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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 644/2021, I.A. 15929/2021**

AKANKSHA SHARMA

..... Plaintiff

Through: Mr. Sameer Vashisht, Sr. Adv. with
with Mr. Abhinav Sharma, Ms. Avsi
Malik, Mr. Vanshay Kaul, Ms.
Harshita Nathrani, Advs.

versus

RIZWAN UL HASAN & ORS.

..... Defendants

Through: Mr. Raman Kapur, Sr. Adv. with Mr.
Faiyaz Hasan, Mr. Varun Kapur,
Advs. for D-1
Mr. Salim Alvi, (VC) Adv. for
Defendant No. 2 & 4
Mr. Faiq sherwani, Adv.(VC) for
defendant no.5

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% **06.02.2024**

I.A. 15927/2021 and I.A. 6461/2022

1. This Court vide order dated 03.12.2021 inter alia passed the following directions;

9. Mr. Manish Vashisht, learned senior counsel for the plaintiff submits that the parties had agreed for the sale and purchase of land measuring 1100 sq. yards from the 50% share of land in Khasra No. 478/396/87/1 & Khasra No. 68(12-8), 84(9-0), 85(8-5) situated in Village Masoodpur, Vasant Vihar, New Delhi measuring 18 Bhigha and 8 biswas and 11 Bhigha and 3 biswas, respectively. It is submitted that the total sale consideration was agreed at Rs.4,50,00,000/- at the time of the execution of the



Agreement to Sell on 12th January, 2021. A sum of Rs. 2,50,00,000/- out of which the plaintiff had paid Rs.1,25,00,000/-, had been paid to the defendant No.1 as has been mentioned in para No.3 of the plaint and which was also confirmed in the Agreement to Sell. It is further submitted that the Sale Deed had to be executed on 8th March, 2021 for which purposes, the plaintiff had also purchased e-stamp papers as evidenced from the photocopies at Page Nos.30 to 43 of the documents filed by the plaintiff in the electronic file. It is further submitted that a sum of Rs.50,00,000/- was also paid through a Manager's Cheque bearing No.027158 dated 8th February, 2021 in furtherance of this Agreement. However, suddenly on 7th March, 2021, a message was sent to the father-in-law of the plaintiff by the defendant No.1 to the effect that there were legal hurdles in the execution of the Sale Deed. Further discussions continued between the parties and even as late as July, 2021, the defendant No.1 was asking the plaintiff to draw up a new Agreement.

10. In order to show that the plaintiff was ever ready and willing to perform her part of the contract, learned senior counsel has drawn the attention of this Court to the receipts of confirmation of deposit issued by the Punjab National Bank for a total sum of Rs.2,75,00,000/-. Thus, it is submitted that interim protection may be granted to the plaintiff as the defendant No.1 has lately commenced asserting independent rights in respect of the suit property.

11. In the light of the various documents that have been placed on record and the deposit receipts, the Court is of the view that the plaintiff has disclosed a prima facie case in her favour and in the absence of an ex-parte interim injunction, irreparable loss would be caused to her. WhatsApp messages dated 22nd July, 2021 also show that the defendant No.1 had sought modified agreements from the plaintiff and that no money has been returned to the plaintiff. Thus, the balance of convenience also lies in favour of the plaintiff.

12. In these circumstances, till the next date of hearing, the defendants No.1, 2 and 3 are restrained from creating any third



party interests in the suit property or from carrying out any construction or changing the nature of the suit land i.e. land measuring 1100 sq. yards from the 50% share of land in Khasra No. 478/396/87/1 & Khasra No. 68(12-8), 84(9-0), 85(8-5) situated in Village Masoodpur, Vasant Vihar, New Delhi measuring 18 Bigha and 8 biswas and 11 Bigha and 3 biswas, respectively.

