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

+ CS(OS) 177/2012

% ***Judgment Delivered on: 01.03.2012***

RAM GOPAL Plaintiff
Through: Mr.Shiv Charan Garg and Mr.Imran Khan,
Advocates

versus

YOGESHWAR CHAND & ORS Defendant
Through

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit for specific performance and permanent injunction. Counsel for the plaintiff was requested to address arguments on the question of limitation, as it appears that the present suit has been filed beyond the period of limitation.
2. As per the plaint, plaintiff is running a shop under the name and style of M/s.R.G.S. Collection on the ground floor in the property in question bearing No.42-43 U.B. Block, Jawahar Nagar Delhi. The defendants who have been arrayed as parties to the present suit are the owner of the suit property and legal heirs of late Sh.Prem Chand Sharma, who expired on 27.09.2011. It is stated in the plaint that during his life time, late Sh.Prem Chand Sharma entered into an oral agreement to Sell with the plaintiff, which fact was within the knowledge of the defendants. The plaintiff is in occupation of the suit premises since the year 1992 onwards. In paragraph

3 of the plaint it has been averred that the oral agreement to sell was made in the last week of April, 1992 in respect of two portions for a total sale consideration of Rs.54,70,000/-. It is also averred that one part of the premises in question was occupied by Sardar Surender Singh, which is shown in yellow colour and another portion was occupied by M/s.Hindustan Book Agency through its partner Sh.Jainender Kumar Jain, which is shown in green colour. As per the plaint a common meeting took place among the plaintiff, Sardar Surender Singh and Shri Jainender Kumar Jain and Late Sh.Prem Chand Sharma agreed to sell the premises as shown in RED colour in the site plan to the plaintiff on the condition that plaintiff would pay Rs.36,70,000/- to Sardar Surender Singh, Rs.5,00,000/- would be paid to M/s.Hindustan Book Agency through its partner Sh.Jainender Kumar Jain and rest of the amount i.e. Rs.13,00,000/- would be paid by the plaintiff to late Sh.Prem Chand Sharma. It is also stated in the plaint that the entire sale consideration was to be paid within two years. As per para 4 of the plaint Rs.36,70,000/- was paid by the plaintiff to Sardar Surender Singh in different instalments i.e Rs.2,51,000/- on 28.05.1992, Rs.10,50,000/- on 02.06.1992, Rs.3,00,000/- on 05.07.1992 and remaining amounts were also paid which was within the knowledge of Sh.Prem Chand Sharma. It is stated that Sardar Surender Singh executed various documents evidencing receipt of money. It is also stated in the plaint that Sardar Surender Singh executed a surrender letter in favour of the plaintiff whereby he handed over peaceful and vacant possession of the portion under his use and occupation in the presence of one Sh.Chander Mohan, to the plaintiff. As per paragraph 6 of the plaint, the back portion of the premises in question was occupied by M/s. Hindustan Book Agency for which plaintiff has paid Sh.Jainender Kumar Jain partner of M/s. Hindustan Book Agency a

sum of Rs.5,00,000/- on different dates (Rs.25,000/- on 02.06.1992, Rs.75,000/- on 04.06.1992 and Rs.4,00,000/- on 18.08.1992) with the consent and on behalf of late Sh.Prem Chand Sharma, out of total sale consideration amount as part performance of the agreement to sell. Sh.Jainender Kumar Jain had also executed a surrender letter dated 18.08.1992 in favour of the plaintiff.

3. Attention of this court is drawn to paragraph 8 of the plaint where it has been averred that plaintiff requested late Sh.Prem Chand Sharma, to execute any document in his favour, as huge amount had been paid to perfect his title. It is also stated that plaintiff also gave some amount to Sardar Surender Singh and Sh. Jainender Kumar Jain in October, 1992, however, late Sh.Prem Chand Sharma, fraudulently and dishonestly induced to the plaintiff that he would issue a letter only in the shape of creating tenancy, unless and until he receives the entire consideration amount. On 19.10.1992 plaintiff paid Rs.3,25,000/-, out of the total sale consideration to Sh.Prem Chand Sharma and Sh.Prem Chand Sharma executed documents on 19.10.1992. English translation of this document reads as under:

“I, Prem Chand Sharma S/o. Late Sh.Mool Chand Sharma is the resident of property bearing no.42/43 U.B. Jawahar Nagar, Delhi. It is stated that I am the owner in possession of the property bearing no.42/43. I with my consent and after consulting with my children, that the shop which is in possession of Surender Singh and the back portion which is in possession of Hindustan Book which comes in the share of S.K. Jain, of which I am the owner and the above said two persons are my tenant, agreed to convert/ change receipt of both in the name of Sh.Ram Gopal S/o. Shri Mohan Lal R/o. 24/22, Shakti Nagar, Delhi for consideration of Rs.13,00,000/- (Rupees Thirteen lakhs only). Received Rs.3,25,000/- in cash for the same from Shri Ram Gopal. The balance Rs.9,75,000/- is agreed to be paid by Shri Ram Gopal at the time when the receipt is to be converted/ changed in the name of Shri Ram Gopal. The rent of

both is agreed at the rate of Rs.600/- (Rupees Six hundred only). February 1993 is the last time fixed for performance of the aforesaid agreement.

