

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

+ **RFA No.673/2002**

% **23rd November, 2011**

SHRI YUDHVIR SINGH Appellant
Through: Mr. Sunil Aggarwal, Advocate with
Mr. Rishabh Wadhwa, Advocate.

versus

SHRI KARTAR SINGH Respondent
Through: Mr. Manmohan Gupta, Advocate.

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 Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 21.9.2002 by which the trial Court decreed the suit for recovery of damages filed by the respondent/plaintiff of ₹ 5 lacs alongwith interest.

2. The facts of the case are that respondent/plaintiff as an owner of 5 bighas and 6 biswas of land i.e. approximately 5400 sq. yds. in village Mitraon, Delhi entered into an agreement to sell with the appellant/defendant on 17.4.1990. The total sale consideration was

fixed for the land to be sold at ₹ 9,75,000/-. It was stated that as per the agreement to sell, possession of the suit land was given to the appellant/defendant. The respondent/plaintiff received only a sum of ₹ 1 lakh under the agreement to sell. The case of the respondent/plaintiff was that on account of the appellant carving out a colony on this suit land which was agricultural land, the land got vested in the Gaon Sabha and therefore the subject suit for damages came to be filed. It may be noted that except an amount of ₹ 1 lakh which was received by the respondent/plaintiff under the agreement to sell as per the pleadings and evidence in the trial Court, nothing else was paid to the respondent/plaintiff i.e. there remained to be paid to the respondent/plaintiff the balance sale consideration of ₹ 8,75,000/-.

3. The appellant/defendant contested the suit and argued that it was the respondent/plaintiff who was guilty of breach of contract by not obtaining the NOC from the revenue authorities for the land to be sold in favour of the appellant/defendant. It is argued that the possession of the land was actually not given to the appellant/defendant under the agreement to sell and on the contrary it is the respondent/plaintiff who sold the land to different persons after carving out the colony and thus it was because of the respondent/plaintiff that the suit land got vested in the Gaon Sabha.

4. After the pleadings were completed, trial Court framed the following issues:-

“i. Whether the court has no territorial jurisdiction to try the

suit in view of the provisions of D.L.R. Act, 1954? OPD

ii. Whether the plaintiff has no locus standi to file the present suit? OPD

iii. Whether the suit is bad for non joinder of necessary parties? OPP

iv. Which of the party failed to perform his part of liabilities as per the terms of the agreement to sell, if so its effect? Onus on the parties

v. To what amount of damages/decreed of amount, the plaintiff is entitled against the defendant in the suit? OPP

vi. Whether the plaintiff is entitled to interest, if so at what rate, for which period and on what amount? OPP

vii Relief.”

5. The trial Court decreed the suit by giving the following findings with respect to issue Nos.4 and 5:-

“17. These two issues are inter connected and for the sake of convenience are being tried together.

18. Admittedly, the parties entered into agreement to sell the suit land Ex.PW1/7 and the plaintiff received a sum of ` 1 lac as earnest money and the balance sale consideration was to be paid by the defendant within six months from the date of execution of the agreement dt.17.4.90. It is also not disputed that the suit land is an agricultural land and on account of its conversion into residential plots, it has vested in Gaon Sabha.

19. The plaintiff's case is that it is the defendant who has carved out residential plots in the suit land after entering into agreement to sell Ex.PW1/7 and did not show interest in execution of the sale deed. So, the suit land vested in Gaon Sabha causing a loss of ` 5 lacs to the plaintiff.

20. The case of the defendant is that it is the plaintiff who has carved out residential plots in the suit land resulting into vesting of the land in Gaon Sabha and the defendant cannot be blamed for it, so the suit is liable to be dismissed with exemplary costs. It is also argued that the plaintiff did not obtain necessary no objection certificate within stipulated period, so the sale deed could not be executed and instead of executing the sale deed in favour of the defendant, the plaintiff has sold the suit land in the form of residential plots to different persons and handed over the possession to them.

21. The rival contentions of the parties regarding who converted the agricultural suit land into residential plot seems

complicated, but it is not difficult to adjudicate upon this controversy for the simple reason that it is the person who was in possession of the suit land, who alone could convert the suit land into different residential plots. As per agreement to sell dt. 17.4.90 Ex.PW1/7 by its clause No.1 at page 2, the plaintiff handed over the actual physical possession and peaceful vacant possession of the suit land to the defendant and the defendant have also occupied the same on the spot. The defendant being in possession of the suit land after payment of earnest money of ` 1 lac to the plaintiff, in terms of agreement to sell Ex.PW1/7 was in a position to convert the suit land. As the plaintiff was out of possession of the suit land, he cannot be expected to convert it into residential plots without any hindrance from the defendant, who was in possession of the suit land. Plaintiff PW1 as well as his witness PW3 and PW5 who are from the same village have also stated that the defendant developed residential colony resulting into vesting of the suit land in Gaon Sabha. The defendant although has stated that the plaintiff has sold the suit land in the form of plots to different persons, even after agreement to sell, but has not been able to explain when he was in possession of the suit land by virtue of agreement to sell Ex.PW1/7. How, the plaintiff was able to sell plots to different persons out of the suit land and why he did not put any hindrance to such activity of the plaintiff. The only inference in the matter therefore is that the defendant has himself sold the suit land in the form of residential plots after taking possession of it under agreement to sell Ex.PW1/7. DW2 Shri Ramesh Kumar Bhalla produced by the defendant to show that the plaintiff sold plot of land out of the suit land to DW2, though produced copy of the documents marked B1 to B4 but has failed to produce or prove the originals on record of the case without which the testimony of DW2 has been rendered useless to show that the plaintiff sold a plot of land out of suit land to DW2.

