

\$~R-62&63

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : April 16, 2012*
Judgment Pronounced on: April 26, 2012

+ RFA(OS) No.07/2008

SAHNI INTERNATIONAL PVT. LTD. & ANR. Appellants
Represented by: Mr. Ravinder Sethi, Senior Advocate
instructed by Mr. P. R. Aggarwal,
Advocate.

versus

NISHA RAJ & ORS. Respondents
Represented by: Mr. Rajive Sawhney, Senior Advocate
instructed by Ms. Kajal Chandra,
Ms. Prachi Gupta and Ms. Renu
Kuhar, Advocates for R-1&2.

AND

RFA(OS) No.08/2008

VARINDER SAHNI Appellant
Represented by: Mr. Ravinder Sethi, Senior Advocate
instructed by Mr. N. S. Vashist,
Advocate.

versus

NISHA RAJ & ORS. Respondents
Represented by: Mr. Rajive Sawhney, Senior Advocate
instructed by Ms. Kajal Chandra,
Ms. Prachi Gupta and Ms. Renu
Kuhar, Advocates for R-1&2.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

PRADEEP NANDRAJOG, J.

1. Mrs.Nisha Raj and her husband Ranjit Raj i.e. respondents No.1 and 2 in both above captioned appeals, filed a suit, registered as CS(OS) No.2630/1994 for specific performance of the agreement to sell dated 30.09.1986 (Ex.PW-1/2) in respect of property bearing No.A-2, Pamposh Enclave, New Delhi. The agreement to sell was executed by Mrs.Vijay Malini Kaula (hereinafter referred to as 'the seller'), the owner of the property, whose right to sell is not disputed. The agreed sale consideration recorded is ₹29 lakhs and out of which the unearned increase payable to DDA had to be deducted and paid to DDA for the reason, the subject property was lease-hold. ₹10,000/- was received as part sale consideration on 30.09.1986 itself.

2. Being the requirement of law, an application (Ex.PW-1/3) under Section 230(A) of the Income Tax Act was filed by the seller seeking permission to sell the said property in favour of the respondents No.1 and 2. The permission was granted on 30.10.1986 vide Ex.PW-1/4. Thereafter, Form No.37(I) was filed under Section 269UC of the Income Tax Act seeking clearance under Chapter-XX(C).

3. Vide order dated 26.12.1986 (Ex.PW-1/5), the Appropriate Authority directed the pre-emptory purchase of the property and tendered ₹17,64,651/- to the seller and ₹11,35,349/- to DDA towards their claim for unearned increase i.e. paid the agreed sale consideration as per the agreement to sell Ex.PW-1/2 and took possession of the subject property.

4. Laying a challenge to the pre-emptive purchase, two writ petitions CW No.225/1987 and CW No.421/1987 were filed by the seller and respondents No.1 and 2 respectively. The said two writ petitions were allowed vide order dated

18.01.1994 but with liberty granted to the Appropriate Authority to reconsider the matter, and upon reconsideration vide order dated 29.04.1994 (Ex.PW-1/14) the Appropriate Authority granted the necessary permission and this required ₹29 lakhs to be refunded to the Income Tax Authorities with obligation on the said authorities to restore possession.

5. On 06.05.1994, respondent No.1 and 2 Mrs.Nisha Raj and Ranjit Raj offered to refund ₹29 lakhs to the Income Tax Authorities, to which the Income Tax Authorities did not respond.

6. The seller, Mrs.Vijay Malini Kaula died in June 1994. Respondents No.1 and 2 i.e. Mrs.Nisha Raj and her husband Ranjit Raj, filed CWP No.3314/1994 praying for a mandamus to be issued to the Income Tax Authorities to receive ₹29 lakhs from them and restore possession of the property to them, and as recorded in the order dated 10.11.1994 they produced in Court a pay order (Ex.PW-1/17) in sum of ₹29 lakhs to the Income Tax Authorities. The said order records objection by the legal heirs of Mrs.Vijay Malini Kaula (respondents No.3 to 6) of the income tax authorities handing over the possession of the property to respondents No.1 and 2.

