

**In the Court of Virender Kumar Goyal: Additional District Judge-01 :
East District : Karkardooma Courts : Delhi.**

Suit No. 1273/16

IN THE MATTER OF :

Deepanshi Aggarwal and anr. Plaintiffs
Versus
Monu Bagga and ors Defendants.

ORDER

1. This order of mine will dispose of an application u/o 39 rule 1 and 2 filed by the plaintiff.
2. Briefly stating, the plaintiffs have filed a suit for specific performance with consequential relief of possession and permanent injunction alongwith alternate relief of declaration against the defendants on the averments that plaintiffs are the peace loving and law abiding citizens and the plaintiff no.1 is the grand daughter of the plaintiff no.2 and both the plaintiffs have purchased the property bearing no. B-13/1(block no. B-13, plot no.1), measuring area 41.94 sq. yards i.e. 35.06 sq. meters, plinth/covered area 35.06 sq. meters, consisting of one shop measurement 8 ft x 35 ft on the ground floor with terrace/roof rights and one room measurement 6.1/2' x 15' on the ground floor with terrace/roof right with the right of upper construction situated in the layout plan of Kishna Nagar, in the area of Village Ghondli, Illaqa Shahdara, Delhi-51, from the defendant no.1, who was the absolute owner and in possession of the suit property by virtue of the documents executed in his favour by

defendant no.2 and 3. Hence, the defendant no.1 was competent to sell and execute the said suit property to the plaintiffs and further averred that the terms and conditions were agreed and the defendant no.1 agreed to sell the suit property for a total sale consideration of Rs. 12,30,000/- and the plaintiff no.1 and 2 have paid 50% of their undivided share and the title documents i.e. agreement to sell, GPA, affidavit, WILL etc. were executed by the defendant no.1 in favour of the plaintiffs.

3. It is further averred that the defendant no. 2 and 3 who were exclusive owners of the entire property agreed to sell part of suit property i.e. area measuring 41.94 square yards to the defendant no.1 for a total sale consideration of Rs. 11,80,000/-.Hence, the defendant no.1 had become the actual and exclusive owner of part of the suit property measuring 41.94 square yards and the defendant no.1 had agreed to sell the said part of the suit property to the plaintiffs for a total sale consideration of Rs. 12,30,000/- by virtue of agreement to sell dated 3.7.2009.

4. It is further averred that the plaintiffs were shocked when they came to know that the defendant no.2 and 3 have illegally occupied the property, after removing the belongings of the plaintiffs. The plaintiffs have made a complaint to the police on 12.9.2014 and also approached to the higher police officials to this effect, but of no avail. Thereafter, plaintiffs sent a legal notice dated 12.9.2014 to the defendants and also filed a complaint u/s 156(3) of CrPC against all the defendants. It is further averred that the acts of the defendants are illegal and

unlawful.

5. Feeling aggrieved with the acts and conducts of the defendants, the plaintiff has filed the present suit and prayed for passing a decree of specific performance, possession, declaration and permanent injunction against the defendants.
6. The plaintiff has also filed the application u/o 39 rule 1 and 2 r.w. Section 151 CPC stating that the defendants be restrained from creating any third party interest in the suit property bearing no. B-13/1(block no. B-13, plot no.1), measuring area 41.94 sq. yards i.e. 35.06 sq. meters, plinth/covered area 35.06 sq. meters, with terrace/roof right with the right of upper construction at Krishna Nagar, in the area of village Ghondli, Illaqa Shahdara, Dahi-51, as well as from executing any further transfer title documents.
7. It is further stated that the plaintiffs have a strong apprehension that the defendants may at any point of time take illegal and unlawful steps for creating any third party interest in the suit property and may execute further transfer title documents in favour of any third person and the plaintiff will suffer irreparable loss and injury, if the ad-interim injunction is not granted in favour of the plaintiffs, which cannot be compensated in terms of money and the plaintiffs have a good prima facie case in their favour and prayed that the defendants, their associates, employees, agents, heirs, successors, assignees etc., be restrained from creating any third party interest in the suit property bearing no. B-13/1(block no. B-13, plot no.1), measuring area 41.94 sq. yards i.e. 35.06 sq. meters, plinth/covered area 35.06 sq. meters,

with terrace/roof right with the right of upper construction at Krishna Nagar, in the area of village Ghondli, Illaqa Shahdara, Delhi-51, as well as, from executing any further transfer title documents in favour of any third person.

