

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

% Judgment delivered on: 20.04.2011

+ **RSA No.20/2004**

SHRI RAMESH KUMAR & ORS.

Through: Mr. Sanjeev Sachdeva and Mr. Preet
Pal Singh, Advocates.
Versus

.....Appellants

SHRI SATYA DEV

Through: Mr. Ashish Malhotra, Advocate.

.....Respondent

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. Oral

1. This appeal has impugned the judgment and decree dated 31.07.2003 which had endorsed the findings of the trial Judge dated 04.02.1989 whereby the suit filed by the plaintiff Harikesh seeking a declaration to the effect that the agreement to sell dated 28.05.1980 executed between himself and the defendant be declared null and void had been dismissed. Relief seeking decree of permanent injunction had also been declined.

2. The plaintiff is stated to be the allottee and lessee of shop No. 217, Block Z, Naraina Ware Housring Scheme, Naraina, New Delhi (hereinafter referred to as the 'suit shop'). Sale deed or lease deed of the said shop had not been executed or registered in his favour. Defendant No.1 was the partner of the plaintiff. In good

faith, defendant No.1 got executed certain documents from the plaintiff. The plaintiff was an illiterate man. The aforementioned documents comprised of an agreement to sell dated 28.05.1980 and a receipt and Will of the same date; two special power of attorneys dated 28.05.1980 had also been got executed by the plaintiff. In terms of the aforementioned agreement, the plaintiff had agreed to sell this shop to the defendant for a consideration of Rs.1,50,000/- but in the agreement to sell dated 28.05.1980, the consideration was wrongly mentioned as Rs.11,500/-. In fact, it had been agreed between the parties that the suit shop would be sold by the plaintiff to the defendant for a total amount of Rs.1,50,000/- and Rs.11,500/- was paid only as an earnest money. Plaintiff was under the bonafide impression that the agreed price of the shop was Rs.1,50,000/- and not Rs.11,500/-. He came to know about this fraud having been played upon him when the present suit was filed.

3 The defendant has contested the suit. Contention was that the agreement to sell had been entered into between the parties with open eyes; it had been agreed that the sale consideration would be Rs.11,500/- and the entire sale consideration has since been paid to the plaintiff; defendant had also been given possession of the suit shop, he could not be dispossessed.

4 On the pleadings of the parties, 13 issues were framed. Oral and documentary evidence was led. The trial Judge examined the entire oral and documentary evidence; the suit of the plaintiff stood dismissed. While disposing of issue No. 3, the trial Judge was of the view that the plaintiff has no saleable title in the suit property. Suit

shop has not been registered in his name; yet since the plaintiff had admitted that he has executed the aforementioned documents including the agreement to sell dated 28.05.1980; his defence that he being an uneducated man did not know the contents of the said documents was disbelieved. The Court was of the view that the plaintiff has failed to prove that the aforementioned document had been got executed by misrepresentation; he was not entitled to cancellation of the said documents.

5 This was endorsed in the first appeal.

6 This is a second appeal. It is still at its admission stage. On behalf of the appellant, it has been urged that the plaintiff not having any saleable title in the suit property could not have entered into an agreement to sell; such an action was in fact a void transaction and this has raised a substantial question of law. He has relied upon the provisions of Section 56 of the Indian Contract Act, 1872.

7 Arguments have been refuted. It is pointed out that this is a second appellate court and no substantial question of law has arisen; there are two concurrent findings of fact against the appellant.

8 Perusal of the record shows that the appellant/defendant has nowhere denied that he had not entered into the aforementioned documents of which he now seeks cancellation. His contention was that these documents had been got executed by him through misrepresentation. Issues No. 6 & 7 had been specifically framed on this count. The impugned judgment has reaffirmed the findings of the trial Judge on the aforementioned issues. Both the two courts

below were of the view that the defendant had signed these documents voluntarily and there was no duress or fear upon him at that time; question of misrepresentation did not arise. These fact findings do not call for any interference. There is no perversity on this count. This plea of the appellant is without any merit.

9 The question of applicability of Section 56 of the Contract Act also does not arise. This provision reads as under:-

"56. Agreement to do impossible act.- An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.- A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.- Where one person has promised to something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise."

10 Essential idea upon which the doctrine of frustration is based is that of impossibility of performance of a contract. The changed circumstances make the performance of the contract impossible and the parties are absolved from the further performance of it as they did not promise to perform an impossibility. This doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of a supervening impossibility or illegality of the act agreed to be done. In the instant case, there has been no such intervening event or changed circumstances for the applicability of this principle. The agreement to sell dated 28.05.1980 in fact clearly shows that the first party who is the appellant/plaintiff was fully aware that this property has been leased out to him by the

DDA; reference has been made to the effect that the unearned increment/any penalty, if any, imposed will be borne by the second party. The plea of the doctrine of 'frustration' as sought to be set up by the appellant is not available to him.

11 Substantial questions of law have been embodied on page 2 of the body of the appeal. No such substantial question of law has arisen. There is no merit in this appeal. Dismissed.

(INDERMEET KAUR)
JUDGE

APRIL 20, 2011
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