

25.07.19 27.07.19 27.07.19 30.07.19 03.10.19

ERX - 2574/19

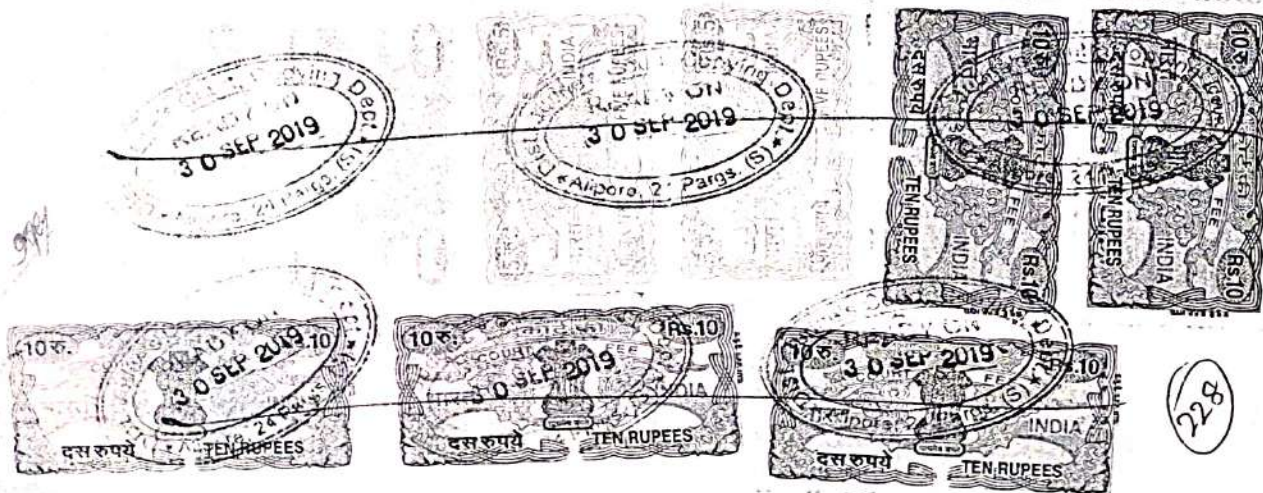
1. In the court of the 1d, 4th civil Judge (sr. divn) at Alipor

T. Suit - 69/92

Sri Ashutosh Bhattacharjee And ors

- VS -

Ms. Deepam And ors.



4th Court of Civil Judge (senior) Alipore

72/04/19
ES 6/7/04
Dis. 2
Dec-2
T-4
SI-603/19
ER-2524/19
O.S.-2
Mort-6
Dorm-3
W.S.-10

T. 69/92
Bimal Chandra Bhatta Chatterjee vs - M/s Deepcon
Hand is put up today for
trip expense agreed.
ad. agreed.

106
28.1.04

ES-447 dt-3/3/04
14th S.D.

This is a suit for specific performance of contract and also for mesne profit and damages which was initially filed by one Sri Ashotosh Bhattacharjee (now deceased) along with his son Sri Bimal Chandra Bhattacharjee, the present plaintiff No.1 against the defendants, M/S Deepcon, a partnership firm represented by its partners, being defendant No.2 to 4 in the instant suit.

The present plaintiffs No.2 and 3 have acquired their title in respect of the suit property by virtue of a registered deed of gift dated 23.08.1989 executed in their favour by their grandfather, Late Ashotosh Bhattacharjee during his life time. The plaintiff No.2 and 3 have produced certified copy of the said registered deed of gift before this Court in support of their title in respect of the suit property, which, however, is certainly not under challenge in this suit.

This plaintiffs' case inter alia is that originally while Ashotosh Bhattacharjee (now deceased) and Sri Bimal Chandra Bhattacharjee were the joint owners of premises No. 14A, Nepal Bhattacharjee Street, Kolkata - 700 026, they entered into a written agreement of exchange on 3.06.1988 with the defendants which was duly registered, for development of the said premises subject to the terms and conditions contained therein. &

As per the said agreement the defendants would construct a five storied building on a portion of 14A, Nepal Bhattacharjee Street, at their own costs within 18 months from 3.6.1988 and on completion thereof the plaintiffs would get absolutely the third and fourth floor in its entirety together with roof right and a garage space measuring 15' x 10' (feet) along with

right over common passage and other amenities. The defendants also agreed to bear all costs with regard to the construction of the said building and also undertook to make the building habitable. It was also agreed between the parties that if the defendants fail to deliver possession of the plaintiffs' allotted portions in the said building to the plaintiffs within the stipulated time, the agreement shall stand cancelled and the plaintiffs shall take possession of the land and/or unfinished building in whole and the defendants shall have no objection thereto. As per the said agreement the defendants were also not entitled to get any title or possession in the said premises unless the plaintiffs were put in possession of their allotted flats in the said building.

