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

\+ CS(OS) 87/2016 & IA No.2993/2016 (u/O XXXIX R-1&2 CPC)

DWARKA PRASAD ..... Plaintiff

Through: Mr. Molvi Aijaz Hussain, Adv.

Versus

MEENU TAPARIA & ORS ..... Defendants

Through: Mr. Kumar Vikram, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **03.05.2018**

1. The plaintiff, as per amended plaint dated 29th February, 2016, has instituted this suit for i) declaration that the plaintiff is the absolute owner in possession of property No.IX/6202, Jain Mandir, Gali No.1, Gandhi Nagar, Delhi constructed on a plot of approximately 30 sq. yds., with a shop on the ground floor and one room set on the first and second floors with terrace; ii) cancellation of Sale Deeds dated 13th May, 2011 and 21st August, 2013 and in the alternative for a decree for redemption of mortgage; and, iii) injunction restraining the defendants viz. i) Meenu Taparia, ii) Shiv Ratan Taparia, and, iii) Prem Lata Daga from creating any third party interest in the property on the basis of the Sale Deeds aforesaid.

2. Though the suit was listed before this Court on 19th February, 2016 but the counsel for the plaintiff stated that there were some typographical errors in the plaint and he intended to move an application under Order VI Rule 17 of the CPC.

3. The suit was adjourned and finally on 2nd March, 2017 the application for amendment was allowed and the amended plaint as aforesaid taken on

record and registered as a suit and summons issued to the defendants.

4. The three defendants have filed a joint written statement and the suit is ripe for framing of issues.

5. The counsel for the plaintiff states that the parties be referred to mediation.

6. The counsel for the defendants states that there is no possibility of settlement.

7. The file has been perused for framing of issues.

8. The plaintiff has instituted this suit pleading i) that he is the absolute owner of the property aforesaid; ii) that in or about the year 2011, the plaintiff was in need of funds; the defendants were acquainted with the plaintiff and the plaintiff approached the defendants for a loan of Rs.3.25 crores; iii) that the defendants agreed to advance the said amount with the proposal that the plaintiff mortgage the suit property with the defendants and which could be redeemed on repayment of loan; iv) that the defendants also demanded interest at Rs.6.50 lacs per month i.e. at the rate of 2% per month; v) that the plaintiff was under the impression that the defendants would resort to mortgage by deposit of title deeds and that would not involve unnecessary expenditure and completion formalities otherwise required; vi) that instead, when the plaintiff wanted a loan of Rs.1 crore initially, the defendants came out with a proposal that the plaintiff executes a Sale Deed in respect of the ground floor shop and also executes Sale Deeds in respect of upper two floors when he receives the balance amount of Rs.2.25 crores; vii) that since the plaintiff was in great need of funds and had no time to explore loan from any other party, he executed Sale Deed dated 13th May,

