

The High Court Of Madhya Pradesh**MA-3458-2018***(MANJUL RAI Vs SMT. SULOCHANA)***Gwalior, Dated : 02-04-2019**

Shri H.K. Shukla, Counsel for the appellants.

Shri Manoj Kumar Gupta, Counsel for the respondents No.3 and 4.

This miscellaneous appeal under Order 43 Rule 1 of CPC has been filed against the order dated 17.5.2018 passed by 11th Additional District Judge, Gwalior in Civil Suit No.510/2016 by which the application filed by the appellants under Order 39 Rule 1 and 2 of CPC has been rejected.

It is submitted by the counsel for the appellants that the appellants have filed a suit for declaration of title and permanent injunction on the basis of an agreement to sell dated 29.5.2010. However, the Court below has rejected the application under Order 39 Rule 1 and 2 of CPC on the ground that no right or title stands transferred to the intending purchaser on the basis of agreement to sell and since the suit has not been filed for specific performance of contract, therefore there is no prima facie case in favour of the appellants.

Challenging the order passed by the Court below, it is submitted by the counsel for the appellants that it is true that the appellants should have filed a suit for specific performance of contract but as a wrong legal advice was given to him, therefore, a suit for declaration of title and permanent injunction has been filed. It was fairly conceded by the counsel for the appellants that no right or title stands transferred to the intending purchaser by virtue of agreement to sell. However, it is submitted by the counsel for the appellants that the Trial Court should have granted a liberty to the appellants to amend the civil suit.

Heard the learned counsel for the parties.

So far as the submissions made by the counsel for the appellants that the Trial Court should have granted a liberty to the appellant to amend the suit is concerned, this Court is of the considered opinion that the Courts are not meant for advising the litigant whereas the Courts are required to decide the

lis brought before it by the litigants. It is the professional duty of a lawyer to properly advise the litigant and if the lawyer has failed in discharging its duty, then the litigant has a remedy against the lawyer by seeking compensation or by filing a complaint before the Bar Council but the Court cannot saddled with the responsibility of giving an opportunity to the litigant to fill up the lacuna.

So far as the merits of the case are concerned, it is well established principle of law that by virtue of an agreement to sell, the intending purchaser would not become the owner of the land in dispute.

Accordingly, this Court is of the considered opinion that once there is no prima facie case in favour of the appellants, then the Trial Court did not commit any mistake in rejecting the application filed under Order 39 Rule 1 and 2 of CPC.

Accordingly, the order dated 17.5.2018 passed by 11th Additional District Judge, Gwalior in Civil Suit No.510/2016 is hereby affirmed.

The appeal fails and is hereby **dismissed**.

G.S. AHLUWALIA)
JUDGE

(alok)