

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

% **Date of decision: 14th November, 2019**

+ **CS(OS) 405/2019 & IA No.10890/2019 (u/O XXXIX R-1&2 CPC)**

QUTAB BUILDWELL PVT. LTD. Plaintiff

Through: Mr. Sanjay Agarwal with Ms. Shikha Saloni
& Ms Preeti Saxana, Advs.

Versus

EVOLVE INFOTRAIN INDIA PVT. LTD. & ORS. ... Defendants

Through: Mr. Akhilesh Arora, Adv. for D-2 to 17.
Mr. Kaustubh Anshuraj, Adv. for D-18&19.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted this suit for (a) declaration as null and void of the Sale Deed dated 6th December, 2016 executed by defendants No.2 to 17 in favour of defendant No.1, of land admeasuring 25 bighas, 7 biswas and 18 biswansi in the revenue estate of Village Pandawala Kalan, Tehsil Kapashera, New Delhi; (b) permanent injunction restraining defendant No.1 to 17 from dealing with the subject land; (c) mandatory injunction directing defendant No.18 Sub-Registrar-IX, Kapashera, Delhi to register the Sale Deed executed by the defendants No.2 to 17 in favour of the plaintiff with respect to the same land; and, (d) mandatory injunction directing the defendant No.19 Sub-Divisional Magistrate (SDM), Kapashera, Delhi to delete the name of the defendant No.1 with respect to the subject land and to enter the name of the plaintiff with respect thereto.

2. The plaintiff instituted the suit for the reliefs aforesaid, pleading (i) that the defendants No.2 to 17, on 21st March, 2013 agreed to sell and

executed a Sale Deed in favour of the plaintiff with respect to the land subject matter of the suit and which Sale Deed was presented for registration; (ii) that however the defendant No.18 Sub-Registrar-IX, Kapashera put the said Sale Deed under objection, for want of 'No Objection Certificate' from the defendant No.19 SDM, Kapashera and for the reason of stay order dated 14th May, 2007 in a case titled ***Hari Ram & Ors. Vs. Tek Chand & Ors.***; (iii) that the defendants No.2 to 17, prior to the agreement to sell with the plaintiff, in November, 2012, had agreed to sell the subject land to Mahesh Tanwar and Satpal Tanwar; CS(OS) No.824/2013 filed by the said Mahesh Tanwar and Satpal Tanwar was pending in this Court and in which suit, besides the defendants No.2 to 17, the plaintiff and its Directors were also impleaded as defendants; (iv) that the defendant No.18 Sub-Registrar-IX, Kapashera, despite vacation of the stay order in ***Hari Ram & Ors. Vs. Tek Chand & Ors.*** had not registered the Sale Deed; (v) that the defendants No.2 to 17 however executed and got registered a Sale Deed dated 6th December, 2016 with respect to the said land in favour of the defendant No.1; (vi) that the defendant no.18 Sub-Registrar-IX, Kapashera has connived with the defendants no.2 to 17, against the plaintiff, in not registering the Sale Deed executed by defendants no.2 to 17 in favour of the plaintiff on 21st March, 2013 and in keeping the same pending and in having registered the Sale Deed dated 6th December, 2016; and, (vii) that the plaintiff filed W.P.(C) No.6562/2019 in this Court which was disposed of vide order dated 31st May, 2019 with a direction to the defendant no.18 to register the Sale Deed dated 21st March, 2013 in favour of the plaintiff or to pass an order stating reasons for declining registration.

3. The suit came up before this Court first on 9th August, 2019 when, the plaintiff having not pleaded that the Sub-Registrar-IX, Kapashera in compliance with the direction issued in the order dated 31st May, 2019 in W.P.(C) No.6562/2019, has passed any order, it was enquired from the counsel for the Sub-Registrar-IX, Kapashera appearing on advance notice, whether any order had been passed and / or what was the status of the registration of the deed dated 21st March, 2013 in favour of the plaintiff.
4. The counsel for Sub-Registrar-IX, Kapashera had no instructions.
5. In the circumstances, expressing reservation as to the maintainability of the suit, summons / notice thereof was ordered to be issued and this suit as well as CS(OS) No.824/2013 ordered to be listed before the same Bench on 23rd August, 2019.
6. On 23rd August, 2019, this suit as well as CS(OS) No.824/2013 were listed when the counsel for Sub-Registrar-IX, Kapashera informed that (i) Sale Deed dated 21st March, 2013 executed by defendants no.2 to 17 in favour of the plaintiff was presented for registration and an NOC application was also received from defendants no.2 to 17 for issuance of NOC for execution of the Sale Deed; (ii) on scrutiny of Khata No.67/61, it was found that the details submitted did not match with the land mentioned in the Khata and thus the NOC was rejected vide order dated 22nd January, 2013; (iii) on presentation of Sale Deed, a deficiency memo dated 21st March, 2013 was also issued; (iv) however till date no NOC had been submitted and thus registration of Sale Deed dated 21st March, 2013 had been refused; and, (v) however a subsequent NOC was applied for by the defendants no.2 to 17 for transfer of the land to defendant no.1 and which was found in order and

was allowed and mutation of the property subject matter of the suit had also been sanctioned in the name of defendant no.1.

