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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) No.1159/2015, IA No.8762/2015 (u/O 39 R-1&2 CPC) and
IA No.18426/2015 (u/O 7 R-11 CPC).
VIPIN VERMA Plaintiff

Through: Mr. Vivek Kr. Chaudhary and Mr.
Vikrant, Advs.

versus

AL NAFEEES FROZEN FOOD EXPORTS & ORS Defendants

Through: Mr. Sunil Dalal and Mr. Vivek Jain,
Advs. for D-1 to 3.

Mr. Vinod Kumar Bhati for Mr.
Devesh Singh, ASC for D-6,7,8&9.

Mr. Attin Shankar Rastogi and Ms.
Neha Rajpal, Advs. for D-10.

+ CS(OS) 2371/2015, IA Nos.16243/2015 (u/O XXXIX R-1&2 CPC),
16246/2015 (u/S 80(2) CPC), 1581/2016 (u/O XXXIX R-4 CPC) &
8508/2016 (for directions to D-7)

DELHI TRANSPORT CORPORATION Plaintiff

Through: Mrs. Avnish Ahlawat with Ms. Latika
Chaudhary, Advs.

Versus

VINA JASWANT CHADDHA & ORS Defendants

Through: Mr. Sunil Dalal, Adv. for D-3 to D-5.
Mr. Vinod Kumar Bhati, Adv. for D-
7,8&9.

Mr. Yeeshu Jain, Adv. for D-10.

Ms. Mansi Bajaj, Adv. for R-11.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.07.2016

1. These two suits are listed together because they pertain to the same
property.

2. CS(OS) No.1159/2015 has been filed (i) for declaration of the

plaintiff therein as the owner of plot/land ad measuring 1 bigha 4 biswas i.e. about 1400 sq. yds. falling in Khasra No.15/17 in Revenue Estate of Village Tatarpur; (ii) for cancellation of Sale Deed dated 6th December, 2013 executed by the defendants no.4&5 Mrs. Vina Jaswant Chhaddha and Mrs. Rajini Verma with respect to the said land in favour of the defendant no.1; (iii) for mandatory injunction directing the defendants to handover vacant peaceful physical possession of the said land to the plaintiff; and, (iv) for permanent injunction restraining the defendants from dealing with the aforesaid land.

3. It is the case of the plaintiff therein (i) that Shri Narender Nath Verma predecessor of the defendants no.4&5 Mrs. Vina Jaswant Chhaddha and Mrs. Rajini Verma was the owner of certain lands in the Revenue Estate of Village Tatarpur and Chaukhandi, Rajouri Garden (West District), Delhi; (ii) that the land falling in Revenue Estate of Village Tatarpur was illegally acquired in the year 1980-81; (iii) being aggrieved therefrom, Mr. Narender Nath Verma had filed writ petition in this Court for de-notification of the said land from acquisition; (iv) the said writ petition was allowed by this Court vide order dated 2nd November, 1987 and the Government was directed to release the land to late Shri Narender Nath Verma; (v) however

the aforesaid order was not complied with and it was learnt that the Government had transferred the land to Delhi Metro Rail Corporation (DMRC) which in agreement with M/s. Pacific Development Corporation had constructed Pacific Mall, Rajouri Garden thereon; (vi) the said Shri Narender Nath Verma approached the plaintiff for helping him out with having his land released and to which the plaintiff agreed; (vii) Shri Narender Nath Verma executed a Special Power of Attorney dated 7th June, 2012 in favour of the plaintiff to enable the plaintiff to act on his behalf for having the land released; (viii) Shri Narender Nath Verma also entered into an Agreement to Sell agreeing to sell land falling in Khasra No.15/12, 15/13, 15/16 to 15/25, 16/2 to 16/5 and 16/8 in the Revenue Estate of Village Tatarpur, Rajouri Garden, Delhi to the plaintiff within a period of two years therefrom and the plaintiff paid a sum of Rs.23 lacs to Shri Narender Nath Verma and his legal heirs under the said Agreement to Sell dated 7th June, 2012; (ix) with the efforts of the plaintiff, land bearing Khasra No.15/17 min area 1 *bigha* 4 *biswas* which was lying vacant was released in favour of Late Shri Narender Nath Verma; (x) the plaintiff and Shri Narender Nath Verma were desirous of selling the said land and were approached by the defendant no.1 through the defendants no.2&3 Mohd. Saleem Qureshi and Mohd.

Mustqeen Qureshi and a Tripartite Agreement to Sell dated 19th April, 2013 was executed between Late Shri Narender Nath Verma of the first part, plaintiff of the second part and defendant no.1 on the third part whereunder the defendant no.1 agreed to purchase the land for Rs.24.50 crores and of which Rs.13.65 crores was to be received by the plaintiff; (xi) the defendant no.1 paid an advance of Rs. 25 lacs under the said Agreement to Sell; (xii) it was the term of the aforesaid Agreement to Sell that the plaintiff and the said Shri Narender Nath Verma will execute the Sale Deed in favour of the defendant no.1 within six months; (xiii) Shri Narender Nath Verma died on 24th May, 2013 leaving the defendants no.4&5 Mrs. Vina Jaswant Chhaddha and Mrs. Rajini Verma as his only legal heirs; and, (xiv) that the defendant no.1 has got the Sale Deed of the said land executed in his favour from the defendants no.4&5 without involving the plaintiff.

4. The defendant no.1 in CS(OS) NO.1159/2015 has filed IA No.18426/2015 for rejection of the plaint therein. It is the contention of the counsel for the defendant no.1/applicant that the plaintiff, on the averments contained in the plaint in CS(OS) No.1159/2015, is not entitled to the relief claimed therein.

