IN THE COURT OF DISTRICT JUDGE-02:
NORTH ROHINI COURTS COMPLEX: DELHI

IN THE MATTER OF:-

CS DJ 1909/16

MAHENDER SINGH BAKSHI Vs. KULWANT SINGH AND ORS

23.09.2024

ORDER ON APPLICATION

Vide this order, Court shall dispose of an application u/o 39 Rule 1 and 2 CPC dated 07.06.2016, filed by the plaintiff.

PLAINTIFF'S CASE :

1. The plaintiff has filed the present suit for specific performance and consequential relief of permanent injunction qua suit property bearing plot no. 1244, Block and Pocket C-1, Sector 34 area measuring 32 sq. meters, Rohini, Delhi. (hereinafter referred to as suit property).
2. It is the case of the plaintiff that suit property was agreed to be sold by the defendants who are co-owners/husband and wife for total sale consideration of Rs. 12.75 lakhs. It is stated that from 12.01.2015 to 11.06.2016 Rs.10.25 lakhs were paid as detailed in para 5 of the plaint. Rs. 2 lakhs were paid earlier at the time of bayana and in this way only Rs. 50,000/- were due.
3. It is further argued that in the written statement defendant on the one hand had stated that agreement dated 11.12.2014 is forged and

fabricated(preliminary objections para 2). Whereas it is admitted that Rs. 50,000/- were only paid on 11.12.2014.

4. It is further argued that in reply on merits to para no. 2 the agreement to sale and purchase is admitted. Further in para no. 5 it is admitted that Rs. 8 lakhs were paid. Payments by cheque are thus admitted by the defendants.
5. It is further argued that in case the stand of the defendants is believed that they did not enter into agreement to sell then on what account the payment of 8 lakhs admittedly was taken by them is not explained.

DEFENDANTS' CASE :

6. It is the case of the defendants that only agreement dated 11.12.2014 is admitted. No agreement dated 13.12.2014 was entered into. Signatures on agreement dated 13.12.2014 are forged.
7. It is further argued that plaintiff did not have financial capacity. As per agreement dated 11.12.2014 payment was to be made within 120 days which was not done. Even if agreement dated 13.12.2014 is taken to be correct, allotment cum demand letter was issued by DDA on 28.11.2014 and still the payment was not made by the plaintiff within 120 days of receipt of demand letter. Reference is made to para 5 of the plaint wherein payments have been shown to be made on 21.08.2015, 30.12.2015 and 11.06.2016.

8. It is further argued that signatures of co-owner Smt. Satender Kaur are not there on the alleged agreement dated 13.12.2014.

SCOPE OF INTERVENTION BY COURT :

9. In the case of Gujarat Bottling **Co. Ltd. v. Coca Cola Co. reported in 1995 (5) SCC 545, the Hon'ble Supreme Court,** while discussing the factors to be considered by the Courts in exercise of the discretion under Order XXXIX Rule 1 & 2 CPC, has held that:

> "The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion, the Court applies the following tests: (i) Whether the plaintiff has a prima facie case;
> (ii) Whether the balance of convenience is in favour of the plaintiff;
> (iii) Whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory is disallowed."

APPLYING THE ABOVE CONSIDERATIONS TO FACTS OF PRESENT CASE ;

10. This court has heard the rival submissions of the parties and perused the relevant record with their assistance. The Court has considered the probability of success in the trial and the comparative strength of the cases of the respective parties before it.

The Court has considered that it is not necessary for the plaintiff to prove his case to the hilt and if a fair question is raised for determination, it should be taken that a prima facie case has been established.

