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IN THE COURT OF SHREYA BANSAL, CIVIL JUDGE (JUNIOR DIVISION) AMBALA (UID No.HR0577).

HRAM020025192022



CIS No. CS-1824-2022

DATE OF ORDER: 07.05.2024.

Sukhwinder Singh Versus Hans Raj

Present: Sh.S.B. Bakshi, Advocate for plaintiff.
 Sh.Sandeep Saini, Advocate for defendant.

APPLICATION UNDER ORDER 39 RULES 1 & 2 READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE.

ORDER:

This order of mine shall dispose of an application Under Order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure, moved by applicant/plaintiff alongwith a suit for mandatory injunction with consequential relief of permanent injunction.

2. As the present application Under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure read with section 151 of the Code of Civil Procedure, has been moved alongwith a suit for permanent injunction, it will be beneficial if the facts as have been averred in the plaint are reproduced herein. It has been averred by the plaintiffs that he is currently abroad and he has granted power of attorney to his wife, Smt. Bhupinder Kaur, enabling her to act on his behalf regarding the disputed property.

Shreya Bansal
CJ(JD), Ambala, 07.05.2024

Having purchased a plot of 153 Sq. Yards in village Babyal, Tehsil Ambala Cantt, through a registered sale deed on 14.02.2000, the plaintiff erected a double-storied house, now known as House No. 92, Paras Nagar, Ambala Cantt. Subsequently, an agreement to sell was entered into with the defendant on 19.10.2006, wherein earnest money was received, and it was agreed that the sale deed would be executed by 18.8.2007. However, despite assurances, the defendant failed to fulfill the agreement, prompting the plaintiff to request the return of the keys in April 2012. However, it was discovered that the defendant had unlawfully rented out the property without the plaintiff's consent, leading to a series of legal proceedings, including a civil suit filed by the defendant against the plaintiff. This suit resulted in a significant financial loss for the plaintiff. In response, the plaintiff filed a civil appeal, ultimately resulting in a judgment on 24.11.2021, declaring the plaintiff as the rightful owner of the property. Despite this legal victory, the defendant continued to unlawfully occupy the premises until 24.11.2021. Subsequently, the plaintiff served the defendant with a legal notice on 22.08.2022, terminating the defendant's license and demanding possession within 15 days, along with arrears of mesne profit. However, the defendant failed to respond to the notice, compelling the plaintiff to file the present suit for a mandatory injunction to obtain possession of the property along with recovery of arrears and future mesne profit, and a permanent injunction against further subletting or damage to the property. On these premise, it

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has been prayed that an interim injunction be passed and the defendant be restrained from subletting or causing damage to the suit property.

3. Notice of suit and application Under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure read with section 151 of the Code of Civil Procedure, was issued to the defendant on which defendant appeared and resisted the claim of the plaintiff by way of filing a written statement and reply to the application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure. As reply to application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure read with section 151 of the Code of Civil Procedure, has been filed alongwith written statement, it will be beneficial if facts as have been averred in the written statement are reproduced herein succinctly. In nutshell, it has been averred by the defendant that the present suit is not maintainable being barred by the principle of lis-pendens. It has been averred that the plaintiff has concealed the true facts as the Hon'ble Punjab and Haryana High Court has already passed an order to maintain status quo regarding the possession of suit property. It has further been averred that the plaintiff himself never came forward to execute the sale deed of the property in favour of the defendant despite his repeated requests. Moreover, the plaintiff did not obtain no objection certificate from the concerned authority which was mandatory to execute the sale deed on his part. It has further been denied that the plaintiff has been lawful owner of the suit property. It has further been averred that as such, there is no prima-facie

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case and balance of convenience in favour of plaintiffs and there is no question of plaintiffs suffering an irreparable loss and injury in case “restraint order” is not passed. Thus, on these premise, it has been prayed that the instant application under Order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure be dismissed.

4. I have heard the learned counsel for the parties and have perused the case file carefully and minutely.

5. Before proceeding further, it will be beneficial if three per-requisites for granting interim injunction are reproduced herein- (i) the applicant shall prove that there is a prima-facie case in his favour; (ii) the applicant shall prove that the balance of convenience lies in his favour; and (iii) the applicant shall suffer an irreparable loss and injury, in case no injunction order is passed in his favour.

6. After appreciating the rival contentions raised by the learned counsel for the parties and from the perusal of case file it is clear that the plaintiff has filed the present suit for mandatory injunction against the defendant for a direction to handover the possession of suit property as well as permanent injunction to restrain the defendant to further sublet or damage the suit property. Admittedly, the plaintiff had entered into an agreement to sell with the defendant on 19.10.2000 and earnest money was received by him. Further, it was agreed that the sale deed would be executed by 18.8.2007. Possession of the said house was accordingly delivered to the defendant by the plaintiff at the time of execution of

agreement to sell. However, no sale deed was executed between the parties leading to the filing of the present suit. In the present application, the plaintiff seeks to prevent the defendant from sub-letting the suit property and causing further damage to it. No doubt, agreement to sell is not a document of title or a deed of transfer of property by sale and as such, may not confer absolute title upon the defendant over the suit property in view of Section 54 of the Transfer of Property Act, 1882, nonetheless, the agreement to sell, the payment of earnest amount as admitted by the plaintiff and the fact that the defendant was put in possession of the suit property in accordance with law goes to prove that the defendant is de-facto having possessory rights over the suit property in part performance of the agreement to sell. This possessory right of the defendant is not liable to be disturbed by the transferer, i.e., the plaintiff. From the above mentioned facts, one thing is clear that the defendant is in a settled possession of the suit property at least in part performance of the agreement which cannot be disturbed or disputed by the transferer, i.e., the plaintiff. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming

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under him. Reliance in this regard can be placed upon the judgment titled **Ghanshyam Versus Yogendra Rathi 2023 SCC Online SC 725** .

In the present case, the plaintiff seeks to restrain the defendant from further sub-letting the suit property, in other words, from renting out the suit property to another person. However, in view of above discussion, the defendant had acquired possessory rights in the property when he was handed over the possession of the suit property by the plaintiff. Therefore, he cannot be restrained or directed to use the said property in any specific manner, being lawfully in possession. As far as restraint against causing damage to the property is concerned, the plaintiff has failed to prove any cause of action in this regard to show that the property is being harmed by the defendant in any manner.

7. In view of the discussion made above, plaintiffs have failed to prove any prima facie case and balance of convenience in their favour. There is nothing on record to show that plaintiffs shall suffer an irreparable loss and injury in case “restraint order” is not passed in favour of plaintiffs.

8. As such, in view of above discussion, I do not find merit in the present application and the same is hereby **dismissed** .

9. Nothing expressed herein should be construed as expression of opinion on the merits of the case.

Announced :
Dated 07.05.2024.

(Shreya Bansal)
Civil Judge(Junior Division)
Ambala. UID No. 0577

Note: All the pages of this order have been dictated,
checked and signed by me.

Dated 07.05.2024.

(Shreya Bansal)
Civil Judge(Junior Division)
Ambala. UID No. 0577

Shreya Bansal
CJ(JD), Ambala, 07.05.2024