

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

% **Date of decision: 16th March, 2018**

+ **CS(OS) 606/2011 & IA No.8267/2012 (u/O VI R-17 CPC)**

**ONKAR SINGH KOHLI (DECEASED)
THROUGH LRS**

....Plaintiff

Through: Mr. Girdhar Govind and Ms.
Neetu Singh, Advs.

Versus

ROYAL ORCHIDS & ORS

..... Defendants

Through: Mr. Mandeep Singh Vinaik,
Ms. Anjali Sharma and Mr.
Deepak Bashta, Advs. for D-1.
Mr. Kamal Mehta, Adv. for D-
2&3.
Mr. Subrat Deb, Adv. for D-
4/DDA.
Ms. Amita Gupta and Ms. Priti
Yadav, Advs. for D-5/MCD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted the present suit, as per amended plaint dated 28th October, 2011, pleading (i) that the plaintiff is the owner of properties constructed on plots No.28 & 29 in Block No.5, Saraswati Marg, Karol Bagh, New Delhi bearing Municipal No.10538 to 10540 in Block No.5, Saraswati Marg, Karol Bagh, New Delhi and also known as property No.5/28 & 29, Saraswati Marg, Karol Bagh, New Delhi; (ii) that the plaintiff purchased the aforesaid property for a total sale consideration of Rs.2.50 lakhs; (iii) that the plaintiff acquired right, title and interest in the aforesaid property from one R.K. Mehra son of Bal Kishan Dass Mehra resident of 60/7, Ramjas Road, Karol

Bagh, New Delhi being the erstwhile owner of the said property; (iv) that the said R.K. Mehra executed an Agreement to Sell dated 29th October, 1981 in favour of one Amar Singh Sawhney son of Sant Singh Sawhney and the plaintiff herein and the plaintiff made part payment of Rs.51,000/- at the time of execution of the Agreement to Sell; (v) that at the time of signing the Agreement to Sell, the plaintiff was also put into possession of the staircase/passage, one room on ground floor opening on the service lane side and complete terrace of the property; (vi) that R.K. Mehra also executed a Will dated 3rd January, 1983 in favour of the plaintiff and the aforesaid Amar Singh Sawhney; (vii) that subsequently an Agreement was arrived at between R.K. Mehra, Amar Singh Sawhney and the plaintiff to the effect that Amar Singh Sawhney was no longer interested in the property and had parted with his share in favour of the plaintiff who alone would be the purchaser under the Agreement to Sell dated 29th October, 1981; (viii) that the entire sale consideration of the property “was made to the Vendor and nothing remained payable”; (ix) that the plaintiff thus became exclusive and absolute owner of the property; (x) that the plaintiff, owing to riots in the year 1984, had to shift to Mumbai but occasionally kept on visiting the aforesaid property; (xi) that in 2009, the plaintiff, being desirous of selling the property, contacted property brokers and it is then that the plaintiff learnt that the property had already been sold to the defendant No.1 Royal Orchids; (xii) that a fraud has been perpetuated upon the plaintiff by defendant No.1 Royal Orchids and defendant No.2 Ankur Sachdeva and defendant No.3 Shalini Kishore, in execution of the sale deeds of

the property in favour of the defendant No.1 Royal Orchids; (xiii) that the sale deeds in favour of the defendant No.1 Royal Orchids are illegal and do not create any right in the property and the defendant No.1 Royal Orchids is not entitled to have the property mutated in its name in the records of the defendant No.5 Municipal Corporation of Delhi (MCD); (xiv) that the plaintiff has also communicated to the defendant No.4 Delhi Development Authority (DDA) that no conveyance deed of freehold rights in land underneath the property be executed in favour of any other person; (xv) that the defendants No.1 to 3 i.e. Royal Orchids, Ankur Sachdeva and Shalini Kishore have not communicated to the plaintiff the benefits earned from the property of the plaintiff and the plaintiff assesses the said benefits at Rs.50 lakhs.

