



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

+ **FAO 569/2018**

Reserved on : 08.05.2023

Date of Decision : 30.05.2023

IN THE MATTER OF:

YASH MEHTA & ANR

..... Appellants

Through:

Mr. Rajat Wadhwa, Mr. Nikhil Mehta and Ms. Dhreti Bhatia, Advocates.

versus

YASH PAL & ORS

..... Respondents

Through: Ms. Sangeeta Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of present appeal, the appellants seek to set aside order dated 18.08.2018 passed by learned Additional District Judge, Karkardooma Court, Delhi whereby their application under Order XXXIX Rules 1 and 2 CPC in CS NO. 3230 of 2016 was dismissed.

2. Pithily put, brief facts of the case are that the appellants preferred the underlying suit for specific performance against respondents claiming that respondent Nos. 2 and 3, owners of property bearing Nos. B-523, B-524 situated at Gharoli Dairy Farm (Colony) situated at B Block Illaqa



Shahdra, Delhi-110096 (hereafter, referred to as ‘suit property’) entered into a collaboration agreement dated 01.06.2012 with respondent No.1 for developing 16 dwelling units in the suit property. The respondent No.1, in turn, entered into an Agreement to Sell with the appellants thereby agreeing to sell two flats in it for a total sale consideration of Rs.16 lacs each.

3. Mr. Rajat Wadhwa, learned counsel for the appellant submits that the Trial Court while refusing to grant restraint order against respondents failed to appreciate that in consequence of oral agreement arrived at on 30.06.2012 between the appellants and respondent No.1, the latter executed an Agreement to Sell dated 19.10.2013 as well as a Possession Letter on 17.02.2014 in favor of the appellants. Out of the total sale consideration, the appellants paid Rs.31 lacs (i.e., Rs. 4.5 lacs through bank transfer and balance Rs.26.5 lacs through cash) to respondent No.1. The receipt of the said amount was duly acknowledged in the Agreement to Sell as well as the Possession Letter. Lastly, it was submitted that respondent No.1 by subsequently filing the amended written statement, materially changed his defense by denying the Agreement to sell as well as Possession Letter.

4. Per contra, Ms. Sangeeta Jain, learned counsel for the respondents defended the impugned order by contending that not only respondent No.1 but also respondent Nos. 2 and 3 have stated that the collaboration agreement was cancelled immediately within one month of its execution. She also referred to the appellant No. 1’s statement that was recorded on 01.08.2018 under Order X Rule 1 CPC wherein he admitted to not receiving the possession of the suit property.



5. While the appellants have claimed that they received possession of the suit property however, in the aforesaid statement recorded before the court, they denied receiving the possession. Admittedly, the suit property belongs to respondent Nos. 2 and 3, who have no privity of contract with the appellants. The respondent No.1 apparently sold the suit property on the strength of the collaboration agreement, which was reportedly cancelled within a month of its execution i.e., in July 2012. The construction is also statedly carried out by respondent Nos. 2 and 3 from their own funds. Even if respondent No.1 has changed his stand in the amended statement, the same would not be detrimental to the interest of respondents Nos. 2 & 3.

6. In light of the fact that apparently, the Agreement to Sell came to be executed after the collaboration agreement was allegedly cancelled, and further in light of the appellant No. 1's statement recorded on 01.08.2018, this Court is of the *prima facie* opinion that the appellants have failed to make out a case seeking restraint against suit property owned by respondent No. 2 and 3, who have no privity of contract with the appellants.

7. Consequently, the appeal is dismissed. It is made clear that the opinions expressed herein above are *prima facie* and should not affect the trial in any manner.

8. Interim Order, if any, stands vacated.

(MANOJ KUMAR OHRI)
JUDGE

MAY 30, 2023

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