

PLRonline 431560

(2022-2)206 PLR 020
PUNJAB AND HARYANA HIGH COURT
Before: Mr. Justice Anil Kshetarpal.
VIKRAM SINGH – Petitioner,
Versus
DR. K.D. SHARMA and another – Respondents.
CR-3218-2021(O&M)

(i) Transfer of Property Act, 1882 (IV of 1882) Section 53-A – There is no final finding that either the agreement to sell is forged or the defendant has no right on the above-mentioned property – Section 53A of the Transfer of Property Act, 1882, protects an agreement holder in possession of the property, with respect to the part performance of the agreement – Furthermore, if the plaintiff has any right, he is entitled to file a suit seeking possession of the property – He cannot be permitted to pray for an issuance of a decree of mandatory injunction – Civil Procedure Code, 1908 (V of 1908) Order 39, Rule 1.

(ii) Suit for Injunction – Trial Court Court as well as the First Appellate Court while deciding the injunction application, in the suit for specific performance of the agreement to sell, it may be noted that such observations are *prima facie* in nature and cannot be held to be conclusive – The observations made by the Court while deciding the interlocutory application is on the basis of the *prima facie* opinion of the Court. Such opinion is never final in nature.

Mr. Amar Vivek Aggarwal, for the petitioner.

Anil Kshetarpal, J. – (Oral) – (10th December, 2021) – The petitioner is a plaintiff in a suit for grant of decree of perpetual injunction along with mandatory injunction, restraining the defendant No.1 from raising further construction and for removing the existing construction. The petitioner claims that he has purchased the property vide a registered Sale Deed dated 24.03.2006, from Sh. Boota Ram, whereas, the defendant No.1 claims agreement to sell in his favour, from Sh. Boota Ram on 16.10.1996. The defendant No.1 did file a suit for specific performance of the agreement to sell but the same was dismissed for non-prosecution on 14.09.2010. As noticed, the plaintiff has not filed a suit for grant of injunction.

2. The trial Court allowed the application under Order 39 Rule 1 and 2 [CPC](#), whereas, the First Appellate Court has dismissed the application while reversing the order, passed by the trial Court.

3. The First Appellate Court has observed after thoroughly reading the plaint, that the plaintiff (petitioner) admits the possession of defendant No.1 on the said property. The First Appellate Court has drawn this conclusion on the basis of the following pleadings:-

6. That sometime ago taking advantage of lockdown and the absence of the plaintiff on account of illness of the father of the plaintiff who died on 15.01.2021 after prolong illness, the defendant No.1 and his agents started raising construction in the said property without any right in an attempt to usurp the property of the plaintiff's land i.e. Plot No.10 measuring 162 sq.Yds in Khasra No.11/27/21, Vill.Rampur Sarsheri Ambala Cantt, without any right.

7. That when the plaintiff on 28.01.2021 came to know about the illegal and unauthorized construction being raised in his said land/plot and the Rasta (way) also blocked by erecting gate, it was objected to by the plaintiff immediately to the workers and agents of the defendant No.1 on the spot with request not to interfere in his possession and

stop illegal construction over the property/land of the plaintiff and not to take law into his hands to forcibly raise construction but the defendant No.1 turned down the request of the plaintiff and his representatives and unknown persons openly declared that they will raise the construction and will not allow the plaintiff to enter his property as they have links with local authorities, police and anti-social elements.

8. The learned counsel representing the petitioner contends that as there is a deemed decree against the defendant No.1, therefore, defendant cannot claim to be in the possession of the abovesaid property. He further contends in a suit for specific performance of the agreement to sell, application for temporary injunction was dismissed while observing that 'prima facie' the agreement to sell appears to be tampered with. He contends that since the defendant has no right, title or interest therefore, the learned Appellate Court has erred in reversing the order passed by the trial Court.

9. This Bench has heard the learned counsel representing the petitioner at length and with his able assistance perused the paper book.

10. From the careful reading of the pleadings, it is evident that the plaintiff himself admits that defendant No.1 is constructing the building on the plot in question. Furthermore, plaintiff has himself sought a decree of mandatory injunction directing the Municipal Council, Ambala Sadar, to demolish the construction carried out by the defendant No.1. On the basis of the aforesaid pleadings, the First Appellate Court has correctly drawn an inference that defendant No.1 is in the possession of the property.

11. As regard arguments of the learned counsel that the defendant No.1 has no right, title or interest in the property, it may be noted that there is no final finding that either the agreement to sell is forged or the defendant has no right on the above-mentioned property. Section 53A of the Transfer of Property Act, 1882, protects an agreement holder in possession of the property, with respect to the part performance of the agreement. Furthermore, if the plaintiff has any right, he is entitled to file a suit seeking possession of the property. He cannot be permitted to pray for an issuance of a decree of mandatory injunction.

12. As regards the argument of the learned counsel that the learned trial Court as well as the First Appellate Court while deciding the injunction application, in the suit for specific performance of the agreement to sell, it may be noted that such observations are *prima facie* in nature and cannot be held to be conclusive. The observations made by the Court while deciding the interlocutory application is on the basis of the *prima facie* opinion of the Court. Such opinion is never final in nature.

13. Keeping in view the aforesaid facts, no ground to interfere is made out.

14. Dismissed.

15. All the pending miscellaneous applications, if any, are also disposed of.

16. Needless to observe the observations made by the First Appellate Court or this Court while deciding the revision petition shall not be construed as an expression of opinion on the merits of the case and the trial Court will proceed to decide the case independently.

R.M.S. - Petition disposed of.