

\$~5

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

+ **CS(OS) 2008/2012**

NARENDER SINGH

..... Plaintiff

Through : Mr Gaurang Bindra and Mr Arvind
Rana, Advocates.

versus

ISHWAR SINGH & ANR

..... Defendants

Through :

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

20.09.2016

VIBHU BAKHRU, J

1. The plaintiff has filed the present suit for specific performance of the agreements dated 25.02.2009, *inter alia*, praying as under :

"(a) pass a decree of specific performance of the contract/agreements dated 25.02.2009 in favour of the plaintiff and against the defendants thereby directing the Defendant No.1 to execute the sale deed in favour of the plaintiff in respect of his share in the undivided property which is 539/1794th share out of total measuring 89 bighas and 14 biswas comprising in Khasra No.2/6(5-02), 7(4-05), 13(4-10), 14(4-16), 15(4- 16), 16(4-16), 17(4-16), 18(4-16), 25/13/2(4-00), 18/1(3-00), 10/1(2-03), 26(0-04), 26/6 (2-08), 15(4-16), 16/1 (0-08), 16/2 (4-08), 22/2 (1-00), 25(4-16), 32/5(4-16), 2/2 (4-05), 7(4-16), 8/2(0-15), 54/43 (1-02), 76(0-17), situated in the Revenue Estate of Village Tajpur Kalan, Delhi-110036. The Defendant No.1 may also be directed to handover the physical possession of the subject land to the plaintiff;

(b) ALTERNATIVELY it is also prayed that in case prayer No. (a) is not granted in respect of contracts dated 25.02.2009 executed by the Defendants, then the Defendants may kindly be directed to pay the earnest money of Rs. 21, 89, 687/- to the plaintiff alongwith damages which may be calculated by this Hon'ble Court on the basis of the escalation/rise in the market price of the land in question;"

2. Although the defendants were served, however, they did not enter appearance and participate in the present proceedings. Accordingly, they were proceeded *ex-parte* on 02.02.2015. Mr Narender Singh (the plaintiff herein and hereafter referred to as 'PW1') has filed an affidavit affirming the averments made in the plaint.

3. The uncontested facts that emerge from the affidavit of PW1 are as follows:

3.1 Defendant no 1 had entered into an agreement to sell dated 25.02.2009 with defendant no 2 in respect of "*agricultural land equal to 539/1794th share out of total measuring 89 bighas and 14 biswas comprising in Khasra No.2/6(5-02), 7(4-05), 13(4-10), 14(4-16), 15(4- 16), 16(4-16), 17(4-16), 18(4-16), 25/13/2(4-00), 18/1(3-00), 10/1(2-03), 26(0-04), 26/6 (2-08), 15(4-16), 16/1 (0-08), 16/2 (4-08), 22/2 (1-00), 25(4-16), 32/5(4-16), 2/2 (4-05), 7(4-16), 8/2(0-15), 54/43 (1-02),76(0-17), situated in the*

Revenue Estate of Village Tajpur Kalan, Delhi-110036" (hereafter 'the Property'). The total consideration for sale of the Property was settled at ₹2,18,96,875/-, out of which ₹21,89,687/- was paid by defendant no 2 to defendant no 1 on 25.02.2009. It is stated by PW1 that ₹16,89,687/- was paid to the defendant no 1 in cash and ₹5,00,000/- was paid by way of demand draft bearing no. 913660 dated 24.02.2009 drawn on Allahabad Bank, New Delhi. It is further stated that the sale was to be completed by 17.08.2009 and defendant no 1 was liable to obtain the required No Objection Certificate (NOC) in respect of the Property. The said agreement to sell along with receipt indicating receipt of ₹21,89,687/- by defendant no 1 from defendant no 2 have been exhibited as Ex-P-1/1 and Ex-P-1/2 respectively.

