

*** HIGH COURT OF DELHI : NEW DELHI**

+ **FAO (OS) No.214/2008**

Judgment reserved on : 06th May, 2008

% Judgment delivered on: 28th May, 2008

1. Avtar Singh Narula
S/o S. Sajjan Singh
20/15 Prommir Villa
Sukhumvit Soi 39
Bangkok, Thailand
(At present)
9/77 Punjabi Bagh West,
New Delhi

2. Surinder Singh Manchanda
S/o Late S. Harbans Singh Manchanda
9/77 Punjabi Bagh,
New Delhi

...Appellants

Through : Mr. D.R. Bhatia, Adv.

Vs.

1. Dharambir Sahni
S/o Late Lala Mana Shah
277 A, Sector 15A
Noida, U.P.

2. Gautam Sahni
S/o Sh. Dharambir Sahni
277 A, Sector 15-A, Noida, U.P. Respondents

Through : Mr. Jasmeet Singh, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MANMOHAN SINGH, I

1. This is an appeal preferred by the appellants (Defendants in CS(OS) No1890/2006) against the order of the learned Single Judge dated 25th March, 2008 dismissing the application filed by the appellants being IA No.4827/2007 seeking rejection of plaint under Order 7, Rule 11 of the Civil Procedure Code (CPC).

2. Briefly stated the facts of the case are that Shri Sajjan Singh was lessee of shop No.57, Khan Market, New Delhi, the lessor being the Land & Development Officer (L&DO). Shri Sajjan Singh, executed a registered will dated 25th June, 1964 at Bangkok bequeathing the above said property in favour of his son Shri Avtar Singh Narula, appellant No.1. Appellant No.2, Surender Singh Manchanda is an attorney of appellant No.1. Shri Sajjan Singh died on 11th April, 1966 and left behind two more sons and a daughter besides appellant No.1/ Shri Avtar Singh Narula.

3. Appellant No.2 on the basis of power of attorney entered into an agreement to sell dated 25th March, 2004 of property bearing Shop No.57-B situated at Khan Market, New Delhi measuring 59.5 sq. yds. (hereinafter referred to as suit property) with the respondents for a sum of Rs.50 lakhs, and respondents paid Rs.2.50 lakhs by cheque and Rs.2.50 lakhs in cash to the appellants as initial payment. As per the agreement to sell a further sum of Rs. 20 lakhs was to be paid by the respondents to the appellants within two months from the date of mutation of the said property in the name of appellant No.1. The balance

sum of Rs.25 lakhs was to be paid by the respondents to the appellants at the time of execution of the regular sale deed after obtaining sale permission from the L&DO. The relevant clauses 2 and 7 of the agreement to sell are reproduced below:

“Clause 2

A further sum of Rs. Twenty Five Lakhs will be paid by the Second party (i.e plaintiffs) to the attorney of the First party (i.e defendant No.2) within two months from the date of mutation of aforesaid property in the record of L&DO in the name of S. Avtar Singh Narula, for which the First Party (defendant No.2) has already applied.

The balance sum of Rs.25 laksh (figures scratched) will be paid by the Second Party (plaintiffs) to the attorney of the First Party at the time of execution of the registration of regular sale deed after obtaining the permission in respect of sale.”

“Clause 7

“ That in case the mutation of aforesaid property is not sanctioned by the Land and Development Office, Nirman Bhavan, in the name of S. Avtar Singh Narula due to any reason within Sixty days then the bargain/agreement shall stand cancelled and the attorney of the first party will be liable to return the advance amount of Rs.5,00,000/- (Rs. Five lakhs) only to the second party immediately within seven days from the date this fact comes to the notice and then this agreement will be destroyed in the presence of both the parties”.

4. In the suit filed by the respondents, it was stated that a legal notice dated 2nd September, 2006 issued by Shri K.C. Bajaj, Advocate for the appellants sought to rescind and cancel the agreement to sell dated 25th March, 2004 relying on clause 7 of the agreement to sell. Along with the said notice, the appellants also returned two demand drafts for a sum of Rs.2.5 lakhs each.

5. It was alleged by the respondents that the appellants cannot unilaterally cancel the agreement to sell without informing the respondents, the appellants are trying to sell the suit property to somebody else at a higher price and trying to wriggle out of their contractual obligations. It is the appellants who have failed to perform their part of contractual obligations in not obtaining the mutation of the suit property from the L&DO or sanction for permission for sale from L&DO.

6. It is also stated by the respondents that they were always ready and willing to perform their part of the contractual obligations and were always in a position to arrange the balance sale consideration of Rs.45 lakhs. The respondents have not encashed two demand drafts of Rs.2.5 lakhs each sent by the appellants along with notice dated 2nd September, 2006. On these broad allegations, the suit was filed for seeking permanent injunction and specific performance of agreement to sell dated 25th March, 2004.

