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HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 89 of 2026

Mahesh Sharma S/o Shyamanand Sharma, Aged About 55 Years, R/o 9/82 Green Park Colony Bilaspur, Tahsil and District- Bilaspur (C.G.)

... Appellant

versus

1 - Atmaram Jaiswal S/o Shyamlal Jaiswal, Aged About 78 Years, R/o Shubham Vihar, Near Lafagarh Gas Godown Bilaspur, Tahsil And District- Bilaspur (C.G.)

2 - Ramchandra Jaiswal S/o Atmaram Jaiswal, Aged About 46 Years, R/o Shubham Vihar, Near Lafagarh Gas Godown Bilaspur, Tahsil And District- Bilaspur (C.G.)

3 - Punjab National Bank, F.F. Nagar Nigam Complex, Sadar Bazar, Near City Kotwali Police Station, Tahsil and District- Bilaspur (C.G.)

... Respondents

For Appellant	:	Mr. Devesh G. Kela, Advocate
For Respondent No.3	:	Mr. Shudhanshu Upadhyay, Advocate appears on behalf of Mr. Sharad Mishra, Advocate
For Respondent No.1 & 2	:	None appears despite of service of notice

Hon'ble Shri Justice Sachin Singh Rajput

Order on Board

17.11.2026

1. This appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (in short the 'CPC') is against an order dated 02.04.2026 passed by 11th Additional District Judge, Bilaspur (C.G.) in Civil Suit

No.14-A/2020 (in short the 'Trial Court'). By the impugned order, the application of the appellant/plaintiff under Order 39 Rule 1 and 2 of CPC was dismissed.

2. Parties are hereinafter referred to as their status before the Trial Court.

3. The application filed on behalf of the plaintiff, in brief, is that the appellant/plaintiff had entered into an agreement to sell with respondent No.1/defendant No.1 on 13.01.2008 in respect of suit property comprising a piece of land bearing Khasra No.1417/6, area 864 sq.ft. and Khasra No.1417/28 area 1221 sq.ft., total area 2085 sq.ft. situated at village Mangla, PH No.21, Shubham Vihar, RIC Tahsil and District – Bilaspur (C.G.) upon which a house was constructed for a sale consideration of Rs.14,00,000/- out of which Rs.3,90,000/- was received by defendant No.1 and assured execution and registration of the sale deed of the suit property. Thereafter on 15.06.2010, further Rs.3,00,000/- was received by defendant No.1 and thereafter, on 09.05.2012, Rs.2,00,000/- was received. Thus, defendant No.1 has received total consideration amount of Rs.8,90,000/-. The defendant No.1 avoided the execution and registration of the sale deed. Thereafter, the appellant/plaintiff went to meet the defendant No.1 on 19.01.2020. The defendant No.1 refused to perform his part of the contract. It came to the knowledge of plaintiff that defendant No.1 is in process of alienating the suit property, thus, the above stated suit was filed along with application under Order 39 Rule 1 & 2 of the CPC with a prayer that during pendency of the suit if the suit property is alienated, it would cause irreparable loss. Thus, stating that *prima facie* case, balance of convenience and irreparable loss lie in favour of the plaintiff, the application may be allowed.

4. The defendant No.1 filed a reply of the said application and denied the averments and pleaded that he never entered into an agreement to sell with the plaintiff. No *prima facie* case, balance of convenience and irreparable loss exist in favour of the plaintiff, thus, prayed for dismissal of the application.

5. The defendant No.3 also filed a reply to this application and pleaded that the application may be rejected as the three ingredients are not in favour of the plaintiff. By the impugned order, the learned Trial Court has dismissed the application.

6. Mr. Kela, learned counsel for the appellant/plaintiff submits that the impugned order is erroneous, contrary to the documents available on record and is bad in law. All the three ingredients including *prima facie* case, balance of convenience and irreparable loss exist in favour of the plaintiff. Thus, the application ought to have been allowed. He submits that though the agreement was executed in the year 2008, however, since 2014 onwards, the time was extended and the suit property was mortgaged with the bank and in the event of alienation, it would cause irreparable loss to the plaintiff and the plaintiff has the first right over the suit property.

7. None appears on behalf of Respondent No.1 and 2 despite of service of notice.

8. Mr. Upadhyay, counsel appearing for Respondent No.3 submits that the suit property is put in mortgaged with the bank and it is a secured asset under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, ‘the Act of 2002’). If the interim injunction from alienating the suit property is granted, it would cause irreparable loss to the bank for

recovery of the loan amount in the event of default made by the defendant No.1.

9. Heard the learned counsel for the parties and perused the material available on record.

10. From narration of the submissions made hereinabove, it is quit vivid that initially the agreement was executed in the year 2008. From the documents appended with the record, it appears that the suit was filed in the year 2020 i.e. after a lapse of about 12 years. The submissions has been made that the suit property has been mortgaged with the bank, thus, it is a secured asset under the provisions of Act of 2002. The learned Trial Court on the basis of materials available on record, found that all the three ingredients are not available in favour of the plaintiff. The learned Trial Court also found that in the prayer of the plaint, the plaintiff has also sought for the refund of the earnest money. On meticulous examination of the impugned order and documents, this Court does not find any irregularity, illegality in passing the impugned order by the learned Trial Court.

11. Accordingly, the appeals fails and is hereby dismissed.

Sd/-

(Sachin Singh Rajput)
Judge

Prakash