

**Prakash Chander Vs. Dev Dutt Malik**

**Prakash Chander Vs. Dev Dutt Malik**

**SooperKanoon Citation :** [sooperkanoon.com/692388](http://sooperkanoon.com/692388)

**Court :** Delhi

**Decided On :** Aug-09-1983

**Reported in :** 27(1985)DLT23

**Judge :** B.N. Kirpal, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1 and 2

**Appeal No. :** I.A. No. 1945/83 in Suit No. 633 of 1983

**Appellant :** Prakash Chander

**Respondent :** Dev Dutt Malik

**Advocate for Def. :** G.L. Rawal, Adv.

**Advocate for Pet/Ap. :** P.K. Aggarwal, Adv

**Judgement :**

**B.N. Kirpal, J.**

1. A suit for specific performance of a contract was filed in which it was contended that the predecessor-in-interest of the plaintiff had entered into an agreement with the defendant for the purchase of a plot of land measuring 601 sq. yards bearing No. 39 E, situated at village Haiderpur (G.T. Karnal Road) in SMA Cooperative industrial Estate.

2. The case of the plaintiff is that the receipt dated 2nd June, 1980, photo copy of which has been filed on the record, shows that the defendant had agreed to sell the aforesaid plot of land at the rate of Rs. 195/- per sq. yards and that the defendant had received a sum of Rs. 5,000/- as advance/part payment towards the sale consideration of the aforesaid plot. This receipt was issued by the defendant in favor of one Shri Ramesh Chand Jain.

3. It is then contended that the rights of Shri Ramesh Chand Jain under the said agreement to sell were assigned in favor of the plaintiff. The plaintiff has stated to have paid a sum of Rs. 5,000/- and it is his case that he became entitled to see that the defendant transfer his right, title and interest in the property in his favor.

4. It is alleged by the plaintiff in the plaint that despite a legal notice having been sent, the defendant has not obtained requisite permission from the different authorities and has not transferred the property in question in his favor. It is averred in the plaint that the plaintiff has always been and is still ready and willing to perform his part of the contract but it is the defendant who is trying to get out of the commitment which he has been entered into with the plaintiff.

5. Along with the plaint, the present application under Order 39 Rules 1 and 2 was also filed. By order dated 2nd May, 1983 an interim order was issued restraining the defendant from wasting, damaging, alienating, disposing, transferring or parting with possession of the aforesaid plot of land.

6. On notice having been issued, the reply to the application has been filed. The defendant has also filed the written statement and has placed on record the documents on which he seeks to rely. The main case of the defendant is that neither the plaintiff nor Shri Ramesh Chand Jain is a member of SMA Cooperative Society Ltd. and the plot cannot be transferred by the defendant in favor of a non member. It is also contended by the defendant that there can be and there has been no valid assignment by Shri Ramesh Chand Jain in favor of the plaintiff. It is also contended by Shri G.L. Rawal that there was no concluded agreement to sell between the parties.

7. It is an admitted case of the parties that the defendant has the right, title and interest in the said plot by virtue of a perpetual sub lease dated 28th March, 1978. This sub lease has been executed between the President of India as the Lesser, SMA Cooperative Industrial Estate Ltd. as the lessee and M/s Federal Rubber Works, of which the defendant is a proprietor, as the sub lessee. The rights and obligations of the lessee and sub lessee are spelt out in detail in this document. It is the right under this agreement which are sought to be got transferred in favor of the plaintiff.

8. Clause 6 of perpetual sub lease reads as follows :

'(a) The Sub Lessee shall not sell, transfer, assign or otherwise part with possession of the whole or any part of the industrial plot in any form or manner, benami or otherwise, to a person who is not a member of the Lessee.

(b) The sub-lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the industrial plot to any other member of the Lessee except with the previous consent in writing of the Lesser which he shall be entitled to refuse in his absolute discretion.' .....

9. The reading of the aforesaid clause makes it very clear that there is an absolute prohibition of transferring of the industrial plot in favor of a person who is not a member of the lessee. The only transfer, which is permitted, is a transfer to another member of the lessee but such transfer can be effected only after first obtaining the previous consent in writing of the Lesser, namely the President of India.

10. In the present case, the main prayer in the suit is that a decree for specific performance should be passed and the defendant should be asked to execute and transfer the said plot of land in favor of the plaintiff. It is now settled that if a final decree cannot be passed for any reason, then an interim order to the same effect cannot be issued. The question which arises for consideration is as to whether at this point of time can a decree for specific performance in the present suit be passed in favor of the plaintiff. Even the counsel for the plaintiff is not able to dispute the fact that the plot in question cannot be transferred by the execution of

a sale deed in his favor because he is not a member of the society. If this be so, it must necessarily follow from the reading of clause 6 reproduced herein above and this is the only conclusion possible, that the defendant is neither entitled nor obliged to transfer the plot of land in favor of the plaintiff who is not a member of the lessee. Clause 6 prohibits, the transfer of possession, sale etc. in any form or manner, whatsoever. In other words, what cannot be done directly is also not permitted to be done indirectly. It cannot be that a decree for specific performance is passed but the sale deed is not to be executed. This is what was suggested by the counsel for the plaintiff, with which I am unable to agree. If a decree for specific performance is passed it has to be that a sale deed of plot of land in question has also to be executed and registered in favor of the plaintiff. It appears in this case that whenever there is a prohibition for any such sale or transfer in favor of a non member like the plaintiff, it may be that the plaintiff may be entitled to receive damages or compensation for any breach of contract which may have taken place but, as far as the transfer of the plot of land is concerned, the Court cannot issue any decree which would be contrary to the terms of the perpetual sub lease. To put it differently, it would mean that in the present case, the plaintiff is not in a position to have the plot of land transferred to his name because he is not a member of the cooperative society.

11. Because of the aforesaid reasons, it is not necessary to go into the other contentions, which have been raised with regard to the validity of assignment etc. In my opinion, because of the prohibition contained in Clause 6 the defendant cannot be directed to transfer the land in favor of the plaintiff and, therefore, the injunction, prayed for, cannot be granted.

12. In the plaint, there is an alternate prayer that a decree for damages of Rs. one lac plus refund of Rs. 5,000/- which had been paid as earnest money, be passed. The fact that Rs. 5,000/- has been received by the defendant cannot be disputed. I think the ends of justice would be met in this case if the defendant, within four weeks, furnishes a security to the satisfaction of the Registrar of this Court for a sum of Rs. 1,05,000/-. The interim order dated 2nd May, 1983 stands vacated, I.A. stands disposed of. Parties to bear their own costs.

