

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 520 of 2009

Date of Decision : December 31, 2009

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Sarla Devi and others

Petitioners

Versus

Surinder Kumar and another

Respondents

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*Coram:*

Hon'ble Mr. Justice Sanjay Karol, Judge.

*Whether approved for reporting?*<sup>1</sup> No.

For the petitioners : Mr. Ajay Sharma, Advocate, for the petitioners.

For the respondents : Mr. Subhash Sharma, Advocate, for the respondents.

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Sanjay Karol, J. (Oral)

In this petition filed under Article 227 of the Constitution of India the plaintiffs have assailed the orders dated 5.5.2009 passed by the Addl. District Judge, Fast Track Court, Una, District Una, H.P. in Civil Misc. Application No. 7 of 2009 whereby their application filed under Order 39 Rules 1 and 2 CPC stands dismissed.

The plaintiffs filed a suit for declaration that they are owners in possession of the suit land, being successors in interest of Sh. Santokh Singh and that the sale of the suit land in favour of the defendants Sh. Surinder Kumar and Sh. Balbir Singh (respondents herein), is an outcome of fraud and collusion. The plaintiffs' Civil Suit No. 19 of 2003 was

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<sup>1</sup> Whether reports of Local Papers may be allowed to see the judgment?

dismissed in terms of judgment and decree dated 25.8.2008 by the Civil Judge (Sr. Division), Una. The defendants were held to be owners in possession of the suit land on the basis of the sale certificates Ext. D-1 and Ext. D-2 issued by the appropriate authority pursuant to an auction taken place in execution proceedings.

Plaintiffs assailed the same by filing an appeal before the District Judge. Alongwith the appeal an application under Order 39 Rules 1 and 2 CPC was filed which stands dismissed in terms of the present impugned order dated 5.5.2009. The operative portion of the same is reproduced as under:

"10 It is settled position of law that while seeking an Interim injunction party seeking the same must show that it has a prima facie case and balance of convenience in its favour and in case of non granting the injunction it will suffer an irreparable loss which can not compensated in terms of money but in this case these ingredients are not there in favour of the applicants. In support of their claim the appellants have mainly relied upon the copies of Jamabandies of the year 1995-96 i.e. Ext. P1 and P2 in which Shri Santokh Singh has been shown as owner in possession. It is true that the Jamabandi entries carry a presumption of the truth but this presumption is rebuttable and on the face of other documents and evidence on the record it can be said that the presumption attached to these entries in Jamabandi has been rebutted. To rebut the same there are the sale certificates Ext. D1 & Ext. D2 both dated 2.7.2002 issued by SDO(Civil) cum-Collector, Una, to the effect that Khasra No. 132 of the suit land has been purchased by the respondent No. 1 Shri Surinder Kumar for a consideration Rs. 29,000 and khasra Nos. 347 & 376 of the suit land have been purchased by the respondent No. 2 for consideration of Rs. 3,35,000/- These sale certificates go to

show that the auction sale of suit land was duly confirmed by the Competent Authority. Not only this, a mutation i.e. mutation No. 160 has also been sanctioned in favour of respondents on the basis of the sale certificates as is apparent from the remarks column of Ext.P1 & P2. So in view of these sale certificates and mutation it is difficult to say that the plaintiffs are having a prima facie case in their favour. The main contention of the applicants/plaintiffs is that auction sale in question are the result of fraud and collusion between the defendants with revenue agency but prima facie, particularly when the suit of the plaintiffs dismissed by the trial Court, there is nothing to draw any such inference.

11. In the facts and circumstances of the case the only direction which can be issued in this application is that suit land shall abide by the principles of *lis pendens*. Any improvement made on the land, construction etc. will not vest any equity in favour of the respondent or any other person and shall abide by the final decision in this appeal. Construction/improvements shall be removed from the land in the event of the appellant succeeding.”

In my considered view no ground for interference is made out at all. The defendants have been held to be owners in possession by virtue of sale certificates issued by SDO (Civil)-cum-Collector, Una. Not only the sale consideration was paid by the defendants but the sale certificates were confirmed by the competent authority. From the record it could not be shown as to how and in what manner the authorities had colluded with the defendants while auctioning the suit land. Prima facie case is also not made out by the plaintiffs and the balance of convenience lies in favour of the defendants and in any event in para 11 of the impugned order plaintiffs’ interest has been adequately protected.

No case for interference is made out. The impugned order cannot be said to be perverse. The petition is dismissed. However, considering the case in totality it is directed that the lower Appellate Court shall decide the appeal as expeditiously as possible and preferably within a period of six months from the date of appearance.

The parties are directed to appear before the Court on 15.1.2010.  
Records be immediately sent back.

CMP No. 669 of 2009

Disposed of.

(Sanjay Karol),  
Judge.

December 31, 2009  
(PK)