

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE-05,
SOUTH WEST, DWARKA COURTS, NEW DELHI**

Civil Suit No. 16099/16

Adesh Kumar Jain

..... Plaintiff

Versus

Brij Rani Sharma & Anr.

..... Defendants

ORDER: -

1. Vide this order, I shall dispose of an application under Order 39 Rule 1 & 2 moved by the plaintiff.
2. Brief facts necessary for disposal of the application are that the plaintiff has filed the present suit for specific performance of contract with possession, permanent injunction and declaration against the defendants. The case of the plaintiff is that the defendant no. 1 agreed to sell her two houses bearing No. 1005 & 1006, Gali Jain Mandir, Najafgarh, New Delhi measuring 150 square yards (*hereinafter refer to as "suit properties"*) to the plaintiff for an amount of Rs.20,25,000/- vide earnest money receipt dated 13.05.2012. The plaintiff paid to the defendant no. 1 an amount of Rs. 3 lacs as an earnest money on 13.05.2012. After receiving the

said amount, the defendant no. 1 signed and executed the earnest money receipt dated 13.05.2012. The said document was also signed by Sh. Dinesh Kuma Sharma as a witness who is son of defendant no. 1. As per earnest money receipt, the balance sale consideration of Rs.17,25,000/- was agreed to be paid by the plaintiff to the defendant no. 1 within two months from the execution of the said receipt and defendant no. 1 was to execute the sale deed in respect of the aforesaid two properties. It was also agreed by defendant no. 1 that the plaintiff will get the aforesaid houses evicted from two tenants. It is stated that on 04.07.2012, the plaintiff alongwith balance sale consideration amount of Rs.17,25,000/- visited the defendant no. 1 at her residence and requested her to receive the said balance consideration and to execute the sale deed in his favour, but the defendant no. 1 refused to accept the balance sale consideration on the pretext that she was suffering from fever and as soon as she will recover, she would execute the sale deed in favour of the plaintiff. The plaintiff again contacted the defendant no. 1 on 10.07.2012 and requested to receive the balance sale consideration amount and to execute the sale deed but the defendant no. 1 refused to do so and asked the plaintiff to pay Rs. 50 lacs instead of Rs.20,25,000/- or else

to forget the suit properties as well as amount of earnest money. It is stated that the plaintiff has always been ready and willing to purchase the above said properties, however the defendant no. 1 deceived the plaintiff after receiving the earnest money of Rs. 3 lacs and is claiming an amount of Rs.50 lacs in place of Rs.20,25,000/- and it shows that the defendant no. 1 has turned dishonest. It is further stated that the plaintiff also sent a legal notice dated 11.07.2012 to the defendant asking her to perform her part of contract but the same was never replied nor complied with by the defendant no. 1. The plaintiff also appeared before the Sub Registrar Kapashera for getting the sale deed executed in his favour on 12.07.2012 but the defendant no. 1 did not turn up. It is further stated that plaintiff was shocked when on 07.08.2012, the defendant no. 2 alongwith defendant no. 1 contacted and told him that she had purchased the suit property from defendant no. 1 on 24.07.2012 through registered sale deed and when the plaintiff told them that he had already given Rs. 3 lacs as earnest money, they became furious and started quarreling with the plaintiff by saying that now the defendant no. 2 has purchased the suit properties and it is better for the plaintiff to forget the same. Therefore, the plaintiff was constrained to lodge a complaint with the

police but no action was taken. Hence, the plaintiff has filed the present suit.

3. The plaintiff has payed for (i) a decree of specific performance of contract with possession in his favour and against the defendant no. 1 thereby directing the defendant no. 1 to execute the sale deed in his favour in respect of the suit properties, (ii) a decree of permanent injunction to restrain the defendants from transferring, selling or creating third party interest in the suit properties and also from raising any construction in the suit properties and (iii) a decree of declaration thereby declaring the sale deed dated 24.07.2012 executed by defendant no. 1 in favour of defendant no. 2 as null and void.

