

Before G. R. Majithia, J.

JASMER SINGH AND OTHERS,—*Petitioners.*

*versus*

KANWALJIT SINGH AND ANOTHER,—*Respondents.*

Civil Revision No. 1453 of 1990.

3rd September, 1990.

*Code of Civil Procedure, 1908—O. 39 rls. 1 & 2—Specific Relief Act, 1963—S. 41 cl. (h)—Where equally efficacious remedies available—Injunction cannot be granted.*

*Held*, that an injunction cannot be granted, if equally efficacious relief can certainly be obtained, by any other usual mode of proceeding. An injunction will not be granted where an adequate relief by way of damages is available. The vendees having a contract for sale in their favour have the equally efficacious remedy by suit of specific performance, their suit for injunction to restrain the vendors from selling the property to others is not maintainable.

(Para 4)

*Petition u/s 115 C.P.C. for revision of the order of the Court of Shri H. S. Bakhshi, District Judge, Ludhiana, dated 23rd April, 1990 reversing that of the Court of Shri G. K. Rai, P.C.S. Sub Judge 1st Class, Ludhiana, dated 10th January, 1990 accepting the appeal and setting aside the order of the learned lower court and restraining the application for temporary injunction as prayed from alienating transferring or handing over the disputed land to any one other than the appellants, and leaving the parties to bear their own costs.*

*Claim:—Application U/O 39 Rule 1 and 2 read with section 151 CPC for grant of ad-interim injunction.*

*Claim in Revision: For reversal of the order of Lower Appellate Court.*

Jagan Nath Kaushal Sr. Advocate with D. V. Sharma and Mr. Vinod Sharma, Advocates, for the *Petitioners.*

Vijay Jhanji Sr. Advocate with Ravinder Jain and O. P. Sharma Advocate, for the *Respondents.*

#### JUDGMENT

G. R. Majithia, J.

(1) This order disposes of Civil Revisions No. 1453 of 1990 and 1509 of 1990. These are directed against the order of the Appellate Court reversing on appeal that of the trial Judge whereby the latter declined to grant interim injunction to the vendees against

the vendors restraining them from alienating the disputed property to Civil Revision No. 1453 of 1989.

(2) I have alluded to the facts arising from the pleadings of the parties in Civil Suit Kanwaljit Singh v. Jang Singh etc. giving rise to Civil revision No. 1453 of 1989.

(3) The facts:—

An agreement to sell dated July 18, 1989 was executed by Jang Singh, son of Partap Singh, Manohar Singh, Balbir Singh, sons of Jang Singh and Surjit Singh, son of Jang Singh, residents of Barewala Awan, Tehsil and District Ludhiana (hereinafter referred to as the vendors) in favour of Lav Kumar, son of Shri Pawan Kumar, son of Shri Dina Nath and Kamaljit Singh, son of Randhir Singh, son of S. Teja Singh, residents of 802, Gurdev Nagar, Ludhiana (hereinafter referred to as the vendees) agreeing to sell land measuring 30 bighas 3 biswas 5 biswansis Pukhta situate at Mauza Barewal Awan, Tehsil and District Ludhiana at the rate of Rs. 4,05,000 per acre. The essential terms incorporated in the agreement were; one lac of rupees were given as *Sai* (part earnest money) on the date of execution of the agreement to sell. Another sum of Rs. 9 lacs was to be paid as additional sum by way of earnest money on November 30, 1989. The balance amount was to be paid in instalments and the first instalment of Rs. 15 lacs was to be paid on May 31, 1990. The remaining amount was to be paid in three equal half yearly instalments. The possession was to be delivered on payment of the remaining part of the earnest money viz. Rs. 9 lacs, on November 30, 1989. After payment of the earnest money, the vendees were entitled to enter into possession and divide the land into plots. The vendors were to get the *Nishan Dehi* done by November 30, 1989. The document also recites that the vendors were in possession and the vendees will be entitled to enter into possession on payment of the entire earnest money i.e. Rs. 10 lacs. It appears that part of the earnest money viz. Rs. 9 lacs which was to be paid on November 30, 1989 was not paid by the vendees. Apprehending that the vendors may not sell the property to any other persons, the vendees filed a suit for permanent injunction restraining the vendors from alienating the property in any manner. Along with the suit, an application under Order 39 rule 1, 2 CPC was also filed which was rejected by the trial judge, but on appeal, the order was reversed by the first Appellate Court and the same has been challenged in this revision petition.