22. The plaintiff has also stated in his statement that he suffered damages of ` 5 lacs on account of vesting of land in Gaon Sabha on account of non agricultural use by the defendant. Thus, the plaintiff is entitled to the sum of ` 5 lacs as claimed in the suit.

In view of the above, both the issues are decided in favour of the plaintiff and against the defendant.” (emphasis added)

6. I completely agree with the aforesaid findings and conclusions of the trial Court which has held that there is no question of the respondent/plaintiff carving out plots of land, once under the

agreement to sell possession of the suit land was delivered to the appellant/defendant. The argument of the appellant/defendant that possession was not delivered to him, is an argument besides of desperation, an argument which is hit by Section 92 of the Evidence Act, 1872 inasmuch as no person can contradict the written terms of the document unless the document was got executed by force, fraud, coercion etc and which is not the case of the appellant/defendant.

7. Learned counsel for the appellant laid stress on two important aspects. The first aspect was that the Civil Court had no jurisdiction because of Section 185 of the Delhi Land Reforms Act, 1954 read with entry 18 of the Schedule and the jurisdiction to try the present suit was with the revenue Courts. The second aspect was that it was the respondent/plaintiff who was guilty of breach of contract in not obtaining the NOC and therefore it was only because of this reason that the sale deed could not be executed. It was argued that a person who is guilty of breach of contract was not entitled to the relief of damages as claimed in the suit.

8. In order to appreciate the first argument, it is necessary to reproduce Section 185 of the Delhi Land Reforms Act, 1954 and Article 18 of the Schedule of the said Act. These provisions read as under:-

“Section 185 Cognizance of suits, etc., under this Act.-(1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.

(2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in

column 3 of the Schedule aforesaid.

(3) An appeal shall lie from the final order passed by a court mentioned in column 3 to the court or authority mentioned in column 8 thereof.

(4) A second appeal shall lie from the final order passed in an appeal under sub-section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid.”

Sl No .	Section of the Act	Description of suit application and other proceedings	Period of limitation	Time from which period begins	Proper Court fees	Court of original jurisdiction	Court of 1 st Appeal	Court of second appeal
18	83	Suit for injunction or for the repair of the waste or damage caused to the holding	Three years or one year from the date of passing of the Delhi Land Reforms (Amendment) Act, 1965, whichever period expires later	From the date the damage is done or the waste begins	As in the Court Fees Act, 1870	Revenue Assistant	Deputy Commisisoner	..

A reference to the aforesaid provisions show that the Civil Court will not have jurisdiction where the jurisdiction is of the Revenue Courts if so provided in Schedule to the Delhi Land Reforms Act, 1954. The subject suit was a suit for damages and which in sum and substance was a claim for the price of the land sold by the respondent/plaintiff inasmuch as the respondent/plaintiff has received only ₹ 1 lakh under the agreement to sell. Even if, I accept the argument on behalf of the appellant/defendant that a total of ₹ 2,50,000/-was received by the respondent/plaintiff yet an amount of ₹ 7,25,000/- remained payable to the respondent/plaintiff under the agreement to sell. Entry No. 18 in the Schedule deals with a suit for injunction. This suit for injunction which is filed under Article 18 is for seeking injunction or for any repair of the waste or damage caused to

the holding i.e. agricultural land of a person. Therefore the suits which are for injunction or for repair of the damage or waste caused to a holding will be decided by the Revenue Court under the Delhi Land Reforms Act, 1954, however, it cannot be that a suit which is filed for damages i.e. recovery of money, and which is basically for payment of, in substance, unpaid price under an agreement to sell will be the subject matter of Article 18 of the Schedule. I really fail to understand that how by any stretch of reasoning that Article 18 applies to the subject suit. I therefore reject this argument urged on behalf of the appellant/defendant that the subject suit for recovery of monetary claim falls under Article 18 inasmuch as the subject matter of Article 18 is a suit for injunction or for repair of damage to a holding and not for recovery of money.

9. The second argument raised on behalf of the appellant/defendant that the respondent/plaintiff was guilty of breach of contract in not obtaining the NOC and therefore surely respondent/plaintiff is not entitled to damages is again an argument without merit. Before proceedings to deal with this argument, I must take note of the stand of the respondent/plaintiff before this Court through its counsel that the respondent/plaintiff claims no rights under the agreement to sell, claims no right of possession of the suit land under the agreement to sell, and does not claim any right whatsoever qua the agreement to sell qua the suit land, and which rights are admitted to be of the appellant/defendant. It is argued that since the

appellant/defendant has got all the rights effectively in his favour by agreement to sell, though not of complete ownership by a sale deed, the respondent/plaintiff is entitled to the balance price of ₹ 8,75,000/- or even as per the admitted case of the appellant/defendant of ₹ 7,25,000/-. The suit has in fact only been filed and decreed only for ₹ 5 lacs with interest and not even for ₹ 7,25,000/-.

