

(2009) 07 DEL CK 0517
In the Delhi High Court
Case No : CS (OS) No. 318 of 2008

Shri Pran Nath Kapoor and Another	Vs	APPELLANT
Shri Surender Hooda		RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Citation : (2009) 07 DEL CK 0517

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : B.L. Chawla, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—The present suit has been filed by the plaintiffs for specific performance of contract with delivery of possession, compensation/damages.

2. It is averred in the plaint that the defendant executed an agreement to sell dated 20.10.2007 in favour of the plaintiffs for a total consideration of Rs. 44,66,000/- in respect of property bearing plot Nos. R-20A and R-20B of an area measuring 203 sq. yards with office com- showroom out of total area measuring 240 sq. yards forming part of Khasra No. 183 and 184, situated in village Nawada, Delhi abadi known as Nawada Housing Complex, Jain Road, Uttam Nagar, New Delhi. The plaintiffs on the representation of the defendant agreed to purchase the property in question from the defendant at the said consideration mentioned above and made a part payment of Rs. 5 lac to the defendant as earnest money on 20.10.2007 and the balance amount of Rs. 39,66,000/- was agreed to be paid by the plaintiffs to the defendant on or before 31.1.2008 on execution of sale deed in favour of the plaintiffs after completion of the necessary and requisite formalities by the defendant and delivery of vacant physical possession of the property to the plaintiffs.

3. It is further averred in the plaint that at the time of entering the agreement to sell, the defendant produced original sale deed dated 3.1.2003 executed in his

favour for inspection of the plaintiffs.

4. Since the defendant continued to postpone to complete the formalities within the stipulated period under one pretext or the other, the plaintiffs sent a notice dated 21.1.2008 on the defendant requesting him to fix a date for execution of the sale deed in their favour showing their willingness and readiness and to pay the balance amount of consideration and asked defendant to execute the sale deed in their favour, and received the balance amount of consideration to enable the plaintiff to purchase the non-judicial stamp paper for the same.

5. The defendant vide letter dated 24.1.2008 replied to the above said notice of the plaintiffs stating that as per the rules of Govt. of Delhi, no sale deed and power of attorney have been allowed to get registered in regard of the locality where the property in question is situated. It is further stated that the plots in the locality where the property in dispute situates were allotted to the people under the 20 points (Sutri) programme by the Government and the decision with regard to getting the locality freehold is still pending for consideration before the Delhi Government. The defendant assured the plaintiffs that the sale deed will be executed in their favour only after the Govt. of Delhi allows the properties in the abovesaid locality to be converted to freehold properties. No document for registration can be executed till the matter pending before the Delhi Govt. is settled.

6. After the aforesaid letter dated 24.1.2008, the defendant also sent a notice dated 4.2.2008 (stated to be erroneously dated 4.1.2008) wherein the defendant informed the plaintiffs that he had waited for the payment of balance sale consideration till 31.1.2008, and as the same was not received, the earnest money of Rs. 5 lac paid by the plaintiff is therefore forfeited by him.

7. The plaintiff states that the plaintiffs were all along and are still ready and willing to pay the balance of the sale consideration to the defendant as indicated in their letter dated 21.1.2008, but the defendant is trying to wriggle out of the contract by making excuses.

8. It is alleged by the plaintiff that they approached the defendant number of times and offered the balance amount of sale consideration and requested him for sale transaction and execution of sale deed with delivery of vacant physical possession after completion of necessary and requisite formalities but the defendant delayed the registration on the ground that the property was allotted under 20 points (Sutri) programme by the Govt.

9. The plaintiff denied of any oral understanding as stated by the defendant in the letter dated 24.1.2008 and subsequent notice dated 4th January, 2008 and submitted that it was represented by the defendant at the time of entering into agreement to sell that he was owner of freehold self acquired property and also produced original sale deed in his favour dated 3.1.2008. This fact is evident from the terms of the bayana agreement dated 20th October, 2007 and also from production of the original sale deed dated 3rd January, 2003 for inspection of the

plaintiffs.

10. It is contended that the contract between the plaintiffs and the defendant is legally. The plaintiffs are therefore entitled to compensation for breach of the contract by the defendant, besides its specific performance, in addition to or in substitution of such performance by the defendant. The plaintiff prayed for specific performance of the contract dated 20th October, 2007. In the alternative, the plaintiffs prayed for compensation of Rs. 5 lac for breach of the contract and also for refund of the amount of Rs. 5 lac paid by them to the defendant as earnest money, with interest thereon at the market rate and to execute and register the sale deed in favour of the plaintiffs.

11. Vide order dated 18.2.2008, an interim order was passed restraining the defendant, his agents and/or assignees from selling, transferring or encumbering the suit property. The defendant even after service of summons by ordinary process neither filed any written statement nor any one appeared on his behalf, therefore, by order dated 30.9.2008 the defendant was directed to be proceeded against ex parte and the interim order dated 18.2.2008 was made absolute till the disposal of the suit. The plaintiff Sh. Pran Nath Kapoor (plaintiff No. 1 herein) filed evidence on behalf of plaintiffs deposing on the same terms as exist in the plaint.

12. It is contended by the plaintiff that the damages in terms of money was not adequately relieved and the breach of contract to convey the immovable property by execution and registration of sale deed cannot be adequately relieved by compensation in terms of money or otherwise in the circumstances of the case, therefore, the plaintiff has prayed for a decree of specific performance.

13. In the agreement to sell Clause 2 provided for payment to be made on or before 31.1.2008 and to execute the sale deed in favour of the plaintiffs at the time of the payment. In Clause 4, it is provided that the suit property is self acquired property of the defendant with the freehold rights of the land under the said property. Though in the reply to the notice, the defendant denied regarding the provision for execution and registration of the sale deed of the property on or before 31.1.2008 after completion of necessary and requisite formalities and took the plea that the suit property was allotted under 20 points (Sutri) programme by the Government, the defendant has not denied of executing the agreement to sell and payment of Rs. 5 lac made to him by the plaintiff. The defendant agreed to do certain acts and things in the agreement to sell.

14. If the buyer is in the position to perform the remaining contract and is ready and willing to pay balance amount, it would be sufficient to fulfil the requirement of readiness to pay. The plaintiffs being the purchaser for valuable consideration under the agreement to sell have right to claim specific performance and as such is entitled for decree in their favour. Performance of the contract would not involve any hardship to the defendant. In the result, I am of the considered view that the contract of sale between the parties is lawful, has been partially and

substantially performed and acted upon by both the parties. The contract is capable of specific performance. There is no valid ground or justification why the court ought not to pass a decree for specific performance of this contract in favour of the plaintiffs.

15. The suit of the plaintiff is decreed in terms of prayer [a]. It is directed to the defendant that as per contract dated 20.10.2007, the defendant will execute the sale deed of the property bearing Plot Nos. R- 20A and R-20B, measuring 203 sq.yds., with office cum showroom, out of total area measuring 240 sq.yds. forming part of Khasra No. 183 and 184, situated in the revenue estate of Village Nawada, Delhi, abadi known as Nawada Housing Complex, Jain Road, Uttam Nagar, New Delhi.

Till the execution of the sale deed, the ex parte ad interim injunction order passed against the defendant shall continue. The other reliefs claimed by the plaintiff are rejected being infructuous.

The decree be drawn accordingly.