The plaintiffs' further case is that the defendants after completion of the construction of the new five-storied building have deliberately and wilfully failed and neglected to deliver vacant possession of the plaintiffs' allotted portions in the said building which is also described in the Schedule 'B' to the plaint to the plaintiffs by the end of December, 1989, on the contrary the defendants have most illegally put strangers in possession of the first and second floor flats of the said premises. The plaintiffs also contend that the defendants in utter violation of their agreement with the plaintiffs were trying to sell the flats in the suit property most illegally and that the defendants have got no right to remain in possession of the plaintiffs' allotment in the said premises and the possession of the defendants in respect of 'B' schedule property to the plaintiffs is wrongful and illegal for which the plaintiffs have prayed for a decree for mesne profit and damages from 3.6.1988 till the date of getting delivery of vacant possession of 'B' schedule property to the plaint besides a decree for specific performance of the said agreement of exchange dated 3.6.1988.

T.S. 69-92

(Contd)
28.1.04

From the record it appears that the defendants filed written Statement on 30.11.1992 in the aforesaid suit but since several years together the defendants are not taking any step in the aforesaid suit, as such, the suit has been posted for ex-parte hearing.

Sri Bimal Chandra Bhattacharjee, one of the plaintiffs in the aforesaid suit has submitted his examination-in-chief on affidavit for self, and also on behalf of his two sons who are the other two plaintiffs in the aforesaid suit alongwith the documents filed by firsts.

The certified copy of the registered deed of gift has been marked Exhibit '1' while the tax receipts have been marked Exhibit '2' series and the certified copy of the agreement dated 3.6.1988 alongwith the plan annexed thereto has been marked Exhibit '3'. The said documents have been proved by P.W.1, Sri Bimal Chandra Bhattacharjee in his evidence on affidavit according to law.

On perusal of the plaint, the evidence of P.W.1 and the documents marked Exhibits, I find that the plaintiffs have been able to prove their case satisfactorily and accordingly they are entitled to the decree as prayed for, the court fees paid thereof is sufficient. Hence

ORDERED

The suit be and the same is decreed ex parte against the defendants with costs and the plaintiffs do hereby get the decree for specific performance of the agreement of exchange dated 3.6.1988 and the defendants are directed to deliver possession of the 'B' schedule property to the plaintiffs within 60 days from the date hereof in default the plaintiffs will be at liberty to get possession of the 'B' schedule property to the plaint by executing the decree

through court.

4.2.1904

Dictated & corrected by me

C.J. 28.1.2004

28.1.2004
Civil Judge (Sr. Dvn.), 4th
Court, Alipore.

107
26/2/04

Decree prepared & signed
and signed this day.

110
7.7.04

Plaintiff files a verified petition
praying for return back the exhibited
and un-exhibited documents on the ground
stated therein.

Civil
Judge

This case has been decreed exparte
on 28.1.04. There has been no Misc
case nor any appeal against the final order.

Now the Plaintiff intends to take back all
the documents both exhibited and un-exhibited
on the ground that the documents are required for the parties.

Hd. the Ld. Lawyer for the plaintiff. Perused
the petition. The documents may be returned
and hence the petition is allowed.

Let the documents be returned to the
Concerned Plaintiff through his engaged
advocate on proper receipt and an undertaking
that the same will have to be re-file as
and when so directed.

ofc
C.J. 28.1.2004

(C.J./sr div)



7-69/92

In the 4th. Court of the Munsif at Alipore.

Title Suit No. 332 of 1990.