Witnesses:

1. Ishwar Chand S/o. Prem Chand
Dated : 19.10.92
2. Krishan Kumar
Property dealer.
114-E, Kamla Nagar, Delhi
3. Prem Chand Sharma
42/43 U.B. Jawahar Nagar,
Delhi
Coming Tenant
Ram Gopal 24/22 Shakti Nagar
Delhi-07
Received Six thousand Rupees from Prem Chand on behalf of
Shri Tribhovan Singh
S/d- Krishan Kumar
19.10.1992”

4. As per paragraph 10 of the plaint, a sum of Rs.3,25,000/- was paid by the plaintiff to Sh.Prem Chand Sharma on 19.10.1992, Rs.1,50,000/- was paid on 17.03.1993, Rs.50,000/- was paid on 09.11.1993, Rs.2,00,000/- was paid on 30.01.1994 and Rs.75,000/- was paid on 02.04.1994. Thereafter in the year 2008 the rent agreement, copy of which has been placed on record, is stated to have been signed between the plaintiff and Sh.Prem Chand Sharma.
5. It is the case of the plaintiff that this rent agreement is a sham document, which the plaintiff was made to sign under coercion, pressure showing rate of rent Rs.600/- per month, whereas in fact this document should have been an agreement to sell and the defendant should have executed a sale deed to perfect the title of the plaintiff.
6. Counsel for the plaintiff further submits that reading of this document

shows that father of the defendant had acknowledged receipt of Rs.6,00,000/- out of Rs.7,50,000/- and also acknowledged receipt of the entire amount of Rs.7,50,000/- from the plaintiff. Counsel has also drawn attention of the court to various other paragraphs of the plaint to show that further amounts were paid to the defendant upto the year 2008 and the last amount was paid on 14.07.2008, although it is contended that the amount in cash was paid subsequently as well to the defendant.

7. The plaintiff has placed on record a rent agreement dated 14.07.2008 which shows that the plaintiff is a tenant at a monthly rent of Rs.1250/-. Counsel for the plaintiff submits that period of limitation for suit for specific performance is for three years in case the date is fixed for the performance and in case where no such date is fixed when the plaintiff has notice that performance is refused and has relied upon Article 54 of the Limitation Act, which is reproduced below:

Description of suit	Period of limitation	Time from which period begins to run
54. For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

8. There is no quarrel to this proposition. All the abovesaid payments made and which have been relied upon by the plaintiff, have been made in cash pertained to the year 1992, signing and execution of the rent agreement dated 14.07.2008 is not denied by the plaintiff and in fact plaintiff has filed copy thereof and submitted that it is a sham document and the plaintiff was made to sign the same under pressure and coercion.
9. In case of the plaintiff is to be believed that he has made payments pursuant to an oral agreement to sell and that instead of executing an

agreement to sell or Sale Deed late Sh.Prem Chand Sharma forced and coerced him into signing a rent agreement would show that late Sh.Prem Chand Sharma was disputing any agreement to sell between the parties. Thus the rent agreement which was executed in the year 2008 would tantamount to a refusal on the part of the father of the defendants to recognize any agreement or the oral agreement to sell, which is pleaded by the plaintiff.

10. Reading of Article 54 of the Limitation Act would show that in the absence of a fixed date for performance of a contract, time for specific performance begins to run from the date of knowledge of vendor's refusal to perform. The period of limitation would thus commence from 14.07.2008 onwards i.e. the date of execution of the rent agreement. In addition to this there is nothing on record to show that plaintiff ever protested to the defendants and / or their father that he was made to sign agreement under coercion or pressure or otherwise. Hence, the rent agreement is a refusal of recognizing any agreement to sell. It is also submitted that the defendants have now instituted eviction proceedings against the plaintiff and admittedly the present suit has been filed only thereafter. It seems that the suit is a counter-blast to the eviction petition, which has been filed. I find the suit is patently beyond the period of limitation, thus the same is dismissed in limine.

IA.No.1379/2012

In view of order passed in the suit, application stands disposed of.

MARCH 01, 2012

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G.S.SISTANI, J