

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

+ **RFA 221/2001**

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9th February, 2011

SH. TALUKDAR SINGH THROUGH LRS. Appellant
Through: None.

VERSUS

SH. GULAB SINGH Respondent
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?
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. Today it is effective Item No. 4 on the Regular Board. It is 1.00 P.M. and no-one appears for the parties. I have therefore perused the record and am proceeding to dispose of the case.

2. 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 8.3.2001 whereby the suit of the appellants/plaintiff for specific performance was dismissed holding that the signatures of the

respondent on the alleged Agreement to Sell are forged and that there was never any Agreement to Sell by the respondent/defendant in favour of the appellants with respect to the suit property being Flat No. KD-92, MIG Flats, IIIrd Floor, Pitampura, New Delhi.

3. The facts of the case are that the appellants/plaintiff alleged that the respondent/defendant executed in his favour an Agreement to Sell on 23.12.1987 for a total consideration of Rs. 1,50,000/-. It was alleged that the complete payment was made by paying Rs. 35,000/- on 7.11.1987, Rs. 40,000/- on 30.11.1987 and Rs. 75,000/- on 23.12.1987. It was also alleged that on 23.12.1987 the respondent/defendant executed a power of attorney in favour of the appellants/plaintiff and also handed over to him the original documents of the suit property. It was further the case of the appellants that the defendant taking advantage of the appellants/plaintiff's illness obtained possession of the flat from Delhi Development Authority and on turning dishonest, failed to perform the Agreement to Sell dated 23.12.1987 resulting in filing of the subject suit.

4. The respondent/defendant entered appearance and contended that the sale agreement, general power of attorney and the receipts were all forged documents and that that respondent never received any monies from

the appellants. It was alleged that the appellants took advantage of their relationship with the respondent by removing the original documents and for which an FIR of theft was filed on 22.1.1989.

5. The trial court has examined the issue of forgery/fabrication very analytically, thoroughly and exhaustively in paras 10 to 14 of the impugned judgment and decree and has held that the signatures of the respondent on the documents are forged and fabricated and that the signatures are in fact traced signatures of the respondent from the original model signatures available of the respondent. The trial court has also examined the handwriting expert reports of both the parties and preferred the handwriting expert report of the respondent which was more convincing and logical to hold that the questioned signatures were not the signatures of the respondent. The trial court has noted that the handwriting expert of the respondent Sh. V.C. Mishra prepared the transparency of the questioned signatures Q5 and when the transparency was placed over the other signatures the same fitted exactly showing that the signatures were in fact traced signatures. The trial court has also noted that there were indentation marks noted under the questioned signatures. The trial court has also noticed how the two signatures, being the original signatures and the

disputed signatures, were exactly the same and exact measurements are found in the traced forgery. Trial court has also arrived at a finding of fact that all payments were made in cash and though the appellants/plaintiff alleged that he had withdrawn the amount from the bank a few days earlier, the record of the bank was not summoned to prove the withdrawal. With regard to balance payment, the appellants/plaintiff said he had taken loan from a Cooperative Society, but, even the name of the Cooperative Society was not disclosed and nor was the said Society summoned to prove the factum of the loan given to the appellants. The trial court has also arrived at a positive finding of fact of the threat of the appellants to go to any extent to take the subject house from the respondent and a portion of which letter of the appellants to the respondent is reproduced in the impugned judgment and the decree. Since I have already said that the impugned judgment is quite categorical and exhaustive, I would do no better than to reproduce paras 10 to 14 of the impugned judgment and the decree and which read as under:

