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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on : MAY 01, 2012
Judgment Pronounced on: MAY 08, 2012

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RFA(OS) 13/2012

BRAHM PRAKASH Appellant
Represented by: Mr. Jitender Chaudhary, Advocate

versus

SURINDER KUMAR & ANR. Respondents
Represented by: Ms. Rachna Agrawal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

PRADEEP NANDRAJOG, J.

1. We need to pen a preamble to our opinion. It may be brusque, scathing and harsh in its sweep, but we feel that it is our duty to so record. It is our message to the learned members of the Bar who are approached by the weak, needy, under-privileged, simple village folk etc. to defend them when actions are brought in Courts. : *The learned members of the Bar are the only hopes of the poor to seek protection; and therefore you have no excuse but to be better than the best of the lawyers of the corporates and the elite. For they have nothing to lose; but the poor loses out completely if you are incompetent.*

2. Instant case brings out the unfortunate lack of professionalism shown by learned counsel for the appellant at the trial and as a result a good case of the appellant has been lost before the learned Single Judge.

3. Observing that as per the law declared in the decisions reported as (1928) LR 55 IA 360 Ardeshr Mama v. Flora Sassoon, AIR 1968 SC 1355 Premraj v. DLF Housing & Construction Pvt. Ltd., 1997 (3) SCC 140 R.C.Chandiok & Anr. v. Chuni Lal Sabharwal & Ors. and the decision reported as (2004) 6 SCC 649 P.D' Souza v. Shondrilo Nidu, readiness and willingness of a party to perform its contractual obligations under an agreement to sell cannot be treated as confined within a straight jacket formula and that the same has to be determined from the entirety of the facts and circumstances relevant to the intention and the conduct of the parties concerned, vide impugned judgment and decree dated December, 13, 2011 suit seeking specific performance of the agreement to sell dated November, 15 1996 (Ex. PW-1/1) filed by the respondents against the appellant has been decreed, but by enhancing the price settled as reflected in Ex.PW-1/1 from ₹32,76,526/- to the current circle rates fixed by the Government, for which increase in the price, the learned Single Judge has held that equity so demands keeping in view the astronomical appreciation in the price of agricultural land in Delhi since 1996 till the year 2011 when the suit was decreed; notwithstanding that the learned Single Judge found the appellant to be the defaulting party.

4. Vide Agreement to Sell dated November 15, 1996, Ex.PW-1/1, it stands recorded that the appellant is a Bhumindar having 1/4th share in agricultural land ad-measuring 23 bigha and 6 biswa bearing Mustatil No.94, Killa Nos.2/2 (1-16), 14/1 min (0-15), 14/2 min (0-8), 3 (4-16), 4 (4-16), 7 (4-16), 8 (4-16), 27 (0-2), Mustatil No.67, Killa No.23 South (0-15), 311 (0-16) in the Revenue Estate of Village Bijwasan, Tehsil Mehrauli and

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that the appellant agrees to sell the same to the respondents for a total sale consideration of ₹32,76,526/-. It records that the appellant has received ₹2,20,000/- by means of 2 cheques and ₹1,00,000/- in cash. It records that upon the appellant obtaining partition of the land he would intimate said fact to the respondents who would pay him the balance sale consideration within 30 days and the sale deed would be registered. It records that up to 3 months, the sale deed would be executed after obtaining the necessary NOC and Income Tax clearance certificate. Being relevant for our discussion, the relevant clauses of Ex.PW-1/1, which we note are not assigned a serial number, read as under:-

“The first party will obtain the N.O.C. and Income Tax Clearance Certificate from the concerned authorities before final payment & will also obtain Court permission for selling the said property.

That after obtaining the said permissions the first party will inform the second party by registered post & second party will get the registration done within 30 days.

That upto 3 months, the First Party will execute the Sale Deed of the said property in favour of the Second party or his/her/their nominee(s), failing which the Second party shall be entitled to get the sale Deed registered through the court of law by specific performances of the contract at the cost and expenses of the First Party.”

5. Simultaneous to the execution of Ex.PW-1/1, a receipt Ex.PW-1/2 was executed by the appellant admitting having received part sale consideration as mentioned under Ex.PW-1/1. Thereafter further payments in sum of ₹60,000/- vide cheque No.739629 dated April 01, 1997 and ₹15,000/- vide

cheque No.741303 dated May 26, 1997 were received by the appellant from the respondents under the agreement to sell.

