

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA (OS) No. 44/2007

DATE OF DECISION: 24th September, 2008

RISHI DEV BATRA

.... Appellant

Through: Mr. Rakesh Tikku, Advocate.

Versus

DR. (MRS.) ANUP SURI

..... Respondent

Through: Mr. Amity Kapoor with

Ms. Garima Kapoor,

Advocates

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE MANMOHAN

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

J U D G M E N T

MUKUL MUDGAL, J: (ORAL)

1. This appeal challenges the order dated 15th March, 2007 whereby Appellant's suit for specific performance and perpetual injunction on the basis of receipt dated 28th August, 2003 was dismissed by the learned Single Judge. It was also held that the appellant had no arrangement to pay the balance sale consideration and as such he was not ready and willing to purchase the sale property.

2. The facts of this case as averred by the Appellant are as follows:-

(a) The Plaintiff/Appellant herein entered into an Agreement to Sell dated 28th August, 2003 with the Defendant/ Respondent herein in respect of property bearing No. 8/273, Sunder Vihar, Paschim Vihar, New Delhi for a sale consideration of Rs. 70 Lacs.

(b) Pursuant to the said Agreement to Sell the Appellant paid an earnest money of Rs. 5 Lakhs to the Defendant/Respondent herein, and balance amount of Rs. 65 Lakhs was agreed to be

paid after conversion of the suit property from leasehold to freehold by the Respondent by 14th December, 2003.

(c) However, as per the Appellant, the Respondent failed to perform her part of agreement since she failed to get the suit property converted to freehold.

(d) Consequently, the Appellant filed a suit bearing CS (OS) No. 902/2005 for specific performance and perpetual injunction.

(e) The suit of the Appellant for specific performance and perpetual injunction was dismissed on the basis of the receipt dated 28th March, 2003.

(f) Thereafter, the appellant filed the present appeal.

3. The learned Counsel for the Respondent filed a written statement and urged that the Appellant's case in the suit as well as in the present appeal is based on forged document. The receipt dated 28th August, 2003 was tampered and the words "& *freehold basis*" which were never written in the original agreement, were added afterwards. It was submitted by the learned counsel for the Respondent that during the course of hearing before this Hon'ble Court, the Appellant had himself admitted that these words were added later on. It is also averred by the counsel for the Respondent that the Appellant failed to

make the payment of balance sale consideration of Rs. 65 Lacs by 14th December, 2003 and there was no obligation on the part of Respondent to get the property converted from leasehold to freehold. The Appellant himself was required to get this property converted from leasehold to freehold and the Respondent was only to sign the necessary papers and assist the Appellant in applying for the said conversion.

4. The Counsel for the Respondent also pointed out that even at the time when the Agreement was entered into between the parties, the application for conversion with DDA was pending and the Respondent was already holding the required documents from her children.

5. He further contended that in and around mid of September, 2003 one Shri Devender Kumar on behalf of Appellant approached the Respondent and told her that she had to execute fresh document from her son and daughter who were in USA and only then the process of conversion can be completed. Even though the Respondent was surprised by the Appellant's conduct, she nevertheless contacted her children and received a

fresh Power of Attorney dated 24th October, 2003 from her daughter whereby she was authorized to get the conveyance deed executed. She also received a power of attorney from her son from USA.

6. On 13th December, 2003 the Appellant informed the Respondent that having suffered huge losses in his brick business in Orissa, he could not at that moment pay the balance sale consideration and offered only Rs. 1 Lac which was refused by the Respondent who demanded the entire balance sale consideration. Since the balance sale consideration was not paid by the Appellant by 14th December, 2003, the Agreement stood cancelled and became null and void.

7. The Learned Single Judge after hearing the pleadings of the parties framed the following issues:-

“1. Whether the plaintiff had materially altered and forged exhibit P-1 i.e. Agreement-cum-receipt by adding the words “& freehold basis” as alleged in the written statement and, therefore, the suit is liable to be dismissed as such? OPD.

