

Kuldeep Singh
Plaintiff

Versus

Harbhajan Singh & ors.
Defendants

Application under Order 39 Rules 1 & 2 CPC

Present: Shri Vishal Kumar, Advocate, counsel for plaintiff
Sh. H.S.Makkar, Adv, counsel for defendants No.1 and 2
Sh. P.K.Acharya Adv counsel for defendant No.3
Sh. Sidharth Sharma Adv counsel for defendant No.4
(Defence of defendant No.4 struck of)

Heard on the application under Order 39 Rules 1 and 2 CPC
filed by the plaintiff seeking to restrain the defendant from selling,
alienating, transferring, mortgaging and from creating any charge over the
suit property during the pendency of the suit.

2. It is alleged by the plaintiff that respondent/defendant entered
into agreement to sell dated 02.09.2016 with the plaintiff in respect of
total land measuring 48 kanal for a total sale consideration of
Rs.45,30,000/-. He received Rs.15,00,000/- as earnest money out of the
total sale consideration in the presence of witnesses of the agreement to
sell. The date of execution of registration of sale deed was fixed as
30.12.2016. On 30.12.2016, the date of execution of sale deed was
extended upto 31.12.2017. The defendant failed to execute the sale deed
in favour of the plaintiff. The plaintiff has been always ready and willing
to perform his part of the contract. Now, the defendant is trying to alienate
the suit land. The plaintiff requested the defendant many a times to
register the sale deed in their favour and not to alienate the same to
anybody, but, to no effect. Hence, this application.

3. The application has been contested by defendant on the
ground that defendant No.2 never executed any agreement to sell in

favour of plaintiff. It is defendant No.1 who has received earnest money of Rs.4,00,000/-. Time was of essence of the agreement. As the agreement was not performed within time, therefore defendants have suffered huge monetary loss. The agreement is a forged and fabricated document. Denying other averments of application, a prayer for dismissal of same has been made.

4. I have heard learned counsel for the parties and have carefully perused the record of the judicial file. My findings are as under:

Findings

5. After hearing learned counsel for the parties and after going through the case file, it comes out that, as per the case of the plaintiff, the defendant executed an agreement to sell in question in his favour, whereas, the defendant has pleaded that it is a forged and fabricated document. However, the allegations of fraud cannot be ascertained at this stage and it requires evidence to prove the same. The original agreement to sell in question is placed on record which *prima facie* shows existence of agreement to sell in question. Therefore, under these circumstances, when the existence of agreement to sell in question is *prima facie* shown and it is also shown that, as per the agreement to sell in question, the plaintiff has paid substantial amount of money to defendant, a *prima facie* case is made out in favour of the plaintiff and balance of convenience also lies in his favour and this court is also of the opinion that if injunction sought for is not granted, the plaintiff shall suffer irreparable loss as it will lead to multiplicity of litigation. Therefore, under these circumstances in

the interest of justice, the application under Order 39 Rules 1 and 2 CPC is hereby allowed and defendants are hereby restrained from alienating the suit land to anybody else, except the plaintiff till the disposal of the present suit. However, it is clarified that the observations made in this order shall have no effect on the merits of the case.

Pronounced
Dated: 28.01.2019
Vinod Kumar-Steno-G-II

Jagbir Singh Mehndiratta, PCS
Additional Civil Judge (Sr. Division)
Sri Anandpur Sahib.(UID No.PB0296)

Present: Shri Vishal Kumar, Advocate, counsel for plaintiff
Sh. H.S.Makkar, Adv, counsel for defendants No.1 and 2
Sh. P.K.Acharya Adv counsel for defendant No.3
Sh. Sidharth Sharma Adv counsel for defendant No.4
(Defence of defendant No.4 struck of)

Arguments heard on the application u/O 39 rule 1 and 2 CPC.

Vide separate detailed order, the application is hereby allowed. From the pleadings of the parties, the following issues arise and are framed:

1. Whether defendants have executed agreement to sell dated 02.09.2016 in favour of the plaintiff?OPP
2. Whether plaintiff has remained ready and willing and is still ready and willing to perform his part of the agreement to sell?OPP
3. Whether the plaintiff is entitled to specific performance of agreement to sell dated 02.09.2016 as prayed for? OPP
4. If answer to Issue No.3 is in the negative, then, in the alternative, whether the plaintiff is entitled to relief of recovery, if so, to what extent? OPP
5. Whether sale deed bearing Vasika No.1077 dated 21.12.2017 is illegal, null and void?OPP
6. Whether the agreement to sell is forged and fabricated document?OPD
7. Whether plaintiffs have no cause of action or locus standi to file the present suit? OPD
8. Whether the suit is not maintainable in the present form? OPD
9. Relief

No other issue arises or pressed by the learned counsel for the parties. Now to come up on 23.05.2019 for evidence of plaintiff. List of PWs, PF, DM be filed within 7 days.

Dated: 28.01.2019
Vinod Kumar-Steno-G-II

Jagbir Singh Mehndiratta, PCS
Additional Civil Judge (Sr. Division)
Sri Anandpur Sahib.(UID No.PB0296)

Next Date 23.05.2018.

Purpose_____