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

+ **CS(OS) 582/2014**

AWANEESH JHA

..... Plaintiff

Through

Mr. Murari Tiwari with Mr. Rahul
Kumar and Mr. Dikshant Khanna,
Advocates

versus

DESH RAJ

..... Defendant

Through

None

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Reserved On : 25th May, 2015

Date of Decision: 30th June, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present suit has been filed for specific performance of Agreement to Sell dated 27th January, 2014 executed between plaintiff and defendant herein with respect to Plot No. 253-A, measuring 250 sq. yards comprising Khasra no. 1494, situated at Block G, Phase VI, Aya Nagar Extension, in the revenue estate of Village Aya Nagar, Tehsil- Mehrauli, Hauz Khas, New Delhi-110047 (hereinafter referred to as “suit Property”).

2. The prayers in the plaint are reproduced hereinbelow:

a. *Pass a decree of specific performance of agreement dated 27/01/2014 in favour of the plaintiff and against the defendant*

thereby directing the defendant, his attorney, friends, family members, agents, legal heirs to execute the sale deed in favour of the Plaintiff in respect of the Suit Property i.e. Plot No. 253-A, measuring 250 Sq. yards comprised Khasra no. 1494, situated at Block G, Phase VI, Aya Nagar Extension, in the revenue estate of Village Aya Nagar, Tehsil- Mehrauli, HauzKhas, New Delhi-110047, more specifically shown in red colour of the site plan, i.e. ANNEXURE A.

- b. Cost of the suit may also be awarded in favour of the plaintiff and against the Defendant.*
- c. Any other order or relief which this Hon'ble Court may deem fit be pleased to pass in favour of the Plaintiff and against the Defendant, in the interest and furtherance of justice.*

3. This Court vide ex-parte order dated 26th February, 2014 granted an ad interim injunction restraining the defendant, his servants, employees, agents, attorneys from creating third party interest in the suit property. The said injunction was confirmed in the presence of counsel for both the parties vide order dated 26th May, 2014.

4. It is pertinent to mention that vide order dated 30th September, 2014 defendants were proceeded ex-parte and all evidence tendered by the plaintiff has gone unrebutted and unchallenged.

5. The relevant facts of the case are that plaintiff and defendant entered into a collaboration agreement on 31st July, 2013 in respect of the suit property. As per the said collaboration agreement, plaintiff in his capacity as a builder undertook to demolish and reconstruct the suit property owned by the defendant. Further, both the parties agreed that the entire cost of reconstruction would be borne by the plaintiff and in lieu thereof, plaintiff would get half share of the suit property, ie. 125 sq. yards. It was agreed that

the defendant would execute necessary documents to transfer the title with respect to the said 125 sq. yards in favour of the plaintiff.

6. Thereafter, plaintiff took physical possession of the suit property and after demolishing the existing construction started the reconstruction.

7. Learned counsel for the plaintiff Mr. Murari Tiwari stated that while the suit property was under reconstruction, the defendant expressed his willingness to sell his remaining half share admeasuring 125 sq. yards to the plaintiff for a total consideration of Rs. 1,09,00,000/- (Rupees One crore nine lakhs). Consequently, plaintiff and defendant entered into an agreement to sell on 14th December, 2013 and plaintiff paid the entire consideration by cash and cheques by 27th January, 2014. Defendant thereafter executed sale documents i.e. General Power of Attorney, Agreement to Sell, Indemnity Bond, Special Power of Attorney, Affidavit, Will, Possession Letter and the money receipt acknowledging the payment of Rs.1,09,00,000/- (Rupees One Crore Nine Lakhs). It is the plaintiff's case that to obviate any controversy on 27th January 2014, plaintiff and defendant entered into another Agreement to Sell with respect to the entire suit property admeasuring 250 sq. yards wherein the receipt of the entire sale consideration, i.e. of Rs.1,09,00,000/- (Rupees One Crore Nine Lakhs) was acknowledged by the defendant.

8. It is stated that as of today, the newly constructed property consists of parking floor, ground floor and first floor. Plaintiff herein is aggrieved that though he had performed his part of the agreement to sell, defendant had neither executed the sale deed nor handed over the complete set of title documents, despite plaintiff's repeated requests. It is the plaintiff's apprehension that defendant wants to usurp the entire sale consideration and forcibly dispossess the plaintiff from the Suit Property.

9. From the unrebutted oral evidence on record as well as from exhibits EX.PW-1/E, EX.PW-1/F, EX.PW-1/G, EX.PW-1/H, EX.PW-1/I, EX.PW-1/J, EX.PW-1/K and EX.PW-1/L on record, it is proved that the defendant had against receipt of agreed consideration validly executed documents in plaintiff's favour. Plaintiff in his Affidavit (Ex. PW-1) has also proved that he is in possession of the property and the defendant has failed to perform his obligations under the Agreement to Sell dated 27th January 2014.

10. Upon a perusal of the evidence on record including the documentary evidence, this Court is of the view that plaintiff has proved his case. Consequently, a decree of specific performance is passed and defendant is directed to execute the sale deed in favour of the plaintiff with respect to the suit property. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

JUNE 30, 2015

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