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

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Judgment delivered on: 25.09.2019

+ C.R.P. 118/2019

RAKESH GOEL

..... Petitioner

versus

HIRA LAL (NOW DECEASED) & ANR Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajinder Pal Singh, Advocate.

For the Respondent: Mr. Puneet Kumar Rai with Mr. Neeraj Kumar Shah, Advocate
for respondent No.1 with respondent No.1 in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

C.R.P. 118/2019 & CM APPL.24052/2019 (stay)

1. Petitioner impugns order dated 11.03.2019, whereby, the application of the petitioner/defendant under Order XII Rule 6 CPC has been dismissed.

2. Subject Suit was filed by one Sh. Hira Lal, the predecessor of respondent No.1 and respondent No.2 for possession and injunction against the petitioner with regard to a piece of land measuring 52 sq. yards out of Plot No.R-137 situated in Abadi known as Rishab Nagari, Village Dhirpur.

3. It was contended in the plaint that the suit property was part of a plot

measuring 250 sq. yards and had been purchased by the plaintiff by virtue of a sale deed. It was specifically contended that the plaintiffs were the owners of the suit property measuring 52 sq. yards out of plot No.137 for which an award had been made but possession had not been taken consequent to the land acquisition proceedings.

4. It was contended that the plaintiffs were in actual ownership and possession of the plot which was unconstructed. As per the plaint, in January 2004, when the plaintiffs visited the property, they found that someone had started raising construction.

5. It was contended that the defendant i.e. the petitioner had illegally and unauthorizedly dispossessed the plaintiffs and started raising construction.

6. Subject application under Order XII Rule 6 CPC was filed by the petitioner/defendant contending that during pendency of the suit, it transpired that one day prior to the institution of the suit, the original plaintiff had sold the property and had ceased to have any right, title and interest in the suit property.

7. It is contended that in terms of the Agreement to Sell executed by the plaintiffs, they had specifically stated that all their right, title and interest in the property stood transferred to one Mr. Manoj Kumar Sharma and he was substituted after the demise of Mr. Hira Lal, the original plaintiff No.1.

8. It is contended by learned counsel for the petitioner that there is an admission by the respondents/complainants that they have no right, title or

interest in the subject property and as such, they have no right to institute the suit for possession and accordingly, the suit was liable to be dismissed on admission under Order XII Rule 6 CPC.

9. By the impugned order, the Trial Court has held that that there was no admission on the part of the plaintiffs which could entitle the defendant/petitioner for dismissal of the suit as filed. The Trial Court had noticed that the claim of the plaintiffs was that they are the owners of the suit property and the claim of Mr. Manoj Kumar Sharma was that he was the subsequent purchaser.

10. It may be noticed that on an application filed by Mr. Manoj Kumar Sharma, he has already been substituted in the Suit in place of plaintiff No.1.

11. The case set up by the plaintiffs is that they are the owners of the Suit property having purchased the same by virtue of a registered sale deed.

12. The contention of the learned counsel for the petitioner that because there is an Agreement to Sell executed which states that the respondents/complainants have no right, title or interest and it amounts to an admission that they have no right, title or interest in the property and as such, not entitled to possession, in my view, has no merit.

13. The case of the respondents/plaintiffs is that they are the owners of the subject property by virtue of a Sale Deed and admittedly, no Sale Deed has been executed by them in favour of Manoj Kumar Sharma.

14. Reliance is placed by learned counsel for the petitioner solely on a

set of sale documents consisting of General Power of Attorney, Agreement to Sell, Will etc. Admittedly, no registered document has been executed by the respondents in favour of Mr. Manoj Kumar Sharma thereby transferring their rights in favour of said Manoj Kumar Sharma.

15. It is settled position of law that transfer of rights in any immovable property valued more than Rs.100 can only be done by a registered document of conveyance. In the present case, admittedly, no registered document has been registered by the respondents/plaintiff in favour of Mr. Manoj Kumar Sharma. Accordingly, it cannot be said that on the date when the suit was instituted, they had no right, title or interest in the suit property.

16. Agreement to Sell relied on by learned counsel for the petitioner itself shows that though the sellers have stated that they have no right, title or interest in the property, they have further stated that they would execute a sale deed in future and in case they fail to execute the sale deed, the buyer could claim specific performance and seek execution of sale deed. The Agreement to Sell clearly establishes that the respondents/plaintiffs continued to retain title to the property.

17. Further, reference may be had to the judgment of the Supreme Court in *Suraj Lamp & Industries vs. State of Haryana & Anr.*: (2012) 1 SCC 656, wherein, the Supreme Court has specifically held that mere Agreement to Sell does not create ownership rights in favour of the purchaser. It, however, grants a right to the purchaser to seek registration of the title document in his favour.

18. Clearly, on the date when the suit was instituted, the plaintiffs/respondents title to the property had not extinguished. It is they alone who could establish their right and claim possession from the defendants. Further, it may be seen that there is no unequivocal admission on the part of the respondents, which is substantiated by any record that they have no right, title and interest in the property.

19. Further, it may be seen that Sh. Manoj Kumar Sharma has been substituted in place of Sh. Hira Lal, so in any case, the Suit cannot be dismissed against him as there is no allegation that he has made any admissions.

20. I find no infirmity in the view taken by the Trial Court in holding that as there is no admission on the part of the plaintiff, the suit cannot be dismissed.

21. I find no merit in the petition. The Petition is, accordingly, dismissed.

SEPTEMBER 25, 2019
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SANJEEV SACHDEVA, J