

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

Reserved on: 31.07.2015
Pronounced on: 03.12.2015

+ CS(OS) 3984/2014

GUNADHAR JANA Plaintiff

Through: Mr. Arvind Kumar Gupta with
Mr. Anshul Garg &
Mr. Abhishek Goyal, Advs.

versus

MOHD KARIM Defendant

Through: Mr. M.A.Rahman with Mr. Ali Abbas,
Mr. Abbula Kalan & Mr. Abdul Qadir,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This suit seeks, inter alia, possession and recovery of mesne profits/damages apropos property bearing no. IX/4009 in Khasra no.142 situated in village Seelampur, Gali No.17, Ajit Nagar, Gandhi Nagar, Delhi-31, (hereinafter referred to as the 'Suit Property'); the suit property admeasures 50 sq. yards comprising two rooms, one kitchen, one latrine and bathroom with similar accommodation available on the three floors above it.

2. The plaintiff claims that he purchased the suit property vide a registered irrevocable Power of Attorney bearing registration no. 5305, in additional book no.4, Vol. No.3396 on page 97 to 107 and accordingly

became the absolute owner of the suit property; that the defendant approached him with the intention of purchasing the suit property and the plaintiff orally agreed on 29.11.2010 to sell it to the defendant for a consideration of Rs.23,00,000/-; that in pursuance of the oral agreement, the defendant gave him two cheques dated 29.11.2010 and 01.12.2010 which together amounted to Rs.11,00,000/- with an understanding that the balance sale consideration would be paid in a period of six months. Pursuant to the payment of Rs.11,00,000/- and at the instance of the property broker Shri Vinod Kumar Sharma, the plaintiff handed over possession of the suit property to the defendant.

3. The defendant failed to pay the balance amount within a period of six months and the plaintiff demanded that the defendant pay use and occupation charges, which the latter failed to do. When despite repeated oral requests, the defendant still did not pay the balance consideration amount, the plaintiff asked the defendant to vacate the suit property, which the latter again failed to do. Hence, this suit seeks possession and mesne profits for use of the suit property.

4. On 12.03.2014 the defendant made another part payment of the outstanding amount of Rs.12,00,000/- by handing over two cheques bearing no. 030631 dated 12.03.2014 and no.030632 dated 24.03.2014 each for an amount of Rs.1,00,000/-. However, on presentation for encashment both cheques were returned as dishonoured.

5. It is the plaintiffs' case that the defendant's possession of the suit property is unauthorized and illegal as the defendant has breached the oral agreement of 29.11.2010; that the defendant has acknowledged the oral agreement by the handing over of the two cheques and has also acknowledged the outstanding amount through an affidavit dated

28.03.2013. The plaintiff has sought possession of the suit property and grant of occupation charges amounting to Rs.3,60,000/- as well as for costs.

6. The plaintiff claims to have issued a legal notice to the defendant on 01.04.2014 wherein he called upon the defendant to hand over the vacant and peaceful possession of the suit property to and pay occupation charges for the use of the suit property @ Rs.10,000/- p.m. w.e.f. 29.11.2010 till such date that the defendant actually hands over the possession of the suit property; that despite receipt of the notice the defendant has neither vacated the suit property nor paid any occupation charges.

7. The defendant has failed to appear before this Court, let alone file a written statement. Summons were issued to the defendant, vide order dated 22.12.2014. Despite service of the same none appeared for the defendant, hence on 03.02.2015 the defendant was proceeded *ex parte*. The plaintiff has led *ex parte* evidence by way of affidavit and the statements of PW1 and PW2 have been recorded. The plaintiff has stated on affidavit that the defendant has acknowledge the oral agreement to sell vide original acknowledgement dated 28.03.2013. This undertaking has indeed been filed and exhibited as PW.1/8. The plaintiff's case remains uncontroverted and unrebutted. There is no reason to disbelieve the plaintiff's case. The plaintiff has made out a case of breach of contract and further resultant relief of return of suit property to his possession.

8. In the circumstances, the relief of possession apropos the suit property is decreed in favour of the plaintiff. However, the plaintiff shall refund the Rs.11,00,000/- as part payment of the consideration of Rs.23,00,000/- to the defendant within eight weeks from today after

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deducting Rs.3,60,000/- as arrears of use and occupation charges @Rs.10,000/- per month for the period commencing 1st November, 2011 till the filing of the suit in November, 2014.

9. Consequently, defendant is further liable to pay use and occupation charges @ Rs.15,000/- per month with effect from 1.12.2014 till the actual handing over of possession of the suit property.

9. The defendant is directed to return possession of the suit property to the plaintiff within a period of 6 weeks. The amount to be paid as use and occupation charges shall be paid within a period of 8 weeks. The defendant is further directed to pay costs which are assessed are Rs.50,000/-.

10. Let the decree sheet be drawn up accordingly.

11. The suit stands disposed off.

NAJMI WAZIRI, J

DECEMBER 03, 2015