IN THE COURT OF SH. ARUN GOEL, ADJ-03, SHAHDARA DISTRICT, KARKARDOOMA COURTS, DELHI

CS No : 43/2023

Rajesh Kumar Aggarwal

.... Plaintiff

Versus

Neha Aggarwal and Anr.

.... Defendants

07.02.2023

<u>O R D E R</u>

1. This order shall dispose off an application under order 39 rule 1 & 2 read with section 151 of C.P.C filed by plaintiff.
2. The plaintiff has filed a suit for seeking specific performance of a Memorandum of Understanding (hereinafter referred as **"MOU"**) dated 18.12.2020. It is stated that defendant no. 2 is real brother of plaintiff and defendant no. 1 is wife of defendant no. 2 and defendant no. 1 is the owner of the property bearing no. B – 1016/1, Khasra no. 396/49 Gali no. 1M, Kabir Nagar, Delhi – 110094 measuing 100 sq. Yards constructed upto 02 floors (hereinafter called as **"Suit Property"**).
3. It is stated that defendant no. 1 and 2 had jointly availed a loan of Rs.90 lakhs from 03 banks i.e. 1. DCB Bank, 2. IDFC Bank and AU Small Finance Bank Limited and had

mortgaged the suit property with the said 03 banks. They were facing difficulties in making payment for the loan and in order to settle the loan amount a tripartite agreement between plaintiff and defendant no. 1 & 2 was exectuted through MOU dated 18.12.2020. In pursuance of the said agreement, payments were made by the plaintiff to the above mentioned 03 banks. The defendant also handed over the possession of ground floor to the plantiff and as per the MOU, the defendant were to transfer 50 sq. yards property in favour of the plaintiff and while defendant no. 1 and 2 were to retain 25 sq. yards of the security each with them.

4. It is further submitted that after making of the payments to the bank regarding the loan taken by the defendants. The plaintiff approached the defendant no. 1 to execute the sale documents in favour of the plaintiff but she kept on lingering the matter on one pretext or the other. Plaintiff also issued a legal notice dated 21.11.2020 upon the defendant to comply with MOU dated 18.12.2020. It is further stated that on 05.01.2023, an e – mail was received from advocate of the defendant no. 1 wherein a fresh MOU was sent and it did not mention the previous MOU dated 18.12.2020 and it appears that the defendants are trying to enlarge the terms which were not mentioned in the MOU dated 18.12.2020.

5. It is further stated that plaintiff has come to knowledge from sources that defendants are trying to sell the suit property in violation of MOU dated 18.12.2020. Hence the present suit

has been filed by the plaintiff for specific peformance of MOU dated 18.12.2020, partition as well as permanent injunction. Alongwith suit an application u/o 39 rule 1 and 2 CPC was also filed on behalf of the plaintif seeking interim relief of injunction restraining the defendant from creating any 3rd party interest in the suit property.

6. The defendant no 1 has filed reply to the application u/o 39 rule 1 and 2 CPC wherein she has denied execution of MOU dated 18.12.2020. It is further stated that there is a collusion between plaintiff and defendant no.2. It is further stated that the loan was taken by defendant no. 2 at the instance of plaintiff and the payment has been made by the plaintiff to save his brother i.e. defendant no. 2. Defendant no 1 has admitted that MOU dated 05.01.2023 has been sent to the plaintiff. It is further submitted that plaintiff is not the owner of the suit property and has denied the remaining allegations levied by the plaintiff and has prayed for dismissal of application u/o 39 rule 1 and 2 CPC.
7. Arguments heard.
8. During arguments, counsel for the plaintiff has also placed reliance on the following judgments :

    1. Anand Prasad Agarwalla V/s. Tarkeshwar Prasad and Ors. in Appeal (Civil) 882-883 of 2001 passed on 09.05.2001 by the Hon’ble Supreme Court of India

2. Engineering and Industrial V/s. Delhi Development Authority passed on 28.02.2002 by the Hon'ble High Court of Delhi
3. Ameed Minhaj V/s. Dierdre Elizabeth (Wright) Issar in Civil Appeal no. 18377/17 passed on 04.07.2018 by the Hon'ble Supreme Court of India
4. M/s. Grovy India Ltd. V/s. Balbir Singh in CS (COMM) no. 1/2020 passed on 22.10.2021 by the Hon'ble High Court of Delhi
5. Anand Prasad Agarwalla V/s. Tarkeshwar Prasad & Ors. in Civil Appeal no. 882-883 of 2001 passed on 09.05.2001 by the Hon'ble Supreme Court of India
6. Anwar Elahi V/s. Vinod Misra & Anr. 60 (1995) DLT 752 by the Hon'ble High Court of Delhi
7. Engineering & Industrial V/s. Delhi Development Authority 2005 (82) DRJ 416 by the Hon'ble High Court of Delhi

