

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

+ **RFA 47/2001**

% 1st February, 2011

SHRI BRAHM SINGH S/O LATE SHRI GHASI RAM Appellants
Through: None.

VERSUS

SMT. NISHA RANI W/O SHRI SUKH LAL GUPTA Respondent
Through: Dr.S.L.Gupta, Attorney & Husband of
respondent, Dr.(Mrs.)Nisha Rani Gupta.

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)

1. No one appeared on 19.11.2009 when the adverse orders were deferred in the interest of justice. This case is on the Regular Board of this Court since 3.1.2011 and today is effective item no.10 on the Regular Board. No one appears for the parties. I have therefore gone through the record and am proceeding to dispose of the matter.

2. The challenge by means of this Regular First Appeal is to the impugned judgment and decree dated 15.12.2000 whereby the suit for specific performance of the appellants/plaintiffs was dismissed.

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3. The case of the appellants/plaintiffs was that the respondent entered into an agreement to sell with the appellants/plaintiffs dated 25.3.1987 with respect to agricultural land measuring 9 bighas and 8 biswas in village Karawal Nagar, Shahdara, Delhi for a consideration of Rs.1,00,000/- , out of which the appellants/plaintiffs claimed to have paid Rs.60,000/- as earnest money. The respondent/defendant contested the suit and contended that the agreement dated 25.3.1987 is a forged and fabricated document. It was stated that Mangal Sen, the brother of plaintiff no.1 was the Chowkidar employed by the respondent/defendant to look after the property, inasmuch as the respondent and her husband were working as Lecturers in Delhi University. It was therefore prayed that the suit for specific performance be dismissed.

4. After completion of pleadings, Trial Court framed the issues on 18.2.1991. The appellant no.1/plaintiff no.1 deposed as PW-1 and also got examined another witness Sh. Gopal as PW-2 who was said to have witnessed the agreement to sell. The appellants/plaintiffs also examined hand writing expert as PW3. The respondent/defendant got 8 witnesses examined in all, of which two were hand writing experts.

5. The following issues were framed by the Trial Court:-

"ISSUES

1. Whether the general power of attorney and an agreement to sell dated 25.3.87, were executed by the defendant in favour of the plaintiffs in respect of the suit land? OPP.
2. Whether a part payment of Rs.60,000/- was made by the plaintiffs on 25.3.87 towards sale price of Rs.1,00,000/-? OPP.

3. Whether the plaintiffs have entered into possession of the suit land in compliance with the GPA and the agreement dated 25.3.87? OPP.
4. Whether the plaintiffs have been ready and willing to perform their part of the agreement? OPP.
5. Whether the plaintiffs are entitled to alternative decree for Rs.1,00,000/- as damages against the defendant? OPP.
6. Who committed the breach of the agreement of sale? OPP.
7. Whether the land in suit does not exist and wrongly claimed? OPD.
8. Whether the alleged agreement is false and fabricated onerous and unreasonable? OPD.
9. Whether the suit has not been valued properly for the purpose of Court fee and jurisdiction? OPD.
10. Whether the suit as framed is not maintainable? OPD.
11. Relief."

6. Though, the Trial Court has discussed the issue nos. 1, 2 3 and 8 separately, all of them could have been dealt with together inasmuch as the same pertain to the factum as to whether there exists an agreement to sell, inasmuch as the respondent/defendant claimed that the said agreement to sell dated 25.3.1987 a forged and fabricated document. Though, the reasoning given by the Trial Court while discussing these issues, may not be correct on all the aspects, however, the conclusion of the trial court is correct that the agreement to sell is a forged and fabricated document. I agree with the aforesaid conclusions, inter alia, for the following reasons:-

- i) The appellants/plaintiffs have failed to prove whether an amount of Rs.60,000/- was paid under the agreement to sell. This has been so held by the Trial court while dealing with issue nos. 2 and 3. The Trial Court rightly mentioned that the appellants/plaintiffs failed to prove the mode of payment. The Trial Court has also in this regard

noted that the appellants/plaintiffs have proved that the possession was given to them by the defendant.

ii) The respondent/defendant has rightly proved through her hand writing experts, who deposed as DW3 and DW5, that, the signatures on the alleged agreement to sell are forged. I may note that the contention of the respondent/defendant was that the appellants/plaintiffs had traced out the signatures of the respondent/defendant from a copy of the power of attorney given to Sh. Mangal Sen. Of course there remains an ambiguity as to for what purpose, the power of attorney was given to Mangal Sen, however, the signatures quite clearly appear to be traced out from the said power of attorney to the disputed agreement to sell.

iii) The respondent/defendant through the evidence of persons working in the college showed quite categorically that she was in the college working as Vice-Principal from 9:12 am to 2:30 pm and therefore there was no question of the alleged agreement to sell being signed at 9:00 am in the morning in the *baithak*/living room of the appellant no. 1/plaintiff no.1.

7. A suit for specific performance is decreed when there is proof beyond doubt of an agreement to sell, inasmuch as an agreement to sell deprives a person of his ownership rights in the property. There also has naturally to be definiteness about passing of the consideration, and which is an aspect not proved by the appellants/plaintiffs as the mode of payment of

Rs.60,000/- has not been explained. I note that in the impugned judgment, the financial capacity of the appellants/plaintiffs has also not been discussed to show their readiness and willingness that if and how the appellants/plaintiffs had with them the balance amount being Rs 1,00,000/- for the payment to the respondent/defendant. Therefore, readiness and willingness has not been adequately proved as required in law.

8. This Court is not entitled to interfere with the conclusions of the Trial Court merely because two views are possible. This Court interferes with the findings and conclusions of the Trial Court only if the view of the Trial Court is perverse or causes grave injustice. I do not find that there is any illegality/perversity in the impugned judgment nor is there caused any grave injustice to the appellants/plaintiffs. The transaction appears to be an unnatural one.

9. In view of the above I do not find any merit in the appeal which is therefore dismissed, leaving the parties to bear their own costs. Interim orders are vacated. The Trial Court Record be sent back.

CM No.419/2002 (Cross objections)

10 Since I have dismissed the appeal, no orders are required to be passed in this application which is disposed of as such.

February 01, 2011
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VALMIKI J. MEHTA, J.