

\$~O-13

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

+ CS(OS) 501/2018 and CAV 921/2018

VIBHA JAIN & ANR.

..... Plaintiff

Through

Mr. Dinesh Kumar Gupta and
Mr. Vidit Gupta, Advocates with
plaintiff no.2 in person

versus

RAJESH GAUTAM & ANR.

..... Defendants

Through

Mr. Vikrant N.Goyal, Advocate with
defendants in person

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

%

15.02.2019

1. Both the parties are present in Court with their counsels and this Court has examined them on oath in exercise of power under Section 165 of the Indian Evidence Act.
2. The defendants have produced the original agreement to sell dated 16th June, 2004, receipt dated 16th June, 2004, original possession letter dated 16th June, 2004, affidavit dated 16th June, 2004, relinquishment deed dated 16th June, 2004 and mutation letter dated 30th October, 2013.
3. After the recording of the statements of the parties, plaintiff no.2 present in Court along with his counsel seeks permission to withdraw the suit.
4. The suit is dismissed as withdrawn.
5. Copy of this order as well as statements be given *dasti* to counsel for

the parties under the signature of the Court Master.

FEBRUARY 15, 2019/b/dk

J.R. MIDHA, J.

CS(OS) 501/2018

Statement of Rajesh Gautam, S/o Late Sh. Ram Kumar, aged 42 years, R/o A-101, Suraj Mal Vihar, Delhi-110092 on SA:

I am in the business of real estate developer. I know the plaintiff since the year 1995. The younger brother of the plaintiff is a friend of mine since 1995. He has moved to USA and he had a PCO earlier. My father was an IAS officer in U.P. Government. The plaintiff's brother is still a friend of mine. The suit property is in the defendants' possession since 16th June, 2004. However, one set of keys of the suit property were given to the plaintiff No.2 in 2004 as he was taking care of our other properties. In the year 2008, I started a coaching institute which continued till end of 2008 when the property was sealed. It took about 1 ½ years for me to get the seals removed by submitting the affidavit and other necessary documents. Since then, the suit property is in my possession. The documents marked as Marks 'A' to 'E' were got prepared by plaintiff No.2 and he signed the same on 16th June, 2004 after receiving cash amount of Rs.10,70,000/- from me.

The suit property was purchased jointly by the plaintiffs and defendants vide sale deed dated 16th June, 2004 which is Mark 'F'. The suit property was mutated in the defendants' name on 30th October, 2013. The copy of mutation letter is Mark 'G'. The copy of relinquishment deed on the basis of general power of attorney executed by the plaintiffs on 24th February, 2016 is Mark 'H'.

The relationship with the plaintiffs was cordial till October, 2016. However, relation became sour after the death of my father. I had dealt with many properties with the plaintiff and I can produce the relevant documents.

R.O. & A.C.

**J.R. MIDHA, J.
15.02.2019**

CS(OS) 501/2018

Statement of Sanjay Kumar Jain, S/o Sh. S.K. Jain, aged 49 years, resident of 93, Bahubali Enclave, Delhi-110092 on SA:

I buy properties and thereafter sell them after raising construction. I am into this business for the last 25 years. I know the defendants for the last 15-20 years. I had family relations with them as well as their father.

Defendant No.1 was a student studying in Australia in 2004 and he used to frequently come to India. However, I do not know what the defendants are doing at present. The father of defendant No.1 was an IAS officer.

About one month before the sale deed dated 16th June, 2004, I had entered into an agreement with the owner of the suit property to purchase the same. I was alone as the purchaser in the said sale agreement. I, thereafter approached the defendants for jointly purchasing the said property in equal shares to which the defendants agreed. In that view of the matter, sale deed dated 16th June, 2004 was executed with the owner in which I and my wife had 50% share and the balance 50% share was of the defendants. I and my wife paid Rs.5 lakh each whereas defendants No.1 and 2 paid Rs.5 lakh each to the seller. Total sale consideration was Rs.20 lakhs.

I have seen the original agreement to sell dated 16th June, 2004 which bears my signatures. However, I deny the contentions of the documents. These documents have been prepared by the defendants on blank papers signed by me as well as signatures of my wife. Copy of the agreement to sell dated 16th June, 2004 which is Mark 'A'.

I have seen the receipt dated 16th June, 2004 which bears my signatures as well as signatures of my wife. However, I deny the contents of the receipt. According to me, the defendants have prepared these documents on blank papers signed by me. I have not received the payment of

Rs.10,70,000/- from the defendants as mentioned in the receipt. Copy of the receipt dated 16th June, 2004 which is Mark 'B'.

I have seen the photocopy of the general power of attorney dated 16th June, 2004 which bears my signatures as well as signatures of my wife. However, this document has also been prepared by the defendants on blank papers signed by me. Copy of the general power of attorney is Mark 'C'.

I have seen the possession letter dated 16th June, 2004 which bears my signatures as well as signatures of my wife. However, I deny the contents. According to me, this document has been prepared by the defendants on blank papers and signed by me. Copy of the original possession letter is Mark 'D'.

I have seen the affidavit dated 16th June, 2004 which bears my signatures as well as signatures of my wife. However, I deny the contents. According to me, this document has been prepared by the defendants on blank papers and signed by me. Copy of the original affidavit is Mark 'E'.

I was never involved in any civil or criminal case. This is the first case in which I am a party.

The possession of the suit property was with me till 2011 when the defendants approached me that they want to operate an office from the suit property whereupon I handed over the keys of the suit property to the defendants who carried out some addition and alterations. The possession of the suit property is with the defendants since then.

I had jointly purchased a property with the defendants at Dehradun around in the year 2010. However, the property was purchased in portions of 250 sq. meters each and one sale deed was in my name and the other sale deeds were in the defendants' name. That property was sold by all of us about 3-4 years back. I do not remember the sale consideration for which we purchased or sold the properties. I have copy of the papers which I can

produce.

I discussed about the suit property with the defendant no.1's father about 4-5 times. My relation with the defendants and their father was good till 2011, when they had taken the keys of the suit property from me. The father of defendant No.1 expired about two years ago.

I signed about 15 blank papers. However, I do not remember the date of signing the blank papers. I signed the papers on the request of the father of defendant No.1 in trust. I did not ask why he is getting the blank papers signed from me.

R.O. & A.C.

J.R. MIDHA, J.
15.02.2019