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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.171/2001

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25th February, 2011

SHRI HANS RAJ VERMA

..... Appellant

Through: Ms. Kamlakshi Singh and Mr.
Saundarya Singh, Advocates.

VERSUS

SHRI PREM SINGH AND OTHERS

..... Respondents

Through: Mr. Kumar C.M.Khan and Mr. Vikas
Singh, Advocates.

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. 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 29.1.2001 whereby the suit of the appellant/plaintiff for specific performance and injunction has been dismissed except giving a partial relief of grant of Rs.50,000/- with pendente lite interest at 12%.

2. The facts of the case are that the appellant/plaintiff claimed that the three defendants/respondents entered into an agreement to sell dated 29.10.1988 with the appellant/plaintiff for sale of a plot of 4 bighas and 5 biswa situated in Khasra No. 47/5/2 and 47/6/1, L Block, Sangam Vihar,

Village Devli, Delhi. It was claimed by the appellant/plaintiff that on the date of agreement to sell a sum of Rs.1 lakh in cash was paid to the respondents/defendants. It was further claimed that subsequently till 1994 two further amounts of Rs.50,000/- (13.4.1989) and Rs.1,15,000/- (16.11.1994) were paid and thereby the entire sale consideration stood paid to the respondents/defendants/sellers. It was the further the case that the appellant was given possession of the subject property at the time when agreement to sell was entered into.

3. The respondents/defendants appeared and contested the suit. The respondents/defendants contended that the documents relied upon by the appellant/plaintiff being the agreement to sell dated 29.10.1988 and the receipt dated 29.10.1988/16.11.1994 are forged and fabricated documents and they never agreed to sell the suit property to the appellant/plaintiff and only a sum of Rs.50,000/- was received from the appellant/plaintiff and which was not towards the Agreement to Sell but towards return of moneys given for making of jewellery. It was pleaded that the documents have been manipulated by the appellant/plaintiff because the appellant/plaintiff was an advocate of one Sardar Singh and these documents were obtained by the appellant/plaintiff from Sardar Singh. It was further pleaded that a complaint with the bar council was filed by Sardar Singh of illegally taking away these documents by the appellant/plaintiff and which have been forged for making out a transaction of sale/purchase.

4. The trial court, after the pleadings were completed, framed the following issues:-

- “1. Whether the suit of the plaintiff is barred by limitation?
2. Whether the claim of the plaintiff is based on forged documents?
3. Whether the agreement dated 29.10.88 was executed between the parties for sale of suit property?
4. Whether the plaintiff is ready and willing to perform his part of the contract?
5. Whether the plaintiff is entitled for specific performance of the agreement?
6. Whether the plaintiff is entitled for refund of sale consideration along with interest, in case specific performance is not allowed?
7. Whether the plaintiff is entitled for permanent injunction as claimed in the suit?
8. Relief.”

5. It is really the issues no.2 and 3 which are the crucial issues which have been decided by the trial court against the appellant/plaintiff, and with respect to which issues arguments were advanced on behalf of the appellant/plaintiff before this court. With respect to these issues, the trial court has held the documents being the agreement to sell Ex.PW1/2 and the receipt dated 29.10.1988/16.11.1994 Ex.PW1/3 to be forged and fabricated documents inter alia, for the following reasons:-

(i) Out of the three sellers, only one seller namely Sh. Prem Singh/respondent no.1/defendant no.1 has signed at the place of the sellers and the other two alleged sellers namely Sh. Roshan Lal and Sh. Krishan Kumar, respondents no.2 and 3/defendants no.2 and 3 have not signed at the place of the sellers but their signatures appeared at the place meant for signatures of the witnesses.

(ii) The documents Ex.PW1/2 and Ex.PW1/3 contain erasures in the form of putting of white correction fluid on the name of the buyer and the name of the original buyer has been substituted by the name of the appellant/plaintiff.

The trial court has held that any person who purchased a valuable property, more so, the appellant/plaintiff, who was an advocate by profession, must have realized that erasures of name originally written and substitution of new name would have clearly affected the credibility of the document/transaction and therefore there ought to have been signatures to certify the corrections/erasures and which were not there. These erasures with respect to the name of the buyer are found in both the relevant documents exhibits, Ex.PW1/2 and Ex.PW1/3.

6. In addition to the above conclusions of the trial court, to appreciate the arguments of the learned counsel for the appellant and the credibility of the case of the appellant, I put to the counsel for the appellant during the course of hearing of the appeal as to whether the appellant/plaintiff who alleges to have paid a sum of Rs.1 lakh in cash has filed any bank accounts to show whether the amount of Rs.1 lakh was withdrawn from the said bank account for being paid to the respondents under the alleged agreement to sell Ex.PW1/2. To this, counsel for the appellant admits that no such copies of bank accounts were filed and proved before the trial court. The counsel for the appellant, however, countered and stated that the appellant/plaintiff was a gold-smith/jewellery maker and therefore amounts in cash used to lie with him. To this, I put a further query to the learned counsel for the appellant that whether the amount which was paid

in cash at the time of agreement to sell for purchasing a valuable property, was shown in any Income Tax Return filed in the relevant year to show that such a transaction was entered into and an amount of Rs.1 lakh was paid. The counsel for the appellant admits that no Income Tax Return was filed for the relevant year showing the entering into an agreement to sell or making any payment under the same. I put further queries to the counsel for the appellant as to whether the subsequent payments made on 13.4.1989 and 16.11.1994 of Rs.50,000/- and Rs.1,15,000/- were shown in the Income Tax Return/records and once again to which, the learned counsel for the appellant admits that no such Income Tax Returns were filed and for the payment of Rs.1,15,000/- in cash once again no bank documents were filed. It is further admitted that even with respect to payment made by cheque of Rs.50,000/- to the respondents, the same is not shown in the income tax records of the appellant/plaintiff as having been paid towards the purchase of the subject property.

7. The trial court has, by a detailed reasoning, dis-believed the case of the appellant and denied the relief of specific performance and it would be worthwhile to reproduce paras 10 to 12 of the impugned judgment which neatly give the appropriate findings and conclusions, and with which, I agree. These paras read as under:-

“8. The plaintiff relies on the Sale Agreement Ex.PW1/2 which purports to have been executed on 29.10.88. He has also produced receipt Ex.PW1/3 to show that an amount of Rs.1,15,000/- was paid to the defendants on 16.11.94. One Nand Kishore is the attesting witness of both these documents and he has been examined as PW2. The plaintiff himself has appeared in

the witness box as PW1. He has testified that the agreement Ex.PW1/2 was signed by defendants Prem Singh, Roshan Lal and Krishan Kumar at points A, B and C in his presence. He has further stated that he paid an amount of Rs.1,00,000/- to the defendants at the time of agreement itself. He has deposed that he paid Rs.50,000/- by cheque on 13.04.89 and the final payment of Rs.1,15,000/- was made on 16.11.94 vide receipt Ex.PW1/3. PW 2 Nand Kishore has supported the plaintiff and he has affirmed that the agreement Ex.PW1/2 and the receipt Ex.PW1/3 were executed by the defendants in his presence. As against this, defendants Prem Singh and Roshan Lal have examined themselves as DW1 and DW2 and they denied the execution of the agreement and the receipt both.

10. Although the defendants have not suggested to the plaintiff that he manipulated some documents received by him from Sardar Singh. Some erasures at vital places in the agreement Ex.PW1/2 and receipt Ex.PW1/3 are visible to naked eye and these erasures create serious doubt about the genuineness of the two document. When PW1 H.R.Verma was confronted with the erasures, he explained that the sellers had, by mistake, filed thereon names in the space meant for the name of the purchaser. He further explained that in the space meant for the name of the seller also, the executants had made wrong entry. Therefore, corrections became necessary according to him. The factum of erasures in the agreement Ex.PW1/2 is thus admitted and the explanation does not sound reasonable at all. Similarly, in the receipt Ex.PW1/3, there are erasures and over-writing in the space meant for the names of the payees and this erasure has not been explained. The plaintiff is an advocate by profession and he must have realized that the erasure of the names originally written and substitution of new names in place thereof in the agreement and the receipt would damage the credibility of the whole case and if the transaction was genuine, there should have been no difficulty in obtaining a new pro forma so as to eliminate all doubts. It is also very strange that similar mistake was committed in writing names on both occasions, i.e., on 29.10.88 and 16.11.94; To my mind, this could not have been a mere coincidence and something more has to be seen in it.

11. It has been claimed in para 3B of the plaint that the defendants had made admission in their Written Statement in the suit filed by Sardar Singh before the Hon'ble High Court that they had transferred some part of the property

to some buyers including the plaintiff. A certified copy of that Written Statement could have been produced to show that the defendants had actually made such admission before the Hon'ble High Court. That would have lent corroboration to the plaintiff's claim that an agreement of sale was executed between the parties on 29.10.88. Omission to file a certified copy of the said Written Statement would, therefore, give rise to an inference against the plaintiff.

12. The agreement Ex.PW1/2 and the receipt Ex.PW1/3 do not otherwise appear to carry any legal value. The agreement Ex.PW1/2 does not bear the signature of the plaintiff at all. It is thus a unilateral document and cannot create bilateral obligations. It cannot be recognized as a bilateral agreement. Moreover, defendants Roshan Lal and Krishan Kumar have signed this agreement as attesting witnesses and not as sellers. If the aforesaid two persons were executants of the document, they should have signed at the proper place and not in the space meant for witnesses. Similarly, the receipt Ex.PW1/3 does not bear signature of any defendant on the revenue receipt. Defendant Krishan Kumar has signed this receipt as an attesting witness and not as a recipient. The tenor of the agreement Ex.PW1/2 and the receipt Ex.PW1/3 thus deprive both documents of all legal worth."

(Emphasis added)

8. Learned counsel for the appellant very vehemently argued that no suggestions were put during the cross examination of the appellant/plaintiff that there was no such agreement to sell and consequently, the case as put forth by the appellant/plaintiff ought to have been believed and the suit decreed. I cannot agree. Putting of suggestions is only one of the aspects which a court ultimately considers at the time of final arguments along with all other evidences, both oral depositions and documentary evidence, for deciding the case. Of course, the suggestions are one of the links in the chain of evidence which can be used to claim benefit thereof for proving a case, however, that is not the

cons in favour of each of the parties. Each of the parties leads evidence to prove their respective case and disputes the case of the other side. A Civil case is ultimately decided on the balance of probabilities. The balance of probabilities in the present case clearly show that the conclusions of the trial court were clearly justified that the documents which are relied upon by the appellant/plaintiff are forged and fabricated documents. The trial court has directed return of the amount of Rs.50,000/- for which the respondent could not give sufficient explanation. I do not find any illegality or perversity in the impugned judgment and decree which calls for interference by this court. Merely because two views are possible, this court is not entitled to interfere with the findings and conclusions of the trial court, unless the view taken by the trial court is perverse and causes grave injustice. I do not find any such ingredients exist in the facts of the present case.

9. In view of the above, the appeal being devoid of merits, is therefore dismissed, leaving the parties to bear their own costs. Trial court record be sent back.

FEBRUARY 25, 2011
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VALMIKI J. MEHTA, J.