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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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Date of Decision: 06.02.2024.

Sushma Devi

...Petitioner.

Versus

M/s Shivnandan Realtors Pvt. Ltd. and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Shekhar Verma, Advocate
for the petitioner.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioner has challenged order dated 18.07.2023 (Annexure P-1) passed by learned trial Court, vide which application filed by the petitioner under Order 39 Rules 1 and 2 read with Section 151 of CPC was dismissed and further the petitioner has challenged order dated 15.11.2023 (Annexure P-2) passed by the First Appellate Court, vide which the appeal preferred by the petitioner against order dated 18.07.2023 has been dismissed.

2. The facts as per the case of the plaintiff are that the petitioner/ plaintiff is co-owner in possession in the suit property, as detailed in para No.1 of the plaint, to the extent of 1/18th share i.e. 3 Kanal 12 Marla land, situated within the revenue estate of village Nakhdola, Tehsil Manesar, District Gurugram, by virtue of sale deed No.1446 dated 11.02.2010. In the first week of February, 2011, respondent/ defendant No.2, who was a

property dealer, approached the petitioner/ plaintiff and told him that he had a builder who was interested to buy her land at the rate of Rs.10 crores per acre. The respondent/ defendant No.2 handed over two cheques to the petitioner/ plaintiff for Rs.26,34,723/- and Rs.79,04,166/- respectively, as earnest money, given to him by the said builder. Later on, the respondent/ defendant No. 2 told the applicant/ plaintiff that within a week the said builder would execute the agreement to sell to this effect and would execute the sale deed within 60 days from that day after paying the balance sale consideration. By accepting the said offer of respondent/ defendant No. 2 the plaintiff got encashed the said cheques. It was also agreed that in case the builder failed to execute the agreement to sell or sale deed within the prescribed period, then the petitioner/ plaintiff would have the right to forfeit the amount of said cheques. After one week the respondent/ defendant No. 2 told the petitioner/ plaintiff that the builder did not have sufficient funds for balance sale consideration and for this reason execution of agreement to sell or sale deed was not possible. He also asked the petitioner/plaintiff to forfeit the advance amount of said cheques and the matter was closed.

Then in the second week of May, 2023, some unknown persons tried to dump building material in the suit property i.e. the land of petitioner/ plaintiff. On asking, they disclosed that respondent/defendant No.4 had got the licence of the suit property and they would change the nature of the land by selling the same to the general public. As the petitioner/ plaintiff is still in actual physical peaceful possession of the suit property, so, the petitioner/plaintiff came to know that respondent/defendant

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No. 1 in collusion with respondent/defendant No.2 had executed a forged, false, frivolous sale deed No. 1966 dated 06.01.2011, in the office of Sub-Registrar Manesar, Gurugram, by producing a fake lady on behalf of petitioner/ plaintiff. The petitioner/ plaintiff never executed the said sale deed in favour of defendant No.1. After going through the said sale deed, the plaintiff also came to know that the cheques which were given by respondent/ defendant No.2 to petitioner/plaintiff in the year 2011, were mentioned as full and final consideration of the said sale deed against the land of petitioner/plaintiff. She also came to know that respondent/ defendant No. 1 had sold the said land to respondent/ defendant No.3 by way of sale deed No.3266 dated 16.03.2012 and sale deed No.140 dated 16.04.2012. The respondent/defendant No.4 under the collaboration agreement with respondent/ defendant No. 3 qua the suit land had got the licence no. 67 dated 30.03.2023 without the knowledge and consent of the plaintiff. It has been alleged that the afore said sale deeds have no binding effect upon the petitioner/ plaintiff and it was prayed that the respondents/ defendants be restrained from alienating or creating third party interest or changing the nature of suit land in any manner and prayed for allowing of the application.

