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

+ **CS(OS) 2204/2013**

Decided on : 24.04.2015

IN THE MATTER OF:

MAHENDER SINGH

..... Plaintiff

Through : Mr. Anand Yadav, Advocate

versus

CHANDA CHAWLA

..... Defendant

Through : Mr. Rohit Puri with Ms. Akanksha
and Mr. Aditya Chibbar, Advocates

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HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.(Oral)

1. The present suit has been instituted by the plaintiff praying *inter alia* for specific performance of an Agreement to Sell dated 5.1.2012, executed in respect of a plot of land bearing No.C-12-B, measuring 240 sq. yards out of a total area of 1400 sq. yards, comprised in Khasra No.271, situated in the revenue estate of village Sahibabad Daulatpur, commonly known as Block 'C' Prehlad Vihar, Delhi, with directions to the defendant to handover the vacant peaceful possession of the subject plot and execute a sale deed/conveyance deed in respect thereof. In the alternative, the plaintiff seeks a decree for recovery of ₹50.00 lacs as damages against the defendant along with the refund of the amount paid by him to the defendant, with *pendente lite* and future interest @ 18% p.a. Lastly, the plaintiff

seeks a decree of permanent injunction for restraining the defendant from selling, transferring, alienating or parting with possession of the subject plot of land.

2. After completion of pleadings and admission/denial of documents, the suit has been placed before the Court for framing of issues.

3. Counsel for the defendant states at the outset that it is not his client, who is in possession of the subject plot, rather it is the plaintiff who is in possession and he had taken over the possession on 03.01.2012 at the time of execution of the Agreement to Sell, GPA, SPA , will, possession letter, etc. which fact is duly reflected from a perusal of the said documents. He states that the plaintiff is well aware of the fact that the subject plot falls in an unauthorized colony and at present, a sale deed cannot be executed or got registered as demanded by him. But he hastens to add that his client is not disputing having executed the documents of sale in favour of the plaintiff and nor is she laying a claim on the said land. He submits that the defendant has already stated in the written statement that she shall co-operate in every manner with the plaintiff for the registration of the sale deed, as and when the authorities permit the same and in the light of the said undertaking, the defendant has no objection if the suit is decreed under Order XII Rule 6 CPC in terms of prayer (a) & (c)

of the plaint except for the prayer with regard to possession of the subject plot, it being in the possession of the plaintiff. Coming to the second relief prayed for by the plaintiff, learned counsel submits that it being an alternative prayer and the first prayer having been conceded by his client, nothing further survives for adjudication in the present suit.

4. Mr. Yadav, learned counsel for the plaintiff disputes the submission made by the other side and states that the cause of action for instituting the present case had arisen in favour of the plaintiff in March, 2013 when one Mr. Sandeep Chhochher had filed a police complaint in respect of the subject land and the plaintiff had discovered that one Mr. Pawan Kumar Gupta had also claimed a title to the subject land. A perusal of the plaint reveals that the plaintiff has averred in para 8 that in the month of March 2013, various meetings had taken place between the parties in the presence of one Mr. Raju Monga, a representative of the defendant, and it was agreed by the parties that the subject land sold by the defendant to the plaintiff is a part of the plot owned by Mr. Sandeep Chhochher. Further, the plaintiff has alleged that when he had approached the defendant, she had refused to execute the sale deed in his favour, which was the reason that compelled him to institute the suit.

5. The Court has heard counsels for the parties and perused the pleadings, particularly, the averments made by the defendant in the written statement and examined the documents filed by the parties. In her written statement, the defendant has made the following admissions:

"2. Without prejudice to above, it is submitted that the present suit is liable to be dismissed inasmuch as the plaintiff has no cause of action whatsoever to maintain the suit for specific performance. It is submitted that admittedly the sale transaction for the suit land has been concluded by executing following documents viz. Agreement to Sell, General Power of Attorney, Possession letter, Affidavit, Receipts, will etc. It is also admitted that the suit land falls under unauthorized colony and therefore sale deed cannot be executed and got registered. Further the defendant has agreed to get the sale deed registered as and when the same is allowed by appropriate authority and the defendant stands by her commitment. It is also admitted fact that possession of the suit property rests with the plaintiff and the same was taken over at the time of execution of agreement to sell, a proof of which is recorded in the possession letter. The plaintiff has neither approached the defendant for executing the sale deed as alleged nor given any notice for calling upon defendant to do so. Thus under the given circumstances when the sale transaction duly stand completed by executing proper documents and the possession thereof has also been taken over by the plaintiff, nothing survives in the present suit for specific performance and possession.

D. That pursuant to the said Agreements to sale as desired by the plaintiff all other documents were also executed to his full satisfaction by the defendant and the plaintiff identified the suit plot, to his full satisfaction, and took possession of the land sold to him. The same finds mention in the documents. The plaintiff promised the defendant that he will send the signed copy of all the documents after signing and notarizing the same.

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7. That the contents of para no.7 as stated are wrong and denied. On the date of execution of the agreement to sell, the plaintiff took possession of the suit property. At that time there was no objection by anyone. The allegation that Shri Sandeep Chhocher and Shri Pawan Kumar have part share in the suit plot and that Sandeep Chhochher filed police complaint are denied for want of any knowledge and being irrelevant and not concerned with the defendant. The plaintiff is barred from pleading contrary to the possession letter.

