

**BEFORE
Dr. AJAY GULATI
ADDL. DISTRICT JUDGE - 02,
WEST, DELHI.**

**Civ DJ No. 668/2020
CNR No. DLWT01-006048-2020**

Sh. Sagar Tanwar and Ors.

.....Plaintiffs

Versus

Suman Sangwan

... Defendant

Order on Application under Order 12 Rule 6

1. Plaintiffs seek possession of 3rd floor of property no. WZ – 1A (suit property), *vill. Tatarpur*, N. Delhi from the defendant on the strength of contention that defendant has admitted her illegal possession over the 3rd floor and hence, must be directed to handover the possession of the same to the plaintiffs.

2. Plaintiffs contend in the plaint that on 26.8.2020 defendant was put in possession of 3rd floor as a licensee for a period of 1 month since she was to carry out renovation of 2nd floor of the same property which floor is owned by her. After expiry of 1 month, defendant sought some more time which was granted by the plaintiffs and the date for vacation

was extended to 20.10.20. However, even after expiry of the extended period and service of a **legal notice** dt. 5.11.2020 *vide* which plaintiffs claim that defendant's license to stay in the 3rd floor was cancelled/terminated, defendant refused to vacate the premises and instead, set up 2 documents to claim lawful possession over the suit property i.e. 3rd floor. The first of such documents is a loan agreement dt. 15.6.2020. The second document is an *agreement to sell* also dt. 15.6.2020, purportedly entered into between plaintiff no. 2 and the defendant in regard to the 3rd floor. The loan agreement has not been objected to by the plaintiffs. **Infact**, plaintiffs contend that in the garb of loan agreement, plaintiff no. 2 was made to sign certain additional documents contents of which she was not even aware of since the documents were in English language *nor* did the defendant (and her husband) make her understand as to what precisely were the documents which she was made to sign. **In short**, plaintiffs allege that defendant played a fraud with plaintiff no. 2.

3. *Few supp. facts require a mention.* The property bearing no. WZ-1A Village Tatarpur is said to be an ancestral property owned by plaintiff no. 3, atleast this what has been asserted by the plaintiffs. Plaintiff no. 3 is husband of plaintiff no. 2 and father of plaintiff no. 1. Defendant had purchased 2nd floor of the above said property from plaintiff no. 1 who acting as attorney of plaintiff no. 3, had executed sale deed in favour of the defendant in respect of the 2nd floor of property no. WZ-1A. *Further*, plaintiff no. 1 had appointed plaintiff no. 2 as an Attorney in respect of the ground, first and third floor of the

above said property who in turn, as per the defendant submission/assertions, has entered into an agreement to sell with her i.e. the defendant. Plaintiff no. 3 is a signatory to the loan document as also the *agreement to sell* purportedly executed between plaintiff no. 2 and the defendant. The defendant admits to having received the legal notice dt. 5.11.2020 and has even replied to the same but contends that same has been sent unlawfully so as to defeat her vested right in the suit property. Ownership of plaintiff no. 2 over the suit property has not been denied by the defendant.

4. Defendant has opposed the application, contending that she has not made any admission warranting the present application to be allowed. She has placed reliance on the *loan agreement* as also the *agreement to sell* so as to assert her rightful and legal possession over the 3rd floor. Defendant contends that the loan agreement was entered into with the stipulation that in case loan is not repaid, plaintiff no. 2 will execute the sale deed of the 3rd floor in terms of the agreement to sell. The 3rd floor has purportedly been agreed to be sold for Rs. 18 lacs out of which, defendant so contends, Rs. 9.90,000 has been paid already which includes the loan amount. She also contends that plaintiffs have put her in possession of the 3rd floor pursuant to the execution agreement to sell cum '*bayana*' agreement. Defendant further contends that she is willing to perform her obligation under the agreement to sell and has in fact, instituted a suit for specific performance since plaintiff no. 2 is not coming forward to execute the sale deed.

