still maintaining the possession of the land mentioned in the sale deed No.5978 dated 29.10.2019. Respondent No.1 also pleaded that he has already performed his part of contract by selling land measuring 26 Marlas in the name of mother of petitioner. However, denied that respondent No.2 ever entered into agreement to sell dated 22.05.2019 and also pleaded that respondent No.2 has no concern with the transaction entered into between him and plaintiff. The respondent No.1 also opposed the interim injunction application of petitioner under Order 39 Rule 1 and 2 on the same lines of the written statement.

9. Learned trial Court on the assessment of the rival pleadings of the parties concluded that if respondents were not restrained from selling/ mortgaging or dealing with the suit property, the plaintiff would suffer

irreparable loss. Additionally, it would result in multiple litigation until the rival claims of the parties are examined on their merits. The learned Trial Court relied on the observations made in **‘Hindustan Petroleum Corporation Limited vs. Sriman Narayan and another, AIR 2002 SC 2598,** noting that if plaintiff’s rights are at a risk of probable injury and cannot be compensated in terms of damages, same should be protected by issuing injunction. On the other hand, learned Appellate Court observed that a mere agreement to sell does not confer title upon the petitioner, a prospective vendee. Furthermore observed that petitioner’s rights are fully covered under the principle of *lis pendens* of Section 52 of Transfer of Property Act 1882. Learned appellate Court protected the petitioner’s right in the suit land by issuing a direction to the respondents to seek prior permission from the Court before dealing with the land or engaging in any proposed transactions, and also instructed to bring on record the subsequent purchaser/ buyer.

10. After considering the facts of the present case and the directions given by the learned Appellate Court, this Court is of the view that sufficient measures have been taken to safeguard the interest of the petitioner if any, in the suit land. Furthermore, it is rightly observed by the leaned Appellate Court that petitioner’s interest in the suit land, as claimed by him, are well protected by the principle of *lis pendens* as mandated by Section 52 of the Transfer of Property Act, 1882. This principle binds the prospective buyer or subsequent purchaser by the outcome of decree in the suit, thus has adequately secured the petitioner’s concerns regarding potential multiplicity of litigation, or wastage of the property or infringement of his rights in the suit property. The case law as relied by the counsel for the petitioner, in the given circumstances, fail to advance his cause in this case.

11. In view of the foregoing discussion, there seems no illegality in the jurisdiction exercised by the learned Appellate Court, warranting any interference by this Court. The present petition is dismissed, accordingly.
12. It is noted that observations made above should not be construed as an expression of opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.
13. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

13.03.2024
raman

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No