

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

% Judgment delivered on: 03rd January, 2018

+ CS(OS) 1097/2011

GAMESH MATHUR & ORS. Plaintiffs

versus

PREM ALIAS PREMVATI & ORS. Defendants

Advocates who appeared in this case:

For the Plaintiffs	:	Mr Anand Yadav and Ms Anita Tomar
For the Defendants	:	None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. The Plaintiff seek specific performance of the Agreement to Sell dated 24.12.2010 executed between the Plaintiffs and Defendants in respect of Defendants 3/4th share in land measuring 31 bighas 18 biswas comprising in Khasra No.11/6 (1-18), 11/15 (4-9), 11/16 (4-5), 11/25 (4-5), 12/11 (1-10), 12/201 (4-3), 12/21 (4-16), 12/22 (4-0), 28/1/1 (2-06) and 28/1/2 min. (0-06) situated in the revenue estate of Village Jat Khore, Delhi (hereinafter referred to as the Suit Land).

2. The Plaintiffs had initially sought specific performance against three Defendants. During pendency of the suit, Defendant Nos. 1 & 2 (i.e. Smt Premvati and Shri Arun Nain) settled the disputes with the

Plaintiffs and accordingly, a sale deed was executed of one-half share of Defendant Nos. 1 & 2 (i.e. 1/4th share each) in the subject properties in favour of the Plaintiffs. It may be noticed that the Plaintiffs paid an amount of Rs.10 lakhs to Defendant Nos.1 & 2 over and above the amount agreed in the Agreement to Sell. In terms of the settlement, a decree was passed in favour of the Plaintiff qua Defendant Nos. 1 and 2 on 23.11.2011.

3. The suit thereafter proceeded solely against Defendant No. 3 (i.e. Smt. Sushma wife of Shri Bhagwan Singh Mann). Defendant No.3, despite opportunities, failed to file written statement and accordingly right of Defendant No.3 to file written statement was closed on 15.01.2013. Even though right of Defendant No.3 to file the written statement was closed by order dated 02.08.2013, the Plaintiffs were directed to lead evidence and an opportunity to cross-examine was given to Defendant No.3.

4. Plaintiffs, in support of their case, produced eight witnesses (PW – 5 & PW – 6 is the same witness i.e. Smt Shashi Bedi, Deputy Manager, State Bank of India, Khanjawala). Apart from Smt. Shashi Bedi, Plaintiffs produced seven other witnesses, who were recorded as PW – 1 to PW – 4 and PW – 7 to PW – 9.

5. The witnesses of the Plaintiffs, through their testimony have duly proved the following documents:

S.No.	Name/Designation of witness	Document proved /Affidavit & page no.	Evidence date and page no.
PW-1	Shri Ajay Kumar, Plaintiff No. 2	Exhibit no.PW-1/A to PW-1/11	08.05.2014, 09.06.2014 pg.39,40 Part I
PW-2	Shri Vinod Kumar, Assistant, Delhi State Cooperative Bank, Karala	Ex PW-2/1 (Colly.), account of Plaintiff No. 1. (Pg. 76 PART III)	16.09.2014 pg.41 Part I
PW-3	Shri Ashutosh Kumar Singh, Branch Manager, Corporation Bank, Kanjhawala.	Exhibit PW-3/1 account of Plaintiff No. 2 (Pg. 83 PART III)	16.09.2014 pg.42 Part I
PW-4	Shri Rajveer Singh, Assistant, State Bank of India, Majra Dabas	Exhibit PW-4/1 account of Smt. Raj Bala. (Pg. 84 PART III)	16.09.2014 pg.43 Part I
PW-5	Smt. Shashi Bedi, Deputy Manager, State Bank of India, Kanjhawala.	Exhibit PW-5/1 account of Plaintiff No. 2 (Pg. 88 PART III)	16.09.2014 pg.44 Part I
PW-6	Smt. Shashi Bedi, Deputy Manager, State Bank of India, Kanjhawala.	Exhibit PW-6/2 and PW-6/1 account of Plaintiff No. 2 & 3. (Pg. 46, 50 PART I)	26.02.2015 pg.45 Part I
PW-7	Shri P K Gupta, Assistant, State Bank of India, Majlis Park.	Exhibit PW-7/1 account of Smt. Namita Chaudhary. (Pg. 52 PART I)	26.02.2015 pg.51 Part I
PW-8	Ms. Namita Chaudhary, sister-in-law of Plaintiff No. 3.	Exhibit PW-8 (Pg.55 PART I)	11.12.2015, 18.05.2015 pg.62, 65 Part I
PW-9	Ms. Rajbala Dabas, Mother of Plaintiff No. 3	Exhibit PW-9 (Pg.59 PART I)	11.12.2015, 18.05.2015 pg.63, 68 Part I