2011 in respect of ground floor shop and thereafter executed Sale Deed dated 21st August, 2013 of the upper two floors and got the two Sale Deeds registered; viii) that the plaintiff continued to pay interest at Rs.6.50 lacs per month to the defendants; ix) that since there was a mortgage and actually admitted to be so by the defendants, the possession of the property remained with the plaintiff who had let out the premises and had continued receiving rent from the tenants; x) that as per arrangement, an Agreement dated 21st August, 2013 was also executed, affirming receipt of factum of loan by the plaintiff and repayment thereof with interest as above; xi) that the plaintiff found it a great burden to make arrangements to repay the loan and to continue to pay Rs.6.5 lacs per month; the plaintiff approached the defendants with a proposal that the plaintiff may sell out the property and discharge the entire loan amount; the plaintiff negotiated the sale of the property with one Sh. Prabhjot Singh Chhabra and an Agreement dated 12th May, 2014 was executed between Sh. Prabhjot Singh Chhabra and the defendants for sale of the property for Rs.6.75 crores and earnest money of Rs.70 lacs was paid by Sh. Prabhjot Singh Chhabra at the time of execution of the Agreement and which amount was received by the defendants as part payment of the principal amount; xii) that it was further agreed that the plaintiff would not be liable for further interest and the balance amount of Rs.2.55 crores payable by Sh. Prabhjot Singh Chhabra would be paid to the defendants in complete discharge of the loan liability and the Sale Deed would be accordingly executed in favour of the said Sh. Prabhjot Singh Chhabra; xiii) that Sh. Prabhjot Singh Chhabra could not complete the sale and failed to perform his part of the Agreement dated 12th May, 2014 and the earnest money of Rs.70 lacs was forfeited and the Agreement with Sh. Prabhjot Singh Chhabra lapsed; xiv) that the plaintiff thereafter made alternate arrangements and approached the defendants offering Rs.2.55 crores and for release of the mortgage by execution of documents; xv) that however the defendants kept on delaying the matter; xvi) that the plaintiff finally got issued a legal notice dated 10th December, 2015 to the defendants and in the reply dated 21st December, 2015, the defendants though admitted that the possession of the property remained with the plaintiff as in fact a formal mortgage agreement was entered into but falsely asserted that the plaintiff had not paid any interest even from 1st June, 2014; xvii) that the defendants, in the said reply also falsely asserted that earnest money of Rs.70 lacs from Sh. Prabhjot Singh Chhabra was received by the plaintiff; xviii) that the plaintiff was pressurized into agreeing to pay huge amount of Rs.6.50 crores; and, xix) that in January, 2016, the plaintiff orally requested the defendants to receive balance amount of Rs.2.55 crores and release the mortgage but the defendants became adamant and threatened to create third party interest in the property.

9. The plaintiff has valued the suit as under:

> "21. That the value of the suit for purposes of court fee and jurisdiction is as following:-
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> (a) The suit is valued for the pecuniary jurisdiction is Rs.3.25 Crores (Rupees Three Crores & Twenty-Five Lakhs). That the valuation of the suit for the relief of declaration and permanent injunction and redemption is Rs.24,10,000/- and Rs.130/- and Rs.200/- respectively. The pecuniary jurisdiction of this suit is Rs.3.25 Crores (Rupees Three Crores & Twnety-Five Lakhs) but for the relief of redemption the valuation of suit is Rs.200/-.

Therefore the plaintiff is no need to pay court fees on Rs.3.25 Crores (Rupees Three Crores & Twenty-Five Lakhs) at this stage. The plaintiff undertakes to pay the court fees on loan amount / redemption amount / decreetal amount at the time of the passing of Preliminary decree as per directions of the court on the amount fixed by the Hon'ble court.

(b) The suit is valued for the relief of declaration with the consequential relief of cancellation of the so called sale deeds dated 13/05/2011 & 21/08/2013 is Rs.10,80,000/- and Rs.13,30,000/- respectively and ad valorem court fees Rs.12,884.8 and 15,324.8 has been paid respectively.

(c) The suit is valued for the relief permanent prohibitory injunction in respect of the suit property is 130/- on which ad valorem court fee under section 7(iv) has been paid i.e., Rs.13/-;

(d) A decree of injunction may be pass in favour of the plaintiff and against the defendant thereby restraining the defendants to create any third party interest in the suit property on the basis of sale deed executed in favour of the defendant.

(e) In the alternative Claim for redemption of mortgage is valued at Rs.200/- on which ad valorem court fee Rs.20/- is paid and plaintiff further under takes to pay the court fee if any deficient is there."

10. The plaintiff, along with the plaint has filed before this Court copies of a) Sale Deeds dated 13th May, 2011 and 17th August, 2013, b) Agreement dated 1st August, 2013, c) Agreement dated 21st August, 2013, d) Agreement dated 12th May, 2014, and, e) copies of the notice dated 10th December, 2015 and reply thereto dated 21st December, 2015.

11. The defendants, in their written statement have pleaded i) that there is no transaction of mortgage between the plaintiff and the defendants and the transaction between the plaintiff and the defendant is of sale by the plaintiff of the property to the defendants; ii) that the plaintiff, after execution of the Sale Deeds, has no right to redeem, having already absolutely conveyed all his right, title and interest in the property in favour of the defendants; iii) that the Sale Deeds executed by the plaintiff do not recite any other transaction and the transaction subject matter of the Sale Deeds is of sale alone; iv) that the suit is barred by time and has been filed after five years of the date of execution of the Sale Deeds; v) that the plaintiff, though received earnest money of Rs.70 lacs from Sh. Prabhjot Singh Chhabra, but handed over only Rs.36 lacs to the defendants with promise to pay the balance with interest within one month and which was never paid; and, vi) that the two Sale Deeds executed by the plaintiff in favour of the defendants with respect to the property subject matter of the suit are not found to contain any clause for re-conveyance and are otherwise found to have divested the plaintiff of any right in the property and to have vested in the defendants all the rights, titles, interest and share of the plaintiff in the property.