7. The order records the writ petition being disposed of, leaving the parties to resolve the dispute elsewhere but noting the statement of counsel for the Commissioner of Income Tax that possession of the subject property would be handed over to the owner if payment is made within a week. In the disposed of writ petition, CM No.8896/1994 was filed on behalf of Mr.P.K.Kaula husband of Mrs.Vijay Malini Kaula under the signatures of Mr.R.N.Sahni accompanied by an affidavit deposed to by Mr.R.N.Sahni in which it was prayed that the Income Tax Authorities should restore possession to the legal

heirs of Mrs.Vijay Malini Kaula since the money to be refunded to the Income Tax Authorities has been refunded.

8. Having paid ₹44.18 lakhs to the Income Tax Department the legal heirs of Mrs.Vijay Malini Kaula resumed possession of the subject property.

9. Thereafter, the said legal heirs, respondents No.3 to 6, executed a Lease Deed (Ex.DW-2/1) dated 29.12.1994 in favour of Sahni International Pvt. Ltd. letting out the property to the said company at a monthly rent of ₹15,000/- per month and the next day i.e. on 30.12.1994 the entered into an agreement to sell (Ex.DW-6/1) with Varinder Sahni, appellant of RFA(OS) No.08/2008. It be highlighted that in Sahni International Pvt. Ltd., Varinder Sahni and his father R.N.Sahni were Directors.

10. Since the legal heirs of the seller, Mrs.Vijay Malini Kaula, refused to honour the agreement to sell Ex.PW-1/2, Mrs.Nisha Raj and her husband Ranjit Raj sought specific performance of the agreement to sell. The suit was registered as CS(OS) No.2630/1994. On being informed that the legal heirs of Mrs.Vijay Malini Kaula had entered into an agreement to sell Ex.DW-6/1, vide IA No.6354/1996, Mrs.Nisha Raj and Ranjit Raj sought impleadment of Varinder Sahni, his father R.N.Sahni and the company Sahni International Pvt. Ltd. and sought to amend the plaint by adding a paragraph by pleading knowledge of said two persons and hence also the private limited company, of the prior agreement to sell executed by Mrs.Vijay Malini Kaula in favour of Mrs.Nisha Raj and Ranjit Raj; and effect of said knowledge being no right created in favour of Varinder Sahni and his father R.N.Sahni to seek specific performance of the agreement to sell Ex.DW-6/1. Vide order dated 04.08.1998 the amendment was allowed.

11. Since, prior to said date, issues had been settled vide order dated 13.11.1995, further issues were settled on 06.09.2002, with respect to the plea of the newly impleaded defendants of being bona fide purchasers and to justify the tenancy in favour of Sahni International Pvt. Ltd.

12. The issues settled vide order dated 13.11.1995 read as under:-

“1. Whether the suit is within time? OPP

2. Whether the suit is not maintainable on the plea of the defendant that the agreement to sell dated 30.09.1986 had been frustrated, rendered invalid and null and void upon passing of the order dated 26.12.1986 u/s 269 UD(1) of the I.T.A.? OPD.

3. Whether the agreement to sell dated 30.09.1986 is valid and enforceable in view of subsequent “No Objection Certificate” dated 26.04.1984 granted by the Appropriate Authority u/s 269 UD of the Income Tax Act? OPP

4. Whether the agreement to sell dated 30.09.1986 is illegal, invalid and unenforceable as being contrary to the terms of the sub-lease as pleaded in para 6 of the preliminary objection of the written statement? OPD

5. Whether the agreement dated 30.09.1986 is unjust, inequitable and therefore unenforceable? OPD

6. Whether the plaintiffs were ready and willing to perform the agreement dated 30.09.1986 even after the grant of “No Objection Certificate” dated 29.04.1994? OPP.”

13. The additional issues settled vide order dated 06.09.2002 are as under:-

“1. Whether plaintiffs are guilty of misrepresentation and fraud upon the mother of defendants Nos.1-4 as alleged?

