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

+ **RFA No.402/2007**

% Date of decision: 19th November, 2008

SATISH KHERA Appellant
Through : Mr. Manish Vashisht, Adv.

Versus

SUKHVINDER SINGH SAHANI Respondent
Through : None.

CORAM :-
THE HON'BLE MR.JUSTICE PRADEEP NANDRAJOG
THE HON'BLE MR. JUSTICE J.R. MIDHA

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

Pradeep Nandrajog, J. (Oral)

1. At an ex-parte trial, the appellant who was the plaintiff, could not manage a decree for specific performance in his favour. The reasoning in the impugned judgment and decree dated 04.05.2007 may be culled out by noting the language of the learned Trial Judge. The same is as under:-

“It is seen that Ex.PW1/1 is the Agreement to Sell dated 16.05.2001 on a stamp paper of two rupees only. A bare reading of this agreement shows that the defendant had agreed to sell the aforesaid suit property i.e. Property No.27/35, Second Floor, Punjabi Bagh, New Delhi for a consideration of Rs.3,50,000/- to the plaintiff. It

also shows that the plaintiff had paid the entire consideration of Rs.3,50,000/- to the defendant and the defendant had delivered the vacant possession of the suit property to the plaintiff.

However, perusal of this document also shows that it was only in the form of memorandum regarding this transaction of having paid a sum of Rs.3,50,000/- to the defendant for purchase of the said property i.e. the agreement nowhere mentions about any further undertaking by either of the parties. Under the said agreement, nothing was required to be done further in future by either of the parties in furtherance of the said agreement. I, thus, feel at the outset that no further performance was promised to be done by either of parties to the said agreement and hence the plaintiff cannot seek specific performance of this agreement as there was nothing to be performed subsequently under the said agreement. Neither of the parties had made any offer or promised anything further to be done under the said agreement. There is no mention about the defendant having agreed to execute any sale deed in respect of the said suit property.

It is also observed that the Will, forming a part of the set of documents relating to this transaction, is not registered. The plaintiff had not cared to call any of the witnesses to these documents i.e. Agreement to Sell, receipt and will, in the witness box to testify that these documents were executed before them. Even the General Power of Attorney is not registered. The said Sh. Avinash Mediratta, in whose name the GPA had been executed, had also not been produced in the witness box to depose about the same."

2. Another reasoning is as under:-

"Under Article 54 of the Limitation Act, 1963 the period of limitation for filing of suit for specific performance of contract was three years from the date of the agreement. This suit has been filed on 18.4.2006, which is much beyond the prescribed period of three years. As regards the Ex.PW1/1A, it cannot be said to extend the

period of limitation i.e. while under the original agreement dated 16.5.2001 Ex.PW1/1, the defendant had not made any promise to execute the sale deed, the said promise has now been made under the said agreement dated 16.5.2003. This cannot be said as acknowledgment of the earlier promise as there is no promise made earlier and hence cannot be considered as acknowledgment of extension of liability.”

3. Ex.PW1/1 referred to by the learned Trial Judge reads as under:-

“AGREEMENT TO SELL

This Agreement to Sell & Purchase is made at New Delhi on 16th day of May, 2001 between Sh. Sukhvinder Singh Sahni S/o Sh. Didar Singh r/o 475, Guru Harkishan Nagar, Paschim Vihar, New Delhi (hereinafter called the First Party) AND Sh. Satish Khera S/o Sh. S.D. Khera R/o 30, SBI Nagar, Paschim Vihar, New Delhi (hereinafter called the Second Party), in respect of Property No.27/35, Second Floor, situated at Punjabi Bagh, New Delhi-110026 (hereinafter called the said property), with the freehold rights of the land under the said property/land.

