

03.02.2024

Present: Sh. Deepak Kumar, ld. counsel for plaintiff.
Sh. Jitender, ld. counsel for defendant along with the defendant.

Affidavit of admission/denial of documents has been filed on behalf of plaintiff.

Arguments heard on the application under Order XXXIX Rule 1 & 2 r/w Section 151 CPC.

Put up for orders in the post lunch session.

(KAPIL KUMAR)
ADJ-01/NE/KKD/DELHI
03.02.2024

In post-lunch session.

Present : None.

Vide this order, I shall dispose off the application under Order XXXIX Rule 1 & 2 r/w Section 151 CPC moved on behalf of plaintiff wherein the relief has been sought that the defendant be restrained from creating third party interest in the suit property i.e. property bearing House no. B-4/45, Yamuna Vihar, Delhi-53.

The case of the plaintiff is that the defendant wanted to sell the suit property in which the plaintiff shown interest and the deal was struck in Rs.1,45,00,000/-. It is stated that on 12.03.2023, the plaintiff along with his friend Samaydeen reached

at the house of defendant and gave Rs.2 lacs to her as token amount for which a defendant issued a receipt acknowledging the payment and that receipt was also signed by Samaydeen as witness. It is stated that it was agreed that the remaining payment of Rs.1,43,00,000/- would be paid by the plaintiff till July 2023 and the defendant would execute transfer documents.

It is further stated that on 12.04.2023, plaintiff called the defendant for accepting the part payment but the defendant refused to take the same stating that the part payment must not be less than Rs.50 lacs. It is stated that on 05.05.2023 plaintiff again called the defendant and told her that he arranged Rs.60 lacs and wanted to give the same to the defendant as advance amount but the defendant did not accept the same. It is stated that the defendant not performed her part of the contract. It is also stated that on 31.07.2023, the plaintiff reached at the office of Sub Registrar, Seelampur and waited for the defendant but the defendant did not appear there. It is stated that the plaintiff always wanted to perform his part of the contract. It is stated by the plaintiff that he came to know that the defendant received Rs.15 lacs from other person as part consideration for the sale of the suit property. It is stated that the defendant be restrained from selling the property.

The present application has been opposed by the defendant stating that on 12.03.2023 the deal was struck between the plaintiff and defendant for the sale of suit property in Rs.1,72,00,000/- out of which Rs.2 lacs was given by plaintiff to defendant as token money for which a receipt was issued on which Sh. Samaydeen also signed as witness. It is further stated that on

18.03.2023 plaintiff came at the house of defendant and shown his inability to arrange the remaining payment and requested the defendant to return Rs.2 lacs. It is stated by the defendant that she refunded Rs.2 lacs to plaintiff on 18.03.2023 for which a receipt was executed by plaintiff in the presence of witnesses. It is further stated that after the cancellation of deal with plaintiff the defendant entered into a fresh deal qua the suit property with one person namely Rakesh and an agreement to sell was executed between the defendant and Rakesh on which Sh. Samaydeen signed as witness. It is stated that the present suit has been filed just to create the dispute over the suit property and the same is liable to be dismissed.

I have heard Ld. Counsels for both the parties and gone through the record.

The plaintiffs are required to prove the following three ingredients under Order XXXIX Rule 1 and 2 CPC :-

- (i) a prima facie case in his favour;*
- (ii) the balance of convenience also lies in favour of the plaintiff and*
- (iii) irreparable loss and injury in case the injunction is not granted.*

There was no formal agreement to sell executed between the parties. As per the plaintiff, the consideration amount was Rs.1,45,00,000/-, however, as per the defendant, the consideration amount was Rs.1,72,00,000/-.

It is not in dispute that RS.2 lacs was accepted by the defendant as token money for which the receipt was issued under

the signatures of the defendant on which Sh. Samaydeen, who was accompanying the plaintiff on that day, signed as witness. There is another document on record filed on behalf of defendant allegedly under the signatures of plaintiff which is also a payment receipt as per which the plaintiff took Rs.2 lacs back from the defendant which was given to the defendant as earnest money after canceling the deal. This receipt also bears signatures of two persons as witnesses.

Ld. Counsel for plaintiff denied the signatures of plaintiff on this receipt. However, the signatures of the plaintiff appearing on the plaint is *prima facie* similar as to the signatures appearing on the payment receipt.

The crucial fact is that the friend of the plaintiff namely Samaydeen who signed as a witness on the payment receipt executed by the defendant acknowledging the receipt of Rs.2 lacs also signed as witness on the agreement to sell executed between the defendant and third person regarding the suit property. In these circumstances, it is clear that the plaintiff was aware about the agreement to sell executed by the defendant with some other person.

The payment receipt allegedly under the signatures of plaintiff bearing signatures of marginal witnesses is denting the case of the plaintiff.

There is no document on record that the plaintiff offered Rs.60 lacs to the defendant on 05.05.2023. There is no legal notice from the plaintiff to the defendant thereby showing his intention of payment of Rs.60 lacs to the defendant. There is no document on record revealing the availability of Rs.60 lacs

with the plaintiff on 05.05.2023.

To sum up – no agreement to sell executed between the parties regarding such a big deal of the sale-purchase of the property. The payment receipt under the alleged signatures of the plaintiff, attested by two witnesses, as per which the plaintiff took the earnest money back from the defendant, coupled with the fact that the friend of the plaintiff namely Samaydeen who signed the payment receipt under the signatures of defendant also signed the agreement to sell subsequently executed by the defendant with third person is fatal to the case of the plaintiff. There is no document on record as to the readiness of the plaintiff with Rs.60 lacs on 05.05.2023 as alleged in para no.5 of the plaint or alleged Rs.1,43,00,000/- on the alleged date fixed for the execution of the sale deed. Further, the defendant already entered into agreement to sell with some other person on 15.03.2023. This reveals that prior to the filing of present suit, the defendant already entered into agreement to sell with some other person qua the suit property and this fact was within the knowledge of plaintiff. There is no *prima facie* case in the favour of the plaintiff. Accordingly, the present application is hereby dismissed.

Nothing stated herein shall tantamount to an expression of opinion on merits during the trial of the present suit. The application is accordingly disposed off.

The payment receipt under the signatures of defendant executed on 12.03.2023 is not in dispute, however, the payment receipt under the signatures of plaintiff on 18.03.2023 is in dispute. Affidavit of admission/denial of documents filed by plaintiff is on record.

From the pleadings of the parties, following issues are framed as under :

- (i) Whether the plaintiff is entitled to decree of specific performance of contract, as prayed for ? OPP
- (ii) Whether the plaintiff is entitled to decree of permanent injunction, as prayed for ? OPP
- (iii) Whether the plaintiff is entitled to decree of recovery of Rs.4 lacs (double of earnest amount of Rs.2 lacs), as prayed for ? OPP
- (iv) Relief.

No other issue arises or is pressed by the parties at this stage. List of witnesses be filed by the parties within fifteen days. Affidavit(s) of the plaintiff's witness(es) be filed within two weeks with advance copy to the opposite party against receiving two days prior to the next date of hearing.

Put up for PE on 30.03.2024.

(KAPIL KUMAR)
ADJ-01/NE/KKD/DELHI
03.02.2024 sb