2. Whether the plaintiff has always been ready and willing to purchase the suit property?

3. Whether the plaintiff failed to perform his obligations under the Agreement/Receipt dated 28.08.2003?

4. Whether the suit is maintainable in its present form?

5. Whether the plaintiff is entitled to the relief(s) prayed for?”

8. There are various versions stated by the appellant regarding addition of the words “**& free hold basis**”.

“a) In the statement recorded on 12.09.2005 under Order X Rule 1, the appellant states that the receipt was signed at the house of one of his friends Sh. Yash Pal Chawla. Smt. Anup Suri alongwith one another person who was accompanying her brought the receipt-cum-agreement which was already filled up and there was no carbon copy. The person who was accompanying the respondent had added those words and then the appellant signed the same.

b) In the cross examination of the appellant conducted on 12.02.2005 he says that besides Dr. Suri, Mr. Chawla and a persons with Dr. Suri whose name he does not remember, Mr. Davinder was also there. He says that

he does not remember whether there was any carbon copy attached to the agreement. He also goes on to say that Mr. Ramesh had probably in his handwriting added the said expression.”

9. The Learned Single Judge on the basis of the evidence recorded the following findings:-

a) The words “& freehold basis” were added subsequently and the receipt dated 28th September, 2003 has been tampered with.

b) Non-payment of balance sale consideration demonstrates that the Appellant was not ready and willing to perform his part of agreement.

c) The words “& freehold basis” were added with different ink which fact was not denied by the Appellant. Except for these words all other blanks which were filled were in dark blue ink colour whereas these words were in black/black-blue ink colour.

d) The conduct of the Appellant also found false qua the stand adopted by him. The payment of balance sale consideration was to be made on or before 14th December, 2003. The Appellant did not write any letter to fulfill the said obligation so as to pay the said money. In fact, there was complete lack of correspondence between the parties from 14th December, 2003 till 5th May, 2005 when the first time legal notice was sent by the Appellant to the Respondent.

e) The Appellant admitted during the cross examination by the Respondent that at no point of time he had Rs. 65 Lacs in his bank

account and the Appellant only stated that he could arrange the money from his father as he had a lot of money.

f) In the statement recorded under Order X Rule 1 on 12th September, 2005 the Appellant categorically stated that there was no carbon copy along with the Agreement but in his cross examination as a witness, he stated that he does not remember whether there was any carbon copy attached to the Agreement. The Appellant also mentioned that the Respondent had already spent Rs. 20,000/- for getting the property converted from leasehold to freehold and if the Respondent had spent this amount, there was no question of Appellant's recovering the amount from the Respondent by adjusting the same from the sale consideration. This demonstrates that the Appellant did not have the money to pay the balance sale consideration that is why he kept quiet. He thus failed to perform his part of obligation under the Agreement by making payment of balance sale consideration.

10. The Learned Counsel for the Appellant sought to displace the above findings by submitting that the alteration to the receipt was made in different ink but these alterations were made before the Agreement was signed, which after a careful examination of the original document was not believed by the learned Single Judge and in our opinion rightly so. The entire circumstances of the case and in particular the fact that the Appellant could not

show his readiness and willingness by way of establishing the availability of the balance sale consideration in any manner clearly shows that whatsoever the facts and circumstances of the case are, the Appellant was not entitled to a decree of specific performance. Even assuming that there was a breach by the Respondent, the fact that the Appellant kept quiet for the period from 14th December, 2003 to 5th May, 2005 eloquently demonstrates that whatever the remedy Appellant could have, he was certainly not entitled to a decree of specific performance. In fact, the learned Single Judge noted the plea of the Respondent that even in the event of breach of the agreement by the Respondent the Appellant was only entitled to double the amount of Rs. 5 Lacs as compensation. Even though the learned Single Judge chose not to decide this issue, nevertheless, in the interest of justice we asked the learned Counsel for Respondent to pay double of aforesaid amount of Rs.5 lacs i.e. Rs. 10 Lacs to the Appellant in full and final settlement of his claim. However, the Appellant declined to accept this suggestion even though the Respondent had agreed to pay Rs. 10 lakhs to the Appellant.

11. After perusal of the facts and circumstances of the case, it is aptly clear that the Appellant tampered with the receipt dated 28.08.2003, never had the requisite funds and had no intention to proceed with the transaction. Accordingly, we are satisfied that no case is made out to interfere with the findings of learned Single Judge. Consequently, the present appeal being devoid of merits is dismissed with cost of Rs. 20,000/- to be paid to Delhi Legal Aid Services Authority not later than four weeks from today.

MUKUL MUDGAL, J.

MANMOHAN, J.

SEPTEMBER 09, 2008

rn/sk