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

+ CS(OS) 2310/2009 & IA No.1478/2020 (of plaintiff & D-2&3 u/O XXIII R-1,3&3A CPC)

A.K. JAIN

..... Plaintiff

Through: Mr. Dinesh Garg and Ms. Rachna Agrawal, Advs. with plaintiff-in-person.

Versus

VIPIN WADHWA & ORS.

..... Defendants

Through: Mr. S.K. Sharma and Mr. Yogender Kumar, Advs. for D-1.
Mr. Rajesh Kuamr Luthra, Adv. for D-2&3 with D-2&3 in person.
Mr. Amandeep, Adv. for Mr. Rahul Bakshi, Adv. for D-4/DDA.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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03.02.2020

1. The plaintiff instituted this suit against defendants No.1 to 4, namely (i) Vipin Wadhwa, (ii) Jasbir Singh, (iii) Harjit Singh and (iv) Delhi Development Authority (DDA), for specific performance of Agreements to Sell dated 30th June, 1999 and dated 11th January, 2000 of sale of the three storeyed built up property together with the basement bearing No.15, situated in Block A-1, measuring 324 sq. mtrs., Prashant Vihar, Delhi and in the alternative for refund of Rs.65 lacs and for recovery of damages in the sum of Rs.2 crores.

2. The suit was entertained and vide order dated 1st February, 2010 summons thereof ordered to be issued and separate written statements filed by defendant No.1, defendants No.2&3 together and defendant No.4.

3. On the pleadings of the parties, on 21st May, 2014, the following issues were framed:

- “(i) Whether defendant nos.2 and 3 had acknowledged the Agreement dated 11.01.2000 entered into between plaintiff and defendant no.1 and the defendants are bound by the said Agreement? **OPP***
- (ii) Whether the defendants can resile from the Agreement to Sell dated 11.01.2000 on plea of imperfect title in view of Section 13 of Specific Relief Act? **OPD***
- (iii) Whether the suit is barred under Section 14 of Specific Relief Act? **OPD-1***
- (iv) Whether the plaintiff has all through been and still ready and willing to perform his part of the Agreement dated 11.01.2000? **OPP***
- (v) Whether the plaintiff is entitled to specific performance? **OPP***
- (vi) If issue no.5 is decided against the plaintiff, Whether the plaintiff is entitled to refund of amount of Rs.65,00,000? If yes, from whom and in what proportion? **OPP***
- (vii) If issue no.6 is decided in affirmative, whether the plaintiff is entitled to interest, if yes, at what rate? **OPD***
- (viii) If issue no.5 is decided against the plaintiff, whether the plaintiff is entitled to damages, if yes, from which defendant and to what extent? **OPP***
- (ix) Whether there is any cause of action against defendants no.2 and 3? **OPD=2 & 3***
- (x) Whether the suit is barred by limitation? **OPD=2 & 3***

- (xi) *Whether the plaintiff does not have any privity of contract in respect of alleged agreement dated 30.06.1999 between defendant no.2 and defendants no.2 and 3 and whether the plaintiff can enforce the said agreement by way of present suit specially in the absence of any such document on record? OPD=2 & 3*
- (xii) *Whether defendant no.1 had any right to sell or for agreeing to sell the suit property to plaintiff in his own right, not being owner of the suit property? OPD=2 & 3*
- (xiii) *Relief.”*

and the parties relegated to recording of evidence.

4. The recording of evidence stood concluded and vide order dated 17th December, 2019, the suit posted before this Court on 22nd January, 2020 for final arguments. Vide order dated 22nd January, 2020, the hearing of final arguments stood posted to 20th August, 2020.
5. The plaintiff and the defendants No.2&3 have filed IA No.1478/2020 under Order XXIII Rules 1, 3 & 3A of the Code of Civil Procedure, 1908 (CPC), for disposal of the suit as compromised between the plaintiff and the defendants No.2&3 and for withdrawal of the suit against defendants No.1&4.
6. The counsel for the plaintiff and the counsel for the defendants No.2&3 support the application and state that the same is signed by the parties and supported by their affidavits and also signed by the counsels themselves and that the plaintiff and defendants No.2&3 are also present in the Court in person.
7. The counsel for the defendant No.1 seeks time to file reply.

