

Before G. C. Mital, J.

SHAM SINGH,—Petitioner

*versus*

PREM CHAND and others,—Respondents.

Civil Revision No. 1745 of 1978.

July 12, 1979.

*Code of Civil Procedure (V of 1908)—Order 39—Transfer of Property Act (IV of 1932)—Section 54—Plaintiff claiming possession under an agreement to sell—Owner selling the property to another person—Plaintiff seeking injunction restraining the owner and the vendee from dispossessing him—Such injunction—Whether could be granted.*

*Held*, that under section 54 of the Transfer of Property Act 1882 mere agreement of sale confers no title on the willing purchaser and he acquires title only when the sale is executed in his favour. Till then the seller remains the full owner of the property and entitled to possession thereof. Even if the plaintiff is in possession but not the owner of the property he could not come in a suit for injunction restraining the vendor to interfere with his possession as no injunction can be issued against the true owners and where the title of the vendor has passed on to the subsequent vendees under a sale deed, even they cannot be restrained at the instance of the plaintiff as they certainly have better title than the plaintiff. (Para 6).

*Petition under Section 115 C.P.C. for revision of the order of the Court of Shri A. S. Garg, Senior Sub-Judge (Exercising Enhanced Appellate powers), Ambala, dated the 12th June 1978 affirming that of Shri Babu Ram Gupta Sub-Judge 1st Class, Ambala City, dated the 10th June, 1977 refusing to grant temporary injunction restraining the defendants from interfering with vacating the ex-parte ad his possession during the pendency of the suit and interim injunction dated 26th May, 1977.*

S. K. Sharma, Advocate, for the Petitioner

S. K. Goyal, Advocate, for the Respondent.

## JUDGMENT

*Gokal Chand Mital, J.*

(1) This is a revision by plaintiff against the appellate order of the Senior Subordinate Judge, Ambala maintaining the order of the trial Court refusing to grant temporary injunction restraining the defendants from interfering with his possession during the pendency of the suit.

(2) The petitioner filed a suit for injunction restraining the defendants from interfering with his possession on the facts that as a result of agreement of sale, dated 26th December, 1974, he had been delivered possession of the agricultural land which was proposed to be sold to him on receipt of part of the sale consideration. It was further alleged that instead of selling the land to him the vendor-defendant sold it to the remaining defendants, who wanted to take possession from him on account of purchase by them. Along with the suit an application for temporary injunction was filed in which *ex parte* injunction was granted, but after notice to the opposite party, the same was vacated by the trial Court,—*vide* order dated 10th June, 1977 on the findings that the plaintiff has not been able to make out a *prima facie* case as neither the agreement of sale has been produced on the record nor he is shown in possession of the land in the revenue records whereas on the contrary the vendee-defendants are shown in possession thereof and there was not a single *girdawari* entry in favour of the plaintiff. The order of the trial Court, on appeal, was maintained by the Senior Subordinate Judge by a well written order, dated 12th June, 1978.

(3) In revision before me, apart from the fact that it is not shown to me that how the orders of the Courts below suffer from illegality or irregularity in exercise of their jurisdiction, on facts of this case I find that the plaintiff has no case, whatsoever. The suit and the injunction application appears to be a clever device to obtain possession forcibly after he was able to secure an order of temporary injunction from the Court which would be manifest from the facts hereinafter reproduced.

(4) The petitioner himself filed an earlier suit for possession by specific performance of the land in dispute in this suit against the vendor and subsequent vendees, who are also defendants in this suit. From a reading of acertified copy of the plaint of that suit

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which has been produced before me by the counsel for the respondents and which could not be controverted by the learned counsel for the petitioner, I find in the heading of the plaint the following words are written :

“Suit for possession by specific performance ..... ”.

In the prayer clause the following words are mentioned;

“that it is, therefore, prayed that a decree for possession of the land fully described in the heading and para No. 1 of the plaint ..... be passed in favour of the plaintiff against the defendants”.