And whereas the first party is the absolute and only owner of the said property and he has agreed to sell the above said property to the second party, for a consideration of Rs.3,50,000/- (Rs. Three Lacs Fifty Thousand only), the entire consideration amount has been received by the First Party from the Second Party vide separate receipt in full and final settlement and nothing remains due out of the sale price of above property and purchase the said property on the following terms & conditions:

NOW THIS AGREEMENT TO SELL WITNESSES AS UNDER;

1. That the First Party has delivered the vacant possession of the above mentioned property to the Second Party.

2. That the First Party hereby assures the Second Party that the said property under sale is free from all sorts of encumbrances such as sale transfer, exchange mortgage, gift, litigation Court Decree etc. and there is no legal defect in the title of the First Party and if proved otherwise the First Party shall be liable to compensate the Second Party to the extent of loss suffered by the Second Party with all costs expenses and damages etc. through all his moveable and immoveable properties.

3. If the first party fails to complete his part of the sale transaction or infringes the terms/conditions of this agreement then the Second Party shall be entitled to get the said transactions completed through the Court of law by filing a suit for specific performance at the cost expenses of the first party.

4. That the legal heirs, of the first party shall not claim, any title interest over the said property in future or interfere in any manner and in case of any such eventually first party will be liable and responsible to compensate the Second Party for all losses/damages suffered by the second party through his personal properties both moveable and immoveable.

IN WITNESS WHEREOF, both the parties have signed this Agreement to Sell on the month, date and year first written above in the presence of the following witnesses."

4. Ex.PW1/1A referred to by the learned Trial Judge reads as under:-

"AGREEMENT

I, Sukhvinder Singh Sahni S/o Sh. Didar Singh R/o 475, Guru Harkishan Nagar, Paschim Vihar, New Delhi had executed the Agreement to Sell in favour of Satish Khera S/o Sh. S.D. Khera regarding Property No.27/35, 2nd Floor, Punjabi Bagh and received the full payment on May 16, 2001 against receipt but I could not execute the Sale Deed due to some unavoidable circumstances. Now I undertake that the Sale

Deed will be executed and got registered in FEB/MARCH, 2006.

I confirm that the WILL, GPA Receipt Agreement to Sell dated May 16, 2001 were executed and signed by me against full payment amounting to Rs.3,50,000/- (Three Lac Fifty Thousand only) received by me against receipt."

5. In respect of the bar of limitation suffice would it be to state that limitation is always computed from the date next when cause of action accrues. Thus, pertaining to the agreement to sell dated 16th May, 2001, limitation would commence on 17th May, 2001 and would expire on 16th May, 2004.

6. Ex.PW1/1A is dated 16th May, 2003. The acknowledgment by the seller to execute the sale deed would thus extend the limitation to enforce Ex.PW1/1. In any case, in Ex.PW1/1A it is clearly recorded that the seller would get executed the sale deed by February or March, 2006.

7. We note that the suit was filed by the appellant on 13th April, 2006.

8. We thus hold that the suit is within limitation.

9. Pertaining to the first reasoning that Ex.PW1/1 evidences an agreement executed between the parties and not an executory agreement, we record our disapproval noting para 3 in the agreement which clearly records that if the seller fails to complete his part of the sale transaction, the buyer shall be entitled to approach a Civil Court.

10. Obviously, under the agreement to sell, entire sale consideration has been paid and therefore, the only obligation which remains is of the seller i.e. the execution of the sale deed. Ex.PW1/1A re-enforces the fact that the seller agreed to execute the sale deed.

11. We allow the appeal and set aside the impugned judgment and decree dated 04.04.2007. The suit filed by the appellant is decreed with a direction to the respondent i.e. the defendant to execute the sale deed in favour of the appellant and convey to him the title pertaining to the property which is the subject matter of Ex.PW1/1. Needless to state, if the respondent/defendant does not execute the sale deed within 3 months from today, the Executing Court would appoint a Court officer to do the needful. Expenses for the sale deed would be borne by the appellant.

12. No costs.

13. TCR be returned forthwith.

PRADEEP NANDRAJOG, J

J.R. MIDHA, J

NOVEMBER 19, 2008

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