8. Defendant no.1 has filed the written statement and stated that the suit is bad in the eyes of law and is liable to be dismissed u/o 7 rule 11 of CPC and further stated that the suit of the plaintiff is not maintainable. Replying to the suit on merit it is admitted that the defendant no.1 executed all the documents in favour of the plaintiffs and handed over the possession of the suit property in favour of the plaintiffs and also admitted that the defendant no.2 and 3 have executed the sale documents in favour of the defendant no.1. It is stated that the plaintiffs themselves have stated that the defendant no.2 and 3 have executed forged documents in favour of the defendant no.4 and defendant no.1 has no concern with the forged execution. It is denied that numbers of meetings had taken place. It is stated that defendant no1 has never attended any meeting and prayed for the dismissal of the suit.
9. In the reply to the application u/o 39 rule 1 and 2 of CPC it is denied that the plaintiffs have a prima facie case in their favour or that balance of convenience lies in favour of the plaintiffs. It is stated that the plaintiffs are not entitled for the relief as sought by them. It is also denied that the plaintiffs will suffer an irreparable loss and injuries, which cannot be compensated in any manner and prayed for the dismissal of the application.
10. Defendant no.2 and 3 have not filed the written statement.

11. In the reply to the application u/o 39 rule 1 and 2 of CPC, filed on behalf of the defendant no. 2 and 3 it is denied that the plaintiffs have a prima facie case in their favour or that balance of convenience lies in favour of the plaintiffs and prayed for the dismissal of the application.

12. Defendant no. 4 in his written statement has stated that the suit of the plaintiff is barred by Limitation, as the entire plaint fails to disclose the date of the execution of the alleged agreement of which the plaintiffs are seeking the specific performance. It is further stated that the suit is liable to be dismissed against defendant no. 4, who is in actual physical possession of the suit property. It is stated that the suit is abuse of process of law as the same has been filed in collusion with the defendant no. 1 to harass the defendant no. 4. Replying to the suit on merit it is denied that the plaintiffs have purchased the part of the suit property i.e. 41.94 sq. yards from the defendant no. 1 for a total sale consideration of Rs.12,30,000/-, who was the absolute owner and in possession of the same. It is also denied that the defendant no. 2 and 3, who were the exclusive owner of the suit property agreed to sell the part of the property measuring 41.94 sq. yards sold the same to the defendant no. 1 for a total sale consideration of Rs.11,80,000/- or that the defendant no. 2 and 3 had executed any such document as alleged in favour of the defendant no. 1.

13. It is stated that the possession of the suit property was never handed over to the plaintiffs or to the defendant no. 1 by the defendant no. 2 and 3, as the same was handed over by the

defendant no.2 and 3 to the defendant no. 4,at the time of execution of transfer documents in favour of the defendant no.4 and prayed for the dismissal of the suit.

14.In the reply to the application u/o 39 rule 1 and 2 of CPC it is denied that the plaintiffs have an apprehension that the defendants may at any point of time take illegal and unlawful steps for creating any third party interest in respect of the suit property or that the plaintiffs have a prima facie case in their favour or that balance of convenience lies in favour of the plaintiffs and prayed for the dismissal of the application.

15.Heard the counsel for the plaintiffs and the ld.counsel for the defendant no. 4 and perused the record.

16.Suit has been filed by the plaintiff for specific performance with consequential relief of possession and permanent injunction alongwith alternate relief of declaration. According to the pleadings, the suit property bearing no. B-13/1(block no. B-13, plot no.1), measuring area 41.94 sq. yards i.e. 35.06 sq. meters, plinth/covered area 35.06 sq. meters, consisting of one shop measurement 8 ft x 35 ft on the ground floor with terrace/roof rights and one room measurement 6.1/2' x 15' on the ground floor with terrace/roof right with the right of upper construction situated in the layout plan of Kishna Nagar, in the area of Village Ghondli, Illaqa Shahdara, Delhi-51,was purchased by the plaintiffs from defendant no.1. The defendant no.1 had purchased the said property on the basis of irrevocable GPA, agreement to sell, affidavit, WILL etc., from the defendant no. 2 and 3. Copy of receipt has also been placed on the record. A sum

