

11

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 1655/2015 & I.As. 11864-11865/2015

G K OBEROI

..... Plaintiff

Through: Mr Vivek Vidyarthi, Advocate.

versus

VCORP DEVELOPERS PVT LTD & OTHERS Defendants

Through: None.

%

Date of Decision: 28th May, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for the following reliefs:-

“(a) pass a decree for cancellation of the following documents and declare them as null and void ab-initio, not binding upon the plaintiffs in any manner:-

- i) *Conveyance deed registered as document no.157, Book No.1, volume No.9,753 dated 04.04.2007 at page no.141 a copy of which is in Addl. Book No.1, volume no. 832 at pages 54 & 55 dated 04.04.2007 which the Sub-Registrar, Gurgaon;*
- ii) *Developer-Anchor Unit Agreements that came to be executed on 15.11.2013, between defendant No.2 through defendant No.3 and plaintiff;*

iii) *Developer-Anchor Option Agreements-Assured Return Plans that got executed between the defendant No.2 through defendant No.3 and the plaintiff, on 15.11.2013.*

(b) *pass a decree of permanent injunction in favour of the plaintiff and against the defendants, thereby restraining the Defendants, their heirs, assignees, representatives, agents, associates, servants, workers, etc. from creating third party interest in the suit property i.e. apartment bearing No.D-11/1, on 11th Floor, in D block, along with One Covered Car Parking, Category A-1, having a covered area of 2890 Sq. Ft. in the residential building in the Group Housing Scheme of The Indian Airlines Pilots Coop. House Building Society Ltd., Gurgaon, situated at Pilots Court, Sector-28, M.G. Road, Gurgaon and the defendants be further restrained from dispossessing the plaintiff from the suit apartment;*

(c) *Award cost of the suit in favour of plaintiff and against the defendants;*

(d) *any other relief which the Hon'ble Court may deem fit and necessary, in the circumstances of the case."*

2. At the outset, this Court put the learned counsel for the plaintiff to notice that this Court does not have the territorial jurisdiction to entertain the present suit as cancellation of Conveyance Deed has been sought of a property situated in Gurgaon. It was also pointed out to learned counsel for plaintiff that permanent injunction had been sought with regard to another property situated outside the territorial jurisdiction of this Court.

3. However, learned counsel for plaintiff insists that this Court has the territorial jurisdiction to entertain the present suit. He firstly states that no relief of possession has been sought in the present proceedings.

4. Learned counsel for plaintiff further states that even after execution of sale deed, no transfer of title had taken place in favour of the defendants. In support of his submissions, he relies upon the following judgments of this Court:-

A. ***Rohit Kochhar vs. Vipul Infrastructure Developers and Ors., CS(OS) 1138/2004*** wherein it has been held as under:-

“28. I need not, therefore, deal with the various decisions of this court and other High Courts relied upon by counsel for the defendants for the reason that the decision of the Supreme Court in Adcon Electronic’s case (Supra) holds the field. The said decision has taken into account Section 22 of the Specific Relief Act. Decision categorically hold that a suit seeking specific performance of an agreement to sell simplicitor even if it relates to immovable property is not a suit in which the relief claimed relates to title or to land. The suit is for enforcement of terms of contract. Decision categorically holds that it is at the option of the plaintiff to seek delivery of possession. Decision categorically holds that unless possession of immovable property is specifically prayed for, suit could be instituted within the local limits of the court having jurisdiction where the defendant resides, carries on business or personally works for gain.”

B. ***Adcon Electronics Pvt. Ltd. vs. Daulat & Anr., (2001) 7 SCC 698*** wherein it has been held as under:-

“19. We cannot also accept the contention of Mr Chitale that the suit is for acquisition of title to the land and is a “suit for land”. In its true sense, a suit simpliciter for specific performance of contract for sale of land is a suit for enforcement of terms of contract. The title to the land as such is not the subject-matter of the suit.

20. In this view of the matter, we do not find any illegality in the order of the Division Bench of the Bombay High Court under challenge. The appeal is dismissed but in the circumstances of the case, without costs."

C. Mrs. Bhawna Seth vs. DLF Universal & Anr., AIR 2007 Delhi 189

wherein it has been held as under:-

"18. The proviso is thus an exception to the main part of the section which in our considered opinion, cannot be interpreted or construed to enlarge the scope of the principal provision. It would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant."

5. In the opinion of this Court, all the three judgments referred to and relied upon by the learned counsel for plaintiff deal with the cases of specific performance of contract for sale of immovable property. Since, the present case is not for specific performance of any agreement to sell, the case law referred to is inapplicable to the facts herein.

6. This Court is also of the view that the judgment in the present case cannot be enforced through the personal obedience of the defendants.

7. It is further settled law that all rights over or in relations to immovable land are governed by the law where the immovable property is situated (*Lex Situs*) and the *lis* has to be determined by the Court which has the territorial jurisdiction over the land.

8. This Court is not in agreement with the submission of learned counsel for the plaintiff that after execution of sale deed, transfer of title had not taken place in favour of defendants.

9. In fact, the reliefs as sought and the structure of the plaint clearly reveal that the reliefs relate to adjudication of title to land and/or immovable property. Even the Supreme Court in *Adcon Electronics Pvt. Ltd.* (supra) has held as under:-

“From the above discussion it follows that a suit for land is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a suit for land or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a suit for land.....”

(emphasis supplied)

10. In the present case as the Court has to adjudicate upon the title of the land/immovable property, it is clearly a suit for land. Consequently, this Court has no territorial jurisdiction to entertain the present plaint. Accordingly, present plaint is directed to be returned to the plaintiff for re-filing the same in an appropriate Court having the territorial jurisdiction.

MANMOHAN, J

MAY 28, 2015

js