3.2 PW1 further states that on 25.02.2009, defendant no 2 had entered into an agreement to sell dated 25.02.2009 (hereafter ' the Agreement') with the plaintiff in respect of the Property for the consideration amount of ₹2,24,00,000/- out of which ₹21,89,687/- was paid by the plaintiff to defendant no 2 as earnest money. It is averred by PW1 that at the time of the Agreement, defendant no 2 represented that he is the absolute owner and in possession of the Property. It is further stated that defendant 2 is avoiding in

completing the sale of the Property on the ground that NOC has not been issued. The Agreement to sell dated 25.02.2009 entered into between the defendant no 2 and the plaintiff has been exhibited as Ex- P-1/3

3.3 PW1 has deposed that thereafter, the plaintiff sent a legal notice dated 08.07.2011 to the defendants, calling upon them to execute the sale deed in favour of the plaintiff within 7 days of receipt of the said notice. PW1 further deposed that defendant no1 replied to the abovementioned notice on 28.07.2011 denying the execution of the agreement to sell dated 25.02.2009 in favour of defendant no 2. PW1 has placed on record the notice dated 08.07.2011 by the plaintiff and its reply by defendant no 1 as Ex-P-1/4 and Ex-P-1/6 respectively.

3.4 It is deposed by PW1 that it came to his knowledge that defendant no 1 has sold the Property in question to other purchasers as well by way of sale deeds, all dated 18.04.2011, and has also filed a civil suit being C.S (O.S) no. 1952/2011 before this Court for Declaration that no sale deeds have been executed by him in favour of the defendants in the said suit.

3.5 PW1 has affirmed that ₹21,89,689/- as paid by defendant no 2 to defendant no1 were actually paid by PW1. PW1 avers that the demand draft

bearing no. 913660 dated 24.02.2009 drawn on Allahabad Bank, New Delhi was issued from the bank account of the plaintiff and formed a part of the part consideration paid by defendant no. 2 to defendant no.1.

4. Mr Krishan Kumar (PW2) has also filed an affidavit on behalf of the plaintiff affirming that he was the witness to Agreement entered into between plaintiff and defendant no 2. PW2 has also affirmed that defendant no 2 told the plaintiff in his presence that *"he has right in the property and he would execute the sale deed"*.

5. In view of the above, it is amply clear that defendant no 1 had executed an agreement to sell dated 25.02.2009 in respect of the Property in favour of Defendant no. 2. It is also clear that thereafter on the same date, defendant no 2 had executed another agreement to sell with the plaintiff in respect of the Property. It is evident that an amount of ₹21,89,687/- was paid by the plaintiff to defendant no 2 at the time of execution of the Agreement. It is apparent that defendant no 2 is neglecting to perform its obligations as per the Agreement.

6. It is also evident that the Property did not belong to defendant No.2. Therefore, defendant No.2 was never in position to specifically perform the

Agreement unless, defendant No.1 performed the agreement entered into by defendant no. 2 with defendant No.1. It is important to note that there is no agreement between the plaintiff and the defendant No.1 for sale of the Property.

7. Clause No.2 of the agreement between defendant No.1 and defendant No.2 specifically provides that time period for completion of the agreement is fixed from 25.02.2009 to 17.08.2009. In other words, the transaction was required to be completed within the period of six months from the date of the agreement. However, the plaintiff had taken no action during said period to ensure that the agreement between defendant Nos.1 & 2 was performed. Thus, in my view, it is not open for the plaintiff to now insist on a specific performance of the agreement between defendant Nos.1 & 2. The legal notice sent by the plaintiff to the defendants was also at a much belated stage, that is, more than two years under the agreements to sell that had been entered into.

8. Therefore, in my view, this would not be an appropriate case to direct defendant No.1 to specifically perform the agreement to sell the property at this stage.

9. Although, the plaintiff has prayed for the damages equivalent to the increase in the value of the property, however, the plaintiff has not led sufficient evidence to show any increase in the value of the property.

10. In the said circumstances, the decree for specific performance cannot be granted in favour of the plaintiff and further the decree for damages equivalent to the increase in the value of the property also cannot be passed. However, since the plaintiff has proved that it had paid a sum of ₹21,89,689/-, the plaintiff would be entitled to the same. I also consider it a fit case for grant of reasonable interest to compensate the plaintiff.

11. Accordingly, a sum of ₹21,89,689/- along with interest at the rate of 9% pa from the date of the payment till the recovery is awarded in favour of the plaintiff and against the defendant No.2. The costs of the suit is also awarded in favour of plaintiff.

12. Let a decree sheet be drawn.

VIBHU BAKHRU, J

SEPTEMBER 20, 2016
RK