

Brijesh Kumar Vs. Bimla Devi

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SooperKanoon Citation : sooperkanoon.com/1162868

Court : Delhi

Decided On : Aug-20-2014

Judge : G. S. Sistani

Appellant : Brijesh Kumar

Respondent : Bimla Devi

Judgement :

§~23 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision :

20. h August, 2014 % + CS(OS) 2206/2013 BRIJESH KUMAR Plaintiff
Through: Mr. Ravinder Narwal, Adv. versus BIMLA DEVI Defendant Through :
Mr.Rajesh Kumar, Adv. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI
G.S.SISTANI, J.

(Oral) 1. Present suit has been filed by the plaintiff for specific performance of an Agreement to Sell dated 17.5.2013 and for permanent injunction.

2. Summons in the suit and notice in the application were issued on 13.11.2013. Counsel for the defendant entered appearance on 13.3.2014 and sought four weeks time to file the written statement. Despite the matter being listed before the Joint Registrar on 4.7.2014 and 11.8.2014, written statement was not filed and consequently the right to file written statement was closed on 11.8.2014 by the Joint Registrar. Counsel for the plaintiff prays that a decree be passed against defendant under Order VIII Rule 10 CPC as despite time being granted to counsel

for the said defendant to file the written statement, no written statement has been filed. No written statement has been filed neither any application for extension of time has been filed.

3. As per the plaint, the defendant claims herself to be the absolute owner of the property bearing No.134 and 135 on the second floor without roof rights, area measuring $26+26 = 52$ sq.m., Pocket 16, Block-E, Sector-8, Rohini, Delhi-85, situated in the Rohini Residential Scheme having purchased the same from the DDA.

4. Further, as per the plaint, parties signed an Agreement to Sell on 17.5.2013 with respect to the suit property. The total sale consideration was fixed at Rs.44,00,000/- out of which the plaintiff has paid Rs.36,00,000/- to the defendants as earnest/ money advanced and a receipt acknowledging the receipt of the said amount was executed on the same day i.e.17.5.2013. The Agreement to Sell duly signed by the parties has been filed alongwith the plaint. The Agreement to Sell acknowledges receipt of Rs.36,00,000/- by the defendant alongwith a receipt, original of which has also been placed on record.

5. It has been averred in the plaint that the sale was to be finalised within a period of one month from the bank clearing/releasing the documents of the property and thereafter the balance sale consideration was to be paid.

6. Counsel for the plaintiff submits that several requests were made to the defendant to clear the bank loan and complete the transaction but no satisfactory response was received and resultantly, a legal notice was issued to the defendant dated 24.9.2013. Copy of the legal notice and postal receipts have been placed on record.

7. Counsel for the plaintiff further submitted that plaintiff has all along been ready and willing to perform his part of the agreement but it was the defendant who refused to honour the terms of Agreement to Sell.

8. I have heard the counsel for the plaintiff and carefully perused the plaint duly supported by the affidavit of the plaintiff and the documents filed along with the

plaint. The plaintiff has placed on record the original Agreement to Sell and original receipt evidencing receipt of payment of Rs.36,00,000/- by the defendant both dated 17.5.2013 out of the agreed sale consideration of Rs.44,00,000/-. Postal receipts have also been placed on record to show that the legal notice was issued and served on the defendant. The A.D. Card which bears the signatures of the defendant has also been placed on record. Despite repeated requests and the legal notice being served, the defendant has failed to complete the transaction.

9. On the basis of documents placed on record, the plaintiff has been able to establish that parties entered into an Agreement to Sell on 17.5.2013. Plaintiff paid Rs.36,00,000/- as is evident upon reading the Agreement to Sell. Separate receipt has also been placed on record. Plaintiff has also established that plaintiff has all along been ready to comply with the terms and conditions of the Agreement to Sell and willing to pay the remaining consideration amount but it was defendant who despite repeated requests and despite legal notice being served upon him failed to complete the transaction.

10. For the reasons stated above and the fact that defendants have failed to file their written statement within the time allowed, this is a fit case to pass a decree under Order VIII Rule 10 CPC. Accordingly, the present suit is decreed in favour of the plaintiff and against the defendant. The defendant shall accept the balance sale consideration within four weeks from today after clearing the dues of the bank failing which it will be open to the plaintiff to deposit the amount with the bank and upon clearance of loan original title deeds would be handed over to the plaintiff by the bank. In case there is any balance amount beyond Rs.8,00,000/-, it will be handed over to the defendant who will execute the sale deed in favour of the plaintiff.

11. Decree sheet be drawn up accordingly. (G.S.SISTANI) JUDGE August 20, 2014 ns/pdf