13. Provisions of Order XXXIX Rule 3 CPC be complied with.”

2. Learned counsel for the defendant No.1 has moved the present applications for vacation of stay on the ground that the said interim order has been passed on the basis of misrepresentation and concealment of the material facts. It has been submitted that since the defendant No.5 has already cancelled the agreement, the alleged agreement to sell dated 12.01.2021 is no longer an enforceable document in law. It has further been submitted that the alleged agreement to sell 12.01.2021 is bad in law as the same is unlawful act of the plaintiff to indulge in benami transactions in collusion with the father-in-law; Mr.Sulekh Malik. It has also been submitted that the present suit is also barred by Section 185 of the Delhi Land Reforms Act.
3. Learned counsel has further submitted that in fact after entering into the agreement to sell, on account of intervention of Mr. Sulekh Malik, the dispute arose between the plaintiff and defendant No.5 regarding their share in the portion of the property. It has further been submitted that the plaintiff and the defendant No.5 were required to obtain the NOC which they failed and the balance payment was also not made. It has been submitted that on account of all these facts the agreement to



sell dated 12.01.2021 was cancelled by the defendant No.1. Pursuant to which defendant No.5 also cancelled the agreement to sell and he took entire sum of money back paid under the agreement to sell.

4. It is interesting to note that in the application, it has been submitted that as per discussion held between the plaintiff and defendant No.1, it was mutually agreed that a fresh agreement shall be made between them on the fresh rate of property which shall be higher than the previous rate. Therefore, the agreement dated 12.10.2021 had to come an end.
5. Learned counsel for the defendant No.1 had agreed to sell 1100 sq yards and if the transaction would have been with respect to 550 sq yds, the rates would have been much higher. Learned counsel submits that in these circumstances, the agreement to sell dated 12.01.2021 has no legal sanctity in eyes of law. It has also been submitted that Mr. Surekh Malik, has filed a false and frivolous writ petition bearing WPC No. 3454/2020 alleging unauthorized construction in the land of the defendant No.1 and falsely claiming himself to be the owner of an area of 650 sq yds. out of the property which was subject matter of the said agreement to sell dated 12.01.2021.
6. Learned counsel submits that prior to the agreement with the defendant No.1, the plaintiff had also sold out the portion of the said property to one Mr. Bal Kishan Rathi on 22.11.2021 which forms the part of the subject property of the alleged agreement dated 12.01.2021. Learned counsel for the defendant No.1 submits that in



these circumstances, the injunction granted in favour of the plaintiff vide order dated 03.12.2021 is liable to be vacated.

7. The parameters for granting the injunction under Order 39 Rule 1 and 2 CPC are quite well settled and do not need any further reiteration. However, to be concise, the plaintiff, in order to get an injunction during the pendency of the suit, is required to prove that there is a prima facie case in his/her favour and that the balance of convenience is in his/her favour along with the fact that if the injunction is not granted, there will be irreparable loss and damage. Similarly, under Order 39 Rule 4 CPC, the injunction, if granted, may be discharged, varied or set aside on an application made by any party dissatisfied with such order. The proviso to Order 39 Rule 4 CPC provides that such an order can be made if the party in whose favour injunction has been made had made false or misleading statement in relation to material particular on the basis of which the injunction was granted or the injunction was granted without giving notice to the opposite party. Another guidance given by the legislature is that such an order can be passed, if it is necessary to do so in the interest of the justice.
8. The present case has peculiar facts and circumstances. The defendant No.1 as an attorney of defendant No.2 & 3 entered into an agreement to sell on 12.01.2021 for a sum of Rs.4,50,00,000/-for 1100 sq.yds. of undivided land at a prime location in Delhi. The agreement was entered into between the plaintiff, defendant No.1 and defendant No.5. Plaintiff and defendant No.5 paid 1.25 crores each. However, later on, defendant No.1 vide the document signed and executed by



defendant No.1 dated 04.03.2021, cancelled the agreement to sell dated 12.01.2021. Defendant No. 5 also executed a full and final receipt-cum-acknowledgment of cancellation of draft of the agreement dated 22.07.2021 and received the entire amount. Thus, one thing is very clear that whatever happened between the defendant No.1 and 5, plaintiff was not aware of the same.