9. Before adverting to the merits of matter, it is necessary to notice the settled law relating to grant of interim injunction, as reiterated by Hon'ble Apex Court in **Makers Development Centre Services Pvt. Ltd. vs. M.Visvesvaraya Industrial Research and Development Centre** [2012(1) SCC 735], wherein it has been observed as under :

> *"...It is settled law that while passing an interim order of injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure,*

> *1908, the court is required to consider three basis principles, namely, (a) prima facie case, (b) balance of convenience and inconvenience, and (c) irreparable loss and injury. In addition to abovementioned three basic principles, a court while granting injunction must also take into consideration the conduct of the parties.....*
>
> *12. It is also established law that the court should not interfere only because the property is a very valuable one. Grant of refusal of same has consequences depending upon the nature thereof and in dealing with such matters the court must make all endeavours to protect the interest of the parties."*

10. Therefore, initial burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the *prima facie* right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits.
11. In the present case, the plaintiff has stated that MOU dated 18.12.2020. As per MOU dated 18.12.2020, the plaintiff is entitled to transfer of 50 sq. yards of suit property in his favour. However, the perusal of the MOU dated 18.12.2020 reveals that the same is neither registered nor stamped. As per the Schedule 1 to Stamp Act, agreement to sell is required to be stamped. Section 35 of the Stamp Act provides

the consequences of unstamped documents. The same is reproduced as below:

"35. Instruments not duly stamped inadmissible in evidence, etc.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that—

> *(a) any such instrument [65] [shall], be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;*
>
> *(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;*
>
> *(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;*
>
> *(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);*

> *(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of [66] [the [67] [Government]] or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act."*

12. As per section 35 of the Stamp Act, a document which is required to be stamped, if not stamped it cannot be looked into for any purpose whatsoever. Reliance is also placed upon the judgment of Hon'ble Supreme Court of India titled as ***Avinash Kumar Chauhan v. Vijay Krishna Mishra,*** **(2009) 2 SCC 532 where the court observed as follows :**

> *17.Parliament has, in Section 35 of the Act, advisedly used the words "for any purpose whatsoever". Thus, the purpose for which a document is sought to be admitted in evidence or the extent thereof would not be a relevant factor for not invoking the aforementioned provisions.*
>
> *25. Section 35 of the Act, however, rules out applicability of such provision as it is categorically provided therein that a document of this nature shall not be admitted for any purpose whatsoever. If all purposes for which the document is sought to be brought in evidence are excluded, we fail to see any reason as to how the document would be admissible for collateral purposes."*

13. The Ld. Counsel for the plaintiff has relied upon judgment of Hon'ble Delhi High Court titled as M/s. Grovy India Ltd. (Supra) stating that plaintiff cannot be denied benefit of interim injunction on the basis of objection of unstamped document in view of judgment titled as M/s. Grovy India Ltd. (Supra). However, this contention of the Ld. Counsel for the plaintiff is not tenable as in the judgment of M/s. Grovy India Ltd. (Supra) there was a clause number 32 in the agreement between the parties. That clause specifically stated that the agreement between the parties is not in the nature of contract for sale. Moreover, in that case, there was collaboration agreement whereas in this case, the MOU dated 18.12.2020 states itself to be a settlement deed and deals with transfer of immovable property.
14. Moreover, the perusal of the MOU dated 18.12.2020 reveals that it is a 03 page document and it bears signatures of the parties only on the last page. The remaining page donot contain signature of any party. The signed page no. 3 does not contain any clause for transfer of property by the defendant no. 1 in favour of plaintiff.
15. Admittedly, it is not denied that defendant no. 1 is the owner of the suit property and she has denied the averments of plaintiff. The MOU dated 18.12.2020 is not properly stamped so it cannot be looked into. Besides this document, there is nothing on record to show that there is any agreement between the plaintiff and defendant no. 1 with

regard to sale of suit property. Thus, plaintiff has failed to make a *prima facie* case in his favour.

16. Balance of convenience is also lies in favour of defendant no. 1. She has admittedly the owner of the suit property. if, she is restrained from exercising her ownership rights regarding suit property much inconvenience will be caused to her. Moreover, She will also suffer irreparable injury being deprived of her ownership rights over the same.
17. In view of the aforesaid, application filed by the plaintiff u/o 39 rule 1 & 2 r/w section 151 CPC stands dismissed.

ARUN GOEL
Digitally signed by ARUN GOEL
Date: 2023.02.07 16:11:39 +0530

Announced in Open Court
on 07.02.2023

(ARUN GOEL)
ADDITIONAL DISTRICT JUDGE – 03,
SHAHDARA, KKD COURTS, DELHI