6. None appeared for Defendant No.3 on 10.08.2017. Defendant No.3 was proceeded *ex parte*, final arguments heard and judgment reserved.

7. The Plaintiff has deposed that Shri Umed Singh was owner of the Suit Land measuring 31 Bighas 18 Biswa in Village Jat Khor, Delhi. He left behind a Will dated 22.04.2009 in favour of his wife Smt. Premvati (Defendant No. 1) Smt. Premvati executed Agreement to Sell dated 03.02.2010 (Exhibit PW – 1/1) in favour of Plaintiffs and received an amount of Rs.25 lakhs as advance money/bayana. As mutation proceeding were pending, her children Defendant Nos. 2 and 3 and one Shri Sudhir executed Affidavit stating that they have no objections of sale of land by their mother. Affidavit of Defendant No. 3 has been exhibited as Exhibit P – 3.

8. It has been further deposed that there was some dispute in respect of mutation and therefore land was mutated in the name of Defendant Nos. 1 to 3 and Shri Sudhir. A fresh Agreement to Sell dated 24.12.2010 (Exhibit P – 4) was executed between Plaintiffs and Defendants Nos. 1 to 3 in respect of 3/4th share of land. The consideration amount was Rs. 2,06,18,778/- and amount of Rs.25 lakhs was paid as advance money/bayana. The earlier Agreement to Sell dated 02.03.2010 (Exhibit PW 1/1) was terminated and with consent of parties, payments made were adjusted in fresh agreement.

The agreement records that Defendant no. 2 and 3 admit that they have received their share amount from their mother. The period for completion of the transaction was fixed at 30 days from the date of issue/obtain of NOC from concern authority. The Defendants were to complete all formalities for completion of said sale and to obtain NOC and other permissions on receipt of which they were to inform the Plaintiffs through registered post and thereafter signed and execute the documents.

9. It is stated that Plaintiffs on or about 27.12.2010 handed over duly signed applications/forms for obtaining NOC. No information was received from the Defendants about the receipt of NOC. Plaintiffs issued notice dated 09.04.2011 (Exhibit P – 1) to Defendants which was duly served (Exhibit P – 2). Without prejudice to terms and conditions of agreement, Defendants were called upon to sign the application form so that Plaintiffs could apply for NOC to complete the transaction. Plaintiffs approached the Defendants on 24.04.2011 but they refuse to give information in respect of NOC and also refused to sign application/form for NOC. On 29.04.2011, Plaintiffs received information that Defendants were contacting and visiting property dealers to sell the said land.

10. Plaintiffs informed the Defendants that they were ready and willing to perform their part of agreement and were ready and willing to pay the balance amount of sale consideration. On failure of the

Defendants to perform their part of the agreement, the Plaintiffs filed the present Suit seeking specific performance of Agreement to Sell dated 24.12.2010 (Exhibit P – 4).