2. Whether defendant No.6 is a bonafide purchaser for valuable consideration without notice of the suit property? If so, its effect.

3. Whether defendant No.8 was validly inducted as tenant in suit property?

4. Relief.”

14. The suit has been decreed in favour of Mrs.Nisha Raj and Ranjit Raj who have been directed to pay ₹49,43,349/- along with simple interest @12% per annum on ₹5,35,349/- to the legal heirs of Mrs.Vijay Malini Kaula.

15. Qua R.N.Sahni, Varinder Sahni and Sahni International Pvt. Ltd. the learned Single Judge has held that they were aware of the agreement to sell Ex.PW-1/2 and that the tenancy in favour of the company and the agreement to sell in favour of Varinder Sahni created/executed by the legal heirs of Mrs.Vijay Malini Kaula were intended to weaken the right of Mrs.Nisha Raj and Ranjit Raj.

16. We need not note the reasoning of the learned Single Judge with respect to the issues settled on 13.11.1995, for the reason the impugned decree was challenged by the legal heirs of Mrs.Vijay Malini Kaula vide RFA(OS) No.5/2008. During the pendency of the said appeal they settled the dispute with Mrs.Nisha Raj and Ranjit Raj and filed CM No.14086/2008 in said appeal, bringing on record the settlement that they would receive ₹3 crores and would simultaneously execute the sale deed in favour of Mrs.Nisha Raj and Ranjit Raj. The settlement has been given effect to.

17. Vide order dated 16.03.2009, the said application was accepted and RFA(OS) No.5/2008 was disposed of.

18. Thus, as far as the agreement to sell Ex.PW-1/2 is concerned, which was the foundation of the claim of Mrs.Nisha Raj and Ranjit Raj, the legal heirs of the seller i.e. Mrs.Vijay Malini Kaula have abandoned their defences.

19. In the instant appeals, the issue which arises for consideration before us is: Whether Sahni International Pvt. Ltd. and Varinder Sahni can claim to step into the shoes of the legal heirs of Mrs.Vijay Malini Kaula and defeat the claim of Mrs.Nisha Raj and Ranjit Raj by taking over the defences available to the legal heirs of Mrs.Vijay Malini Kaula?

20. It is settled law that an agreement to sell does not create any right, title or interest in an immovable property. An agreement to sell pertaining to immovable property only creates a right in personam to sue, in person, the owner of the property.

21. A study of the jurisprudence pertaining to property would guide us, that the fundamental distinction between the jurisprudence relating to movable and immovable property is that there can be no action for delivery of a specific movable property; the action has to be one of monetary recompense. But, for an immovable property, an action for delivery of the specific property is maintainable. This distinction, with respect to an action relating to immovable property would not mean that the action has to be premised only when there is an interest asserted in an immovable property. The action would also lie, in person, against the owner of the property. Since an agreement to sell does not create any interest in a property, it would not run along with the property, and this is the reason why a subsequent bona-fide purchaser is entitled to resist an

action by a person who claims a right under a prior agreement to sell. Indeed, Varinder Sahni is claiming a right, as a subsequent person with whom an agreement to sell has been executed, on the strength of the afore-noted jurisprudence.

22. Thus, unless Varinder Sahni can show that he was unaware of the agreement to sell Ex.PW-1/2 when the legal heirs of Mrs.Vijay Malini Kaula and he entered into the agreement to sell Ex.DW-6/1 on 30.12.1994, he cannot predicate any defence to defeat the right of Mrs.Nisha Raj and Ranjit Raj, which has been acquired by them after they compromised the dispute with the legal heirs of Mrs.Vijay Malini Kaula.

23. Narration of some facts may be necessary to show whether Varinder Sahni was a bona-fide purchaser or not. As noted above, after the death of Mrs.Vijay Malini Kaula, Mrs.Nisha Raj and Ranjit Raj filed CWP No.3314/1994 where Mr.P.K.Kaula, the husband of the seller was impleaded as respondent No.3. This writ petition was disposed of by order dated 10.11.1994 leaving the parties to resolve their problems elsewhere. However, the statement of the counsel for Income Tax Authorities was recorded that the possession of the property would be handed over if the payment was made within one week by the owner. Mr.P.K.Kaula, accordingly, made payment to the Income Tax Department on 16.11.1994. The possession was, however, not handed over to Mr.P.K.Kaula.

24. Mr.P.K.Kaula filed CM No.8896/1994 (Ex.D-7/9) on 06.12.1994 through Mr.R.N.Sahni as his attorney, praying for directions to Income Tax Department to hand over the possession of the property. The said application was

accompanied by affidavit (Ex.DW-2/2) deposed to by Mr.R.N.Sahni.

25. With respect to CW No.3314/1994, Mr.R.N.Sahni was cross-examined when he appeared as a witness of his son. He stated:-

"I did not know Smt.Vijay Malini Kaula. I did know her husband, Mr.Pratap Kaula. I met Mr.Pratap Kaula sometime in 1994 for the first time..... I met Mr.Pawan Kaula in the year 1987, 1988 and 1989 and onwards. Mr.Pawan Kaula often visited my house.....I am presently a Director in M/s.Sahni International Pvt. Ltd. I was a Director in the said company in the year 1994..... The lease agreement dated 29.12.1994 with defendant Nos.1 to 4, photocopy whereof is attached to my affidavit and has been now exhibited as Ex.DW-2/1, was approved by the Board of Directors..... In 1994, I was aware of the provisions of Section 269 of the Income Tax Act, which required taking of approval from the Income Tax Authority before sale or purchase of property. I was acting as attorney in the year 1994 for Mr.Pawan Kaula and his father and his two brothers. I might have attended Court in connection with hearing of Civil Writ No.3314/1994 as attorney..... Mostly Mr.Pawan Kaula was in touch with Mr.Rajiv Nayyar relating to proceedings in Civil Writ Petition No.3314/1994. I was meeting him every 2nd – 3rd day as he is my neighbour. I knew about the case being power of attorney. I was not informed about the case by Mr.Rajiv Nayyar in meetings every 2nd or 3rd day but I was informed by Mr.Pawan Kaula whenever he required.....

I met Mr.Pawan Kaula along with my son many times. I do not know whether my son knew that I was the power of attorney holder for the Kaulas..... In December 1994 my son knew about the property because he was working in the office and was a Director of the company. I have not discussed with my son about the property..... I was in the Board

Meeting where Resolution was passed for entering into lease agreement with Kaulas in respect of the suit property..... I might have discussed with Mr.Pawan Kaula matters relating to suit property. I do not recall whether in some of my meetings with Mr.Pawan Kaula, my son was present..... My son told me the terms of the agreement to sell prior to signing of the agreement to sell.....”

26. Thus, it is apparent that Mr.R.N.Sahni knew about the claim of Mrs.Nisha Raj and her husband Ranjit Raj with respect to the agreement to sell Ex.PW-1/2 on or before 06.12.1994 on which date, under his signatures and accompanied by an affidavit deposed to by him CM No.8896/1994 was filed in CW No.3314/1994.

27. On the subject of Mr.R.N.Sahni and Varinder Sahni being made aware of the claim of Mrs.Nisha Raj and her husband Ranjit Raj under the agreement to sell Ex.PW-1/2 prior to the agreement to sell Ex.DW-6/1 being executed by the legal heirs of Mrs.Vijay Malini Kaula, the admissions made by Mr.Pawan Kaula during cross-examination need to be noted. They are as under:-

“I know Mr.Varinder Sahni S/o Mr.Ravi Sahni. I met Mr.Varinder Sahni in 1990s: it was earlier part of 1990. I have been to house of Mr.Ravinder Sahni. I know him well..... I appointed Mr.Sahni..... Before appointing Mr.Sahni as my attorney I did not speak to the plaintiff, Mr.Ranjit Raj or Mrs.Nisha Raj. I was aware of proceedings pending in Delhi High Court at that time. I discussed the said proceedings with Mr.Sahni..... Yes, it is possible that Mr.Sahni attended the court proceedings in Civil Writ No.3314/1994 at the request of myself and my father..... If I recall, the power of attorney that I signed in favour of Mr.R.N.Sahni on 14.11.1994 was General Power of Attorney. Under the said power of attorney I had authorized

Mr.R.N.Sahni to deal with the Income Tax Department for the family. I do not recall whether under the said power of attorney I authorized him to let out the suit property."

