

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

% **Date of decision: 15th February, 2019.**

+ **CS(OS) 520/2016, IA No.12602/2016(u/O.XXXIX R-1 & 2 CPC) & IA No.7804/2017(u/S 151 CPC)**

JUDGE CHAWLA

..... Plaintiff

Through: Mr. Shrey Chathly with Ms. Bandana Grover & Mr. Vishesh Wadhwa, Advs.

versus

VINAY CHHABRA & OTHERS

..... Defendants

Through: Mr. Vaibhav Mehra, Adv. for D-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 12th February, 2019, when this suit came up before this Court, the following order was passed:-

“1. The suit is ripe for framing of issues.

2. Only the defendant no.1 is contesting the suit. The defendants no.2 to 4 have neither filed any written statement nor have appeared and have already been proceeded against ex parte.

3. The counsel for the plaintiff has handed over proposed issues as under:-

(i) Whether the plaintiff is entitled to be granted the relief of possession of the suit property on the Sale Deed dated 21st June, 2007? OPP

(ii) Whether the Sale Deed dated 14th July, 2011 executed by the defendant no.2 in favour of defendant no.1 liable to be declared null and void in view of the existence of Sale Deed dated 21st June, 2007? OPP

(iii) Whether the Sale Deed dated 22nd July, 2009 executed by the defendant no.3 in favour of

defendant no.2 liable to be declared null and void in view of the existence of Sale Deed dated 21st June, 2007? OPP

- (iv) Whether the plaintiff is entitled to the relief of injunction as sought from? OPP*
- (v) Relief.*

for framing.

4. The counsel for defendant no.1 states that in addition to the aforesaid issues, another issue qua limitation be framed.

5. The counsel for the plaintiff objects, drawing attention to the order dated 3rd January, 2018.

6. The counsel for defendant no.1 states that the order dated 3rd January, 2018 would not come in the way of framing of an issue on limitation as the said order is on a prima facie view of the matter.

*7. However a reading of the order dated 3rd January, 2018 does not indicate so. The same rejects the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) seeking rejection of the plaint on the ground of the suit claim being barred by time, referring to the dicta of this Court in **Ashok Kumar Vs. Mohd. Rustam** (2016) 227 DLT 385 and **Sunil Kohli Vs. Subhash Chand Dua** 2016 SCC Online Del 3244. The counsel for defendant no.1, on enquiry whether he has read the said judgments, replies in the negative. In view of the said order, the question of framing any issue qua limitation does not arise.*

8. Having gone through the plaint and heard the counsel for the plaintiff and the defendant no.1, it is felt that the written statement of defendant no.1 does not raise any material proposition of law or fact which requires evidence and in the event of proof whereof the defendant no.1 shall be entitled to ward off a decree for possession against him as sought.

9. *The plaintiff seeks possession of immovable property on the basis of Sale Deed executed by defendant no.3 in his favour.*

10. *The defendant no.1 opposes the suit setting up title in himself under a Sale Deed executed in favour of the defendant no.1 by defendant no.2 and in whose favour in turn a Sale Deed has been executed by the defendant no.3.*

11. *The counsel for the plaintiff states that the Sale Deeds by defendant no.3 in favour of defendant no.2 and by the defendant no.2 in favour of the defendant no.1 are of a date subsequent to the Sale Deed by the defendant no.3 in favour of the plaintiff. It is also stated that though in the written statement, a reference is made to Memorandum of Understanding (MoU) between the wife of the plaintiff and the defendant no.4 and to the suit for specific performance filed on the basis thereof but the said suit has since been compromised. Certified copies of the compromise documents are handed over in the Court and taken on record. It is thus contended that as of today, the only defence of the defendant no.1 is on the basis of the Sale Deeds aforesaid but which Sale Deeds are of after the Sale Deed by defendant no.3 in favour of the plaintiff and after execution of which Sale Deed the defendant no.3 was not entitled to execute a Sale Deed with respect to the same property in favour of the defendant no.2.*

12. *I have enquired from the counsel for the defendant no.1 that once the defendant no.3 had executed the Sale Deed in favour of the plaintiff, what was the right and entitlement of the defendant no.3 to execute the Sale Deed in favour of the defendant no.2 from whom the defendant no.1 claims to have purchased the property.*

13. *The counsel for defendant no.1 states that the Sale Deed by defendant no.3 in favour of the plaintiff is without consideration and the defendant no.1 is entitled*

to an opportunity to lead evidence on the said aspect.

