

Virender Arora and anr Vs. Jitender Singh and anr

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Court : Delhi

Decided On : Dec-02-2010

Judge : V.K. Jain .J.

Appeal No. : CS(OS) No. 650/2010

Appellant : Virender Arora and anr

Respondent : Jitender Singh and anr

Advocate for Def. : Mr. Usha Srivastava, Adv

Advocate for Pet/Ap. : Mr. Suhail Dutt, Adv

Judgement :

IA 16253/2010 (on b/o. plaintiff u/O.1 R.10(2) CPC) Notice of the application be issued to the proposed additional defendants for 10th March, 2011. IA 16259/2010 (on b/o. plaintiff u/O.39 R.1 & 2 CPC) Notice of the application be issued to the defendants for the date already fixed above. CS(OS)No. 650/2010 Page 1 of 5 IA 4460/2010 (O.39 R.1 & 2 CPC)

1. The case of the plaintiffs is that the defendants had entered into a Collaboration Agreement with the owners of property No.1195, Dr. Mukherjee Nagar, New Delhi, under which they had to re-construct the aforesaid property and the third floor of the property was to fall to share of the defendants, whereas the other share were go to the owners. This is also the case of the plaintiffs that the defendants vide Agreement to Sell dated 15th April, 2009 had agreed to sell the third floor of the

aforesaid property along with terrace rights to them for a total sale consideration of Rs.53,75,000/- and they have already made part-payment of Rs.15,60,000 to them. The plaintiff, therefore, filed this suit for specific performance of the Agreement to Sell dated 15th April, 2009 with respect to third floor alongwith terrace rights of property No.1195, Dr. Mukherjee Nagar, Delhi, alongwith common right of passage, entrance and staircase. Vide IA No. 4460/2010, the plaintiffs have sought injunction restraining the defendants from selling, alienating or encumbering the third floor of the aforesaid property during the pendency of the suit.

2. The defendants have contested the suit and have CS(OS)No. 650/2010 Page 2 of 5 stated that the plaintiffs have failed to make payment of the balance sale consideration on or before the stipulated date of 15th April, 2009. They have also claimed that in the event of their not honouring the agreement, the plaintiffs are entitled to an amount twice the earnest money, but, they cannot seek specific performance of the agreement. They have, however, not disputed having entered into a collaboration agreement with Shri Mohan Lal, the original owner of the suit property. They have also not disputed that under the collaboration agreement, they were to be the exclusive owner of the third floor of the property.

3. The learned counsel appearing for the defendants states that the owners of the property have already cancelled the collaboration agreement which was executed between them and the defendants and therefore the defendants are not left with any right in respect of the third floor of aforesaid property and terrace over it which are the subject matter of this suit.

4. It is now an admitted case of the plaintiffs that the third floor of the aforesaid property is no more in possession of the defendants. Their case is that in July, 2010, they have delivered the possession to Mr. & Mrs. Saroj Budhiraja CS(OS)No. 650/2010 Page 3 of 5 who are now in its possession. Since the defendants are no more in possession of the third floor as well as the terrace over it in property No. 1195, Dr. Mukherjee Nagar, New Delhi, no injunction restraining them for handing over the possession of the aforesaid portion of the property can be granted and, therefore, the application has become in fructuous.

5. As regards title in respect of the third floor and the terrace over it is disputed question of fact as to whether the collaboration agreement which was executed between the defendants and the owners of the property has been cancelled or not. The case of the plaintiffs is that the collaboration agreement has not been cancelled and the title with respect to the third floor and the terrace over it continues to vest in the defendants. If this is true, the plaintiffs would be entitled to injunction against sale, transfer or alienation of the third floor of the property by the defendants.

6. In these circumstances, the defendants are directed to maintain status quo with respect to title of the third floor of the property No. 1195, Dr. Mukherjee Nagar, New Delhi and the terrace over it. Presuming that the CS(OS)No. 650/2010 Page 4 of 5 defendants have no right, title or interest left in the third floor of the suit property and terrace over it, the injunction being granted by the Court is not likely to hurt them in any manner.

The application stands disposed of accordingly.

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