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HIGH COURT OF DELHI : NEW DELHI

+ **I.A No. 8962/2007 & I.A No. 8965/2007 in CS (OS) No. 655/2007**

% Judgment reserved on : 27th July, 2009

Judgment pronounced on : 13th August, 2009

Krishan Kumar Kathpal ... Plaintiff

Through : Mr. M.S. Khan, Adv.

Versus

Dayanand and Anr. ... Defendants

Through : Mr. M.L. Sharma, Adv. with
Mr. Amit Rana, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

MANMOHAN SINGH, J.

1. By this order, I propose to dispose of I.A No. 8962/2007 filed by defendant no. 2 under Order VII Rule 11 CPC, 1908 and I.A No. 8965/2007 filed by defendant no. 1 under Section 8 and 11 of the Arbitration and Conciliation Act, 1996.

2. Following are the brief facts of the present suit. The plaintiff was allotted shop no. F-27 A, Shankar Market, Central Market, Connaught Place, New Delhi (hereinafter referred to as 'suit property') and purchased the same from L & DO in 1979. The plaintiff was in the business of conducting sale of electrical and electronic goods from the suit property and had a 'cash credit

limit' of Rs. 20,00,000/- with Punjab National Bank, N-46, Connaught Place, the collateral security for which was the suit property. Due to losses in business, the plaintiff was unable to pay the amount due to the bank as a result of which the suit property was attached and sealed on 30.01.2003. After negotiations, the amount due was reduced to Rs. 21 lac.

3. To make the said payment of Rs. 21 lac, the plaintiff claims to have negotiated the sale of the suit property with defendant no. 1 for a total consideration of Rs. 1.25 Crore.

4. The agreement reached upon by the parties is claimed by the plaintiff to be as follows; out of the total consideration of Rs. 1.25 Crore, defendant no. 1 was to pay Rs. 21 lac to the Bank. As regards the remaining Rs.1.04 Crore, defendant no. 1's brother in law, i.e. defendant no.2 would give his land measuring 5000 sq. yards at Khasra No. 20/10 (2-A), 20/11 (2-12), Khera Dabar Village, New Delhi to the plaintiff on returnable basis on the cash payment of the said Rs. 1.04 Crore.

5. On 29.03.2004, defendant no. 1 executed a General Power of Attorney and a Will relating to the property of defendant no. 2 in the plaintiff's favour. Other documents were also executed by defendant no. 2 in favour of the plaintiff. On the same date, the plaintiff also executed documents in favour of defendant No.1 for sale of the suit property to the same.

6. As per the plaintiff, before execution of all these documents, he suspected the genuineness of the defendant no. 2's possession of the Khera Dabar Village land and insisted on the physical verification of the same. On this, the defendants got alarmed and got the documents forcibly executed, keeping all the original copies with themselves.

7. Thereafter, despite the plaintiff's entreaties, the defendants neither gave him possession of the land belonging to defendant no. 2 nor the balance of Rs. 1.04 Crore. Instead, they attempted to ensnare the suit property and the plaintiff claims to have stopped this attempt just in time.

8. The plaintiff states that it has made several complaints to the police regarding the illegal designs of the defendants. However, it is claimed that the defendants in connivance with the police obtained the possession of the suit premises, even as a 'kalandra' instituted by the police itself under section 145 of the Cr. PC was pending. In the absence of possession of suit premises by plaintiff, the 'kalandra' was disposed of vide order dated 14.08.2006 with the observation that defendant no. 1 could retain possession of the suit premises till the same is decided by due process of law.

9. As per the plaintiff, he received threatening phone calls from the defendants and their associates and also recently got to know that the defendants were planning to sell the suit premises to some third party. The plaintiff claims that at the time that the Bank sealed the suit premises, there were goods worth Rs. 30-32 lac in the same. In addition, there were business documents and account books of the plaintiff in the suit premises and the same have now been allegedly stolen and appropriated by the defendants.

10. Hence the plaintiff filed the present suit for declaration that the documents with the defendants as regards the suit property are null and void, for a decree of permanent injunction restraining the defendants from creating any third party rights as regards the suit property and for a decree of possession in favour of the plaintiff as regards the suit property, or in the alternative, a decree of mandatory injunction directing the defendants to hand

over possession of the land of defendant no. 2, i.e. land measuring 5000 sq. yards at Khasra No. 20/10 (2-8), 20/11 (2-12), Khera Dabar village, New Delhi to the plaintiff.

11. Defendant no. 1 filed an application under Section(s) 8 and 11 of the Arbitration and Conciliation Act, 1996 praying that the disputes with regard to the suit property may be directed for adjudication by arbitration and that a sole arbitrator be appointed for the purpose of settlement of the aforementioned disputes.

12. In the said application, defendant no. 1 has alleged that the plaintiff after receiving entire sale consideration for the suit property from defendant no. 1, sold, transferred and delivered possession thereof to the same by execution of various documents dated 29.03.2004. The said sale was by way of a power of attorney and not a sale deed as the latter was not permissible due to several restrictions in the initial lease of the suit property. Therefore, defendant no. 1 is the bona fide purchaser and owner of the suit property.