of Rs.11,80,000/- was paid by the Defendant no.1 to the defendant no.2 and 3. Possession letter was also issued by the defendant no.2 and 3 in favour of the defendant no.1. Consequently, defendant no.1 executed irrevocable GPA, agreement to sell, affidavit, WILL etc., in favour of the plaintiffs alongwith receipt, vide which, defendant no.1 had received Rs. 12,30,000/- from the plaintiffs. As defendant no.1 had received the possession of the suit property, so, he handed over the same to the plaintiffs and executed possession letter dated 3.7.2009.

17. Now, it is alleged that defendant no.2 and 3 had sold the same area of the suit property to the defendant no. 4, by executing the sale deed dated 15.7.2011, which includes the area of the plaintiffs, which was sold to the plaintiffs by defendant no.1, who had previously purchased the same from the defendant no.2 and 3.

18. It is further claimed by the plaintiffs that defendant no. 4 trespassed in the suit property, for which a complaint dated 12.9.2014 was given to the SHO concerned and a complaint has been filed u/s 156(3) CrPC against these defendants, for cheating, misappropriation and trespassing etc.

19. On the other hand, ld.counsel for the defendant no. 4 has contended that according to the information received from defendant no.2 and 3, the documents executed by defendant no.1 were in respect of loan transaction. So, there was no sale of the suit property measuring area 41.94 sq. yards. It is also contended by the ld.counsel for the defendant no. 4 that the suit is barred by limitation. The suit has been filed on 3.3.2015.

Whereas, a criminal complaint of tress-pass had been given on 12.9.2014. So, from the date of knowledge of tress-passing, it cannot be said at this stage, that suit is barred by limitation.

20. In the written statement, defendant no.1 has opposed the suit.

However, the execution of the documents has been admitted, as executed in favour of the plaintiffs. Defendant no.1 has also admitted that defendant no.2 and 3 had also executed the sale documents in his favour and he had handed over the possession of the suit property to the plaintiffs.

21. Written statement by defendant no. 4 has also been filed.

22. Whereas, none argued on the application u/o 39 rule 1 and 2 of CPC on behalf of defendant no.1,2 and 3.

23. In the application u/o 39 rule 1 and 2 of CPC, the plaintiffs have prayed that the defendants, their associates, employees, agents, heirs, successors, assignees etc., be restrained from creating any third party interest in the suit property bearing no. B-13/1(block no. B-13, plot no.1), measuring area 41.94 sq. yards i.e. 35.06 sq. meters, plinth/covered area 35.06 sq. meters, with terrace/roof right with the right of upper construction at Krishna Nagar, in the area of village Ghondli, Illaqa Shahdara, Delhi-51, as well as, from executing any further transfer title documents in favour of any third person.

24. In view of above facts and circumstances, the plaintiffs have a prima facie case in their favour, as they are the prior purchaser of the suit property i.e. of 2009. Whereas, the alleged sale documents have been executed by the defendant no. 2 and 3 in favour of defendant no. 4 are of 2011. So, defendant no. 4 is a

subsequent purchaser, for which a complaint has been made by the plaintiffs for cheating and tress-passing. Under such circumstances, if the defendants are not restrained, then the plaintiffs will suffer irreparable loss and injury, which cannot be compensated in the form of money. Accordingly, the application is allowed. So, the defendants, their associates, employees, agents, heirs, successors, assignees etc., are hereby restrained from creating any third party interest in the suit property bearing no. B-13/1(block no. B-13, plot no.1), measuring area 41.94 sq. yards i.e. 35.06 sq. meters, plinth/covered area 35.06 sq. meters, with terrace/roof right with the right of upper construction at Krishna Nagar, in the area of village Ghondli, Illaqa Shahdara, Delhi-51, as well as, from executing any further transfer title documents in favour of any third person, till the disposal of the suit. Nothing said herein shall amounts to an expression of opinion on the merits of the case.

Announced in the open court
On: 28.04.2016

(Virender Kumar Goyal)
Additional District Judge-01,
East District, KKD Courts, Delhi

