

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 396 OF 2015

Prateek Kumar Praful Kumar ...Plaintiff
Vs.
Nirmal Singh Gurudayal Singh Bhangoo ...Defendant

Ms.Veena Thadani I/b. Vishal Thadani for Plaintiff.

CORAM : S.C. GUPTE, J.

DATE : 12 APRIL 2018

P.C. :

This suit is filed by the Plaintiff for specific performance of an agreement for sale of the suit property. The suit property consists of Plot No.22, CTS No.59 of Village Vile Parle in Mumbai admeasuring 347.8 sq.metres together with a building known as “Victory Building” consisting of stilt plus upper floors having a total built up area of 393.32 sq.metres.

2 By an Indenture of Lease dated 17 April 2001 registered with the Sub-Registrar of Assurances at Bandra, Mumbai, one Suvarna Co-operative Housing Society, who are owners of a large plot of land at Juhu, Vile Parle, Taluka Andheri, Mumbai, assigned a part of the plot, which was sub-divided from the larger plot, to one Narayan Jethanand Pagrani and Meena Pagrani. PAGRANIS, who were admitted as members of the society in respect of this plot, assigned their leasehold rights in the said plot along with the building constructed thereon by them to the Defendant. The Defendant in turn entered into an agreement for sale dated 29 December 2011 agreeing to sell the suit plot together with the building to the Plaintiff at or for a total consideration of Rs.16 crores and on terms and conditions

mentioned in the said agreement for sale. In pursuance of this agreement, the Defendant put the Plaintiff in quiet and peaceful possession of the suit property. The Plaintiff claims to have made in all eight payments of Rs.2 crore each towards full and final payment of the consideration of sale. The Defendant also handed over original title deeds in respect of the suit property to the Plaintiff in pursuance of the suit agreement for sale and payments towards the consideration of the same. It is the Plaintiff's grievance that despite the Plaintiff having performed his part of the suit agreement for sale, the Defendant refused to execute conveyance in respect of the suit property assigning the leasehold rights in the suit plot of land and transferring and conveying the suit building to the Plaintiff. The Plaintiff, in the premises, has filed the present suit praying for specific performance of the suit agreement for sale.

3 The writ of summons along with the plaint was duly served on the Defendant. An affidavit in proof of service has already been filed by the Plaintiff. Though the Defendant entered appearance and showed cause at the stage of ad-interim application in the suit, he has not filed any written statement contesting the suit. The suit has accordingly been transferred to the list of Undefended Suits and is placed on board today for exparte decree.

4 Learned Counsel for the Plaintiff tenders affidavit of evidence of Prashant Prabhakar Manjrekar, Constituted Attorney of the Plaintiff, along with a compilation of original documents. The documents consist of the original property card and documents of title including the share certificate and the conveyances in favour of the Defendant, the original agreement for sale between the parties and the orders passed by this court

in the notice of motion taken out in the suit. The affidavit of evidence of Prashant Prabhakar Manjrekar dated 26 March 2018 is taken on record as examination-in-chief of PW1.

5 Based on the oral evidence of PW1, the documents tendered by the Plaintiff, which are listed in the list annexed to the affidavit are admitted in evidence and marked as **Exhibit P1 to P8** in accordance with their respective numbers in the list of documents accompanying the originals.

6 Based on the oral and documentary evidence noticed above, the Plaintiff has made out a case for specific performance of the suit agreement for sale. The existence and validity of the suit agreement is not a matter of dispute. The Plaintiff has proved his readiness and willingness to perform his obligations in the suit agreement for sale. The payments made by the Plaintiff in pursuance of the agreement are either by cheque or RTGS and evidenced by receipt endorsed on the suit agreement for sale as well as statement of account annexed to the plaint, which is not disputed by the Defendant. Despite payment of the entire consideration under the suit agreement for sale, the Defendant has failed and neglected to execute conveyance of the suit property and transfer the same to the Plaintiff. The Plaintiff is accordingly entitled to a decree of specific performance.

7 The suit is accordingly decreed in terms of prayer clauses (a) and (b). The Plaintiff will also be entitled to the costs of the suit.

8 Office to return the originals of the documents tendered in

evidence by the Plaintiff against production of copies certified as true by the Advocate of the Plaintiff. The copies shall be kept on record and marked with the same exhibit numbers and by adding letter “A” after the same. Refund of court fees in accordance with the applicable rules. Drawing up of a decree is expedited.

(S.C. GUPTE, J.)