

IN THE COURT OF SH. KISHOR KUMAR
ADDITIONAL DISTRICT JUDGE-04 (NORTH)
ROHINI COURTS, DELHI

CS DJ 72/2018
CNR No. DLNT01-000621-2018

Jaharmal Gupta

.....Plaintiff

Versus

R.L. Jhamb & Ors.

.....Defendants

ORDER

1. Vide this order I shall dispose of the application under Order XXXIX Rule 1 & 2 CPC moved on behalf of the plaintiff.

2. As per case of the plaintiff, defendant no.2 himself and on behalf of defendant no.1 and defendant no.3 to 5 have entered into an agreement to sell/bayana receipt dated 16.02.2005 and thereafter plaintiff has paid amount of Rs.18,73,586/- including amount deposited with DSIDC out of total sale consideration of Rs.40,00,000/- and the plaintiff is ready to pay the balance amount of Rs.21,26,414/- in view of last payment receipt dated 06.06.2016 where the defendants have handed over the original perpetual lease along with physical possession of the suit plot to the plaintiff. It is further stated that defendants

instead of executing an appropriate sale deed in favour of plaintiff, trying to forcibly dispossess the plaintiff and also trying to create third party interest in the suit plot.

3. In reply to the present application, it is stated by defendants that the plaintiff has not entered into any agreement to sell with the answering defendants and the property in question is a leasehold property and that too belongs to defendant no.1. It is further stated that defendant no.1 is the lessee of the aforesaid plot and it has not given the possession of the plot in question to the plaintiff by way of any document nor has received any consideration. It is further stated that the perpetual lease holder is the company i.e. defendant no.1 and defendant no.1 itself or through its directors had not entered into any transaction or agreement with plaintiff for sale of plot in question. It is further stated that defendant no.2 was ceased to be the director of the defendant no.1 by resolution dated 02.05.2000 and the services of the defendant no.2 were terminated w.e.f. 11.03.2000 and to this effect the defendant no.1 has already intimated the ROC and form 32 was also filed with ROC for the cessation of defendant no.2 from the directorship of defendant no.1 and defendant no.2 also did not object to the same or filed any case to this effect and, therefore, no transaction said to be taken place by defendant no.2 with the plaintiff. The defendant no.2 had no authority to enter into any transaction in respect of the property in question with any person and therefore any transaction entered into by plaintiff with defendant no.2 is void ab initio, which is not in the knowledge of defendant no.1, 4 and 5 and the receipts of

payments relied upon by the plaintiff are false, frivolous and fabricated.

4. I have heard Ld. Counsel for both the parties and have carefully gone through the material on record.

5. It is well settled that in order to obtain an order of injunction, the party who seeks grant of such injunction has to prove that he has made out a prima facie case, the balance of convenience is also in his favour and he will suffer irreparable loss and the injury if injunction is not granted.

6. In **Dalpat Kumar And Anr. vs Prahlad Singh And Ors., AIR 1993 SC 276**, The Hon'ble Supreme Court has settled the three main requirements for granting a temporary injunction -

1.) Prima Facie Case

A suit consists of a seriously disputed question. The facts in those questions encourage the probability of entitlement to relief for the plaintiff or the defendant. A prima facie case does not mean that the plaintiff or the defendant come up with an irrefutable argument that will in all probability succeed in a trial. It only means that the case they build for their injunction must be meritorious enough, not to be rejected instantly.

2.) Irreparable Loss

If an irreparable loss were to be incurred by an individual with regards to the suit before his legal right is established in the trial, it would be a cause of grave injustice. However, it must be noted that illustrations like frustration over a loss of something with sentimental value will not be regarded as irreparable damage. On the other hand, things that by nature can be remedied will be considered to be irreparable damage if the court were to have no fair or reasonable address. Very often an injury is irreparable

where it is continuous and repeated or where it is remediable at law only by a multiplicity of suits. Sometimes, the term irreparable damage refers to the difficulty of measuring the amount of damages inflicted. However, a mere difficulty in proving injury does not establish irreparable injury.

3.) Balance of convenience

The court needs to compare the case of parties, comparative mischief or inconvenience which is likely to sue from withholding the injunction will be greater than which is likely to arrive from granting it.

7. As per case of plaintiff, he is in possession of the plot in question, however, no document is filed on record to show that plaintiff is in possession of the suit property whereas the defendants have pleaded that they are in possession of the suit property. It is pertinent to mention here that suit property is only an open plot and defendant with whom plaintiff alleged to have transacted with respect to the suit property, had already resigned from the company. Further, no source of payment allegedly made by plaintiff is shown on record and there is long delay in making the payment from date of agreement i.e. 16.02.2005, but the payment was made on 06.06.2016. Perusal of record further reveals that defendant has disputed his signature and no explanation has been given as to how plaintiff got possession without making full payment specially in view of the fact that suit property is lease hold property and cannot be sold.

8. In view of the reasons, as discussed hereinabove, it can be said that there is no prima facie case in favour of the

plaintiff, balance of convenience is also not in his favour and no irreparable loss is likely to be suffered by the plaintiff.

9. Accordingly, present application under Order XXXIX Rule 1 & 2 CPC stands disposed of as not allowed.

10. Nothing mentioned herein above shall tantamount to be an expression of opinion on the merits of the present case.

Announced in Open Court

On 08.11.2023

(Kishor Kumar)
ADJ-04, North, Rohini Courts,
Delhi/08.11.2023