8. The counsel for the defendant No.4, informed to be Mr. Rahul Bakshi, Advocate, has not appeared and has sent Mr. Amandeep, Advocate who seeks adjournment.

9. To determine, whether any opportunity for filing reply is to be given to the defendant No.1, inasmuch as the suit against defendant No.1 is being unconditionally withdrawn by the plaintiff, the counsel for the plaintiff and the counsel for the defendant No.1 have been heard.

10. The counsel for the plaintiff has stated / argued, (a) that the perpetual lease of the land underneath property No.15, Block A-1, Prashant Vihar, Delhi was granted by defendant No.4 DDA in favour of the defendants No.2&3; (b) that the said lease was cancelled for misuse and non-payment of misuse charges and the application of defendants No.2&3 for restoration of lease was pending; (c) that the defendants No.2&3, vide Agreement to Sell dated 30th June, 1999 agreed to sell all their rights in the property to the defendant No.1 and in pursuance to the said Agreement, the defendant No.1 took possession of basement, ground floor and first floor of the property from the defendants No.2&3 and the defendants No.2&3 remained in possession of second floor and terrace above of the property; (d) that the defendant No.1, vide Agreement to Sell dated 11th January, 2000 agreed to assign his rights under the Agreement dated 30th June, 1999 with the defendants No.2&3, in favour of the plaintiff, for a consideration of Rs.2,73,00,000/- and out of which Rs.65,00,000/- was received by the plaintiff from the defendant no.1; (e) that under the Agreements dated 30th June, 1999 as well as 11th January, 2000, the responsibility for getting the leasehold rights in the land underneath the property restored and converted

to freehold was of the defendant No.1, at his own costs; (f) that the defendant No.1 could not get the leasehold rights restored inspite of various extensions granted by the plaintiff and the plaintiff ultimately instituted this suit; (g) that the defendants No.2&3 were impleaded as parties to this suit because were confirming parties to the Agreement to Sell dated 11th January, 2000 executed by the defendant No.1 in favour of the plaintiff; and, (h) that now the plaintiff and the defendants No.2&3 have arrived at a settlement / compromise, as recorded in the application aforesaid, and want the suit to be disposed of in terms of the said settlement, insofar as against the defendants No.2&3 and want to unconditionally withdraw the suit against the defendants No.1&4.

11. The need to adjourn on the request of Mr. Amandeep, Advocate appearing for defendant No.4 DDA, as proxy counsel for Mr. Rahul Bakshi, Advocate for the defendant No.4 DDA is not felt as the suit, insofar as against the defendant No.4 DDA, is being unconditionally withdrawn and by further making it clear that nothing in the settlement between the plaintiff and the defendants No.2&3 shall affect the right of the defendant No.4 DDA.

12. On enquiry, what was the consideration of the Agreement dated 30th June, 1999 between the defendant No.1 on the one hand and defendants No.2&3 on the other hand, while the counsel for the plaintiff states that that agreement has not come on record and neither the defendant no.1 nor the defendants No.2&3 have disclosed the consideration therefor, the counsel for the defendant No.1 states that in the cross-examination of the defendant No.1, it has now come on record that the consideration of the said

Agreement was Rs.2,21,00,000/- and of which Rs.2,10,00,000/- stands paid by the defendant No.1 to defendants No.2&3.

13. The counsel for the defendant No.1 also states that as of today, the entire property is in possession of the defendant No.1.

14. I have enquired from the counsel for the defendant No.1, whether the defendant No.1 has pleaded being in possession of the entire property.

15. The counsel for the defendant No.1 has drawn attention to paragraph 11 of the reply on merits in the amended written statement on behalf of the defendant no.1 dated 6th April, 2013 where the defendant No.1 has denied that the possession of the entire first floor along with basement of the property was handed over by the defendant No.1 to the plaintiff and has pleaded that the entire first floor with basement was in possession of the defendant No.1 and the plaintiff had nothing to do with the possession.

