



2024:DHC:9396



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 28th November, 2024***

+ C.R.P. 351/2024 & CM APPLs. 69529-30/2024

INDU WAHI

.....Petitioner

Through: Mr. Aman Kumar Pathak, Advocate

Versus

VINOD KUMAR

.....Respondent

Through: Nemo.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Revision Petition under *Section 115 of the Code of Civil Procedure, 1908* (hereinafter referred to as '*CPC*') has been filed challenging the Order dated 01.10.2024, *vide* which the learned District Judge has dismissed Application under *Order VII Rule 11 CPC* filed on behalf of Petitioner/Defendant No.1, in Suit No. CS DJ/879/2023 titled *Vinod Kumar vs. Indu Wahi and Anr.*

2. The Respondent/Plaintiff had filed a Suit for *Specific Performance, Mandatory Injunction and Permanent Injunction with consequential relief* in respect of Suit Property i.e. a Plot bearing No.363, Pocket No. A-3 Block, Sector 34, measuring 66 sq. mts., situated in Rohini, Delhi (hereinafter referred to as '*Suit Property*') on the basis of an Agreement to Sell, GPA, Affidavit, etc. dated 20.06.2022.

3. The Revisionist/Defendant No.1 has taken a defence that though a



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Possession Letter has been issued in favour of Defendant No.1, but the Conveyance Deed is not executed, since Defendant No.1 does not have any ownership right as of date, the Suit for *Specific Performance* is not maintainable as Defendant No.1 has no capacity to execute the Sale Deed in favour of the Respondent/Plaintiff.

4. The Respondent/Plaintiff in the plaint specifically averred that Revisionist/Defendant No.1 had executed Sale Documents on 25.09.2006, in respect of the acquired plot his favour with the assurance that as and when the alternative plot will be allotted to her by the DDA/Defendant No.2, she would execute the registered Transfer Documents and shall handover the peaceful vacant possession of the said plot. It was further agreed that Respondent/Plaintiff shall deposit the allotment charges from the date of the allotment till the execution of the Lease Deed by the DDA.

5. The plot in question was allotted in favour of the Revisionist/Defendant No.1 by the DDA *vide* Allotment Letter dated 31.12.2023 (01.01.2014) on perpetual Lease Hold basis @ Rs.11622/- per sq. mts. A copy of the Allotment Letter was duly provided to the Respondent/Plaintiff along with the payment schedule for making the payments in DDA. Accordingly, the Respondent/Plaintiff deposited 10% premium of the aforesaid plot i.e. Rs.77,000/- as earnest money / confirmation amount to DDA/Defendant No.2 on 24.01.2024.

6. Thereafter, the intentions of Revisionist/Defendant No.1 turned dishonest and she started backing out from her agreement and tried to escape from her part of the contract. With the intervention of respectable and known persons of both the sides, a Written Settlement dated 23.04.2014 was



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arrived at between the Respondent/Plaintiff and the Revisionist/Defendant No.1. The tentative value of the plot was decided as Rs.17,50,000/- on 23.04.2024 and was deemed to be the sale price to be given by the Respondent/Plaintiff to Revisionist/Defendant No.1. It was also agreed between the parties that all the expenses incurred for undertaking the proceedings before the DDA in respect of stamp duty, etc., shall be equally borne between the parties. Also, as and when the plot is sold, after deducting amount of Rs.17,50,000/- as well as other expenses incurred by the Respondent/Plaintiff, the sale proceeds shall be equally divided between the Respondent/Plaintiff and Revisionist/Defendant No.1.

7. The peaceful possession of the said plot was handed over to Revisionist/Defendant No.1 on 24.10.2022 and a Perpetual Lease Deed dated 26.04.2022 was executed in her favour along with the site plan. Upon coming to know about execution of the Perpetual Lease Deed as well of handing over of physical possession of the plot to Revisionist/Defendant No.1, the Respondent/Plaintiff approached her for execution of the transfer documents pursuant to their settlement.

8. Consequently, an Agreement to Sell dated 20.06.2022 was executed and the physical possession of the Suit Property i.e. the plot was handed over to the Respondent/Plaintiff. On the basis of the said documents, the Respondent/Plaintiff sought Specific Performance of Agreement to Sell.

9. The main ground on which rejection of the Suit was sought by Revisionist/Defendant No.1 is that there is only an allotment letter in her favour and no Conveyance Deed has been executed, and she not being the owner of the property, cannot execute the sale/ transfer / ownership



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documents in favour of the Respondent/Plaintiff. Therefore, no cause of action has been disclosed in the plaint and sought its rejection.

10. The learned District Judge, however, has dismissed the Application under *Order VII Rule 11 CPC* vide order dated 01.10.2024, against which the present Petition has been filed.

11. Submissions heard and record perused.

12. It has been rightly observed by the learned District Judge in the impugned Order that the Suit of the Respondent/Plaintiff is based upon Agreement to Sell dated 20.06.2022 and other documents dated 24.10.2022.

13. It is the defence of the Revisionist/Defendant No.1 that she merely has the Allotment Letter, and no Conveyance Deed till date has been given in her favour. Therefore, Defendant No.1 does not have the capacity to honour the Agreement to Sell.

14. However, it has been rightly observed by the learned District Judge that whatever are the rights which the Revisionist/Defendant No.1 has allegedly agreed to sell to the Plaintiff under the Agreement to Sell etc. - whether in fact the Agreement to Sell was executed or whether the Revisionist/Defendant has the requisite capacity to honour the Agreement to Sell, are all matters of trial.

15. The issues raised by the Revisionist/Defendant No.1 in the Written Statement are required to be established by way of evidence. While considering the Application under *Order VII Rule 11 CPC*, it is only the averments made in the Plaint, which have to be considered. The Plaintiff / Respondent No.1 has alleged all the requisite facts which constitute a valid



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cause of action for the trial. The Application under *Order VII Rule 11 CPC* has been rightly rejected.

16. There is no merit in the Revision Petition and it is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 28, 2024

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