

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

+ **RFA No. 223/2011**

% **Reserved on: 2nd November, 2011**
Pronounced on: 11th November, 2011
SH. HARVINDER SINGH Appellant
Through : Ms. Ashu Arora, Advocate.

versus

SH. SURESH KUMAR TEHRI Respondent
Through : Mr. R.P. Shukla, 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 18.3.2011. By the impugned judgment, the trial Court decreed the suit for specific performance filed by the respondent/plaintiff with respect to the subject/suit property being flat No.J-2/100A, DDA Flats, Kalkaji, New Delhi (hereinafter referred to as the "suit/subject property").

2. The facts of the case are that an agreement to sell and purchase was executed on 27.9.2004 between the parties, the respondent/plaintiff

being the prospective purchaser and the appellant/defendant being the prospective seller. The total sale consideration fixed for sale of the suit property was Rs. 6 lacs and out of which a sum of Rs.1,15,000/- was paid to the appellant/defendant as advance money. The balance sale consideration of Rs.4,85,000/- was agreed to be paid on or before 31.3.2005 at the time of execution of the sale deed and handing over possession of the suit property. The appellant/defendant gave the title deeds of the suit property to the respondent/plaintiff. The respondent/plaintiff further paid a sum of Rs.60,000/- to the appellant/defendant on 1.10.2004. When the respondent/plaintiff approached the appellant/defendant on 30.3.2005 to execute the sale deed, the appellant/defendant requested for one month time to arrange an alternative accommodation for shifting from the suit premises. When the respondent/plaintiff again asked the appellant/defendant to execute the Sale Deed on 30.4.2005, again the appellant/defendant asked for time. A second agreement/document was entered into between the parties on 25.5.2005. On account of the failure of the appellant/defendant to execute the sale deed, the respondent/plaintiff filed a police complaint and on registering of an FIR, the appellant was arrested and thereafter released on bail. Ultimately as the appellant/defendant failed to execute the sale deed the subject suit for specific performance came to be filed.

3. The defence of the appellant/defendant was that the

respondent/plaintiff agreed to get the property of the appellant/defendant exchanged for some other property and therefore the appellant/defendant executed certain blank papers, including blank signed receipts over stamps and handed them to the respondent/plaintiff. For the same purpose the appellant/defendant also handed over the title documents of the property to the respondent/plaintiff. It was also alleged that the appellant/defendant handed over three cheques to the respondent/plaintiff amounting to Rs.50,000/- (two) and Rs.60,000/- (one). It was stated that if the deal is not finalized the respondent/plaintiff will return the cheques.

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

- “1. Whether documents stated to be advance receipt cum agreement to sell and purchase dated 27.09.2004, receipt dated 1.10.2007, another receipt 30.03.2005 and affidavit in the name of Sh. Harvinder Singh dated 15.10.05 are forged and fabricated documents? OPD
2. Whether plaintiff is entitled for a decree of specific performance for agreement to sell as claimed in this case? OPP
3. Relief.”

5. The main issue was issue No.1 and which has been dealt with by the trial Court as under:-

“13. **ISSUE NO.1:** It is sworn on oath by the plaintiff (PW1), in his affidavit (Ex.PW1/A) that defendant entered into an agreement to sell with him on 27.09.04, with respect to the suit property. An agreement was written on a stamp paper of Rs.50/- which is Ex.PW1/1. Defendant signed it on each and every page. The latter received a sum of Rs.1,50,000/- as advance money. On the request of defendant, he paid Rs.60,000/- to the former on 1.10.04. Receipt in this regard is Ex.PW1/2, which was witnesses

by the wife of defendant. A sum of Rs.80,000/- was again paid to the defendant on 30.03.05, receipt in this regard is Ex.PW1/3. The defendant gave undertaking on the back side of first page of the agreement dated 27.09.04. Defendant executed further agreement on 25.05.05 stating that he would not seek further extension of time, it was also witnessed by his wife. After being released on bail in case FIR No.1033/2005, PS Kalkaji, the defendant gave an undertaking on 15.05.05, to hand over the possession of the suit property to the plaintiff, after receiving balance amount.

14. In his affidavit (Ex.DW1/A), the defendant denied having entered into any agreement to sell, the suit property with the plaintiff for a consideration of Rs.6 Lakhs or having received any amount like Rs.60,000/- on 1.10.04 or Rs.80,000/- on 30.03.05. DW1, during his cross examination admitted to have signed some documents but claimed that these were blank papers. After seeing documents Ex.DW1/D1, Ex.DW1/D2 and Ex.DW1/D3, the defendant identified his signatures on these documents. He also admitted having received a sum of Rs.2,10,000/- from the plaintiff between 2004-2006 but clarified that same was loan amount. DW1/5 is copy of receipt.

