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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 104/2011

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17th February, 2011

RAJINDER & ORS.

..... Appellants

Through: Mr. U.M.Tripathi, Adv.

VERSUS

HARSH VOHRA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

CM No. 3288/2011 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

RFA No. 104/2011

1. The challenge by means of this regular first appeal under Section 96 of the Code of Civil Procedure, 1908, is to the impugned judgment and decree dated 20.11.2010 whereby the suit of the appellants/plaintiffs was dismissed on the ground that the right of a seller

of immovable property, in case the complete price is not received, is to seek payment of the balance price in terms of Section 55(4) of the Transfer of Property Act, 1882 and no relief can be claimed for cancellation of the sale deed.

2. The suit was in fact decided on a preliminary issue as to whether the suit of the plaintiffs is maintainable in the present form.

3. The above preliminary issue was framed as per directions of a learned Single Judge of this court in an earlier litigation between the parties being CRP No. 183/2007 and FAO(OS) No. 25/2009, in which, this court vide its order dated 1.12.2009 observed as under:-

“ However, this is not the end of the matter. This court in the exercise of its supervisory jurisdiction having perused the file of the Trial Court entertains a doubt as to the very maintainability in law of the suits. The Supreme Court in ***T Aravindam Vs. T.V. Satyapal AIR 1977 SC 2421*** has held that suit which are bound to doom and of which there is no likelihood of success ought not to be kept pending to clog the courts and the valuable time and at the costs of the other deserving plaintiff is and should be dismissed summarily. On going through the pleadings of the petitions/plaintiffs it appears that the petitioners/plaintiffs through admitting the agreement to sell of their property and execution of documents with respect thereto are seeking cancellation of the sale deeds only for the reason of the entire agreed sale consideration having not been received by them. In my opinion, non payment of the agreed sale consideration does not entitles the petitioner/plaintiffs to seek relief of cancellation of the sale deed. Section 55(4) of the Transfer of Properties Act envisages situation where title to the property has passed to the purchaser before the entire sale consideration has been paid. It appears that the remedy in such situation is only for recovery of the balance sale consideration and of having attachment on the property till such balance sale consideration is paid and not of seeking cancellation of the sale deed. In this regard *Kaliaperumal Vs. Rajagopal AIR*

2009 SC 2122 may be perused. If that be the position, no purpose would be served in proceedings with the trial of the suits.....”

4. One must admit that the preliminary issue is not too happily worded and actually the issue ought to have been whether on the admitted facts suit of the plaintiff does not lie in view of Section 55(4) of the Transfer of Property Act, 1882. Further, actually, the preliminary issue is really an issue which arises from Order 12 Rule 6 CPC because it is on the admitted facts that the suit had to be disposed of viz decreed/dismissed on account of the bar in law to the filing of the suit by virtue of Section 55(4) of the Transfer of Property Act. The provision of Section 55(4) of the Transfer of Properties Act reads as under:-

“(4) The seller is entitled:-

(a) to the rents and profits of the property till the ownership thereof to the buyer.

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, [any transferee without consideration or any transferee with notice of the non-payment], for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part [from the date on which possession has been delivered].”

5. The facts of the case are that the plaintiffs/appellants claimed to have through one Sh. Ved Prakash agreed to sell the subject property being lands situated in village Rewala, Khanpur, Delhi to the defendant no.2/respondent no.2/Sh. Om Prakash and in whose favour also a registered power of attorney was also executed. On the basis of this registered power of attorney, the respondent no.2 for part of the lands executed a sale deed on 10.7.1995 in favour of the defendant

