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A.Nos.4626 & 4625 of 2022

in

CS.Nos.144 & 142 of 2022

R.N.MANJULA, J.,

The applicant is the 1st defendant in the suit in CS No. 144 of 2022 and the applicants are the 1st and 2nd defendants in the suit in CS.No.142 of 2022. The plaintiff in both suits is one and the same. The plaintiff filed these suits for recovery of possession in respect of two different properties. The defendants 1 and 2 in CS.No.144 of 2022 and defendants 2 and 3 in CS.No.142 of 2022 are same.

2. The 1st defendant in CS.NO.144 of 2022 and the 1st and 2nd defendants in CS.No.142 of 2022 have filed these applications to reject the plaint on the same grounds. The defendant, by name VishalSurana is one of the applicants in these applications. He filed these applications by stating that he had sold the suit property to the 1st respondent/plaintiff by virtue of two sale deeds dated 15.06.2021. In the sale deed itself, the following recitals have been stated:

“That the vendor have this day handed over vacant possession of the the schedule mentioned property to the purchaser”

3.The respondent/plaintiff has also signed the sale deeds as a



purchaser. Having purchased the suit property and accepted that the vacant possession has been handed over to him, the plaintiff cannot take the contrary stand that the possession lies with the vendor.

4. As per Section 92 of the Indian Evidence Act, if dispossession of property has been done through a written document like a sale deed, no oral evidence can be given to prove the transaction except by way of producing the sale deed themselves. The plaintiffs have produced the sale deeds, but he has made averments in the plaint just contrary to the contents of the sale deeds. There are materials available to show the self-contrary nature of the suit and also in view of the bar for oral evidence under Section 92 of the Indian Evidence Act, the plaint itself should be rejected.

5. Having admitted that the vacant possession has been given to the plaintiff after the sale deeds were executed, the plaintiff is not entitled to file the suit by pleading something contrary to the recitals of the sale deed and such contentions made by the plaintiff are hit under Section 92 of the Indian Evidence Act.

6. The learned counsel for the respondent/plaintiff has filed his counter by stating that even for the sake of arguments, if it is assumed that the plaintiff had been given actual possession of the suit property and



thereafter if the defendant had enjoyment of the same, that would tantamount to permissive occupation. If the plaintiff intends to take possession of the property, but if it is denied by the defendant, then the only recourse available to the plaintiff is to file a suit for recovery of possession. The plaintiff has filed the suit on the strong cause of action that has been pleaded by them and hence, these applications should be dismissed.

7. Both sides learned counsels argued in the line of their pleadings and their arguments heard.

8. No doubt, under Section 91 of the Indian Evidence Act, if any transaction has been reduced to writing, the transaction has to be proved only by way of producing the very same written document or otherwise, and Section 92 of the Act would exclude oral evidence that would contradict the averments made in the documents. The plaintiff did not deny the sale transaction, but the contention is that the defendants had failed to come forward to deliver the vacant possession of the said property in grant and other dispositions of the property in terms of the sale. Even though the plaintiff is signatory to the sale deeds, which contain the contents of handing over the vacant possession, his contention is that part of the recitals in the sale deeds was not honoured.



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The defendants continued to be in possession and they are running their business therewith with the permission of the plaintiff, but later they denied handing over the possession.

9. Even according to Section 92 of the Act, oral evidence is excluded against the terms of the written document on production of the same; the proviso to Section 92 of the Act would enable the plaintiff to prove certain facts, which is contrary to the recitals. The plaintiff is at a greater risk and shoulders a huge burden to prove something contrary to the recitals found in the sale deeds. Though the plaintiff accepts the sale transaction, he denies the execution of the term as to handing over the possession. To that extent, the plaintiff has filed the suit seeking recovery of possession. Unless the plaintiff could prove through any other evidence, including oral evidence that one part of the terms found in the sale deed was not honoured, the plaintiff will be thrown out without any remedy.

10. The learned counsel for the respondent/ plaintiff further submitted that even for the sake of arguments, if the possession has been handed over to the plaintiff but the defendant continues to be in actual possession, the possession of the defendant has to be construed as permissive possession. Even when the defendant refuses to vacate after



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the permission is revoked, the plaintiff's remedy is only to file a suit for recovery of possession. Just because the plaintiff has a greater burden to prove his claim, it cannot be concluded that the suit is hit under Section 92 of the Act and that he has not come out with any cause of action.

11. In view of the stated reasons, I do not find any merit in the grounds raised by the applicants.

In the result, these applications are **dismissed**.

20.09.2023
[½]

jrs



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