15. Even, at the time of deliberations, it is not disputed that said documents were signed by the defendant. It is not proved on the record that any of these documents was blank, when was signed by the defendant or the latter was induced by the plaintiff to sign any of these documents or the same were forged and fabricated documents. This issue is therefore decided against the defendant.” (underlining added)

6. I agree with the findings and conclusions of the trial Court. My detailed reasons, I am giving in the later portion of this judgment after setting out the arguments as advanced by the counsel for the appellant/defendant.

7. Before this Court, the counsel for the appellant/defendant once again reiterated that documents which were signed by the

appellant/defendant were blank and were in fact executed by the appellant so that the property of the appellant/defendant could be exchanged for another property which was to be found out by the respondent/plaintiff. It is argued that document being the second agreement dated 25.5.2005 would have to be a blank document inasmuch as the said agreement does not talk of the earlier receipts which were executed by the appellant/defendant in favour of the respondent/plaintiff. It is also argued that the police complaint which was filed by the respondent/plaintiff made no mention of the second agreement dated 25.5.2005. It was also urged on behalf of the appellant/defendant by her counsel that the contents of the documents show that the documents were signed in blank.

8. The main issue therefore would be whether the various documents which are stated to have been executed by the appellant/defendant in favour of the respondent/plaintiff were blank and signed only for the purpose of getting in exchange another property. The following documents have been proved and exhibited before the trial Court as having been executed by the appellant/defendant:-

(i) Agreement to sell dated 27.9.2004 Ex.PW1/1. Behind the back of the first page of the agreement to sell there is endorsement bearing the signatures of the appellant/defendant that the last date for full and final payment will be 30.4.2005, and which is an endorsement made subsequent to the agreement Ex.PW1/1. This endorsement is Ex.DW1/D1.

(ii) The receipt for Rs.60,000/- dated 1.10.2004 Ex.PW1/2 (Ex.DW1/D4).

(iii) Receipt dated 30.3.2005 showing payment of Rs.80,000/- Ex.PW1/3(Ex.DW1/D5)

(iv) Undertaking on non-judicial stamp papers dated 15.10.2005 of the appellant/defendant to hand over vacant possession of the suit property by 5.11.2005 and receive the balance consideration, Ex.PW1/5.

9. In my opinion, the argument raised on behalf of the appellant/defendant that he signed blank documents for getting his property exchanged with another property which was to be found out by the respondent/plaintiff is quite clearly a false and dishonest argument for the following reasons:-

(i) It is not possible in today's circumstances for a person to have signed not one but as many as five documents allegedly in blank, especially inasmuch as it is not as if there was such great closeness between the parties for handing over of blank signed documents, more so documents which include signatures across the revenue stamps. Such convenient stand have a more ring of falsehood in it than anything else.

(ii) The back of the stamp paper of the agreement to sell Ex.PW1/1 shows that the stamp paper was purchased in the name of the appellant/defendant and that too for an agreement to sell.

(iii) The endorsement signed bearing the signatures of the

appellant/defendant made at the back of the first page of the agreement to sell viz. Ex.DW1/D1 shows that there is a subsequent acceptance of the original agreement to sell.

(iv) The very fact that original title documents are in possession of the respondent/plaintiff is a very strong factor to hold that there was an agreement to sell and not that the appellant/defendant had signed documents in blank for getting his property exchanged with another property. Title documents of a property are very vital documents and the same are handed over only when ownership in the same is sought to be transferred. It is inconceivable for any person to hand over all the original title documents of his property to a third person allegedly because he wanted to get his property exchanged for some another property.

(v) The second agreement to sell dated 25.5.2005 is witnessed by the wife of the appellant/defendant. Though the appellant/defendant has sought to conveniently deny the signatures of his wife, however, no affirmative evidence has been led to show that if the signatures appearing on this agreement dated 25.5.2005 are not the signatures of the wife of the appellant/defendant, then, what are the real signatures of the wife of the appellant/defendant.

(vi) All the documents executed by the appellant/defendant in favour of the respondent/plaintiff are witnessed by one Mr. M.R. Behl, who is a resident of the locality and in the cross-examination the appellant/defendant

has admitted that he has no disputes with Mr. M.R. Behl. Sh. M.R. Behl, the witness therefore, is an independent and neutral witness, whose testimony with respect to execution of documents by the appellant/defendant in favour of the respondent/plaintiff needs to be accepted.

