

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

% Date of Decision: 06.11.2012

+ CS(OS) No.116/2008, IA No.3041/2010(u/s 151 CPC) and IA No.17440/2012(u/O 23 R.1 & 2 CPC)

DIPAVALI DEBROY Plaintiff

Through: Mr.Rohit Kumar, Advocate.

versus

BIBEK DEBROY & ORS. Defendants

Through: Mr.P.Banerjee, Advocate

And

+ CS(OS) No.670/2009, IA No.11622/2009(u/S 151 CPC) and IA No.17441/2012(u/O 23 R.1 & 3 CPC)

BIBEK DEBROY Plaintiff

Through: Mr.P.Banerjee, Advocate

versus

DIPAVALI DEBROY & ORS. Defendants

Through: Mr.Rohit Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

1. CS(OS) No.116/2008 has been filed by Smt.Dipavali Debroy, wife of defendant No.1 in that suit against Shri Bibek Debroy and five others seeking

declaration, cancellation and injunction. The case set out in the plaint is that property bearing Flat No.6410(Ground Floor), Pocket C-6 & 7, Vasant Kunj, New Delhi, Flat No.67(First Floor) in Block-F, Sushant Lok-II, Gurgaon and the Time Sharing Unit sold by defendant No.6, namely M/s Prestige Holiday Resort Pvt. Ltd. were jointly acquired by the plaintiff and defendant No.1. The flat in Vasant Kunj is stated to have been purchased from defendant No.2 Mahmud Uddin by way of documents comprising Agreement to Sell and Power of Attorney etc. The Agreement to Sell was executed in favour of the plaintiff whereas the Power of Attorney was executed in favour of defendant No.1. The flat in Sushant Lok was acquired from defendant No.5 M/s Ansal Buildwell Ltd. whereas the Time Sharing Units were acquired from defendant No.6. Defendant No.3 is stated to be the agent of defendant No.1 acting for and on his behalf. The following prayers were made in the suit:-

- (i) Declare the Conveyance Deed dt. 15.11.2000 registered as Doc. No.17120 in Addl. Book No.1, Vol.No.402 on pages 51 to 52 dt. 29.11.2000 executed by Defendant No.4 in favour of Defendant No.2 as null and void and consequently direct Defendant No.4 to execute a Conveyance Deed in favour of the plaintiff or in the alternative direct specific performance of the agreement to sell dt. 21.12.1993 and further direct defendant no.3 to execute a sale deed in favour of the Plaintiff;

- (ii) Declare the Plaintiff as owner of property bearing flat No.6410 (Ground Floor) in Pocket C-6 & 7 , Vasant Kunj, New Delhi;
- (iii) restrain Defendant No.2 from executing documents for transferring the property bearing flat No.6410 (Ground Floor) in Pocket C-6 & 7, Vasant Kunj, New Delhi in favour of either defendant No.1 or Ms.Suparna Banjerjee or jointly in their names;
- (iv) restrain Defendants No.1 and 2 from creating any third party interest of any nature or kind whatsoever by misusing the General Power of Attorney executed by Defendant No.2 in faovur of Defendant No.1 or misusing the Conveyance Deed dt. 15.11.2000 executed in favour of Defendant No.2 by Defendant No.4.
- (v) restrain Defendant No.1 to 3 or their agents, servants etc. from dispossessing the Plaintiff from flat bearing No.6410 (Ground Floor) in Pocket C-6 & 7, Vasant Kunj, New Delhi;
- (vi) restrain Defendant No.1 from entering in flat No.6410 (Ground Floor) in Pocket C-6 & 7, Vasant Kunj, New Delhi or causing any interference in the peaceful user and enjoyment of the Plaintiff and her ailing mother;
- (vii) direct Defendant No.5 to execute a sale deed of flat no.F-67 First Floor in Block-F, Sushant Lok-II, Gurgaon (Haryana) jointly in the names of the plaintiff and Defendant No.1 and be pleased direct Defendant No.1 to join in execution of the same;

