

Alka Tyagi Vs. Bijender Singh and Ors

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Court : Delhi

Decided On : Nov-19-2014

Judge : G. S. Sistani

Appellant : Alka Tyagi

Respondent : Bijender Singh and Ors

Advocate for Pet/Ap. : Dr. Suman Chaudhary

Judgement :

\$~30 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

19. h November, 2014 % + CS(OS) 2098/2014 ALKA TYAGI Through: Plaintiff
Dr. Suman Chaudhary, Advocate versus BIJENDER SINGH & ORS Through:
None Defendants CORAM: HON'BLE MR. JUSTICE G.S.SISTANI
G.S.SISTANI, J.

(Oral) 1. Plaintiff has filed the present suit for specific performance and permanent injunction under Sections 10 and 34 of Specific Relief Act with respect to land comprising in Khasra No.15//3(4-5), 4(2-18), 5(2-1), 26 (0-3), 1(112), situated in the Revenue Estate of Village Devrala, Delhi.

2. Summons in the suit and notice in the application under Order XXXIX Rules 1 and 2, were issued on 21.07.2014. Despite service none appeared for the defendants, consequently the defendants were proceeded ex parte vide order

dated 22.08.2014. Time was granted to the plaintiff to file affidavits by way of evidence.

3. Plaintiff has filed her affidavit by way of evidence and same has been exhibited as Ex.PW1/A. PW1 has deposed in her affidavit that the father of the defendants Late Sh.Maam Singh S/o Sh.Kanha was the bhumidhar of the agricultural land comprising in Kh.No.15//3 (4-5), 4 (2-18), 5 (2-1), 26 (0-3), 1 (1-12) situated in the Revenue Estate of Village Devrala, Delhi and the copy of the Khatauni has been exhibited as Ex-PW-1/1.

4. PW1 has also deposed that the defendants and their father Late Sh.Maam Singh agreed to sell their land comprising in Kh.No.15//3 (4-5), 4 (2-18), 5 (2-1), 26 (0-3), 1 (1-12) to the plaintiff and in this regard an agreement to sell dated 14.07.2011 was executed between the plaintiff and father of the defendants with the consent of the defendants as the defendants have also given their consent in written vide affidavit dated 14.07.2011 and in the said affidavit the defendants have undertaken that if Sh.Maam Singh dies before the completion of the sale transaction, then the defendants would complete the same. The agreement to sell dated 14.07.2011 has been exhibited as Ex-PW-1/2. The defendants had agreed to sell the said land for a total sale consideration of Rs.1,20,83,334/- (Rupees One Crore Twenty Lacs Eighty Three Thousand Three Hundred Thirty Four Only) out of the said total sale consideration the plaintiff has paid a sum of Rs.18,00,334/- for which a separate receipt dated 14.07.2011 was executed by the father of the defendants. That out of Rs.18,00,334/- the defendants received Rs.9,00,334/- in cash and Rs.9,00,000/- vide Cheque No.289937 dated 20-7-2011. The receipt has been exhibited as Ex-PW1/3.

5. PW1 has further deposed that it was agreed between the plaintiff and defendants that the balance sale consideration shall be paid on or before 09.11.2011 at the time of execution of the sale deed in favour of plaintiff and on procurement of the NOC by the defendants or their father. It has also been deposed that as per the terms of the agreement it was the obligation of defendants and their father to obtain the NOC from the competent authority and to inform the plaintiff within 7 days from the receipt of NOC by registered post and it was further

agreed that if defendants would not obtain the NOC within the stipulated period than the time would be extended automatically till the NOC is obtained by defendants or their father.

6. PW1 has next deposed that before 09.11.2011, the husband of the plaintiff contacted and met the defendants and their father at their residence and the defendants assured the husband of the plaintiff, that the defendants or their father would not infringe the agreement and in any condition they would sell the land to the plaintiff only. It has also been deposed that the plaintiff has always been ready to perform her part of the agreement, however, despite repeated requests by the plaintiff and her husband, the defendants and their father did not obtain the NOC from the competent authority. In the month of November 2011, the defendants requested for further time to obtain the NOC on account of old age of the father of defendants and for the reason that he was suffering from various diseases. Plaintiff was informed that they would obtain the NOC as and when their father would recover his health. The plaintiff on the ground of humanity agreed to the same.

7. It has further been deposed that Sh.Mann Singh died in the month of April 2013 and after his death, the husband of the plaintiff visited the house of the defendants and requested the defendants to get the mutation in their favour and thereafter obtain the NOC from the competent authority and at that time the husband of the plaintiff had provided the Forms of NOC to the defendants and on this the defendants assured that they would get the mutation done in the Revenue Record as early as possible and after the mutation the defendants would provide a copy of Khatauni, but no such steps were taken. It has also been deposed that since April 2013, the defendants have been prolonging the matter on one pretext or another inspite of repeated requests by the plaintiff and her husband.

