

\$R-1A & R-1 (Part A)

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

Decision on : 20th March, 2017

+ **CS (COMM) 21/2016**

RAVINDER SINGH & ANR. Plaintiffs

Through: Nemo.

versus

NARESH KUKREJA Defendants

Through: Nemo.

+ **CS (COMM) 22/2016**

RAVINDER SINGH & ANR. Plaintiffs

Through: Nemo.

versus

MANOJ KUMAR PRUTHI & ANR. Defendants

Through: Mr. Akhil Sibal, Mr. Sanjay S.
Chhabra, Mr. Vijay Laxmi &
Mr. Pradeep Chhindra, Advs.
for D-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. These two suits filed by the same set of plaintiffs, one after the other, in respect of the same subject property it being shop bearing No. 6A , Khan Market, New Delhi were consolidated for purposes of trial by common order dated 11.05.2009. It may be noted that Naresh Kukreja one of the two defendants in the second suit i.e. CS (Comm)

22/216 was the sole defendant in the first suit, he having been described as the owner of the subject property, the other defendant in the second suit i.e. Manoj Kumar Pruthi (the first defendant) in the second suit being the subsequent purchaser. The subsequent purchaser had contested the suit, *inter alia*, on the plea that the suits were based on false averments and that the litigation was vexatious. In the first suit, the plaintiffs prayed for specific performance of Agreement to Sell dated 15.9.2005 also seeking mandatory injunction to the effect of a direction to the owner to execute sale deed pursuant thereto. The second suit was instituted in the face of alleged discovery of fact by the plaintiffs about the owner having entered into Agreement to Sell dated 3.12.2008 in favour of the subsequent purchaser, the prime prayer made therein being for declaration that the said Agreement to Sell dated 3.12.2008 (duly registered with the Sub-Registrar on 4.12.2008) was null and void and inoperative, this in addition to a decree of permanent injunction to restrain the owner from selling, alienating or parting with the possession or creating any third party rights in respect of the subject property.

2. The issues were framed, common to both the suits by order dated 11.5.2009 whereafter the plaintiffs were called upon to lead evidence, the prime onus in respect of all material issues (except issue no.4) being that of the plaintiffs. The record would show that the first plaintiff appeared as PW-1 on the strength of his affidavit, and was subjected to part cross-examination for and on behalf of the owner (second defendant in the second suit and the sole defendant in the first suit) on some of the dates, lastly on 09.09.2014. Thereafter the first

plaintiff (as PW-1) played truant and would not appear inspite of several opportunities being given for the purpose, such conduct eventually resulting in right to lead evidence for and on behalf of the plaintiffs being closed by order dated 02.02.2015. It also needs to be noted that after closing the opportunity for the plaintiffs to lead evidence, the Joint Registrar granted some opportunity to the defendants to lead evidence though no witness having been examined by the defendants, it having been submitted eventually on 06.01.2016 that the defendants did not wish to adduce any evidence. By order passed on the said date, the Court directed the case to be put in the category of 'Finals' to be taken up on its own turn.

3. The matters came up for final hearing on 29.02.2016, but none appeared for either side. These cases again came up for final hearing on 06.03.2017 but only the first defendant was represented. Since the plaintiffs were not present, the Court considered it proper for Court notices to be issued to the plaintiffs and their counsel for today. The office report shows that the counsel for the plaintiffs and the first plaintiff himself have been duly served with the court notice on 10.03.2017.

4. These cases were called out today against the above-noted backdrop in the post lunch session. With the assistance of learned counsel appearing for the first defendant in the second suit, the background facts have been taken note of. No one has appeared for the plaintiffs till 3.45 p.m. In these circumstances, there is no good ground to adjourn the matters again or to keep them alive further. It is clear the plaintiffs have lost interest in this litigation and have virtually

abandoned the pursuit of the remedies which were sought through the cases at hand. The learned counsel for the first defendant in the second suit fairly concedes that in these facts and circumstances the only course available to the court is to apply the statutory prescription in Rule 8 of Order 9 of the Code of Civil Procedure, 1908 (CPC), inasmuch as the statement of PW-1 cannot be treated as “evidence” within the meaning of Rule 2 of Order 17 CPC, the full right of cross-examination of such witness not having been afforded.

5. Since there are no admissions, not even of the part of the claim of the plaintiffs by the defendants, there is no case made out for any of the reliefs being granted to the plaintiffs.

6. Since the plaintiffs have chosen not to appear, the suits are dismissed given the conduct with costs quantified at Rs. 5 lakhs in favour of each defendant in the second suit, the costs, thus awarded in favour of the second defendant in the said second suit also covering the costs incurred by that party even in the first suit.

(R.K. GAUBA)
JUDGE

March 20, 2017

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