

Civ DJ 460/21

RAJ RANI UPPAL Vs. KAMAL KANT SHARMA

15.10.2024

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 defendants seeking the relief of possession, recovery of arrear of rent, damages/mesne profit and permanent & mandatory injunction in respect of property i.e. Third 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 defendants for residential purpose vide rent agreement dated 01.01.2019. It is submitted that defendants have defaulted in payment of rent and on March 2021, they were liable to pay the total outstanding rent of the amount of Rs.2,52,900/-, so plaintiff through her counsel sent a legal notice dated 24.03.2021 to defendants and thereby tenancy of defendants was terminated and they were asked to vacate the suit premises and pay the arrear of rent and damages/mesne profit.
5. It is submitted that in their written statement, defendants have taken the false and frivolous plea that on 16.11.2016, plaintiff entered into an agreement to sell with defendant no. 1 and one Sh. Rahul Chaudhary qua the suit premises and upper ground floor 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 defendants is accepted, they are 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 defendants.

7. Perusal of record shows that in his written statement, defendant no. 1 has stated that in October 2016, plaintiff conveyed to Sh. Rahul Chaudhary that she wanted to sell her property and Sh. Rahul Chaudhary conveyed the above-mentioned wish of plaintiff to defendant no. 1 and defendant no. 1 and Sh. Rahul Chaudhary agreed to jointly purchase the suit premises and upper ground floor of same property from plaintiff and agreement to sell dated 16.11.2016 was executed between plaintiff on one side and defendant no. 1 & Sh. Rahul Chaudhary on other side. 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 possession of suit premises was handed over to defendant no. 1 and Sh. Rahul Chaudhary by plaintiff in pursuance of said agreement to sell.

8. Perusal of record also shows that in his written statement, defendant no. 2 has taken the plea that he was domestic servant-cum-cook of defendant no. 1 and Sh. Rahul Chaudhary and he has nothing to do with the plaintiff and suit property and there was no relationship of landlady and tenant between plaintiff and defendant no. 2.

9. This Court is of the considered view that defendant no. 1 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 no. 1 & Sh. Rahul Chaudhary on the other side. Perusal of said agreement to

sell also shows that thereby plaintiff agreed to sell the suit premises i.e. third floor with roof rights of property bearing no. 36/7, East Punjabi Bagh, New Delhi and Upper Ground Floor of said property alongwith two servant room, one toilet and one bathroom on the ground floor and parking rights on ground floor were also agreed to be given by said agreement to defendant no. 1 and Sh. Rahul Chaudhary 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.

10. This Court is of the view that as per the case of defendant no. 1, 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.*”

11. 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 no. 1 qua suit premises i.e. Third Floor of property bearing no. 36/7, East Punjabi Bagh, New Delhi cannot be protected.

12. So far defendant no. 2 is concerned, he has clearly stated in his written statement that he was domestic servant-cum-cook of defendant no. 1 and Sh.

Rahul Chaudhary and he has nothing to do with the plaintiff and suit property and there was no relationship of landlady and tenant between plaintiff and defendant no. 2. In view of the same, it is clear that defendant no. 2 has clearly stated that he has no right to remain in possession of suit premises.

13. In view of above facts and circumstances, relief of possession is granted in favour of plaintiff and against both the defendants in respect of suit premises i.e. Third Floor of property bearing no. 36/7, East Punjabi Bagh, New Delhi 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 15th day of October, 2024.**

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