5. It needs a brief highlight that so far as the loan agreement is concerned, plaintiffs admit the loan amount of Rs. 6.5 lacs. However, the loan agreement mentions an amount of Rs. 7 lacs. *Interestingly*, the details of the loan amounts (in tranches) purportedly transferred to plaintiff no. 2 by the defendant amounts to a total of Rs. 6.7 lacs. The loan agreement states that the loan advanced is interest free and yet the loan amount mentioned i.e. Rs. 7 lacs is more than the total amount purportedly transferred. However, what is even more interesting is that though defendant relies on the loan agreement dt. 15.6.2020 which states that loan of Rs., 7 lacs has been extended, it also mentions that Rs. 11 lacs was to be paid at a future date i.e. 28.6.20. Except for this term of Rs. 11 lacs which vaguely and impliedly links the loan agreement to the agreement to sell, the loan agreement and agreement to sell are absolutely exclusive to each other and there is no mention of one in the other.

Agreement to sell relied upon by the defendant is an *unregistered* document.

6. *I have carefully considered the rival submissions.*

7. Defendant in her written statement has made a solitary material admission which is to the effect that plaintiff no. 2 is the owner of the suit property and has been put in possession by the plaintiffs pursuant to signing of agreement to sell and payment of more than half of the sale amount. Rest of the allegations/assertions have been completely denied by her. Ld. Counsel for the plaintiffs argued that the extent of admission

made by the defendant is good enough for the application to be allowed. It was submitted by Id. Counsel that defendant has admitted the ownership of plaintiff no. 2 over the suit property (i.e. 3rd floor) and has also admitted that she took possession of the same from the plaintiffs i.e. plaintiff no. 2 & 3. Id. Counsel argued that irrespective of the reasons which have been put forth from either side in regard to the possession of defendant over the 3rd floor and which admittedly are at complete variance to each other, undisputed fact is that defendant is seeking to retain/protect her possession on the basis of an agreement to sell which is unregistered. Id. Counsel for the plaintiffs highlighted that after the amendment in section 17 (1) A of the Registration Act which was carried out in the yr. 2001, benefit of sec. 53 A of the *Transfer of Property Act* would be available to a vendee only in case of a registered agreement to sell. Reliance has been placed by the plaintiffs on 3 judgments delivered by the **Hon'ble** High Court of Delhi i.e.

1. Sudhir Sabharwal Vs Rajesh Pruthi MANU/DE/2383/2014
2. Pawandeep Singh & Ors. Vs Gurdeep Singh Virdhi MANU/DE/2479/2019
3. Prashant Goyal Vs Indranil Wadhwa MANU/DE/2115/2020

all of which have held in clear terms that a purchaser **cannot** retain possession on the basis of an unregistered agreement to sell and the only remedy for such a *vendee* is to file a suit for specific performance. Till such time that a decree for specific performance is not passed in favour of such a vendee, she/he/it/they-them has no right to retain possession of the subject matter property of the agreement to sell under

which the right to retain possession is being claimed. Ld. Counsel for the defendant has not been able to highlight any ruling or law to the contrary.

8. In the understanding of the Court, so far as the suit prayer for recovery of possession is concerned, there is really no triable issue and hence, the plaintiff no. 2 must be held entitled to recover possession of the 3rd floor of the property no.WZ-1, Village Tatarpur from the defendant. Reliance is also placed in this regard on another judgement delivered by the **Hon'ble** High Court of Delhi i.e. in a suit titled as *M/s Versatile Commotrade Private Limited Vs Smt. Kesar Devi and Ors.* CS(OS) 143/2018 wherein it has been held that if there is no triable issue, the suit can be decreed to the extent of prayer where no triable issue is made out. The application is thus disposed-off with direction to the defendant to handover vacant, peaceful and unhindered possession of the 3rd floor of property number WZ-1A, Village Tatarpur within 6 weeks from the date of this order. Defendant is also permanently enjoined from parting with the possession of the suit property to anyone till the time she is able to establish her ownership rights over the same. However, the trial shall proceed for proving the plaintiffs claim for *mesne* profits/damages at the rate asserted in the prayer clause in regard to defendant's illegal possession of the 3rd floor of property number WZ-1A, Village Tatarpur. The application is accordingly disposed off.

**Announced in the open court
today the 18 May, 2023**

**(Ajay Gulati-I)
ADJ-02, West/Delhi**