

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

% *Date of Judgment: 18.03.2011*

+ **RSA No.191/2008 & CM No. 11817/2008**

SHRI SURESH GEHLOT Appellant
Through: Mr. Jagat Rana, Advocate.

Versus

SHRI CHANDER PRAKASH KUSHWAHA Respondent.
Through: Mr.K.K. Sharma, Advocate.

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 28.04.2008 which had reversed the findings of the trial Judge dated 09.02.2007. Vide the judgment and decree dated 09.02.2007, the suit of the plaintiff Chander Prakash Kushwaha seeking recovery of ₹1,76,000/- had been dismissed. The impugned judgment has reversed this finding. Suit stood decreed.

2 The case of the plaintiff is that he was doing the business of sale and purchase of property. The defendant was also in the same business. The plaintiff entered into a transaction for sale and purchase of plot bearing No.S-118, Mohan Garden, Delhi which was owned by the defendant. In this context, a sum of ₹2 lacs was paid by the plaintiff to the defendant. This deal did not mature. The

plaintiff requested the defendant for refund of his money. With the intervention of relatives, a settlement was arrived at between the parties whereby the defendant agreed to pay ₹1,10,000/-; this was vide an agreement dated 25.05.2000. The agreement was attested by 4 witnesses of whom Mr. Inder Singh has been examined as PW-2 and Mr. Pawan Pratap Singh has been examined as PW-3. In spite of the aforementioned undertaking, the defendant did not refund the amount, suit was accordingly filed.

4 In the written statement, the defendant had denied the execution of any such document between the parties; he had denied that any amount was payable by the defendant to the plaintiff. It was contended that the defendant had entered into a sale transaction with Mr. Pawan Pratap Singh; Mr. Pawan Pratap Singh had given money to the defendant; Bayana amount had been returned to Mr. Pawan Pratap Singh on 26.04.2000 which had been endorsed by the plaintiff. No cause of action had accrued in favour of the plaintiff.

5 On the pleading of the parties, the trial court had framed 10 issues. Oral and documentary evidence was led. The trial Judge had held that there is no privity of contract between the parties; suit of the plaintiff stood dismissed.

6 The impugned judgment had reversed this finding. The impugned judgment had returned a finding in favour of the plaintiff. Relevant extract reads as follows:-

“ Therefore from the testimonies of the plaintiff's witnesses and that of the defendant himself it is fairly proved that the earnest money reflected in Ex. PW-1/D1 was paid by the plaintiff.

According to the plaintiff, subsequent to the payment of ₹1 lac on 25.03.2000, he had paid ₹ 1 lac on 15.04.2000. According to him, a settlement had been reached on 24.05.2000 whereby he

agreed to receive ₹1,10,000/-instead of ₹ 2 lacs due to him. It is the case of the defendant that he had paid ₹ 1 lac to Pawan Pratap Singh in the presence of the plaintiff on 26.04.2000 and that the plaintiff had been recorded on the bayana receipt that he had no interest or connection with the plot in question.

The question that strikes one is why would the plaintiff write such a thing and why would the defendant have wanted such an assurance from the plaintiff if the plaintiff had nothing got to do with the transaction? In other words, the defendant is blowing hot and cold at the same time and is not disclosing all the facts. If the plaintiff had nothing to do with the transaction relating to the bayana receipt, if the defendant's version is to be believed, neither would the plaintiff have come to receive the alleged repayment nor would he have written what is recorded at point A on Ex. PW-1/D1. The very case set up by the defendant belies his claim that he had nothing to do with the plaintiff or that the plaintiff had no locus or cause of action to file this suit against him.

Another fact is that during the entire cross-examination of PW-3 Pawan Pratap Singh, he was not asked about the payment of ₹ 1 lac to him on 26.04.2000. He denied the suggestion put to him that he had not initiated any legal action against the defendant after the transaction fell through because he had entered into a settlement with the defendant. Rather in the affidavit, the defendant as DW-1 claimed that it was the plaintiff himself who had taken back ₹ 1 lac from him on 26.04.2000. There does not appear any substance in this claim, as is clear from the evidence. The observation of the Ld. Trial Court is that the statement of the defendant as DW-1 that Pawan Pratap Singh at point 'Z' had gone un rebutted and as the plaintiff has admitted having written the portion marked 'A' therefore it had to be concluded that ₹1 lac had been paid to Pawan Pratap Singh are both misplaced and is a consequence of mis-appreciation of the evidence.

