

2024:PHHC:082295



S. No.122

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

**CR No.1811 of 2024 (O&M)
Date of Decision:03.07.2024**

Gurtej SinghPetitioner
Vs.
Kuldip Singh and othersRespondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Dharam Bir Bhargav, Advocate
for the petitioner.

Mr. Vineet Chaudhary, Advocate for
the caveator/respondents.

DEEPAK GUPTA, J. (Oral)

In a suit for specific performance filed by the plaintiff- Kuldeep Singh (now respondent No.1), an application under Order 39 Rules 1 and 2 read with Section 151 CPC was moved for seeking temporary injunction which was allowed by the trial Court on 12.12.2022, whereby defendants No.1 and 2 (petitioner and respondent No.2 herein) were restrained from alienating the suit property or creating any charge over the same till decision of the suit. Separate appeals filed by two defendants were dismissed by the Appellate Court vide impugned order dated 19.12.2023. These orders have been now assailed by one of the defendants before this Court by way of present petition.

According to plaintiff, defendants agreed to sell the suit land measuring 80 kanals vide an agreement dated 27.03.2017 after receiving earnest money of ₹50 lakhs. Target date for execution of the sale deed was agreed to be 30.05.2017. However, violating terms of the agreement,



defendants No.1 and 2 mortgaged the suit land in favour of defendant No.3 vide mortgage deed dated 01.12.2014 and now they intended to alienate the suit land to defeat the rights of the plaintiff.

The two contesting defendants in their separate written statements denied execution of the agreement. According to defendant No.1, he had borrowed an amount of ₹15 lakhs from one Gurvinder and ₹20 lakhs from the plaintiff and they had obtained his (defendant No.1's) signatures on blank papers and then prepared the forged agreement to sell in question. Defendant No.2 took the stand that he never executed any General Power of Attorney in favour of his brother – defendant No.1 so as to enter the agreement to sell. He further stated that he along with defendant No.1 had taken loan from the Bank which could not be repaid and that he had executed a Special Power of Attorney in favour of defendant No.1 only for the purpose of clearance of the bank loan. It was alleged that defendant No.1 had got prepared a false GPA with deception and that alleged agreement to sell was not binding on him.

After hearing both the sides, the trial Court allowed the application for temporary injunction and restrained defendants No.1 and 2 from alienating the suit land, although defendant No.3 – Bank was given liberty to recover the loan amount against mortgaged property as per law. Learned Appellate Court concurred with the order passed by the trial Court and dismissed the appeal.

It is contended by learned counsel that agreement to sell as pleaded by the plaintiff is a forged document; that plaintiff has already lodged FIR against the defendants and during investigation, an amount of ₹10 lakhs was paid by the



petitioner (defendant No.1) and his brother to the plaintiff and in the circumstances, alienation of the suit property should not have been stayed.

After hearing learned counsel for both the sides, this Court does not find merit in this petition. As rightly observed by the Appellate Court that defendants have not denied their signatures on the agreement to sell, although it is alleged that the same were taken by way of fraud. The plea of fraud is liable to be proved by the party taking the said plea, by way of cogent evidence just like in a criminal case and by merely taking plea in itself does not prove the contention. Further, the amount of ₹50 lakhs as earnest money was paid by way of three cheques. Defendant No.1 has admitted having received the amount of ₹20 lakhs and failed to explain that for what purpose, he had taken this amount of ₹20 lakhs. Learned Appellate Court has already observed that the contentions as raised by defendants No.1 and 2 need evidence to be led to support the same and at this stage, the claim of the plaintiff qua prima-facie case in his favour is quite believable and that he would suffer irreparable loss in case injunctory relief is not granted. It has also been rightly observed that granting or refusing temporary injunction rests on the sound exercise of discretion of the Courts and such exercise of discretion should not be lightly interfered with by the Appellate Court unless it is shown that such exercise of discretion is unreasonable or capricious. The Appellate or Revisional Court cannot substitute its view, in case two views are possible and the trial Court has adopted one view while exercising judicial discretion.



In view of the afore-said discussion, this Court does not find any merit in the present petition and so, the same is hereby dismissed. However, it is made clear that nothing expressed in this order should be taken as an expression of opinion on the merits of the case.

July 03, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No