- (viii) restrain Defendant No.1 from having the name of the plaintiff struck off as co-owner of flat bearing No.F-67 First Floor in Block-F, Sushant Lok-II, Gurgaon (Haryana) from the records of Defendant No.5 M/s Ansals Buildwell Ltd.
- (ix) restrain Defendant No.1 from asserting exclusive ownership rights and creating third party interest thereof in property bearing flat no.F-67 First Floor in Block-F, Sushant Lok-II, Gurgaon(Haryana)
- (x) restrain Defendant No.5 M/s Ansals Buildwell Ltd. from transferring property bearing flat No.F-67 (First Floor) in Block-F, Sushant Lok-II, Gurgaon(Haryana) in their records exclusively in the name of Defendant No.1 or in joint names of Defendant No.1 and Ms.Suparna Banerjee;
- (xi) restrain Defendant No.1 from having the name of the Plaintiff struck off as co-owner of Time Sharing Unit in the Royal Goan Beach Club from the records of Defendant No.6 M/s Prestige Holiday Resorts Pvt. Ltd.
- (xii) restrain Defendant No.6 from striking off the name of the plaintiff from the records with respect to time sharing unit in the Royal Goan Beach Club;
- (xiii) restrain Defendant No.6 from incorporating the name of Ms.Suparna Banerjee as co-owner of Time Sharing Unit along with defendant No.1 in its records;
- (xiv) direct defendant no.1 to hand over the original documents pertaining to flat no.6410 (Ground Floor) in Pocket C-6 & 7, Vasant Kunj, New Delhi, flat

no.F-67 First Floor in Block-F, Sushant Lok-II, Gurgaon(Haryana) and the Time Sharing Unit at Royal Goan Beach Club and;

- (xv) direct defendant no.1 to hand over one set of keys of flat bearing No.F-67 First Floor in Block-F, Sushant Lok_II, Gurgaon (Haryana) to the plaintiff;
- (xvi) restrain Defendant No.3 from using any papers/documents handed over by the Plaintiff to the said Defendant and to return all papers signed by the Plaintiff and given to Defendant no.3;
- (xvii) restrain Defendant No.1 from taking possession of the Car, model Opel Corsa bearing registration No.DL 1CG 8629 and

Any other or further relief as may be deemed fit and just in the facts and circumstances of the case may also be passed in favour of the Plaintiff and against the Defendants.”

2. In CS(OS) No.116/2008, DDA who was impleaded as defendant No.4, had filed written statement stating therein that the plaintiff had no cause of action against it. The suit was contested by defendant No.1, who also filed a counter-claim seeking the following reliefs:-

- (a) pass a decree of declaration in favour of the Defendant No.1/Counter Claimant and against the Plaintiff declaring the Defendant No.1/Counter Claimant to be the exclusive and absolute owner of property bearing No.F-67, First Floor, Sushant Lok-II, Gurgaon, Haryana.

(b) pass a decree of mandatory injunction compelling the Defendant No.5, its agents, representatives, officers, assigns and nominee(s) to execute and register Sale/Title Deed with respect to the suit property in the sole name of the Defendant No.1/Counter Claimant only;

(c) pass a decree of permanent injunction restraining the Plaintiff, her representative(s), nominee(s) and assign(s) from entering into the suit property or any way disturb quite vacant, actual and legal possession of the suit property or selling, mortgaging and/or creating any third party interest therein.

(d) costs of the institution and prosecution of the suit; and

(e) Pass such other and/or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

3. CS(OS) No.670/2009 has been filed by Shri Bibek Debroy, defendant No.1 in CS(OS) No.116/2008 claiming exclusive right in respect of Vasant Kunj flat.

The following prayers were made in the suit:-

a) “pass a decree of possession and direct the Defendant to hand over the actual, vacant and peaceful possession of property bearing Flat No.6410 (Ground Floor), Pocket C-6 & 7, Vasant Kunj, New Delhi to the Plaintiff;

b) pass a decree of permanent injunction restraining the Defendant, her agents, representatives, nominee(s) and assign(s) from either entering the suit property

