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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : August 10, 2016

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RFA(OS) 61/2016

WG CDR (RETD.) YESHVIR SINGH TOMAR Appellant
Represented by: Mr.Ashish Mohan, Advocate with
Mr.Shakeel Sarwar Wani, Advocate

versus

DR O.P.KOHLI & ORS. Respondents
Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM No.28971/2016

Allowed subject to just exceptions.

CM Nos.28972-73/2016

For the reasons stated in the two applications delay in filing and re-filing the appeal is condoned.

The applications are disposed of.

RFA (OS) No.61/2016

1. The appeal challenges an order dated August 03, 2015 holding that on account of Article 23A of the Indian Stamp Act, 1899 as applicable in Delhi, since the appellant had relied upon an agreement to sell which was an

unregistered document and did not bear the requisite stamp duty, no right could be claimed under the agreement to sell.

2. The result was the suit has been dismissed in limine. Having perused the record of the suit and the agreement to sell in question relied upon by the appellant we find the view taken by the learned Single Judge to be contrary to law. Article 23A of the Stamp Act referred to by the learned Single Judge requires 90% stamp duty to be paid for an agreement to sell where possession of the immovable property is handed over, and in the instant case we find that possession has not been handed over. The learned Single Judge has overlooked the fact that there was prayer in the suit for a decree of possession to be passed. Though the learned Single Judge has not noted, with the introduction of Section 17(1A) to the Registration Act, 1908 as applicable in Delhi, such an agreement to sell i.e. where possession is transferred needs registration and not an agreement to sell.

3. But inspite thereof, as conceded to by learned counsel for the appellant, the suit must still suffer a dismissal for the reason the facts pleaded by the plaintiff/appellant are that one Karan Singh was the owner of the suit property ad-measuring 4 bigha and 3 biswa comprised in khasra No.1800/4 (0-14), khasra No.1802/1 (1-11) and khasra No.1802/2 (1-18) in the revenue estate of village Chattarpur, Tehsil Hauz Khas, New Delhi. He sold the same to one Dev Pratap Singh vide registered sale deed on November 23, 1997. The land came under acquisition which was challenged. Mr.Dev Pratap executed a general power of attorney in favour of one Dr.Mrs.Vinod Kaushal on November 06, 2006 empowering her to deal with the suit property. As the attorney of Dev Pratap Singh, Dr.Mrs.Vinod Kaushal executed an agreement to sell in favour of the

appellant concerning the suit property. As per the agreement to sell in favour of the appellant if the acquisition proceedings came to an end or were quashed, a sale-deed would be executed.

4. As per the appellant, since possession of the subject land was not taken over pursuant to the acquisition proceedings initiated by the Land Acquisition Collector and compensation was not paid the proceedings have lapsed.

5. Thus, the appellant has to sue for a decree for specific performance requiring a sale-deed to be executed. Simultaneously, the appellant can pray for possession to be delivered to him. If for some reason the issue concerning acquisition proceedings lapsing acts as a summoning block for the sale-deed to be executed, seeking permission under Order 2 Rule 2 of Code of Civil Procedure the appellant can seek a decree of injunction against the defendant, who as per the appellant are threatening to part with possession of the suit property. Under no circumstances can the plaintiff claim a decree for declaration to be granted declaring him to be the owner of the land, because the land is governed by Delhi Land Reforms Act and such a suit would lie only before the Revenue Assistant. Further, the prayer in the instant suit that a suit filed by the first defendant bearing CS(OS) 687/2005 be declared a vexatious suit cannot be allowed for the reason this would be the defence of the appellant in the suit filed by O.P.Kohli. We note that in the suit Mr.O.P.Kohli rests a right on the basis of a general power of attorney and a will statedly executed by Dr.Satya Prakash Kaushal, the husband of Dr.Mrs. Vinod Kaushal and as per the appellant Dr.Satya Prakash Kaushal had no right to execute the general power of attorney or the will in favour of O.P.Kohli.

6. For the reasons above noted, notwithstanding the view taken by the learned Single Judge to be incorrect, the appeal is dismissed in limine but without any order as to costs.

CM No.28970/2016

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 10, 2016

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