

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 70/2023, CM APPLS. 13373-375/2023**

Reserved on : 20.03.2023

Pronounced on : 12.05.2023

IN THE MATTER OF:

BIJENDER SINGH AND ANR.

..... Appellants

Through: Mr. Lokesh Sawhney, Sr.
Advocate with Mr. Hari Kishan,
Advocate

versus

IQBAL SINGH AND ORS.

..... Respondents

Through: Mr. Harpreet Singh, Advocate for
respondent Nos. 1 and 2.
Mr. R.K. Dhawan, Advocate for
respondent no.3/DDA.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present appeal has been filed under Order XLIII Rule 1 Sub Rule(I) CPC against the order dated 16.12.2022 passed by learned ADJ-02/North, Rohini Courts, Delhi in CS/DJ NO. 290/2022 whereby appellants' application filed under Order 39 Rules 1 and 2 CPC seeking

restraint on the respondents from creating any third party interest was dismissed.

2. Briefly the facts, as culled out from the records, are that the appellant/plaintiff filed the underlying suit for specific performance, declaration, mandatory and permanent injunctions. It was claimed that Late Sh. Amar Singh, (father of respondent No.1 and husband of respondent No.2) was having half share as the owner/bhumidar in the agricultural land out of total land measuring 28 bigha and 15 biswa situated in the revenue estate of Village Pooth Kalan, Delhi. The land was acquired by DDA and a recommendation was made to allot an alternate plot in favour of Amar Singh & his wife Baseri Devi vide recommendation letter no. F-33(31)/297/86/L&B/ALT/127 dated 09.01.1992. On the strength of above recommendation letter, Amar Singh and Baseri Devi executed an Agreement to Sell dated 18.04.1994 with respect to the alternate plot which was to be allotted. The sale consideration of Rs. 28 lakhs was acknowledged to be received and for which a separate receipt was also executed. It was agreed that on allotment, a sale deed would be executed between the parties. It was claimed that Amar Singh expired and later, in the draw of plots held on 28.01.2022 a plot bearing No. 4, Pocket A, Sector A-10, Narela, Delhi admeasuring 333 square meters was allotted to Baseri Devi. The appellant sought execution of the sale deed which was denied resulting in filing of the underlying suit.

3. Mr. Lokesh Sawhney, learned Senior Counsel for the appellants contending that the Trial Court erred in observing that the Agreement to Sell was a contingent contract. He submitted that reading of the Agreement to Sell would show that all the parameters of a concluded

contract were mentioned therein as not only the parties to the agreement were specified but also entire sale consideration was acknowledged to be paid. The identity of the property was also certain, inasmuch as, the same was to be allotted in pursuance of the recommendation letter.

4. Per Contra, learned counsel for the respondent contended that the alleged Agreement to Sell is a forged and fabricated document. In arguendo, it was submitted that the Agreement is in teeth of Sections 29, 31 and 32 of the Indian Contract Act, inasmuch as, neither the details of the property nor any time period for completion of sale has been provided.

5. In rejoinder, learned Senior Counsel submitted that after passing of the impugned order, the appellants have placed on record before the Trial Court, copy of an earlier suit being filed in the year 2014 by one Raj Singh @ Raju against Amar Singh & Others including appellant No.1. He also submitted that in view of the denial of signatures and thumb impression of late Amar Singh and Baseri Devi on the Agreement, the appellant has filed an application before the Trial Court seeking directions to obtain contemporaneous signatures of Amar Singh and thumb impression of Baseri Devi to be sent for comparison.

6. While deciding the application under Order 39 Rules 1 and 2 CPC, the Court is only required to see if the plaintiff has been able to make a prima facie case in its favour. Additionally, it is also to be seen for balance of convenience in favour of the plaintiff that in case interim order is not passed in favour of the plaintiff, the same would result in irreparable loss to him.

7. Admittedly, prior to the subject allotment in question, Amar Singh was allotted an alternate plot in the year 2014 on the basis of same

recommendation letter. The said allotment was challenged by one Raj Singh @ Raju vide suit (old no.93/2014) for Declaration, Permanent and Mandatory injunction. In the said suit, it was claimed that he was the cousin of Amar Singh and their ancestor was the recorded owner of the acquired land. The present appellant no.1 was also impleaded as defendant no. 3. It was specifically averred that Amar Singh was going to sell the land to be allotted. There is also a mention that even panchayat was held wherein the present appellant no.1 also participated and admitted to the purchase of plot from Amar Singh.

8. Pertinently, the aforesaid applications and copy of the earlier suit came to be filed after passing of the impugned order. Without commenting on the merits, this Court deems it expedient to direct that the Trial Court shall hear the parties afresh on the subject application in light of the subsequent facts and without being influenced in any manner by the impugned order or the facts noted herein. The parties shall also be at liberty to place further facts/documents, if any, in support of their respective stands.

9. Accordingly, the impugned order is set aside. The matter is directed to be listed before the Trial Court on 22.05.2023 at the first instance for fresh hearing on plaintiffs' application under Order 39 Rules 1 & 2 CPC.

10. The appeal is disposed of in above terms alongwith pending applications.

(MANOJ KUMAR OHRI)
JUDGE

MAY 12, 2023

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