14. The right if any to challenge the Sale Deed on the ground of being without consideration is of the defendant no.3 and not of the defendant no.1. Even otherwise the said plea cannot invalidate a registered Sale Deed.

15. It is deemed appropriate to grant time to counsel for defendant no.1 to prepare.

16. List on 15th February, 2019.”

2. Today, the counsel for the defendant no.1 has argued, (i) that **Ashok Kumar** and **Sunil Kohli** supra referred to in the order aforesaid are not applicable because in those cases, the suit, besides for the relief of recovery of possession, was also for the relief of declaration and it was in the said context that it was held that the limitation provided for a suit for possession would apply; however in the present suit the plaintiff has only claimed possession and there is no relief of declaration qua the sale deeds in favour of the defendant no.1 and his predecessor in title defendant no.2; (ii) that the plaintiff is a bonafide purchaser and the said plea requires trial; and, (iii) that the plaintiff, in para 36 of the plaint has admitted that the defendant no.1 has raised construction over the property and the defendant no.1 is liable to be compensated in the sum of about Rs.30 to 40 lacs spent by him on the said construction.

3. No merit is found in any of the aforesaid contentions.

4. As far as the first of the aforesaid contentions is concerned, the same is in ignorance of the reliefs claimed in the plaint. The plaintiff, besides claiming the relief of possession, has also claimed a relief of declaration as null and void of the sale deeds executed by defendant no.3 in favour of defendant no.2 and by the defendant no.2 in favour of the defendant no.1.

Attention of the counsel for the plaintiff in this respect is invited to prayer paragraph B and C of the plaint dated 4th October, 2016.

5. As far as the second contention of the counsel for the defendant no.1, of the defendant no.1 being a bonafide purchaser, is concerned, I have enquired from the counsel for the defendant no.1 as to under which law a purchaser from a person who has no title to the property, qualifies as a bonafide purchaser and on proof of which bonafide, the purchaser becomes entitled to the property which he has acquired from one who had no title thereto.

6. No answer is forthcoming.

7. The plea of bonafide purchaser is available in law with respect to purchase of immovable property qua which there is a claim for maintenance and in respect of claims for specific performance of agreement to sell of immovable property. No such plea has been conferred on a purchaser, howsoever bonafide, from one who had no title to the property. The well-known doctrine rather is purchaser beware. Reference in this regard may be made to ***Rajesh Kumar Gupta Vs. Pratap Builders & Contractors (P) Ltd.*** 2013 SCC OnLine Del 2892 [SLP(C) No.3875/2014 preferred whereagainst was dismissed on 1st September, 2014] and ***Yogender Kumar Vs. Rajender Kumar*** 2018 SCC OnLine Del 11500 [SLP(C) Diary No.15211/2018 preferred whereagainst was dismissed for non-prosecution on 19th November, 2018].

8. Moreover, I have enquired from the counsel for the defendant no.1, as to what action the defendant no.1 has taken against the defendant nos.2 and 3, after coming to know of the claim of the plaintiff, with respect to the offence committed of cheating and/or for recovery of monies claimed to be

paid by the defendant no.1 and defendant no.2 to the defendant no.3 and/or for damages suffered by defendant no.1. No such claims have been preferred which are indicative of the defendant no.1 as well as the defendant no.2, at the time of acquiring title from the defendant no.3, knowing of the defendant no.3 having no title to the property and having taken a chance, by having the sale deeds executed in their favour.

9. The counsel for the defendant no.1 has now contended that no action could be taken while the claim of the plaintiff was *subjudice*.

