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

Date of Decision: 14.03.2019

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FAO(OS) No.114/2018

USHA GOYAL & ORS. Petitioners
Through Mr.Pulkit Aggarwal, Adv.

Versus

DEVI DAYAL GARG & ANR. Respondents
Through Mr.Shakeet, Mr.Sarwar Wari &
Mr.Sindhu Suta, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. We have heard learned counsel for the parties. We proceed to dispose of the present appeal.
2. The appellants are the wife, son and daughter of Late Shri Manoj Goyal. Respondent No.2 is the mother-in-law of Late Shri Manoj Goyal. Shri Manoj Goyal, according to the respondent no.1/plaintiff, entered into an Agreement to Sell with the plaintiff in respect of the property bearing No.2, Road 20 situated in Punjabi Bagh East, New Delhi admeasuring 352.01 square yards. The plaintiff claims that under the Agreement to Sell and Purchase dated 06.11.2013, he paid to Late Shri Manoj Goyal, an amount of Rs.51 lakhs by cheque, and an amount of Rs.1,01,25,000/- in cash on

06.11.2013 as bayana/earnest money out of the total sale consideration of Rs.12,01,00,000/- for purchase of the aforesaid property. Soon after encashment of the cheque, Late Shri Manoj Goyal refunded the amount of Rs.51 lakhs by cheque. The plaintiff claims that the cash amount of Rs.1,01,25,000/- was, however, not refunded. According to the plaintiff, Shri Manoj Goyal and the plaintiff reinstated the Agreement to Sell subsequently.

3. The plaintiff has filed the suit to claim an amount of Rs.2,53,50,000/- along with pendente lite and future interest at the rate of 24% per annum. The amount of Rs.2,53,50,000/- is double of the amount allegedly paid by the plaintiff to Late Shri Manoj Goyal. The claim is on the basis that under the agreement, in case of default of Shri Manoj Goyal-the seller, to complete the transaction, the buyer/plaintiff was entitled to double the amount.

4. The plaintiff also moved an application under Order XXXIX Rule 1 and 2 CPC (IA No.5609/2014) to seek an injunction against the defendants from transferring, alienating or dealing with the aforesaid property. It appears that an ex parte order of injunction was passed in the suit against the defendants. The interim application was heard and decided by the learned Single Judge vide the impugned order dated 14.05.2018. The learned Single Judge has confirmed the ex-parte injunction granted in favour of the plaintiff/respondent no.1, restraining the heirs of Late Shri Manoj Goyal, who passed away before the institution of the suit, from alienating or dealing with the aforesaid property.

5. The appellants are aggrieved by the said injunction and,

consequently, have preferred the present appeal. The submission of the learned counsel for the appellants is that the application to seek interim injunction in respect of the aforesaid property was not maintainable, since the only relief sought in the suit is for recovery of money and no interest is claimed in the property in respect of which the injunction has been obtained. Learned counsel submits that soon on the encashment of Rs.51 lakh, Shri Manoj Goyal refunded the said amount and the plaintiff/respondent no.1 accepted the said refund without protest/demur. The appellants/defendants deny that Shri Manoj Goyal entered into the agreement as set up by the plaintiff/respondent no.1 as well as the receipt *inter alia* in respect of the cash payment of Rs.1,01,25,000/-. They also deny that the alleged agreement was re-instated by Late Shri Manoj Goel.

6. On the other hand, learned counsel for the respondent no.1 firstly points out that the deletion of respondent no.2/Rama Goyal—who is a party defendant in the suit and has also filed her written statement, is improper. She has been deleted on the ground that she cannot be served, even though, she is the mother-in-law of appellant no.1 and grandmother of appellant nos.2 and 3. Learned counsel for respondent no.1 further submits that the respondent no.1/plaintiff is entitled to security for the amount claimed in the suit. The defendants have not disclosed their other assets which would be available and sufficient to satisfy the decree that may be passed in his suit.

7. We have considered the submissions of learned counsels. Since the suit is not in respect of the property aforesaid, an injunction under Order XXXIX Rule 1 and 2 CPC could not have been granted to

restrain its alienation. To this extent, the submission of learned counsel for the appellants appears to be justified. At the same time, the respondent no.1/plaintiff is entitled to security of the amount alleged to have been paid to Shri Manoj Goyal in cash i.e. Rs.1,01,25,000/-. The plaintiff has placed on record the Receipt and the agreement to sell claimed to have been executed by Late Shri Manoj Goel, which records the receipt of the said amount in cash. The trial in the suit would unravel the truth of the matter.

8. Learned counsel for respondent no.1 has submitted that he should be secured for the suit amount, which is the double of the amount allegedly paid to Shri Manoj Goyal. In this regard, he places reliance on Clause 7 of the Agreement to Sell.

9. We are not inclined to agree with this submission, since the claim for damages would have to be established upon trial.

10. We, therefore, modify the injunction granted by the learned Single Judge vide the impugned order. The legal heirs of Shri Manoj Goyal are free to deal with the said property. However, before they enter into any transaction to transfer any rights in the said property in the nature of sale, mortgage, gift etc., they should inform the Court of the same, and they shall deposit in this Court the amount of Rs.1,01,25,000/-. From out of the consideration received by them, the amount shall be retained in the Court during the pendency of the suit in a fixed Deposit in the name of the Registrar General of this Court, and its disbursal shall abide by the final decree that the Court may pass.

11. We make it clear that those directions shall not be construed as

an opinion on the merits of the claim of the plaintiff, or the defence of the defendants.

12. The appeal stands disposed of.

**(VIPIN SANGHI)
JUDGE**

**(REKHA PALLI)
JUDGE**

MARCH 14, 2019

gm

