

**(2022) 11 JH CK 0007**

**In the Jharkhand High Court**

**Case No : Civil Miscellaneous Petition No. 86 Of 2022**

M/s Associated Estate Enterprises

APPELLANT

Vs

Sunil Kumar Singh & Others

RESPONDENT

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**Date of Decision : 04-11-2022**

**Acts Referred:**

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2  
Specific Relief Act, 1963 — Section 20A, 31

**Citation : (2022) 11 JH CK 0007**

**Hon'ble Judges :** Gautam Kumar Choudhary, J

**Bench :** Single Bench

**Advocate :** Indrajit Sinha, Ankit Vishal, P.A.S. Pati

**Final Decision :** Allowed

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## **Judgement**

Gautam Kumar Choudhary, J

1. Instant petition has been filed for quashing of order dated 07.02.2022 passed by Principal District Judge, East Singhbhum at Jamshedpur in Civil Miscellaneous Appeal No.04 of 2021 whereby and whereunder the petition under Order XXXIX Rule 1 and 2 of the C.P.C. the petition for temporary injunction has been disallowed.

2. Petitioner is the plaintiff in Original Suit No.317 of 2019 which has been filed for declaration of title and recovery of possession and cancellation of sale deeds executed by defendant Nos.2-6 in favour of defendant No.7 and also for recovery of possession.

3. It is submitted by the learned counsel that the plaintiff claims the suit property vide registered sale deed No.6755 dated 30.07.1982 and sale dated No.3239 dated 03.05.1985 executed by Bacha Singh, the recorded tenant.

4. The defendants claim title on the basis of sale deeds executed by the heirs of Bacha Singh in 2017 by three sale deeds and on the plea that sale deed

executed in favour of the plaintiff was cancelled by the vendor by cancellation deed No.8630 dated 29.11.1982.

5. From the pleadings of the parties, it will be manifest that the plaintiff has got prima facie case as sale deed duly executed cannot be cancelled by another cancellation deed, without recourse to Section 31 of the Specific Relief Act. During the pendency of the suit, the defendant is not only continuing construction on the suit premises but there is an impending possibility of alienation by subsequent sale deeds.

6. Learned counsel on behalf of opposite party No.7 has vehemently opposed the petition and submits that the opposites are in settled possession of the suit land and after purchase, the land has been duly mutated in their name and they are paying rent to the Government with regard to it. The construction of the multi-story building is at an advance stage and it will not be in the interest of justice by imposing temporary injunction at this stage. Reliance is placed in the case of ECE Industries Limited Versus S.P. Real Estate Developers Private Limited & Another reported in (2009) 12 SCC 776 in which it has been held where there is concurrent finding refusing any injunction, it should not normally be interfered. Ultimately, if the suit is decreed, the plaintiff can be compensated in terms of money or construction can be removed by delivering the possession. It is also submitted that Additional District Commissioner by sending letter dated 11th October, 2017 to the Circle Officer stated that it was Baban Singh who had executed sale deed and not Bacha Singh and this point has been considered by the Appellate Court.

7. Having considered the rival submissions and on perusal of the orders of the Court below, it is apparent that the Trial Court has recorded that there was no prima facie case in favour of the plaintiff but nor reason has been assigned for this finding. The Trial Court appears to have been moved by the fact that the defendants had constructed multi-storied building and amended Section 20A of the Specific Relief Act restrains the Court from passing order of injunction in matters involving infrastructure project. The Schedule appended to the Specific Relief Act provides list of projects under the category of infrastructure projects, which does not include private multi-storied apartment, but only affordable housing project. Therefore the reasoning of the Trial Court in refusing temporary injunction is not correct. The Appellate Court refrained from passing order of injunction principally on the ground that substantial construction had been completed.

8. The petitioner/plaintiff claims to be prior purchaser of the suit property on the basis of registered sale deed which cannot be cancelled except by a suit under Specific Relief Act. There is also a rebuttable presumption of due execution of a registered sale deed. Admittedly, the claim of the defendants is based on the claim of title on the basis of the execution of the sale deed by the heirs of Bachha Singh (vendor of the plaintiff). In this view of matter there is a prima facie case in favour of the plaintiff. Alienation of suit property during the

pendency of suit will not only result in creation of third party interest but will prejudicially affect the interest of gullible purchasers.

9. One of the objects of issuing a temporary injunction is that the effect of the injunction would be to preserve the status quo and to prevent irreparable injury. Here in the present case, the multistoried building is under construction by the subsequent purchaser and if the alienation of the property is allowed that will create third party interests and even if the plaintiff succeeds, he will get only a hollow decree with interminable difficulties in getting the said decree executed against the third-party purchasers. It is precisely to forestall such eventualities that the provision of temporary injunction is engrafted in the code. This court is of the view that there are sufficient condition for passing an order of temporary injunction. It has been held in *Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass*, 2005 0 AIR(SC) 104 "that unless and untill a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed, which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings."

10. Under the circumstance, the petition for temporary injunction is allowed. The defendants are refrained from alienating the suit property during the pendency of the suit. The learned Court below is directed to expeditiously dispose of the suit, preferably within six months.

This Civil Miscellaneous Petition is allowed.