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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.397/2010

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14th November, 2011

SHIV KUMAR SHARMA

..... Appellant

Through: Ms. Anuradha Mukherjee and
Ms. Jyoti Dastidar, Advs.

versus

MADHU AGGARWAL

..... Respondent

Through: Mr. Satish Pandit, Adv.

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? Yes
3. Whether the judgment should be reported in the Digest? Yes

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure (CPC), 1908 is to impugn judgment of the Trial Court dated 30.3.2010. By virtue of the impugned judgment, the Trial Court decreed the suit of the respondent/plaintiff by declaring the sale deed dated 24.3.2005, Ex.DW1/2, executed in favour of the appellant/defendant as null and void. The Trial Court consequently held the respondent/plaintiff entitled to possession of the

suit property being B-29/30/1, Friends Colony Industrial Area, Jhilmil Tahirpur Colony, Ilqa Shahdara, Delhi-95. The appellant was also restrained from selling, etc. the suit property. The suit of the respondent/plaintiff for mesne profits was however dismissed.

2. The facts of the case are that the respondent as a seller and the appellant as a buyer entered into a registered sale deed with respect to the property admeasuring 67 square yards bearing no. B-29/30/1, Friends Colony Industrial Area, Jhilmil Tahirpur Colony, Ilqa Shahdara, Delhi-95. Under this registered sale deed, the appellant/defendant received possession of the suit property. The appellant/defendant/buyer paid a sum of Rs.20,000/- on the date of execution and registration of the sale deed and also delivered 26 post-dated cheques of Rs.30,000/- each totaling to Rs.7,80,000/-. The first of these cheques was encashable after about 11 months of the sale deed. As per para 5 of the sale deed, the respondent/plaintiff was liable to clear all the outstandings of the local authorities including the Electricity Authority, House Tax Authority and Water Supply Department. The respondent/plaintiff is said to have not given the 'No Dues Certificates' of these Authorities and therefore the appellant/defendant stopped the payment of the cheques by closing the account resulting in filing of the subject suit.

3. The respondent/plaintiff therefore filed the subject suit for declaring the sale deed to be null and void because consideration under the same was not paid.

4. Learned counsel for the appellant argued two main points before this Court. The first point is that by virtue of Para 5 of the sale deed, it could not be disputed that the respondent/plaintiff was liable to clear all the outgoings of the property till the date of execution of the sale deed and which included the dues of the Electricity Authority, Water Authority and the House Tax Authority. It is argued that admittedly no such 'No Dues Certificate' was given and therefore the appellant/defendant had to stop the payment of the cheques. It is argued that the Electricity Authority had claimed an amount of approximately about Rs.67,00,000/- on account of the electricity connection in the property and which bill had been issued on account of dishonest abstraction of energy from the earlier electricity connection.

5. The second point which is argued is that as per Section 55(4)(b) of the Transfer of Property Act, 1882, once there exists a registered sale deed, title in property is transferred unless the payment of consideration is a condition precedent for transfer of the title. It is argued that in the present case, the sale deed does not show that payment of price was a condition precedent to the transfer of the

property. Reliance is placed upon the recent judgment of the Supreme Court reported as ***Kaliaperumal vs. Rajagopal & Anr. 2009 (II) SLT 789*** and para 8 thereof.

6. In response, the learned counsel for the respondent argued that there were no dues of the Electricity Authority towards the subject property and the dues were, in fact, towards another part of the same property. It is argued that once the sale consideration is not paid, the respondent/plaintiff was entitled to get the sale deed declared null and void.

7. In my opinion, the arguments as advanced by counsel for the appellant are well merited and thereof the appeal deserves to succeed. It cannot be urged with any conviction that the respondent/plaintiff was not liable to give the necessary 'No Dues Certificate' from the requisite Authorities including the Electricity Authority. This is clear from Para 5 of the sale deed which reads as under:

“That all the dues Govt. demands, House taxes, charges, duties, liabilities and outgoings, if any, shall be paid and borne by the Vendor upto the date of registration of this sale deed relating to the above mentioned property under sale and thereafter the same shall be paid and borne by the Vendee.”

