

Civ DJ 613720/2016
Prem Sagar Sachdeva
Vs. Sanjay Bhatia & Ors.

02.11.2022

Present: Sh. Nikhlesh Krishnan, Ld. Counsel for plaintiff.

D-1 & D-2 are already ex-parte.

The name of D-3 Bank of India has already been
deleted from array of parties

Ms. Kashish Narang, Ld. Counsel for D-4.

Sh. Sandeep Soni, proxy counsel for D-5 Union
Bank of India.

1. Arguments heard on pending application filed by
D-4 i.e. Edelweiss Reconstruction Company under Order VII
Rule 11 CPC for rejection of plaint.

2. In the present suit, the plaintiff has submitted that
D-1 Sanjay Bhatia agreed to sell third floor of property no. B-75,
Mansarovar Garden, New Delhi-15, to him for total sale
consideration of Rs.85 lakh out of which he has already received
total Rs.83 lakh at the time and after executing agreement to sell
dated 25/05/2011.

3. The agreement to sell is executed on a stamp paper
of Rs.50/- and is not registered or notarized. The possession of
the above mentioned suit property was handed over by D-1 to
plaintiff on the same day i.e. 25/05/2011.

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4. The plaintiff has sought decree of specific performance of agreement to sell dated 25/05/2011 against D-1, for directions to D-1 to execute sale deed of suit property in his favour and also hand over the previous chain of title documents of suit property to plaintiff.

5. Plaintiff has also sought declaration of cancellation of sale deed dated 25/06/2012 in respect of suit property, executed by D-1 Sanjay Bhatia in favour of his wife i.e. D-2 Purnima Bhatia.

6. Through present application, D-4 has submitted that D-1 Sanjay Bhatia had obtained loan from Bank of India that got assigned to D-4 Financial Company. The loan was obtained by D-1 from Bank of India on 23/03/2011 and suit property was mortgaged with Bank of India on 26/03/2011. In this manner, D-1 Sanjay Bhatia had created charge/encumbrance over suit property in favour of Bank of India (that got assigned to D-4), even before he agreed to sell the suit property to plaintiff through alleged agreement dated 25/05/2011. As it transpired, D-1 failed to repay the loan obtained from Bank of India, that got assigned to D-4. Now, D-4 has initiated proceedings under SARFEASI Act for recovery of dues from D-1 Sanjay Bhatia.

7. As per application of D-4, the plaintiff has no cause of action to sue for specific performance of agreement dated 25/05/2011, there being a prior charge of D-4 over the suit property.

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8. The Court finds that the facts in dispute between the parties can only be decided by way of trial. The plaint instituted as such by plaintiff is maintainable and plaintiff has valid cause of action on the basis of agreement to sell dated 25/05/2011.

9. Plaintiff seeks to enforce agreement to sell dated 25/05/2011 against D-1 Sanjay Bhatia for directions to D-1 to execute a proper registered sale deed in favour of plaintiff. The plaintiff is not suing for decree of possession, since he is alleged to be already in possession of the suit property from 25/05/2011.

10. The issue related to execution of agreement dated 25/05/2011 on a mere stamp paper of Rs.50/- and non-registration of the agreement does not affect the plaintiff's case since he has approached the Court for appropriate legal remedy available to him i.e. for execution of registered sale deed.

 The application under Order VII Rule 11 CPC is, therefore, dismissed.

 At this stage, on request of Ld. Counsel for D-4, written statement originally filed shall be deemed to be written statement in answer to amended plaint too.

 Put up for framing of issues and further proceedings on 24/02/2023.

(VISHAL SINGH)
ADJ-03, WEST/DELHI
02.11.2022