

Civ DJ 646/20
SH DHANI RAM AND ANR Vs. SH SUMESH

13.10.2022

Present: Sh. Sachin Sangwan, Ld. counsel for the plaintiff
Defendant **Ex-parte** vide order dated 22.09.2022.

Arguments heard on the application u/o 39 rule 1 & 2 CPC.

Vide separate order, the application u/o 39 rule 1 & 2 CPC
moved on behalf of the plaintiff has been allowed.

Be listed for Ex-parte PE on **20.01.2023**.

[Syed Zishan Ali Warsi]
ADJ-05/West/THC/Delhi
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Present: Sh. Sachin Sangwan, Ld. counsel for the plaintiff
Defendant **Ex-parte** vide order dated 22.09.2022.

At this stage, Ld. Counsel for the plaintiffs have pressed their application u/o 39 rule 1 & 2 CPC.

The facts of the case in nutshell are like that the plaintiffs have filed the present suit for specific performance of contract dated 28.03.2018 and permanent injunction. It is averred that the defendant was selling his house and agricultural land i.e. 1/16th share out of total land area 58 Bigha 19 Biswa out of khasra No. 19//6 MIN(4-05) , 7(4-16), 14(4-16), 15 MIN (4-05), 16(4-16), 17(7-04), 25(7-04) 20//11/1 MIN (1-01), 20(4-16), 21(4-16), 23//1(4-16) 34//5(4-16) 6/2(0-03) and 79//12(0-09) situated in village Baprola, New Delhi-110043 (here in after called the suit property). The suit property is shown in red colour in the site plan. The defendant was willing to sell the suit property and the plaintiffs were willing to purchase the suit property. After negotiations a final consideration of Rs. 41 lacs were decided and a bayana/agreement dated 28.03.2018 was executed between the parties and on the same day the plaintiff has paid an amount of Rs. 16 lacs to the defendant by cash as earnest money and balance payment of Rs. 25 lacs has to be paid within 2 months. A receipt of Rs. 16 Lacs was also executed & duly acknowledged by the defendant. Thereafter, a part payment of Rs. 7.5 lacs was made on 20-04-2018 and second part payment of Rs. 7.5 lacs was made on 01-05-2018 through RTGS in the account of the defendant by the plaintiff but the

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defendant has shown his inability to perform the agreement dated 28-03-2018 and sought 6 months extension for the execution of the sale deed. For the purpose of which an agreement/undertaking dated 27-05-2018 was also executed for extension of time. Thereafter, on 22-11-2018 the defendant again sought extension of time for execution of sale deed and one more written agreement between the parties for extension of time of 6 months was entered. On 28-05-2019 the plaintiff has intimated the defendant and reached the Sub-Registrar Office for the execution of sale deed but the defendant has avoided the same. Till dated the plaintiffs have almost paid sale consideration of Rs. 37 lacs to the defendant and the plaintiffs were/are always ready and willing to purchase the suit property and they are having the balance payment with them but as per the conduct of the defendant, the plaintiffs have got the apprehension that the defendant is intentionally avoided/avoiding the transfer of the suit property in favour of the plaintiffs and on 01-07-2020 from some local property dealer the plaintiffs came to know that the defendant is also trying to create the third party interest in the suit property. It is also submitted that the balance payment of Rs. 4 lacs was available in the saving account of the plaintiff on the day of registry and plaintiffs are ready with the said amount of Rs. 4 lacs. The plaintiffs are always ready and willing to purchase the suit property.

Plaint perused.

Ld. Counsel Sh. Sachin Sangwan on behalf of plaintiff submits that the plaintiff has already paid more than 90 % of the sale consideration to the defendant and only Rs. 4 lacs has been remained to be paid to the

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defendant. The plaintiff is ready and willing to perform his part of contract. The defendant is intentionally avoiding to perform the sale deed and also trying to create third party interest in the suit property as the defendant is trying to contact local property dealers for the sale of the suit property.

Arguments heard.

On the basis of the aforesaid facts, submissions and documents available on record, this court is of the prima-facie view that the plaintiffs have entered into the alleged notarized agreement with respect to the suit property and a part of the consideration is also paid to the defendant. Thus, prima-facie this court is of the view that there is an agreement for the sale of the suit property between plaintiffs and defendant.

As far as the balance of convenience is concerned, the defendant is in possession of the suit property and the suit property is still in the name of the defendant. The defendant has received a part of alleged sale consideration and if third party interest is created, then it will lead to multiplicity of litigation. Thus, this court is of the considered view that the balance of convenience be maintained, if no third party interest in the suit property be created.

With regard to irreparable loss and injury, as the plaintiff has allegedly paid a considerable part of sale consideration to the defendant and if third party interest is created then there is possibility of irreparable loss and injury to the plaintiffs.

Accordingly, the application u/o 39 Rule 1 & 2 CPC is hereby **allowed** and the defendant/his legal heirs/agents of any person on

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his behalf is/are hereby **restrained** from creating third part interest in the suit property i.e. 1/16th share out of total land area 58 Bigha 19 Biswa out of khasra No. 19//6 MIN(4-05) , 7(4-16), 14(4-16), 15 MIN (4-05), 16(4-16), 17(7-04), 25(7-04) 20//11/1 MIN (1-01), 20(4-16), 21(4-16), 23//1(4-16) 34//5(4-16) 6/2(0-03) and 79//12(0-09) situated in village Baprola, New Delhi-110043.

Copy of this order be given dasti to Ld. Counsel for the plaintiff.

Order dictated & announced in an open Court.

[Syed Zishan Ali Warsi]
ADJ-05/West/THC/Delhi
13.10.2022