

Sunil Kumar Vs. Uma and anr.

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Court : Delhi

Decided On : Feb-24-2014

Judge : G. S. Sistani

Appellant : Sunil Kumar

Respondent : Uma and anr.

Judgement :

§~7 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CS(OS) 1546/2010 % Judgment dated 24.02.2014 SUNIL KUMAR Through: Mr.V.P.Rana, Advocate Plaintiff versus UMA & ANR. Through: Defendants CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S.SISTANI, J (ORAL) 1. The plaintiff has filed the present suit for specific performance of agreement to sell dated 20.08.2009. After service defendants had entered appearance. Written statement filed was returned with objections. The objections were not removed and written statement was not brought on record. Since 24.3.2011, the defendants were not represented and they were proceeded ex-parte on 29.09.2011.

2. Plaintiff has led ex-parte evidence by filing affidavit by way of evidence of the plaintiff, Sh.Sunil Kumar. The affidavit by way of evidence is exhibited as Ex.PW-1/A. The plaintiff has deposed on the lines of the plaint. As per the evidence of PW-1, he had entered into an agreement to sell with the defendants on 20.08.2009 with respect to purchase of property No.C-11, area measuring 116.1/2 sq.yd., out of rectangle No.10, Kila No.17, situated in the area of village Asalatpur

Khadar Abadi known as Jeevan Park, Block-C, Pankha Road, New Delhi-110059 for a total sale consideration of Rs.52 lakhs. It has been deposed by PW-1 that Rs.10 lakhs were paid in cash by him to the defendants as earnest money on the date of signing of the agreement to sell i.e. on 20.08.2009 and further out of the total agreed sum i.e. Rs.52 lakhs, Rs.31 lakhs stand paid to the defendants. PW-1 has further deposed that since the property was mortgaged to Central Bank of India, Sukhdev Vihar Branch even before the present agreement was entered into, he is willing to clear the balance loan amount with the bank as per clause 3 of the Agreement to Sell which is roughly Rs.9 lakhs. As per the evidence of PW-1, the parties signed the agreement to sell i.e. bayana agreement dated 20.08.2009. The original agreement to sell has been exhibited as Ex.PW-1/1. The aforesaid agreement to sell acknowledges Rs.10 lakhs paid in cash to the defendants. The deponent has also testified that wherein the defendants have acknowledged receipt of Rs.10.00 lacs in the Agreement to Sell on 20.08.2009 a separate receipt was also executed by the defendants, the original receipt of which bearing thumb impression and signatures of the defendants has been exhibited as Ex.PW-1/2. Further, Rs.5 lakhs were paid to the defendants on 24.08.2009. The original receipt, acknowledging Rs.5.0 lakhs has been exhibited as Ex.PW-1/3 which also bears the signatures and thumb impressions of the defendants. Another amount of Rs.5 lakhs were paid to the defendants on 26.08.2009, the original receipt whereof has been exhibited as Ex.PW-1/4. Rs.7 lakhs were paid on 28.08.2009, original receipt whereof has been exhibited as Ex.PW-1/5. Rs.2 lakhs (2 cheques of Rs.1 lakh each in favour of defendant No.2) were paid on 08.03.2010 and acknowledgment receipt thereof has been exhibited as Ex.PW-1/6. The statement of accounts to show that the cheques stand encashed has been filed as Ex.PW-1/7. Mr.Sunil Kumar has also deposed that on 16.03.2010 the plaintiff paid Rs.2 lakhs to the defendants on their specific demand for which defendants issued a receipt/acknowledgment dated 16.03.2010 which is exhibited as Ex.PW-1/8. The copy of the reminder issued to the defendants dated 30.03.2010 for execution of the sale documents in compliance with the agreement has been exhibited as Ex.PW-1/9. The courier receipt showing that the reminder was issued to the defendant has been exhibited as Ex.PW-1/10. The proof of delivery by Blue Dart has been exhibited as Ex.PW-1/11. It has also been deposed that the deponent

