

CS DJ No. 340/25
SHRESHTA DEVI Vs. INDU DEVI

29.04.2025

**Fresh suit received by way of assignment.
It be checked and registered as per rules.**

Present: Sh. R.L. Mishra, Ld. Counsel for the plaintiff.

1. I have heard Ld. counsel for the plaintiff and perused the plaint and documents filed therewith.
2. The plaintiff has filed the present suit for reliefs of recovery of possession, permanent injunction, recovery of damages/mesne profit and recovery of costs of the suit. These reliefs are being sought in respect of the property i.e. a built up flat on 4th floor, in the property bearing no. 280-B-1, Carpet area measuring 596 sq. ft., out of total land measuring area 145 sq. yards, village Molar Band, Gali No. 29-D, Molarband Extension, Badarpur-110044 (herein after referred to as 'the suit property').
3. The suit of the plaintiff is based upon the claim that he had entered into an Agreement to Sell with the defendant on 29.06.2021. Vide the said Agreement to Sell, the plaintiff had agreed to sell the suit property to the defendant at a total consideration of Rs. 24,35,414/-. As per the plaint, out of the said sale consideration, a sum of Rs. 10,40,000/- has already been received by the plaintiff from the defendant and the balance sale consideration of Rs. 13,95,414/- was agreed to be paid by the defendant to the plaintiff in 54 equal monthly installments of Rs. 25,841/- starting from January, 2021 onwards. It was further agreed in the clause 3 of the said Agreement that in case of default by the defendant in payment of 3 consecutive installments, the plaintiff would charge market rent of Rs. 10,000/- per month from the defendant. In the background of these facts, the plaintiff is seeking aforesaid reliefs.
4. Upon perusal of the plaint and documents filed therewith, following defects have been pointed out to the plaintiff/Ld. Counsel:-

(i) As per Section 7(v) of the Court Fees Act, 1870, the relief of recovery of possession of an immovable property is required to be valued according to the market value of the property. However, the plaintiff has neither valued the said relief, nor has he paid any Court fees thereupon.

(ii) The plaintiff in prayer (c) is seeking recovery of a sum of Rs. 1,20,000/-, as per clause 3 of the Agreement to Sell, for the period from 01.07.2022 till 09.01.2025. The recovery as stated for the said period comes to Rs. 3,10,000/- approximately. Further, the plaintiff, in the said prayer is also seeking recovery of a sum of Rs. 9,13,000/- during the period from 01.07.2022 till 09.01.2025. However, the plaintiff has valued the relief as sought in prayer (c) by adding Rs. 1,20,000/- and Rs. 9,13,000/-. He has not valued the relief of recovery of annual rent of Rs. 1,20,000/- for the entire period i.e. 01.07.2022 till 09.01.2025, which comes to Rs. 3,10,000/- approximately.

5. Ld. Counsel for the plaintiff submitted that as per clause 3 of the aforesaid Agreement to Sell, the defendant was the tenant in the suit property and, therefore, the relief of recovery of possession is not required to be valued as per its market value. However, this Court is not satisfied that such term in an Agreement to Sell constitutes 'lease' as defined under Section 105 of the Transfer of Property Act. This Court is of the view that the relationship between the plaintiff and the defendant was of a prospective seller and prospective buyer only.

6. The plaintiff is directed to make the submissions in respect of the aforesaid defects, or to move an appropriate application seeking amendment in the plaint on or before the next date of hearing.

7. List on **04.06.2025** for the said purpose.

(Sachin Mittal)
DJ-03/South-East District
Saket Courts, New Delhi/29.04.2025