

(2009) 02 DEL CK 0235
In the Delhi High Court
Case No : C.S. (OS) No. 165 of 2009

Smt. Kaushal Aggarwal and Another

APPELLANT

Vs

Ashok Malhotra and Others

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1)
Transfer of Property Act, 1882 — Section 53A

Citation : (2009) 02 DEL CK 0235

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Ashim Vachher, for the Appellant;

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—The plaintiffs are in possession of ground floor of the property No. G-40, Nizamuddin (West). The plaintiffs claim to have entered into an oral agreement to purchase this property from late Smt. Gian Devi and defendant No. 3 for a total consideration of Rs. 2,90,000/-. The plaintiffs claim that out of the sale consideration, they paid Rs. 2,35,000/- and the remaining amount of Rs. 55,000/- was to be paid at the time of execution of sale deed. They alleged to have entered into this oral agreement on or around 15th March, 1984. In the same property, one Smt. Vimla Malhotra had been a tenant since 1971 at first floor and barsati floor. Defendants No. 3, 4 & 5 who were the recorded owners of the property filed an eviction petition against late Smt. Vimla Malhotra u/s 14(1)(e) of DRC Act. This eviction petition was contested by Smt. Vimla Malhotra and a leave to defend was granted to her. Ultimately the learned Rent Controller vide order dated 7th September, 2006 passed an eviction order in favour of defendants No. 3, 4 & 5 and against Smt. Vimla Malhotra. plaintiffs claim that this eviction order was challenged by Smt. Vimla Malhotra by way of a revision petition. However, Smt. Vimla Malhotra expired on 23rd May 2008. Her son and daughter, who are defendants No. 1 & 2 herein had agreed to hand over

the vacant possession of the premises in their occupation to defendants No. 3, 4 & 5. The plaintiffs have filed this suit seeking an injunction that defendants No. 1 & 2 be restrained from handing over vacant peaceful possession of suit property to defendants No. 3, 4 & 5 and Court should pass a decree of permanent injunction to this effect against defendants No. 3, 4 & 5. In case the possession had already been handed over by defendants No. 1 & 2, defendants No. 3, 4 & 5 be restrained from handing over possession of this property to any third party and the Court should also pass a mandatory injunction against defendants No. 1 & 2 to hand over the vacant possession to the plaintiffs.

2. The plaintiffs' sole claim in this suit is based on an oral agreement, which plaintiffs allegedly entered about 25 years ago with the deceased Smt. Gian Devi and defendant No. 3. An oral agreement to sell, even if it is assumed was there, does not confer any title in the property on the plaintiffs and on the basis of this oral agreement the plaintiffs cannot seek an injunction against a tenant handing over possession of the tenanted premises to the landlord and lawful registered owners of the property. It is the plaintiffs' own case that defendant No. 3 had got issued a legal notice as back as on 29th April, 1993 on the plaintiffs asking plaintiffs to vacate the property and it is only after this notice that the plaintiffs took a plea that there was an oral agreement to sell in respect of the property in their favour. The plaintiffs had not taken action on the basis of alleged oral agreement to sell prior to 1993. The plaintiffs filed a suit for specific performance of this alleged oral agreement to sell only in 2005 i.e. after about 21 years of the alleged agreement. The suit is pending before the Court. Defendants No. 3, 4 & 5 have also filed a suit for possession against the plaintiffs in respect of the ground floor, which is in possession of the plaintiffs. The suits filed by the plaintiffs and defendants are being tried together.

3. I consider that on the basis of an oral agreement to purchase, no ownership rights can be claimed in a property. The part performance which is alleged by the plaintiffs cannot be looked into in view of Section 53(A) of the Transfer of Property Act as the basic and fundamental requirement of Section 53A is that the agreement should be in writing specifying precisely the terms and conditions of contract. Creation of a right in any manner in immovable property of more than Rs. 100 is compulsorily register-able. Under these circumstances, I consider that the suit filed by the plaintiffs seeking injunction restraining the tenant from handing over possession to the landlord lawful owners cannot be entertained neither the Court can restrain the lawful owners of the property from exercising their rights in inducting another tenant or another person because of plaintiffs' claim of entering into an oral agreement to sell of the property around 25 years ago without any document showing that any amount was paid towards sale of the property. The suit is not maintainable and is hereby dismissed.