In the first place PW-3 Pawan Pratap Singh was never asked about the receipt of ₹ 1 lac. He has denied any settlement with the defendant. Most importantly the receipt and signatures at point 'Z' on Ex. PW-1/D1 was not even put to him. In fact, he was questioned about his signatures at point 'X' on the said document and he admitted that the signatures were his. But he was not asked to confirm the signatures at point 'Z'. A bare comparison of the two signatures, at point 'X' and point 'Z' would show how different they are from each other. There can be no doubt of any kind that PW3 Pawan Pratap singh has not signed at point 'Z'. On the interested statement of the defendant who has been changing his stance between the written statement and affidavit and it

unsure as to whom he had paid ₹1 lac to the plaintiff or to the PW3 there was no justification for the Ld. Trial Court to conclude that the defendant had discharged the burden of proving payment of ₹ 1 lac to Pawan Pratap Singh.

Clearly the signatures at point 'Z' are not of the plaintiff as they do not resemble the admitted signatures at point 'B' on Ex. PW1/Defendant No. 1.

There is yet another reason to reject the claim of the defendant of repayment. The so called receipt signed at point 'Z' on Ex. PW1/D1 reads as follows: "Received sum of ₹1,00,000/- (One Lakh) as part payment against plot no. R-III A/118". If only ₹1 lac had been paid by (according to the defendant) Pawan Pratap Singh why describe it as part payment? On the other hand the explanation of the plaintiff appears more logical that after the first payment of earnest money a further payment was made as the total sale consideration was ₹6,38,400. Or it can be a confirmation of the part payment already made in view of the endorsement made that ₹ 50,000 of the earnest money was to be paid on 26.3.2000 whereas the bayana receipt is dated 25.3.2000. In either case the receipt could have been issued only by the defendant and not the PW3 Pawan Pratap Singh or the plaintiff.

In fact, a comparison of these signatures at point 'Z' and those at point 'B' on Ex. PW 1/1 bear a striking resemblance. In other words if Ex. PW1/D1 is to be accepted as an authentic document, and in the light of the findings herein above that the signature at point 'Z' are not those of the plaintiff or Pawan Pratap Singh and that the signatures could only be of the defendant himself acknowledging part payment, the only conclusion that can be drawn is that the document Ex. PW 1/1 has been signed only by him at point 'B'. The denial by the defendant of these signatures is only motivated. It needs no great powers of deduction to know that once a suit has been filed and litigation has commenced, litigants are prone to camouflage their signatures and handwriting. Therefore the dissimilarities in the signatures of the defendant on his pleadings and vakalatnama as compared to the signatures appearing on Ex. PW 1/1 & Ex. PW 1/D1 cannot suffice to discard the former document as unauthentic.

Moreover, the witnesses who have come in the witness box on behalf of the plaintiff are natural witnesses. PW3 Pawan Pratap Singh has deposed to the working out of a settlement between the plaintiff and the defendant and has recognized Ex. PW 1/1 as the

document of settlement. He admits that his signatures are not on it. At the same time he has identified the signatures of the plaintiff and defendant on this document, Similarly, PW2 Inder Singh has deposed to the settlement between the plaintiff and the defendant and has identified their signatures and his own on the said document.

Apart from the document Ex. PW 1/1, the evidence that has come on the record is sufficient to prove that there was a land transaction between the parties whereby a plot of land was to be purchased in the name of Pawan Pratap Singh for which the plaintiff had paid the earnest money amounting to ₹ 1 Lac. There is evidence to prove that the transaction did not fructify. There is no evidence to prove that the defendant thereafter re-paid the said sum of ₹ 1 lac to the plaintiff. Considering the time that had passed it is not inconceivable that an agreement was reached along the terms reflected in the document Ex. PW1/1, whereby the defendant agreed to repay ₹ 1,10,000 instead of ₹ 1 lac, by November 2000, ie after about six month. The terms of the agreement in the background of the admitted transaction and payment does not appear one sided or unconscionable.

