

## Smt. Rita Toor Vs Logical Developers Pvt. Ltd.

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Jan. 20, 2010

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 151

**Citation:** (2010) 2 CivCC 616 : (2010) 158 PLR 499 : (2010) 3 RCR(Civil) 662

**Hon'ble Judges:** Rakesh Kumar Garg, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Rakesh Kumar Garg, J.

This is defendant's revision petition challenging the impugned order dated 4.8.2009 passed by Additional District

Judge, Ludhiana whereby the petitioner has been restrained from alienating the suit property during the pendency of the suit.

2. As per the averments, respondent filed a civil suit for specific performance of the agreement to sell dated 12.8.2005 for a total sale

consideration of Rs. 1,02,60,000/- out of which earnest money of Rs. 25 lacs was paid to the petitioner. The petitioner failed to execute the sale

deed as stipulated. Thereafter, respondent filed civil suit for possession as owner by way of specific performance of the agreement to sell in

question on 5.6.2006. The petitioner filed written statement to the aforesaid civil suit filed by the respondent.

3. Along with the suit, respondent also filed an application under Order 39 Rules 1 & 2 CPC restraining the petitioner from alienating the suit land

in any manner. The aforesaid application was dismissed by the Civil Judge (Junior Division), Ludhiana vide order dated 28.1.2009. Aggrieved

from the aforesaid order, the respondent filed an appeal which was allowed by the Additional District Judge, Ludhiana vide the impugned order

dated 4.8.2009 and the petitioner was restrained from alienating the suit land during the pendency of the suit.

4. Challenging the impugned order, learned Counsel for the petitioner has vehemently argued that the impugned order has been passed against the

well settled principles of law as there is no prima facie case in favour of the plaintiff-respondent, inasmuch, as the agreement to sell in question has

not created any interest in favour of the respondent and the respondent could reach the property only through specific performance of contract of

sale and not otherwise. It has been further argued on behalf of the petitioner that the lower appellate court has committed an illegality in exercise of

its jurisdiction as by granting interim injunction, the civil rights of the petitioner have been infringed and on the other hand, the rights of the

respondent were protected under the doctrine of lis pendens. Learned Counsel for the petitioner has further argued that the judgment of the

Hon'ble Supreme Court in Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, was based on the concession and therefore, the same

cannot be relied upon as a precedent and, thus, the impugned order was liable to set aside.

5. I have heard learned Counsel for the petitioner and perused the records of this petition.

6. Execution of the agreement of the sale dated 12.8.2005 for the sale of land for a total sum of Rs. 1,02,60,000/- between the parties is admitted.

A substantial amount of Rs. 25 lacs has been admittedly received by the petitioner as earnest money. Possession of the land in dispute is still with

the petitioner and now the petitioner is allegedly threatening to alienate the property in dispute.

7. After noticing the facts and the rival contentions, the lower appellate court observed as under:

From the perusal of the judicial file, this Court finds that execution of the agreement to sell dated 12.8.05 is admitted. Payment of earnest money of

Rs. 25 lacs by the plaintiff to the defendant is also admitted. Main contention of the defendant is that due to breach committed by the plaintiff, the

agreement in question stands cancelled and the earnest money stood forfeited. At this stage, without any evidence on the file, it cannot be decided

whether the plaintiff committed the breach in part performance of the agreement or whether the earnest money stands forfeited. Whether the

plaintiff was ready and willing to perform his part of the contract will be decided by the learned trial court during trial after perusing the evidence

which is yet to be led by the parties. In this case, substantial amount has been paid as earnest money by the plaintiff to the respondent/defendant.

There is no doubt in it that the defendant/vendor is the owner of the land till the execution of the sale deed and agreement to sell does not confer

any title. The only question which is to be determined in the present case is that whether the defendant can be restrained from alienating the

property in dispute during the pendency of the suit on the basis of agreement to sell. The answer is in affirmative. As the execution of the agreement

to sell dated 12.8.05 and payment of earnest money of Rs. 25 lacs is admitted, then prima-facie case and balance of convenience is in favour of

the plaintiff. Learned lower court has relied upon Darshan Lal v. Ram Parshad (supra) in which it has been held by our Hon'ble High Court that,

any transfer made during pendency of the suit would be hit by the principles of lis pendens. This citation is not applicable to the facts of the case in

hand as in that case, the matter in dispute was regarding possession of the property in dispute on the basis of agreement to sell, whereas in the

instant case, possession is still with the defendant and the plaintiff is only seeking remedy to restrain the defendant from alienating the property in

dispute during the pendency of the suit. It has been held by Hon"ble Apex Court in case titled Maharwal Khewati Trust (Regd.) Faridkot v.

Baldev Dass 2005 (1) CCC 430 (S.C.) that temporary injunction cannot be declined on the basis that alienation will be subject to law of lis

pendens and construction raised will be at own risk. It is further held that unless and until the 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 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. In view of

the law laid down by the Hon"ble Apex Court in this citation, the citation relied upon by the learned lower court is not applicable to the facts of the

case in hand. Only on the basis of lis pendens, the relief of temporary injunction regarding alienation of the suit property cannot be decided. If

injunction is not granted, then the plaintiff/appellant would suffer an irreparable loss and injury, which cannot be compensated in terms of money

and will rather lead to further multiplicity of proceedings. The defendant-respondent has failed to prove on record that how she is going to suffer

any irreparable loss or damage if injunction is granted in favour of the plaintiff. The order of the learned lower court is perverse and is not based on

well established principles of law. The same is hereby set aside. The appeal is allowed. Application of the plaintiff/appellant Under Order 39 Rules

1 & 2 r/w Section 151 CPC is also allowed with costs and accordingly the defendant/respondent is hereby restrained from alienating the suit

property during the pendency of the suit....

8. At this stage, without any evidence on the file, the rights of the parties with regard to the agreement in question cannot be decided and the same

will be decided by the trial court after perusing the evidence which is yet to be led by the parties. In this case substantial amount has already been

paid as earnest money to the petitioner. Thus, in view of these circumstances, temporary injunction cannot be declined on the basis that alienation

will be subject to law of lis pendens. Even otherwise, no prejudice can be said to have been caused to the petitioner by the impugned order as

alienation during the pendency of the civil suit is hit by the doctrine of lis pendens. In this case, plaintiff has made a case of irreparable loss or

damage to him as he has already paid a substantial sum of Rs. 25 lacs. Possession is still with the petitioner. In case of further alienation or transfer

of property in suit, may lead to loss or damage being caused to the plaintiff/respondent who may ultimately succeed and this may further lead to

multiplicity of proceedings. On the other hand, the petitioner is in possession of the property in dispute and there is nothing on record to prove that

in what manner she is going to suffer if injunction is granted of the plaintiff/respondent. It may also be relevant to note that in Maharaj Khewaji's

case (supra), the observations of the Hon'ble Supreme Court are not based upon any concession as argued.

I find no error in the exercise of its discretion by the lower appellate court by granting stay on the alienation of the suit property during the

pendency of the suit.

Dismissed.