9. Learned senior counsel for the plaintiff has submitted that it is a settled law that if one of the party backtracks from performing their part of the contract, the other party which is willing to perform the contract has a remedy in law and such willing person should be given an opportunity to perform his/her part. In support of such contentions, learned counsel has relied upon ***Ponnuswami Gounder v. Rama Boyan and Ors.*** MANU/TN/0309/1979; 1978 SCC OnLine Mad 120 and ***P.Ramasubbamma v. V. Vijayalakshmi & Ors.*** (2022) 7 SCC 384:

10. Per contra, learned senior counsel for the defendant no.1 has submitted that since it was an undivided land and one of the party has withdrawn from the contract and taken back the money therefore, under Section 12 of Specific Relief Act, 1963 the contract has become *non-est*. Learned senior counsel submits that therefore the suit itself is liable to be rejected and the injunction order is also liable to be vacated. Learned senior counsel has also submitted that some portion of the subject matter has already been sold before filing of the suit.

11. Learned senior counsel for the plaintiff in rejoinder submitted that in



view of the admission made by the defendant No.1 in the written statement, rather the suit of the plaintiff is entitled to be decreed and directions are required to be issued for specific performance of the contract/agreement and execution of sale deed in pursuance to the agreement to sell dated 12.01.2021. Learned senior counsel has submitted that even as per the order dated 03.12.2021 passed by this Court, it is clear that the plaintiff is ready, willing and has sufficient means to discharge her obligations.

12. In *Ponnuswami Gounder* (Supra), High Court of Madras *inter alia* held as under;

“3. The Privy Council also considered the question in the decision reported in Manghibai v. Cooverji Umersey MANU/PR/0023/1939 and it was held therein:

“It has long been recognised that one or more of several persons jointly interested can bring an action in respect of joint property and if their right to sue is challenged can amend by joining their co-contractors as plaintiffs if they will consent or, as co-defendants if they will not”.

*This passage was quoted with approval by the Supreme Court in the case above cited. There could therefore be no bar that in a case where the contract was in favour of more than one person and if some of them are not willing to join as plaintiffs, the others could file a suit impleading those who are not willing as defendants and a person cannot be prevented from filing a suit merely because he is only a joint promisee and the other promisees have refused to join him in filing the suit. The main basis of the judgments in *Sajfur Rahmin v. Maharamunnissa Bibi* ILR(1897) and *Koripalli Ramiah v. Sajja Subbiah* 1912 MWN 415 is therefore no longer available. In fact the two later Bench decisions in *Kondapaneni Kottaya v. Gangaru Seshayya* and 1913*



MWN 995 Abdul Shakur Sahib v. Abdul Rahiman Sahib ILR (1923) Mad 148:MANU/TN/0139/1922: AIR 1923 Mad 1923 have dissented from the decision in Koripalli Ramiah v. Sajja Subbiah 1912 MWN 415 and held that one of the joint promisees could file a suit impleading the others who are not willing to join them, as defendants in the suit. These two later judgments were followed by Ismail, J. in Kandassami v. Venkatachala Kandar(1972) 85 MLW 616, where the learned Judge had considered the earlier judgments in detail. The learned Judge also pointed out that in a case for specific performance, the relief to be granted being in the nature of discretion of the court where there are no sufficient grounds for rejecting the claim of the plaintiff for specific performance, the court cannot refuse to grant the relief merely on the ground that some of them had refused to join. The learned counsel for the appellant tried to distinguish the decisions in Kandasami v. Venkatachala Kandar (1972) 85 MLW 616 On the ground that in that case the learned Judge specifically found that the refusing parties have colluded with the defendant against whom the relief is sought and that therefore the plaintiff was entitled to the relief. I am unable to agree with this argument of the learned counsel. It is true that the learned Judge pointed out that the defendants 2 and 3 have colluded with the first defendant in order to deprive the plaintiff of his right of specific performance. But, that was not the ratio of the judgment. In my opinion, the ratio of the judgment is that where the plaintiff is entitled to the relief, merely because some of them have refused to join him as plaintiffs or even where they do not want the specific performance of the agreement, his right could not be jeopardised by such refusal by the other parties. In such a case I am of the view that if the defendants do not want to pay the money, the plaintiffs would have to pay the entirety of the consideration payable under the agreement to convey or recon-vey, as the case may be and on such deposit of the entire money, he would be entitled to get a conveyance of the entirety of the property though it should normally be in favour of the plaintiff and the defendants in whose favour the agreement was executed. After the conveyance is executed as such, the rights of the plaintiff and the other defendants in whose favour the agreement was executed will



