

IN THE COURT OF CIVIL JUDGE NO. 2, KAMRUP, GUWAHAI.

Present : ***Sri S.N. Sarma , LLM. AJS,***
Civil Judge No. 2,
Kamrup, Guwahati.

Reference : ***Title Suit No. 224/10***

Plaintiff : ***Sri Dhiraj Kalita***

vs

Defendant : ***Smti Mina Gogoi***

For the plaintiff : ***Sri Girish Misra , Advocate***

For the defendant : ***Sri S.Z. Sheikh , Advocate***

Date of hearing : ***21/7/12***

Date of Judgment : ***2/8/12***

JUDGEMENT

This is a suit for specific performance of contract , confirmation of possession and for permanent injunction.

The brief of the plaintiff's case is that On 5/8/09 defendant Smti. Mina Gogoi with a view to sell the suit land to the plaintiff entered into an agreement being registered Deed of Agreement No. 9142 dated

5/8/09. As per the deed of agreement the price of the land was fixed at Rs. 10,00,000/-. The defendant accepted an amount of Rs. 5000/- on 25/7/09 and also accepted another amount of Rs. 50,000/- on 29/7/09 from the plaintiff. On 5/8/09 plaintiff and defendant entered into an agreement for sale and purchase. Plaintiff has also paid another amount of Rs. 4,05,000/- as advance to the defendant . Out of total price of Rs. 10,00,000/- defendant took an amount of 4,60,000/- as advance from the plaintiff. Defendant after accepting the aforesaid advance amount handed over possession of the suit land verbally to the plaintiff. As per agreement plaintiff was to pay the balance amount of Rs. 5,40,000/- within five months from that day for sale and also the defendant was to take necessary permission from the concerned authorities within the said stipulated date for execution of the final sale deed. The burden of the defendant to obtain the necessary sale permissions from the Authorities, the plaintiffs very often inquired the matter with the defendant as to whether she has applied for sale permission or not. But on various pretext the defendant extended such date for obtaining sale permission and avoided to contact the plaintiff to obtain the relevant papers from him. As and when the plaintiff met the defendant the plaintiff let the defendant know that he was always ready and willing his part of contract by paying the balance amount of Rs. 5,40,000/- to the defendant. But the plaintiff noticed that the defendant was not at all ready and/or made any attempt to obtain such sale permissions from the authorities. On 12/7/10 plaintiff along with P.W.2 met at the office of defendant and delivered the relevant documents for permission of sale. Plaintiff was under the impression that the defendant might have already applied for sale permission before the authorities. But to his utter surprise the plaintiff who went to Sub-Registrar Office on 14/9/10 and saw that the defendant

with a view to execute another Agreement for sale with some persons. When the

plaintiff enquired the matter with the defendant Sub-Registrar Office, she flatly refused to sell the land to the plaintiff and as such plaintiff immediately lodged a complaint before the Sub-Registrar accompanied with this agreement for sale not to register any fresh agreement in respect of the suit land and as such prays for a decree for specific performance of contract directing the defendant to execute the final sale deed in favour of the plaintiff described in the schedule of the plaint , a decree for execution of the sale deed in favour of the plaintiff , a decree for recovery of Rs. 4,60,000/- with interest @ normal bank rate , a decree for confirmation of possession of the suit land which is described in the schedule of the plaint and also a decree of permanent injunction from entering upon the suit land and also restraining them from alienating the suit land to any other person as well with cost of the suit.

The defendant contested the suit by filing Written Statement . Thereafter, defendant remains absent.

In support of his case, the plaintiff exhibited the following documents :

- 1. Exhibit – 1 is the copy of Jamabandi for surveyed village*
- 2. Exhibit – 2 is the money receipt*
- 3. Exhibit -3 is the money receipt*
- 4. Exhibit – 4 is the Deed of agreement for sale.*

In support of his claim, plaintiff adduced evidence of two witnesses namely – 1) P.W.1. Dhiraj Kalita and 2) Biju Choudhury .

P.W.1 in his evidence as well as plaint stated that on 5/8/09 defendant Smti.