no.1/respondent no.1/Sh. Harsh Vohra and on which date, each of the appellants received further consideration of Rs.3,32,500/- by cheque. The case of the appellants/plaintiffs was that this consideration was not the entire consideration inasmuch as the respondents no.1 and 2 as also Sh. Ved Prakash stated that they did not have the capacity to pay the complete consideration and hence certain mortgage deeds were being got executed. The appellants claimed that there was consequently a misrepresentation upon them because actually sale deeds were got executed. It may be noted that pursuant to the execution of the sale deeds, mutation was carried out in the name of the buyers in the revenue records and an appeal filed by the appellants/plaintiffs against the mutation order before the Financial Commissioner was also dismissed. The appellants/plaintiffs thereafter filed suits, firstly, seeking mandatory injunction for the respondents to disclose all the documents which were got executed from them but which suit was dismissed as withdrawn. Another suit was filed for injunction challenging the sale deeds and since in that period another sale deed was executed in favour of the respondent no.3/defendant no.3, this suit was also withdrawn without any liberty to file any fresh suit. In fact, the suit by the plaintiff no.1/appellant no.1 was simplicitor withdrawn because he alleged that he was promised that the balance consideration would be paid and therefore he unconditionally withdrew the suit. The appellants/plaintiffs thereafter filed the present suit once again for declaration and cancellation of the sale deeds executed in favour of the respondents no.1 and 3 through the respondent no.2- the registered power of attorney holder of the appellants/plaintiffs.

6. The respondents/defendants appeared before the trial court and claimed that the suit was an abuse of the process of law because earlier suits which were filed, were withdrawn without liberty to file a fresh suit and that in fact no balance price was payable. As already noted above, as per directions of this court in an earlier litigation a preliminary issue was got framed.

7. The trial court by the impugned judgment and decree has dismissed the suit relying upon Section 55(4) of the Transfer of Property Act, already quoted above, by holding that the right of the plaintiffs/appellants was only to recover the balance sale price assuming the balance sale price was due and not paid. No fault can be found with this conclusion of the trial Court.

8. I may note that in fact the subject suit would also be barred under Order 2 Rule 2 CPC because the subject suit claims in fact the same reliefs of injunction on substantially the same cause of action of the earlier suits which were dismissed as withdrawn without liberty to file a fresh suit. Also, so far as the plaintiff no.1/appellant no.1 is concerned, the suit will be barred by Order 23 Rule 1 CPC as suit filed by him was withdrawn simplicitor without any liberty to file a fresh suit. The Supreme Court in the case of ***T Aravindam Vs. T.V. Satyapal AIR 1977 SC 2421*** has deprecated the tendency of filing repeated suits which amount to abuse of process of law. The present suit is one such suit, and in addition to the same being rightly dismissed by virtue of provision of Section 55(4) of the Transfer of Property Act, the same was also liable to be dismissed as

successive suits on the same cause of action amount to abuse of the process of law besides, the same being barred by Order 2 Rule 2 and Order 23 Rule 1 CPC.

9. Before this court, the learned counsel for the appellant contended that there was a fraud played upon the appellants and in fact only mortgage papers were sought to be signed and not sale deed. Quite clearly, this argument is specious because the entire case laid out in the plaint, and a copy of which has been filed from page no.25 of the paper book, shows that right from the beginning, the appellants only wanted to sell the property and for which purpose they executed an agreement to sell and a registered power of attorney in favour of the respondent no.2. Further, the suit lacks the necessary averments as required under Order 6 Rule 4 CPC with regard to the plea of misrepresentation. In fact, on the admitted facts, which a thorough reading of the plaint shows, that what is in fact averred is the prayer of cancellation of the sale deeds on account of plaintiffs not having been paid the balance consideration. In fact, as already stated above, the appellant no.1/plaintiff no.1 withdrew the earlier suit on the ground that balance consideration was agreed to be paid to him. All in all, therefore, the litigation is only for recovery of the alleged balance price of the sale deeds.

10. In view of the above, I do not find any illegality or perversity in the impugned judgment and decree which calls for any interference by this court. No other issue was urged or pressed before this court. In view of the admitted facts discussed in the impugned judgment and decree, and

no other disputed questions of facts raised, there is no need to summon the trial court record.

11. The appeal being therefore misconceived, is dismissed, leaving the parties to bear their own costs.

FEBRUARY 17, 2011
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VALMIKI J. MEHTA, J.