

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No.473/2004

Judgment delivered on: 13.01.2011

SHRI HANS RAJ GOEL Appellant
Through: Mr. J.K.Nayyar, Advocate.

Versus

SHRI RAM NIWAS AND ANR. Respondents
Through: Mr. Murari Tiwari with
Ms.Priyanka Nayak,
Advocates.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may
be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

KAILASH GAMBHIR, J. Oral:

1. By this appeal filed under Section 96 of the Code of Civil Procedure, 1908, the appellant seeks to challenge the judgment and decree dated 15.04.2004, whereby the suit filed by the appellant for declaration, permanent injunction, possession and damages in respect of the property bearing No.C-9/3, Wazirpur Industrial Area, Delhi was dismissed.

2. Brief facts of the case, as per the appellant and relevant for deciding the present appeal are that the appellant was the owner of the property bearing no. C/93 Wazirpur Industrial Area, Delhi and had entered into a commission agreement with the respondents with regard to half the portion of the said property on 5.10.1985. That vide agreement to sell dated 10.5.95 the appellant sold the said portion of the property to the respondents for a sum of 3 lakhs and an amount of Rs. 2,75,000 was received by the appellant through the Banker's cheque dated 9.5.1995 on that day and the balance of Rs.25,000 was to be paid by the respondents within two or three days. That the respondents failed to pay the balance amount and the appellant served a legal notice dated

27.10.1997, which was not replied to by the respondents. Thereafter the appellant cancelled the Will and the General Power Of Attorney executed in favour of the respondent no.1 and 2 respectively on 8.10.1997 and sent a notice of the same on 14.10.1997 which was not replied to by the respondents. Consequently, the appellant filed a suit for declaration, permanent injunction, possession of the suit property and damages which vide judgment and decree dated 15.4.2004 was dismissed. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Assailing the judgment and decree passed by the learned trial court, counsel for the appellant submits that the entire sale consideration amount was not paid by the respondent and in fact only an amount of Rs.2,75,000/- was paid by the respondent, leaving a balance amount of Rs.25,000/- still to be paid by the respondent. Inviting attention of this court to the clause of agreement to sell which states *that any dues demands etc. of sales tax,*

income tax charges in the name of M/s. Delhi Wire and General Mills up the date hereto shall be paid by the first party and thereafter shall be paid by the second party, the counsel contended that the house tax dues were not included in the said clause and the learned trial court wrongly observed that the said clause also took care of the house tax dues. Counsel further submits that the respondent had approached the House Tax Authorities with mala fide intention to seek mutation of the property without even making the payment of the balance sale consideration amount of Rs.25,000/-. The contention of counsel for the appellant is that the respondent had no competence or authority to approach the House Tax Authorities to seek mutation of the said property under sale, once the respondent had failed to fulfill his part of obligation in terms of the agreement to sell. Counsel also submits that the learned trial court wrongly referred to the reply sent by the respondent as a notice and has returned a wrong finding on this aspect and therefore the impugned judgment deserves to be set aside.

4. Refuting the submissions of counsel for the appellant, Mr. Murari Tiwari, the counsel appearing for the respondents submits that in terms of the above referred clause of the agreement to sell, the appellant had clearly agreed that any demands which were due relating to the property in question upto the date of execution of the agreement to sell shall be the liability of the appellant and thereafter that of the respondents. Counsel further submits that the appellant had failed to clear the outstanding dues of the house tax and when the respondents had approached the office of the M.C.D to seek mutation of the said property in their favour, it was learnt by the respondents that the demand raised by the M.C.D for a sum of Rs.2,06,696/- upto the year 1994-95 for the entire property was still outstanding. Counsel further submits that after having learnt about the said demand from the office of the M.C.D, the respondents had approached the appellant to pay the said amount, but on refusal by the appellant, the respondents had paid an amount of Rs.1,03,348/- in respect of the half share of the said

property which was purchased by the respondents. Counsel thus submits that with the payment of said demand of house tax, it is the appellant who is liable to pay the balance amount to the respondents instead of raising a false claim of non-payment of the alleged balance sale consideration amount of Rs.25,000/-. Counsel thus submits that the appellant illegally and mala fide cancelled the sale documents and had also filed various cases against the respondents with ulterior motive.