7. Attention of the counsel for the plaintiff, on 23rd August, 2019, and as recorded in the common order of that date in the two suits, was drawn to Section 72 of the Registration Act, 1908 which provides for remedy of appeal to the Registrar against an order of refusal of the Sub-Registrar to register a document and to Section 77 of the Registration Act which provides for the remedy of a suit before the District Judge against the order of the Registrar of refusal to register. It was enquired from the counsel for the plaintiff, that once it was so, how was the plaintiff entitled to a decree for mandatory injunction against the Sub-Registrar-IX, Kapashera to register the Sale Deed dated 21st March, 2013.

8. It was similarly brought to the notice of the counsel for the plaintiff, on 23rd August, 2019, that the Delhi Land Revenue Act, 1954 makes detailed provisions qua mutation of names in the revenue records and Chapter VI thereof also provides for appeals, references and revisions against the orders of refusal of mutation and it was enquired that in the face thereof, how was this suit seeking the relief of direction to the Sub-Divisional Magistrate to delete the name of defendant no.1 with respect to subject land and to enter the name of the plaintiff with respect thereto, maintainable.

9. It was further observed in the order dated 23rd August, 2019 that till the plaintiff does not have a registered Sale Deed with respect to the subject property in its favour, it had no locus to challenge the Sale Deed of the property in favour of defendant no.1 inasmuch as without a registered Sale Deed in its favour, plaintiff is merely an Agreement Purchaser, having no

right in the property and only having a right to seek either registration of the Sale Deed or a right to specific performance to an Agreement to Sell. It was further observed that once a Sale Deed in favour of defendant no.1 had been executed, the only remedy of the plaintiff appeared to be of specific performance against defendants no.2 to 17 as well as defendant no.1, under Section 19(b) of the Specific Relief Act, 1963. It was noted that neither the Registrar nor the District Judge, in exercise of powers under Sections 72 and 77 respectively of the Registration Act, even appeared to be entitled to order registration of the Sale Deed dated 21st March, 2013 after subsequent Sale Deed in favour of defendant no.1.

10. Though for the reasons aforesaid, it was observed in the order dated 23rd August, 2019 that this suit as filed was not maintainable and liable to be summarily dismissed, but on the counsel for the plaintiff stating that he needs to take instructions, the proceedings were adjourned to 20th September, 2019.

11. In the hearing on 20th September, 2019, the aspect of maintainability of this suit qua which questions were put to the counsel for the plaintiff on 23rd August, 2019 was not taken up and the hearing adjourned to today.

12. Today, the counsel for the plaintiff, on enquiry, whether he wanted to urge anything qua the maintainability of this suit, first stated that his client was unwell. However when it was pointed out to the counsel for the plaintiff that his client is not a natural person to be unwell, but a company, the counsel for the plaintiff states that the Director of the plaintiff was unwell. However on being asked which Director and who all were the Directors of the plaintiff, the counsel for the plaintiff states that he does not know and again seeks adjournment.

13. Adjournment having already been granted to the plaintiff as far back as on 23rd August, 2019 though finding the suit on that date also to be not maintainable, adjournment is refused.

14. The counsel for the plaintiff now states that he wants to argue and has been given an opportunity. However in the arguments he is unable to address anything qua the queries contained in the order dated 23rd August, 2019 and ultimately states that his instructions are to challenge the said part of the order dated 23rd August, 2019.

15. The challenge if any to order dated 23rd August, 2019 or any part thereof should have been made by now.

16. For the reasons aforesaid, the suit as framed is found to be not maintainable and is dismissed.

17. With the dismissal of the suit, all pending applications in the suit have also become infructuous and stand disposed of. The parties are left to bear their own costs.

18. Decree sheet be drawn up.

19. At this stage, the counsel for the plaintiff states that he seeks liberty to withdraw the suit with liberty to file the appropriate proceedings.

20. The suit is dismissed as withdrawn with liberty aforesaid.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 14, 2019

‘bs/gsr’