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

***Date of Decision: 13.12.2022***

+ **CS(OS) 577/2022 & I.As. 15225-26/2022**

RAGHUKUL BHUSHAN ..... Plaintiff  
Through: Mr.Saimon Farooquui,  
Mr.Arjun Mohan, Mr.Pulkit  
Prakash, Mr.Shubhashish  
Sharma, Advs.

versus

CHANDERLEKHA SINGH & ORS. .... Defendants  
Through: Nemo

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (Oral)**

1. This suit was originally filed by the plaintiff praying for the following reliefs:

*“A. On adjudication it may be declared that the Plaintiff was willing and ready to perform the part of his contract and that the Plaintiff is still ready and willing to perform his part of contract and the Plaintiff shall be ready and willing to perform the part of his contract in future as well and after declaring a degree of specific performance of contract may be passed in favour of the Plaintiff and against the Defendant No.1 and the Defendant No.1 may be*

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*directed to receive the amount as per the Schedule of Payment or as per the dates decided by this Hon'ble Court and if the Defendant No.1 declines to receive the amount as per the dates formulated by this Hon'ble Court, then the Plaintiff may be given liberty to deposit the said amount before this Hon'ble Court and at time of the final payment, the Defendant No.1 may be directed by this Hon'ble Court to execute the Deed in favour of the Plaintiff failing which, sale may be executed through the process of Court and the Plaintiff may be put in possession of the Said Property.*

*B. On adjudication it may be declared that the Impugned Sale Deed No.3, dated 28.07.2022, as mentioned in schedule-II-A, bearing sale deed No.19220, executed by the Defendant No.1 in favour of Defendant No.4, may be declared null and void in the eye of law.*

*C. On adjudication it may be declared that the Impugned Sale Deed No.2, dated 28.07.2022, as mentioned in schedule-II-B, bearing sale deed No.19221 executed by the Defendant No.1 in favour of Defendant No.3 may be declared null and void in the eye of law.*

*D. On adjudication it may be declared that the Impugned Sale Deed No.1, dated 28.07.2022, as mentioned in schedule-II-C, bearing sale deed No.19222, executed by the Defendant No.1 in favour of Defendant No.2, may be declared null and void in the eye of law.*

*E. Pass a final decree in favour of the Plaintiff, acknowledging the Plaintiff as the rightful purchaser of the Said Property, upon conveyance of the remaining consideration.*

*F. Pass a decree of temporary injunction under Order 39, Rule 1 of the Code of Civil Procedure, 1908, in favour of the Plaintiff against the Defendants, their agents, assignees, representatives or any other person claiming through them or on their behalf thereby restraining them from in any manner alienating, parting with possession, transferring or creating any third-party rights or interest in respect of the Said Property.*

*G. Pass a decree of permanent injunction, in favour of the Plaintiff against the Defendants, their agents, assignees, representatives or any other person claiming through them or on their behalf thereby restraining them from in any manner alienating, parting with possession, transferring or creating any third-party rights or interest in respect of the Said Property.*

*H. To pass such order or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

2. The suit was listed on 16.09.2022, when the learned counsel appearing for the plaintiff sought for time to amend the plaint.

3. The plaintiff thereafter filed an application, being I.A. no.18782/2022, under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the ‘CPC’) seeking amendment of the plaint. The said application was allowed by this Court vide order dated 17.11.2022.

4. After the amendment to the plaint, the plaintiff now seeks the following reliefs:

*“A. On adjudication it may be declared that the Plaintiff was willing and ready to perform the part of his contract and that the Plaintiff is still ready and willing to perform his part of contract and the Plaintiff shall be ready and willing to perform the part of his contract in future as well and after declaring a decree of specific performance of contract may be passed in favour of the Plaintiff and against the Defendant No.1 and the Defendant No.1 may be directed to receive the amount as per the Schedule of Payment or as per the dates decided by this Hon’ble Court and if the Defendant No.1 declines to receive the amount as per the dates formulated by this Hon’ble Court, then the Plaintiff may be given liberty to deposit the said amount before this Hon’ble Court and at the time of the final payment, the Defendant No.1 may be directed by this Hon’ble Court to execute the Deed in favour of the Plaintiff failing which, sale may be executed through the process of Court and the Plaintiff may be put in possession of the Said Property.*

*B. Pass a final decree in favour of the Plaintiff, acknowledging the Plaintiff as the rightful purchaser of the Said Property, upon conveyance of the remaining consideration.*

*C. To pass such order or further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”*

5. A reading of the above prayers would show that the plaintiff, in effect, seeks specific performance of the alleged Agreement to Sell dated 19.08.2021 by which it is alleged that the defendant no.1 agreed to sell to the plaintiff the properties situated at and near Main Road, admeasuring 39 decimal, forming part of Ward No. – Survey No. 20, Circle – Mushahri, PS No. 406, Jamabandi No. 82, Part – 20, Page – 82, Khasra No. 310(Ka) (Kha), (Ga), (Gha), (Anga), (Cha) situated at Mohalla - Kalyani Chowk, P.S - Nagar, District - Muzaffarpur, Bihar (hereinafter referred to as the ‘said property’).