5. I have heard learned counsel for the parties at considerable length and gone through the records.

6. The respondent was in occupation of the half portion of the factory in question by virtue of agreement dated 05.10.1985 proved on record as Ex.DW-1/P-1 and thereafter on 10.05.1995 the appellant had agreed to sell the said half portion in favour of the respondents for a total sale consideration amount of Rs.3 lacs vide agreement to sell dated 10.05.1995 proved on record as Ex.PW-1/D-6. Out of the sale consideration amount of Rs.3 lacs, a sum of

Rs.2,75,000/- was paid by the respondents to the appellant vide banker's cheque dated 09.05.1995. Various other documents were also executed by the appellant towards sale of the said property such as indemnity bond, receipt, affidavit, special power of attorney, general power of attorney and all these documents were proved on record by the appellant. It is also not in dispute that the said property in question was also mutated in the house tax records in the name of the respondents.

7. The main emphasis of argument of counsel for the appellant is that the respondents had failed to pay the balance sale consideration amount of Rs.25,000/- which, as per the appellant, the respondents were required to pay within a period of two or three days from the date of execution of the agreement to sell, otherwise the advance amount of Rs.2,75,000/- paid by the respondents to the appellant was to be forfeited. Counsel for the appellant also submitted that the appellant had cancelled the Will and General Power of Attorney on 8.10.97. The stand of the respondents on the

other hand is that the appellant had received the amount of Rs.2,75,000/- as full and final consideration towards the sale of the said property and the balance amount of Rs.25,000/- was kept by the respondents as reserve amount towards outstanding dues, if any, left to be paid by the appellant, be towards property tax, income tax or sale tax etc. The respondents have also taken a stand that in fact the respondents had already paid an amount of Rs.1,03,348/- to clear their liability towards the house tax dues.

8. Before carrying any further discussion on this contentious issue, it would be apt to reproduce the following terms of the agreement to sell :-

".....And whereas the first party agreed to sell the said property with the present construction with all fittings and fixtures along the lease hold rights of the land attached thereto measuring 309 sq. yds. (31'. 4"x88'. 9") i.e. southern portion for a sum of Rs.3,00,000/- (Rs. Three lacs only) from the second party being the full and final price of the said property and the receipt of which the first party hereby acknowledge through separate receipt duly signed at Delhi by a Banker's cheque only.

That the first party assures the second party that the first party is the rightful owner of the said property being owner of the said firm M/s. DELHI WIRE AND GENERAL MILLS and the said portion of the said property is absolutely free from all kinds of encumbrances, such as sales, mortgage, gift, liens, surety, guarantee, attachment in the decree of any court etc. and if it is proved otherwise then the first party shall be liable and responsible for the same to indemnify the second party of all losses, costs and expenses thus suffered by the second party in this connection.

Thus any dues, demands etc. of Sales Tax, Income Tax charges in the name of M/s.DELHI WIRE AND GENERAL MILLS upto the date hereto shall be paid by the first party and thereafter shall be paid by the second party.

That after obtaining the necessary permission to sell the said property the first party assures shall execute a sale deed in favour of the second party or nominee/s, failing which the second party is entitled to get the same registered through the court of law under specific performance of the contract at the cost and expenses of the first party.....”