Surely, in view of this clause, it cannot be disputed, and it is also very logical that all the outgoings till the date of the sale are

ordinarily and necessarily to be of the respondent/seller and who has enjoyed the ownership and possession of the property till that date. It could not be disputed that the respondent/plaintiff never gave the necessary 'No Dues Certificates' of all the requisite Authorities, i.e. Electricity Authority, House Tax Authority and the Water Authority to the appellant/defendant. It may be noted that the very fact that possession was delivered and a registered sale deed was executed in favour of the appellant/defendant shows that except the consideration by means of 26 cheques of Rs.30,000/- each nothing further was payable to the respondent/plaintiff. In the cross-examination of the respondent/plaintiff she admitted (and there was no other alternative but saying so) that the respondent/plaintiff had to clear outgoings with respect to the suit property and 'No Dues Certificates' were to be given to the appellant/defendant. In my opinion, therefore, the appellant was fully justified in not making payment under the post-dated cheques as the necessary 'No Dues Certificates' were not given. After all the respondent/plaintiff had a period of over 11 months to give the 'No Dues Certificates' inasmuch as the first post-dated cheque was of 11 months after the date of the execution of the registered sale deed.

8. In any case, Section 55(4)(b) of the Transfer of Property Act, 1882 is a complete answer to the case as set up by the

respondent/plaintiff. Para 8 of the judgment in the case of

Kaliaperumal (supra) reads as under:

“8. Sale is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the properties sold. No rights are left in the transferor. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale in regard to immovable property of the value of Rs.100/- or more and that is by a registered instrument. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of Transfer of Property Act, 1882 ('Act' for short) defines 'sale' as a transfer of ownership in exchange for a price paid or promised or part paid and part promised. If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment or price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is an invariable rule, as the true test of passing of property is the intention of parties. Though registration is *prima facie* proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.....”(underlining added).

9. A reading of the sale deed makes it clear that the payment of price was not a condition precedent to the transfer of title. No such clause to this effect could be pointed out to me by the counsel for the

respondent/plaintiff. The very fact that possession was given under the registered sale deed which transferred the title, showed that the respondent/plaintiff had received the entire consideration less the installments of cheques totaling to Rs.7,80,000/-. Therefore, in any case, the sale deed cannot be prayed to be cancelled and at best in terms of Section 55(4)(b) of the Transfer of Property Act, 1882, the respondent/plaintiff could have asked for balance consideration along with interest. In the present case, the respondent/plaintiff would, no doubt, be entitled to balance consideration, but definitely not the cancellation of the sale deed. The appellant/defendant in the written statement had, at the outset, pleaded that he is ready to immediately pay the balance sale price on the 'No Due Certificates' being given. Admittedly, till date the 'No Dues Certificates' have not been given.

10. The argument of the learned counsel for the respondent that the 'No Dues Certificate', was not refused to be given because the dues which were claimed by the Electricity Authority were of a different part of the property is an argument which lacks substance inasmuch as if this was so, there was no difficulty in the respondent's/plaintiff's obtaining the necessary 'No Dues Certificates'.

11. The very fact that the 'No Dues Certificates' having not been obtained either from the Electricity Authority or the House Tax Authority

or the Water Authority, though there were outgoings which were payable with respect to the said property and therefore the appellant was justified in retaining the balance sale consideration.

12. In view of the above, the appeal is allowed. The impugned judgment and decree dated 30.3.2010 is set aside. The suit of the respondent/plaintiff shall stand dismissed, however subject to the observation that the respondent/plaintiff will in terms of para 5 of the sale deed give the necessary 'No Dues Certificates' of the Electricity Authority, Water Authority or the House Tax Authority to the appellant/defendant within a period of 2 months from today. On these 'No Dues Certificates' being given, the appellant/plaintiff will within a period of 4 weeks thereafter pay the entire balance price in lump-sum by means of a bank draft payable in the name of the respondent/plaintiff. This bank draft can be given or sent by registered post to the respondent or be delivered to her counsel.

13. At this stage, counsel for the appellant/defendant states that the balance payment of Rs.7,80,000/- has been deposited in this Court on 8.12.2010 and is lying in a fixed deposit. Accordingly on the 'No Dues Certificates' of the relevant authorities being given to the appellant/defendant within a period of 8 weeks from today, the

respondent/plaintiff thereafter will be entitled to withdraw the amount lying deposited in this Court along with accrued interest.

14. The appeal is allowed and disposed of accordingly. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

NOVEMBER 14, 2011
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VALMIKI J. MEHTA,J