11. As noticed above, Defendant no. 1 and 2 settled the disputes with the Plaintiffs and on 23.11.2011, Suit was decreed qua them. Plaintiffs paid an amount of Rs.10 lakhs to Defendant Nos. 1 and 2 over and above the agreed amount. On 18.06.2012, Defendant Nos. 1 and 2 are stated to have executed sale deed of ½ share in favour of nominees of Plaintiffs in terms of settlement and order dated 23.11.2011 and amount of Rs.1,47,45,000/- was paid to them.

12. Defendant No. 3 admitted the Agreement to Sell dated 24.12.2010 (which has been exhibited as Exhibit P – 4), notice dated 09.04.2011 (which has been exhibited as Exhibit P – 1), A.D. Card of notice dated 09.04.2011 (which has been exhibited as Exhibit P – 2) and her affidavit dated 02.03.2010 (which has been exhibited as Exhibit P – 3).

13. By admitting the Agreement to Sell dated 24.12.2010 (Exhibit P – 4), notice dated 09.04.2011 (Exhibit P – 1), Affidavit dated 03.02.2010 (Exhibit P – 3), Defendant No. 3 has admitted the Suit land to be sold, consideration amount of the Suit land and the amount received by her as earnest money and her obligation to obtain NOC. Defendant No. 3 has failed to file any written statement or rebut the evidence produced by the Plaintiffs.

14. The Plaintiffs have duly proved the execution of the Agreement to sell. They have established the description of the Suit Land and that they were and are ready and willing to perform their part of the obligation. They have established through the testimony of the Witnesses, that they had and still have sufficient funds available to meet their obligations under the Agreement to Sell. They have established that they had approached the Defendant No. 3 requiring her to perform her part of the obligation of obtaining NOC and transfer of her share in their favour and that the Defendant No. 3 failed to perform her part of the contract and is in breach of the Agreement to Sell.

15. The 1/3rd Share of Defendant No. 3 in the sale consideration comes to Rs. 68,72,926/- out of which she has received Rs. 8,33,333/- being 1/3rd of the earnest money deposit of Rs. 25,00,000/-, paid under the Agreement to Sell. The balance thus payable is Rs.60,39,593/-. Accordingly, Defendant No. 3 is liable to be directed to perform her part of the Agreement. As noticed above, Plaintiff had paid a sum of Rs.10,00,000/- to Defendant 1 and 2 over and above, the agreed amount in terms of the settlement at the time of execution of the sale deed on 18.06.2012. Record reveals that Plaintiffs even approached Defendant No. 3 for amicable settlement, however, there was no response from her side. Even though, Defendant No. 3 has been found to be at fault and in breach of the agreement to sell, keeping in view that substantial time has elapsed and property prices

have risen and the fact that the Plaintiffs paid a sum of Rs. 10,00,000/- to Defendants 1 and 2 over and above the agreed price, it would be expedient to direct the Plaintiffs to pay a sum of Rs. 10,00,000/- over and above the balance sale consideration of Rs. 60,39,593/-.

16. In view of the above, a decree of specific performance is passed in favour of the Plaintiffs and against the Defendant No. 3 directing specific performance of Agreement to Sell dated 24.12.2010 (Exhibit P – 4). Defendant No. 3 is directed to obtain NOC for transfer of her 1/3rd share of the land measuring 31 bighas 18 biswas comprising in Khasra No.11/6 (1-18), 11/15 (4-9), 11/16 (4-5), 11/25 (4-5), 12/11 (1-10), 12/201 (4-3), 12/21 (4-16), 12/22 (4-0), 28/1/1 (2-06) and 28/1/2 min. (0-06) situated in the revenue estate of Village Jat Khore, Delhi. After obtaining NOC, Defendant No. 3, simultaneously with receipt of a sum of Rs. 70,39,593/- (i.e. Rs. 60,39,593/- + Rs. 10,00,000/-) is directed to execute and register appropriate Sale Deed to transfer her 1/3rd share in the Suit Land in favour of the Plaintiffs or their nominee.

17. Suit is decreed in the above terms with costs. Decree Sheet be drawn up accordingly.

SANJEEV SACHDEVA, J

JANUARY 03, 2018

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