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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.361/11 & RFA No.364/11

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21st July, 2011

1. RFA No.361/11

SANGEETA DALMIA

..... Appellant

Through: Mr. Sunil Sabharwal, Adv.

VERSUS

RAJINDER KAUR BEDI & ANR.

..... Respondents

Through: None

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2. RFA No.364/11

SANGEETA DALMIA

..... Appellant

Through: Mr. Sunil Sabharwal, Adv.

VERSUS

RAJINDER KAUR BEDI

..... Respondent

Through: None

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)

CM No.13113/11 in RFA No.361/2011

This is an application for extension of time for deposit of Court fee. Court fee has already been deposited. The application is disposed of as having become infructuous.

CM No.13114/11(exemption) in RFA No.361/2011

Allowed, subject to all just exceptions.

Application stands disposed of.

CM No.13253/2011(exemption) in RFA No.364/2011

Allowed, subject to all just exceptions.

Application stands disposed of.

**+ RFA No.361/2011 & RFA No.364/2011 with
CM No.13252/2011(stay) in RFA No.364/2011**

1. Both these appeals can be heard and disposed of together as they are between the same parties and they arise from more or less, common facts. Whereas RFA No.364/11 challenges the judgment of the Trial Court dated 19.3.2011 which decreed the respondents'/plaintiffs' suit for possession and mesne profits against the appellant, RFA No.361/2011 is the appeal of the appellant/plaintiff in the other suit in which recovery of money was claimed by the appellant, being double the amount of the price paid, on account of the breach committed of the agreement to sell by the defendants therein, (and who are the respondents in both the appeals) and which has been only partly decreed only for refund of the advance price paid with interest and not for double of the advance price. I may note that reference to the respondents would include Mr.I.S.Bedi, (who is the predecessor-in-interest of the respondents) and with whom the subject agreement to sell was entered into.

2. The facts of the cases are that the appellant Smt. Sangita Dalmia entered into an agreement to sell with late Sh. I.S.Bedi with respect to the property admeasuring 1200 square yards having a

construction of a boundary wall and one room situated at khasra no. 134, village Siraspur, Delhi. It is stated that an agreement was entered into vide a receipt dated 14.3.1999 for a total consideration of Rs.10,21,000/- and of which the appellant paid a sum of Rs.1,11,000/-. The appellant also claimed that late Sh. I.S.Bedi handed over possession of the suit property to the appellant on making of the payment of Rs.1,11,000/-. It was the case of the appellant in her suit for recovery of money filed in the Trial Court, being Civil Suit no.227/2010 (subject matter of RFA No.361/2011) that she was misled by late Sh. I.S. Bedi that he was the owner of the property whereas the suit property vested with the gram sabha. The appellant therefore claimed to have rescinded the contract and sought refund of double the amount of advance paid in the Civil Suit no.227/2010, and which suit has been decreed by the Trial Court not to the extent of double the amount of advance money paid of Rs.1,11,000/-, but to the extent of Rs.1,11,000/- with interest thereon.

3. RFA No.364/2011 is the appeal filed by the appellant, who was the defendant in the suit for recovery of possession and mesne profits which was filed by the widow of late Sh. I.S. Bedi, Mrs. Rajinder Kaur Bedi, and who is the respondent in RFA No.364/2011 and the respondent no.1 in RFA No.361/2011. The suit for possession and damages has been decreed against the appellant on the grounds that it was the admitted case of the appellant that she received possession from late Sh. I.S. Bedi under the subject agreement to sell and therefore, it could not be claimed that the appellant was not liable to return back possession to the respondent who

is the successor-in-interest of late Sh.I.S.Bedi. It has also been held that once appellant has been held entitled to recovery of the advance price paid with interest, there was no reason to continue to hold on to the possession of the suit property, and which had to be returned, more so because no order of the SDM vesting the property in gram sabha had been filed.

4. Two issues are therefore canvassed in the subject appeals before me. In the appeal no. 364/2011, prayer is made for setting aside of the decree for possession and mesne profits. In the RFA No. 361/2011, prayer is made for increasing the amount of decree from Rs.1,11,000/- to double the amount of this price.

5. Learned counsel for the appellant argued before me that the Khatoni (revenue record) of the year 1990-91 with respect to the suit land, which was filed before the Trial Court and proved as Ex.PW1/D2, established that the property vested in gram sabha and therefore the appellant was not liable to hand over the possession to the respondents. On the aspect of the claim of seeking enhancement of the decree to double the amount of price paid, it was argued that since the appellant had validly rescinded the contract, and since, the respondents had misled the appellant in entering into the agreement to sell, the appellant was entitled to double the amount of advance amount paid. It is also argued that the suit for possession ought not to have been decreed because the suit was on the basis of title and was not a suit under Section 6 of the Specific Relief Act, 1963 for claim of specific relief.