- or creating any third party interest with respect to property bearing Flat No.6410 (Ground Floor), Pocket C-6 & 7, Vasant Kunj, New Delhi;
- c) pass a money decree for compensation for damages to the tune of Rs.1,30,000/- (Rupees One Lakh thirty thousand only);
 - d) direct an enquiry into the extent of mesne profits with respect to the suit property and award pendent lite compensation for damages till the possession is recovered by the Plaintiff;
 - e) costs of the institution and prosecution of the suit;”
 - f) pass any other and further orders as this hon’ble court may deem just and equitable in these facts and circumstances.
4. During the pendency of the suit, the matter has been settled between Shri Bibek Debroy and Smt.Dipavali Debroy and the terms of settlement are contained in the Settlement Agreement dated 1.9.2012 executed before Delhi High Mediation and Conciliation Centre. Under the settlement, it has been agreed that Sushant Lok flat would go exclusively to Smt.Dipavali Debroy, whereas Vasant Kunj flat would go to Shri Bibek Debroy. It has also been agreed that Time Sharing Units from defendant No.6 would be transferred in the sole name of Smt. Dipavali Debroy.
5. Learned counsel for the plaintiff in CS(OS) No.116/2008, gives up defendants No.3 and 4 in the suit i.e. Shri L.D.Mago and DDA. Their names are accordingly deleted from the array of defendants. An amended memo of parties has been filed today.

6. The learned counsels for Smt.Dipavali Debroy and Shri Bibek Debroy state that Flat No.6410, Pocket C-6 & 7, Vasant Kunj has since been converted into a freehold property by DDA in the name of defendant No.2 and the entire consideration had already been paid to him, at the time of agreement was executed by him in favour of Smt.Dipavali Debroy. The only requirement now is execution of sale deed by defendant No.2 in favour of Shri Bibek Debroy. The learned counsel for Smt.Dipavali Debroy has drawn my attention to Clause 5 of the Agreement to Sell(Ex PW- 1/1) dated 21st December, 1993 executed by defendant No.2 in CS(OS) No.116/2008 in favour of the plaintiff in the said suit, which provides for execution of the sale deed in favour of the plaintiff in the suit or her nominees. The learned counsel states that Smt.Dipavali Debroy has accordingly nominated Shri Bibek Debroy as her nominee and, therefore, sale deed is to be executed in his favour.

7. Article 54 of Limitation Act provides that in a suit for specific performance of a contract, the period of limitation is 3 years to be computed from the date fixed for the performance, or, if no such date is fixed, the plaintiff has noticed that performance is refused. In her supplementary affidavit filed today, Smt.Dipavali Debroy has stated that the aforesaid flat was converted into a freehold property only on 5.11.2000 by Conveyance Deed but she came to know of this fact only on 19.11.2007 when this document was filed in the divorce petition which her

husband had filed against her. The contention is that the Suit for Specific Performance of the Agreement to Sell executed by defendant No.2 on 21st December, 1993, therefore is well within limitation, since defendant No.2 never refused to execute sale deed in terms of the agreement dated 21st December 1993 and in any case there was no cause of action to file a suit for its specific performance before conversion of the property into freehold and the plaintiff being intimated of the conversion. A perusal of the Agreement to Sell Ex.PW-1/1 would show that defendant No.2 was required to obtain sale permission from the lessor and then execute the requisite sale deed in favour of the vendee. That having not been done, the plaintiff could not have sought execution of sale deed in her favour and consequently the period of limitation for seeking specific performance of the agreement dated 21st December, 1993 did not commence, before the property was converted into freehold thereby making it transferable without prior permission of the lessor and the plaintiff came to know of the aforesaid conversion.

8. As regards, the flat in Sushant Lok-II, the plaintiff has stated in para 5 of her supplementary affidavit dated 6.11.2012 that sale deed could not be executed since registration charges for floor wise dwelling units were not finalized by Govt. of Haryana. She has further stated that during the pendency of the suit that defendant No.5 M/s Ansal Buildwell Ltd. had informed them vide letter dated 11.3.2010 that the stamp charges for registration of floor wise dwelling units have been

determined and notified by Govt. of Haryana vide notifications dated 27.3.2009 and 5.8.2009. Defendant No.5 never refused to execute sale deed pursuant to the agreement dated 21.12.1993 and the plaintiff could not have insisted on its execution and registration before the requisite stamp fee was determined. Therefore, the relief for specific performance of the agreement dated 13.1.1998 (Ex.PW1/5) is also stated to be within limitation. The learned counsels for the parties state that the entire consideration for purchase of flat in Sushant Lok-II already stands paid to defendant No.5 and the only requirement now is execution of sale deed/transfer deed/conveyance deed by defendant No.5 M/s Ansal Buildwell Ltd. in favour of plaintiff Smt.Dipavali Debroy, plaintiff in CS(OS) No.116/2008.