3. The reply of application under Order 39 Rules 1 and 2 read with Section 151 CPC was filed by respondents/defendants No.1, 3 and 4 by alleging that the petitioner/plaintiff is neither owner nor in physical possession of the suit land and has no right title or interest of any kind in the suit property. She had voluntarily executed sale deed bearing vasika

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No.1966 dated 06.01.2011 and had herself got it registered after receiving the entire sale consideration amount of Rs.1,05,38,889/-. Even mutation bearing No.1564 was sanctioned on the basis of sale deed bearing vasika No.1966 dated 06.01.2011, in respect of suit property. The respondent/ defendant No.1 had executed the sale deed bearing No.3236 dated 16.03.2012 and sale deed bearing No.140 dated 16.04.212, in favour of respondent/ defendant No.3. In the Jamabandi for the year 2018-19, the respondent/defendant no.3 has been shown as co-owner in possession to the extent of 5/6th share pertaining to land bearing Rect. No.1 Killa No. 15(2-16), 16/1(6-16), 25/2(1-12), Rect. No.2, Killa No.19(0-15), 20(5-4), 21(8-0), 22(7-10), 23(2-6), 24(0-10), Rect. No.4 Killa No.1/1(6-9), 2/2(2-0), 3(7-16), 4/1(2-10), measuring 54 kanals 4 marlas, situated within the revenue estate of village Nakhdaula, Tehsil Manesar, Gurugram. The respondent/ defendant No. 3 had initiated partition proceedings titled as M/s Blanka Builders & Developers Pvt. Ltd. Vs. Ram Mehar & Ors. in respect of said land and other land total measuring 98 Kanals 11 Marlas on 07.09.2012. The petitioner/ plaintiff was also impleaded as respondent No. 8 in those partition proceedings and she was served through her father-in-law. Thereafter, munadi was also effected and then petitioner/ plaintiff was proceeded against ex parte. Order dated 22.08.2019 was passed and it was duly acted upon. As such, it cannot be said that the petitioner/ plaintiff was ignorant of execution of sale deed bearing vasika No. 1966 dated 06.01.2011 in favour of respondent/ defendant No. 1. The respondent/ defendant No. 1 has come to know that subsequent to collaboration

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agreement dated 10.03.2022 and registered on 11.03.2022 bearing No. 11995, another addendum agreement dated 10.03.2022 was executed between respondents/ defendant No. 3 & 4. The respondent/ defendant No. 3 had executed a sale deed bearing No. 2931 dated 05.06.2023 in favour of respondent/ defendant No. 4 in respect of aforesaid land measuring 45 kanals 2 marlas. So, the respondents/ defendants No. 3 & 4 have got licence No. 67 dated 30.03.2023 from Directorate, Town and Country Planning Haryana Chandigarh, qua the land measuring 45 kanals 2 marlas and other land measuring 66 kanals 13 marlas situated within the revenue estate of Village Nakhdaula, Tehsil Manesar, Gurugram.

4. Respondent No.2 also filed reply to the application under Order 39 Rules 1 and 2 CPC submitting that the plaintiff has filed the present suit by concocting a false story. The respondent/ defendant No. 2 has no concern with the alleged properties of petitioner/ plaintiff. The petitioner/ plaintiff and her husband have already received the full and final sale consideration of the suit property as per the then prevailing market value of the same and if any fraud had been committed by respondent/ defendant No. 2, then she would not have remained silent for considerable long period of approximately 12 years. The respondent/ defendant No. 2 has been dragged unnecessarily by petitioner/ plaintiff in the present suit.

5. After hearing the parties and going through the record, the trial Court had dismissed the application under Order 39 Rules 1 and 2 CPC filed by the petitioner/plaintiff vide order dated 18.07.2023. The appeal preferred against the same before the First Appellate Court was also dismissed vide judgment dated 15.11.2023. Hence the present revision petition was filed by

the petitioner before this Court.