6. In my opinion, both the appeals are wholly without merit and therefore are liable to be dismissed.

7. So far as the RFA No. 361/2011 challenging the money decree in favour of the appellant having been granted refund of only the price paid of Rs.1,11,000/- along with interest and not double the amount, the appeal is without merit because the Trial Court records the fact that in the receipt, it is not mentioned that in case of breach, the appellant will be entitled to double the amount of advance price paid. No fault can thus be found with such a conclusion of the Trial Court. Also if the appellant prayed for being awarded double the price paid, then he was bound to plead and prove that after entering into the agreement to sell the prices of the property had increased, and that when he went to purchase a similar property in the market the same was available at a higher price and therefore having been caused loss/damages, the appellant was entitled to any addition to the original price paid of Rs.1,11,000/-, a further amount of Rs.1,11,000/- for such loss or damages. However, as admitted by the counsel for the appellant, there are absolutely no pleadings and evidence, and consequently this issue is not discussed by the Trial Court that the appellant was able to plead and prove that the appellant had loss entitling the appellant to damages of Rs.1,11,000/- in addition to refund of the price paid of Rs.1,11,000/-. Accordingly, on both the counts that the receipt does not contain the fact with respect to requirement to pay double the amount of earnest money and also because of the fact that there is no pleadings and proof of any loss having

been caused to the appellant, the Trial Court has rightly decreed the suit only for the refund of the advance of Rs.1,11,000/- with interest at 9% per annum.

8. So far as the judgment and decree in the suit for possession and the mesne profits being subject matter of RFA No. 364/2011, it was the case of the appellant/defendant itself that she received possession of the suit property from late Sh.I.S.Bedi under the agreement to sell. Once, possession is received under an agreement to sell, and which is thereafter sought to be rescinded on the ground that the contract is voidable because the buyer/appellant was misled, then the consequences are provided in Sections 64 & 65 of the Contract Act which read as under:-

“64. Consequences of rescission of a voidable contract.- When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise, therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he had received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

65. Obligation of person who has received advantage under void agreement, or contract that becomes void.- When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from who he received it.”

9. A reference to aforesaid sections show that a party rescinding a voidable contract shall, if he had received any benefit there under, from the other party to such contract, then the party rescinding is liable to restore such benefit to the person from whom it was received. The appellant admits to receive possession under the said agreement to sell

which the appellant rescinded. Accordingly, Sections 64 & 65 will immediately come into play inasmuch as the appellant had already been granted a decree with respect to refund of the advance price paid along with interest. Consequently, leaving apart the fact that there may not be a title in favour of late Sh. I.S.Bedi who entered into an agreement to sell with respect to the plot, the fact of the matter is that possession was indeed received by the appellant from late Sh.I.S.Bedi. In law, possessory title is as much recognized as an ownership in the property along with the right to possession based on title. If possession is given by a person under an agreement which is rescinded, then such possessory right, being a valuable right, has to be returned to the person from whom possession was received. I cannot subscribe to the arguments on behalf of the appellant that the suit ought to have been filed under Section 6 of the Specific Relief Act. A suit under Section 6 of the Specific Relief Act is filed by a person who has a possessory right because another person with a lesser possessory title illegally dispossess such previous person from possession of the property and therefore summary proceedings are provided for under Section 6 of the Specific Relief Act, 1963 for taking back/recovery of possession.

10. In view of the facts with regard to the subject agreement to sell, the fact that the agreement to sell was rescinded by the appellant, allegedly on account of being misled as title to the property, the fact that the appellant has received back the price paid under the agreement along with interest, and the fact that possession was in fact received from late

Sh. I.S.Bedi by the appellant- all the aforesaid being admitted facts, there are no disputed questions of fact which require detailed examination of the Trial Court record, and which therefore is not required to be summoned.

11. Counsel for the appellant also argues that damages ought not to have been awarded against the appellant. This argument is also without merit because if a person forces a person to file a suit for possession to recover property, then surely benefit of illegal possession could not be granted to a person who is found to be in such a legal possession who in law is bound to pay mesne profits for the period for which the illegal possession continued. Mesne profits are therefore a natural consequence to retaining of illegal possession and which is also so specified in Section 2(12) CPC. The Trial Court had taken a fair rate of Rs.6,000/- per month inasmuch as the Trial Court has recorded that the rental value of the factory of the appellant which is just opposite to the suit property must be Rs.5,000/- to Rs.7,000/-. A civil case is decided on balance of probabilities. In the present case, we are dealing with the physical possession of the property which is of a huge area of 1200 square yards. Therefore, there is nothing illegal or perverse in the impugned judgment which directs payment of mesne profits of Rs.6,000/- per month.

12. No other issue arises or is pressed for. The appeals and the application for stay are dismissed.

JULY 21, 2011
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VALMIKI J. MEHTA, J.