“10. The question to be determined is whether the signatures Q1 to Q6 on the agreement, receipts and GPA are genuine or forged. The plaintiff examined PW6, R.P. Singh, a handwriting expert to prove his case. Shri R.P. Singh testified that on comparison of the disputed signatures Q1 to Q6 with specimen

and admitted signatures of the defendant, he had found the same to be genuine. He proved his report Ex. PW6/1. The defendant countered the testimony of Shri R.P. Singh by examining DW3, V.C. Mishra, another handwriting expert. Shri Mishra proved his report Ex. DW3/1 and expressed the opinion that the disputed signatures Q1 to Q6 had been forged by means of tracing the signatures from the original model signatures available of the signatory. I have carefully studied the reports of the two handwriting experts, and in my opinion the conclusion of DW3, Shri V.C. Mishra is more sound and supported by more cogent reasons as far as the signatures Q1 to Q6 are concerned. Shri Mishra prepared the transparency Ex. DW3/2 of the signature Q5 and he has rightly stated that if this transparency is placed over the other signatures, it exactly fits on the same. Shri Mishra is also right when he says that indentation marks were noticed under the questioned signatures. The enlarged photograph Ex. DW3/B demonstrates the distance between strokes of various letters in the signatures Q5 and Q6 and it shows that the distance between two similar strokes in the two signatures is exactly the same. Even PW6, R.P. Singh admits that such exact measurement is found in traced forgery. Thus, on a comparative study of the two reports Ex. PW6/1 and Ex. DW3/1, I have no hesitation in preferring the opinion of DW3, V.C. Mishra.

11. The case of the plaintiff is that the total amount of consideration was paid by him in three instalments. The first payment of Rs. 35,000/- was made on 07.11.87, the next payment of Rs. 40,000/- was made on 30.11.87 and finally, an amount of Rs. 75,000/- was paid on 23.12.87. It will be interesting to note that all the payments are alleged to have been made in cash. PW1, Talukdar Singh states on cross-examination that the amount of Rs. 75,000/- which was paid on 23.12.87, had been withdrawn by him from bank five or seven days earlier. He has not, however, summoned the record from the bank to prove such withdrawal. As a matter of fact, he does not even remember the name of the bank from which the

amount was withdrawn. Coming to the other two payments, he says that he had taken loan from P.P. Sikka, D.R. Botra and a Cooperative Society. The name of the Cooperative Society has not been disclosed by him and no witness from the Cooperative Society was summoned to prove the factum of loan. PW1, Talukdar Singh does not say that he had taken loan from Chatar Singh for the purpose of making payment to the defendant but PW4, Chatar Singh, in his zeal to support the plaintiff, claims that he had advanced loan of Rs.35,000/- to the plaintiff on 07.11.87. If the testimony of PW4, Chatar Singh were to be believed, the total amount alleged to have been paid vide receipt Ex.PW1/2 was arranged from Chatar Singh, PW6, D.R. Gotra falsifies statement of Chatar Singh by saying that he had also contributed an amount of Rs.10,000/- on 07.11.87. Thus, the picture that emerges from a cumulative reading of the evidence of PW1, Talukdar Singh, PW2, P.P. Sikka, PW4 Chatar Singh and PW6 D.R. Gotra regarding the arrangement of money for payment to the defendant, is very confusing and contradictory. Such evidence cannot be believed and the conclusion that inevitably follows is that the receipts Ex.PW1/2, 3 and 4 are all forged documents and do not reflect the truth. Learned counsel for the plaintiff points out that the financial resources of the defendant were very meager and yet he made cash down payment to DDA. He has drawn my attention to letter Ex.DW1/P5 dated 20.12.87 addressed by the defendant to Dy. Director, Housing, DDA requesting for converting cash down payment to hire-purchase instalments. This letter shows that the defendant was short of funds. It is argued that paucity of funds may have pushed him to realize that he would not be able to purchase the flat on his own. Such realization must have induced him to enter into agreement of sale with a third party and earn some profit in the bargain. The defendant has examined his son Kanwar Singh as DW2 to prove that an amount of Rs.75,000/- was arranged from agricultural income. The defendant has also stated that a contribution of Rs.35,000/- to Rs.40,000/- was made by his wife. In this context, it is pointed out that the wife of defendant was a household lady

and she had no source of income. The testimony of DW2 Kunwar Singh has already been assailed. To my mind, all this is insignificant. In this case, the question to be decided is whether there was consideration for the alleged agreement and not as to how and from where the defendant got the funds for purchase of the flat. As noticed above, the plaintiff's evidence regarding arrangement of consideration money is quite inconsistent and unworthy of credit.

