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

+ RFA 259/2007 & CM No. 6693/2007

SHIV KUMAR

..... Appellant

Through: None.

versus

K.R.HITESHI & ORS.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **04.02.2019**

1. This appeal is on the Regular Board of this Court since 22.10.2018. No one appears for the appellant although it is 2.47 PM. The appeal is dismissed in default and for non-prosecution.

2. It is noted that the claim of the appellant/plaintiff was on the basis of the set of documents dated 31.1.2001 including the agreement to sell, power of attorney, registered Will etc. The suit property claimed by the appellant/plaintiff was 150 sq. yds.

3. Though the documentation dated 31.1.2001 in favour of the appellant/plaintiff would be valid but the appellant/plaintiff would be entitled to the benefit of doctrine of part performance under Section 53-A of

the Transfer of Property Act only if the appellant/plaintiff received possession of 150 sq. yds in terms of the documentation dated 31.1.2001.

4. The newly added defendant no.3 stated that in terms of the Agreement dated 18.8.1977 executed by the father of the defendant no.1, the suit land was given for the purposes of Shiv Mandir and Dharamshala, and possession of the entire land of the father of the defendant no.1 being 400 sq. yds, was given to defendant no.3, and therefore the appellant/plaintiff would not have possession of 150 sq. yds. At best, the appellant/plaintiff could only have claimed 58 sq. yds of which illegal possession was continued by the defendant no.1, and which area of 58 sq. yds was taken by the defendant no.1 on the ground that the area was to be renovated and re-constructed.

5. In view of the above facts it is seen that the appellant/plaintiff was used to buying and selling disputed properties, and the appellant/plaintiff never received possession of 150 sq. yds in terms of the alleged documentation dated 31.1.2001, and therefore, the appellant/plaintiff had no right, title and interest in the suit property.

6. Since no one appears for the appellant, this appeal is dismissed in default and for non-prosecution.

7. Let no application for restoration or recall of this order be entertained by the Registry of this Court unless costs of Rs.20,000/- are first deposited with the website www.bharatkeveer.gov.in.

VALMIKI J. MEHTA, J

FEBRUARY 04, 2019
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