6. Neither the appellant cared to call upon the respondents to come forward and have the sale deed registered after tendering balance sale consideration, nor did the respondents write on the subject to the appellant, till May 05, 1999, when respondents served a legal notice Ex.PW-1/3 through their lawyer upon the appellant calling upon the appellant to receive the balance sale consideration of ₹28,81,526/- and execute the sale deed within 15 days of the notice, to which the lawyer for the appellant sent a reply Ex.PW-1/4 on May 26, 1999, and regretfully, contrary to the instructions of the appellant responded in a most unprofessional, and if we may say, a stupid manner, by taking a stand that appellant's signatures were obtained on some unfilled document; and thus the stand in the reply, that there was no agreement between the parties. The lawyer took the stand in Ex.PW-1/4: (Quote): *When no agreement to sell was made complete or final, so no question of payment of balance consideration or completing other formalities at all arises.* Surprisingly, the notice ends by informing the lawyer of the respondents to advise the respondents to tender the balance sale consideration together with interest @24% per annum and get the agreement to sell completed and finalized.

7. It is apparent that a contradictory stand was taken in the reply filed by the learned counsel.

8. Respondents' counsel sent a counter-reply Ex.PW-1/5 on July 13, 1999 denying that a complete agreement had not been executed between the parties and once again called upon the appellant to receive the balance sale consideration and

execute the necessary sale deed, to which another counsel engaged by the appellant, submitted a counter-reply Ex.PW-1/6 on August 23, 1999 by denying that any agreement was executed by the appellant. He took the plea, contrary to the plea taken in Ex.PW-1/4, of the appellant, being an innocent villager and uneducated, signing in good faith on a piece of paper. Stand taken in the reply was: (Quote) : *That even from your notice it is clear that your said alleged agreement is an agreement in air as there was no specific mention of the land of our client being individually absolute owner.*

9. It is difficult for any rational person to comprehend what the lawyer was wanting to say inasmuch as the agreement to sell lists the description of the land and its area, being 23 bigha and 6 biswa and the fact that the appellant had 1/4th share therein and that the appellant would get the land partitioned so that he could sell his separated 1/4th share in the land i.e. 5 bigha and 16.5 biswa separated land.

10. The respondents filed a suit on October 04, 1999 seeking specific performance of Ex.PW-1/1 alleging that the appellant was in breach of the agreement to sell Ex.PW-1/1 and that they were always ready and willing to perform their obligations under the agreement to sell.

11. On being served with the summons for settlement of issues, appellant filed a written statement not denying having executed Ex.PW-1/1 but took the stand that the respondents had to be co-signatories to the statutory application forms for obtaining No Objection Certificate from the Income Tax Authorities and from the Revenue Authorities, and it was pleaded that the respondents never volunteered to do so. It was pleaded that in that view of the matter the respondents

were in breach of the agreement to sell. Receipt of ₹3,20,000/- when Ex.PW-1/1 was executed as also subsequently receiving further sum of ₹75,000/- towards part sale consideration was not denied.

12. It be highlighted that the written statement was filed on October 16, 2001, but much prior thereto, after entering appearance, counsel for the appellant, as recorded in the order dated October 24, 2000 stated before the learned Joint Registrar, before whom the suit was listed for completion of pleadings, that the appellant was ready to execute the sale deed upon receipt of balance consideration and that the necessary applications to be submitted to the Income Tax Authorities and the Revenue Authorities were signed by the respondents and received by the counsel for the appellant for doing the needful. Ex.DW-1/1 evidences that the appellant obtained the necessary permission from the Revenue Authorities on December 21, 2000 for sale of 5 bigha and 16.5 biswa land comprised in Khasra No.94/7 Min (3-14), 14/2 (0-8), 94/14/1 (0-5) and 94/08 Min (0-19.5). Ex.DW-1/2 evidences that the appellant obtained similar permission from the Income Tax Authorities.

13. Highlighting that as per the proforma prescribed by the Revenue Authorities, at serial No.4, while giving the details of the land sought to be transferred in respect whereof permission was sought, it was disclosed:-

“1/4th share in Agricultural land measuring 23 bigha 6 biswa bearing Mustatil No.94, Killa No.2/2 (1-16), 14/1 min (0-15), 14/2 min (0-8), 3 (4-16), 4 (4-16), 7 (4-16), 8 (4-16), 27 (0-2), Mustatil No.67, Killa No.23 South (0-15), 311 (0-16) situated within revenue estate of village Bijwasan, Delhi.”

but the said type-script was scored off and in place it was written: Khasra No.94/7 Min (3-14), 14/2 (0-8), 94/14/1 (0-5) and 94/08 Min (0-19.5).

