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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.405/2010

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24th November, 2011

SATISH KUMAR

..... Appellant

Through: Mr. S.C. Sagar, Adv.

VERSUS

KARAN SINGH & ANR.

..... Respondents

Through: Mr. Mohit Chaudhary with
Ms. Anupama Beniwal,
Ms. Rashi Bansal & Mr. Dheeraj Gupta,
Adv. for the respondent no.1
Mr. Umed Singh, Defendant no.2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure (CPC), 1908 impugns the judgment of the Trial Court dated 16.3.2010 by which the Trial Court decreed the suit for specific performance filed by the respondent no.1/plaintiff.

2. The facts of the case are that the respondent no.1/plaintiff entered into an agreement to sell with the original defendant/Sh. Jaishi, who has since expired and is now represented by his legal heirs, and who are the appellants in

this appeal. The agreement to sell dated 6.1.1995 is in the form of a receipt-cum-agreement. The total sale consideration was ₹4,60,000/- and out of which a sum of ₹2,30,000/- was paid on the date the agreement to sell was entered into. This aspect of receipt of ₹2,30,000/- is duly recorded in the agreement dated 6.1.1995. The respondent/plaintiff further paid a sum of ₹2,00,000/- to the original defendant/Jaishi/proposed seller through his son-Mahavir Singh on 1.2.1996. Therefore, a total sum of ₹4,30,000/- out of the total consideration of ₹4,60,000/- was paid to the seller Sh. Jaishi. It is alleged that since Sh. Jaishi wanted to wriggle out of the agreement to sell, a legal notice dated 13.7.1996 was sent on behalf of the respondent/plaintiff to him, and ultimately the subject suit for specific performance came to be filed. The basic defence of Sh. Jaishi in the written statement filed by him was that the agreement to sell dated 6.1.1995 was void because signatures on the same were obtained by the respondent/plaintiff in collusion with one of his son Sh. J.N.Sehrawat.

3. After the pleadings were complete, the Trial Court framed the following issues:-

“ISSUES

1. Whether the signatures of the defendant were obtained by fraud by his son upon the Agreement to Sell in question? If so, its effect? OPD
2. Whether the defendant was competent to enter into the agreement with the plaintiff in view of various clauses of the

lease deed? OPP

3. Whether the defendant did not agree to sell the suit land to the plaintiff? OPD

4. Whether the plaintiff was ready and willing to perform his part of the contract? OPP

5. Relief.”

4. The Trial Court has held that there is no collusion and that the respondent/plaintiff was always ready and willing to pay the balance nominal consideration of ₹30,000/-, and therefore, decreed the suit for specific performance by making, inter alia, the following observations:-

“14. It is no denial that defendant was an old person. Same died during trial of this case. If deposition of PW1 is taken as true, the defendant negotiated for the sale of plot in dispute on his own. He i.e. the defendant executed agreement cum receipt by signing it and that in the presence of Sh. J. N. Sehrawat who was none-else but the eldest son of him (deft.). After about one year, defendant came to his house and demanded balance sale consideration, which was also paid by the plaintiff. All this makes it clear that the defendant was in his full senses that is able to make a decision. Nothing is established on the file as plaintiff or said son of defendant namely Sh.J.N.Sehrawat played any fraud upon the defendant.

17. In the opinion of Id. Counsel for defendant the agreement to sell cum receipt was a fake document. A stamp paper on which it is written is shown to have been purchased from stamp vendor Sh. Vinod Kumar having license No.271 Kashmere Gate, Delhi but no such license having No.271 was ever issued in the name of Sh. Vinod Kumar.

19. In his cross examination, it is admitted by Sh. Kailash Chnad (DW 4) that licenses to stamp vendors were issued in serial order. In the register brought by this witness, license no.

270 is issued at serial no.64 and license no. 272 was issued at serial no. 65. There is no mention of license no. 271. No explanation is given as how no.271 remained missing while license no.270 and 272 were issued at no.64 and 65 respectively.

20. As mentioned above, plaintiff (PW 1) stated on oath that defendant executed receipt cum agreement (Ex.PW 1/1) which was witnessed by son of defendant Sh.J.N.Sehrawat. He identified signatures of defendant as well as of said witness on this document at points A and B.

21. The transaction having taken place has not been denied even by the defendant. It is admitted by Sh. Umed Singh (DW 1) that his father (defendant) had told him about his desire to sell suit property. Mother of sh. Satish Kumar told him about plot in question having been sold to Sh. Karan Singh and thereafter his father also disclosed him about such sale. Even defendant did not deny having executing such a document, though claimed that his signatures were obtained by playing fraud.

24. It is stated on oath by Umed Singh (DW1) that the DDA allotted plot in dispute to his deceased father on certain terms and conditions, which were embodied in the lease deed. One of such conditions was that suit plot will remain non transferable for a period of ten years.