2. The following reliefs have been claimed in the suit (a) cancellation of Sale Deed dated 21st July, 2008 executed by defendant No.3 Shalini Kishore in favour of the defendant No.1 Royal Orchids; (b) cancellation of Sale Deed dated 21st July, 2008 executed by defendant No.2 Ankur Sachdeva in favour of the defendant No.1 Royal Orchids, both pertaining to plot No.5/28 and 5/29, Saraswati Marg, Karol Bagh, New Delhi; (c) declaration of the aforesaid Sale Deeds as illegal; (d) mandatory injunction directing the defendants to hand over the keys and physical and vacant possession of the property aforesaid to the plaintiff; (e) permanent injunction restraining the defendants No.1 to 3 from dealing with the property aforesaid; (f) recovery of *mesne* profits of Rs.50 lakhs; (g) mandatory injunction restraining the defendant No.4 DDA from executing conveyance deed of freehold rights in land underneath the property in favour of the

defendant No.1; and, (h) mandatory injunction restraining the defendant No.5 MCD from mutating the property in favour of the defendant No.1 Royal Orchids.

3. The suit is stated to have been instituted on 14th February, 2011 and came up before this Court first on 11th March, 2011 and thereafter on 6th April, 2011 when though summons of the suit were ordered to be issued but no *ex-parte* relief sought granted. However, vide subsequent order dated 25th April, 2011, *status-quo* qua title and possession of the property was ordered to be maintained.

4. The defendant No.1 preferred FAO(OS) No.274-75/2011 against the order dated 12th May, 2011 denying the interim order but which was disposed of on 24th May, 2011 with a direction for expeditious disposal of all pending applications.

5. Vide order dated 8th May, 2012, the application of the plaintiff under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC) was dismissed and FAO(OS) No.397/2012 preferred by the plaintiff thereagainst was dismissed as withdrawn.

6. The suit since then has languished, with several applications being filed.

7. On 24th January, 2018, the Legal Representatives (LRs) of the plaintiff were substituted in place of the plaintiff. It was the contention of the counsel for the defendants No.2&3 on that date that the plaintiff, merely claimed an Agreement to Sell in his favour and on the basis thereof was not entitled to seek the reliefs claimed in the suit and the remedy, if any of the plaintiff was to sue for specific

performance of the Agreement to Sell in his favour. On request of the counsel for the plaintiff, the hearing was adjourned to today.

8. Today, the counsel for the plaintiff states that the wife and son of the deceased plaintiff and who are now the present plaintiffs and who are resident of Bombay, be directed to appear in this Court so that the matter can be settled. It is stated that the plaintiff would be satisfied on the defendants paying some compensation to the plaintiff.

9. The suit has already remained pending for the last eight years and when the counsel for the plaintiff is appearing, the need to direct the personal presence of the LRs of the plaintiff as sought is not felt.

10. I have perused the documents filed by the plaintiff and find (I) the Agreement to Sell dated 29th October, 1981 by R.K. Mehra in favour of Amar Singh Sawhney and the plaintiff to be for a total sale consideration of Rs.2.50 lakhs and out of which a sum of Rs.51,000/- was paid at the time of execution of the Agreement to Sell and the balance sale consideration of Rs.1,99,000/- was agreed to be paid by Amar Singh Sawhney and the plaintiff as purchasers to R.K. Mehra, at the time of registration of the sale deed, to be executed within thirty days of R.K. Mehra giving written information to Amar Singh Sawhney and plaintiff that he had received all consents, no objection and clearances required for execution of the sale deed; (II) the Agreement to Sell dated 29th October, 1981 by R.K. Mehra in favour of Amar Singh Sawhney and the plaintiff to be recording that R.K. Mehra had put Amar Singh Sawhney and plaintiff as purchasers in vacant possession of staircase/passage, one room on ground floor

opening on the service lane side and entire terrace of the building in the property and that the property was occupied by tenants, details of whom were given in the Schedule to the Agreement; (III) the Agreement to Sell dated 29th October, 1981 by R.K. Mehra in favour of Amar Singh Sawhney and the plaintiff to be recording that the past dues of the property on account of misuse were to be borne by R.K. Mehra as seller; (IV) R.K. Mehra to have also executed and registered a Will of the property in favour of Amar Singh Sawhney and the plaintiff; (V) R.K. Mehra having also executed a registered Power of Attorney with respect to the property in favour of the son of Amar Singh Sawhney and wife of the plaintiff; (VI) Amar Singh Sawhney having signed a confirmation dated 15th January, 1987 of assignment of his rights under the Agreement to Sell dated 29th October, 1981 executed by R.K. Mehra, in favour of the plaintiff.

