

CS 441/19
SUNIL DARAL
Vs.
M/S S S ASSOCIATES

19.11.2024

Present : Mr. Vishesh Kumar, Ld. Counsel for plaintiff.
Mr. Vijay Kumar Gupta, Mr. Ashok Budhiraja and
Mr. Mehul Gupta, Ld. Counsel for defendant.

Arguments heard on the aspect of maintainability of the present matter.

Ld. Counsel for defendant submits that since the possession of the suit property has already been taken by the plaintiff in pursuant to agreement to sell dated 04.07.2017, therefore, the agreement to sell by virtue of provisions of the Indian Registration Act is required to be compulsorily registered. It is further argued by Ld. Counsel for defendant that since the agreement to sell dated 04.07.2017 is not registered, the same cannot be taken into evidence and therefore, the suit filed by the plaintiff in the present form is not maintainable.

It is argued by the Ld. Counsel for plaintiff that possession of the suit property was not given to the plaintiff on 04.07.2017, therefore, handing over of the possession of the suit property is not a consequence of agreement to sell dated 04.07.2017. The handing over of the possession is the consequence of making 95% payment of consideration amount

on 20.04.2018 and therefore, the possession of the suit property was handed over to the plaintiff on 20.04.2018.

In my opinion, the issue of maintainability of a suit as a whole is different from the issue of admissibility of a document given by the parties in support of their averments. Therefore, merely on the ground that the agreement to sell dated 04.07.2017 is not a registered document, it cannot be said that the present suit is not maintainable.

Further, in view of the proviso of Section 49 of Indian Registration Act, the arguments addressed by Ld. Counsel for the defendant are found to be not tenable as the proviso specifically provides that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract under the suit for specific performance, Chapter-II of Specific Relief Act.

Admittedly, the plaintiff is not relying on the second part of the proviso which says that an unregistered document affecting immovable property may be received as evidence of any collateral transaction not required to be effected by registered instrument.

Replication not filed by the plaintiff.

Ld. Counsel for plaintiff seeks two weeks time to file the replication. Let the same be filed within two weeks from today with advance copy to Ld. Counsel for the defendant.

Ld. Counsel for defendant submits that plaintiff may be directed to file the original agreement to sell dated

04.07.2017 on record.

However, in view of the law laid down by the Hon'ble High Court of Delhi in case titled as "*Aktiebolaget Volvo & Ors vs R. Venkatachalam & Anr*" decided on 18 May, 2009, the plaintiff is directed to file the document at the appropriate stage.

Both the parties are directed to file their respective affidavits of admission-denial of documents on or before the next date of hearing with advance copy to opposite party.

Put up on **01.02.2025** for the completion of pleadings/ framing of issues.

(Hem Singh)
District Judge-01
(East)/KKD/Delhi/19.11.2024