25. Neither any such lease deed was produced on the record nor any witness was examined by defendant to prove any such covenant between DDA and the defendant. Even otherwise, as per ld. counsel for plaintiff when entire sale consideration was paid by the latter to the defendant prior permission of DDA could not come in the way for execution of sale deed. Ld. Counsel relied upon a case titled as **Vinod Singh vs. Phutori Devi (since deceased) through her LRs – 2006(87) DRJ 567 High Court of Delhi** in almost similar conditions as are confronted in this case, it was held by our own High Court that the plaintiff was entitled to a decree of specific performance of agreement to sell and prior permission from DDA was not required.

26. It is again argued that receipt cum agreement (Ex.PW1/1) cannot be treated as an agreement to sell. As per Ld. counsel for defendant, at the most, same could be treated as receipt of payment. Ld. counsel cited a case titled as “**Lalit Kumar Sabharwal vs. Ved Parkash Vijn – 2003 (68) DRJ 670**’. The document stated to be an agreement to sell was not signed by both of parties, it was held by High Court of Delhi that it did not fulfill conditions of agreement to sell, therefore, it was not a valid and legal agreement for sale. Rather, same was merely a receipt of payment.

27. No specific performa is prescribed to secrete agreement to sell. As per Section 10 of The India Contract Act, all agreements are contract if they are made by free consent of the parties, competent to contract, for a lawful considering and with lawful object and are not hereby expressly declared to be void. Section 29 of same Act prescribes that the agreements, the meaning of which is not certain, or not capable of being made certain, are void.”

5. Learned Trial Court therefore gave the findings and the conclusions that not only there was no fraud and collusion upon Sh. Jaishi, it was also found that merely because a stamp has not been purchased from a licensed vendor will not make any difference because Sh. Jaishi admitted his signatures on this document on the stamp paper being the agreement to sell dated 6.1.1995. The Trial Court has also held that there is no format of an agreement to sell, therefore once all the necessary ingredients of the contract are found in the receipt-cum-agreement dated 6.1.1995, it does not lie in the mouth of the appellant/defendant to allege that there was no agreement to sell.

In addition to the aforesaid findings, I feel that there are other reasons also to hold that there was no collusion between the respondent/plaintiff and the son of Sh. Jaishi as alleged inasmuch as if there was collusion, why did Sh.Jaishi continue to retain ₹2.3 lacs with him paid to him under the agreement to sell. If there was collusion, Sh.Jaishi would have immediately refunded the amount back to the respondent/plaintiff. Admittedly, this was not done and therefore there is no substance in the plea of collusion. Another reason to hold that there was no collusion as alleged between the respondent/plaintiff and the son of Sh. Jaishi in getting the agreement to sell signed, inasmuch as, if a person is defrauded in signing the document, then, the said person immediately would have sent a legal notice withdrawing from execution of the alleged document which was stated to have been got signed by fraud. Admittedly, no notice was ever issued by late Sh. Jaishi withdrawing from the document on the ground that the same was signed in collusion. In my opinion, further, a plea of collusion is a plea which falls under Order 6 Rule 4 CPC and as per which position it is necessary that there should be great and detailed material particulars with respect to the plea of collusion. Unless there are detailed particulars with respect to the collusion, the plea of collusion cannot be accepted. Except making a self-serving statement of collusion no particulars have been given and therefore in

my opinion, the requirement of Order 6 Rule 4 CPC is not complied with. I must also add at this stage that collusion is for an illegal purpose. Something illegal or undesirable or unwanted is sought to be achieved through collusion. There is no evidence or pleading to show what was the illegal, unwanted or undesirable aim which was allegedly sought to be achieved through this so-called collusion, which was never proved, and which in fact is false because of the reasons given above.

6. Learned counsel for the appellant argued three main points. Firstly, it is argued that the Trial Court ought to have held that there was a collusion between the son of Sh. Jaishi, namely, J.N.Sehrawat and the respondent/plaintiff making the agreement to sell void. The second argument was that agreement to sell is not a valid document. The third argument was that the agreement was not written on the stamp paper and therefore it showed that this document was a void document and there was therefore collusion. All these aspects have already been dealt with by me above by holding that neither there is any collusion, nor can it be said that agreement to sell is not a valid document inasmuch as all the terms and conditions of the proposed sale are clear, and, the fact that merely because the stamp paper does not seem to have been purchased from a particular stamp vendor cannot take away the fact that Sh. Jaishi had admitted his signatures on

the agreement to sell.

7. A civil case is decided on balance of probabilities. The balance of probabilities in the present case undoubtedly shows that not only the agreement to sell was entered into, the same was acted upon, the proposed seller/Jaishi received almost the entire consideration of ₹4,30,000/- out of the total of ₹4,60,000/- and there was no collusion in getting the agreement to sell signed. The suit for specific performance was thus rightly decreed

8. In view of the above, there is no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA,J

NOVEMBER 24, 2011
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