

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP No.1638 of 2012 in RFA No.901 of 2012

Date of Decision : 4.3.2014

Sqn. Ldr. Gurdial Singh (Retd.)Appellant-applicant.

versus

Amit Sahni and others ...Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

For the Appellant/applicant : Mr. Y.P. Sood, Advocate.

For the Respondents : Mr. Neeraj Gupta, Advocate.

Sanjay Karol, Judge^(Oral)

In terms of present application, plaintiff-appellant-applicant (hereinafter referred to as the plaintiff) wants the Court to pass an interim order, restraining the defendants-respondents (hereinafter referred to as the defendants) from alienating, encumbering, selling or creating third party interest or charge over the suit property, i.e. Flat No.3, Third Floor of Modern Deluxe Building known as Amit Apartments in Mauza Thodo, Solan, District Solan, Himachal Pradesh.

2. On 25.3.1999, plaintiff entered into an agreement, for sale of suit property with the defendants. On account of break of certain conditions by the defendants, plaintiff filed a suit, seeking performance of the agreement.

3. Trial Court, vide judgment and decree dated 30.6.2012, passed in Civil Suit No.4-S/1 of 2009/04, titled as *Sqn. Ldr. Gurdial Singh (Retd.) v. Amit Sahni and others*, partly decreed the suit in the following terms:

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“In view of my findings given on issues No.1 to 9 above, the suit of the plaintiff is partly decreed. A decree for recovery of Rs.3,30,000/- with interest @9% per annum from 17-4-2004 till the recovery of the amount is hereby passed in favour of the plaintiff and against the defendants with proportionate costs. The rest of the reliefs claimed by the plaintiff is declined. Decree sheet be drawn accordingly.....”

4. Mr. Gupta, learned counsel for the defendants, submits that the amount in terms of decree already stands deposited and as such interest of the plaintiff stands adequately protected.

5. Having heard learned counsel for the parties as also perused the record, I am of the considered view that plaintiff's prayer, for grant of interim injunction needs to be allowed. Appeal already stands admitted.

6. The question as to whether plaintiff can be adequately compensated with money or not is an issue which requires consideration in the present appeal. After all, plaintiff entered into an agreement on 25.3.1999, since when property prices have arisen considerably. In the event of appeal being allowed, prejudice may be caused to the plaintiff, if the property is alienated during pendency of the appeal. Plaintiff has a strong prima facie case and balance of convenience also lies in his favour. Property has to be protected, interest of justice warrants passing of such order.

7. As such, present application is allowed. Defendants are restrained from alienating, selling or encumbering the suit property. Also, no third party interest or charge shall be created, except with the permission of the

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Court. It is clarified that it shall be open for the defendants to let out the property, but however such lease shall be subject to the outcome of the present appeal, which fact shall be disclosed to the lessee.

8. Application stands disposed of.

List the appeal for hearing in due course.

March 4, 2014_(sd)

(Sanjay Karol),
Judge.