Mina Gogoi with a view to sell the suit land to the plaintiff entered into an agreement being registered Deed of Agreement No. 9142 dated 5/8/09. As per the deed of agreement the price of the land was fixed at Rs. 10,00,000/-. The defendant accepted an amount of Rs. 5000/- on 25/7/09 and also accepted another amount of Rs. 50,000/- on 29/7/09 from the plaintiff. On 5/8/09 plaintiff and defendant entered into an agreement for sale and purchase. Plaintiff has also paid another amount of Rs. 4,05,000/- as advance to the defendant . Out of total price of Rs. 10,00,000/- defendant took an amount of 4,60,000/- as advance from the plaintiff. Defendant after accepting the aforesaid advance amount handed over possession of the suit land verbally to the plaintiff. The burden of the defendant to obtain the necessary sale permissions from the Authorities, the plaintiffs very often inquired the matter with the defendant as to whether she has applied for sale permission or not. But on various pretext the defendant extended such date for obtaining sale permission and avoided to contact the plaintiff to obtain the relevant papers from him. As and when the plaintiff met the defendant the plaintiff let the defendant know that he was always ready and willing his part of contract by paying the balance amount of Rs. 5,40,000/- to the defendant. But the plaintiff noticed that the defendant was not at all ready and/or made any attempt to obtain such sale permissions from the authorities. Plaintiff is always ready and willing to perform his part of the contract to get the sale deed executed in his favour by paying the balance amount of the total sale price, yet the defendant willfully and negligently

avoided execution of final sale deed in favour of the plaintiff on various pretext.

P.W.2 in his evidence stated that the defendant made a proposal to sell the suit land to the plaintiff accordingly, and agreement was entered between the parties . Accordingly, an amount of Rs. 4,60,000/- was paid by the plaintiff to the defendant as advance. Thereafter, plaintiff met the defendant to take permission for registration of

sale deed but defendant on various pretext delayed the matter for seeking permission of sale of the suit land and on 12/7/10 again plaintiff along with P.W.2 met at the office of defendant and delivered the relevant documents for permission of sale. However, defendant instead of taking sale permission he is trying to sell the land to some other person.

Learned counsel for the plaintiff has argued that plaintiff is able to prove the execution of contract between the parties. However, defendant was avoiding to perform the contract. He further stated that plaintiff is ready and willing to perform their duty . However, in spite of repeated request made by the plaintiff , defendant did not pay heed to it.

Section 10 of the Specific Relief Act provides the cases in which specific performance of contract is enforceable as follows :

“10. Cases in which specific performance of contract enforceable :- Except as otherwise provided in this chapter, the specific performance of any contract may, in the discretion of the court, be enforced -

- a) When there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done ; or*
- b) Whether the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.*

Explanation :- Unless and until the contrary is proved, the court shall presume -

(i) That the breach of contract to transfer immovable property can not be adequately relieved by compensation in money ; and

(ii) That the breach of contract to transfer movable property can be so relieved except in the following cases

(a) Where the property is not an ordinary article of commerce or is of special value of interest to the plaintiff, or consists of goods which are not easily obtainable in the market

(b) Where the property is held by the defendant as the agent or trustee of the plaintiff .”

In the instant case, the plaintiff is able to prove the agreement for sale of the suit land . The evidence of PW1 and PW2 is stated in favour of the plaintiff and as such , it remains unrebutted. However, defendant was avoiding to perform the contract and also did not pay heed to it.

From the above discussion and evidence on record, the fact remains that the plaintiff made an agreement with the defendant promising to sell the suit land to the plaintiff for a consideration of Rs. 10,00,000/- and accordingly, an advance amount of Rs. 4,60,000/- was also paid to the defendant and the plaintiff was ready and willing to pay the rest of the amount. However, defendant was avoiding to perform his part and as such , I am of the view that plaintiff is entitled for specific performance of the contract in respect of the schedule land mentioned in the plaint.

ORDER

In the result, the suit is decreed ex-parte with cost. It is ordered that the plaintiff shall deposit the balance consideration of Rs. 5,40,000/- (Rupees five lacs forty thousand only) within two months from the date hereof. On receipt of the balance consideration amount, the defendant is ordered to execute the sale deed within two months from the date of deposit of balance consideration for the schedule properties mentioned in the schedule – of the plaint in favour of the plaintiff. After registration of the sale deed the defendant is directed to hand over the possession of the schedule properties to the plaintiffs by removing his men, materials, structures, belongings etc. standing thereon. The stamp duty for registration and other charges shall be borne by the plaintiff. If the defendant fails to execute the sale deed within two months from the date of deposit of balance consideration, the plaintiff shall be at liberty to apply for execution of decree in accordance with the provision of Order 21 Rule 34 of the CPC.

Prepare decree accordingly.

Given under my hand and seal of this court on this the 2nd day of August, 2012 at Guwahati.

***Civil Judge No. 2,
Kamrup, Guwahati.***

Dictated & corrected by me

***Civil Judge No. 2,
Kamrup, Guwahati.***