IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6882-2023
Date of Decision: 10.01.2024

SHERO DEVI ...... PETITIONER

VS

HARKESH CHAND .... RESPONDENT

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present : Dr. Pankaj Nanhera, Advocate for the petitioner.

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GURBIR SINGH, J.

1. Challenge in this petition filed under Article 227 of the Constitution of India is to the order 21.08.2023 passed by ld. Additional District Judge, Yamuna Nagar at Jagadhari by which learned Court has dismissed the appeal, filed against the order dated 01.12.2022 passed by learned Civil Judge (Jr. Div) by which learned trial Court has dismissed the application of injunction filed under Order 39 Rule 1 and 2 read with Section 151 CPC with prayer to set aside both the orders.

2. The brief facts as culled out from the petition are that petitioner (hereinafter called as 'plaintiff') against respondent (hereinafter called as 'defendant') has filed a suit for declaration to the effect that she is joint owner and in joint possession of land measuring 3 kanals 8 marlas as described in the head note of the plaint and further for declaration that transfer deed No. 627 dated 20.09.2018 allegedly executed by plaintiff in favour of defendant and mutation No. 1568 sanctioned on that basis are illegal, null and void and thereafter relief for permanent injunction restraining the defendant from alienating the suit property in any manner and from interfering in the suit property. It is further submitted that in the

month of September 2018, the plaintiff was in dire need of money and due to fiduciary relationship with the defendant, the plaintiff had shared her needs. The defendant asked the plaintiff that she could mortgage her land measuring 3 kanals 8 marlas and he would provide her money. The plaintiff owed Rs.2,03,000/- from the defendant and defendant gave her Rs. 5,65,000/- after deducting Rs.2,03,000/- on 20.09.2018. The defendant took the plaintiff to Tehsil and took her signatures on some papers and got some photographs on the pretext that such procedure was mandatory for getting the mortgage deed registered. The plaintiff believed him being her brother but defendant got executed and registered alleged false and bogus transfer deed qua the suit land in his favour and committed fraud upon the plaintiff. On receipt of summons in the suit filed by the defendant, the plaintiff came to know about the alleged fraud committed with her. Along with the main suit, an application under Order 39 Rule 1 and 2 CPC was filed for temporary injunction restraining the defendant from interfering and alienating the suit land.

3. The defendant contested the suit on the ground that he is exclusive owner in possession of the suit property as per transfer deed dated 20.09.2018 and the plaintiff had purchased the land jointly in equal share in the District Yamuna Nagar in the year 2013. They were jointly irrigating the land. The defendant after incurring the expenses got installed the tube-well in the name of the plaintiff. The plaintiff transferred ½ share vide transfer deed No. 627 dated 20.09.2018 in favour of the defendant and defendant became the successive owner of the entire property. Defendant has also been continuously irrigating the same from the above mentioned tube-well. The plaintiff was already having the knowledge of transfer deed which was

signed by the plaintiff and her son Amit Verma. After execution of registered transfer deed dated 20.09.2018, the plaintiff and her son Amit Verma demanded sale consideration of the suit property and as per demand, Rs.7,65,000/- was paid to the plaintiff. The plaintiff executed receipt after receiving an amount of Rs.7,65,000/- from the defendant which was singed by the plaintiff, her son Amit Verma and Sheo Ram Lamberdar.

4. After hearing the arguments, the learned trial Court dismissed the application and the appeal against the said order was also dismissed.

5. The counsel for petitioner has submitted that the transfer deed is the result of fraud since it was executed between the blood relations, so, there was no question of receipt of any sale consideration. The respondent/defendant has also committed fraud upon the State by not paying the stamp duty. It is the specific stand of the petitioner that she signed the papers believing that same were mortgage papers. By taking advantage of the relationship between the parties, the defendant got executed the transfer deed by misrepresentation. In case suit property is alienated, then petitioner would suffer irreparable loss and injury. The petitioner only came to know on receipt of the summons, about the execution of transfer deed by way of fraud. So, she has good case for grant of temporary injunction.

6. I have heard the submissions of the learned counsel for the petitioner and gone through the file.

7. Prima facie, plaintiff has not denied the signatures and photographs on the transfer deed No. 627 dated 20.09.2018 and the said transfer deed is witnessed by Sheo Ram Lamberdar of the village as well as Amit Verma son of the plaintiff/petitioner. The transfer deed was duly

registered. A receipt of receiving an amount of Rs.7,65,000/- on the same day has been executed by the plaintiff which is also attested by her son. Prima facie, it cannot be said that plaintiff did not execute the transfer deed. Plaintiff is required to prove fraud by leading evidence, thereafter Court would be able to decide whether plaintiff is able to prove that transfer deed is a result of fraud or not. Since transfer deed is prima facie duly registered and is attested by son of the plaintiff, so presumption is that it was duly executed by the plaintiff. For grant of injunction, plaintiff is required to prove the prima facie case, irreparable loss and injury and balance of convenience. Prima facie, the plaintiff has executed the transfer deed and learned Appellate Court has also mentioned that in case of transfer of the property, recital would be mentioned in the said document of transfer about the pendency of the case with suit number, memo of parties and name of the Court. So, no irreparable loss would be caused to the plaintiff in case of alienation of suit property is made. Whosoever takes risk of buying the suit property, would not be able to take the plea of bonafide purchaser and sale would be hit by *lis-pendens*.

8. In view of above, I do not find any illegality and irregularity in the order passed by learned Court below. This revision petition is without merit and is dismissed accordingly.

(GURBIR SINGH)
JUDGE

10.01.2024
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No