7. An application was filed by the appellants under Order 7 Rule 11 CPC with the prayer that the plaint of the plaintiff be rejected as it does not disclose a cause of action in favour of the plaintiff to file the present suit and one of the pleas of the appellants was that suit of the respondents is not maintainable in view of clause 2 and 7 of the agreement.

8. The appellants sought rejection of the plaint on the grounds that on the date of filing of the suit there was no cause of action in favour of the plaintiffs as there was no concluded agreement between the parties in

view of clause 7 of the agreement; the agreement was void under Section 20 of Contract Act as both the parties were under a bilateral mistake of fact that appellant No.1 had a clear title to the suit property and was therefore competent to transfer the same whereas at the time of agreement he had no title to the suit property and the plaintiff could not seek performance of the agreement in view of the provision of Sections 13 and 17 of the Specific Relief Act, 1963.

9. The application was resisted by the respondents, who contended that the plaint cannot be rejected on the ground of obtaining of probate certificate, as it is a mere formality. The very purpose of filing of the present suit for specific performance by the respondents shows that the respondents till this date are ready and willing to perform their part of contract. Also the mutation of the suit property within stipulated time in favour of the respondents was the appellants' responsibility. The provisions of Sections 13 and 17 of the Specific Relief Act, 1963 do not even prima facie apply to the present case, as it is beyond doubt that the appellants are the absolute owners of the suit property.

10. On the basis of the averments made in the pleadings and in the application under Order 7 Rule 11 CPC, the learned Single Judge by an order dated 25th March, 2008 has come to the conclusion that the plaint cannot be rejected under Order 7 Rule 11. It is against this order that the present appeal is preferred by the appellants. The point that arises for consideration in the appeal before us is whether the order passed by the

learned Single Judge rejecting the application filed under Order 7 Rule 11 CPC is correct or it requires any interference or not.

11. The learned Single Judge while rejecting the application of the appellants held that Section 17 of the Specific Relief Act, 1963 applies only when specific performance to sell any immovable property is sought by the Vendor. This Section has no application when the specific performance of an agreement to sell is asked by the Vendee. Furthermore, the rigors of Section 17 would apply in case the vendor would have no title to the property which he has contracted to sell to the vendee. In the present case, appellant No.1 on whose behalf agreement to sell was executed by appellant No.2 became owner of the suit property under the registered will dated 25th June, 1964 of his late father Shri Sajjan Singh who expired on 11th April, 1968.

12. The Learned Judge further observed that:

“A reading of the agreement to sell dated 25.03.2004 of which specific performance is sought by the plaintiffs in the present suit would show that mutation of the suit property in the record of the L&DO was to be got done by the defendants themselves and they cannot take advantage of their own default in not getting the property mutated in the record of the L&DO within the time period stipulated in the said agreement. This question of breach cannot be ascertained in the absence of evidence of the parties on this aspect of the matter.”

13. It is settled law that the provisions of Order 7 Rule 11 are procedural and they are designed and aimed at preventing vexatious and frivolous litigations. The power of rejecting the plaint has to be exercised by Courts sparingly and cautiously and the Court has

jurisdiction, in a proper case, to reject the plaint. While rejecting a plaint, the Court has to confine itself only to the averments made in the plaint and is not supposed to look into the defence taken up by a defendant and the Court may not even examine or declare upon the correctness of the contents or otherwise, of the plaint. However, if after examination of the plaint and documents filed by the plaintiff, the Court finds that the suit is not maintainable, it must reject the plaint under the said provision.

14. In the present case in hand, the position is otherwise as we find that the following are admitted position between the parties:-

- That the execution of agreement is not denied by the appellants.
- That it was for the appellants to obtain the sanction from L&DO for mutation of property in the name of appellant No.1 which is not obtained within the stipulated time as provided in the agreement to sell.
- That the respondent No.1 was always ready and willing to pay the balance amount as per the terms and conditions of the agreement.
- That there was a cause of action for the plaintiff to approach the Court for relief.

15. In view of the abovesaid circumstances, we are of the view that there is a valid reason for filing the suit and there are triable issues involved wherein evidence of the party is required. Hence the contention of the appellants cannot be accepted. Thus, the application of the appellants under Order VII Rule 11 CPC was not maintainable and order passed by the learned Single Judge is sustained.

16. There is no force in the appeal and the same is liable to be dismissed. No costs.

MANMOHAN SINGH, J

MADAN B. LOKUR, J

MAY 28, 2008
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