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

+ **CS(OS) 235/2009**

PARVEEN KUMAR JOLLY Plaintiff
Through Mrs. Vibha Mahajan Seth and
Ms. Heena Dua, Advocates

versus

VINAY CHHABRA & OTHERS Defendants
Through Mr. R.P. Sharma and Mr. Vaibhav
Mehra, Advocates for D-1 & D-4
Mr. Vikas Mahajan, Mr. A.N. Singh,
Mr. S.S. Rai, Advocates for D-2 &
D-3
Mr. M.S. Vishnu Shankar and
Mr. David Rao, Advocates for R-4

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **08.01.2016**

1. This suit which was filed in the year 2009 was for specific performance. Plaintiff Mr. Parveen Kumar Jolly sought specific performance of the Agreement to Sell dated 21.06.2007. Subject matter of the Agreement to Sell was property no.9/21, East Patel Nagar, New Delhi (hereinafter referred to as the 'suit property').

2. Admittedly, as per the plaint the specific performance of the Agreement to Sell dated 21.06.2007 is only from the defendant no.1 but

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defendant no.1 himself was not the owner of the suit property and only had an Agreement to Sell in his favour dated 18.03.2007 from defendant nos.2 and 3 and dated 18.05.2007 from defendant no.4. The suit therefore, as originally framed, was not maintainable because there cannot be a suit seeking specific performance from a person who himself is not the owner of the property or in whose favour there exist no rights under Section 53-A of the Transfer of Property Act, 1882. During the pendency of the suit, however, subsequently it is pleaded that defendant no.1 is now the owner of the suit property as per the case of the plaintiff in terms of the Agreement dated 16.09.2010. This Agreement of 2010 is qua transfer of 1/3rd share of the defendant no.4 in the suit property in favour of the defendant no.1. Plaintiff therefore can, subject of course to all defences of the defendants in the present suit or any other person, may be able to seek entitlement to the 1/3rd share of the present defendant no.4 in the suit property which now vests in defendant no.1.

3. Plaintiff by I.A. No.25707/2015 had sought amendment of the plaint but a plaint can be amended only if the original plaint itself is in accordance

with law. Since the original suit was not maintainable, with respect to specific performance, though the same would have been maintainable with respect to relief of recovery of monies, accordingly during the course of hearing it is agreed that plaintiff be allowed to withdraw the present suit but liberty be and is granted to the plaintiff to file a fresh suit in accordance with law for specific performance or damages or other related reliefs against the defendant no.1 or against the share of defendant no.4 in the suit property which is now to be owned by defendant no.1. Liberty is accordingly granted and plaintiff in accordance with law will also have the benefit of Section 14 of the Limitation Act with respect to the fresh suit which is to be filed.

4. Suit is accordingly allowed to be withdrawn in terms of the aforesaid liberty leaving parties to bear their own costs. All pending applications will stand accordingly disposed of.

5. Half of the court fees deposited by the plaintiff be returned to the plaintiff in view of Section 16-A of the Court-fees Act as applicable to Delhi and Registry will issue the necessary certificate in favour of the plaintiff.

VALMIKI J. MEHTA, J

JANUARY 08, 2016/nn
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