1. Sri Ashutosh Bhattacharjee
son of Late Pratap Chandra Bhattacharjee.
2. Sri Bimal Chandra Bhattacharjee
son of Sri Ashutosh Bhattacharjee.
3. Sri Utpal Bhattacharjee.
4. Sri Himangsu Bhattacharjee,
both sons of Sri Bimal Chandra Bhattacharjee,
all of 30, Kabir Road, P.S. Tollygunge,
Calcutta - 700026. PLAINTIFFS

- Versus -

1. M/S. Deepcon, a registered
Partnership firm having its
registered Office at 1A, Kali Temple
Road, P.S. Bhowanipore, Calcutta-700026.
2. Sri Tarun Kumar Das,
son of Late Kalipada Das.
3. Sri Dipak Kumar Das,
Sri Dipen Kumar Das,
both sons of Sri Tulsi Charan Das,
all of 14A, Nepal Bhattacharjee Street,
P.S. Bhowanipore, Calcutta - 26. DEFENDANTS

SUIT FOR SPECIFIC PERFORMANCE OF CONTRACT AND MESNE PROFITS
AND/OR DAMAGES VALUED AT RS. 100/- AND RS. 100/- TOTALLING
RS. 200/- ONLY.

The Plaintiffs state as follows :-

1. The Plaintiff No.1 made a gift of his undivided half
share in the suit land to plaintiff Nos. 3 and 4 on 23.8.89 and

Contd. ... P/2



Ashtol Bhatta
Cherry
Bimal Chandra
Bhatnagar
W.P. Bhatnagar
Himansu Bhatnagar
28 Nov 99

25.8.89 and as such the Plaintiffs No. 3 and 4 are made Plaintiffs in this suit. As the contract was made by the Plaintiffs No. 1 and 2 with the defendants hence the Plaintiff No.1 is made a party. The suit land described in the schedule below belongs to the Plaintiffs as stated above.

2. The defendants No. 2 to 4 approached the Plaintiff No.1. 2 in or about the last part of May, 1988 and stated that they are the Partners of a Partnership firm No. 4 and wanted to develop the suit land by constructing a multi-storied building thereon on suitable agreements for mutual benefits.

3. The negotiations between the Plaintiffs and the defendants NO. 2 to 4 thereupon started and ultimately a written agreement between them was executed and registered on 3.6.1988 and the copy of the original document is hereby annexed.

4. The salient points of the agreement for exchange are detailed below :-

(a) As per sanctioned plan the promoters would construct a five-storied building on a portion of 14A, Nepal Bhattacherjee street at his costs and on completion thereof, the Plaintiff Nos. 1 and 2 will get absolutely the 3rd, and fourth floor in its entirety roof right and a garage space measuring 15' x 10' feet with right over common passage and other amenities.

(b) After giving possession of those floors etc. the promoters will sell all other floors and appropriate the sale proceeds thereof.

(c) The Plaintiff NOS. 1 and 2 shall do all necessary acts



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Pril. Chandra Kellings
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P. G. Chandra

for transfer of other floors to the Promoters after giving the aforesaid floors etc. to the Plaintiff Nos. 1 and 2 as agreed upon.

(d) The building shall be completed within 18 months from 3.6.88, the date of agreement.

(e) All costs shall be borne by the promoters from the executing of the agreement in regard to the construction and the Promoters shall make the building habitable.

(f) After getting the floors etc. the Plaintiffs 1 and 2 shall furnish to the promoters/builders for I. T. Clearance on getting the drafts of conveyance, affidavit etc. in accordance with law.

(g) If the Promoters fail to deliver possession of the said floors etc. to the plaintiff Nos. 1 and 2 within the stipulated time, the agreement shall stand cancelled and the plaintiff Nos. 1 and 2 shall take possession of the land and/or unfinished building in whole and the promoters shall have no objection thereto.

(h) The defendants will get no title or possession unless the floors etc. are first given possession to the plaintiffs.

5. That the defendants completed the construction on the land described in the schedule in or about the stipulated period and transferred the first and the second floor flats of the newly constructed 5 storied building to the third parties and assured the plaintiffs to give vacant possession

Contd. .. P/4



Arjun Kishan Mallya
Chang
Bimal Chandra Bhattacharya
Wahid-Uddin
Hemanta Bhattacharya

[Signature]

of the third and fourth floor flats of the said building as per terms of the said Agreement dated 3.6.1988 by the end of December, 1989.

6. That instead of delivering vacant possession of the third and the fourth floor flats etc. of the newly constructed building to the Plaintiffs as per the said agreement, the defendants themselves possessed the four flats in the said third and the fourth floor and refused to deliver vacant possession of the same to the plaintiffs. The defendants inspite of repeated requests did not deliver possession to the Plaintiff Nos. 1 and 2 the 3rd. and 4th floors roof and garage.

