

# Manoj Kumar Mangla vs Abhishek Singh & Anr on 23 January, 2023

**Author: Navin Chawla**

**Bench: Navin Chawla**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CS(OS) 355/2021  
MANOJ KUMAR MANGLA ..... Plaintiff  
Through: Mr.Sambit Nanda & Ms.Samaya  
Khanna, Advs.  
versus  
ABHISHEK SINGH & ANR. .... Defendants  
Through: Mr. Aditya Dewan & Mr. Sahil  
Chandra, Advs.  
CORAM:  
HON'BLE MR. JUSTICE NAVIN CHAWLA  
ORDER  
% 23.01.2023  
IA 15615/2022

1. This application has been filed by the defendants under Section 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'), seeking stay of the present suit.
2. The applicants/defendants have filed the earlier Civil Suit, being CS(OS) 418/2020, inter alia, praying for the following relief :-

"(a) Pass a decree of perpetual injunction in favour of the Plaintiffs and against the Defendant, restraining the Defendant from taking forceful possession of the Property bearing Khasra No.1595 min (3-2), 1596 min (2-8) 1597 min (1-3) 1598 min (4-7), 1482 min (2-3) situated at Village Asola, Tehsil Mehrauli, New Delhi-110074, measuring 13 Bighas and 03 Biswas from the Plaintiffs.

(b) Pass a decree of declaration, declaring the Purported Documents dated 12.09.2020 mentioned in Para 14 of the Plaint as nullity and void ab initio.

(c) Pass a decree of permanent and mandatory injunction, directing the Defendant to hand over the Original Titled Deeds of the Property as mentioned in Para 15 of the Plaint.

(d) Pass a decree of permanent and mandatory injunction, restraining the Defendant from wholly or partly, transferring, alienating, selling and/or creating a third party interest, in any manner the Suit Property on the basis of the purported documents,

(e) Pass a decree of permanent and mandatory injunction, restraining the Defendant from interfering in the Plaintiffs peaceful possession of the Suit Property."

3. The plaintiff has now filed the present suit praying for the following relief:-

"(a) Direct the Defendants to specifically perform the agreement for sale dated 12 September 2020 and they may be further ordered and decreed to do all such things, acts and deeds in order to carry out the terms of the said agreement and directions in respect thereof may be given by this Hon'ble Court to the Defendants in favour of the Plaintiff, and execute the Sale Deed in respect of the Subject Property in favour of the Plaintiff.

(b) Direct the Defendants to handover peaceful and vacant possession of the Suit Property.

(c) Pass a decree of permanent and mandatory injunction, directing the Defendants to render all co-

operation and to sign all the documents required for the execution of the sale deed and obtain all necessary permission for effecting the Sale deed of the Subject Property in favour of the Plaintiff.

(d) Pass a decree of permanent and mandatory injunction, restraining the Defendants, their agents, servants, legal representatives, nominees, attorneys, executors, administrators, authorised representatives or anybody acting on their behalf from selling, alienating, letting, creating third party rights or parting with the possession of the suit property bearing No. F-27, Regency Farms, Asola constructed on Khasra nos. 1595 min (3-2), 1596 min (2-8), 1597 min (1-3), 1598 min (4-7), 1428 min (2-3) situated at Village Asola, Tehsil Mehrauli, New Delhi- 110074."

4. The learned counsel for the defendants/applicants submits that the matter in issue between the two suits is common, which is, as to whether the plaintiff herein has given a sum of Rs.1 Crore or Rs.8 Crores to the defendants/applicants under the Agreements dated 20/21.08.2020 and the Side Agreements dated 12.09.2020. He submits that the parties being common to the two suits; the matter in issue also being common, the present suit is liable to be stayed under Section 10 of the CPC.

5. He places reliance on the following judgements in support of his submissions :-

1. National Institute of Mental Health and Neuro Sciences Vs. C. Parameshwara, (2005) 2 SCC 256;

2. Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527;

3. V-Guard Industries Ltd. Vs. Rakesh Malhotra and Ors., 2023 SCC OnLine Del 61;  
and

4. Punjab & Sind Bank Vs. Lalit Mohan Madan & Co., 2012 (130) DRJ 436.

6. On the other hand, the learned counsel for the plaintiff/non-applicant submits that though one of the issues which would arise in the two suits, being whether the defendant herein has received a sum of Rs.1 Crore or Rs.8 Crores from the plaintiff under the above mentioned Agreements, is common to the two suits, an additional issue arises in the present suit in form of whether the plaintiff herein is entitled to a decree of specific performance of the Agreements. He submits that therefore, instead of staying the present suit, this Court may direct the consolidation of the two suits for purposes of trial.

7. I am in agreement with the submissions made by the learned counsel for the plaintiff. Though, there can be no denial that the object underlying Section 10 of the CPC is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue, it would be applicable only where the whole of the subject matter in both the suits is identical. In the present case, the plaintiff apart from proving in the Suit that he has paid the consideration mentioned in the Agreements, would also have to prove that he is entitled to a decree of specific performance and/or in the alternative, refund of the amount paid to the defendants. These issues do not arise in the suit of the defendant and cannot, therefore, be adjudicated upon in the said suit.

8. In view of the above, in my opinion, it would be in the interest of justice that the two suits are consolidated for purposes of trial. The evidence led by the parties in CS(OS) 418/2020 shall be read in the present suit as well. This would also meet the object as set out in Section 10 of the CPC. It is ordered accordingly.

9. The application is disposed of in the above terms.

10. This is an application seeking modification of the order dated 15.07.2022. In my opinion, in effect, it seeks review of the said order.

11. As the said order was passed by the Hon'ble Mr. Justice Amit Bansal, subject to orders of the Hon'ble the Judge In-charge (Original Side), list this application before the Hon'ble Mr. Justice Amit Bansal on 9th February, 2023.

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12. The parties shall file Joint Schedule of Documents within four weeks from today.

13. List before the learned Joint Registrar (Judicial) on 21st April, 2023.

NAVIN CHAWLA, J.

JANUARY 23, 2023 dc