

IN THE COURT OF SIMRANDEEP SINGH SOHI, PCS, CIVIL JUDGE
JUNIOR DIVISION, HOSHIARPUR

CIS Registration No. 8015 of 2013
Date of Instt: 24.12.2009/30.07.2013
Date of order: 13.04.2023
Next date: 26.04.2023

Satnam Singh Versus Bachint Singh

Application under Order 39 Rule 1 and 2 CPC .

Present: Sh. Balraj Kaushal, Adv., counsel for plaintiff
 Sh. Rajesh Chopra, Adv for defendant No.1,2 (A,B)

ORDER:

This order shall dispose of an application under order 39 Rule 1 and 2 Civil Procedure Code, for restraining the defendants from alienating, changing the existing position, interfering and dispossessing the plaintiff from the suit property, during the pendency of the suit.

2. It is the case of the plaintiff that defendants being owner of suit property agreed to sell the same to the plaintiff vide agreement dated 30.11.2004 after receiving Rs. 1,00,000/- as earnest money from the plaintiff and balance sale consideration of Rs. 5 Lakhs was to be paid upto 30.11.2009. The defendants are residing in USA and the plaintiff made many requests to the defendants to execute the sale deed in his favour after receiving the balance sale consideration of Rs. 5 Lakhs. The plaintiff remained present in Tehsil complex on 30.11.2009 but the defendants did not come to get the sale deed executed in favour of plaintiff. The plaintiff many times requested the defendants to execute the sale deed of suit land as per agreement to sell but the defendants threatened the plaintiff with dire consequences. Hence this application.

3. In reply, the Lrs of defendant No.2 Harjinder Singh appeared and

filed written statement and took preliminary objections with regard to maintainability, locus standi, clean hands etc. On merits, it is admitted that defendants are owners in possession of suit property. However it is submitted that defendants never entered into agreement to sell with the plaintiff on 30.11.2004 nor received Rs. 1 Lakh as earnest money nor it is agreed between them that defendants will execute the sale deed in favour of plaintiff after receiving Rs. 5 Lakhs. It is submitted that Bachant Singh son of Harnam Singh and Harjinder Singh son of Harnam Singh through their attorney Bhajan Kaur plaintiff filed suit for declaration that the alleged agreement to sell dated 30.11.2004 is illegal, null and void and liable to be set aside and plaintiff filed suit for specific performance on the basis of forged and fabricated agreement to sell dated 30.11.2004 against Bachant Singh and Harjinder Singh which is pending in this court. Unfortunately, Bachant Singh and Harjinder Singh defendants died during the pendency of the case. After the death of Harjinder Singh the defendant No.2 Rajinder Kaur Lehal his wife became the owner in possession of the land in dispute. The property in dispute is worth Rs. 3,00,00,000/- (three crores). Remaining averments of plaint were denied and a prayed for dismissal of application of plaintiff was made.

4. I have heard and thoughtfully considered the submissions made by learned counsel for the parties and carefully perused the record. It is the case of plaintiff that the predecessor of defendants entered into agreement to sell dated 30.11.2004 with the plaintiff with regard to suit land as mentioned in the head note of the plaint for total sale consideration of Rs. 6,00,000/- and defendants received Rs. 1 Lakhs as earnest money and remaining consideration was to be paid at the time of execution of

sale deed. However, the defendants did not execute the sale deed on stipulated date i.e. 30.11.2009 despite making many requests by the plaintiff. On the other hand, the LRs of defendant No.2 has denied of having execution of any agreement to sell in favour of the plaintiff and specifically pleaded that agreement to sell is forged and fabricated document. Perusal of the agreement to sell dated 30.11.2004 shows that the same is registered and duly stamped and appears to have been executed by Bachint Singh, Harjinder Singh sons of Harnam Singh in favour of plaintiff. The plea of Lrs of defendant No.2 that the said agreement to sell is forged and fabricated is a matter of evidence which can only be ascertained after leading evidence by the parties. However at present presumption of truth is attached to the registered document. Moreover, Ld. Counsel for plaintiff has placed copy of sale deeds dated 05.02.2010 whereby Bhajan Kaur attorney of defendants sold land out of suit property to plaintiff Satnam Singh and reference of the agreement dated 30.11.2004 has duly been made in those sale deeds. Accordingly prima facie case is made out in favour of the plaintiff. Balance of convenience also lies in favour of the plaintiff. Accordingly application stands allowed and the defendants are hereby restrained from alienating the suit property as detailed and described in the head note of the plaint during the pendency of the present suit. However, nothing observed herein above shall be construed as opinion of this Court on the merits of this case.

Announced:
Dated: 13.04.2023.
vikas

(Simrandeep Singh Sohi), PCS
Civil Judge (Jr. Division)
Hoshiarpur /UID 0550

Satnam Singh Vs. Bachint Singh etc

Present: Sh. Balraj Kaushal, Adv., counsel for plaintiff
Sh. Rajesh Chopra, Adv for defendant No.1,2 (A,B)
Replication filed. Copy supplied. Arguments upon stay application

heard. Vide my separate detailed order of even date, the same stands allowed.

On the basis of pleadings of the parties following issues are framed:-

1. Whether the plaintiff is entitled to the relief of possession by way of specific performance as prayed for?OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP
3. Whether the plaintiff is entitled to the alternative relief of recovery as prayed for?OPP
4. Whether suit of the plaintiff is not maintainable for want of locus standi?OPD
5. Whether the plaintiff has not come to the court with clean hands and suppressed the material facts from the court?OPD
6. Whether suit is not properly valued for the purpose of court fees and jurisdiction?OPD
7. Whether the plaintiff is estopped by his act and conduct from filing the present suit?OPD
8. Whether this court has no jurisdiction to try and decide the present suit?OPD
9. Relief.

No other issue arises or is pressed for. Now to come up on 26.04.2022 for evidence of the plaintiff. PF, DM, documents and list of witnesses be filed within 15 days. Since the present case is old and relates to the year 2009, as such both the parties are directed to expedite the process. The plaintiff is directed to supply copies of affidavit of witnesses to the Ld. Counsel for defendant five days prior to the date fixed so that cross examination of Pws could be concluded. Dasti process be issued if desired.

Announced:
Dated: 13.04.2023.
vikas

(Simrandeep Singh Sohi), PCS
Civil Judge (Jr. Division)
Hoshiarpur /UID 0550