

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

+ **RFA No.474/2009**

% **9th December, 2011**

RAJ SINGH & ORS Appellants
Through: Ms.Priyanka &
Mr. M.K.Bhardwaj, Adv.
versus

SUDESH GUPTA Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Vide order dated 1.11.2011 this case was listed for today as no one was present for the respondent on 1.11.2011. Today even in spite of passover, no one appears for the respondent. I have therefore perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment of the Trial Court dated 24.10.2009 by which the suit for specific performance filed by the respondent/plaintiff was decreed.

3. The facts of the case are that the respondent/plaintiff filed the subject suit for specific performance alleging that the appellants/defendants had entered into an agreement to sell dated 18.12.1997 (Ex.PW2/3) with them for selling 18 bighas and 19 biswas of land situated in the revenue estate of village Mohammadpur Ramzanpur, Delhi. The area of 18 bighas and 19 biswas would translate to about nineteen thousand sq. yds. of land. The case of the respondent/plaintiff was that the total sale consideration was fixed at Rs.4,95,000/-. A sum of Rs.1,00,000/- was stated to have been paid in cash on the date of the agreement to sell and so recorded in a receipt of the same date, Ex.PW1/2. It was further pleaded that an amount of Rs.1,00,000/- was further paid to the appellants/defendants on 5.1.1998 and a further sum of Rs.1,00,000/- was again paid on 16.3.1998. It was pleaded that since the appellants/defendants failed to take the necessary no-objection certificate from the Revenue Authorities or the income tax clearance certificate, the appellants/defendants therefore breached the agreement to sell, and consequently the subject suit for specific performance was filed.

4. The appellants/defendants contested the suit and pleaded that the agreement to sell is a forged and fabricated document inasmuch as the actual agreement of the appellants/defendants was not with the

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respondent/plaintiff but with one Sh. Pawan Kumar Gupta and the sale consideration was Rs.11,01,000/- per acre and not a total amount of just ₹4,95,000/-. It was pleaded that there was no question of sale of the land in question for a paltry amount of Rs.4,95,000/-. A crucial aspect pleaded by the appellants/defendants was that whereas the agreement to sell talked of land to be sold of 18 bighas and 19 biswas, however, this figure of 18 bighas 19 biswas was the figure picked-up from the Revenue Records. Though there was no change in the Revenue Records, however, the appellants/defendants were only owners of 15 bighas and 11 biswas of land, inasmuch as portion of the land had already been acquired by the Government way-back in the year 1983-84. It was pleaded that the total sale consideration for 15 bighas and 11 biswas actually comes to Rs.34,68,859/- and therefore it is inconceivable for the land to be allegedly sold for Rs.4,95,000/-. It was pleaded that Sh. Pawan Kumar Gupta had taken certain signatures on certain blank documents promising to type the correct agreement to sell, however, the subject agreement to sell was forged and fabricated inasmuch as said Sh.Pawan Kumar Gupta wanted to pay most of the amount in cash/black money which was refused by the

appellants/defendants.

5. After the pleadings were completed, the Trial Court framed the following issues:-

“i) Whether the plaintiff has no locus standi to file the present suit, if so what its effect? OPD

ii) Whether the suit is bad for non-joinder of necessary parties as mentioned in P.O.No.5? OPD

iii) Whether the alleged contract is unconscionable as market value of the property in question was Rs.11,01,000/- per acre at the time of execution of the alleged agreement, if so, what is its effect? OPD

iv) Whether the suit is not properly valued for the purpose of court fees and jurisdiction? OPD

v) Whether this court has no pecuniary jurisdiction as alleged in WS? OPD

vi) Whether the suit is within limitation? OPP

vii) Whether the deft had entered into an agreement to sell of their property for a total consideration of Rs.4,95,000/- and had received Rs.1 lac at the time of execution of the alleged agreement to sell? OPP

viii) Whether the plaintiff remained ready and willing to perform her part of contract and is still ready to the same? OPP

ix) Whether the plaintiff is entitled to a decree for possession by way of specific performance as claimed? OPP

x) Relief.”