14. Now, Ex.PW-1/1 clearly records that of the land comprised in the various khasras enumerated in the agreement to sell, ad-measuring 23 bigha and 6 biswa, share of the appellant is $\frac{1}{4}^{\text{th}}$. His share would therefore come to 5 bigha and 16.5 biswa. Ex.PW-1/1 records that the appellant would obtain partition of the joint holding (so that the respondents could be put in exclusive possession of the land) and thus it is apparent that upon partition of the joint holding, 5 bigha and 16.5 biswa holding would fall to the share of the appellant; and needless to state, this would be comprised of not the whole, but a part of the joint holding; and thus the separated holding of the appellant would be referring to land comprised only in a few, out of the all khasra numbers comprised in the joint holding.

15. This is a matter of common sense for a person who understands the revenue law.

16. Order dated March 29, 2001 recorded by the learned Single Judge records the statement made by learned counsel for respondents that the income tax clearance and No Objection Certificate received from the revenue authorities, copies supplied to the respondents, do not relate to the suit property.

17. We would have expected learned counsel for the appellant to have explained as aforesaid, as we have done in paragraphs 13 and 14 above, that the documents record the khasra numbers, being 4 in number, and that all of them find a

mention in Ex.PW-1/1, but the counsel did not do so. It is rather unfortunate.

18. Subsequent order-sheet would reveal that the matter was adjourned mindlessly till when, not noticing as aforesaid, order dated November 09, 2004 was passed recording as under:-

“This is a suit for specific performance filed by the plaintiff. The learned counsel for the defendant has contended that it (sic) is ready and willing to execute the documents pertaining to the land in question. The learned counsel for the plaintiff on 29th March 2001 submitted that ITC and NOC supplied by the defendant on 21st March 2001 do not relate to the property involved in the suit, a fact which is contested by the learned counsel for the defendant. Learned counsel for the defendant submits that it is the plaintiff who does not want to carry on his part of obligation as disclosed in the plaint.

List the matter before the Joint Register on 29th November 2004 to examine the land involved in the present plaint and whether the NOC and ITC supplied by the defendant relates to the same land. The Joint Registrar will make a report to this Court within 4 weeks thereafter.

The matter be listed before the Court on 27th January 2005.”

19. It is rather unfortunate that learned counsel for the appellant behaved like a parrot and kept on insisting that the appellant had obtained the requisite permission, and when challenged by the respondents’ counsel, to the truthfulness of the stand taken by the appellant, failed to point out to the Court the facts which we have noted in paras 13 and 14 above.

20. Unfortunately, the learned Joint Registrar showed total ignorance of the job assigned to the learned Joint Registrar evidenced by what the learned Joint Registrar wrote in the order-sheet dated December 02, 2004. It is recorded as under:-

“Vide order dated 09.11.2004 of the Hon’ble Court the undersigned has been directed to examine the land involved in the present plaint and to submit a report to the Hon’ble Court whether the NOC and ITC supplied by the defendant relates to the same land. As per averments made in para 1 of the plaint, the suit has been filed for specific performance of an agreement to sell with regard to 1/4th share in an ‘**agricultural land**’, as described in para-1 of the plaint situated in the Revenue Estate of village Bijwasan, Tehsil Mehrauli New Delhi. In terms of the Delhi Land Revenue Act 1954, the Deputy Commissioner has to in accordance with rules made under Section 84 of the said enactment to maintain a map and field book of each village and inter alia to get recorded therein all changes in the boundaries of each village or field. As per Chapter-IV of the Delhi Land Revenue Rules 1962, the maps and surveys of an ‘**agricultural land**’ are to be conducted by the Patwari and the Khasras have to be prepared in form P-4 in terms of Rule 54 of the said rules.

Since the land involved in the present plaint is an ‘**agricultural land**’, which per se would not bear on it any identification mark of any number bearing the numbers as mentioned in para-1 of the plaint and as the requisite maps in terms of the Delhi Land Revenue Act 1954 have to be maintained by the Revenue Authorities, the matter is placed before the Hon’ble Court with a request that the undersigned may be permitted to avail of the assistance of the Revenue Authorities at the spot in order to examine the land involved in the present plaint and to ascertain whether the NOC and ITC supplied by the defendant relates to the same land, for compliance of order dated 09.11.2004 of the Hon’ble Court, the

matter be thus placed before the Hon'ble Court with the said request on 03.12.2004."

21. We are pained to note that counsel for the appellant did not instruct the learned Joint Registrar that the dispute did not relate to demarcation or the identity of the land at site. No revenue map was required. No field book was required. A simple application of mind was required. With reference to Ex.DW-1/1 and Ex.DW-1/2 one had to simply read the description of the land, with reference to the Khasra numbers mentioned and then check with reference to Ex.PW-1/1 whether the land in respect whereof sale permission was obtained was referable to Ex.PW1/1.