6. Learned counsel for the petitioner has contended that from the facts and circumstances of the present case, no prima facie case is made out in favour of the plaintiff. He has further contended that the projection given by the respondents that the petitioner had been allegedly paid the sale consideration, is incorrect and if the complete sale consideration had been paid then there was no need to set up an imposter for execution of the sale deed. The amount of Rs.1,05,38,889/- was given by defendant No.2 as token amount without executing any agreement, which was later on forfeited by the plaintiff and the said amount was not against the sale consideration. He has argued that in the alleged partition proceedings the plaintiff was proceeded against exparte and the plaintiff acquired the knowledge of the alleged fraud in 2nd week of May 2023, when some unknown persons tried to dump the building material in the suit land. Both the Courts below have failed to appreciate the ingredients for grant of ad interim injunction and erroneously held that no prima facie case is made out in favour of the plaintiff. He has urged that the impugned order may be set aside and the respondents/ defendants be restrained from alienating or creating third party interest or from changing the nature of suit property.

7. I have heard learned counsel for the petitioner and have gone through the relevant record.

8. In the instant case, this fact is not disputed that the plaintiff was originally owner of the suit land to the extent of 3 kanals 12 marlas, by virtue of sale deed bearing vasika No.1446 dated 11.02.2010. Again this fact

is not disputed that defendant No.2 handed over her two cheques of Rs.26,34,723/- and Rs.79,04,166/- which were got encashed by the plaintiff. It has been alleged by the plaintiff that respondent/ defendant No.2 approached the plaintiff to sell the suit property to respondent/ defendant No.1 for Rs.10 crores per acre. The defendant No.2 had assured the plaintiff that within a week the said builder would execute the agreement to sell to that effect and would execute sale deed within 60 days from that day after paying the balance sale consideration. On failure of builder to execute agreement or sale deed within the prescribed period, the plaintiff would be entitled to forfeit the cheque amount. As neither any agreement to sell was executed nor any sale deed was executed, so the said amount was forfeited by the plaintiff. It has been alleged that the sale deed bearing vasika No.1966 dated 06.01.2023 is a result of fraud and concoction.

9. The sale deed bearing vasika No.1966 dated 06.01.2013 executed by the plaintiff in favour of defendant No.1 bears the signatures and thumb impressions of the plaintiff as well as her photo is annexed with the same and is a registered document. It is a matter of evidence that whether the photograph of Sushma Devi resembles the one on sale deed dated 06.01.2013 and it is also a matter of evidence that whether the sale deed bears signatures and thumb impressions of the plaintiff. Moreover, at this stage of case, prima facie presumption of truth and correctness is attached to registered document and rather an unbelievable story has been coined by the plaintiff. It is also pertinent to note that the huge amount of more than rupees one crore had been forfeited by the plaintiff. The plea of

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fraud that has been raised by the petitioner/ plaintiff requires evidence from both the sides, in order to ascertain that whether the sale deed bearing No.1966 dated 06.01.2011 was actually executed by the plaintiff or not. But strangely the plaintiff took more than 12 years to come to know the commission of alleged fraud by respondents/ defendants No.1 and 2. It is not believable that for all these years, she was not in the knowledge that she was no longer owner of the suit property by virtue of sale deed bearing No.1966 dated 06.01.2011. Again it is not believable that when the plaintiff was served in the partition proceedings, she was not aware of partition proceedings or execution of registered sale deed bearing vasika No.1966 dated 06.01.2011.

10. The plaintiff has also not challenged the sale deed and collaboration agreement executed in favour of defendant No.4 alongwith licence obtained by it. No material has been placed on record that the plaintiff is in possession of the suit land. Though the plaintiff has taken the plea of fraud but she cannot take any benefit of the same, when she had already received the aforesaid amount as total sale consideration from respondent/ defendant No.1 and sale qua the suit property had already been completed though it is under challenge. The registered sale deed in favour of respondents/ defendants No.3 and 4 cannot be ignored just because of plea of fraud taken by the plaintiff. Respondents No.3 and 4 prima facie appear to be bonafide purchasers of the suit land and they have nothing to do with the alleged fraud of defendants No.1 and 2 with the plaintiff.

11. Thus, there being no illegality or infirmity in the impugned

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order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

12. All pending applications, if any, also stand disposed of accordingly.

13. Nothing expressed hereinabove shall be construed as an opinion on the merit of the case.

(SUKHVINDER KAUR)
JUDGE

06.02.2024.
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No