4. The defendant no. 1 has contested the suit by filing written statement contending that the plaintiff has no locus standi to file the present suit, the earnest money receipt dated 13.05.2012 has not been executed by defendant no. 1 and the same is a forged and fabricated document and not admissible in evidence being not duly stamped. It is denied that the defendant no. 1 has agreed to sell her two houses to the plaintiff or she received an amount of Rs. 3 lacs as earnest money on 13.05.2012. It is stated that defendant no. 1 and

her son Sh. Dinesh Kumar Sharma sold the suit properties to defendant no. 2 for a total sum of Rs.40,50,000/- on 23.07.2012 vide sale deed dated 24.07.2012 and possession of the same was also handed over to defendant no. 2. It is stated that there is no question of sale deed in favour of the plaintiff as the suit properties have already been sold to defendant no. 2. The other contents of the plaint are stated to be wrong and denied and the defendant no. 1 has prayed for dismissal of the suit.

5. The defendant no. 2 has filed separate written statement taking similar objections that the plaintiff has no locus standi to file the present suit and that the earnest money receipt dated 13.05.2012 has been forged and fabricated to grab the suit properties of the defendant no. 2. It is contended that the defendant no. 2 is the sole owner of the suit properties having purchased the same from defendant no. 1 vide sale deed dated 24.07.2012. The defendant no. 2 has also prayed for dismissal of the suit while denying the other contents of the plaint.

6. The plaintiff has filed the replication to written statement filed by both the defendants separately reiterating and reaffirming the averments made in the plaint and those made in the

written statements have been controverted.

7. Alongwith the suit, the plaintiff has filed an application under Order 39 Rule 1 & 2 CPC seeking ad-interim injunction order in his favour and against the defendants thereby restraining the defendants, their heirs, representatives, servants, agents, attorneys, family members etc. from raising any construction in any manner in the suit properties and from selling, transferring or creating third party interest in the suit properties, till the final disposal of the present suit.
8. The defendants have filed their respective reply to the application as well and prayed for dismissal of the same.
9. It is pertinent to mention here that the defendant no. 2 was initially contesting the suit but later on she stopped appearing in the matter. She was also served with the court notice but she chose not to contest the suit and hence she was proceeded ex-parte vide order dated 23.10.2019.
10. I have heard the Ld. Counsel for the plaintiff and the Ld. Counsel for defendant no. 1 and perused the record carefully.
11. It is not in dispute that the suit properties i.e. houses bearing No. 1005 and 1006, Gali Jain Mandir, Najafgarh, New Delhi

were owned by the defendant no. 1. Now, the case of the plaintiff is that the defendant no. 1 had agreed to sell her aforesaid two houses to him for a total sale consideration of Rs.20,25,000/- and consequently earnest money receipt dated 13.05.2012 was executed by defendant no. 1 acknowledging receipt of Rs. 3 lacs as earnest money and she also agreed to execute the sale deed in favour of the plaintiff within two months after receiving the balance sale consideration amount of Rs.17,25,000/-. The plaintiff further claims that he requested the defendant no. 1 several times to execute the sale deed in his favour on receiving the balance sale consideration but the defendant no. 1 made excuses on one or other ground and finally it was revealed to the plaintiff that the defendant no. 1 has sold the suit properties to defendant no. 2 through registered sale deed. The defendant no. 1 in her written statement has denied any deal by which she had agreed to sell the suit properties to the plaintiff for a sum of Rs. 20,25,000/-. The defendant no. 1 has also denied that she had received earnest money of Rs. 3 lacs and executed earnest money receipt dated 13.05.2012 and claimed the same to be forged and fabricated.

