

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

+ **RFA No. 343/2004**

% **24th April, 2012**

VIMAL ARORA Appellant
Through: Mr. Rajat Aneja, Advocate.

versus

MAHENDER SINGH & ORS. Respondents
Through: Respondent No. 1 in person.

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 19.04.2004 dismissing the suit for declaration, possession and permanent injunction filed by the appellant/plaintiff with respect to the suit property admeasuring 1 Bigha and 4 Biswas situated in Khasra No. 40/25 in village Khera Kalan, Delhi. The suit filed for declaration, possession and permanent injunction pleaded the cause of action that the sale deed executed in favour of the defendant No. 1/respondent No. 1 by the appellant/plaintiff be declared to be null and void inasmuch as out of the total sale consideration of ₹ 5 lakhs, only a

sum of ₹ 1 lakh was paid. Trial court has held that the sale deed was executed and registered for a sum of ₹ 1 lakh and no further amount was due to the appellant/plaintiff, and therefore, the suit of the appellant/plaintiff was dismissed.

2. The facts of the case are that the appellant/plaintiff pleaded that he had purchased the suit property vide sale deed dated 11.06.1992 for a sum of ₹ 1,92,000/- from one Sh. Raj Singh. It was pleaded that the appellant/plaintiff entered into an arrangement for selling of the suit property to the respondent No.1/defendant No. 1. On 22.02.1996 the respondent No. 1/defendant No.1 induced the appellant/plaintiff to execute the sale deed for the stated consideration for a sum of ₹ 1 lakh, although, the real consideration was a sum of ₹ 5 lakhs. It was pleaded that the defendant No. 1/respondent No. 1 agreed to pay ₹ 4 lakhs outside the court of the Sub-Registrar, however, he failed to do so and thereafter since in spite of repeated requests, balance amount of ₹ 4 lakhs was not paid, and hence the subject suit came to be filed.

3. The respondent No. 1/defendant No. 1 contested the suit and pleaded that the case as set up by the appellant/defendant of fraud, misrepresentation, undue influence is false and the appellant/plaintiff had received the complete price of the suit property. It was also pleaded that

the suit was barred for non-joinder of necessary parties inasmuch as the suit property has been bifurcated and thereafter, now it is owned by 4 persons including Sh. Kamal Singh and Kamar Singh besides the defendant No.1/respondent No. 1.

4. After the pleadings were completed, trial court framed the following the issues:

1. *Whether the suit of the Plaintiff is barred under the provision of Section 41(h) of S.R. Act? OPD*
2. *Whether the suit of the Plaintiff has not been property valuded for the purposes of court fee and jurisdiction? OPD-1*
3. *Whether the Plaintiff has no locus standi to file the present suit? OPD-1*
4. *Whether the Plaintiff is entitled to the declaration as prayed? OPP*
5. *Whether the Plaintiff is entitled to the possession as prayed? OPP*
6. *Whether the Plaintiff is entitled to the injunction as prayed? OPP*
7. *Relief.*

5. The main issues in this regard were issues no. 4,5 and 6 and trial court in this regard has held as under:

“16. The Plaintiff had executed the Sale Deed on 22/2/96. According to him he had agreed to execute the Sale Deed on the assurances given by the Defendants that the payment of ₹ 4

