

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

Date of Reserve: 03.03.2009

Date of Order: 24.03.2009

CS(OS) No. 1063/2008

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24.03.2009

Ravinder Singh

... Plaintiff

Through: Mr. Jasmeet Singh, Adv.

Versus

M/s Mahamaya Builders Pvt. Ltd. & Ors.

... Defendants

Through: Mr. Kapil Gaur, Advocate for D-1

Ms. Anuradha Lall, Advocate for D-4-8, 10-14,
23-31, 33 & 35-38

Mr. Kamal Sawhney, Advocate for D-15,17 & 20-22

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

This suit has been filed by the plaintiff against 51 persons. Defendant no.1 is builder with whom plaintiff had entered into an agreement to sell. Defendants no. 2-51 are those persons, who according to plaintiff had entered into an agreement to sell with defendant no.1 and defendant no.1 had assured plaintiff that he was in a position to transfer/sell the land belonging to defendants no. 2-51 on the basis of power of attorneys and agreements to sell executed in his favour.

2. It is a case of plaintiff that plaintiff entered into an agreement to sell dated 11.10.2005 with defendant no.1 and the present suit was based on the basis of this agreement to sell. A perusal of this agreement to sell shows that defendant no.1 had represented to the plaintiff that it had a valid and legal right to alienate or sell 100 bighas of land situated in Mehrauli Tehsil of Village Mehrauli Delhi. The land did not belong to defendant no.1 but the owners of land were all alive and there were certain agreements and documents such as authority letters, general power of attorney etc. executed by owners in favour of defendant no.1 which subsisted on the date of agreement dated 11.10.2005 and shall be kept alive till the transaction with plaintiff was complete. On the basis of this representation, plaintiff agreed to purchase the land @ Rs.13,000/- per sq. yard from defendant no.1 and paid the earnest money of Rs.1,00,21,000/-. It is provided in the agreement that in case defendant no.1 failed to comply with the terms of the agreement within 60 days of the execution of the agreement or defendant no.1 failed to execute sale deed in respect of atleast 30,000 sq. yards of the land @ Rs.6,000/- per sq. yard after obtaining 'No Objection Certificate' from the competent authority in favour of the plaintiff or its nominee within 20 working days from the date of the agreement, then the plaintiff may at his sole option seek the refund of Rs.1,00,21,000/- paid by him forthwith. In order to secure this repayment of the amount, plaintiff also obtained a post dated cheque from defendant no.1 being cheque no. 068512 dated 11.12.2005. The plaintiff has filed the present suit alleging therein that defendant no.1 did not comply with the terms of the agreement nor complied with the condition of getting the sale deed executed @ Rs.6,000/- per sq. yard in respect of 30,000 sq. yard of land despite best efforts and continuous reminders, as a result plaintiff had already filed a complaint under Section 138 of Negotiable Instruments Act and the proceedings were pending in the

Court of Shri J.P.Nahar, MM. It is stated that plaintiff had paid further amount of Rs.4 crore to defendant no.1 and out of this, a substantial amount was paid to defendants no. 2-51 by defendant no.1. It is further submitted by the plaintiff that plaintiff had always been ready and willing to perform his part of the contract but defendant no.1 failed to perform its part of contract because defendants no. 2-51 did not transfer titles of their land in favour of defendant no.1 or did not keep the documents alive. It is also submitted that even though there was arbitration agreement provided in the contract dated 11.10.2005 but the same would not bind defendants no. 2-51 since they were not party to the agreement. The plaintiff has filed the present suit as defendants no. 2-51, who had entered into agreement to sell with defendant no.1 with respect of their land, failed to honour those agreements to sell with the result that defendant no.1 could not honour the agreement entered into with the plaintiff.

3. The plaintiff has prayed that this Court should pass a decree of permanent injunction restraining defendants from selling, alienating or creating any third party interest in respect of the property measuring 100 bighas in khasra no. 1151/2 Revenue Estate of Village Mehrauli. The other relief claimed is that the defendant no.1 be directed to procure sale deeds/title deeds from defendants no.2-51.

4. The defendants no. 2-51 had raised an objection that this suit was not maintainable. After considering the submissions, this Court framed a preliminary issue "Whether the present suit for permanent injunction is maintainable without seeking consequential relief including relief for specific performance?".

5. There is no dispute that defendants no. 2-51 were not parties to the contract entered into between plaintiff and defendant no.1. Defendant no.1 made some representations to plaintiff about his title/right over the 100 bighas of land and believing that representation plaintiff entered into this agreement. The agreement itself shows that the plaintiff was very much doubtful about the claim of the defendant no.1 and obtained a post dated cheque of the earnest money of Rs.1,00,21,000/- simultaneously, while executing the agreement so that in case the defendant no.1's claim was not found truthful, the plaintiff had a refund of its earnest money.

6. The plaintiff has not come to this Court for specific performance of the agreement between him and defendant no.1. The plaintiff has come to this Court that this Court should issue permanent injunction against defendants no. 2-51 restraining them from selling their land. None of the defendants out of 50 (defendants no.2-51) had made any promise to the plaintiff neither they were party to the contract between plaintiff and defendant no.1. The plaintiff had no contractual right vis-à-vis defendants no. 2-51. Whatever rights plaintiff have out of the contract dated 11.10.2005, the same are against defendant no.1. The plaintiff has no other legal right apart from contractual right against defendants no. 2-51. In absence of any right vested in plaintiff against defendants no. 2-51, this Court cannot grant injunction permanent or perpetual in favour of the plaintiff in respect of land owned by defendants no. 2-51. If the plaintiff had chosen to believe a representation made by defendant no.1 about its right over the land, without a title of the land having been vested in defendant no.1 the plaintiff has to suffer.

7. This Court cannot issue an injunction to defendant no.1 direct it to procure sale deeds/title deeds from defendants no. 2-51 as there is no *lis* between

defendant no.1 and defendants no. 2-51. Only defendant no.1 has a right to approach the Court against defendants no. 2-51 for specific performance of the contracts, if any, having been entered into by defendants no. 2-51 with defendant no.1. The plaintiff has no right to come to the Court to say that the contract entered into between defendant no.1 and defendants no. 2-51 be got specifically performed. The right, if any, vis-à-vis defendants no. 2-51 vests only in defendant no.1, no right vests in plaintiff. The plaintiff therefore has no right to approach the Court to seek a mandatory injunction in its favour seeking direction to defendant no.1 to procure sale deeds/title documents from defendants no.2-51. I find that the present suit is not maintainable and is liable to be dismissed. The suit is hereby dismissed being not maintainable.

March 24, 2009
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SHIV NARAYAN DHINGRA, J.