

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

+ **RFA 52 OF 2005**

% Date of Decision: 16th August, 2010

! **HARBANS SINGH** Appellant

Through: Mr. Alok Sharma, Advocate.

versus

\$ **NEELAM KAUSHIK** ...Respondent

^ Through: None.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

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

JUDGMENT

P.K.BHASIN, J(ORAL)

The appellant is the unsuccessful plaintiff in a suit for specific performance of agreement dated 2nd May, 1996 executed by the respondent – defendant in his favour agreeing to sell her property bearing No. 22-D, AP Block, Pitampura, Delhi. His suit has been dismissed by the trial Court vide judgment and decree dated 12th October, 2004.

2. The appellant – plaintiff had filed the suit for specific performance against the respondent – defendant claiming that she had agreed to sell to him her property no. 22-D, AP Block, Pitam Pura, Delhi, which is a

leasehold property of DDA, for a sum of rupees four lacs and she had received earnest money of ₹ 40,000 from him on 02-05-1996. The balance sale consideration of ₹ 3,60,000 was to be paid by the appellant – plaintiff to the respondent – defendant on 17-06-1996. However, the respondent – defendant instead of executing the Sale Deed filed a suit for injunction against the appellant – plaintiff in which she denied execution of the agreement to sell dated 2nd May, 1996 and having received any money from the appellant – plaintiff. That showed the disinclination of the respondent – defendant to perform her part of the agreement to sell. Having, thus, failed to get the sale deed executed from the respondent – defendant the appellant – plaintiff had to file the suit for specific performance.

3. The respondent – defendant contested the suit, inter-alia, on the ground that she had neither executed any agreement to sell the suit property in favour of the appellant – plaintiff nor had she received any earnest money from him as was being claimed in the plaint.

4. On the pleadings of the parties, the trial Court had framed the following issues for trial:

- “1. Whether the suit is bad for mis-joinder and non-joinder of parties? OPD
2. Whether the plaintiff has no cause of action and not maintainable in the present form? OPD
3. Whether the suit is barred under the law? OPD

4. Whether the plaintiff is entitled for the decree of specific performance?
OPD
5. Relief.”

5. The trial Court after examining the evidence adduced by the parties including the evidence of handwriting experts examined from both the sides decided issues no. 1 to 3 in favour of the appellant – plaintiff. However, issue no. 4 was decided against him and consequently the suit came to be dismissed. The learned trial Judge came to the conclusion that the plaintiff had failed to establish that the defendant had executed the alleged agreement to sell dated 2nd May, 1996.

6. Feeling dissatisfied with the judgment of the trial Court the appellant – plaintiff filed the present appeal. Notice of the appeal was served upon the respondent and he entered appearance through counsel on 14th March, 2006 when the appeal was admitted. However, when the appeal came up for final hearing no one appeared on behalf of the respondent and, therefore, only counsel for the appellant was heard.

7. One of the issues framed by the trial Court was regarding non-joinder of necessary party. Though the learned trial Court has decided this issue in favour of the plaintiff on the ground that in the written statement it had not been clearly stated as to who have not been impleaded but during the course of hearing of the appeal when it came to light that the defendant

though she was claiming herself to be the owner in her written statement was, in fact, holding only a Power of Attorney from Shri Suresh Diwan, the actual owner of the suit property. Counsel for the appellant did not dispute this factual position. In fact, he drew my attention to the plaint of a suit for injunction which the respondent – defendant had filed against the appellant herein in which she had herself claimed that she was an attorney of Shri Suresh Diwan, the owner of the suit property. In these circumstances, it was put to the learned counsel for the appellant as to how the appellant could maintain the suit for specific performance against the attorney only of the owner of the suit property, the reply was that Delhi Development Authority these days is not insisting that transfer of the leasehold rights can be effected only when the original lessee approaches it and it is accepting sale effected through Power of Attorney. However, without saying anything further on the question of non-impleadment of the owner of the suit property, learned counsel made a prayer that the appellant-plaintiff may be permitted to implead Shri Suresh Diwan as one of the defendants in the suit. In this regard he also submitted that since appeal is a continuation of the suit Order 1 Rule 10 of the Code of Civil Procedure can be invoked even by this Court and appellant can be permitted to implead the actual owner of the suit property, namely, Shri Suresh Diwan.

8. This Court is inclined to accept the aforesaid prayer made on behalf

of the appellant-plaintiff for permitting him to implead Shri Suresh Diwan as one of the defendants since the impleadment of Shri Suresh Diwan is considered to be necessary for an effective and complete adjudication of the questions involved in the suit. The question whether the respondent-defendant had signed the receipt-cum-Agreement to Sell relied upon by the appellant-plaintiff or not would be of relevance only in case the original owner of the suit property of which she claims herself to be an attorney is before the Court since in the event of it being found that he had appointed the respondent-defendant as his attorney authorizing her to sell his property and that she had in fact agreed to sell the suit property to the appellant-plaintiff in exercise of her authority as his attorney the liability to execute the Sale Deed would be of Shri Suresh Diwan only as he is the vendor and he only can execute the sale deed and take sale permission from DDA. This Court is, therefore, of the view that after allowing the request of the appellant-plaintiff for impleadment of Shri Suresh Diwan this case needs to be sent back to the trial Court for a fresh trial after impleadment of Shri Suresh Diwan.

9. The impugned judgment is accordingly set aside and the matter is remanded back to the trial Court where the appellant-plaintiff shall file the amended plaint impleading Shri Suresh Diwan as defendant No.2 and he shall also be entitled to make consequential changes in the amended plaint.

10. The case shall now be taken up by the trial Court on 31st August, 2010, at 2.00 p.m.

August 16, 2010
nk

P.K. BHASIN,J