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(4) It is true that the discretionary orders passed by the trial or Appellate Courts are not interfered with in revision but if the order has been passed by reading something in the document of title which is non-existent then this Court will be justified in considering the merits of the case. A perusal of the order of the First Appellate Court reveals that it read the essential terms of the document as under:—

- “(i) The agreement was for the sale of land measuring 42B-11-B-OB pukhta out of total land measuring 46B,13B-14B, pertaining to several Khasra Nos. in which the respondents had a share.
- (ii) A sum of Rs. 4,05,000 was paid as earnest money and the remaining earnest money of rupees nine lacs was to be paid on 30th November, 1989.
- (iii) The respondents were bound to take *Nishan Dehi* from the Revenue Officers till 30th November, 1989.
- (iv) In case the purchasers did not pay the amount of nine lacs on 30th November, 1989 then the contract was to be considered cancelled and amount of rupees one lac forfeited.
- (v) The remaining sale consideration was to be paid in instalments as mentioned above.
- (vi) In case purchasers did not pay any instalments by the stipulated date then they could pay it within one month thereafter alongwith interest at 1 per cent P.M.”

The essential terms which appear to have been extracted from the agreement to sell are not incorporated therein. It was not mentioned in the agreement that Rs. 4,05,000 had been paid as earnest money. It was also not there in the agreement that the amount of Rs. 9 lacs, as balance part of the earnest money, will only be paid if *Nishan Dehi* is taken on November 30, 1989. The essential terms of the agreement to sell have been reproduced in the earlier part of the order. One lac rupees were paid as ‘*Sai*’ (earnest money) on the date of the execution of the agreement to sell. An additional sum of Rs. 9 lacs was to be paid towards the earnest money on or before November 30, 1989. The vendees were to enter into possession on payment of the balance earnest money. They were entitled to demarcate the land or divide the same into plots and they could

ask the vendors to execute the sale deed in favour of their nominee. In the later part of the agreement, it was also mentioned that the vendors will get the *Nishan Dehi* by November 30, 1989 but there was no mention in the agreement to sell that the balance earnest money amounting to Rs. 9 lacs will only be paid if *Nishan Dehi* has been taken by November 30, 1989. Rs. 1 lac was paid as Sai (earnest money) and total Rs. 10 lacs were to be paid as earnest money. The Appellate Court took into consideration that Rs. 4,05,000 were paid as earnest money which is factually incorrect. The Appellate Court was also incorrect when it said that the balance amount of Rs. 9 lacs as earnest money was to be paid only if the *Nishan Dehi* was got done. The entire approach of the first Appellate Court is based on mis-reading of the agreement to sell which is the fountain head from which the rights of the parties flow. It appears that the vendees did not pay Rs. 9 lacs, the balance earnest money, by November 30, 1989. They had failed to perform their part of the agreement. Apprehending that the vendors may not serve a notice that the contract stood cancelled, they filed the instant suit for permanent injunction restraining the vendors from alienating the suit property. Section 41 of the Specific Relief Act relates to circumstances when injunction cannot be granted. Clause 'h' of Section 41 reads thus:—

“(h) When equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;”

An injunction cannot be granted, if equally efficacious relief can certainly be obtained, by any other usual mode of proceeding. An injunction will not be granted where an adequate relief by way of damages is available. The vendees having a contract for sale in their favour have the equally efficacious remedy by suit of specific performance, their suit for injunction to restrain the vendors from selling the property to others is not maintainable. The first Appellate Court has mis-read the essential conditions of the agreement to sell and also the mandatory provisions relating to the grant of injunction. The order under challenge cannot be sustained.

(5) Consequently, the revision petition is allowed, the order under challenge is set aside and that of the trial judge is restored with no order as to costs.

R.N.R.