

F-21

\$~

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

+ **CS(OS) 1516/2012**

MEENA TEJRANA Plaintiff
Through: Mr. R.K. Alagh, Advocate with
Mr. Praveen Kumar Bhatnagar,
Advocate.

versus

SURESH KUMAR JINDAL AND ANR. Defendants
Through: None.

% Date of Decision: 27th February, 2013

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (ORAL)

1. Present suit has been filed for Specific Performance of contract and permanent injunction. The prayer clause in the suit is reproduced hereinbelow:-

“(i) *Pass a Decree of specific performance of contract with directions to the defendants to execute sale deed in favour of the plaintiff in respect of suit property bearing No.4-A, Situated at Village Khureji Khas in the Abadi of Shiv Puri Extension Delhi-110051 and to hand over the possession of the said property to the plaintiff, which is specifically shown in the enclosed site plan.*

(ii) *Pass a decree of permanent injunction thereby*

permanently restraining the defendants, their associates, heirs, assignees and representatives to sell, mortgage, transfer, alienate or create third party interest/encumbrances in any manner in the suit property bearing No.4-A, Situated at Village Khureji Khas in the Abadi of Shiv Puri Extension Delhi-110051.

- (iii) *Award cost of the litigation in favour of the plaintiff and against the defendant.*
- (iv) *Pass any further or other order(s) as deem fit and proper to this Hon'ble Court in the interest of the justice."*

2. Briefly stated the relevant facts of the present case are that defendants being co-owners of suit property bearing No.4-A, situated at Village Khureji Khas in the Abadi of Shiv Puri Extension, Delhi-110051 agreed to sell the aforesaid suit property to the plaintiff for a total consideration of Rs.36,50,000/- out of which Rs.32,85,000/- was paid at the time of registration of Agreement to Sell dated 04th July, 2011. The relevant terms of the registered Agreement to Sell are reproduced hereinbelow:-

"1. That in consideration of the aforesaid sum of Rs.36,50,000/- [Rupees Thirty Six Lacs, Fifty thousand only], out of which the Vendee has paid a sum of Rs.32,85,000/- [Rupees Thirty Two Lacs, Eighty Five thousand only], to the Vendors, which is admitted by the Vendors, before the S.R.VIII, at Delhi, at the time of presentation and registration of this Agreement to sell, regarding the above said property and the balance sum of Rs.3,65,000/- [Rupees Three Lacs, Sixty Five thousand only], will be paid by the Vendee, to the Vendors, upto 04.01.2012, at the time of execution and registration of regular Sale Deed and/or as and when mutually decided by and between the parties.

2. That the Vendors shall have handed over the peaceful,

physical vacant possession of the above said property, to the said Vendee, after receiving the said balance amount, at the time of execution and registration of regular Sale Deed, along with the Original documents in acknowledgement of Sale/transfer of all their rights, titles and interest in the said property by them, in favour of the said Vendee and hereafter the Vendors admit in the above said property.

xxx

xxx

xxx

MODE OF PAYMENT

- i. *Rs.16,42,500/- vide Cheque No.039881, dt. 03.07.2011, drawn on Oriental Bank of Commerce, Mayur Vihar, Phase-II, Delhi-91, in favour of Sh. Suresh Kumar Jindal.*
- ii. *Rs.16,42,500/- vide Cheque No.039882, dt.03.07.2011, drawn on Oriental Bank of Commerce, Mayur Vihar, Phase-II, Delhi-91, in favour of Sh. Sanjeev Kumar.”*

3. It is stated that on failure on the part of the defendants to perform their part of the contract, legal notice dated 07th December, 2011 was issued by the plaintiff to the defendants.

4. On receipt of the notice, both the defendants in identical language sought extension of time in their own handwriting on the back of the legal notice till 10th January, 2012. The English translation of the request of one of the defendants is reproduced hereinbelow:-

“I, Suresh Kumar Jindal, received a two-pages notice written on the back side of this paper on 10th or 11th of December, 2011. The contents of this notice have been read over and explained to me by my advocate which I admit to be true, however, I am not in a position to vacate my property i.e. 4A, Shivpuri Extension, Khureji Khas till 10.01.2012 as I have not found any alternative accommodation for myself as yet. I, therefore, request to Smt. Meena Ji not to initiate any legal

action against me till 10.01.2012 as I will definitely vacate and execute a registered sale deed in respect of this property in favour of Smt. Meena Ji on or before 10.01.2012. And as I myself and my brother Sanjeev Kumar have used Rs.32,85,000/- for this last six months without vacating the shop, hence I have given a cheque bearing No.836836 for Rs.2,00,000/- to Smt. Meena Ji which bears this Signature of both my brother and mine. I will get this cheque handover under any circumstances.