11. Though the plaintiff has not filed any document of payment of balance sale consideration as pleaded but even if it were to be believed that the plaintiff has paid the balance sale consideration under the Agreement to Sell, the fact remains that the plaintiff is merely an agreement purchaser and has no sale deed in his favour.

12. Though the Division Bench of this Court in **Asha M. Jain Vs. Canara Bank** (2001) 94 DLT 841, taking note of the manner in which properties were being transferred in Delhi, had construed the documents such as Power of Attorney, Will, Agreement to Sell, as executed by R.K. Mehra, as documents of title of immoveable property but Supreme Court in **Suraj Lamp & Industries Pvt. Ltd. Vs.**

State of Haryana (2009) 7 SCC 363 and (2012) 1 SCC 656 set aside the said judgment of the Division Bench and unequivocally held that the same do not constitute title to the property.

13. Even otherwise, a mere Agreement to Sell does not constitute any title to the property as held in *Samarjit Chakravarty Vs. Tej Properties* 2014 SCC OnLine Del 3809, *Cement Corporation of India Ltd. Vs. Life Insurance Corporation of India* 2014 SCC OnLine Del 4536, *Bharat Wadhwa Vs. Sushma Arora* 2013 SCC OnLine Del 2448 (DB) and *Sunil Kapoor Vs. Himmat Singh* 167 (2010) DLT 806.

14. As far as the plea of the plaintiff, of having been put in possession of a part of the property is concerned, and which would be in part performance of the Agreement to Sell, the counsel for the plaintiff, on enquiry, whether the plaintiff is still in possession of the said part of the property, states that though the plaintiff was in possession till the institution of the suit but has thereafter been dispossessed and no action has been taken by the plaintiff with respect to his dispossession from the property. It is thus also not as if the possession of the plaintiff in part performance of the Agreement to Sell in writing exists. Moreover, even if it were to be otherwise, Section 53A of the Transfer of Property Act, 1882 only restrains the transferor from enforcing against the transferee in possession a right other than the right expressly provided in the Agreement. The present is not a proceeding where the plaintiff as transferee is resisting any right by the defendants as assignee of the transferor but a case where

the plaintiff is seeking to invalidate the title in the property of the defendants, presuming himself to be the owner of the property. The plaintiff, as aforesaid, has no ownership right in the property.

15. The contention of the counsel for the defendants No.2&3 on 24th January, 2018 that the remedy, if any of the plaintiff was to sue for specific performance and in which *prima facie* merit was found on 24th January, 2018 is meritorious and the plaintiff, without having any title in himself in the property, has no locus to invalidate the title of the defendants No.1 to 3.

16. I may in this regard also mention Section 19(b) of the Specific Relief Act, 1963 which entitles specific performance of an Agreement to Sell against a person claiming a title arising subsequent to the Agreement to Sell in favour of the plaintiff. Thus, the only remedy which the plaintiff could have had against the defendant No.1, in whose favour admittedly a title to the property exists, according to the plaintiff of a date after the Agreement to Sell with the plaintiff, was / is of joining the defendant no.1 in the suit for specific performance, if were to make such a claim. The plaintiff, till has a document of title in his favour, cannot challenge the title of defendant no.1. Allowing the plaintiff to do so would amount to plaintiff, though unwilling to have a title in his favour, being allowed to challenge title of defendant no.1 to the property.

17. The suit was thus not maintainable on the date of institution thereof and remains so today and is dismissed as not maintainable.

18. The plaintiff having vexed the defendants with a misconceived vexatious litigation, is also burdened with costs of Rs.2 lakhs, payable to the defendant No.1 Royal Orchids.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MARCH 16, 2018

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