13. Defendant no. 1 submits that there exists a valid arbitration agreement between the parties by virtue of an arbitration clause in the agreement dated 29.03.2004. The relevant portion thereof is reproduced hereunder:

“AND WHEREAS, if there might be some dispute arising regarding the terms and conditions of the agreement referred to above, therefore, both the parties have mutually decided to appoint a sole arbitrator who will decide the said dispute and whose decision will be final and binding on both the parties and their heirs and successors.”

14. In another application being I.A. No. 8962/ 2007 filed by Defendant no. 2 for rejection of plaint under Order VII Rule 11 CPC, defendant no. 2 has submitted that the transaction between the plaintiff and him is separate from that of the plaintiff and defendant no. 1.

15. I have heard learned counsel for the parties and have also gone through the pleadings referred thereto. Though the plaintiff was previously not agreeable to the idea of settlement of disputes by the arbitrator, however, during the course of the arguments the learned counsel for the plaintiff agreed to refer the disputes for adjudication by the sole arbitrator. Learned counsel for the defendant on the other hand is agreeable to refer the disputes only pertaining to the property No.F-27A, Shankar Market, Central Market, Connaught Place, New Delhi as per arbitration agreement. From the documents referred by the plaintiff during the course of hearing, it appears on a perusal of the General Power of Attorney dated 29.03.2004 executed by defendant no. 2 in favour of the plaintiff wherein the latter has been appointed as the lawful General Attorney with regard to Khera Dabar Village land that Clause 14 of the same is as regards arbitration. It states the following:

“14. To appoint any Arbitrator in respect of any dispute regarding the said land and to accept the award of the said arbitrator.”

16. Following are all the documents executed on 29.03.2004:-

- i) Agreement to sell the plaintiff's property being the suit property to defendant no. 1 for Rs. 21 lac with defendant no. 2 and S.N. Aggarwal as witnesses;
- (ii) Indemnity bond as regards the suit property between plaintiff and defendant no. 1 with defendant no. 2 and S.N. Aggarwal as witnesses;
- (iii) Will of plaintiff bequeathing suit property to defendant no. 1 with defendant no. 2 and S.N. Aggarwal as witnesses;
- (iv) Possession Letter written by plaintiff as regards suit property, in favour of defendant no. 1 with defendant no. 2 and S.N. Aggarwal as witnesses;

- (v) Affidavit and Undertaking as regards the sale of suit property by plaintiff in favour of defendant no. 1;
- (vi) Special Power of Attorney of plaintiff as regards suit property executed in favour of defendant no. 1 with defendant no. 2 and S.N. Aggarwal as witnesses;
- (vii) Receipt of Rs. 21 lac signed by the plaintiff with defendant no. 2 and S.N. Aggarwal as witnesses;
- (viii) General Power of Attorney of plaintiff as regards suit property executed in favour of defendant no. 1 with defendant no. 2 and S.N. Aggarwal as witnesses;
- (ix) General Power of Attorney of defendant no. 2 appointing the plaintiff as attorney of Khera Dabar Village land with defendant no. 1 and S.N. Aggarwal as witnesses; and,
- (x) Will of defendant no. 2 bequeathing the Khera Dabar Village land to the plaintiff with defendant no. 1 and S.N. Aggarwal as witnesses.

17. Keeping in mind all of the above circumstances and facts, I am of the view that both disputes mentioned above are referred to arbitration, including the dispute between the plaintiff and defendant No.2 because of the above-mentioned clause in defendant no. 2's GPA as well as the reasons enumerated below, prima facie, it appears that the land at Khera Dabar Village measuring 5000 sq.yd is linked with the suit property. These reasons are as follows:

- (i) All the relevant documents have been executed on the same day, the details of which shall be stated in the next paragraph;
- (ii) The defendant no. 1 and defendant no. 2 are relatives and admittedly

reside in the same house;

(iii) The witnesses in all the documents are the same, as will also be detailed in the next paragraph; and,

(iv) As per the plaintiff's allegations, payment for the suit property was by way of Rs. 21 lac in cash and by adjustment of the Khera Dabar Village land as mentioned in Para 4 of this order.

18. Under these circumstances I am of the view that it is a fit case for appointment of arbitrator to decide the disputes as mentioned in the plaint. In the circumstances, I appoint Mr. Alakh Kumar, Advocate, Mobile No.9811063763 as the sole arbitrator to decide all the disputes raised by the parties. The parties would be at liberty to take all the pleas that may be available to them in law before the arbitrator as their claims/counter claims. The arbitrator shall try to decide the matter within six months, if possible. The arbitrator shall be paid his fees up to the maximum of Rs.1 lakh to be shared equally by the parties. Both the parties shall appear before the arbitrator on 1st September 2009. Interim order dated 16th April, 2007 shall continue during the pendency of the arbitration proceedings. In view of the above, the suit and pending applications are disposed of accordingly. The parties are left to bear their own costs. A copy of this order be sent to the learned sole arbitrator.

MANMOHAN SINGH, J.

AUGUST 13, 2009