

IN THE HIGH COURT AT CALCUTTA

(Ordinary Original Civil Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

CS 199 of 2021

Mallika Chatterjee

Vs.

Gooptu Apartments & Middleton Associates

Private Limited & Ors.

Mr. Dhruba Ghosh, Sr. Adv.

Mr. Kaushik Mondal

Mr. Soumyajit Ghosh

Ms. Ajeya Choudhury

... for the plaintiff.

Mr. Rishad Medora

Mr. Abhirup Chakraborty

... for the defendant nos. 1 and 3

Heard on : 14.03.2023 & 31.03.2023

Judgment on : 05.04.2023

Krishna Rao, J.:

The plaintiff has filed the instant suit for decree declaring the plaintiff as absolute owner of the Apartment No. 401 at Middleton Court, 4/2

Middleton Street, Kolkata – 700071 along with car parking space no. 7 at basement being the suit property and is entitled to have the formal conveyance in respect of the suit property executed and registered in favour of the plaintiff by the defendant and allied prayers. Though the defendant had entered appearance but had not filed the written statement.

Plaintiff has examined one witness on commission but the defendant has not adduced any evidence.

As per the case of the plaintiff sometimes in the year 1974, the plaintiff had approached the defendant no. 2 to purchase a flat at 4/2 Middleton Street and accordingly the defendant no. 1 had agreed to sell a flat measuring an area of 1535 square feet on the 4th floor of the 4/2 Middleton Street at the total sale consideration of Rs. 1,60,000/-. The plaintiff had paid an amount of Rs. 20,000/- on 14th August, 1974 as first installment. Subsequently thereof, a Memorandum of Agreement was entered between the parties on 17th October, 1974.

The plaintiff had requested the defendant no. 1 to increase the area of the flat and the defendant has accepted the same and increased the area by approximate 200 square feet in addition to 1535 square feet and accordingly the total area become 1740 square feet. As the defendant has increased the area of 200 square feet and accordingly the total sale consideration was also increased at Rs. 1,75,000/- including car parking space.

The entire sale consideration of the flat was paid by the plaintiff including electric connection charges and the defendant no. 1 had issued

receipt for the payment. The possession of the flat along with the car parking was handed over by the defendant no. 1 to the plaintiff sometimes in the year, 1977. Since then the plaintiff is in occupation of the premises along with the car parking. Though the defendant has received the total consideration but has not come forward for execution of formal Deed of Conveyance in favour of the plaintiff inspite of several requests made by the plaintiff and finding no other alternative, the plaintiff has issued a formal notice to the defendant on 26th July, 2021 calling upon the defendant for execution of formal Deed of Conveyance. Though, the notice was received by the defendant no. 1 but the defendant no. 1 has not come forward to execute Deed of Conveyance and accordingly the plaintiff has filed the instant suit.

The plaintiff had examined one witness on commission and during the evidence, nine (9) documents were exhibited being Exhibit A to G.

Exhibit G proves that the plaintiff had paid the first installment of Rs. 20,000/- on 14th August, 1974 out of the total consideration of Rs. 1,60,000/-.

Exhibit A proves that the plaintiff and the defendant entered into a Memorandum of Agreement on 17th October, 1974.

Exhibit B proves that the defendant had agreed to increase the area of 200 square feet of the flat.

Exhibit C proves that the plaintiff accepted and confirmed that the plaintiff is agreeable to receive the flat having an area of 1740 square feet.

Exhibit E proves that the plaintiff has paid Rs. 1,75,000/- being the total consideration and Rs. 500/- for security deposit of electricity connection.

Exhibit I proves that the plaintiff had sent a notice to the defendant.

Considered the evidence of the plaintiff, averments of the plaint and the documents exhibited during evidence, it is proved that the defendant was the owner of the suit property and had agreed to sell the suit property for a total sum of Rs. 1,60,000/- but subsequently the area of the flat was increased and accordingly the consideration was also increased and the plaintiff had paid the total consideration of Rs. 1,75,000/- along with an amount of Rs. 500/- as security charge of electric connection and the plaintiff has taken possession of the property including car parking in the year 1977 and since then the plaintiff is in occupation of the premises.

Mr. Rishad Medora, Learned counsel for the defendant submits that there is no dispute with regard to the payment of total sale consideration and possession of the plaintiff over the suit property but only difficulty is with regard to executing a Deed of Conveyance after so many years and if the plaintiff will agree, decree for declaration may be passed declaring that the plaintiff is the absolute owner of the suit property.

Mr. Dhruba Ghosh, learned Sr. Advocate submits that the plaintiff is at present 85 years old and has filed the present suit for her ownership of the suit property and has no objection if this Court will pass a decree

declaring the plaintiff as absolute owner of the suit property and the plaintiff will not press the further prayer of plaint.

In view of the above, the plaintiff is declared as absolute owner of the suit property i.e. one flat, being Apartment No. 401 at Middleton Court, 4/2 Middleton Street, Kolkata – 700071, measuring an area of 1740 square feet lying on the North East corner at the Fourth floor along with car parking space no.7.

C.S. No. 199 of 2021 is thus **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)