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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 19.12.2025***+ **FAO 91/2025 and CM APPL. 20553/2025****AJAY KUMAR GOYAL****.....Appellant**

Through: Mr. Rakesh Tanwar, Ms. Sanjana
Gupta and Mr. Varun Arora,
Advocates.

versus

**SANJAY GOYAL NOW DECEASED
THROUGH LEGAL HEIR ANJU GOYAL**

.....Respondent

Through: Mr. Rohit Goel and Mr. Avdesh Rai,
Advocates.

CORAM:**HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA****JUDGMENT (ORAL)****CHANDRASEKHARAN SUDHA, J.**

1. This appeal under XLIII Rule 3 of the Code of Civil Procedure, 1908 (the CPC) has been filed by the plaintiff in Civ DJ 163/2023 on the file of learned District Judge-05 (West), Tis Hazari Courts, New Delhi, aggrieved by the order dated 03.03.2025, whereby his application under Order XXXIX Rule 1 of the CPC was dismissed.



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2. According to the appellant/plaintiff, he entered into an agreement to purchase dated 11.10.2021 (the sale agreement) with the father of the respondents/defendants for the purchase of the suit property and paid approximately 10% of the agreed sale consideration as advance, in cash, at the time of execution of the agreement. As the sale agreement did not materialize, the plaintiff filed the suit for specific performance of the agreement. An application under Order XXXIX Rule 1 of the CPC was moved by the appellant/plaintiff, apprehending creation of third-party interest in the suit property by the respondents/defendants.

3. The respondents/defendants entered appearance and contended, *inter alia*, that the sale agreement relied upon by the appellant/ plaintiff is forged and fabricated and that their father had never executed any such agreement.

4. The trial court, after hearing both sides, was not inclined to allow the prayer on the ground that the appellant/plaintiff was admittedly not in possession of the suit property. The relevant



portion of the impugned order reads thus:-

“Plaintiff is admittedly not in possession of the property in question since August, 2023. While there is available on record the registered sale deed of the property in dispute in favour of Sh. Sanjay Goel, all that the plaintiff has to show his prima facie case is an agreement to sell with respect to the same property in his favour (the authenticity of which is declined by the LRs of Sh. Sanjay Goel) Further, admittedly the plaintiff had only paid a nominal advance amount towards purchase of the disputed property when entering into the agreement to sell.

Thus at this stage, no prima facie case is made out in favour of the plaintiff and balance of convenience does not lie in favour of the plaintiff in the face of the registered sale deed available with the LRs of Sh. Sanjay Goel. The rights of the LRs of the registered owner of an immovable property cannot be lightly interfered with.

Thus no ground for grant of an interim injunction is made out. Application under Order 39 Rule 1 & 2 CPC is dismissed.”

(Emphasis supplied)

5. Aggrieved, the plaintiff has come up in the appeal.

6. It is submitted by the learned counsel for the appellant/plaintiff that the question as to whether the sale agreement is forged and fabricated can only be adjudicated after



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evidence is led by both sides. In such circumstances, creation of a third-party interest during the pendency of the suit would complicate the current state of affairs and defeat the purpose of the suit. Therefore, the trial court ought to have granted the injunction prayed for.

7. *Per contra*, it is strenuously and persuasively submitted by the learned counsel appearing for the respondents/defendants that no infirmity has been committed by the trial court calling for an interference by this Court. According to the learned counsel, the respondents/defendants have produced materials on record which would show that the sale agreement relied on by the appellant/plaintiff is forged and fabricated. It is also submitted that the father of the respondents/defendants was suffering from cancer and had undergone a surgery, and, therefore, it is highly impossible and improbable for him to have executed the sale agreement. It is also submitted that the respondents/defendants do not have any independent source of livelihood and hence, it is



necessary for them to rent out the suit property for their sustenance. In these circumstances, he submits that no relief be granted to the appellant/ plaintiff.

7.1. The learned counsel for the respondents also point out that no *prima facie* case, balance of convenience or irreparable injury would be caused if the injunction sought for is not granted.

8. Heard both sides.

9. Admittedly, the appellant/plaintiff is the paternal uncle of the respondents/defendants. The appellant/plaintiff relies on an agreement to purchase dated 11.10.2021, which, according to the respondents/defendants, is a forged and fabricated document. The question whether the sale agreement was, in fact, executed by the predecessor-in-interest or the respondents/defendants is a matter that needs to be adjudicated by the trial court after consideration of oral and documentary evidence.

10. The other aspect pointed out by the learned counsel for the respondents/defendants is that it was impossible and



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improbable for their predecessor-in-interest to have executed the sale agreement due to his illness and surgery. Again, these are matters that cannot be considered or decided without letting the parties adduce their evidence before the trial court.

11. The trial court dismissed the application mainly on the ground that the appellant/plaintiff is not in possession of the suit property and that there is a registered sale deed in favour of the predecessor-in-interest of the respondents/defendants. In the plaint, the plaintiff has never a case that he is in possession of the suit property. In a suit for specific performance, it is not necessary for the plaintiff to be in possession of the property. As far as the finding that the predecessor-in-interest of the defendants had a registered sale deed in his favour is also no ground to dismiss the application for injunction because it is only the owner or anyone on his behalf, who can enter into an agreement for sale. That being the position, till the rival contentions of the parties are decided, it is necessary that the subject matter of the suit be preserved and,



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therefore, the trial court ought to have granted the prayer to the limited extent of not creating any third-party interest in the property till the disposal of the suit.

12. In the result, the appeal is allowed to the aforesaid extent, and the parties are directed not to create any third-party interest in the suit property or act in any manner that would be prejudicial to the interest of the opposite side, till the disposal of the suit.

13. The appeal stands disposed of in the aforesaid terms.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

DECEMBER 19, 2025

kd/rs