12. In support of his case, the plaintiff has placed on record the original earnest money receipt dated 13.05.2012. Perusal of the

same shows that by virtue of this document, the plaintiff and defendant no. 1 have entered into a transaction by which the defendant no. 1 had agreed to sell the suit properties to the plaintiff for a sum of Rs.20,25,000/- and also acknowledged the receipt of Rs.3 lacs as earnest money and also agreed to execute the sale deed in plaintiff's favour within two months on receiving the balance sale consideration amount of Rs.17,25,000/-. The plaintiff has claimed the said earnest money receipt to be signed by defendant no. 1 and also witnessed by her son Sh. Dinesh Kumar Sharma.

13. Although execution of earnest money receipt dated 13.05.2012 was denied by the defendant no. 1 and she claimed the same to be forged and fabricated, but it is a matter of trial as to whether the said earnest money receipt was signed by the defendant no. 1 and witnessed by her her son or the same is a forged and fabricated document. At this stage, from the rival claims of the parties, it cannot be concluded as to whether the said earnest money receipt is a forged document or the same was validly executed by defendant no. 1 in favour of the plaintiff.

14. The Ld. Counsel for defendant no. 1 has argued that the said earnest money receipt dated 13.05.2012 has not been signed by

the plaintiff and, therefore, it cannot be construed as an agreement to sell. Of course, the said earnest money receipt dated 13.05.2012 is not signed by the plaintiff but that will not *ipso facto* render the said document inadmissible for the want of signature of the vendee i.e. the plaintiff.

15. It has been held by the Hon'ble Supreme Court in ***Alka Bose vs. Parmatma Devi & Ors., Civil Appeal No. 6197 of 2000*** that in India an agreement to sell signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract.

16. Admittedly, in the present case, the defendant no. 1 has already sold the suit properties to the defendant no. 2 vide registered sale deed dated 24.07.2012. The Ld. Counsel for the plaintiff has submitted that if during the pendency of the suit, the suit properties are not preserved from further alienation, the plaintiff shall suffer irreparable loss and injury which cannot be compensated in terms of money and it will lead to multiplicity of litigations. Per contra, the Ld. Counsel for defendant no. 1 submitted that the defendant no. 1 has disputed the execution of said earnest money receipt dated 13.05.2012, therefore no injunction can be granted in favour of the

plaintiff on the plea of multiplicity of litigations and the plaintiff can very well be compensated in case the plaintiff succeeds in his case by refunding Rs. 3 lacs. He has relied upon the judgment of Hon'ble Apex Court in *Ambalal Sarabhai Enterprise Ltd. vs. KS Infraspace LLP Ltd. & Anr., Civil Appeal No. 9346 of 2019.* I have gone through the said judgment and the same is not applicable in the facts and circumstances of the present case.

17. In the given facts and circumstances, the plaintiff has made out a prima facie case in his favour that he has purchased the suit properties from the defendant no. 1 for a sum of Rs.20,25,000/- and also claimed to have paid Rs. 3 lacs as earnest money vide earnest money receipt dated 13.05.2012 executed by the defendant no. 1. Though the same has been denied by defendant no. 1 but these facts can be established after the trial. Balance of convenience also lies in favour of the plaintiff as the defendant no. 1 has already sold the suit properties to defendant no. 2 and in case the defendant no. 2 further sells the suit properties, it will lead to multiplicity of litigations and the plaintiff shall suffer more hardship and irreparable loss and injury which cannot be compensated in terms of money in case he is able to establish his case. In these facts, the suit property is

required to be preserved from further alienation during the pendency of the suit. Hence, the application is allowed and the defendants, their heirs, representatives, servants, agents, attorneys, family members etc. are restrained from selling, alienating, transferring or creating third party interest in the suit properties i.e. two houses bearing No. 1005 & 1006, Gali Jain Mandir, Najafgarh, New Delhi measuring 150 square yards, during pendency of the suit.

18. Nothing stated herein shall tantamount to my expressions on merits of the case.

Announced in open Court (Balwant Rai Bansal)
on 7th January, 2020 Addl. District Judge-05 (South-West)
Dwarka Courts, New Delhi