22. On the next date, which was before the learned Single Judge, the matter was simply adjourned and kept on getting adjourned. Grinding slowly the legal process reached its apotheosis when, recording a failure of a settlement, vide order dated February 23, 2006, the issues were settled, and needless to state the principal issue was: Whether the respondents were always ready and willing to comply with their obligations under Ex.PW-1/1? As also the issue: Whether the appellant was in default?

23. Referring to Ex.PW-1/1, the learned Single Judge has held that it was appellant's responsibility to get the joint holding partitioned and thereafter obtain the necessary Income Tax Clearance and No Objection Certificate from the Income Tax and the Revenue Authorities respectively and call upon the respondents to tender the balance sale consideration and on receipt of the same to have executed the sale-deed. With reference to the legal notices Ex.PW-1/3, Ex.PW-1/4, Ex.PW-1/5

and Ex.PW-1/6, contents whereof have already been notified hereinabove, the learned Single Judge has opined that the response of the appellant through his counsel as contained in Ex.PW-1/4 and Ex.PW-1/6 would reveal a dishonest stand, in that, the appellant was blowing hot and cold in the same breath by sometimes taking a stand that the agreement was incomplete, sometimes taking a stand that he never executed any agreement and sometimes calling upon the respondents to pay the balance sale consideration with interest @ 24% per annum. Learned Single Judge has opined that these documents reveal an attempt by the appellant to wriggle out of his contractual obligations. With reference to the fact that it was the obligation of the appellant to have the land partitioned, the learned Single Judge held that no document has been filed to prove that the appellant had got the land partitioned. With reference to Ex.DW-1/1 and Ex.DW-1/2, the learned Single Judge has held that the order sheet, to which we have made a brief reference hereinabove, of the suit would reveal that the appellant did not obtain, even during the pendency of the suit, the No Objection Certificate and Income Tax Clearance pertaining to the suit land. The learned Single Judge had highlighted that Ex.DW-1/1 confirms the alterations made in the document.

24. The learned Single Judge has held that evidence establishes the readiness and willingness of the respondents to comply with their obligations under Ex.PW-1/1.

25. Now, the so called alterations in Ex.DW-1/1 are the ones as noted by us in para 13 above and suffice would it be to state that he who typed on the proforma application, first acted

mechanically by typing out the particulars and details of all the Khasra numbers constituting the joint holding comprising, 23 bigha and 6 biswa land. Realizing that the sale pertained only to 1/4th share, scored of what was typed and replaced with only 4 khasra detailed therein encompassing 1/4th land i.e. 5 bigha and 16.5 biswa.

26. It is unfortunate that even at the final hearing stage, the learned Single Judge was not correctly guided on the subject matter. Nobody told the learned Single Judge that as per the agreement to sell dated Ex.PW-1/1, the appellant was required to obtain partition of the joint holding in which he had 1/4th share. The joint holding comprised land ad-measuring 23 bigha 6 biswa bearing Mustatil No.94, Killa No.2/2 (1-16), 14/1 min (0-15), 14/2 min (0-8), 3 (4-16), 4 (4-16), 7 (4-16), 8 (4-16), 27 (0-2), Mustatil No.67, Killa No.23 South (0-15), 311 (0-16) situated within revenue estate of village Bijwasan, Delhi. Upon partition 5 bigha and 16.5 biswa would be assignable to the exclusive share of the appellant and this we find reflected in Ex.DW-1/1 and Ex.DW-1/2 wherein 5 bigha and 16.5 biswa land is described as comprised in Khasra No.94/7 Min (3-14), 14/2 (0-8), 94/14/1 (0-5) and 94/08 Min (0-19.5). We highlight that the two documents would evidence that the land mentioned therein forms part of the land detailed in Ex.PW-1/1. Thus, the learned Single Judge has been misled into an erroneous finding being returned that the appellant tried to even pull wool over the eyes of justice. It may be true that the appellant did not file any document in the form of a fard evidencing he having obtained a partition of the joint holding, but the sale permissions, Ex.DW-1/1 and Ex.DW-1/2, and in particular

Ex.DW-1/1 which has been issued by the Revenue Authorities, is intrinsic proof of the joint holding being partitioned for the reason Ex.DW-1/1 signed by the Revenue Assistant grants permission in the name of the appellant to sell 5 bigha and 16.5 biswa land comprised in Khasra No.94/7 Min (3-14), 14/2 (0-8), 94/14/1 (0-5) and 94/08 Min (0-19.5) in the revenue estate of village Bijwasan, and this is only possible if the joint holding was partitioned. In any case, Ex.DW-1/1 and Ex.DW-1/2 were sufficient for the appellant to convey title to the respondents.

