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

CR-1228-2024 (O&M)

Date of Decision : 24.07.2024

Ranbir Singh

... Petitioner(s)

Versus

Ram Kumar & Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Satyam Arora, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. The present civil revision petition has been preferred under Article 227 of the Constitution of India challenging the order dated 28.07.2023 dismissing the application filed by the plaintiff-petitioner under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 as well as the order dated 30.11.2023 whereby the First Appellate Court has also dismissed the appeal.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for permanent injunction for restraining the defendant-respondents from interfering in his ownership on the basis of an agreement to sell dated 12.10.2020. It is the case set up in the plaint that the plaintiff-petitioner had purchased property measuring 4 kanals 15 marlas, fully described in the headnote of the plaint, vide agreement dated 12.10.2020 after paying earnest money of Rs.1,00,000/- out of the total sale consideration of Rs.7,00,000/- and that possession was also handed over. Alongwith the said suit, an application was filed for grant of interim injunction under Order 39 Rules 1 and 2 CPC. Reply was filed to the said

application. The Trial Court vide order dated 28.07.2023 dismissed the application filed by the plaintiff-petitioner. Aggrieved by the same, an appeal was preferred which was also dismissed by the First Appellate Court vide order dated 30.11.2023. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioner would contend that the plaintiff-petitioner is owner in possession of the suit property on the basis of the agreement to sell dated 12.10.2020. The learned counsel would further contend that his case is squarely covered under Section 48 of the Transfer of Property Act, 1882.

4. I have heard the learned counsel for the plaintiff-petitioner.

5. Hon'ble Supreme Court in the case of **Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana & Anr. [2011(4) RCR (Civil) 669]** has held as under :

“11. Section 54 of Transfer of Property Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam and Anr., (1977)3 SCC 247, observed :

A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. See Rambaran Prosad v. Ram Mohit Hazra, [1967]1 SCR 293. The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of

contract and annexed to the ownership of property, but not amounting to an interest or easement therein."

In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in Section 5 of Transfer of Property Act is used in the wider sense of conveying ownership....that only on execution of conveyance ownership passes from one party to another....."

In Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra, 2004(4) RCR (Civil) 303 : [2004(8) SCC 614] this Court held :

"Protection provided under Section 53A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

It is thus clear that a transfer of immoveable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immoveable property can be transferred.

12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of

Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53A of Transfer of Property Act). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. section 54 of Transfer of Property Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.”

6. In the present case, admittedly the suit of the plaintiff-petitioner is based solely on the agreement to sell dated 12.10.2020. There is no other document on which reliance has been placed by the learned counsel. The Supreme Court in the case of **Suraj Lamp and Industries Pvt. Ltd.** (supra) has clearly held that an agreement to sell is not a conveyance and it does not transfer ownership rights or confer any title. In view thereof, it cannot be said that any of the three ingredients for grant of temporary injunction are met with. There is no illegality or irregularity in the impugned orders.

7. In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

8. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

24.07.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO