

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

+ **RFA No. 104/2001**

% 2nd February, 2011

SHRI Y.NANDAN Appellant

Through: None

VERSUS

SHRI B.R.K.CHAUDHARY & ORS Respondents

Through: Mr. Nalin K. Jain, Adv. for R-2.

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?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. This case is on the Regular Board of this Court since 3.1.2011. No one appears for the parties although it is 2.55 p.m. This case is effective item no.4 on the Regular Board of this court today. I have therefore perused the record and heard the learned counsel for respondent no.2 and am proceeding to dispose of the matter.

2. By way of the present first appeal under Section 96 of the Code of Civil Procedure, 1908, challenge is laid by the appellant/plaintiff to the impugned judgment and decree dated 24.1.2001 of the trial court whereby the suit for specific performance has been dismissed.

3. The facts of the case are that the appellant/plaintiff prayed for a decree of specific performance on the ground that the respondent no.2 had entered into an agreement to sell with respect to the suit property being Flat No. K-2 Bhim Nagri, Safdarjang Development Area, New Delhi for a consideration of Rs.1,25,000/-. The agreement to sell was alleged to have been executed by the defendant no.2 through her attorney i.e., defendant no.1. It was claimed that a sum of Rs.25,000/- was given to the respondent no.1/defendant no.1 at the time of entering into an agreement to sell and thereafter further payment of Rs.40,000/- was made on 28.11.1987 in cash and another amount of Rs.50,000/- was paid on 30.1.1988. It was further the case of the appellant/plaintiff that the respondent no.2/defendant no.2 approached him saying that the respondent no.1 had played a fraud upon her and therefore denied her liability to perform the agreement to sell. The appellant further alleges that on the complaint of the respondent no.2 to the police, when he visited the police station, the original title deed/lease deed of the property was snatched by the police officer for which he thereafter, complained by sending a telegram to the Commissioner of Police. The suit for specific performance ultimately came to be filed.

4. The respondent no.2/defendant no.2 entered appearance and contested the suit by stating that one portion of the property was in the possession of a recalcitrant tenant Mr. S.R.Vyas and the respondent no.1 persuaded her to execute a power of attorney in her favour with respect to the suit property so that the respondent no.1 could evict Mr. S.R.Vyas. The respondent no.2 claimed that respondent no.1 was the parent of one of the

students who had influenced her and made her believe that he was a resourceful and influential person who could get the troublesome tenant evicted. Respondent no.1 also used to donate various Telugu books to the school. Respondent no.2 also claimed that respondent no.1 posed as an industrialist having many plots at Hyderabad. It was in such circumstances that the respondent no.2 executed a power of attorney dated 13.7.1987 in favour of the respondent no.1. The further contention of the respondent no.2 was that she continued to be in possession of the rest of the property and her goods were lying in the flat. It was stated that she used to go to Hyderabad every summer and after she returned back from Hyderabad she discovered the real intention of the respondent no.1 which was to de-fraud her from the ownership of the property. The respondent no.2 further denied that the original title deeds were ever given to the respondent no.1 and she also denied that the subject title deeds were allegedly snatched from the appellant by police officer.

5. The trial court in its detailed and exhaustive judgment has given findings with respect to the issues framed in the suit and which read as under:-

- “1. Whether the plaintiff is entitled to specific performance of the contract dated 26.11.1987 in respect of sale of the property in question?
2. Whether the agreement dated 26.11.1987 was null and void as claimed by defendant No.2?
3. Whether the defendant No.1 had cheated the defendant No.2 and ruined her?
4. Whether the defendant No.1 had a valid Power of

Attorney on behalf of defendant No.2 dated 13.07.1987 to enter into transaction?

5. Whether the possession was handed over by defendant No.1 to the plaintiff?
6. Relief.”

6. Issues No.2 and 5 have been dealt with together.

While discussing these issues, the trial court has denied the benefit of provision of Section 41 of the Transfer of Property Act,1882 to the appellant, and which was rightly denied because the said provision of Section 41 would only apply if the respondent no.1 was actually an ostensible owner. The respondent no.1 was only an attorney holder of the respondent no.2. The trial court has also rightly held that there was no question of the police officer snatching the title deed from the appellant because in the telegram sent by the appellant to the Commissioner of Police Ex.PW1/4, there is not even a whisper about the snatching of the title deed. The trial court has also pointed out the inconsistency in the deposition of the appellant as to when the title deed was given to him. At this stage, I would seek to reproduce paras 19 to 24 of the impugned judgment which categorically summarize the correct position in the facts and circumstances of the case and thereafter rightly gives the appropriate findings and conclusions. These paras read as under:-