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11. That the contents to para No.11 are wrong and hence denied. It is denied that the defendant has executed any agreement to sale on 5.1.2012 and therefore, question of executing the sale deed pursuant to the alleged agreement does not arise. It is submitted that as regards the agreement to sell dated 3.1.2012, the defendant has never objected to executing a sale deed if the authority permits. As regards possession, the same has been handed over to plaintiff and it does not lie in the mouth of plaintiff to call for handing over possession when the plaintiff is already in possession of the suit property. The defendant is also under no further obligation except executing the sale deed in favour of the plaintiff. The question of refusing to sign sale deed does not arise as the colony in which plot is situated is unauthorized.

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14. That the contents of para No.14 are wrong and denied. As already stated herein above, there is no agreement to sale dated 5.1.2012 by and between the defendant and plaintiff and thus the question of specific performance does not arise. However as regards the agreement to sell dated 3.1.2012, the plaintiff is otherwise not entitled to specific performance as the suit land falls within the area of unauthorized colony where the sale registration is not permitted. Further the plaintiff entered into agreement for sale of suit land with due verification and

due diligence, therefore, it is not permissible for the plaintiff to now assert the specific performance of the agreement, for any reason whatsoever. Even if this Hon'ble court comes to a conclusion that the specific performance cannot be granted the plaintiff is not entitled to any compensation as sought in the plaint. The plaintiff is not entitled to any damages as he is enjoying the suit property."

6. At the time of instituting the present suit, the plaintiff had filed three documents pertaining to the subject land, namely, a copy of an Agreement to Sell dated 3.1.2012, notarized on 5.1.2012, wherein it was duly recorded that the defendant had received the entire sale consideration and had executed a separate receipt for the sale consideration. It has been recorded in para 2 of the said Agreement to Sell, that the defendant had delivered the vacant possession of the subject land to the plaintiff, who had occupied the same on the spot. The second document filed by the plaintiff is a receipt dated 3.1.2012, notarized on 5.1.2012, wherein the defendant had acknowledged having received a sum of ₹8.00 lacs from the plaintiff towards the sale price of the subject plot. The third document filed by the plaintiff is an affidavit of the defendant, dated 3.1.2012, notarized on 5.1.2012, wherein she has stated that she had sold and transferred the subject plot in favour of the plaintiff for a sale consideration of ₹8.00 lacs and that she had executed a GPA, Agreement to Sell, receipt and possession letter in his favour.

7. In the course of admission/denial of documents, the aforesaid three documents filed by the plaintiff have been duly admitted by the defendant and they have been exhibited as Ex.PW-1, PW-2 & PW-3. The said documents clearly indicate that at the time of executing the Agreement to Sell, GPA, receipt, possession letter, etc., the defendant had handed over and the plaintiff had taken over the vacant physical possession of the subject land. On her part, the defendant has also filed the same documents and over and above the said documents, she has filed copies of the possession letter dated 3.1.2012, in respect of the subject land and will dated 3.1.2012 which the plaintiff has not admitted, the same being photocopies.

8. The documents filed by the plaintiff evidence that vacant physical possession of the land was taken over by him on 03.01.2012 at the time of executing the sale documents, including the Agreement to Sell, GPA, Receipt, etc. It is an undisputed position that as on date, the subject land is situated in an unauthorized colony and therefore the registration thereof cannot take place. In these circumstances, it is impermissible for the plaintiff to call upon to the defendant to handover vacant physical possession of the subject land to him or to seek directions to the defendant to execute a sale deed in his favour.

9. Pertinently, despite his version that Mr. Sandeep Chhocher, Mr. Pawan Kumar Gupta or Mr. Raju Monga are the ones who are

disputing the identity of the plot sold to him by the defendant, the plaintiff has neither impleaded them in the present suit, nor has any relief been prayed for against the said parties. Further, even as per the averments made in the plaint, the plot of land, subject matter of the Agreement to Sell, GPA, SPA, etc., has been encroached upon by third parties and if that is the case, then an independent cause of action has arisen in favour of the plaintiff for seeking possession from those, who are the encroachers.

10. However, in the light of the documents placed on record by the plaintiff, wherein there is a categorical admission on his part of having taken over the vacant physical possession of the subject land from the defendant at the time of executing the sale documents and further, having regard to the contents of the Agreement to Sell and the will filed by the defendant and the submission made by her counsel that she does not have any objection to a decree being passed in respect of the first and the last reliefs, except for the relief of possession and lastly, taking into consideration the undertaking given by the defendant that she shall execute a sale deed in favour of the plaintiff and get the same registered before the competent authority as and when called upon, nothing further survives for adjudication in the present suit.

11. The suit is accordingly decreed on the basis of the admissions made by the defendant and recorded hereinabove. The first and the last reliefs having been granted in favour of the plaintiff on the lines recorded in para 3 above. The second relief, being an alternate prayer, does not survive.

12. Needless to state that if the plaintiff has any grievance with regard to the identity of the subject land in view of a dispute, allegedly raised by Mr. Sandeep Chhochher, Mr. Pawan Kumar Gupta and Mr. Raju Monga, then it is for him to seek independent legal remedies against the said parties.

13. The suit is decreed with directions issued to the defendant to execute a Sale Deed in respect of the subject plot in favour of the plaintiff, as and when permission is granted by the concerned authorities. Further, the defendant is restrained from selling, transferring or alienating the subject plot. Decree sheet be drawn.

14. The suit is disposed of. No order as to costs.

APRIL 24, 2015
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(HIMA KOHLI)
JUDGE