9. As regard to Time Sharing Unit from defendant No.6, learned counsels for the parties state that the only requirement is deletion of the name of Shri Bibek Debroy from the record of defendant No.6 since the units were allotted in the joint name of the husband and wife.

10. For the reasons stated hereinabove, both the suits as well as counter-claim are disposed of in the following manner:-

- a) The sale deed of Flat No.6410, Pocket C-6 & 7 at Vasant Kunj shall be executed by defendant No.2 in CS(OS) 116/2008 in favour of Shri Bibek Debroy defendant No.1 in the aforesaid suit, within eight weeks from

today. Both the parties will jointly inform defendant No.2 within one week that Smt.Dipavali Debroy, plaintiff in CS(OS) No.116/2008 has nominated Shri Bibek Debroy, defendant No.1 in the aforesaid suit as her nominee in terms of Para 5 of the Agreement to Sell dated 21.12.1993. He shall then execute the sale deed in favour of Shri Bibek Debroy within the time stipulated in this order. One copy of this order shall also be annexed to the intimation to be sent to defendant No.2. If he fails to execute the sale deed in terms of this order, it shall be open to defendant No.1 in CS(OS) No.116/2008, namely, Shri Bibek Debroy to seek appointment of a Court Commissioner to execute the sale deed on behalf of defendant No.2. The stamp duty and all other charges required for execution and registration of the sale deed in favour of defendant No.1 Shri Bibek Debroy shall be borne by him.

- b) The plaintiff in CS(OS) No.116/2008 Smt.Dipavali Debroy shall be the sole owner of Flat No.67(First Floor) in Block-F, Sushant Lok-II, Gurgaon. Defendant No.5 M/s Ansal Buildwell Ltd. shall execute sale deed/transfer deed/conveyance deed of the aforesaid flat in favour of Smt.Dipavali Debroy within eight weeks from today. Both, the husband and wife will, within one week, jointly inform defendant No.5 of this order and request it to execute the sale deed/transfer deed/conveyance

deed of said flat in favour of Smt.Dipavali Debroy. If defendant No.5 fails to execute the sale deed in terms of this order, it shall be open to plaintiff in CS(os) No.116/2008, namely, Smt.Dipavali Debroy to seek appointment of a Court Commissioner to execute the sale deed on behalf of defendant No.5. The stamp duty and all other charges required for execution and registration of the sale deed in favour of defendant No.1 Smt.Dipavali Debroy shall be borne by her. A copy of this order will be annexed to the intimation.

If any charges still remain unpaid to defendant No.5, the same shall be paid by Smt.Dipavali Debroy if demanded by defendant No.5, on receipt of intimation in terms of this order.

- c) The Time Sharing Units in Royal Goan Beach Club, Goa allotted by defendant No.6 on 26.9.1995 shall vest exclusively in Smt. Dipavali Debroy and the name of Shri Bibek Debroy, defendant No.1 in CS(OS) No.116/2008 shall be deleted in the record of defendant No.6 as far as ownership of these units are concerned. The plaintiff and defendant No.1 shall jointly intimate defendant No.6 of the order passed today and make a request for deleting the name of Shri Bibek Debroy in the record of defendant no.6 as well as the in the said units. A copy of this order would also be annexed to the intimation to be sent to the defendant No.6.

11. Keeping in view the facts and circumstances, there shall be no order as to costs. Decree sheet be drawn accordingly.
12. The suit and all pending IAs also stand disposed of.
13. The parties shall remain bound by their respective undertakings contained in IA No.17441/2012.
14. Since the matter has been settled between the parties before the Delhi High Court Mediation and Conciliation Centre on reference from the Court and the issues are yet to be framed, the plaintiffs in both the suits are entitled to refund the Court Fee in terms of Section 16 of the Court Fee Act.
15. The Registry is directed to issue requisite certificate to the plaintiff accordingly within four weeks.
16. Copy of this order be given dasti to the parties under the signature of the Court Master.

V.K. JAIN, J

NOVEMBER 06, 2012
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