

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

+ **RFA 663/2003**

% **22nd May 2012**

SMT. SUNITA Appellant

Through: Mr. S.A.Khan, Advocate

VERSUS

SMT. ASHA RANI Respondent

Through: Mr. R.M.Sinha and Mr. A.K.Shakya,
Advocates.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC), is to the impugned judgment of the trial Court dated 16.12.2002 dismissing the suit for recovery of ₹4.5 lacs filed by the appellant/plaintiff against the respondent/defendant. The suit for recovery was filed claiming that the amount of ₹4.5 lacs was the balance sale consideration with respect to a plot of 200 sq. yds forming part of the 600 sq. yds

property bearing no. RZ-483/13B, Tughalkabad Extension, New Delhi, which was sold by the appellant/plaintiff to the respondent/defendant.

2. The facts of the case as pleaded by the appellant/plaintiff were that the appellant/plaintiff had agreed to sell the suit property to the respondent/defendant for a total sum of ₹ 6 lacs and of which, a sum of ₹ 1.5 lacs was paid when the documents were executed on 31.5.1994. In the plaint, it was stated that the balance amount would be paid by the respondent/defendant within a period of six months after execution of the documents. Though the plaint is silent as to handing over of possession of the suit property to the respondent/defendant, subsequently in the evidence of the appellant/plaintiff it has been admitted that possession of the suit property was handed over to the respondent/defendant at the time of execution of the documents. The appellant/plaintiff in the plaint further pleaded that the respondent/defendant got prepared the documents only at ₹1.5 lacs to avoid taxes of the suit property. It was further pleaded that the appellant had objected to the contents of the documents and showed her annoyance to the respondent/defendant and that she would not agree to mention of a lesser consideration in the documents. The plaint is however silent as to when the appellant/plaintiff came to know of the mention of lesser consideration of ₹1.5 lacs instead of ₹ 6 lacs and when she objected to the respondent/plaintiff. It is further pleaded that the appellant/plaintiff

was not given any copies of the documents by the respondent/defendant. There is mention in the plaint of certain alleged attempts of the respondent/defendant to grab the remaining portion of 400 sq. yds which was not sold to the respondent/defendant and a criminal case which arose therefrom. In terms of the aforesaid facts, the subject suit came to be filed for recovery of the balance price of ₹4.5 lacs.

3. The respondent/defendant contested the suit and contended that the entire price of ₹6 lacs was paid to the appellant/plaintiff. It was further pleaded that the documents which were executed in favour of the respondent/defendant were not dated 31.5.1994 but were dated 24.1.1994. Accordingly, it was prayed that the subject suit be dismissed.

4. After completion of pleadings, trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to the suit amount, if so to what extent? OPP
2. Whether the plaintiff is entitled to interest if so, at what rate?OPP
3. Whether the suit of the plaintiff is barred by limitation?OPD
4. Whether there is no cause of action in favour of the plaintiff?OPD

5. Whether the suit of the plaintiff is liable to be rejected u/o 7 Rule 11 CPC?OPD
6. Relief.

5. The only issue which has been urged before this Court is as to whether the complete price of ₹ 6 lacs was paid to the appellant/plaintiff and whether an amount of ₹ 4.5 lacs still remains due and payable to the appellant/plaintiff by the respondent/defendant.

6. In my opinion, the suit of the appellant/plaintiff has rightly been dismissed by the Court below. Firstly, I find that there is divergence also between the pleading/plaint of the appellant/plaintiff and the evidence which was led by her with respect to the issue of handing over of the possession of the suit property. In the plaint whereas the appellant/plaintiff is silent as to the delivery of possession of the suit property, in her evidence she has categorically admitted that she has handed over the possession of the suit property to the respondent/defendant at the time of execution of the documents. Further, there seems to be some divergence also with respect to mentioning of a sum of ₹ 1.5 lacs in the documents dated 24.1.1994 inasmuch as, though in the plaint, it was averred by the appellant/plaintiff that the lesser amount was stated to avoid taxes (i.e. property taxes inasmuch as higher the value of sale, higher the value of property taxes), in the evidence of the appellant/plaintiff it is simply stated that she objected to the