*-sd- Suresh Kumar
Witness*

*Date 28.12.11.
Tme 5.20 p.m.*

Mayur –Sd- Sanjeev Kumar

*Place-56, Pocket-E,
Vihar-II”*

5. Learned counsel for plaintiff states that defendants failed to perform their part of the contract despite the plaintiff showing her readiness and willingness to perform her part of contract and to pay the balance amount of Rs.3,65,000/-.
6. Upon the present suit being filed, this Court on 23rd May, 2012 passed an ex parte ad-interim order restraining the defendants from selling, mortgaging, transferring, alienating or creating any third party interest/encumbrance in the suit property.
7. As despite service of summons, defendants did not enter appearance, they were proceeded ex parte by this Court on 16th October, 2012.
8. The plaintiff led ex parte evidence by way of her own affidavit as well as that of the attesting witness of Agreement to Sell namely, Mr. Phool Kumar.
9. The plaintiff in her evidence proved the site plan, original Agreement to Sell and Purchase, legal notice to defendants No.1 and 2 as well as

request of the defendants for extension of time.

10. Learned counsel for plaintiff has today in Court handed over an affidavit stating that in the first week of January, 2013 when the plaintiff got her passbook updated, she found transfer of two entries of Rs.16,42,500/- dated 20th December, 2012 each by defendant No.2 through RTGS mode. It is pertinent to mention that the said amount is equivalent to Rs.32,85,000/-, the amount which had been paid to the defendants by plaintiff as sale consideration. The relevant portion of the affidavit tendered in Court is reproduced hereinbelow:-

“2. That during the pendency of the suit the defendants transferred a sum of Rs.32,85,000/- on 20th December, 2012 directly to my Bank Account number 11292011006270 maintained by me with Oriental Bank of Commerce, Branch Mayur Vihar, Delhi through RTGS mode without any consent and knowledge which fact came to my knowledge in the first week of January, 2013 when I got my Pass Book completed.

xxx

xxx

xxx

4. That I state that have no intentions to revoke the transaction or to retain the amount sent to me by the defendants and I am still ready and willing to perform my part of contract. I am not interested to receive back the amount and have not utilized the said amount.

5. That I am enclosing herewith a cheque of Rs.32,85,000/- drawn in favour of the Registrar of Delhi High Court, New Delhi on Oriental Bank of Commerce, Mayur Vihar, Delhi which is the amount un-authorisedly transferred in my account. I am also enclosing the cheque of Rs.3,65,000/- drawn in favour of the Registrar of Delhi High Court, New Delhi on Oriental Bank of Commerce, Mayur Vihar, Delhi i.e. the balance amount required to pay to the defendants for execution of sale deed and handing over the suit property to me.”

11. Since the evidence of the plaintiff has neither been rebutted nor controverted, this Court is of the view that plaintiff has proved her case along with all the documents referred to hereinabove.

12. In view of the aforesaid facts and circumstances, a decree of Specific Performance is passed in favour of the plaintiff and against the defendants directing the defendants to render all necessary cooperation to the plaintiff in getting the Sale Deed of the suit property i.e. property No.4-A, situated at Village Khureji Khas in the Abadi of Shiv Puri Extension, Delhi-110051 as specifically shown in the site plan (Ex.PW1/1) registered in favour of the plaintiff and thereafter, hand over the vacant and physical possession thereof to her.

13. The two cheques bearing Nos.127243 and 127244 dated 27th February, 2013 drawn on Oriental Bank of Commerce, Mayur Vihar Branch, Delhi, for the sum of Rs.32,85,000/- and Rs.3,65,000/-respectively enclosed by the plaintiff along with her affidavit are directed to be encashed by the Registrar General of this Court and the said amounts are directed to be kept in an interest bearing Fixed Deposit Receipt initially for a period of one year. The defendants shall be entitled to withdraw the said amount along with the accrued interest, if any. Registry is directed to keep on extending the Fixed Deposit Receipt till the amount is withdrawn by the defendants.

14. It is further directed that in case the defendants fail to cooperate with the plaintiff by accompanying her to the office of Registrar for getting the suit property registered in her favour within a period of three months, then Mr. Anil Kaushal, an officer of the Court, Cell No. 9910390949 shall be authorised to take necessary steps for and on behalf of the defendants for

getting the sale deed registered in favour of the plaintiff for which purpose, he shall be paid a sum of Rs.50,000/- by the plaintiff.

15. The suit is disposed of with costs including counsel fee quantified at Rs.75,000/-.

MANMOHAN, J

FEBRUARY 27, 2013

js