have to be worked out. The specific performance as such therefore could not be denied to the plaintiffs merely on the ground that defendants 2 and 3 have refused to join as plaintiffs or that they do not want the conveyance. It may also be pointed out that in a case of this nature, it will not be possible for one co-promisee to give up his rights so as to prejudice the rights of the other co-promisees. Therefore, the first defendant also would not be entitled to claim that he will execute only with reference to half of the suit properties on the ground that if the conveyance is executed in favour of the plaintiffs and defendants 2 and 3, defendants 2 and 3 would be entitled to half of the properties conveyed. The rights as between the plaintiffs and the defendants would have to be worked out with reference to the agreements between them and it is not open to the first defendant to plead that the second and third defendants' right should be separated from that of the plaintiffs. Accordingly, the judgment and decree of the Lower Appellate Court is correct and does not call for interference. The Second Appeal fails and it is dismissed, but there will be no order as to costs.”

13. Similarly, in **P.Ramasubamma** (Supra), the Hon'ble Supreme Court inter alia held as under;

“5.2 Considering the fact that original defendant No. 1 – vendor – original owner admitted the execution of agreement to sell dated 12.04.2005 and even admitted the receipt of substantial advance sale consideration, the learned Trial Court decreed the suit for specific performance of agreement to sell dated 12.04.2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff – vendee. Therefore, as such the learned Trial Court rightly decreed the suit for specific performance of agreement to sell. The High Court, was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further



evidence and/or proof was required.”

14.I consider that this question that whether the suit can be decreed on the basis of admissions made by the defendant at this stage is to be further examined in the light of the provisions under Order 12 Rule 6 CPC. The further marshalling of the facts and the documents are also required to adjudicate whether the agreement to sell dated 12.01.2021 has become *non-est* in view of the cancellation of the contract by the defendant No.1 and 5. However, as of now, it seems that the plaintiff has a *prima facie* case as well the balance of convenience lies in her favour. If the defendant No.1, 2 and 3 succeed in selling the subject matter land, the plaintiff shall be put to irreparable loss. Hence, the order dated 03.12.2021 is confirmed.

15.In these circumstances, the defendants No.1, 2 and 3 are restrained from creating any third party interests in the suit property or from carrying out any construction or changing the nature of the suit land i.e. land measuring 1100 sq. yards from the 50% share of land in Khasra No. 478/396/87/1 & Khasra No. 68(12-8), 84(9-0), 85(8-5) situated in Village Masoodpur, Vasant Vihar, New Delhi measuring 18 Bhigha and 8 biswas and 11 Bhigha and 3 biswas, respectively.

16.Similarly, I do not find any ground to modify, variate or vacate the order dated 03.12.2021. Hence, both the applications stand disposed of.

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17.Both the learned counsel for the parties submit that admission/denial



of the documents has already been completed.

18. On the pleadings of the parties, following issues are framed;

- i. Whether the plaintiff is ready and willing to perform the specific performance/contract in pursuance to agreement to sell dated 12.01.2021. OPP
- ii. Whether in view of the document dated 22.07.2021 and 04.03.2021, the agreement dated 12.01.2021 has become *non-est*. OPD
- iii. Relief.

Alternative issue

- iv. If issue no.1 is not answered in favour of the plaintiff, whether the plaintiff would be entitled to the relief of return of money and the damages as claimed in the plaint. OPP

19. Parties are directed to file list of witnesses within four weeks with advance copy of affidavit of witnesses to the opposite party.

20. List the matter before the Joint Registrar (Judicial) on 20.03.2024 for further proceedings.

DINESH KUMAR SHARMA, J

FEBRUARY 6, 2024

Pallavi