10. No merit is found in the said contention also. The defendant no.1, immediately on knowing of the claim of the plaintiff and knowing that the plaintiff has a superior title over the title of the defendant no.1, ought to have immediately taken action.

11. As far as the third and last contention aforesaid of the counsel for the defendant no.1 is concerned, a perusal of the sale deed by defendant no.3 in favour of plaintiff shows the property sold to be described as comprising of three bed rooms, two attached bath-rooms and one kitchen with terrace and roof rights upto sky. The sale deeds by the defendant no.3 in favour of defendant no.2 and by the defendant no.2 in favour of the defendant no.1 also describes the property as constructed; it thus appears that the construction on the terrace of the second floor of the property which is the subject matter of the dispute, was made neither by the plaintiff nor by the defendant no.1.

12. However, the counsel for the defendant no.1 again refers to para 36 of the plaint, where the plaintiff indeed has admitted that the defendant no.1 was raising construction on the second and the third floor.

13. The counsel for the plaintiff, at this stage, without prejudice to the rights and contentions of the plaintiff and under instructions of the plaintiff present in Court, to put an end to the controversy, offers Rs.15,00,000/- to the defendant no.1 by demand draft in favour of the defendant no.1 against delivery of possession of the property.

14. The counsel for the defendant no.1 is agreeable to the aforesaid proposal.

15. Resultantly, a decree is passed, in favour of the plaintiff and against the defendant no.1, (a) of recovery of possession of the second floor comprising of the rear portion of the terrace of the second floor i.e. third floor comprising of whatsoever construction may be existing thereon, as well as above thereon of property No.11-B, Rajender Park New Delhi; (b) of declaration as null and void, the sale deeds (i) dated 14th July, 2011 registered as document no.6797 in Book no.1, Volume 14272 at pages 179 to 188 on 19th July, 2011 with respect to the roof of the second floor i.e. third floor of the property and (ii) dated 22nd July, 2009 registered as document no.5212 in Additional Book No.1, Volume No.13280 at pages 186 to 194 on 22nd July, 2009 with respect to the aforesaid property and of cancellation thereof; and, (c) of permanent injunction restraining the defendants, jointly and severally, from hereafter dealing with the property with respect where to the decree for possession has been passed.

16. It is, however, made clear that the plaintiff shall be entitled to delivery of possession from the defendant no.1 against payment by way of demand draft in favour of defendant no.1 of a sum of Rs.15,00,000/- and the defendant no.1 to simultaneously deliver to the plaintiff the original sale deeds aforesaid of which cancellation has been ordered.

17. The plaintiff, on the basis of this judgment and decree, shall be entitled to approach the concerned Registrar/Sub-Registrar with whom the sale deeds are registered, for recording the cancellation thereof in the records of the Registrar/Sub-Registrar.

18. The parties are left to bear their own costs.

19. The counsel for the defendant no.1 states that the defendant no.1 is residing in the subject property and needs time to shift out.

20. The defendant no.1 is granted three months' time from today to vacate the property, whereafter the plaintiff shall be entitled to execute the decree.

21. The counsel for the plaintiff, at this stage, draws attention to the order dated 25th October, 2016 directing the plaintiff to deposit Rs.70,00,000/- in this Court, to secure the interest of the then defendant no.4 to this suit namely Tejinder Singh Yadav, and states that since the plaintiff has already settled with the said Tejinder Singh Yadav, the plaintiff is entitled to refund of the said amount.

22. The counsel for the defendant no.1 has not opposed.

23. The counsel for the plaintiff, on enquiry, states that under the settlement with Tejinder Singh Yadav, the said amount has been ordered to be returned to the plaintiff.

24. The amount of Rs.70,00,000/- deposited in this Court pursuant to order dated 25th October, 2016 together with interest, if any, accrued thereon be refunded to the plaintiff.

Decree sheet be prepared accordingly.

RAJIV SAHAI ENDLAW, J

FEBRUARY 15, 2019/Ak..

(Corrected & released on 2nd March, 2019)