7. That the plaintiffs started requesting the defendants from the end of December, 1989 for such delivery of possession of the said floors etc. but on some plea or other, the defendants have deferred the matter.

8. The defendants have been motivatedly and for illegal gains have not given possession to the plaintiffs of the said floors etc. and the defendants are enjoying the wrongful gains by depriving the plaintiffs from getting possession of the floors etc. as agreed upon. The defendants have no right to sell the flats without giving possession of the floors etc. to the plaintiffs. The defendants are trying to sell the property and the plaintiffs learnt about the proposed sale on 10. 6. 1990 and the Plaintiff Nos. 1 and 2 already got an order of injunction in said Money suit 11/90 restraining

28-10-1990

- 5 -

Cyber Law Mall
Cherry
Binal Chandra Mallick

W. P. Chatterjee
Himansu Chatterjee

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P. S. Chatterjee

the defendants from alienating the property. The cause of action of permanent injunction arose on 3. 12. 89 and on subsequent dates. The defendants are liable to deliver possession of the floors etc. to the plaintiffs by way of mandatory injunction.

9. That the plaintiffs NO. 1 and 2 requested the defendants from the end of December, 1989 and thereafter on all dates for such delivery of possession till a few days back to give possession of the floor etc. to the plaintiffs but the defendants failed to deliver possession. The plaintiffs are entitled to get vacant possession of the "B" schedule property viz. the said two floors, roof and garage space and the plaintiffs are entitled to get mesne profits and/or damages for wrongful with-holding of possession. The defendants are in wrongful possession of "B" schedule property. The plaintiffs tentatively claims Rs. 100/- as mesne profits and damages from 3.12.89, the date of expiry of 18 months as stipulated in the agreement till recovery of possession. The plaintiff will pay advalorem Court fees on the amount that will be decreed as mesne profits and/or damages from 3.12.89 till recovery of possession. The plaintiffs are all along ready and willing to perform their part of contract. The defendants failed to perform their part of contract.

10. The defendants on false allegations filed Money Suit No. 11 of 1990 in the 4th Court of Assistant District Judge at Alipore against the plaintiffs NO. 1 and 2 for recovery of Rs. 4,30,729.92 paisa and that suit is pending.

Contd. .. P/6



Chaitanya Mehta
Chaitanya
Bimal Chandra Shastri
W.P. Shastri
Pranab Kumar Shastri

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Pranab
Shastri

11. The cause of action arose on 3.6.88 and on subsequent dates and on 3.12.1989 and on subsequent dates at 14A, Nepal Bhattacharjee Street, P.S. Bhowanipore, within the Jurisdiction of this Court.

12. For the purpose of Court fees and Jurisdiction the suit valued at Rs. 100/- for specific performance of contract and recovery of possession and at Rs. 100/- for mesne profits and/or damages tentatively claimed and advalorem Court fees are paid.

The plaintiffs therefore pray :-

- a) for a decree of specific performance of agreement of exchange dated 3.6.88 and delivery of possession of "B" Schedule property,
- b) for a decree of mesne profit and damages from 3.6.88 to the date of delivery of possession on taking requisite Court fees from the plaintiffs,
- c) for permanent injunction,
- d) for mandatory injunction. (e) Costs,
- f) for any other relief or reliefs, the plaintiffs SCHEDULE "A" property. entitled to in law and eq

District : 24 Parganas(s) premises NO. 14A, Nepal Bhattacharjee Street, land measuring about 2 Kottahs 4 Chittaks 9 Sq. feet.

SCHEDULE "B" PROPERTY

On "A" Schedule property, 3rd, and 4th Floors in its entirety roof right, garage space measuring 15' x 10' feet with common spaces and common passage, common user of stairs, drain, sweage, electricity in common areas at 14A Nepal Bhattacharjee Street, P.S. Bhowanipore Calcutta - 700026.

VERIFICATION

I, the Plaintiff No.2 do hereby declare that the statements made above are true to my knowledge and rests are my submissions before this Learned Court. I sign this verification this the 16th day of November November, 1990.