documents mentioning the alleged lesser price of ₹1.5 lacs. Also, in my opinion the raising of objection is a clear cooked-up story inasmuch as a person objects to a thing only if it goes against that person's interest and mentioning of lesser value was not in any manner prejudicial to the appellant/plaintiff for her to object about the same. I find the case of the appellant is not believable that the appellant/plaintiff would deliver physical possession of the suit property to the respondent/defendant merely on receiving 25% of the sale consideration i.e ₹ 1.5 lacs out of the total price of ₹ 6 lacs. It is well known that unless complete or most of the consideration is paid to the seller, the seller never transfers actual physical possession of the suit property. On this aspect it must be noted that it is incredulous that payment of as much as 75% of the consideration was left in an oral understanding without any documentary evidence that there existed a huge balance of ₹ 4,50,000/- which was to be paid after the six months of the execution of the documents. No one would take such a risk of letting the issue of balance payment to an oral promise. Another important aspect to be noted is that if the case of the appellant/plaintiff was correct that she was to receive the balance payment within six months of the execution of documents, and which according to her of 31.5.1994 (the documents actually are of 24.1.1994 and which have been filed and exhibited by the respondent/defendant in the trial Court as Ex.DW1/2 to

DW1/6), the appellant/plaintiff would not have waited for almost 3 years till 24.4.1997 when the first legal notice was sent alleging non-payment of the balance sale consideration of ₹ 4.5 lacs. The appellant/plaintiff, had the balance consideration not been paid to her by January, 1995, would have raised hue and cry in January, 1995 itself and would have got issued various notices or taken other legal steps. I may note that the respondent/defendant has filed and proved in the trial court a document of three pages (Ex.DW1/1) which shows payment of various different amounts to the appellant/plaintiff by the respondent/defendant over the years 1992-1993, and at the end of the said document there is an endorsement that complete amount due to the appellant/plaintiff stands paid.

7. So far as the remaining amount of ₹ 1.5 lac is concerned, the documents dated 24.1.1994 executed by the appellant/plaintiff in favour of the respondent/defendant themselves mention the factum of payment of ₹ 1.5 lac. In fact, and as rightly pointed out by the counsel for the respondent/defendant, in the document being the affidavit dated 24.1.1994, it is mentioned that the appellant has received the full consideration amount. Counsel for the respondent/defendant further rightly points out that even in the receipt dated 24.1.1994 it is mentioned by the appellant that full and final payment against the sale of the property/plot of land has been received.

In view of the aforesaid facts, I am of the clear opinion that no further payment was due to the appellant from the respondent/defendant.

8. In fact, in my opinion, the plea of the balance sale consideration of ₹ 4.5 lacs yet remaining to be paid to the appellant/plaintiff by the respondent/defendant is not open to the appellant/plaintiff in terms of the provisions of Sections 91 and 92 of the Evidence Act, 1872 and which provide that once there is a written document encompassing the contract between the parties, in such circumstances, it is not open to plead any oral understanding to contradict the terms of the written document. Only way that the contents of the documents can be contradicted/denied is provided that the documents have been got executed by force, coercion, undue influence etc, and which is not the plea of the appellant/plaintiff.

9. A civil case is decided on balance of probabilities. The balance of probabilities shows that the appellant/plaintiff has received the complete consideration, and it is a fact which is mentioned not only in the affidavit dated 24.1.1994, but also in the receipt Ex.DW1/5, as proved in the trial Court. The factum that possession was also delivered under the documentation is another proof that the entire consideration would have been received by the appellant/plaintiff and not merely 25% consideration as is being falsely alleged.

10. In view of the above, I do not find any merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

MAY 22, 2012
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VALMIKI J. MEHTA, J.