9. The aforesaid terms of the agreement to sell unequivocally disclose that the appellant had acknowledged the receipt of the total sale consideration amount of Rs.3 lacs from the respondents. No doubt, the said covenant of receipt of Rs.3 lacs by the appellant is not in conformity with the receipt which was separately executed by the appellant wherein the appellant had acknowledged receipt of a sum of Rs.2,75,000/- vide banker's cheque drawn on Bank of India, Ashok Vihar, Delhi, but in this receipt also, the appellant has again stated that the said payment of Rs.2,75,000/- is full and final payment of the sale price in respect of the southern portion of the property being sold in favour of the respondents. Nowhere in the agreement to sell or in the

receipt or in any other documents there is any stipulation which can show that the respondents had agreed to pay the balance sale consideration amount of Rs.25,000/- to the appellant. Counsel for the appellant failed to point out as to in which document the respondents can be shown to have agreed to pay the balance sale consideration amount of Rs.25,000/- within a day or two, the plea which was taken by the appellant before the learned trial court. Once the appellant himself had agreed that the receipt of Rs.2,75,000/- would be the total sale consideration amount of the said property in terms of receipt proved on record as PW1/D1, coupled with the fact that in the agreement to sell the appellant has gone to the extent of stating the receipt of Rs.3 lacs i.e. the entire amount towards the sale consideration of the subject property then how come the appellant can still agitate that a balance amount of Rs.25,000/- was yet to be paid by the respondent.

10. In the face of these two very documents, it is totally incongruous on the part of the appellant to

subsequently take a plea in the court that the balance sale consideration amount of Rs.25,000/- was still left to be paid by the respondents. In the absence of any such stipulation in the agreement to sell or in any other document, no other evidence can be looked into in view of Section 91 and 92 of the Indian Evidence Act, 1872. So far the contention of counsel for the appellant that the respondents themselves had admitted the fact that an amount of Rs.25,000/- was not paid by the respondents and that the admission on the part of the respondents by itself would prove the case of the appellant is concerned, this argument is equally devoid of any force. Counsel for the appellant has not denied the fact that the respondents had paid an amount of Rs.1,03,348/- towards the house tax liability of the appellant and that the said liability was for the period before the date of execution of agreement to sell. Although specifically house tax dues were not mentioned in the agreement to sell, but it was the moral and legal obligation of the appellant to have disclosed the liability of the house tax dues standing on the said property as on the

date of execution of agreement to sell. There was a clear suppression on the part of the appellant in not disclosing the said arrears of house tax dues standing on the said property. The learned trial court has rightly observed that the words "*any dues, demands etc.*", including the demand towards property tax contained in the agreement to sell might not be happily worded, but in the given facts the words "*any dues, demands etc.*" can be taken to have included the demand of the house tax as well. The respondents have proved on record that the payment of Rs.1,03,348/- was paid by them towards house tax liability and with the said payment having been made by the respondents, the appellant cannot be seen to take a stand that the said amount of Rs.25,000/- was not meant for liquidating the liability of the appellant towards house tax dues. The respondents had even called upon the appellant to return the additional amount of Rs.78,348/- vide legal notice dated 03.01.2001 proved on record as Ex.DW-1/G. It is quite intriguing to find that instead of the appellant disclosing his liability towards the arrears of house tax, all

illegal steps in cancelling the sale documents and then filing the suit in question were taken by the appellant.

11. So far the argument of counsel for the appellant that the respondents had no right to seek mutation of the said property in the house tax records is concerned, this argument of counsel for the appellant is also totally unfounded. Once the appellant had sold the said property in favour of the respondents then nothing could come in the way of the respondents to seek mutation of the same in the house tax records. With regard to the last limb of the argument of counsel for the appellant that the learned trial court wrongly held that the appellant dragged the respondents in court after having received the legal notice dated 03.01.2001, this plea of the counsel for the appellant also lacks merit, as filing of the suit either prior to the receipt of legal notice dated 03.01.2001 or thereafter is hardly of any consequence, as the suit filed by the appellant was patently false and untenable in law.

12. In view of the above discussion, this Court does not find any illegality or perversity in the impugned judgment and decree passed by the learned trial court and the same is upheld.

13. There is no merit in the present appeal and the same is hereby dismissed.

January 13, 2011
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KAILASH GAMBHIR, J