

Ritesh Vs. Surat Singh

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Court : Delhi

Decided On : Aug-28-2014

Judge : G.P. Mittal

Appellant : Ritesh

Respondent : Surat Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Pronounced on:

28. h August, 2014 + CS(OS)1558/2013 .. Plaintiff RITESH Through: Mr. V.P. Rana, Advocate versus SURAT SINGH .. Defendant Through: None. CORAM: HONBLE MR. JUSTICE G.P. MITTAL G.P. MITTAL. J.

(ORAL) 1. This suit for specific performance and permanent injunction has been filed by the Plaintiff against the Defendant. Vide an Agreement for Sale(Ex.PW-1/1) dated 30.05.2013, the Plaintiff agreed to purchase the land measuring 2 bighas and 7 biswas comprising Khasra nos.29//5(2-7) situated in the revenue estate of Village Kanjhawala, Delhi-110081 for a consideration of ` 21 lakhs. An amount of ` 10 lakhs was paid to the Defendant as earnest money (Ex.PW1/2) and the balance consideration of ` 11 lakhs was to be paid within 30 days, i.e., till 29.06.2013 at the time of execution of the Sale Deed subject to obtaining of NOC by the Defendant. It is the case of the Plaintiff that on 25.06.2013, the Plaintiff requested the Defendant to obtain the required NOC in terms of clause 11 of

Agreement for Sale (Ex.PW1/1). The Defendant promised to obtain the NOC in the first week of July, 2013, but the same was not obtained.

2. The Plaintiff served a legal notice dated 08.07.2013 (Ex.PW1/3) expressing his willingness to pay the balance amount and again requested the Defendant to obtain the NOC. The Defendant sent a reply dated 11.07.2013 admitting execution of the Agreement of Sale and receipt of the amount of `10 lakhs. He, however, stated that the Plaintiff was under obligation to pay the balance amount of `11 lakhs within 30 days and that having not been done, the earnest money of `10 lakhs had been forfeited. The Defendant also informed that he never promised the Plaintiff to obtain the NOC.

3. Summons of the suit were served upon the Defendant. The Defendant preferred not to contest the proceedings and was proceeded ex parte and ex parte evidence was ordered by an order dated 22.10.2013. The Plaintiff corroborated the averments made in the plaint by proving the Agreement for Sale dated 30.05.2013 (Ex.PW1/1), Receipt dated 30.05.2013 for ` 10 lakhs (Ex.PW1/2), legal notice dated 08.07.2013 (Ex.PW1/3) and its reply dated 11.07.2013 (Ex.PW1/4).

4. I have heard the learned counsel for the Plaintiff and perused the record.

5. As per clause 11 of the Agreement for Sale, the seller was under obligation to provide NOC from the concerned department/authority for execution of the Sale Deed. Thus, the Defendant could not have shied away from his responsibility to obtain the NOC. Since the Defendant was ordered to be proceeded ex parte, the evidence produced by the Plaintiff has remained unchallenged and unrebutted. Consequently, the Plaintiff is entitled to a decree for specific performance of the contract dated 30.05.2013. The Plaintiff is accordingly directed to deposit the balance sale consideration of `11 lakh with the Registrar General of this Court within four weeks. The amount so deposited shall be converted into a fixed deposit for a period of three months.

6. I hereby pass a decree for specific performance of the contract dated 30.05.2013 in favour of the Plaintiff and against the Defendant directing the Defendant to obtain the NOC under Section 8 of the Delhi Land (Restrictions on

Transfer) Act, 1972 from the competent authority within a period of eight weeks for transfer of the suit property in favour of the Plaintiff and shall execute the Sale Deed within a period of four weeks thereafter. If the Defendant fails to obtain the NOC, the Registrar(Original) shall apply to the concerned authority for obtaining the NOC. On issuance of the NOC, the Registrar(Original) shall execute the Sale Deed in favour of the Plaintiff on behalf of the Defendant.

7. Immediately on execution of the Sale Deed, the Defendant shall be entitled to withdraw the amount of ` 11 lakhs deposited with the Registrar General of this Court with interest, if any, accrued on the said amount. If it is found to be not permissible to issue an NOC, the suit of the Plaintiff for specific performance shall be deemed to be dismissed and the Plaintiff shall be entitled to refund of the earnest money of `10 lakhs along with interest @ 12% per annum from the date of filing of the suit till the amount is paid to the Plaintiff.

8. Once the Sale Deed is executed, the Plaintiff shall be entitled to obtain the possession of the suit property from the Defendant by getting a warrant of delivery of possession.

9. The suit is decreed in above terms with costs.

10. Decree Sheet be prepared accordingly.

11. Pending applications stand disposed of. G. P. MITTAL (JUDGE) AUGUST28 2014 pst

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