Lakhs shall be made afterwards. Defendant No. 1 had, according to the Plaintiff, stated that he was not having white money to pay ₹ 4 Lakhs. On the assurances, he (Plaintiff) had signed the Sale Deed. I have mentioned the facts of the case in detail. In the entire plaint it was nowhere mentioned that on 22/2/96 Jagdish Bubna (PW-2)) and Prem Kumar Bubna (PW-3) were present. The Plaintiff has examined both these witnesses namely Jagdish Chand PW-2 and Prem Kumar (PW-3). Both these witnesses have stated that on 22/2/96, he (witness alongwith Plaintiff and the Defendants) had gone to the office of Sub-Registrar for execution of the Sale Deed. In their presence the Sale consideration had been fixed at ₹ 5 lakhs. The balance of ₹ 4 lakhs was to be paid after execution of the Sale Deed and its registration by the Sub-Registrar. The Defendant No.1 had handed over a cheque of ₹ 1 Lakh to the Plaintiff. Both these witnesses have further stated that from the office of the Sub-Registrar they had gone to office of Defendant No. 2 and waited there for Defendant No. 1. In the Plaint reference of Jagdish finds mention in para 10. In this paragraph the Plaintiff has not mentioned that Jagdish or Prem had accompanied him to the office of Defendant No. 2. Surprisingly, when the Plaintiff appeared as PW-1, he also did not say about the presence of PW-2 and PW-3 at the time of execution of the Sale Deed or the undertaking given by the Defendants to make the payment of ₹ 4 Lakhs after registration of the Sale Deed. The Plaintiff (PW-1) has, in his chief, stated that he has purchased the land in suit for ₹ 8.95 Lakhs. He got the Sale Deed executed for a sum of ₹ 1.92 Lakhs. Agreement to sell (Ex. PW-1/1) dt. 9/4/92, the receipt dt. 9/4/92 (Ex. PW-1/2) another receipt dt. 14/6/92, another receipt Ex. PW-1/4 and Agreement to sell dt. 14/6/92 (Ex. PW-1/5) had been executed by one Raj Singh. That particular deal had been materialized through Mohinder Singh for a sum of ₹ 6,65,500/-. After making payment of ₹ 6 Lakhs, Mohinder Singh had backed out from the deal. Defendant No. 1 had not given him the possession of the property after getting the Sale Deed executed. All the papers including Sale Deed, Agreement to sell, receipts etc. had been snatched by Mohinder Singh to whom the property had been sold. Another payment of ₹ 1.75 Lakhs was made to Mohinder Singh on 14/6/92 vide receipt (Ex. PW-1/3).

Here I would like to clarify that the documents Ex. PW-1/1 to PW-1/5 show that there had been an agreement to sell on 9/4/92 between the Plaintiff and one Raj Singh and the payment had been made to Raj Singh. Exhibit PW-1/2, PW-1/5 bear the signature of Mohinder Singh as a witness.

17. PW-1 further stated that Defendant No. 1, after receiving a sum of ₹ 8.95 Lakhs had executed the Sale Deed in respect of land in suit. The sale Deed showed the amount as ₹ 1.92 lakhs. The land was sold to him (Plaintiff) for sum of ₹ 5 Lakhs orally. He (Plaintiff) had paid ₹ 70,000/- to Mohinder Singh for use of a common space. Ex. PW-1/4 is the receipt in this regard. Now this receipt Ex. PW-1/4 is again, bears signature of Raj Singh and not of Mohinder Singh. The witness further deposed that he had paid ₹ 6 Lakhs to Mohinder Singh vide receipt mark 'A'. The Plaintiff did not produce the original of this receipt.

18. In the cross-examination the Plaintiff deposed that Mohinder Singh had snatched the papers on the Sunday which had fallen after 22/2/96. He (Plaintiff) had not lodged the complaint to the police regarding snatching of the documents by Mohinder Singh from him. He (Plaintiff) had signed the Sale Deed in the presence of Sub-Registrar. He had been accompanied by three persons. The Sale Deed was executed at about 11.00 or 11.30 A.M. or 12.00 Noon. He along with three other persons, who had accompanied him to the office of Sub-Registrar had remained in the office of Sub-Registrar for about 10/15 minutes, after execution of the Sale Deed. He had not discussed with Mohinder Singh in respect of the Sale of the property to Mohinder Singh. The Plaintiff had volunteered that he had had a talk with Rajinder Sharma. He was unable to tell as to when he had discussed the matter regarding sale of the land in suit, with Rajinder Sharma. The Land in suit is surrounded by the land of Defendant No. 1. He (witness) could not reach the property in suit that is why he had sold it to Defendant No. 1. There was no other way to reach the property in suit except through the door installed by Defendant No. 1 at his field. He (witness) was illiterate. He does not know English. He does not know whether it was mentioned in the

plaint or not: that all the documents in respect of the suit land had been snatched by Mohinder Singh. The witness admitted that the documents Ex. PW-1/1 does not bear his signature. These documents (Ex. PW-1/1 to Ex. PW-1/5) are neither registered nor attested so far. The witness denied the suggestions that these documents had not been executed by Mohinder Singh or that they had been executed by Raj Singh. I would like to clarify that, as mentioned earlier, these documents purport to have been executed by Raj Singh and not Mohinder Singh. The witness (PW-1) further admitted that Ex. PW-1/D-1 bears his signature at point A and B.

