

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

% Date of Decision: October 31, 2012

+ **CS(OS) 2665/2012**

SUMITRA Plaintiff
Through Mr. Pankaj Dabas, Advocate

versus

URMILA DEVI Defendant
Through None

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

JUDGMENT

V.K.JAIN, J. (ORAL)

CS(OS) 2665/2012 and IA No. 16102/2012 (Order 39 Rule 1 and 2 CPC)

1. This is a suit for specific performance of an agreement to sell dated 25th January, 2012. The case of the plaintiff is that the defendant is the recorded owner of half share of land admeasuring 7 bigha and 4 biswas comprised in Khata No. 263/221 min under Khasra No. 57/17 (4-16) and 18/1 (2-08) of Village Bankner, Delhi and she agreed to sell a piece of land admeasuring 1200 square yards out of the aforesaid land to her for a consideration of Rs. 20,50,000/-.

This is also the case of the plaintiff that the whole of the sale consideration was paid to the defendant in cash on 25th January, 2012 and she also delivered vacant possession of the aforesaid land to her.

The grievance of the plaintiff is that despite receiving the entire sale consideration, the defendant has not executed any sale deed in her favour. The plaintiff is accordingly seeking execution of the agreement to sell dated 25th January, 2012 by the defendant in her favour.

2. The defendant was proceeded ex parte on 3rd October, 2012 since no one appeared for her despite service personally upon her on 20th September, 2012.

3. The plaintiff has filed two affidavits by way of evidence. In her affidavit, the plaintiff Smt. Sumitra has stated on oath the case set out in the plaint and has stated that the defendant is the recorded owner of half share of land admeasuring 7 bigha and 4 biswas comprised in Khata No. 263/221 min under Khasra No. 57/17 (4-16) and 18/1 (2-08) of Village Bankner, Delhi. She has further stated that vide agreement to sell dated 25th January, 2012, the defendant had agreed to sell 1200 square yards out of the aforesaid land to her and had received the entire sale consideration of Rs. 20,50,000/- from her. According to her, the defendant, while receiving the sale consideration, executed the documents Ex. PW-1/3 to PW-1/8. The plaintiff has further stated that the Power of Attorney and Will Ex. PW-1/9 and Ex. PW-1/10 were thereafter executed by the defendant at her request on 27th January, 2012. She has claimed that in February, 2012, she has visited the defendant several times for execution of the sale deed but the defendant kept the matter outstanding on over one pretext or the other and finally in April, 2012, she

told her that she will have to take permission ('NOC') from the revenue authorities and then only, the sale deed can be executed.

The plaintiff has further claimed that the defendant has now become greedy and has not executed the sale deed so as to extract more money from her. PW-2 Shri Phool Kumar is the husband of the plaintiff and he has corroborated the deposition of the plaintiff in all respects.

4. A perusal of the Khatoni Ex. PW-1/1 would show that the defendant Smt. Urmila Devi is the recorded Khatedar in respect of land admeasuring 7 bigha and 4 biswas comprised in Khata No. 263/221 min under Khasra No. 57/17 (4-16) and 18/1 (2-08) of Village Bankner, Delhi. It further shows that half of her share was sold by Smt. Bimla Devi to Smt. Kamlesh W/o Shri Jagbir Singh. Ex. PW-1/5 is the agreement to sell dated 25th January, 2012 executed between the parties to the suit. Vide this agreement, the defendant agreed to sell the land admeasuring 1200 square yards out of Khasra No. 57/17 (4-16) and 18/1 (2-08) of Village Bankner, Delhi-40 to the plaintiff for a consideration of Rs. 20,50,000/- and received the entire sale consideration in cash from her. Ex. PW-1/6 is the receipt of Rs. 20,50,000/- purported to be issued by the defendant to the plaintiff and it also has photographs of both the parties to the suit, affixed on it.

Ex. PW-1/7 is the Will dated 25th January, 2012 executed by the defendant in favour of the plaintiff in respect of the land, the subject matter of the suit. Ex. PW-

1/8 is the possession letter whereby the defendant had delivered the actual physical and peaceful possession of the land admeasuring 1200 square yards out of Khasra No. 57/17 (4-16) and 18/1 (2-08) of Village Bankner, Delhi to the plaintiff.

Ex. PW-1/9 is the General Power of Attorney purported to be executed by the defendant in favour of the plaintiff in respect of the land which is the subject matter of the suit. This Power of Attorney has been duly registered with the Office of the Sub-Registrar in Noida, District Gautam Budh Nagar, U.P.

Ex. PW-1/10 is another Will which the defendant has executed in favour of the plaintiff on 27th January, 2012 and which was got registered with the Sub-Registrar, Noida on the same date.

Ex. PW-1/3 is the General Power of Attorney executed by the defendant in favour of the plaintiff on 25th January, 2012 in respect of the land admeasuring 1200 square yards out of Khasra No. 57/17 (4-16) and 18/1 (2-08) of Village Bankner, Delhi.

Ex. PW-1/4 is the affidavit of the defendant dated 25th January, 2012 wherein she declared having executed the General Power of Attorney and having entered into an agreement to sell in favour of the plaintiff in respect of the land admeasuring 1200 square yards out of Khasra No. 57/17 (4-16) and 18/1 (2-08) of Village Bankner, Delhi.

Ex. PW-1/2 are various photographs of the suit land.

5. I see no reason to disbelieve the unrebutted testimony of the plaintiff which has also been corroborated by her husband. The documentary evidence filed by the plaintiff also corroborates the case set out by her and clearly shows that the defendant who continues to be the owner of half share of land admeasuring 7 bigha and 4 biswas comprised in Khata No. 263/221 min under Khasra No. 57/17 (4-16) and 18/1 (2-08) of Village Bankner, Delhi had agreed to sell the land admeasuring 1200 square yards out of Khasra No. 57/17 (4-16) and 18/1 (2-08) of Village Bankner, Delhi to the plaintiff for a sale consideration of Rs.20,50,000/- and had received the entire sale consideration in cash from her.

The Power of Attorney and the Will Ex. PW-1/9 and Ex. PW-1/10 executed by the defendant in favour of the plaintiff are not only registered documents but also bear the photographs of the defendant.

The legal notices Ex. PW-1/15 and Ex. PW-1/16 which the plaintiff sent to the defendant were received back with the endorsement of refusal vide registered envelopes Ex. PW-1/13 and Ex. PW-1/14.

6. For the reasons stated hereinabove, a decree for specific performance of the agreement to sell dated 25th January, 2012 is hereby passed directing the defendant to execute sale deed in respect of the land admeasuring 1200 square yards out of Khasra No. 57/17 (4-16) and 18/1 (2-08) of Village Bankner, Delhi in favour of the plaintiff within eight weeks from today.

If the defendant fails to comply with these directions, the plaintiff would be entitled to apply for appointment of Court Commissioner to complete the transaction on behalf of the defendant.

The plaintiff is also entitled to the costs of the plaint.

Decree sheet be drawn accordingly.

The suit and application stand disposed of.

V.K. JAIN, J

OCTOBER 31, 2012

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