

Date of decision :09.04.2024

...Petitioners

Vs.

...Respondents

Present: Mr. Akshay Jindal, Advocate
for the petitioners.

Mr. Vijay Sharma, Advocate
for respondents No. 1 and 2.

Mr. Sushil K. Bhardwaj, Advocate for
Mr. Vivek Bhandari, Advocate
for respondents No. 3 to 5.

1. The suit filed by the respondents No. 1 and 2 for actual and separate possession in respect of area measuring 4332 Sq. Yards being 3/4th share owned by them through partition by metes and bounds and by way of a specific performance of the agreement to sell is pending before the trial Court.

2. The defendants No. 1 to 5 are owners of a residential unit to the extent of 3/4th whereas, the defendants No. 7 to 9 are owners to the extent of 1/4th share. The petitioners are stated to be Non Resident Indian. They entered into an agreement to sell with the plaintiffs on 28.12.2017 with respect to their 3/4th share, which is measuring 4300 Sq. Yards. In the agreement to sell, there was no stipulation in the agreement to sell that the petitioner would deliver actual and physical possession to the plaintiffs.

3. The defendants No. 1 to 5 filed an application conceding to the plaintiffs' case while requesting the Court to direct the plaintiffs to execute the sale deed. The plaintiffs however, contested the application. The plaintiffs took a stand that they are not prepared to come forward to execute the sale deed unless actual physical possession of the property is delivered.

4. The trial Court has dismissed the application.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

6. Learned counsel representing the petitioners submits that the defendants are not in actual physical possession of any part of the property. He submits that as per the agreement to sell, the petitioners were required to execute the sale deed with respect to 3/4th share equivalent to 4300 Sq. Yards. The plaintiffs were aware of this fact at the time of execution of the agreement to sell. There is an undivided portion of the joint property and actual physical possession can be delivered only upon partition of the joint property. He submits that the trial Court had erred in dismissing the application.

7. Learned counsel representing the respondent (plaintiff) has reiterated his stand. He submits that in view of Section 54 read with Section 55 of the Transfer of Property Act, 1882, the delivery of possession is a condition precedent for execution of the sale deed, even if it is of undivided partition of a residential house.

8. This Court has considered the submissions of the learned counsel representing the parties.

9. In the opinion of the Court, once the intended purchaser has

knowingly entered into an agreement to sell with respect to an undivided portion of the property, he is required to come prepared to pay the balance sale consideration to enable the proposed vendors to execute the sale deed, subject to obtaining his actual physical possession of the property upon partition.

10. In response to this, learned counsel representing the petitioners submits that they are prepared to deliver symbolic possession.

11. Learned counsel representing the respondents submits that there is no stipulation in the agreement to sell that the actual physical possession is not required to be delivered to the plaintiffs at the time of execution of the sale deed. Hence, it is inevitable that the delivery of possession is a condition precedent.

12. However, at this stage, expression of final opinion on the aforesaid situation shall not be appropriate.

13. Keeping in view the aforesaid facts, the revision petition is disposed of.

09.04.2024

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Whether speaking/reasoned :

Whether Reportable :

(ANIL KSHETARPAL)
JUDGE

Yes No

Yes No