27. Now, the appellant is an uneducated villager. He can barely scribble his signatures. His lawyers may have done a shoddy job for him, but the respondents and in particular respondent No.2 are not only well educated, but have good experience in the sale and purchase of properties. We take judicial notice of the fact that respondent No.2 is a litigant in two other Revenue Litigations in this Court. He and his lawyer knew, that if not earlier, at least during the pendency of the suit the appellant had not only obtained a partition of the joint holding but had even obtained the necessary sale permissions; the fact that they did not come forward to tender the sale consideration when, during proceedings in Court, the appellant obtained the requisite sale permissions is evidence of they not being ready and willing to comply with their obligations under Ex.PW-1/1. Assuming for the sake of arguments that even the respondents did not apply themselves, nor did their counsel, to the reason as we have done in paragraphs 13 and 14 above, the fact of the matter would remain that the appellant had obtained the necessary sale permissions and unequivocally told

the Court of said fact and even produced the documents, but unfortunately nobody heard his cry for justice and on no fault principle and his being an innocent party, we see no scope for Ex.PW-1/1 becoming an albatross around his neck and sink him.

28. The learned Single Judge had himself recognized a phenomenal appreciation in the price of agricultural lands in Delhi since when Ex.PW1/1 was executed till impugned judgment was rendered, and attempting to strike an equitable balance has increased the sale price to the current circle rates notified in Delhi by the Government of NCT of Delhi pertaining to agricultural lands.

29. This recompense would not be a fair recompense to the appellant keeping in view the fact that if not earlier during the pendency of the suit and even before filing the written statement, on December 21, 2000, the appellant had obtained not only a partition of the joint holding but even the requisite sale permissions and told the Court of having so obtained and the respondents not having come forth to tender the balance sale consideration and thereafter everybody going in a tail spin, consuming time till when issues were settled after more than 6 years on February 23, 2006 and then the matter decided when impugned judgment was rendered, it would be most iniquitous to grant the prayer made by the respondents.

30. The evidence on record establishes that learned counsel for the appellant evidenced an innocent knowledge of the law. This is reflected in the pre suit stage when legal notices were exchanged between the parties. This is evidenced from the proceedings in the suit when the learned counsel could not

point out to the Court a simple fact, on a reasoning, as to why the appellant was justified in crying all throughout that he had obtained the necessary sale permissions as per Ex.DW-1/1 and Ex.DW-1/2 on December 21, 2000.

31. We think we have brought home the point with reference to the preamble statement as per paragraph 1 of our opinion and would now write a post-script by concluding that it is time for the Court to make the learned counsel accountable if it is found that the level of professional assistance rendered by the counsel is below acceptable limit. We leave that as a warning, hoping that never ever would any Court be compelled to so do.

32. As regards the case at hand, the evidence brings out that till the suit was instituted, the appellant was in default of his obligations under Ex.PW-1/1, but upon the suit being filed, even before filing the written statement, he made amends by obtaining the necessary partition on the joint holding and also obtaining the necessary sale permissions by December 21, 2000 and his act of calling upon the respondents to pay to him the balance sale consideration and get the sale deed registered was met by a recalcitrant attitude of the respondents; it is settled law that equities play a very important role in matters pertaining to sale of immovable property and thus we conclude by holding that the weight of the evidence leads us to the conclusion that the respondents would not be entitled to specific performance of Ex.PW-1/1.

33. We take on record the stand of learned counsel for the appellant who stated during arguments that if the impugned decision is set aside, his client would refund ₹3,20,000/-

received when Ex.PW-1/1 executed on November 15, 1996 and would also refund ₹60,000/- received by him on April 01, 1997 as also would refund ₹15,000/- received by him on May 26, 1997 together with interest @ 12% per annum reckoned from the three respective dates and thus we dispose of the appeal setting aside the impugned judgment and decree dated December 13, 2011 in CS(OS) No.2243/1999 and dispose of the suit filed by the respondents by passing a decree in favour of the respondents and against the appellant in sum of ₹3,95,000/- together with interest @ 12% per annum on the sum of ₹3,20,000/- with effect from November 15, 1996, on the sum of ₹60,000/- with effect from April 01, 1997 and on the sum of ₹15,000/- with effect from May 26, 1997 till date of payment.

34. We make it clear that in terms of the impugned decree, if the respondents have deposited any amount in this Court, the same would be refunded to them together with the interest which has accrued thereon.

35. Parties shall bear their own costs all throughout.

**PRADEEP NANDRAJOG
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

**MAY 08, 2012
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