

Punjab-Haryana High Court

Rohtas Singh vs Desh Raj And Others on 5 August, 2009

Civil Revision No. 5371 of 2008

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 5371 of 2008

Date of decision: 05.08.2009

Rohtas Singh

....Petitioner

Versus

Desh Raj and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD K. SHARMA

Present: -Mr. Aman Pal, Advocate,
for the petitioner.

Mr. D.D. Bansal, Advocate,
for the respondents.

VINOD K. SHARMA, J (ORAL) This revision petition is directed against the order dated 5.8.2008 passed by the learned Courts below, on an application moved under Order 39 Rules 1 and 2 of the Code of Civil Procedure.

The petitioner herein entered into two agreements dated 17.2.2004 with the defendant/respondents. In one of the agreements, sale consideration fixed was Rs. 79 lac per acre, out of which Rs.18.31 lac was said to have been paid as earnest money, whereas in the second agreement total sale consideration was Rs.22.9 lac, out of which petitioner claimed to have paid earnest money of Rs.4.59 lac.

Parties agreed to execute the sale deed on 16.8.2004. The parties blamed each other for not executing the sale deed on the date fixed.

The plaintiff/petitioner filed a suit for specific performance on 4.1.2006 for enforcement of agreements to sell. The petitioner also Civil Revision No. 5371 of 2008 moved an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, seeking injunction against the alienation of the property by the defendant/respondents during the pendency of the suit.

The learned Courts below have declined the application. The learned counsel for the petitioner vehemently contends, that the impugned order cannot be sustained, as the agreements to sell have been admitted, and the dispute is only as to which of the party was in fault in not executing the sale deed.

It is also the contention of the learned counsel for the petitioner, that refusal of injunction is likely to result in multiplicity of litigation, as third party interest would be created, which would prejudice the petitioner.

On consideration, I find no force in the contentions raised by the learned counsel for the petitioner. It is well settled law, that sale during the pendency of the suit is hit by principle of lis pendens, and the vendees would be bound by the decree, which may ultimately be passed. It cannot be said, that the plaintiff/petitioner would suffer irreparable loss, in case injunction was not granted.

No ground is made out to interfere with the order passed by the learned Courts below.

However in order to settle the equalities between the parties, it is ordered that in case defendant/respondents alienate property, they would incorporate covenant in the sale deed, stating therein that the land is subject-matter of litigation in civil suit.

With above observation, revision is disposed off.

(Vinod K. Sharma) Judge August 05, 2009 R.S.