

Misc. (J) 31/2017.

ORDER

10.7.2017.

Parties are represented.

Opposite party Gobinda Karmakar filed petition No. 1696/17 vide which he prays for treating the written statement submitted by him in Title Suit No. 23/17 as the written objection in the present case as well.

Heard.

Prayer is allowed.

Heard both sides in respect of the present Misc(J) Case.

With the following order the present Misc.(J) case is sought to be disposed of.

Petitioners filed petition under Order 39 Rule 1 and 2 CPC read with section 151 CPC praying for a temporary injunction to restrain the opposite party from transferring / alienating the suit land till disposal of the main suit. It is the petitioner's case that the opposite party has entered into an agreement for sale in respect of the suit land and has received a consideration amount to the tune of Rs. Ten lakhs and odd but failed to execute the registered sale deed, in respect of the suit land in petitioner's favour and instead opposite party have been negotiating to sell the same to some others at a higher price.

Upon motion, this Court observing the presence of a prima-facie case in petitioner's favour, enjoined the opposite parties from creating any third party interest in respect of the suit land in the interim, while directing show-cause notices upon the opposite parties.

The opposite parties resisted the petitioner's prayer on the ground of non-execution of the alleged agreement for sale and non-receipt of

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any advance amount towards total consideration amount and claimed to be in possession of the suit land by his own right.

However, learned counsel for the opposite party, during the course of hearing submits that the interim order passed, may be made absolute as he is not going to sell / transfer the suit land to any person.

Heard.

Perused the case record.

It is well settled that injunction though a discretionary relief, its grant / refusal is governed by three cardinal principles being prima-facie case, balance of inconvenience, irreparable loss or injury.

It is therefore, required to find out whether the aforesaid principles exists in the petitioner's case or not to enable him to secure the relief of injunction.

It is the petitioner's pleaded case that the opposite party on 15.9.2015 executed an agreement for sale in respect of his land measuring 4 katha 10 lecha situated at village Abhayapuri under Srijangram Revenue Circle in favour of the petitioner for a total consideration of Rs. 15,00,000/- (Rs. Fifteen lakhs) and accordingly received 10,12,000/- (Rs. Ten lakhs twelve thousand only) as advance amount towards total consideration fixed, and thereafter opposite party failed to execute the registered sale deed in favour of the petitioner receiving the balance consideration amount and instead have been trying to sell the suit land to some other purchasers.

The opposite party denied having executed any agreement for sale or receiving any consideration amount and instead had alleged fraud and forgery by the petitioner. Apparently, substantial issues as to whether an

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agreement for sale between the parties as alleged took place or not and whether opposite party had received consideration amount or not has come up for consideration of the Court, requiring decision on merits. A prima-facie case for trial is disclosed.

It is the petitioner's case that he had parted with a handsome amount of money. Therefore the apprehension, that the said amount may be misappropriated by the opposite party, in the wake of opposite party's denial in respect of receiving any consideration amount from the petitioners, is not unfounded. A case of urgency is also disclosed.

Further the opposite party is in possession of the suit land. He would have nothing to lose if he is injuncted from selling the suit land at the present times, as he himself do not intend to sell the same presently. On the other hand, if the suit property is not protected by way of an injunctive order, the petitioner would suffer irreparable loss as with the same money, which he had expended he would be able to buy another plot of land, as same would not be sufficient to fetch a different plot, as price of land escalates with time even if compensation to the said tune is granted.

Again for the same reason the opposite party would be able to sell the suit land at a much higher price, if he sells it later, if the petitioner's case fails. Balance of convenience is with the opposite party and inconvenience with the petitioner. The cardinal principles are accordingly present in petitioner's case. Hence in the above circumstances, and in view of the submissions made by the opposite party's learned counsel. I am of the measured opinion that the suit property is required to be protected till final disposal of the main suit.

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Accordingly the order dated 4.4.2017 restraining the opposite parties to create any third party interest in respect of the suit land is made absolute hereby.

Misc.(J) case is allowed on contest without costs as above.

Parties to bear their own costs.

As dictated.



Civil Judge,
Bongaigaon

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