

CIV DJ 187/2024
Bhupinder Singh Vs.
Gurmeet Kaur

05.05.2025

Present: Plaintiff with Ld. Counsel Sh. Akshay Mahajan.
Sh. Mukul Rawal, Ld. Counsel for defendant.

Hard copy of affidavit of admission-denial of documents, filed on behalf of defendant through e-filing, is furnished. Be taken on record. Copy supplied.

At this stage, Ld. Counsel for plaintiff has pressed pending application u/o XXXIX Rule 1 & 2 CPC.

Facts of case of the plaintiff, in brief, are as follows- Defendant is related to the plaintiff as sister-in-law (younger brother's wife). Defendant is owner of ground floor and first floor (without roof rights) of property no. NW-12, Vishnu Garden, Village Khayla, New Delhi-110018 (hereinafter referred to as 'suit property'). In June 2022 she had approached the plaintiff for selling the suit property as she was in need of money. On 17.06.2022 the plaintiff and the defendant had entered into an agreement to sale and purchase of the suit property against a total consideration of Rs.30 lakhs out of which Rs.3.5 lakhs was paid by the plaintiff to the defendant as earnest amount. As per the terms of the agreement, the suit property had to be transferred by the defendant to the plaintiff on or before 14.12.2022 after payment of balance consideration amount. In the meantime, behaviour of the defendant towards the plaintiff became indifferent and she did not seem to be willing to adhere to the terms of the aforesaid agreement. Later on in May 2023, the

Contd..2/-

plaintiff suffered a major cardiac arrest and resultantly got hospitalized for a considerable period. At that time due to intervention of common relatives it was mutually agreed between the plaintiff and the defendant that the plaintiff would pay balance consideration amount to the defendant once he completely recovers from his ailment and in the meantime peaceful and vacant possession of the suit property would be handed over to the plaintiff. Thereafter, the possession of the suit property was so handed over by the defendant to the plaintiff's family members. Since then the plaintiff had been requesting the defendant to receive the balance sale consideration amount and to transfer the title of the suit property in his name, however, she had been evading the same. Then the plaintiff had issued legal notice dated 20.11.2023 and corrigendum notice dated 23.12.2023 to the defendant and when the same were not complied with, the present suit was filed.

In written statement filed on behalf of the defendant although the factum of execution of the aforementioned agreement, handing over of the possession of the suit property to the plaintiff and receipt of the aforementioned legal notices, have not been denied, however, it is contended that the possession of the suit property was handed over to the plaintiff immediately after execution of the agreement and not in May 2023, as claimed by him and that the plaintiff had failed to fulfill his part of obligation within the stipulated period as per the terms of the agreement, hence, the earnest amount paid by the plaintiff, stood forfeited.

As aforementioned, as per the terms of the

Contd..3/-

agreement to sell and purchase dated 17.06.2022, the suit property had to be transferred by the defendant to the plaintiff on or before 14.09.2022. If the un rebutted claim of the plaintiff that the possession of the suit property was handed over by the defendant to his family members in May 2023, is accepted to be correct then the period of performance of the agreement was impliedly extended by the defendant beyond 14.09.2022. Although the aforesaid claim has been controverted by the defendant mentioning that the possession of the suit property was handed over to the plaintiff immediately after execution of the agreement, however, this fact is not mentioned in the terms of the agreement. Admittedly, the defendant had received the aforementioned legal notices of the plaintiff, however, had opted not to reply the same. Also during proceedings of the present matter the defendant side has conceded that so far no action has been initiated by the defendant against the plaintiff to recover possession of the suit property back. All these factors go against the defendant.

From above facts it is evident that there exists *prima-facie* case in favour of the plaintiff. Balance of convenience also lies in his favour and he is likely to suffer irreparable loss in case injunction is not granted in his favour.

Hence, the application under consideration is being allowed. The injunction temporarily granted in favour of the plaintiff and against the defendant vide order dated 04.12.2024, whereby the defendant was directed not to create any third party interest in the suit property, is being extended till disposal of the present suit.

Contd..4/-

On the basis of pleadings of the parties, following issues are framed:-

1. *Whether the plaintiff is entitled to decree of specific performance of agreement to sell and purchase dated 17.06.2022, as prayed for? OPP.*
2. *Whether in alternative, the plaintiff is entitled to a decree for recovery of Rs.7,00,000/-, being double of the amount of the earnest money, as per the terms of the aforementioned agreement, along with interest @ 12% per annum, as prayed for? OPP*
3. *Whether the plaintiff is entitled to a decree of perpetual injunction, as prayed for? OPP.*
4. *Relief.*

No other issue arises or pressed for by the parties.

Put up for PE on 08.08.2025.

Plaintiff to file affidavit of evidence and list of witnesses by NDOH with advance copy to opposite side at-least 10 days prior to NDOH.

(GOPAL SINGH CHAUHAN)
DJ-03, WEST/DELHI
05.05.2025