Thus upon an assessment of the evidence that has come on the record, I hold that the findings of the Id. Trial court on all the 10 issues are liable to be and are set aside. The issues are answered in favour of the plaintiff and against the defendant.

Accordingly, the plaintiff is found entitled to the recovery of ₹ 1,10,000 with interest. There is no evidence to prove that the plaintiff is entitled to 18% interest per annum. An interest rate of 10 will meet the ends of justice.

The suit of the plaintiff is decreed for a sum of ₹ 1,10,000 with interest @ 10% per annum with effect from December 2000 till date of actual recovery with costs of the suit and appeal. Decree sheet be prepared accordingly. "

7 This finding was arrived at after a re-appreciation of the entire oral and documentary evidence which had been led between the parties. Ex. PW-1/1 was the document which had formed the basis of the case of the plaintiff which as per the plaintiff had been signed by the defendant at point 'D'. The defendant had denied his

signatures at point 'D'. The court after a detailed scrutiny of oral and documentary evidence returned a finding that the defendant had agreed to repay ₹1,10,000/- in lieu of ₹2 lacs which he had taken. The testimony of Inder Singh an attesting witness (examined as PW-2) as also the testimony of Pawan Pratap Singh who was another attesting witness to this document (examined as PW-3) had been adverted to; this was besides the testimony of PW-1. Ex.PW-1/D1 was the Bayana receipt dated 25.03.2000 signed by the defendant wherein he had received a sum of ₹50,000/- from Pawan Pratap Singh qua the sale/purchase of a plot; the endorsement on the back page of this document dated 15.04.2000 stated that a sum of ₹ 1,00,000/- has been received by Pawan Pratap Singh; endorsement of the plaintiff Chander Prakash dated 26.04.2000 is to the effect that he has no concern with this plot. The document on the basis of which the claim of the plaintiff is slated is dated 25.05.2000 which is later in time.

8 This was a settlement arrived at between the parties whereby the defendant had agreed to pay a sum of ₹1,10,000/- to the plaintiff in full and final settlement of his claims. This was in view of the specific averment of the plaintiff that he had advanced the sum of ₹2 lacs but a settlement had been arrived at between the parties whereby the defendant had agreed to repay the sum of ₹1,10,000/- instead of ₹2 lacs due to him. This document had been witnessed by PW-2 and PW-3 who had supported the stand of the plaintiff. PW-3 is a neutral witness; in fact as per the case of the plaintiff, he had entered into a transaction with PW-3; there was no reason as to why PW-3 would have for any ulterior purpose deposed against the defendant. So also the case of PW-2 who had

also in his cross-examination stated that he was not a friend of the plaintiff; no reason has been pointed out as to why PW-2 would have supported the stand of the plaintiff except for the reason that this was a true fact. The impugned judgment had also noted that in the entire cross-examination of PW-3, no question was put to him about the payment of ₹1 lac paid to him on 26.04.2000. In fact the signatures of PW-3 on Ex. PW-1/D1 had not been put to him at all; this document also did not bear the signatures of the plaintiff. This fact finding had been returned in the impugned judgment.

9 This is a second appeal. It is yet at its admission stage. Substantial questions of law have been embodied at page F of the body of appeal. They read as under:-

- “1. Whether the Ld. First Appellate Court is justified in making out a case in favour of the respondent/plaintiff on facts and documents pleaded by him?
2. Whether the Ld. First Appellate Court has acted judicially by granting decree on the pleadings and grounds raised for the first time in appeal?
3. Whether Ld. First Appellate Court has correctly applied the Law of Evidence on proof of Ex. PW-1/1?
4. Whether the respondent/plaintiff had legally discharged the burden of proof to prove his case?”

10 No such substantial question of law has arisen. Appeal as also pending application are dismissed in limine.

INDERMEET KAUR, J.

MARCH 18, 2011

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