

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Writ Petition No.206544 of 2018

Ghulam Muhammad

VS

Ashiq Hussain, etc.

S.No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge, and that of parties or counsel, where necessary.
--------------------------------	-------------------------------	--

30.04.2018 Malik Noor Muhammad Awan, Advocate.

Prayer in this petition is that an order in the nature of writ of certiorari be issued for quashing the orders of the Courts below, whereby application of the plaintiff under Order XXXIX Rule 1 & 2 CPC for grant of temporary injunction was dismissed.

2. This constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is of the plaintiff and arises from his suit through which he sought a decree for specific performance of oral agreement to sell dated 11.07.2004. Alongwith plaint an application under Order XXXIX Rule 1 & 2 CPC was also filed for grant of temporary injunction restraining the defendants from interfering with his possession. The averments made in the plaint as well as in the application for grant of temporary injunction were traversed by the defendants No.1 to 5, 11 & 12 whereas the other defendants submitted a joint consenting written reply. On consideration of the matter, the Trial Court dismissed the application for grant of temporary injunction vide order dated 08.03.2017 on the ground that the plaintiff had failed to establish a prima-facie case in his favour. The plaintiff thereupon preferred an appeal before the Addl.

District Judge, Khushab. On appeal, the plea of the plaintiff was re-appraised but the same was not found sufficient for the grant of temporary injunction. The Appellate Court relying upon the case of “Mirza Nazim Baig v. Government of the Punjab through Chief Secretary and others”(NLR 2008 Civil 565) came to the conclusion that the defendants being lessee of the state land were not entitled to transfer any right or interest in state land leased out to them except with permission of the competent authority, that is, Collector; and that since the defendants had not obtained any permission of the Collector, alleged oral agreement to sell by virtue of provisions of Section 19 of the Colonization of Government Land (Punjab) Act, 1912 was void. On the basis of said conclusion the relief for the grant of temporary injunction was declined and resultantly, the appeal was dismissed vide judgment dated 11.04.2018. So, this petition.

3. The grouse of the plaintiff is that he had established a case of temporary injunction in his favour but this fact was not appreciated properly; that his possession over the suit land is not disputed; that the defendants being allottee/tenant of the colony land by way of an agreement to sell, handed over possession of the suit land to him and undertook to execute sale deed in his favour on grant of proprietary rights; and that as per principle settled in the case of “Syed Hussain Naqvi and others v. Mst. Begum Zakara Chatha through LRs and others”(2015 SCMR 1081) such contingent /prior agreement to sell did not necessitate obtaining prior permission to transfer the right in the suit land in term of Section 19 of

the Colonization of Government Land (Punjab) Act, 1912.

4. Although the ground which prevailed upon the Courts below to decline temporary injunction was not valid yet the arguments canvassed at the Bar have not persuaded me to grant the prayer made in this petition. The dispute in this case related to the land measuring 104-Kanlas 7-Marlas which according to record of rights for the years 2003-2004 comprising Khatta No.31-Min and Khatooni No.32-Min was situated within Chak No.6-MB Tehsil Quaidabad District Khushab. This is a colony land and was allotted to the defendants under *Abaad Kaari Scheme*. The case of the plaintiff is that on 11.07.2004, the defendants in the presence of witnesses sold the suit land to him for consideration of Rs.1,500,000/-; that upon payment of the whole sale consideration amount, the possession of the suit land was delivered to him and since then he is enjoying possession over the suit land; and, that it was agreed that the defendants would transfer the suit land in his favour after getting proprietary rights from the Collector. On the other hand, defendants No.1 to 5 and 11 in their joint written statement have denied the claim of the plaintiff. The defence of the said defendants is that they never agreed to sell the suit land to the plaintiff; and, that the possession of the suit land was never delivered to the plaintiff. The defendants No.7 to 10 however, filed a joint consenting written statement before the Trial Court. The Province of Punjab through Collector, that is, defendant No.12 also submitted a contesting written statement. The plea of defendant No.12 is that the alleged oral agreement to sell

dated 11.07.2004 is not enforceable by law and, therefore, the same cannot be got performed through process of the Court. The rival stances of the parties to the suit suggest that convincing and reliable evidence is required to be produced by the plaintiff so as to establish the alleged oral sale; and the reasons which led him to wait for more than fourteen years to knock at the door of the Court for protection of his alleged right. Prior to recording of evidence, it cannot be held at this stage that the plaintiff has established prima-facie case in his favour. It is now well established principle that temporary injunction cannot be allowed as a matter of course in those cases where even to establish prima-facie case evidence is yet to be produced. In this regard reference may be made to the cases of *Fazal Din v Mst. Robeena Aurgangzeb and 2 others* (1983 CLC 1280) and *Chairman, Municipal Committee, Taxila v Mohammad Jan and 4 others* (1987 CLC 2416)

5. The argument that since the possession of the plaintiff is not disputed and thus the balance of convenience lean in his favour to get protection of his possession over the suit land as otherwise he would suffer irreparable loss sans merits. In the present case, the plaintiff has failed to make out a prima-facie case and, thus, as per principle settled in the case of *Aijaz Hussain Bhatti and another v Haji Bagh Ali and 9 others* (1985 CLC 261), there is no need to attend to other two considerations, that is, balance of convenience and irreparable loss which really belong to one and the same category. Even otherwise the monetary value is attached to the suit land and, therefore, question of irreparable loss does not arise.

Writ Petition No.206544 of 2018

6. Since exercise of discretion by the Courts below does not suffer from any illegality or procedural irregularity or jurisdictional defect, interference with the orders, under challenge, is not called for. This petition is, therefore, dismissed.

**(SHAHID WAHEED)
JUDGE**

M.R.Shad*

Approved for reporting.

Judge