

**IN THE COURT OF KISHOR KUMAR, ADJ-04 (EAST),
KARKARDOOMA COURTS, DELHI.**

CS no. 1296/16

Samta Jain VS

Vs

Ahilya

17.01.2023

ORDER

1. Vide this order, the applications filed along with plaint U/o 39 rule 1 & 2 CPC for passing interim injunction to restrain the defendants from creating third party interest in the suit property shall stand disposed off.

2. Reply to the present application has been filed by the defendant.

3. It is seen that another application under the same provisions seeking the same relief has been filed on behalf of the plaintiff on dated 22.09.2022 also.

4. Plaintiff has filed the present suit for specific performance, possession, permanent injunction and damages against the defendants on the grounds that the defendant no.1 claim

herself to be the owner of upper ground floor portion of property no. U-118-A, measuring 100 sq. yds. consisting of three bedrooms and one drawing / dinning room set therein fitted with electricity and water tap connection with their meters, water motor and water tank, with common stairs, passage, entrance and one car parking on the ground floor situated at Upadhyay Block, Shakarpur in the area of village Shakarpur Khas, Ilaqa Shahdara, Delhi-92 (hereinafter be referred to as the suit property). According to the plaintiff, defendant no.1 wanted to sell the suit property to which plaintiff agreed to purchase the same for sale consideration of Rs. 15,50,000/-. On 04.05.2012, plaintiff paid the entire sale consideration. Plaintiff also purchased the stamp duty of Rs. 62,000/- for the execution of the sale deed. However, the defendant did not turn up for execution of the original sale deed before the Sub-Registrar.

5. The plaintiff requested the defendant several times to execute the title documents of the suit property in favour of the plaintiff but to no effect. Hence, the present suit filed by the plaintiff to direct the defendant to execute the sale deed in favour of the plaintiff in respect of the suit property and also for the possession thereof.

6. In alternative, the defendant be directed to pay sum of Rs. 15,50,000/- with interest @ 24% p.a. The plaintiff has also prayed for decree of permanent injunction to restrain the defendant

no.1 from creating any third party interest in the suit property. The plaintiff has also prayed for the damages.

7. Defendant no.1 filed written statement and submitted that she and her husband have already returned sum of Rs. 15,11,000/- by way of two cheques in the name of the plaintiff vide cheque no. 746145 of Rs. 5 lacs dated 01.03.2015 and cheque no. 746146 of Rs. 5 lacs dated 20.05.2013 drawn on Karnataka Bank Limited. On 19.11.2013, the husband of the plaintiff after taking Rs. 05,11,000/- in cash sold the suit property through an agreement to sell dated 19.11.2013 to the husband of defendant in the presence of Sh. Jeet Singh and Sh. Sharad Tyagi. The plaintiff and her husband have taken an excess amount of Rs. 8,91,000/- from the defendant and her husband.

8. The suit is not properly valued for the purpose of Court fees and jurisdiction.

9. It is further submitted by the defendant that husband of the plaintiff Sh. Sanjeev Jain approached the husband of the defendant for purchasing the property bearing no. U-118A, measuring 100 sq. yds Ground Floor, Upadhyay Block, Delhi-92 which was in the name of the defendant. Husband of the defendant agreed to sell the above property for a sum of Rs. 06,20,000/-. On 04.05.2012, the husband of the plaintiff got prepared the sale deed on the stamp paper in the name of the plaintiff. The defendant and

her son signed the document but the sale deed could not be registered due to technical reasons.

10. On this husband of the plaintiff put pressure on the husband of the defendant and demanded Rs. 15,11,000/-. On this, the husband of defendant told the defendant to issue the cheques for return of the money to the plaintiff and the defendant issued two cheques in the name of the plaintiff of Rs. 5 lacs each.

11. On 19.11.2013, the husband of the plaintiff after taking Rs. 5,11,000/- in cash sold the same suit property through an agreement to sell dated 19.11.2013 to the husband of the defendant in the presence of Sh. Jeet Singh and Sh. Sharad Tyagi.

12. The husband of the defendant had filed police complaint dated 03.06.2015 against the plaintiff and her husband. Rest of the case of the plaintiff is denied being wrong and incorrect.

13. It is seen that vide order dated 21.05.2022, defendant no.2 Sh. Prakash Mishra has been impleaded as defendant no.2 as the defendant no.1 sold the suit property during pendency of the present suit to the proposed defendant Sh. Prakash Mishra.

14. No written statement has been filed on behalf of defendant no.2.

15. I have heard Ld counsel for the plaintiff, Ld counsel for the defendants and have carefully gone through the record.

16. While dealing with an application U/o 39 rule 1 & 2 CPC, the Court has to see three ingredients i.e prima facie case in favour of the plaintiff, balance of convenience and the aspect of irreparable loss and injury in case interim relief is not granted to the plaintiff.

17. In view of the facts and circumstances of the case, the Court is of the considered opinion that at this stage the plaintiff has a prima facie case and that in case the defendants are not restrained from creating third party interest, the plaintiff shall suffer irreparable loss and injury which cannot be compensated in terms of time and money.

18. In view of the facts and circumstances of the case, the applications U/o 39 rule 1 & 2 CPC dated 22.09.2022 and dated 08.12.2014 are allowed. Both the defendants are restrained from creating any third party interest in the suit property bearing no. U-118-A, measuring 100 sq. yds Ground Floor, Upadhyay Block, Delhi-92 till pendency of the present suit.

(Kishor Kumar)
ADJ-04, East District,
Karkardooma Courts, Delhi
17.01.2023