16. The counsel for the defendant No.1 has next drawn attention to affidavit by way of examination-in-chief **Ex.D1W1/A** dated 21st November, 2017 of the defendant No.1, where the defendant No.1 has deposed as under:

“12. I state that the possession of the entire first floor and the basement is with me and the plaintiff has nothing to do with the possession. I state that the defendant No.1 has put his guards in the property. I state that when the plaintiff is not in the possession of the basement and the first floor, the question of obstructing the entry of the plaintiff by me does not arise. I state that the plaintiff in connivance with the property dealers fraudulently got the possession letter signed at the time of execution of the agreement only as a security though actual vacant physical possession of the entire property continued to be with me.”

and has contended that the defendant No.1 was not cross-examined on the aspect.

17. In the compromise application between the plaintiff and defendants No.2&3, it is *inter alia* recorded in paragraphs 8(iv), 9(vi), (vii) & 9(viii) as under:

- “8. iv) *the Defendant Nos.2 and 3 had also agreed and admitted to hand over vacant possession of portion of the property in their occupation i.e. Second Floor & Terrace to the Plaintiff.*
9. vi) *The Defendants No.2 & 3 shall forthwith handover the vacant physical peaceful possession of entire Second Floor and entire Terrace thereupon of the suit property to the Plaintiff;*
- vii) *Simultaneously to taking over of possession of Second Floor and terrace, the Plaintiff shall pay a sum of Rs.50,00,000/- to the Defendants No.2 & 3 in equal proportion in full and final settlement;*
- viii) *This is to record that the possession of entire Basement and entire First Floor of the suit property is already with the Plaintiff. The Ground Floor is presently in an unauthorized occupation. The plaintiff, hereinafter, shall be entitled to recover possession of the Ground Floor from the occupant either through negotiations or through Court at his own costs.”*

18. The counsel for the defendant No.1 has also contended that the defendant No.1 has a substantial right to be decided in this suit. It is also argued that the defendant No.1 was not given any opportunity to file pleadings in response to the pleadings of defendants No.2&3. However, on enquiry, whether the defendant No.1 at any time sought an opportunity therefor, the answer is in the negative.

19. It is also contended by counsel for defendant no.1, that it was the plea of the defendants No.2&3 that they had no privity with the plaintiff.

20. The counsel for the plaintiff states that as per the written documents and in fact, the possession of the basement and first floor is with the plaintiff and the counsel for the defendants No.2&3 states that possession of the second floor and terrace above is with the defendants No.2&3 and both state that they want the suit, insofar as by the plaintiff against the defendants No.2&3, to be disposed of in terms of the compromise.

21. I have perused the compromise arrived at between the plaintiff and the defendants No.2&3 and find the same to be lawful and do not deem any need for an opportunity to file reply to be given to the defendant No.1, inasmuch as the rights of the defendant No.1, even if any for adjudication in this suit, were at the instance of the plaintiff and not at the instance of the defendant No.1 and the defendant No.1 cannot come in the way of the plaintiff withdrawing the suit insofar as against the defendant No.1 and if the defendant No.1 has any entitlement in law to agitate any right, would have to institute independent action therefor and cannot stop this suit from being withdrawn qua him. All that needs to be observed is that nothing contained in the compromise arrived at between the plaintiff and the defendants No.2&3 shall bind or affect the defendants No.1&4.

22. IA No.1478/2020 is thus allowed.

23. A consent decree is passed, in favour of the plaintiff and against the defendants No.2&3, on the terms contained in IA No.1478/2020, which shall form part of the decree sheet, leaving the parties to bear their own costs.

24. The suit, insofar as against the defendants No.1&4, is dismissed as withdrawn, leaving the parties to bear their own costs.

Decree sheet be drawn up.

25. Date already given of 20th August, 2020 is cancelled.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 03, 2020
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