6. In ***Shri M.K.Sharma and Anr. v. Shri SH Tek Chand and Ors.*** 2011 SCC OnLine Del 2925, a learned Single Judge of this Court, on a consideration of various prior judgments, summarized the law with respect to the jurisdiction of a Court to entertain and try a suit for specific performance relating to an immovable property situated outside Delhi, as under:

*“6.1 The principles laid down by the Supreme Court in the cases of Babu Lal (supra) and Harshad Chiman Lal Modi (supra) and three Division Bench judgments of this Court in Vipul Infrastructure Developers Ltd. (supra); Pantaloon Retail India case (supra) and Splendor Landbase Limited (supra) are summarized as under:—*

*6.1.1 This Court has no jurisdiction to entertain and try a suit for specific performance relating to an immovable property situated outside Delhi because the relief cannot be entirely obtained through the personal obedience of the defendant under the proviso to Section 16 of the Code of Civil*

*Procedure as the defendant will have to go out of the jurisdiction of this Court to get the sale deed registered outside Delhi.*

*6.1.2 The relief of possession is inherent in the relief of specific performance under Section 22 of the Specific Relief Act, 1963 read with Section 55(1) of the Transfer of Property Act, 1882 and the plaintiffs can seek an amendment to claim delivery of possession at any stage of the suit.*

*6.1.3 This Court has no jurisdiction to get the decree of possession enforced for the property situated outside Delhi.*

*6.1.4 The proviso to Section 16 cannot be interpreted or construed to enlarge the scope of the principal provision.*

*6.2 In CS(OS) No. 2354/2010, the defendants are not even residing within the jurisdiction of this Court.*

*6.3 For the reasons as aforesaid, the proviso to Section 16 of the Code of Civil Procedure is not applicable to the present cases."*

7. The learned counsel for the plaintiff invoked the territorial jurisdiction of this Court by contending that the defendant no.1 is a resident of Delhi and that the Agreement to Sell, in Clause 17 thereof, provides that in case of any dispute arising between the parties, the same shall be referred to the Courts at New Delhi. He submits that a part of the cause of action has also arisen in Delhi.

8. In my view, the above submissions cannot vest jurisdiction in this Court to adjudicate the present Suit. As noted hereinabove, relief of specific performance with respect to an immovable property can be claimed only in a court within whose jurisdiction the immovable property is situated. Section 16 of the CPC shall apply to such a Suit, and Section 20 of the

CPC shall have no application. Therefore, even if the defendant no. 1 resides or works for gain within the jurisdiction of this Court, this Court will not have the jurisdiction to adjudicate this Suit. Similarly, merely because a part of the cause of action has arisen with the jurisdiction of this Court, would not vest jurisdiction in this Court.

9. In *Harshad Chiman Lal Modi v. DLF Universal Ltd. and Another*, (2005) 7 SCC 791, the Supreme Court had also rejected the contention that the proviso to Section 16(d) of the CPC can apply where the defendant is situated within the jurisdiction of the Court. The Court held that the suit for specific performance would fall under Section 16(d) of the CPC, however, the proviso to Section 16 shall have no application. It was further held that the parties can agree to the jurisdiction of a Court only where two or more Courts have jurisdiction to entertain a suit and the parties submit to the jurisdiction of one of such courts; it can have no application where the Court otherwise has no jurisdiction.

10. Therefore, merely because Clause 17 of the Agreement provides for jurisdiction in Courts at Delhi, jurisdiction shall not vest in the Courts at Delhi, as they otherwise do not have jurisdiction to entertain the suit seeking specific performance of an agreement in relation to an immovable property not situated within its jurisdiction.

11. The learned counsel for the plaintiff further submits that there is a threat to life of the plaintiff at Muzzafarpur.

12. Even if this assertion of the plaintiff is to be accepted, the same cannot vest jurisdiction in this Court to entertain the present suit.

13. In view of the above, the plaint is returned to the plaintiff under Order VII Rule 10 of the CPC to be filed before the Court of appropriate jurisdiction.

14. The pending applications are also disposed of.

**NAVIN CHAWLA, J**

**DECEMBER 13, 2022/Arya/RN/Ais**

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