12. The plaintiff has produced letters Ex.PW1/6 dated 02.10.88 and PW1/7 dated 06.10.88. It is argued that these letters contain an implied admission of sale agreement. In Ex.PW1/6, the defendant offers to sit and negotiate. In the other letter Ex.PW1/7, he offers to reimburse the plaintiff for all the expenses incurred by him. In my opinion, the true meaning and import of the letters Ex.PW1/6 and PW1/7 can be understood only by reading the entire correspondence exchanged between the parties in chronological sequence. The correspondence starts with the letter Ex.PX dated 12.09.88. Admittedly this letter was written by the plaintiff to the defendant. The plaintiff reminded the defendant through this letter that he had arranged loan for him from some other person and that he had neither paid the principal amount of Rs.4,900/- nor interest. The letter Ex.PX was followed by another letter Ex.PY dated 29.09.88. This letter is quite significant. In this letter, the plaintiff protested that the defendant had not replied to his earlier letter dated 12.09.88. He wrote further as follows:-

“You know very well about me. Under any circumstances I will take this house from you and I may have to go to any extent. I will lay such trap that you will get entrapped, otherwise you should do as I say and get the documents of the house transferred in my name.”

13. It was in response to the letters Ex.PX and PY that the defendant wrote the letters Ex.PW1/6 and PW1/7. On 02.11.88,

the plaintiff again wrote letter Ex.D15 and told the plaintiff that the person from whom he had arranged money for the defendant, was demanding the principal and interest. Then again on 21.12.88 the plaintiff wrote letter Ex.D16 to acknowledge the receipt of an amount of Rs.7,000/-. He reminded the defendant that an amount of Rs.350/- still remained to be paid. The endorsement of the defendant on this letter is as follows:-

“ I request you to think further if any other amount is due so that we may get rid of trouble and you could also sleep in peace.”

14. If we read the letters Ex. PX, PY, PW1/6 and PW1/7, D15 and D16, it would appear that the defendant had taken some loan and an amount of Rs.6360/- was due from him upto August, 1988. This amount was demanded vide letter Ex.PX. When the defendant did not respond to the letter Ex.PX, the plaintiff threatened to implicate him vide letter Ex.PY. This letter was replied to by the defendant vide Ex.PW1/6. He wrote that he would be grateful to the plaintiff if he would help him in getting the house for his children. He wrote further that he had been taken to police station by a relative and, therefore, he had lodged a report on the basis of the last letter, i.e. Ex.PY. He simply offered to pay money. There is nothing in letters Ex.PW1/6 and PW1/7 to indicate the existence of a sale agreement between the parties. The subsequent letters Ex.D15 and D.16 which were written by the plaintiff, also show that there was a dispute regarding payment of loan amount only. If a sale agreement had been executed on 23.12.87 as alleged by the plaintiff, the plaintiff could not have omitted to mention the said agreement in the letters Ex.D15 and D.16.” (Emphasis added)

6. I do not find any illegality or perversity in the impugned judgment and decree. Quite obviously, the appellants were guilty of fraud and

forgery and therefore the suit was rightly dismissed. This court cannot interfere with the findings and the conclusions of the trial court merely because two views are possible unless the view taken by the trial court is a perverse view which causes injustice. I do not find any illegality or perversity in the impugned judgment and the decree nor does the same cause any grave injustice. In fact grave injustice would have been caused to the respondent if the suit would have been decreed.

7. I may note that the original plaintiff has since died and now is represented by his legal heirs as the appellants and thus reference in this judgment to the appellants will mean a reference either to the original plaintiff or to the legal heirs as per the context.

8. In view of the above, I do not find any merit in the appeal and the same is, therefore, dismissed, leaving the parties to bear their own costs.

February 09, 2011
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VALMIKI J. MEHTA, J.