12. The counsel for defendants contends, that the counsel for the plaintiff has also not drawn attention to any clause in the Sale Deeds which may suggest that the transaction therein is anything else than of absolute conveyance of right, title, interest and share of the plaintiff in the property to the defendants; that the Agreement dated 1st August, 2013, copy of which has been filed by the plaintiff, has been executed by the plaintiff in favour of the defendant no.2 Shiv Ratan Taparia of sale of first and second floors with

terrace of the property; that similarly the Agreement dated 21st August, 2013 filed by the plaintiff is of Agreement by the plaintiff to sell to the three defendants of the entire property; that though it is inexplicable as to why the aforesaid agreements were executed inasmuch as the Sale Deeds executed by the plaintiff in favour of the defendants no.1 to 3 are of earlier date i.e. 13th May, 2011 and 17th August, 2013 and the plaintiff has not made any pleadings in this respect; and, that the Agreement dated 12th May, 2014, copy of which has been filed, is by the three defendants to sell the property aforesaid to Sh. Prabhjot Singh Chhabra and is in consonance with the Sale Deed dated 13th May, 2011 earlier executed by the plaintiff in favour of defendants no.1 to 3.

13. I have enquired from the counsel for the plaintiff as to how on the aforesaid pleas, the present suit is maintainable.

14. Though the counsel for the plaintiff could not give any answer prior to lunch but since lunch intervened, this order could not be dictated immediately and the matter was kept post lunch. Post lunch, the counsel for the plaintiff states that he is not the main counsel and the main counsel is Mr. Himal Akhtra who is unwell.

15. The plaintiff, it appears has already flogged this suit which has no legs to stand on, for the last two years and the suit cannot be kept pending by the counsel for the plaintiff who is not even bothered to have proper representation before this Court.

16. The counsel for the plaintiff now states that he is ready to argue and has contended that from the Agreement dated 21st August, 2013, it is clear that the transaction between the parties was of mortgage and not of sale.

Attention is also invited to Article 58 of the Schedule to the Limitation Act, 1963 to contend that the suit is within limitation.

17. I have enquired from the counsel for the plaintiff that even if the Agreement dated 21st August, 2013 was to be given any credence, ignoring Section 92 of the Evidence Act, 1878 inasmuch as the Agreement dated 21st August, 2013 is unregistered while the Sale Deeds are registered, even then the fact remains that the plaintiff has not sued for redemption of mortgage though in the prayer paragraph, in the alternative, redemption of mortgage is sought but without the suit being in compliance of a mortgage suit and having the requisite pleas and without valuing the suit for the purpose of court fees and jurisdiction as the suit for redemption of mortgage.

18. The counsel for the plaintiff states that the plaintiff may be directed to deposit the deficient court fees.

19. It is for the plaintiff to compute the appropriate court fees on the relief and to deposit the same and the plaintiff cannot make an attempt to hoodwink the Court and cannot be permitted to take a chance on the said attempt being defeated. It is not deemed appropriate to grant an opportunity to the plaintiff to pay the deficient court fees inasmuch as the defect is not only of deficiency in court fees but also of deficiency in pleadings. It is further inexplicable as to why, if the plaintiff is entitled to the relief of redemption of mortgage, the relief of cancellation of Sale Deeds has been claimed. To say the least, the plaintiff has instituted this suit mindlessly and such mindlessness cannot be permitted to be perpetuated.

20. The plaint is thus rejected.

21. Needless to state that if there is a properly instituted suit before this Court, the plaintiff shall be entitled to maintain the suit.

No costs.

RAJIV SAHAI ENDLAW, J

MAY 03, 2018
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