has all along been ready and willing to complete his part of the transaction and in fact the deponent reached the office of Sub-Registrar, Janakpuri at 10:00 am on the appointed date along with the balance sale consideration of Rs.21 lakhs. He waited till 1:00 pm and executed an affidavit dated 31.03.2010 before the Notary Public and also put his appearance before Sub-Registrar-II, District-West, Delhi vide receipt No.005911 dated 31.03.2010 but the defendants did not reach the Sub-Registrars office on the appointed date and time. The receipt has been exhibited as Ex.PW1/12 and the affidavit before the Notary Public has been exhibited as Ex.PW-1/13. PW-1 has further testified that on his instructions a legal notice was issued to the defendants on 04.04.2010 which was sent by Regd.A.D.Post as also by UPC on 05.04.2010. A copy of the notice has been exhibited as Ex.PW-1/14 and the postal receipts have been exhibited as Ex.PW-1/15 and Ex.PW-1/16. UPC receipts have been exhibited as Ex.PW-1/17 and Ex.PW-1/18. The acknowledgment card received back, which otherwise was duly received by Uma Bhatla has been exhibited as Ex.PW-1/19 and the acknowledgement card received by Rekha Bhatla has been exhibited as Ex.PW-1/20. Reliance has also been placed on a handwritten note of Uma Bhatla dated 02.07.2010 wherein she has acknowledged entering into an agreement to sell with the plaintiff; the handwritten note is exhibited as Ex.PW-1/21. Plaintiff, who is present in Court, has made a stated that he has all along been ready and willing to complete his part of the transaction and even now he is willing to pay the balance consideration to the defendants after depositing the amount due to the bank. The statement made in Court today shall be read as part of his evidence.

3. I have heard the counsel for the plaintiff, carefully perused the affidavit by way of evidence, considered the statement made by the plaintiff in Court today and the original documents which have been placed on record. The evidence of the plaintiff is unrebutted. Despite service, the defendants have chosen not to contest the matter. The original agreement to sell, which has been placed on record [PW-1/1]. bears the thumb impressions as also the signatures of the defendants. The plaintiff has been able to establish that he has made a payment of Rs.31 lakhs to the defendants out of the agreed sale consideration of Rs.52 lakhs. The original receipts duly signed by the defendants acknowledging the amounts received have been exhibited as Ex.PW-1/2 to Ex.PW-1/6. The statement of accounts evidences

the fact that Rs.2 lakhs paid to the defendants by cheques stand encashed. The plaintiff has also established his readiness and willingness to perform his part of the agreement from the fact that he visited the office of the Sub-Registrar on 31.03.2010 and also the fact that he expressed his willingness by means of a legal notice issued to the defendants which was duly received by the defendants. The postal receipts and acknowledgment cards have also been filed and exhibited by the plaintiff. No response to the legal notice was issued by the defendants. Defendant Uma Bhatla in her own handwriting has admitted that she entered into an agreement to sell with the plaintiff. Consequently, the present suit is decreed in favour of the plaintiff and against the defendants. The plaintiff will be entitled to approach the Central Bank of India, Sukhdev Vihar and clear the loan amount. After the loan amount is cleared the bank will release the title deeds in favour of the plaintiff. Any balance after loan amount is cleared shall be tendered to the defendants and in case the defendants do not accept the same and do not sign and execute the sale deed, the plaintiff shall deposit the balance sale consideration in this Court within 10 days of receipt of this judgment. After serving a notice to the defendants it will be open for the defendants to complete the sale transaction and receive the balance sale consideration simultaneously or else the plaintiff will be entitled to legally execute the same. The amount shall be kept by the Registrar General of this Court in a fixed deposit which would be renewed periodically. The principal amount and interest so accrued shall be released in favour of the defendants, once the documents are finally executed. Decree-sheet be drawn up accordingly. G.S.SISTANI, J.

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