“19. Any purchaser of immovable property would naturally like to satisfy himself about the title of the seller. If he does not do so, he cannot claim that he exercised reasonable care and acted in good faith. In this case, the plaintiff claims that defendant No.1 had handed over the title deeds of the flat to him. Defendant No.1 also admits that he handed over the original documents to the plaintiff. The evidence, however,

shows otherwise. Defendant No.2 has stated that the Conveyance Deed/Lease Deed always remained in her possession. Plaintiff has stated in paragraph No.6 of the plaint that the original title deeds were handed over to him by defendant No.1 on 30.01.88. On cross examination 30.10.98 however, he claimed that the original Lease Deed had been given to him at the time of agreement itself, i.e., 26.11.87. On that date, he denied the suggestion that the Lease Deed was given to him on 30.01.88. However, when he was examined again on 30.08.99, he reverted to the position that the Lease Deed had been given to him on 30.01.88. Thus, the plaintiff is very unsure as to when exactly the lease deed which was the most important document of title, was given to him by defendant No.1. The plaintiff was very well aware that the original Lease Deed was with defendant No.2. Therefore, he developed the story that he went to the police station with the original documents on 14.4.90 and that the police snatched the original Lease Deed from him. This story is falsified by the telegram Ex.PW1/4 which the plaintiff sent to the Commissioner of Police on 15.04.90 at 4.30 p.m. There is not a whisper about snatching of lease deed/conveyance deed in this telegram. If the lease deed had been actually snatched from the plaintiff by the police on 14.04.90 as alleged by him, he would have definitely mentioned this fact in the telegram Ex.PW1/4 which he sent to the Commissioner of Police the very next day. As regards the allotment letter mark-A and house tax bill mark-B, these documents cannot be termed as title deeds. Moreover, defendant No.2 has satisfactorily explained that these documents were lying in her almirah when she allowed defendant No.1 to stay in her portion. This very almirah was later on recovered from the house of Sant Ram.

20. Coming to the question of possession, DW2, N.C.Triveni has stated that defendant No.1 asked her to give him some place to stay in the flat and she gave him possession of her portion. From her testimony, it would appear that she had not delivered vacant possession of any portion to defendant No.1. Her goods kept lying in the said portion and this fact is corroborated by the seizure memo Ex.DW2/A-3 which shows that the almirah of defendant No.2 was recovered from the house of one Sant Ram on 16.08.90 by the police. This Sant Ram is an attesting witness of the sale agreement relied upon by the plaintiff. If the goods of defendant No.2 had not been lying in the portion which was delivered to defendant No.1, how the almirah could have been recovered from Sant Ram who was obviously a man of the plaintiff and defendant No.1.

21. One Rashid Ali is admittedly in occupation of the flat. The plaintiff claims that he had inducted Rashid Ali as a tenant. Rashid Ali himself stated in the letter Ex.DW2/N that he had been inducted by Y. Nandan. However, when the plaintiff was

crossexamined on 30.10.98, he stated that Rashid Ali in possession as a Caretaker. Thus, as far as plaintiff is concerned, he is not at all sure whether Rashid Ali was occupying the premises as an employee or as a Caretaker or as a tenant. Moreover, the plaintiff stated in paragraph No.11 of the plaint that due to the illegal tactics of defendant No2 his tenant had recently left the premises. Later on, when he was examined in court as PW1 on 30.10.98, he testified that Rashid Ali was still living in the flat. This admission on the part of the plaintiff renders false the report of the Local Commissioner as well.

22. Thus, the evidence shows that neither the original Conveyance Deed was with defendant No.1 at the time of alleged sale agreement nor the plaintiff could be sure about the status of defendant No.1. It is also very doubtful whether the plaintiff ever got possession of the flat. So, he cannot claim the benefit of Section 41 of TP Act.

23. The original sale agreement dated 26.11.87, which forms the basis of this suit is Ex.DW2/P1. It has been signed by two attesting witnesses, namely, Sant Ram and Pyare Lal. Sant Ram has not been examined. Pyare Lal was examined as PW2. Strangely enough he remained totally silent about the agreement Ex.DW2/P1. Moreover, while the original agreement Ex.DW1/P1 purports to bear the signature of Pyare Lal, the photocopy of the same document which was produced by the police along with the chargesheet Ex.DW4/1 after investigation of FIR No.365/89, does not bear the signature of Pyarelal at all. Thus, the genuineness of the agreement itself is doubtful.

24. In view of the above discussion, I find that the sale agreement Ex.DW2/P1 which purports to have been executed on the strength of Power of Attorney Ex.PW1/9, is not binding on defendant No.2. I also find that the plaintiff is not entitled to the benefit of Section 41 of TP Act. It is doubtful that the possession of the flat was ever delivered to the plaintiff. I also hold that the power of attorney was procured by the defendant No.1 from defendant No.2 by misrepresentation. Issues are decided accordingly."

(Emphasis added)

7. I completely agree with the findings and conclusions in the aforesaid paragraphs. In addition to, what I have already observed above, I note that the trial court has rightly found that possession was not given to the appellant because the goods of the respondent no.2 were lying at the flat and were recovered from one Sh. Sant Ram on 16.8.1990 by the police. This

Sant Ram is an attesting witness to the so called agreement to sell. The trial court has referred to the various inconsistencies with respect to the contention that one Mr. Rashid Ali was in occupation of the flat, inasmuch as at one place, Mr. Rashid Ali was stated to be an employee and at another place, he was stated to be a care taker. Further, it was claimed that Rashid Ali was a tenant who had left but in the testimony dated 30.10.1998 of PW-1, it was testified that Rashid Ali was still living in the flat. Quite clearly, a gross fraud has been perpetrated on the respondent no.2 and the trial court has rightly denied the relief based on the alleged agreement to sell dated 30.7.1987.

8 I do not find any illegality or perversity in the conclusions of the trial court. In fact, grave injustice would have been caused to the respondent no.2 if the suit for specific performance would have been decreed. There is therefore no merit in the appeal which is dismissed leaving the parties to bear their own costs. Trial court record be sent back.

FEBRUARY 2, 2011
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VALMIKI J. MEHTA, J.