

**Omwati Vs. Ghure**

**Omwati Vs. Ghure**

**SooperKanoon Citation :** [sooperkanoon.com/772084](http://sooperkanoon.com/772084)

**Court :** Rajasthan

**Decided On :** Feb-18-2008

**Reported in :** 2008(3)WLN375

**Judge :** Dalip Singh, J.

**Appeal No. :** S.B. Civil Misc. Appeal No. 477/2005

**Appellant :** Omwati

**Respondent :** Ghure

**Judgement :**

**Dalip Singh, J.**

1. Heard learned Counsel for the parties. This misc. appeal has been filed by the plaintiff appellant against the order by which the application of the plaintiff under Order 39 Rule 1 & 2 has been dismissed. The plaintiffs filed a suit for specific performance of the agreement dt. 10.07.2001 in respect of the agriculture land in which the plaintiff as well as the defendant are co-sharers. The allegation of the plaintiff is that the deceased husband of the plaintiff No. 1 entered into an agreement for purchase of the share of a defendant to the extent mentioned in the plaint vide agreement dt. 10.07.2001 for an amount of Rs. 6,00,000/- and at the time of the execution of the agreement a sum of Rs. 1,50,000/- was paid by the deceased-husband to the defendant. Subsequently also the amount of Rs. 1.5

lakhs was paid on two occasions on 20.06.2002 and 11.06.2003 thereafter, the husband of the plaintiff No. 1 died on 21.10.2003. On 02.04.2004 the balance amount of Rs. 1.5 lakhs was also paid but the defendant failed to give the receipt and execute the sale deed and as such the plaintiffs filed the suit against the defendant.

2. The defendant filed a reply and denied the fact of execution of the agreement, and the receipt of the amount either from the deceased-husband of the plaintiff or from the plaintiff and also pleaded that the document in question was a forged document. It was also pleaded that with respect to the document in question was a forged document. It was also pleaded that with respect to the document the defendant had filed a FIR No. 390/2004 at Police Station, Kama.

3. The learned trial Court decided the question relating to prima facie case on the basis of the fact that the agreement dt. 10.07.2001 was not duly stamped and also not a registered document and, therefore, held the question of prima facie case against the plaintiff. Accordingly, the other two points with regard to balance of convenience and irreparable loss have also been decided that the defendant had submitted that the document was a forged document and for which a case by means of a FIR under Sections 420, 467, 468, 471, 120B IPC had been lodged against the plaintiff.

4. The learned trial Court, therefore, dismissed the application filed by the plaintiff-appellant.

5. The learned Counsel for the appellant has submitted that so far as the document dt. 10.07.2001 is concerned the same could have been looked into for collateral purpose and further that so far as the learned trial Court has gone into the question of the merits, primarily on the basis of the alleged FIR against the plaintiffs is concerned, the police after investigation of the case on FIR No. 390/2004 has submitted a final report in this behalf. It is thus been submitted that the learned trial Court has thus committed an error in dismissing the application on the aforesaid ground and further that during the pendency of the suit the property must be protected.

6. Having considered the rival submissions and the judgment passed by the learned lower Court, I am prima facie of the view that in the case at hand the property in dispute deserves to be protected and, therefore, in the instant case looking to the fact that the suit is one of specific performance of the agreement and that the police have filed a final report on the FIR lodged by the defendant and the defendant could not prove their allegation I am inclined to accept this appeal and set aside the judgment passed by the learned lower Court and direct that the defendant would maintain status quo as it exists today with regard to the property in dispute during the pendency of the suit.

7. This appeal is accordingly allowed to the extent indicated above. The stay application also stands disposed of.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**