Bimal Chandra Shastri

HIGH COURT FORM No. (J) 25
DECREE IN ORIGINAL SUIT
(Order 20, Rules 6 and 7, Code of Civil Procedure)

District South 24 - Parganas

In the 4TH Court of civil Judge (senior) Alipore

Title Suit No. 69 of 200 1992

- 1) Sri Ashutosh Bhattacharjee died, Expunged no. dt. 4.9.91
- 2) Sri Bimal chandra Bhattacharjee, son of Sri Ashutosh Bhattacharjee
- 3) Sri N. P. Bhattacharjee, 4) Sri Himangsu Bhattacharjee, both sons of Sri Bimal chandra Bhattacharjee. all of 30. Kalar Road P.S. Tollygunge, Calcutta - 700026.

VERSUS

1. M/s. Deepcon, a registered partnership firm having its registered office at 1A, Kali Temple Road, P.S. Bhowani pore, Calcutta - 700026. Plaintiff(s)
2. Sri Tanu Kumar Versus Das, son of late Kali Prada Das.
3. Sri Dipak Kumar Das, 4. Sri Dipen Kumar Das both sons of Sri Tulsi Charan Das all of 14 A, Nepal Bhattacharjee street, P.S. Bhowani pore, Calcutta - 700026.

Claim for :- Suit for specific performance of contract and mesne profits and/or damages valued at Rs=100/- and Rs=100/- totalling Rs= 200/- only. Defendant(s)

Schedule - 'A' Property
Dist - 24 - Parganas (S). Premises no. 14A, Nepal Bhattacharjee Street. land measuring about 2 Kottaks 4 Chittaks 9 sq feet.

Schedule 'B' Property
On 'A' schedule property, 3rd and 4TH floors in its entirety roof right, garage space measuring 15' x 10' feet with common spaces and common passage. Common user of stairs, drain, sewerage, electricity in common areas at 14 A, Nepal Bhattacharjee Street, P.S. Bhowani pore Calcutta - 700026.

This suit coming on this day for final disposal before Sri Anupam Bhatte Chavhan
Civil Judge (sa civ) Mipore in the presence of
Sri Amitava Bawa Advocate for the Plaintiff
and of for the Defendant.

It is ordered and decreed that The Suit be and the same is decreed
ex parte against the defendants without costs and the Plaintiffs
do hereby get the decree for specific performance of
the agreement of exchange dated 3.6.1988 and the defendants
are directed to deliver possession of the 'A' schedule
property to the plaintiffs within 60 days from the date
thereof in default the Plaintiffs ^{but} ~~within 60 days~~ from
the date will be at liberty to get possession of the 'B'
schedule property to the Plaintiff by executing the decree
through Court.

(3)



and that the sum of Rs.
be paid by the

to the

in account of the costs of this suit, with interest thereon at the rate of
per cent, per annum from this date to date of realisation.

Given under my hand and the seal of this Court, this* 28th

day of January 20 04

*The addresses given above are the
addresses for service filed by the parties.*

Sudhir Kumar Hossain
clerk
23.2.04

Judge

*Enter here the
date of the
Judgement

Sudhir Kumar Hossain
26-02-04
Civil Judge (Sr. Division)
4th Court, Alipore
South 24-Parganas
in-charge

N.B.—This Judge shall make an autograph note stating the date, month and year
on which the decree is signed and initial the corrections or alterations, if any.

COSTS OF SUIT

Plaintiff		Rs.	P.	Defendant		Rs.	P.
1. Stamp for plaint	..	16	30	1. Stamp for power	..		
2. Stamp for power	..	2	00	2. Stamp for petitions and affidavits	..		
3. Stamp for petitions and affidavits	..	30	00	3. Cost of exhibits including copies made under the Bankers' Books' Evidence Act, 1891	..		
4. Cost of exhibits including copies made under the Bankers' Books' Evidence Act, 1891	..			4. Pleader's fee	..		
5. Pleader's fee on Rs. 200/-	..	15	00	5. Subsistence and travelling allowances of witnesses (including those of party, if allowed by Judge)	..		
6. Subsistence and travelling allowance of witnesses (including those of party, if allowed by Judge)	..			6. Process fees	..		
7. Process fees	..	2	00	7. Commissioner's fees	..		
8. Commissioner's fees	..			8. Demi-paper	..		
9. Demi-paper	..	9	70	9. Cost of transmission of records	..		
10. Cost of transmission of records	..			10. Other costs allowed under the Code and Civil Rules and Orders	..		
11. Other costs allowed under the Code and Civil Rules and Orders	..			11. Adjournment costs not paid in cash (to be deducted or added as the case may be)	..		
12. Adjournment costs not paid in cash (to be added or deducted as the case may be)	..						
Total	..	75	00	Total	..		

