

23.04.2018

**CPC O. 39 R. 1, 2 - Land situated within 'lal lakir' or 'lal dora' - Possession - Plea that by virtue of agreement to sell the petitioner had purchased land and had been put in possession, therefore, the injunction was liable to be granted in his favour - Plea that Land in dispute is situated within 'lal lakir', whereby there is no provision for execution and registration of the sale deed and that entire sale consideration had been paid by the vendee and it was share, therefore, cause of action arose for seeking separate possession by way of partition - It was incumbent upon the petitioner to establish on record certain documents, post agreement to sell to show that he was in possession - No such document had been placed on record - Even otherwise also, rapat roznamcha is required to be entered for the purpose of purchase and sale of the land situated within 'lal lakir' or 'lal dora' - All these factors are the domain of the trial Court whereby the parties to the lis can place the documents on record in support of the averments relied upon but not with the interim application as the plaintiff, had not been able to comply with the ingredients of Order 39 Rules 1 and 2 CPC.**

**Land - Situated within 'lal lakir' or 'lal dora' - Possession - Rapat roznamcha is required to be entered for the purpose of purchase and sale of the land situated within 'lal lakir' or 'lal dora' .**

*Mr. Shivoy Dhir, for the petitioner.*

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**AMIT RAWAL J. (Oral)** - The petitioner-plaintiff is aggrieved of the impugned order dated 20.02.2018 (Annexure P-1) rendered by the Lower Appellate Court, whereby, the civil miscellaneous appeal preferred against the order dated 26.09.2017 vide which application filed under Order 39 Rules 1 and 2 CPC allowed while granting status quo, has been allowed.

2. Mr. Shivoy Dhir, learned counsel for the petitioner-plaintiff submitted that by virtue of two agreements to sell dated 24.6.2011 and 29.08.2011, the petitioner had purchased 2 biswas of land and had been put in possession, therefore, the injunction was liable to be granted in his favour. It is in this background, the trial Court granted the status quo but the Lower Appellate Court has abdicated in reversing the well reasoned finding on the premise that agreement to sell did not confer the title by ignoring the fact that land in dispute is situated within 'lal lakir', whereby there is no provision for execution and registration of the sale deed. The entire sale consideration had been paid by the vendee and it was share, therefore, cause of action arose for seeking separate possession by way of partition. The ingredients of Order 39 Rules 1 and 2 CPC had been proved to hilt for the purpose of granting injunction and urged this Court for setting aside the order under challenge.

3. I have heard the learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Shivoy Dhir, for, it was incumbent upon the petitioner to establish on record certain documents, post agreement to sell to show that he was in possession. No such document had been placed on record. Even otherwise also, rapat roznamcha is required to be entered for the purpose of purchase and sale of the land situated within 'lal lakir' or 'lal dora'.

4. In my view, all these factors are the domain of the trial Court whereby the parties to the lis can place the documents on record in support of the averments relied upon but not with the interim application as the plaintiff, in my view, had not been able to comply with the ingredients of Order 39 Rules 1 and 2 CPC. In view of the aforementioned observations, I do not find any illegality and perversity in the order under challenge based upon the appreciation of oral and documents placed on record. While upholding the order under challenge, the revision petition stands disposed of with a direction to the trial Court to

decide suit as expeditiously as possible.