11. Perusal of the record shows that the plaintiff has filed the present suit for specific performance and consequential relief of permanent injunction qua suit property bearing plot no. 1244, Block and Pocket C-1, Sector 34 area measuring 32 sq. meters, Rohini, Delhi. (hereinafter referred to as suit property).
12. Perusal of the record shows that it is the case of the plaintiff that suit property was agreed to be sold by the defendants who are co-owners/husband and wife for total sale consideration of Rs. 12.75 lakhs. It is stated that from 12.01.2015 to 11.06.2016 Rs.10.25 lakhs were paid as detailed in para 5 of the plaint. Rs. 2 lakhs were paid earlier at the time of bayana and in this way only Rs. 50,000/- were due.
13. The submission on behalf of plaintiff that in the written statement defendants on the one hand had stated that agreement dated 11.12.2014 is forged and fabricated (preliminary objections para 2). Whereas it is admitted that Rs. 50,000/- were only paid on 11.12.2014, is rejected. If written statement is read as a whole, it is clear that defendant is alleging that sale agreement dated 13.12.2014 was not signed by the defendants.
14. The submission on behalf of plaintiff that in written statement in reply on merits to para no. 2 the agreement to sale and purchase is

admitted. Further in para no. 5 it is admitted that Rs. 8 lakhs were paid. Payments by cheque are thus admitted by the defendants is rejected. Careful reading of written statement as whole shows that only agreement dated 11.12.2014 is admitted and not agreement dated 13.12.2014. Regarding receipt of Rs. 8 lakhs it is clear that same was not paid within the agreed time as per agreement dated 11.12.2014. The same was to be paid within a period of 120 days from Allotment letter by DDA dated 28.11.2014. This term was prima facie violated by the plaintiff.

15. The submission on behalf of plaintiff that in case the stand of the defendants is believed that they did not enter into agreement to sell then on what account the payment of 8 lakhs admittedly was taken by them is not explained, is rejected. The same will require evidence and trial. <u>If without consent of defendants payment is deposited by the plaintiff after delay the defendants prima facie will not be liable.</u>

16. The case of the defendants that only agreement dated 11.12.2014 is admitted. No agreement dated 13.12.2014 was entered into. Signatures on agreement dated 13.12.2014 are forged will require evidence and trial.

17. The submission on behalf of defendants that plaintiff did not have financial capacity. As per agreement dated 11.12.2014 payment was to be made within 120 days which was not done. Even if agreement dated 13.12.2014 is taken to be correct, allotment cum demand letter was issued by DDA on 28.11.2014 and still the

payment was not made by the plaintiff within 120 days of receipt of demand letter is prima facie acceptable. Reliance is rightly placed by defendants upon para 5 of the plaint wherein payments have been shown to be made on 21.08.2015, 30.12.2015 and 11.06.2016 that is beyond 120 days.

18. It is rightly argued on behalf of defendants that signatures of co-owner Smt. Satender Kaur are not there on the alleged agreement dated 13.12.2014. The plea that this alleged agreement dated 13.12.2014 is forged will required evidence and trial.

19. The plaintiff is even otherwise protected by doctrine of lis pendens provided under section 52 of the Transfer of Property Act 1882. Thus plaintiffs will not suffer any irreparable injury. Balance of convenience is also in favour of the defendants.

20. The case cited by counsel for the plaintiff titled as **Babasaheb Dhondiba Kute Vs. Radhu Vithoba Barde decided on 15.02.2024 by Hon'ble Supreme Court of India** is clearly distinguishable. There is no dispute with the proposition of law laid down by Hon'ble Supreme Court of India in this case, however, in facts of the present case, prima facie court is satisfied that no payment within the agreed 120 days was made by the plaintiff. Thus plaintiff prima facie did not perform his part of the contract.

CONCLUSION :

21. In totality of circumstances, the application u/o XXXIX Rule 1 and 2 CPC by the plaintiff is dismissed. However, sale if any during pendency of the suit will be subject to the doctrine of lis

pendens provided under section 52 of the Transfer of Property Act 1882. However, nothing stated in the order shall affect the merits of the case.

22. Application stands dismissed.

VIKRAM BALI Digitally signed by VIKRAM BALI Date: 2024.09.23 16:11:01 +0530

(Vikram Bali)
District Judge-02, North
Rohini Court Complex, Rohini
Delhi/23.09.2024

Announced in the open Court
(Order contains **7** pages)