

Sandeep Lakra Vs. Rajender and ors.

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Court : Delhi

Decided On : Dec-09-2010

Judge : V.K. Jain .J.

Acts : Specific Relief Act - Section 10

Appeal No. : CS(OS) No.1518/2010

Appellant : Sandeep Lakra

Respondent : Rajender and ors.

Advocate for Def. : Mr. Rohit Jain, Adv.

Advocate for Pet/Ap. : Mr. Arjun Singh Bawa, Adv.

Judgement :

1. This is a suit for specific performance of the agreement dated 28.9.2007 alleged to have been executed by the defendants in favour of the plaintiff. The agricultural land owned by defendant No.1 in village Kakrola was acquired by the Government. Thereafter, defendants No.1 & CS(OS)No.1518/2010 Page 1 of 7 2, under the scheme of Large Scale Acquisition Development & Disposal of Land in Delhi, framed by Government of NCT of Delhi, applied for allotment of an alternative plot measuring 80 sq.yds. The defendants offered to sell their right, title and interest in the plot, which Govt. of NCT of Delhi had recommended to be allotted to them, to the plaintiff, for a total consideration of Rs.22 lakhs. A part sale consideration of Rs.8 lakhs is alleged to have been paid by the plaintiff to them at

the time of execution of the agreement. This was followed by a payment of Rs.5 lakhs on 15.07.2008 and yet another payment of Rs.5 lakhs on 8.12.2008.

2. In a draw held on 5.2.2010, plot bearing No.92, Pocket-10, Block-B, Sector-23 of Dwarka, measuring 66 sq.mtrs. was allotted to defendant No.1. It is alleged in the plaint that on being informed of the allotment by defendants No.1 & 2, the plaintiff made payment of Rs.1,24,150/- to DDA being 10% of the cost of the plot which it had allotted to defendant No.1. It is also alleged that the defendants have now started negotiating with some property dealers in the local for sale of the aforesaid plot. He has, therefore, sought a decree for specific performance of the Agreement to CS(OS)No.1518/2010 Page 2 of 7 Sell dated 28.09.2007 in respect of the aforesaid plot allotted to defendant No.1 by DDA and has also sought possession of that plot and execution and registration of sale deed on payment of balance amount of Rs.4 lakhs. The alternative prayer made by the plaintiff is for recovery of Rs.38,58,000/- along with interest thereon at the rate of 18% per annum. As an interim relief, the plaintiff is seeking injunction against sale, alienation, transferring and parting with possession of the aforesaid property and raising any construction therein, during pendency of Suit.

3. The defendants have contested the suit and have taken a preliminary objection that relief cannot be granted to the plaintiff since no contract to sale plot No. 92, Pocket- 10, Block-B, Sector-23 of Dwarka, was entered into by them with the plaintiff. On merits, the case of the defendants is that defendant No.1, who was in urgent need of Rs.1 lakh, approached the plaintiff to advance that amount to him. The plaintiff agreed to advance the loan to him, on payment of interest at the rate of 15% per annum for a period of two years. It is further alleged that at the time of advancing the loan, the plaintiff obtained signatures of defendants No.1 & 2 on certain blank papers as well as on the papers which CS(OS)No.1518/2010 Page 3 of 7 had already been typed.

4. The defendants have admitted allotment of plot No. 92, Pocket-10, Block-B, Sector-23 of Dwarka, by DDA. Regarding payment of Rs.1,24,150/- to DDA, the case of the defendant is that no such payment was authorized by them and this amount was unilaterally paid by the DDA.

5. It is an admitted fact that by the time the agreement dated 28.09.2007 is alleged to have been executed by the defendants in favour of the plaintiff, no plot of land had been allotted to either of the defendants. The plot at Dwarka was allotted to defendant No.1 on 8.6.2010 which would be more than 2 years after the Agreement to Sell is alleged to have been executed. In fact the Agreement to Sell itself refers to the recommendation made by Land & Building Department of Delhi Government to DDA, for allotment of a plot measuring 80 sq.yds. to defendant No.1.

6. Section 10 of Specific Relief Act, provides that specific performance of a contract, can be enforced, where there exists no standard for ascertaining the actual damage caused by the non-performance of the Act agreed to be done or when the act agreed to be done is such compensation in money for its non-performance would not be adequate relief. CS(OS)No.1518/2010 Page 4 of 7 Some of the essential ingredients of an Agreement to Sell an immovable property are (i) identity of vendor and purchaser (ii) complete description of the property subject matter of the agreement (iii) amount of consideration to be paid by the purchaser to the seller (iv) time within which the agreement is to be performed and (v) earnest money if any paid to the vendor, one more of these essential ingredients are missing, the agreement between the parties would not amount to concluded contract. A Division Bench of this Court in *Mirahul Enterprises & Ors. v. Mrs. Vijaya Srivastava* AIR 2003 Delhi 15 referring to the provisions contained in Section 10 of Specific Relief Act, observed that a true contract requires the agreement of the parties, freely made with full knowledge and without any feeling of restraint and the parties must be ad-idem on the essential terms of the contract and in case, it is an Agreement to Sell of immovable property, the law requires that it must certainly identify the property agreed to be sold and the price fixed as consideration paid or agreed to paid. The Agreement alleged to have been executed by the defendants in favour of the plaintiff on 28.09.2007 does not identify the property subject matter of the agreement.

7. In the facts and circumstances of this case, it could not have been possible to identify the property subject matter of the agreement for the simple reason that by the time this agreement was executed no plot had been allotted to either of the

defendants by DDA. At the time of execution of this agreement, it was not known when the plot of land would be allotted by DDA, in which locality the allotment would be made and which particular plot would be allotted to the defendant. Therefore, it is difficult to dispute that the agreement dated 28.09.2007, even if taken as true and on its face value does not constitute a concluded contract for sale of an immovable property.

8. Therefore, prima facie, the plaintiff cannot seek enforcement of the agreement dated 28.09.2007. The application for grant of interim relief seeking injunction against sale, transfer, assignment or parting with possession of plot No. 92, Pocket-10, Block-B, Sector-23 of Dwarka, during pendency of the suit, therefore, cannot be granted.

9. The application is dismissed.

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