

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

+ **RFA No. 880/2018**

% **29th October, 2018**

KARU PASWAN Appellant

Through: Mr. Akhilesh Singh, Advocate
(Mobile No. 7248517989).

versus

CHANDRAVATI & ORS Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 44920/2018 (for exemption)

1. Exemption allowed, subject to just exceptions.

C.M. stands disposed of.

C.M. Appl. Nos. 44919/2018 (for delay in filing) and 44922/2018 (for delay in re-filing)

2. For the reasons stated in the applications the delays of 91 days in filing the appeal and 55 days in re-filing the appeal stand condoned, subject to just exceptions.

C.Ms. stand disposed of.

RFA 880/2018 and C.M. Appl. No. 44921/2018 (for stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no. 2 in the suit impugning the Judgment of the Trial Court dated 27.01.2017 by which the trial court has decreed the suit for specific performance filed by the respondent no. 1/plaintiff.

4. The facts of the case are that the subject suit was filed by the respondent no. 1/plaintiff for specific performance qua the property bearing nos. 1 and 2, area measuring 50 sq. yards out of khasra no. 44/1, situated in Village Madanpur Dabas, Colony Bhagya Vihar, Phase II, Delhi, with respect to which the Agreement to Sell dated 17.12.2012 was executed by respondent no. 2/defendant no. 1 in favour of the respondent no. 1/plaintiff. The total sale consideration for the said property was Rs.5,00,000/-. The case of the respondent no.1/plaintiff was that the entire consideration of Rs.5,00,000/- was paid by her and she also received possession of the suit property, and on 20.04.2013 respondent no. 1/plaintiff additionally paid an amount of Rs.1,00,000/- to respondent no. 2/defendant no. 1 for construction of the boundary wall, the said boundary wall was completed, but on

02.12.2015 when the respondent no. 1/plaintiff along with her husband went to the suit property it was found that one person Sh. Angad was looking after the property and carrying on the construction. The subject suit for specific performance was therefore filed.

5. There were three defendants in the suit being respondent no. 2/defendant no.1(original owner)/, appellant/defendant no. 2 and respondent no. 3/defendant no. 3. The appellant/defendant no. 2 and respondent no. 3/defendants No. 3 were impleaded as being subsequent purchasers. The right of the defendants in the suit to file the written statement was closed vide Order dated 06.09.2016 and which order has become final. I may also note that even in this appeal there is no specific prayer made for setting aside of the order dated 06.09.2016 by which right of the defendants to file written statement was closed and no grounds were pleaded for setting aside the order dt. 06.09.2016.

6. The Trial court framed the flowing issues:-

“(i) Whether the plaintiff is entitled for a decree of specific performance of agreement to sell dated 17.12.2012? OPP.

(ii) Whether the plaintiff is entitled for decree of possession of the suit property in question, as prayed for?

(iii) Whether the plaintiff is entitled for a decree of permanent injunction restraining the defendants from selling, transferring, alienating and creating third party interest with regard to the suit property in question? OPP.

(iv) Whether the plaintiff is entitled for a decree of declaration that documents executed by defendant no. 1 in favour of defendants no. 2 & 3 are null and void? OPP.

Alternate prayer with regard to the issue of specific performance and declaration:

(v) Whether the plaintiff is entitled for recovery of Rs. 5 Lakhs as well as Rs. 1 Lakh towards penalty from defendant no. 1 alongwith interest? OPP.

(vi) Any other relief.”

7. The Respondent no. 1/plaintiff led evidence and proved her case and documents executed by the respondent no. 2/defendant no. 1 in her favour as Ex. PW1/4 (colly.). The respondent no. 1/plaintiff as PW-1 was cross-examined on behalf of the defendants in the suit, and these aspects are recorded in para 6 of the impugned judgment which reads as under:-

“6. Plaintiff examined herself as PW-1 and relied upon documents i.e. ID card Ex. PW1/2, copy of title documents of defendant no. 1 Ex. PW1/3, copy of title documents executed by defendant no. 1 in favour of plaintiff Ex. PW1/4 (colly) & site plan Ex. PW1/5.

Except the above, PW-1 has reiterated all the facts during his examination in chief as alleged in the plaint and the same are not repeated here for the sake of brevity.

This witness has been cross examined on behalf of the defendants on law points only. During cross-examination, it is stated by

PW-1 that a person namely Kalu-defendant no. 1 is residing in the suit property in question. She has further volunteered that at the time of purchase of the plot, it was vacant. It is stated that she purchased the plot measuring 50 sq. yards. It is stated by PW-1 that possession of the suit property in question at present is with Kalu.”

8. The trial court has decreed the suit by observing that the respondent no. 1/plaintiff proved her case, and also proved her documents, and since as stated above right of the defendants in the suit to file written statement was closed, therefore no evidence was led on behalf of the defendants including the appellant/defendant no. 2. In such a scenario I do not find any illegality in the impugned judgment decreeing the suit once the respondent no. 1/plaintiff proved her case as also the documents relied upon and there is no counter evidence on behalf of the defendants including the appellant/defendant no. 2.

9. There is no merit in the appeal and the same is hereby dismissed.

OCTOBER 29, 2018

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VALMIKI J. MEHTA, J