8. PW1 has also deposed that as per the terms and conditions of the agreement to sell dated 14.07.2011, it is the obligation of the defendants to perform their part of the agreement to sell being the legal heirs of Late Sh.Maana Singh. As per clause 14 of the Agreement to Sell and affidavit of defendants, the defendants are bound to execute the sale deed in favour of the plaintiff and further as per the conditions

of the agreement to sell, if defendants failed to execute the Sale Deed in favour of the plaintiff or his nominee within the stipulated period then the plaintiff would have the right to file a suit for Specific Performance of the agreement to sell against defendants in a court of law and can get the Sale Deed executed and registered through court.

9. PW1 has further deposed that since the defendants have failed to obtain the NOC from the competent authority and have been prolonging the matter on one pretext or another, the plaintiff was constraint to send a legal notice dated 21.04.2014 to the defendants. Same was duly received by the defendants however neither the defendants replied to the notice nor they obtained the NOC. Copy of the legal notice dated 21.04.2014 has been exhibited as Ex-PW-1/5.

10. PW1 has next deposed that the defendants have now started avoiding the plaintiff and her husband and the behavior of the defendants has completely changed. It has also been deposed that the plaintiff has been ready and willing to perform her part of the agreement by paying the balance sale consideration to the defendants, but the defendants are not willing to perform their part by not obtaining the NOC/permission from the competent authority and also by not executing the sale deed.

11. Further, in the second week of July 2014, the plaintiff and her husband came to know from the residents of the Village Devrala that the defendants have been negotiating with some property dealers to sell their entire land including the land in question for a higher price. It has also been deposed that the defendants are now intending to cancel the agreement to sell dated 14.07.2011.

12. Plaintiff has also filed the affidavit by way of evidence of Sh.Ravinder Kumar Tyagi (PW2), husband of plaintiff, and Sh.Ashok Kumar (PW3), attesting witness and mediator and the same have been exhibited as Ex.PW2/A and Ex.PW3/A, respectively. PW2 and PW3 have also deposed on the lines of the plaintiff.

13. I have heard counsel for the plaintiff and carefully perused the documents which have been placed on record along with the affidavit by way of evidence which have been filed. The evidence of plaintiff has gone unchallenged and un-

rebutted.

14. On the basis of the document placed on record, plaintiff has been able to establish that an agreement to sell dated 14.07.2011 (Ex.PW1/2) was entered between the plaintiff and father of the defendants with regard to the land comprising in Khasra No.15//3(4-5), 4(2-18), 5(2-1), 26 (0-3), 1(1-12), situated in the Revenue Estate of Village Devrala, Delhi. An affidavit dated 14.07.2011 (Ex.PW1/4) was also executed by the defendants thereby undertaking that in case Sh.Maan Singh, father of the defendants, dies before completion of the sale transaction then the defendants would complete the same. Since the father of the defendants died in the month of April, 2013, i.e. prior to the completion of the agreement, as per the terms of affidavit dated 14.07.2011 and being legal heirs of Sh.Maan Singh, defendants are under obligation to execute sale deed in favour of the plaintiff. Plaintiff has also been able to establish that out of the total sale consideration of Rs.1,20,83,334/-, the plaintiff has paid a sum of Rs.18,00,334/-, which is evident from a receipt dated 14.07.2011 (Ex.PW1/3) issued by the father of the defendants. Plaintiff has further established that the defendants even after receiving earnest money from the plaintiff has failed to obtain NOC from the competent authority and also failed to perform their part of the agreement to sell.

15. Having regard to the fact that the plaintiff has paid Rs.18,00,334/- to the defendants and that the plaintiff is willing to pay the balance sale consideration to the defendants and perform her part of the agreement to sell dated 14.07.2011, present suit is decreed in favour of the plaintiff and against the defendants in terms of prayer (a) and (b) of the plaint. The plaintiff shall tender the balance sale consideration within eight weeks of receipt of this order to the defendants and in case the defendants refuse to accept the same the amount shall be deposited with the Registrar General of this Court, who will keep the amount in a fixed deposit. Plaintiff would be then be free to execute the decree. Defendants are directed to execute the sale deed and get the same registered in favour of the plaintiff with respect to the land comprising in Khasra No.15//3(4-5), 4(2-18), 5(2-1), 26 (0-3), 1(1-12), situated in the Revenue Estate of Village Devrala, Delhi on payment of balance sale consideration and to do all acts and things necessary.

16. Decree sheet be drawn up accordingly. G.S.SISTANI, J NOVEMBER19 2014
msr

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