In order to appreciate the issue as to whether the respondent/plaintiff committed breach of contract or the appellant/defendant committed breach of contract, it is necessary first to appreciate that basically the issue with respect to breach of contract is an issue that the breach of contract causes losses or damages to the aggrieved party. If therefore there is no loss or damage to the aggrieved party then mere breach of contract cannot be actionable. This I am stating because the appellant/defendant having received the complete possession of the suit property under the agreement to sell, and, since the respondent/plaintiff states that this land was carved out into plots/colony, and thereafter sold by various sale deeds, shows that the appellant/defendant has received complete benefits/price which an owner gets from the land by selling the same to different persons. There is therefore no loss or damage merely because no NOC was obtained by the respondent/plaintiff.

The appellant/defendant sought to prove on record certain documents which are marked as B1 to B4 in the trial Court to show that in fact the respondent/plaintiff had executed the sale documents with

respect to the 200 sq. yds. portion of the subject plot, and which case has been rejected by the trial Court, as the documents have not been proved, however, even if for the sake of arguments I take these documents which are a bunch of documents for transfer of rights in a plot of 200 sq. yds. of land (by the usual documents of an agreement to sell, power of attorney etc. as prevalent in Delhi) the same in fact go against the appellant/defendant because no doubt these documents are signed by the respondent/plaintiff as seller, however, admittedly the appellant/defendant is a witness to these documents showing that it is the appellant who received benefits as a seller under these documents. There is a peculiarity that when a person does not have complete title to the land and has only an agreement to sell in his favour, such a person when he wants to transfer the land which is the subject matter of an agreement to sell, then, a person who seeks to buy the subject land will want the recorded owner to execute the necessary documents in his favour. It is for this reason that these documents being B1 to B4 are executed by the respondent/plaintiff because the buyer of this plot would have wanted the documents directly from the owner i.e. the respondent/plaintiff. However, the fact that the appellant/defendant is a witness to these documents shows that he was a confirming party. In fact therefore it was the appellant/defendant who had transferred the land which is the subject matter of the documents being B1 to B4 and received the benefits of transfer of rights in the land which was the subject matter of these documents.

10. In any case, I feel that there will be caused grave injustice by the appellant/defendant to the respondent/plaintiff if this appeal is allowed inasmuch as the appellant/defendant under the agreement to sell received entire possession of the suit land, carved out a colony, sold the entire colony to different persons and thereafter though the land could have formally vested with the Gaon Sabha, however, it is admitted that Gaon Sabha has not taken under the Delhi Land Reforms Act, 1954 any proceeding for dispossession of the persons who are in actual physical possession of these plots carved out of the total subject land of 5400 sq. yds. Unless the Gaon Sabha after vesting of land in the Gaon Sabha takes an action within a period of limitation to take possession of the suit land, action by the Gaon Sabha becomes barred. As per the answers given to me by the counsel for both the parties, no proceedings till date have been initiated by the Gaon Sabha with respect to any plot out of the total land of 5400 sq. yds., the net effect being that the buyers of these plots in total area of 5400 sq. yds. are enjoying their respective possession of the plots and for which plots it is apparent that the appellant/defendant would have received the necessary price from these plot holders/buyers.

11. In view of the above, I hold that the appeal is an endeavour by a person who after taking possession of the land and transferring rights of the same to various buyers is refusing to pay the price of the property which was in fact payable under the agreement to sell on a very fragile ground that the land is vested in the Gaon Sabha although

the entire land (except an area of 300 sq. yds. which continues to be with the appellant/defendant) has been sold/rights therein transferred and for which surely the appellant/defendant would have received monies. Accordingly, the appeal being without merit is dismissed with costs of ₹ 25,000/-. I may note that the Supreme Court in the recent judgment of ***Ramrameshwari Devi and Others v. Nirmala Devi and Others (2011) 8 SCC 249*** has stated that it is high time that actual and realistic costs must be imposed. Some of the relevant paras of the aforesaid judgment read as under:-

“43. We have carefully examined the written submissions of the learned Amicus Curiae and learned Counsel for the parties. We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

47. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In *Swaran Singh v. State of Punjab* MANU/SC/0320/2000 : (2000) 5 SCC 668 this Court was constrained to observe that perjury has become a way of life in our courts.

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be

curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. ...

B. ...

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

.....

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.” (underlining added)

I am also empowered to impose costs which may be actual costs in terms of **Volume V** of the **Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15.**

12. Appeal is accordingly dismissed with costs of ₹ 25,000/-. Trial Court record be sent back.

VALMIKI J. MEHTA, J

NOVEMBER 23, 2011
Ne