

**Bharatlal Vs. Devichand**

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**Court :** Rajasthan

**Decided On :** Nov-26-1992

**Reported in :** 1992WLN(UC)601

**Judge :** B.R. Arora, J.

**Appeal No. :** S.B. Civil Misc. Appeal No. 229 of 1991

**Appellant :** Bharatlal

**Respondent :** Devichand

**Disposition :** Appeal dismissed

**Judgement :**

**B.R. Arora, J.**

1. This appeal is directed against the order dated 3rd May, 1991 passed by Additional District & Sessions Judge No. 1, Udaipur, by which the learned Additional District & Sessions Judge granted a temporary injunction in favour of the plaintiff directing the respondents not to alienate the property in question.

2. Plaintiff Devi Chand filed a suit on the basis of an agreement dated 15th August, 1988 with respect to the house situated in Sarva Ritu Vilas, Udaipur. Alongwith the suit, an application under Order 39 Rule 1 & 2 read with Section 151, C.P.C. was also filed. It was averred in the application that the defendant on 15th August,

1988 agreed to sell the house in question to the plaintiff for a consideration of Rs. 5,55,000/-. A sum of Rs. 1,11,000/- was paid as an advance on 15th August, 1988 itself at the time of execution of the agreement and out of the remaining amount, Rs. 1,00,000/- was agreed to be paid in October, 1988 and remaining Rs. 3,44,000/- was to be paid in February, 1989 before the Registrar at the time of registration of the sale-deed. The case of the plaintiff is that he made payment of Rs. 1,93,497.43 and also paid an amount of Rs. 86,225 for the purchase of stamps but the defendant did not get the sale deed executed in favour of the plaintiff though a sum of Rs. 1,93,497.43 has been paid to him. It is further averred in the plaint that several registered notices were given to the plaintiff but he is not ready to perform his part of the contract and the defendant is making efforts to sale the house in question to some other person. It was, therefore, prayed that the defendant may be restrained from alienating the property in question. This application was opposed by the defendant and it was averred in the reply that notices were given to the plaintiff to pay the balance price so that the sale-deed may be executed but the plaintiff did not pay the amount and, therefore, now he is not entitled for any temporary Injunction.

3. I have heard the learned Counsel for the parties and perused the order passed by the learned trial Court. It is not in dispute that an agreement was arrived at between the parties for the sale of the house for a consideration of Rs. 5,55,000/- and out of this Rs. 1,93,497.43 has been paid to the defendant on various dates; Rs. 1,11,000/- was paid on 15th August, 1988, Rs. 49,000/- was paid on 24th January, 1989 and Rs. 33,497.43 was paid on 23rd February, 1989.

4. Before this Court, the appellant gave an offer that he is ready to get the sale deed executed provided the plaintiff pays the entire balance amount. Learned Counsel for the plaintiff took time for calling his client and on 19th October, 1992 the plaintiff showed his willingness to pay the balance amount but the learned Counsel for the appellant refused to accept the amount and stated at the Bar that his client is not agreeable to accept the amount and get the sale deed executed. Initially it appears that the time was essence of the contract but the defendant accepted the amount even thereafter. A sufficient sum has already been paid to the defendant by the plaintiff and if the appellant-defendant will be permitted to

sale the house in question to any third party during the pendency of the suit, the effect of that will be that further complications will arise in the matter.

5. The learned trial court has considered all the facts and circumstances of the case in a right perspective and rightly came to conclusion that prima facie a case has been established in favour of the plaintiff. The learned lower court has also decided the questions of balance of convenience and irreparable injury in favour of the plaintiff. The learned trial court while granting the temporary injunction has also taken into consideration, the interest of the defendant by directing plaintiff to give an undertaking that he will pay a sum of Rs. 2000/- as mesne profit for use and occupation of the house as that will remain vacant during that period. It is stated by the learned Counsel for the plaintiff at Bar that the undertaking has already been furnished by the plaintiff. Thus, the learned lower court while granting injunction has taken into consideration the interest of both the parties and the order passed by the learned lower court cannot be said to be in any way arbitrary or unjust or against the judicial norms.

6. In the result, I do not find any merit in this appeal and the same is hereby dismissed.

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