

IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.

SINGLE BENCH: HON'BLE SHRI JUSTICE ALOK VERMA

MISCELLANEOUS APPEAL NO.1776/2016

Bharat Jaroli

Vs.

Dr.Ramesh Dak and another

Shri A.S.Kutumbale, learned senior counsel with Shri Vivek Phadke, learned counsel for the appellant.

Shri B.I.Mehta, learned senior with Shri Kapil Mahant, learned counsel for respondent no.1.

ORDER

(Passed on this 16th day of February, 2017)

This Miscellaneous Appeal is filed challenging the order passed by the learned Additional District Judge, Neemuch in Civil Suit No.01A/2016 dated 03.09.2016, whereby the learned Additional District Judge, dismissed the application filed by the plaintiff under Order 39 Rules 1 and 2 read with Section 151 C.P.C.

2. The relevant facts for disposal of this appeal are that the appellant/plaintiff filed a civil suit before the learned Additional District Judge for declaration and specific performance of contract, possession and permanent injunction. According to the appellant, the respondent no.1 was

owner of land bearing survey no.2010, 2012 and 2013 having area 1.418 hectare. He sold part of the land having area of 0.716 hectare to the appellant by a registered sale deed. The suit was filed for the remaining portion of the land having area 0.702 hectare. As per averments made in the plaint, in respect of this portion of the land, which was suit land, before the learned District Judge, an oral agreement was entered into between the appellant and the respondent no.1. It was agreed to between them that the appellant would develop this portion of the land also and would pay the plaintiff Rs.6 Crores, cost of the land. To avoid various formalities under the Registration Act and Stamp Act, agreement was not reduced in writing. The respondent no.1 received Rs.1 Crore cash from the plaintiff and no written receipt was passed by respondent no.1. It was also agreed between the plaintiff and respondent no.1 that the appellant would develop the land constructing commercial and residential accommodation on it and by selling the accommodation to third party, he would pay the amount to the appellant. Respondent also executed one power of attorney in favour of the appellant. In pursuance to this agreement, according to the appellant, he received Rs.1 Crore from one Vidhisha Patidar and Rs.21,50,000/- from Vinod Yadav and various amounts from other persons. After the appellant entered into an agreement with these purchasers, the respondent no.1 gave a notice through his Advocate and rescind the

contract immediately. He showed himself to be the owner and in possession of the suit property and also he published general notice in a newspaper stating therein that he withdrew the power of attorney given to the present appellant on 17.10.2015. It was also stated by the appellant that when the appellant was under threat given by somebody to his life, the respondent no.1 taking advantage of his state of mind took possession of the suit property. As such, under this factual background the plaintiff filed suit for specific performance and possession etc., against respondent no.1.

3. Respondent no.1 in the reply stated that he executed a power of attorney in favour of the appellant on 10.11.2011 and he engaged the appellant as contractor to construct commercial and residential accommodation over the remaining land having area 0.716 hectare. The land was never sold to the appellant. The language used in the power of attorney did not mention that the land was sold to the appellant by respondent no.1. Subsequently, according to the respondent no.1, the appellant posed himself as owner of the land and started selling the land to various persons and, thereafter, the power of attorney was withdrawn/cancelled.

4. The learned Additional District Judge by the impugned order found that there is no prima facie case in favour of the appellant, as he was not

owner of the land. The learned Additional District Judge also observed that it was unnatural for the appellant that for such a huge amount of money, he did not entered into written agreement with the plaintiff and did not asked for receipt. The learned Additional District Judge also found that as the appellant was not in possession of the property, according to his own averments, no interim relief could be granted in his favour.

5. So far as the balance of convenience and irreparable loss are concerned, the learned Additional District Judge found these two aspects are also in favour of the appellant and he proceeded to dismiss the application and refused to grant temporary injunction.

6. Learned counsel appearing for the respondent vehemently opposes the argument putforth by the learned counsel for the appellant. Relying on the judgment of the Hon'ble Apex Court in the case of **Secretary U. P. S. C. Vs. Krishna Chaitanya AIR 2011 SC 3101** and **Mandali Ranganna Vs. T.Ramachandra AIR 2008 SC 2291**, counsel for the respondent submits that no case is made out for any interference as the learned Additional District Judge rightly dismissed the application not finding a prima facie case in favour of the plaintiff.

7. Counsel for the appellant in response submits that in pursuance of the oral agreement, he undertook construction on the suit property, as agreed by respondent no.1. He also obtained money from various

purchasers. He is ready to pay the amount agreed upon in the agreement with respondent no.1, but now after construction, respondent no.1 wants to grab all the profits and, therefore, he is not following the terms and conditions agreed between both the parties.

8. I have heard both the counsel and gone through the various documents produced by the appellant. The facts itself show that the suit property was never sold to the appellant by respondent no.1. The alleged oral agreement was not believed by the learned Additional District Judge rightly, because at this stage, though such oral evidence is permissible, however, without taking evidence, the oral agreement cannot be believed and relied upon. However, the plaintiff himself averted in the plaint that the possession was taken over by respondent no.1 and as such, possession is not with the plaintiff and, therefore, grant of temporary injunction was not necessary, because the main purpose of granting temporary injunction was preserving the status, as it was at the time of filing of the suit. Since at the time of filing of the suit, the plaintiff was not in possession, there was no question of preserving that status, during the pendency of the suit. The power of attorney could be withdrawn by the person who gave such power of attorney to his agent. In the present case also the same was withdrawn and therefore, no interference can be called for at this Stage.

9. In this view of the matter after going through the order passed by the learned Additional District Judge which deals with other aspects of the matter minutely, no interference is called for.

The appeal is devoid of merit and liable to be dismissed and dismissed accordingly.

C.C. as per rules.

(ALOK VERMA)
JUDGE

RJ/