In the body of the plaint barring para 11, which shall be reproduced a little later no averment is made that the plaintiff was ever delivered possession in pursuance of the agreement of sale or that he came into possession of the land, subject-matter of the agreement of sale, before filing of the suit and this is very important to be noticed as in the present suit out of which this revision has arisen, the plaintiff has categorically stated that he was delivered possession of the land in dispute under the agreement of sale. However, if any doubt about possession is left that is clarified in para 11 of the plaint which is reproduced hereunder :

“That the plaintiff is now entitled to get possession of the land in dispute and is also entitled to get agreement, dated 26th December, 1974 specifically enforced through the Court on payment of Rs. 3,700 the balance of the sale consideration of the land in dispute”

So at the time of filing of the previous suit the plaintiff was admittedly out of possession and when the present suit was filed, he did not allege that after the filing of the previous suit how he came in possession of the land in dispute and in what manner. All that he has stated is that in pursuance of the agreement of sale he entered into possession of the land in dispute which fact is specifically missing from the previous plaint and clearly shows that a false allegation has been levelled in this plaint in the second suit, so that if somehow he is able to obtain an interim injunction he may enter into possession of the land on the strength of the order of the Court. Moreover, there is no revenue entry in favour of the plaintiff

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whereas the vendee-defendants are shown to be in possession in the revenue record. On these facts I will hold that the plaintiff is not in possession of the land dispute and as such has no *prima facie* case.

(5) The matter does not rest here. Even if the plaintiff was able to show that he was in possession of the land in dispute even then no order of injunction could be granted to him in view of the Supreme Court judgment reported as *M. Kaliappa Setty v. M. V. Lakshminarayana Rao*, (1). The relevant passage from the aforesaid decision may be reproduced below:—

“The plaintiff can on the strength of his possession resist interference from persons who have no better title than himself to the suit property.”

(6) According to the plaintiff's own case in the present suit, what he alleges is that he is in possession of the land in suit on the basis of agreement of sale. Under section 54 of the Transfer of Property Act, mere agreement of sale confers no title on the willing purchaser and he acquires title only when the sale deed is executed in his favour. Till then the seller remains the full owner of the property and entitled to possession thereof. Admittedly no sale deed has been executed in favour of the plaintiff and as such he is not owner of the property. According to the dictum of the Supreme Court in the above referred case even if the plaintiff was in possession he could not come in a suit for injunction restraining the vendor to interfere with his possession as according to the decision of the Supreme Court noted above, no injunction can be issued against the true owner. Since the title of the vendor has passed on to the vendee-defendants under the registered sale deed, even they cannot be restrained at the instance of the plaintiff as they certainly have better title than the plaintiff.

(7) For the aforesaid reasons also I would hold that the suit for injunction is wholly frivolous and if the Court cannot issue permanent injunction against the true owners in view of the Supreme Court decision referred above, no temporary injunction can be granted to the plaintiff.

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(1) A.I.R. 1972 S.C. 2299.

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(8) The petitioner has already filed his previous suit for possession by specific performance and if he is able to make out a case for grant of decree for specific performance, he would get a decree for possession of the land also on payment of the balance purchase price and on execution of the sale deed through the Court he would be able to recover possession of the land from the defendants.

(9) For the reasons recorded above, I dismiss the revision petition with costs.

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S. C. K.

*Before G. C. Mital, J.*

OM PARKASH and others,—*Petitioners.*

*versus*

SMT. TIRSHALA and others,—*Respondents.*

*Civil Revision No. 1536 of 1978*

July 12, 1979

*Haryana Urban (Control of Rent and Eviction) Act (11 of 1973)—Section 15(6)—Application for ejection dismissed as having abated—Order of dismissal—Whether appealable—Case remanded for trial on merits—Appellate authority—Whether has power to pass such a remand order.*

*Held*, that if it is a case where the Rent Controller has held that there is no abatement and wants to proceed with the ejection application then there will be no appeal as the order will be treated purely as an interlocutory order not finally decided either the rights of the parties or disposing of the claim application finally. If on the other hand, the Rent Controller comes to the conclusion that the ejection application is to be dismissed for not bringing the legal representatives on record then it will be a final order and appeal against the same would be competent. (Para 3).

*Held* that where the Rent Controller rejects an application for ejection without going into the merits of the same and the appellate authority is not satisfied with the said decision, the latter has