10. In addition to the above reasons, there are two clinching evidences which show that an agreement to sell was executed between the parties and it was not as if that the appellant/defendant had given blank signed papers for getting his property exchanged. These reasons are:-

(i) The case of the appellant/defendant was that he signed all the documents together in one go in blank. This is proved to be ex facie false because the undertaking Ex.PW1/5 is on a non-judicial stamp paper of 15.10.2005. Obviously stamp papers of 15.10.2005 could not have come into existence earlier on 27.9.2004 when the agreement to sell Ex.PW1/1 was executed. This undertaking was executed after the appellant/defendant was arrested and then released on bail. The appellant/defendant backing out of this undertaking shows the height of dishonesty to which appellant/defendant will resort to. The language of this undertaking is relevant and the same is reproduced as under:-

“I, Harvinder Singh Arora son of Late Sardar Milkha Singh Resident of J-2/100A, D.D.A. Flats, Kalkaji, New Delhi-110019, do hereby undertake as under:-

1. That I had entered into a Agreement to Sell and Purchase dated 27th day of September, 2004 with a Purchaser Shri Suresh Kumar Tehri Son of Late Shri Ram Parkash Tehri resident of J-2/51 AB, D.D.A. Flats, Kalkaji, New Delhi-110019 for the sale of my

property bearing no.J-2/100 A, Ground Floor, D.D.A. Flats, Kalkaji, New Delhi-110019.

2. That I did not give the possession of the aforesaid flat to the purchaser on or before the agreed date of 31.3.2005.

3. That the purchaser subsequently lodged a complaint with the Kalkaji Police Station on 29.5.2005 and a case was filed by the Purchaser in the Court of Hon'ble Judge Shri S.K. Aggarwal in Patiala House Courts, New Delhi.

4. That I have been directed by the Hon'ble Judge, to reach a settlement with the purchaser for handing over the possession of the flat to the purchaser.

5. That I hereby undertake that I shall deliver the vacant and peaceful possession of the aforesaid flat to the purchaser on or before 5th day of November, 2005 and I shall receive the balance full and final payment as stated in the aforesaid advance Agreement to Sell and Purchase dated 27th day of September, 2004.

IN WITNESS WHEREOF I, the executants have put my hands on the day, month and year herein mentioned below in the presence of the following witnesses:-

PLACE: NEW DELHI

DATE: 15TH DAY OF OCTOBER, 2005

WITNESSES:-

(HARVINDER SINGH ARORA)
EXECUTANT"

A reading of the aforesaid undertaking shows that the documents being agreement to sell and the subsequent receipts could never have been signed in blank alongwith this particular document which is dated 15.10.2005. The contents of the same also show that the same cannot be a document which could have been signed in blank inasmuch as on 27.9.2004 it could not have been known that a police complaint would be filed by the respondent/plaintiff against the appellant/defendant in June, 2005 and that a specific Judge S.K.Aggarwal would deal with the criminal case. In fact, the first witness who has signed on this undertaking is the brother of the

appellant/defendant. Therefore this undertaking Ex.PW1/5 lays bare the falsity of the case of the appellant/defendant.

(ii) The second clinching document which I found from the record, though the same is not referred to by the Court below is the first page of the bail application filed by the appellant/defendant. In para 3 of this bail application, the appellant/defendant in categorical terms admits that he was always ready and willing to return the earnest amount received by him. This categorical admission made in judicial proceedings shows that the appellant/defendant had received monies from the respondent/plaintiff and that also as an earnest amount.

I may hasten to add that this argument is only an additional independent argument, and which I am stating inasmuch as the bail application is not exhibited in the trial Court, however, the said application would clearly be an admitted document and therefore I am referring to the same.

11. During the course of hearing of this appeal, this case was adjourned on two occasions in order to enable the appellant/defendant to arrive at a compromise, however, after two adjournments it was stated that compromise was not possible and thereafter this case was argued.

12. A resume of the above facts shows that there is no merit in the appeal and the appellant/defendant having received the substantial amounts over different dates and agreeing to execute the sale deed, failed to do so by

using the false and dishonest defence. A person such as the appellant/defendant therefore is not entitled to any relief from the Court of law. I may also state that handing over of original title documents of a property is a near conclusive factor for holding that in fact ownership in the suit property was sought to be transferred by the appellant/defendant to respondent/plaintiff. Any doubt on this aspect is removed by execution of the undertaking dated 15.10.2005 Ex.PW1/5 by the appellant/defendant in favour of the respondent/plaintiff. The arguments raised on behalf of the appellant by his counsel in this court have no substance in view of the reasoning given by me above. Also a complaint to a police is not like a plaint in a suit for specific performance where all facts and all executed documents have to be referred to and hence the argument of the appellant that the police complaint does not refer to receipts executed does not take the case of appellant further.

13. No other point was urged or argued before this Court by any of the parties.

14. In view of the above, there is no merit in the appeal. The same is therefore dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J

NOVEMBER , 2011
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