NOTE 1. The parties should apply as soon as possible for the return of all exhibits which they may wish to preserve as they will be destroyed at the time prescribed by the High Court (Rule 557 *et. seq.*, Civil Rules and Orders, vol. I).

NOTE 2. The above note or the Schedule of costs shall be penned through if there are no exhibits for return or no costs in favour of any party (see Note 1 to rule 456, Civil Rules and Orders, vol. I).



FOR DEPOSITION

Dipen Das

Dipen Das

Tarun Kumar Das

(Partners)

Filed by
[Signature]

District : South 24-Parganas.

In the 4th. Court of Assistant District Judge at Alipore.

Title Suit No. 69 of 1992

Bimal Bhattacharjee & Ors.

.. .. Plaintiffs.

-Versus-

M/s. Despoon & Ors.

.. .. Defendants.

Written Statement on behalf of Defendants.

1. That the suit is not maintainable in law and in its present form.
2. That the plaintiffs have no cause of action for the suit.
3. That the suit is barred by resjudication.
4. That the suit is barred by principles of estoppel, waiver, and ~~acquiescence~~ acquiescence.
5. That the suit is bad for misjoinder and non-joinder of parties.

Recd Copy
Cmnhg
A & S
30/11/92



Dependence
Dipen Das
Kumar Das
Kumar Das

Filed by
P

- 2 -

6. That the defendants doing all allegation made in the plaint under reply except what is specifically admitted herein and the plaintiffs are put to the strict proof thereof.

7. That from the plaint it is crystal clear that the plaintiffs have filed the instant suit for specific performance of contract of change by suppressing all material facts and by suppressing the M.S. 11/90 pending before the 4th. Court of Assistant District Judge at Alipore by the defendants for bonafide claiming therein of Rs. 4,30,729.92 paisa. The Plaintiff No. 1 & 2 filed the instant suit for avoiding in payment of Rs. 4,30,729.92 paisa to the defendants.

8. That the defendants are demised the para 1 of the plaint. It is absolutely false that the plaintiff no. 1 made a gift of his undivided half share in the suit land to plaintiff no. 3 & 4 on 28-8-89 and 25-8-89. The defendants submit that the alleged documents is

and made for the instant purpose. The plaintiff no. 3 & 4 have no right, title and interest on the said property. The defendants further submit that after death of Ashutosh Bhattacharjee by an application by the plaint in M.S. 11/90 of 4th. Court of Assistant District Judge at Alipore the learned court has been pleased to make party the following heirs of Ashutosh Bhattacharjee after hearing in length by the both side. The name of heirs of Ashutosh Bhattacharjee has supplied by the defendant Bimal Bhattacharjee in that



For DEFP CON

Dipen Das

Dipen Das

Tarun Kumar Das
Partner

Filed by
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that suit. The said Bimal Bhattacharjee also has filed an application for substitution of Utpal Bhattacharjee and Himangshu Bhattacharjee in the place of Ashutosh Bhattacharjee but the ld. court rejected the said application and allowed the substitution petition as follows :-

- i) Nityananda Bhattacharjee,
- ii) Ashish Bhattacharjee.
- iii) Smt. Purnima Bhattacharjee,
- iv) Smt. Kamala Bhattacharjee.
- v) Gita Bhattacharjee.
- vi) Smt. Madhabi Chakraborty.
- vii) Smt. Bela Bhattacharjee.
- viii) Sri Gopal Bhattacharjee

but the plaintiff did not make them ~~taxx~~ party in the suit. The plaintiff no. 3 & 4 have no locustant in filing the instant suit.