6. I may note that the Trial Court has on very important issues which were involved in the present case given extremely cursory findings. Important aspects as to the agreement to sell being forged and fabricated because the same contains an area/land which was never owned by the appellants/plaintiffs, or the documents being signed in blank or the sale consideration could never have been a paltry sum of Rs.4,95,000/- have not been properly dealt with. In order to appreciate the cursory nature of findings, I would seek to reproduce paras 8, 10, 11 and 13 of the judgment which read as under:-

“8.Finding on Issue No.1

Onus of proving this issue was on the defendant whose case is that they have not entered into any agreement to sell with the plaintiff. In fact, they have entered into the agreement to sell with Shri Pawan Kumar Gupta who manipulated the documents. I have perused the Agreement to Sell Ex.PW-2/3 which clearly shows that defendants had entered into Agreement to Sell with the plaintiff. This fact is corroborated by evidence by attesting witness. Further it is contended by counsel for defendant that plant has not been verified and signed properly. Plant has been signed and verified by attorney of plaintiff viz. PW-1/1 on record. In view of that, this issue stands proved and decided in favour of plaintiff and against the defendant.

Finding on Issue No.3.

10. Onus of proving this issue was on the defendant whose case is that agreement to sell is unconscionable as at the time of entering into the agreement to sell between the parties, value of the land was more than Rs.11,01,000/- per acre. Defendant being a poor and illiterate person, has been cheated by plaintiff by executing this agreement to sell. On the one hand execution of agreement to sell is denied and on the other hand it is stated that the consideration is less. It is on the parties to arrive at any agreement regarding property in question. Even if it is admitted that the consideration is at a lower side, it could not be said that agreement is unconscionable agreement. Accordingly this issue is decided in favour of plaintiff and against the defendant.

Finding on Issues No. 4 & 5

11. Onus of proving these issues was on the defendants whose case is that the suit of the plaintiff is not properly valued for the purpose of court fees and jurisdiction and this court has no pecuniary jurisdiction to try the suit. In a suit for specific performance, valuation is required to be put at the value put in the agreement to sell and plaintiff has accordingly valued the suit properly for the purpose of court fees and jurisdiction at Rs.4,95,000/-. Accordingly suit is properly valued for the purposes of court fees and jurisdiction and valuation of the suit being Rs.4,95,000/- much below the pecuniary jurisdiction of this court which is Rs.20 lacs, this court has pecuniary jurisdiction to try the suit. Both these issues are decided in favour of plaintiff and against the defendants.

Finding on Issues No.7, 8 & 9

13. Onus of proving all these issues was on the plaintiff who has proved on record the agreement to sell executed between the parties Ex.PW-2/3 duly

corroborated by the statement of PW-2 and receipt Ex.PW-1/2 and PW-2/1, PW-2/2 and Ex.PW-1/5 by virtue of which payment of Rs.4 lac was made. Plaintiff served the notices upon the defendants. First notice was not replied. Second notice was replied in which a plea was taken that no agreement to sell was executed between the parties despite the extension of time. Several times letters written by plaintiff to the defendant. The Sale deed was not executed though, plaintiff was required to pay the amount at the time of execution of sale deed and had paid earnest money of Rs.1 lac. He has paid more than Rs.3 lac even after the execution of agreement to sell on the request of the defendant only. The payment of Rs.95,000/- is required to be made towards the remaining consideration of agreement to sell of which plaintiff is willing and ready to perform her part of contract. Hence it is held that defendant has entered into agreement to sell with the plaintiff Ex.PW-2/3 for a consideration of Rs.4,95,000/- and received 1 lac towards the earnest money. Plaintiff is ready and willing to perform her part of contract. Hence accordingly, suit of the plaintiff is decree. Defendants their agents, associates etc. are directed to execute the sale deed in favour of plaintiff in respect of the agricultural land measuring 18 bighas and 19 biswas bearing khasra no.373 (1-18), 374(2-11), 375(5-4), 381(2-18) and 282(6-8) situated in the area of village-Mohammadpur Ramzanpur, Delhi less the land which is already acquired by the Government of NCT of Delhi on payment of consideration of remaining amount of Rs.95,000/- within the period of one month. In case of non-compliance of this order by any party the other party will be free to get it executed with the help of this Court. Ordered accordingly.”