28. Certain admissions made by Mr.Varinder Sahni during cross-examination need to be noted. They are as under:-

"For the first time I and Mr.Pawan Kaula discussed about the sale and purchase of the property on 30th December 1994..... Within a couple of hours of our discussions the agreement to sell was signed I did discuss the transaction with my father before signing the agreement. At that time Mr.Pawan Kaula had casually mentioned to me the Income Tax Authority having requisitioned the property. I did discuss the matter of Income Tax Authority with my father on that particular date..... At that point of time my father informed me about the Court matter relating to the suit property..... it could be that the stamp paper for execution of the agreement to sell was purchased on 29th December 1994. It could have been, I am not too sure, that the agreement to sell was in contemplation on 29th December 1994..... My father was also present when I discussed the drafting of agreement to sell with Mr.K.B.Kapoor."

29. From the admissions made by Varinder Sahni it needs to be highlighted that he admits having discussed the transaction with his father before signing the agreement to sell Ex.DW-6/1. He admits being aware of the Income Tax Authority's requisitioning the property, which requisition was with respect to the agreement to sell Ex.PW-1/2. It is apparent that the knowledge of his father pertaining to Ex.PW-1/2 was passed on to him, de hors the fact that his admission of being made aware of the property being requisitioned by Pawan Kaula establishes his knowledge of the existence of Ex.PW-1/2.

30. Thus, there is tell-tale evidence of R.N.Sahni and his son Varinder Sahni being aware of the existence of Ex.PW-1/2 and the claim of Mrs.Nisha Raj and Ranjit Raj under the same.

31. The claim of Varinder Sahni that the talks and the agreement between him and the legal heirs of Mrs.Vijay Malini Kaula pertaining to the subject property was discussed and settled on 30.12.1994 is patently false for the reason, the stamp papers pertaining to the lease deed Ex.DW-2/1 under which Sahni International Pvt. Ltd. was inducted as a tenant in the property and the agreement to sell Ex.DW-6/1 bear a stamp of having been issued on 29.12.1994. The same stamp vendor has sold the two stamp papers which bear serial issue number as entered in the sale register by the stamp vendor.

32. Thus, the appellants cannot predicate a stand that it would be iniquitous to enforce the agreement to sell Ex.PW-1/2 and relief of specific performance as per Section 20 of the Specific Relief Act is discretionary. The claim for equity could be raised by the legal heirs of Mrs.Vijay Malini Kaula. They have settled the matter with Mrs.Nisha Raj and her husband Ranjit Raj. Appellants cannot urge the bar of limitation. Appellants cannot urge that with the requisition of the property by the Income Tax Authorities the agreement to sell Ex.PW-1/2 stood frustrated. They cannot urge that due to rise in the price of the property and that under Ex.PW-1/2 a paltry sum of ₹10,000/- was paid as earnest money-cum-sale consideration and thus Ex.PW-1/2 should not be specifically enforced. We reiterate, being not bona-fide prospective purchasers; and there being evidence that the appellants were only desiring to put spokes in the wheels set into motion by Mrs.Nisha Raj and her husband Ranjit Raj, the appellants are

left with nothing to litigate with Mrs.Nisha Raj and her husband Ranjit Raj.

33. The appeals are dismissed with one set costs assessed in sum of ₹50,000/- against the appellants and in favour of Mrs.Nisha Raj and her husband Ranjit Raj.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

APRIL 26, 2012
dk