9. That the defendants are denied the statement contained in para 2 & 3 of the plaint. It is absolutely false to say that the defendant no. 2 to 4 approached the plaintiff no. 1 & 2 in or about last part of May, 1988 and stated that they are partner of a Partnership Firm No. 1 and wanted to develop the suit land by constructing a multistoried building thereon on suitable agreement for mutual benefits. The defendants submit that the sons of plaintiff no. 2 have friendship with the defendant no. 3 showed the sanction plan of the premises no. 14A, Nepal Bhattacharjee Street, Calcutta-700 026 and after scrutiny and inspection of the plan B.S.No.203(W) dated 9-1-1985, the

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FR DEEPCON

Dipankar Das

Dipen Das

Tarun Kumar Das

Partners

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2/2/10

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the defendant approached the Ashutosh Bhattacharjee and Bimal Bhattacharjee with a proposal to develop the land by the way of construction of five storied building as per sanction plan by Calcutta Municipal Corporation and ultimately it was settled and agreed between the parties and an agreement registered on 3-6-88 at S.R.O. Alipore. Beyond the agreement it was also settle to develop the rear portion of the property. Ashutosh Bhattacharjee and Bimal Bhattacharjee under took to make agreement/xxxx (Written) for rear portion after completion of 1st portion as agreed on dated 3-6-88.

10. That the defendants denied each and every line made in para 4 (a)(b)(c)(d)(e)(f)(g) & (h) of the plaint the defendants denied each and every line of the above paragraphs which does not born and from agreement. The defendant denied that the salient points of the agreement for exchange are detailed as para. (a)(b)(c)(d)(e)(f)(g) & (h).

(a) The defendant denied on per sanction plan the promoter would construct a five storied building in a portion of 14A, Nepal Bhattacharjee Street at his costs and on completion thereof the plaintiff no. 1 & 2 will get absolutely the 3rd. and 4th. floor in its entire roof rights and a grage & space measuring 15' x 10' with a right over common passage and other amminities. The defendants submits that the above para is nonconceep and concocted story which beyond the

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For DEEPCON

Dipen Das

Dipen Das

Tarun Kumar Das

For

Handwritten signature/initials.

- 6 -

the agreement dated 3-6-88. The agreement dated says as follows :-

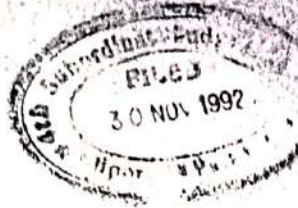
" (1) The owners hereby authorised the promoters/builders to build erect foundation ground, first second, third and fourth floors with flats and roof (but allow the promoters/builders to build and access to the water reasover and to fix T.V. Antina and repair it and when repaired for)".

(b) That the statement contained in para (b) is a matter of record.

(c) That the statement contained in para (c) of the plaint is denied and it is denied that the plaintiff no. 1 & 2 shall all necessary acts for transfer of other floors to the promoter after giving the aforesaid floors & etc. to the plaintiff no. 1 & 2 as agreed upon. The defendants submit that during the construction of the plaintiff no. 2 and his sons used to visit and inspect all the flats and their construction and plaintiff no. 2 directly verbally and by order slip approached the defendants to make some addition works of 3rd. and 4th. floor flats being no. 5, 6, 7, 8 and also to make a god room on the roof. The defendant also change the electric line from D.C. to A.C. connection and paid huge dues for outstanding water line to Calcutta Municipal Corporation. The defendants sent a bill for Rs. 3,30,729.92 paise to the

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the plaintiff no. 1 & 2 ~~xxx~~ requesting to take delivery of possession by a letter dated 23-11-89 but the plaintiffs have not paid the amount and took delivery of possession to the defendants ~~oreave~~ leave to refer the letter dated 23-11-89 at the time of hearing. The defendants on failure have instituted a Money suit before 4th. court of assistant District Judge at Alipore in M.S. No.11 /90 stating all the facts and got an order of ad-interim injunction on 10-5-90 and therefore the plaintiffs there in filed an application under order 39 rule 1 & C.P.Code and filed objection against ad-interim injunction dated 10-5-90 and injunction petition upon hearing in length by the both parties the learned court rejected the petition under order 39 rule 4 C.P.Code and grant injunction. The defendant have been restrained from taking possession of the flat until the amount demanded is paid" and also restrained the plaintiff from letting out or in any way transferring the 3rd. and 4th. floor flats in its entirety roof and garnage. The plaintiffs knowing filing well about the ~~fix~~ facts filed the instant suit in material intention for making infriuctions of money suit M.S.11/90. The defendants complying the order of injunction by the learned court.

(d) That the statement 2 contained para (d) matter of record.

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FEDERATION

Dipendra Kumar Das

Dipendra Kumar Das

Tarun Kumar Das

Partner

Handwritten signature and initials.

