

Civ DJ 328/21

RAJ RANI UPPAL Vs. RAHUL CHOUDHARY

09.10.2024

ORDER

1. Vide this order, this Court shall decide the application u/o 12 Rule 6 r/w Section 151 CPC moved on behalf of plaintiff.
2. Arguments have already been heard. Record perused.
3. In said application, it is submitted on behalf of plaintiff that plaintiff has filed the present suit against defendant seeking the relief of possession, recovery of arrear of rent, damages/mesne profit and permanent & mandatory injunction in respect of property i.e. Upper Ground Floor of property bearing no. 36/7, East Punjabi Bagh, New Delhi (hereinafter referred as suit premises).
4. It is submitted that suit premises was let out by plaintiff to defendant for residential purpose vide rent agreement dated 31.08.2016, which was further extended time to time. It is submitted that since March 2020, defendant did not pay any rent, so plaintiff through her counsel sent a legal notice dated 01.03.2021 to defendant and thereby tenancy of defendant was terminated and he was asked to vacate the suit premises and pay the arrear of rent and damages/mesne profit.
5. It is submitted that in his written statement, defendant has admitted the rent agreement dated 31.08.2016, however, he further took the false and frivolous plea that on 16.11.2016, plaintiff entered into an agreement to sell with defendant and one Sh. Kamalkant Sharma qua the suit premises and third floor with roof rights of same property for consideration amount of

Rs.1.5 Crore.

6. It is submitted that although plaintiff is not admitting said agreement to sell, however, even if the plea of defendant is accepted, he is not entitled to retain the possession of suit premises as alleged agreement to sell dated 16.11.2016 is an unregistered document. By way of present application prayer has been made that decree of possession be passed u/o 12 Rule 6 CPC in favour of plaintiff and against defendant.

7. Perusal of record shows that in his written statement, defendant has taken the plea that suit premises was let out to him for residential purpose vide rent agreement dated 31.08.2016. It is submitted that in October 2016, plaintiff conveyed to defendant that she wanted to sell her property and defendant conveyed the above-mentioned wish of plaintiff to Kamalkant Sharma and defendant and Kamalkant Sharma agreed to jointly purchase the suit premises and third floor with roof rights of same property from plaintiff and agreement to sell dated 16.11.2016 was executed by plaintiff and defendant & Kamalkant Sharma. It is submitted that the consideration amount for the same was Rs.1.5 Crore and part payment has already been made to plaintiff. It is submitted that in view of said agreement to sell, the rent agreement stood mutually cancelled and tenancy also terminated.

8. This Court is of the considered view that defendant has filed on record the copy of agreement to sell dated 16.11.2016, which shows that said agreement to sell was executed between plaintiff on one side and defendant & Kamalkant Sharma on the other side. Perusal of said agreement to sell also shows that thereby plaintiff agreed to sell the suit premises i.e. Upper Ground Floor of property bearing no. 36/7, East Punjabi Bagh, New Delhi and third floor with roof rights of said property alongwith two servant room, one toilet

and one bathroom on the ground floor and parking rights on ground floor were also given by said agreement to defendant and Sh. Kamalkant Sharma for sale consideration amount of Rs.1.5 Crore and part payment was made to plaintiff. Perusal of said agreement to sell shows that same is an unregistered document.

9. This Court is of the view that as per the case of defendant, now he is in possession of suit premises in view of agreement to sell dated 16.11.2016. The said agreement to sell is unregistered document. This Court is of the considered view that as per **Section 17 (1A) of the Registration Act**, “*The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.*”

10. This Court is of the considered view that in view of above provision, it is clear that on the basis of unregistered agreement to sell dated 16.11.2016, the possession of defendant qua suit premises i.e. Upper Ground Floor of property bearing no. 36/7, East Punjabi Bagh, New Delhi cannot be protected. In these circumstances, relief of possession is granted in favour of plaintiff and against defendant u/o 12 Rule 6 CPC and qua said relief, suit is decreed. Preliminary decree be drawn accordingly.

**Announced in the open Court
on this 09th day of October, 2024.**

**(Dharmender Singh)
District Judge-01, (West)
Tis Hazari Courts, Delhi**