7. I am afraid that the Trial Court has arrived at findings which are

incorrect both in facts and law. Firstly, the agreement to sell in question is undoubtedly a forged and fabricated document inasmuch as the agreement to sell cannot talk of sale of 18 bighas and 19 biswas of land, inasmuch as, appellants/defendants were only owners of 15 bighas and 11 biswas. This aspect conclusively proves that the signatures of the appellants/defendants were taken on a blank paper and subsequently which was made into an agreement to sell. Obviously, at the time of making of the agreement to sell, the respondent/plaintiff would have looked at the Revenue Record which would have reflected the appellants/defendants as owners of the 18 bighas and 19 biswas, although, part of this land was already acquired by the Government way-back in the year 1983-84 leaving the appellants/defendants only with an area of 15 bighas and 11 biswas. The fact that the agreement to sell is a forged and fabricated document and the signatures of the appellants/defendants were taken on a single blank piece of paper is also established by the fact that in the agreement to sell, there are no signatures of the appellants/defendants either on page 1 or page 2 of the agreement. Even on the third and the last page of the agreement, the signatures of the appellants/defendants appear above the expression “second party” whereas

the space constraint or typographical error, there was available no space to adjust the signatures of the appellants/defendants. I therefore hold that the agreement to sell in question is clearly a forged and fabricated document.

8. Another reason for holding that the agreement to sell is a forged and fabricated document is because the appellants/defendants have filed and proved on record a legal notice dated 16.2.1999, Ex.DW1/A, issued to them on behalf of one Sh. Yash Bhatia through their Advocates, and in which notice it was alleged that the appellants/defendants had agreed to sell their land to Sh. Yash Bhatia vide agreement to sell dated 25.6.1997 at Rs.11,01,000/- per acre. Obviously, therefore if in June, 1997, the price of the subject land to be sold was Rs.11,01,000/- per acre, then, subsequently under the agreement to sell dated 18.12.1997, it could not be that the land was to be sold for a total amount of Rs.4,95,000/-.

9. Other important aspects which also can be noted are that in the receipts which have been filed and exhibited by the respondent/plaintiff, Ex.PW1/2 dated 18.12.1997 and Ex.PW2/2 dated 16.3.1998, the typing showing the person from whom payment has been received is of a different typewriter/printer than the original receipt typed, showing that the name of

Sh. Sudesh Gupta, the present plaintiff/respondent, which is typed
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subsequently by a different typewriter, and obviously which name would have been added in furtherance of the forged and fabricated agreement to sell. I may note that the appellants/defendants are honestly stating that they did, in fact, receive a sum of Rs.4,00,000/-, however, it is said that this amount of Rs.4,00,000/- was received not from the respondent/plaintiff but from Sh.Pawan Kumar Gupta under an agreement by which the land was agreed to be sold at Rs.11,01,000/- per acre.

10. Finally, I may add that the respondent/plaintiff did not file either the books of accounts or the income tax returns to show whether at all any agreement to sell in question was reflected in the books of accounts or that in the income tax returns the payment, which was alleged to be made by the respondent/plaintiff, was reflected.

11. In view of the above, I hold that the agreement to sell dated 18.12.1997, Ex.PW2/3 is a forged and fabricated document inasmuch as neither the appellants/defendants were owners of 18 bighas and 19 biswas of land nor could the agreement has been for a sum of Rs.4,95,000/- for the huge area of above nineteen thousand sq. yds. as per the case of the respondent/plaintiff and fifteen and a half thousand sq. yds. as per the case of the appellants/defendants. There is quite clearly a ring of truth in the
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stand of the appellants/defendants and obvious dishonesty/falsehood in the stand of the respondent/plaintiff. This is all the more clear because the respondent/plaintiff has not appeared to contest the present appeal.

12. Finally I may note that the possession of the suit land, even if it is assumed only to be of 15 bighas and 11 biswas and not 18 bighas and 19 biswas continues to remain with the appellants/defendants, and which could not have been the position if there was a genuine agreement to sell which was acted upon inasmuch as the respondent/plaintiff claims that about 60% of the payment under the agreement to sell was already made to the appellants/defendants, i.e. a sum of Rs.3,00,000/- was already paid out of the total alleged consideration of Rs.4,95,000/-.

13. In view of the above, the impugned judgment and decree dated 24.10.2009 is set aside. The suit for specific performance filed by the respondent/plaintiff shall stand dismissed. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA,J

DECEMBER 09, 2011
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