- 7 -

(e) That the statement contained para (e) are denied it is denied that all costs shall be borne by the promoter from the executing of agreement in regard to the construction and promoter shall make the building habitable. The Defendants submit that the defendant are not bound to make any additional work as per order by the plaintiffs and to make payment before Calcutta Municipal Corporation and change the electric line from D.C. to A.C. connection this own packet and to make make a god room in the roof the defendant plaintiff liable to pay Rs. 4,30,729.92 plus to the defendants as stated in M.S. 11/90 of this court. The defendants create leave to refer the agreement dated 3-6-88 at the time of hearing.

(f) The defendants denied the para (g) and submit that as per order of this learned Court in M.S. 11/90 the defendants complying the order of injunction. The plaintiff have not performing this duty and make the deed of conveyance in respect of other flats, as per agreement dated 3-6-88 and also have not taken the Income tax clearance as yet. The plaintiffs have violated the terms of agreements dated 3.6.88.

(g) That statement contained in para (g) are denied in toto. It is claimed that the promoter

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For DEPRCON

Dipen Das
Tarun Kumar Das
Partners

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- 8 -

promoter fail to deliver possession of the said floors etc. to the plaintiff within stipulated time, the defendants submits that all the statement in para (5) are miscep and to contempt of court. The defendants ^{after} several request sent a ^{registered} letter dated 23-11-80 requesting to make payment of Rs.4,30,729.00 paisa and take delivery of possassion but the plaintiffs have failed to take delivery of possession and to make payment. The defendant filed a Money Suit in this court being No. M.S. 11 of 1990 and got an order of injunction dated 10.05-1990.

(b) That the statement contained in para (h) is denied. The defendants submits that the defendants have ^{right title} ~~ought interest~~ and possessing in the flats as per ld. court's order in M.S.No.11/90 ~~of this court~~ of this court. The plaintiff have no right, title and interest and possession in the flats.

11. That the statement contained para 5,6,7 are denied the defendants denied each and every line of thier para which does not berne and from record. The defendants submit that the plaintiffs by suppressing all the material facts which specifically expression M.S.11/90 pending before the 4th. court of Assistant District Judge at Alipore trying to grab all property. The plaintiff also shall not furnish

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Tarun Kumar Das

Parties

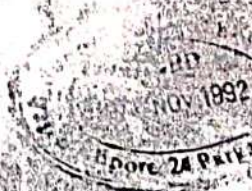
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- 9 -

furnish any Income Tax clearances yet. the defendants claim of Rs. 4,30,729.92 paisa from the plaintiffs in M.S.11/90 and the defendants there is able to established the prima facie case and balance of conveniences in this favour and the upon hearing the learned court granted an order of injunction " the defendants have been restrained from taking possession of the flats ~~instant suit~~ ^{until} the amount ~~claim~~ demanded is paid. The plaintiffs are knowing fully well filed the instant suit.

The defendants also denied that plaintiff started recovering the defendant from the ends of December, 1989 for such delivery of possession and also denied that defendants have been motivatedly and for illegal gains have not given possession to the plaintiffs of the said floors etc. and defendants are enjoying the wrongful gains by depriving the plaintiffs from getting possession of the floors as agreed upon. The defendants have not motivatedly and for illegal gains have not given possession and defendants are enjoying the wrongful gainly depriving the plaintiffs on the *other hand*. The plaintiffs depriving the defendants from Rs.4,30,729.92 paisa as claimed in M. S. 11/90 and also have not performing the *duties* per agreement dated 3-6-88. The defendant are not trying to sell the property. The strong of selling the property is baseless and concocted. The defendants further submit that no cause of action ever been arose on 3-12-1989.

12. That the suit is liable to dismiss for the cause of action.



For DEKPCON

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Dipen Das

Tarun Kumar Das

Partner

Dipen Das

Tarun Kumar Das

- 10 -

13. That the statement contained in para 9 are denied in every line. The ~~suit~~ suit is liable to dismiss for of cause of action.

14. That the court fees in sufficient.

15. That on the ground setforth above it is necessary to dismiss the suit in amicable with cost.

Verification

I, do hereby declare that the statements made in above paragraphs are true to my knowledge and I sign this verification on this the day of November, 1992 at my Lawyer's Chamber.

Tarun Kumar Das