5. In the aforesaid state of affairs, it has been enquired from the counsel

for the plaintiff as to how the plaintiff claims himself to be the owner of the land for being entitled to a declaration to the said effect.

6. As would be obvious from the above, none of the pleas of the plaintiff in the plaint disclose any transfer of title by Late Shri Narender Nath Verma, who according to the plaintiff had title to the property, in favour of the plaintiff. All that the plaintiff pleads is that Late Shri Narender Nath Verma had vide Agreement to Sell dated 7th June, 2012 agreed to sell the subject land to the plaintiff. However an Agreement to Sell does not create any title in favour of the Agreement Purchaser; in fact not till even a decree for specific performance is passed in favour of the Agreement Purchaser and till the execution of the Sale Deed in pursuance to the decree for specific performance. Reference if any is required in this regard can be made to *M/s Jagdambey Builders Pvt. Ltd. Vs. J.S. Vohra* (2016) 228 DLT 49 and *Hari Gopal Manu Vs. B.S. Ojha* 2016 SCC Online Del 985.

7. The counsel for the plaintiff, faced therewith, states that he is not pressing the relief claimed of declaration of the plaintiff as owner of the property.

8. It has next been enquired from the counsel for the plaintiff that if the plaintiff admits that he is not the owner and that Late Shri Narender Nath

Verma was the owner, what can be the objection of the plaintiff to execution of the Sale deed of the land by the defendants no.4&5 Mrs. Vina Jaswant Chhaddha and Mrs. Rajini Verma as heirs of Late Shri Narender Nath Verma in favour of the defendant no.1 and on what ground the relief of cancellation of the Sale Deed and the ancillary relief of delivery of possession after cancellation of Sale Deed and restraining the defendants from dealing with the property are claimed.

9. The counsel for the plaintiff states that since under the Tripartite Agreement to Sell dated 19th April, 2013 the Sale Deed was to be executed in favour of the defendant no.1 by the plaintiff as well as by Late Shri Narender Nath Verma, the Sale Deed executed by the legal heirs of Late Shri Narender Nath Verma without involving the plaintiffs void the Sale Deed.

10. No legal basis of such an argument or plea has been disclosed.

11. The plaintiff admittedly was not the owner of the land with respect to which Sale Deed has been executed. Title in land can be conveyed only by the title holder thereof. Thus, for conveying title of the land in favour of defendant no.1, the plaintiff was not required to be a party to the Sale Deed and it cannot be said that the Sale Deed executed by the defendants no.4&5

in favour of the defendant no.1 is bad for this reason.

12. The claim if any of the plaintiff under the Agreement to Sell dated 19th April, 2013, can be for recovery of his share of the sale consideration agreed to be paid by the defendant no.1 and not of voiding the sale deed.

13. A Sale Deed does not become void even if the entire agreed sale consideration has not been paid. Section 55(4) of the Transfer of Property Act, 1981 provides that in the absence of a contract to be contrary, the claim of unpaid seller of immovable property is confined only to a charge on immovable property for the unpaid sale consideration and no more.

14. No agreement to the contrary has been pleaded in the present case.

15. Thus, non-payment of the share if any of the plaintiff of the sale consideration for the Sale Deed cannot also be a ground for cancellation of the Sale Deed or for declaration of the same as void.

16. The suit i.e. CS(OS) No.1159/2015 is thus found to be misconceived. There is no possibility of grant in law of reliefs claimed by the plaintiff therein, even if all the averments in the plaint, which though are disputed by the defendants, are to be established after the suit is put to trial.

17. It is the settled principle of law that the Court will not put to trial such suits which are doomed to fail and of which there is no chance of success.

18. The plaint in CS(OS) No.1159/2015 is thus rejected as not disclosing a cause of action for the reliefs claimed and with the clarification that if the plaintiff, inspite thereof is entitled to maintain a suit for recovery of his share of purchase consideration with respect to the land, he shall be entitled to maintain the same, of course subject to the defences available to the defendants in the said suit. No costs.

19. However I must notice that after Mr. Vivek Kumar Chaudhary, Advocate appearing for plaintiff has addressed arguments and after knowing that he is unable to satisfy the Court, he stated that Mr. D.K. Mehta arguing counsel is not available. However Mr. Vivek Kumar Chaudhary, Advocate has filed the suit and has throughout been appearing in the suit. Such adjournments cannot be granted.

20. CS(OS), No.2371/2015 has been filed by Delhi Transport Corporation (DTC) also for declaration of the sale deed aforesaid as not conferring any rights in the defendant no.3 M/s Al-Nafees Frozen Food Exports Pvt. Ltd. (which was defendant no.1 in aforesaid CS(OS) No.1159/2015) but on the ground that the land with respect to which the sale deed has been executed was acquired; that the challenge to the acquisition thereto failed till the Supreme Court; that the owners of the subject land had accepted the

compensation; and, the sale deed has been executed on the basis of fraud practiced by some of the officers of the Land Acquisition Collector's office. It is the case of the plaintiff DTC that the land, upon acquisition, was vested in DMRC and DMRC in lieu of certain land of the plaintiff DTC taken over by it has put the plaintiff DTC into possession of the subject land and the plaintiff is in possession thereof.

21. It appears that if the khasra number with respect to which the sale deed is executed is found in the acquisition notification and in the judgments in the writ petitions impugning the acquisition, then perhaps there is no need to put CS(OS) No.2371/2015 to trial.

22. However both the counsels are not prepared to address arguments.

23. List for the said purpose on 20th September, 2016 already fixed, on which date CS(OS) No.2371/2015 be listed before this Bench instead of before the Joint Registrar.

RAJIV SAHAI ENDLAW, J

JULY 21, 2016

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