19. Ex. PW-1/D-1 is in fact a Photostat copy of the statement which is required to be furnished to the registering officer regarding transfer of title. This Photostat copy is dt. 1/1/96. In this document, which purports to have been sent on behalf of the Plaintiff to the registering officer, an information has been sent that the land measuring 1 Bigha and 4 Bishwa which is part of Khasra No. 40/25 has been transferred by Vimal Arora (The Plaintiff herein) to Mohinder Singh (Defendant No. 1 herein) for a Sum of ₹ 1 Lakh vide Sale Deed. I am not giving any importance to this document as it purports to have been written on 1/1/96 and the Sale Deed in question was got registered on 22/2/96.

20. Defendant No. 1 had given him (witness) cheque of ₹ 1 Lakh in the office of Sub-Registrar on 22/2/96. There was no agreement of ₹ 5 Lakhs. The witness (PW-1) admitted that Defendant No. 1 had never used any force or pressure for executing the Sale Deed. The witness volunteered that a quarrel had taken place between him and the Defendant No. 1 after execution of the Sale Deed. The witness then changed his stand and stated that the quarrel had taken place before execution of the Sale Deed. He (witness) had informed the Sub-Registrar that total value of the suit land was ₹ 5 Lakhs and not ₹ 1 Lakh. The Sub-Registrar did not say any thing about the stamp duty. The witness volunteered that he (Sub-Registrar) had enquired from him (Witness) whether he had received the balance amount on which Rajinder Sharma had informed the Sub-Registrar that he (Rajinder Sharma) had

received the balance amount and will pay the same later on. All these facts clearly establish that the claim of the Plaintiff cannot be accepted on its face value. If the quarrel had taken place before execution of the Sale Deed, the Plaintiff had had chance and rightly to refuse to execute the Sale Deed. He could have refused to get the Sale Deed registered. In that situation the Registrar would have refused to register the Sale Deed in view of Section 71 of the Registration Act 1908. The statement of the Plaintiff does not inspire confidence. When Rajinder Sharma had informed the Sub-Registrar that he (Rajinder Sharma) had received the balance amount and the same would be paid later on the Plaintiff should have raised his voice and challenged (Rajinder Sharma) at that very moment. The suit has been filed on 16/5/02 i.e. after a lapse of about three months. No Police report has been lodged. Although the documents had been snatched on 22/2/96 and the Defendants had shown their reluctance to pay the alleged balance amount. The Plaintiff should have approached the authority. The Defendant No. 1 had appeared as DW-1 and refuted the claim of the Plaintiff.

21. In view of the above discussion, I hold that the Plaintiff is not entitled to relief of declaration, possession or injunction. All these issues are accordingly decided against the Plaintiff and in favour of the Defendant.” (underlining is added)

6. A reference to the aforesaid paras shows that the trial court has rightly arrived at a finding that there was no fraud as alleged by the appellant/plaintiff. Trial court has rightly referred to the inconsistencies and the lack of credibility in the case as pleaded on behalf of the appellant/plaintiff as also the evidence led on behalf of the appellant/plaintiff. Trial court has noted the inconsistency i.e. on one hand it was claimed that the balance amount was to be paid outside the office of

the Sub-Registrar whereas at another place it was pleaded that the balance amount was to be paid on next date. Trial court has also found it rightly to be unbelievable that the respondent No.1/defendant No. 1 snatched the original title documents from the appellant/plaintiff outside the office of the Sub-Registrar. Trial court has observed that if really there was any snatching of documents, as per the case of the appellant/plaintiff, then a police report would have been lodged but admittedly, no police report was lodged. The trial court in fact notes that if there was any quarrel before the execution of the sale deed the appellant/plaintiff had a chance to refuse the execution of the sale deed, and which he did not. It has also been rightly held that a Sub-Registrar normally puts question to the seller receiving a complete consideration and the appellant/plaintiff should have objected at that stage itself when the sale deed was sought to be registered.

7. In my opinion, in view of the facts as found by the trial court it could not have been said that the appellant/plaintiff executed the sale deed for the suit property in favour of the defendant No. 1/respondent No. 1 on account of any alleged fraud etc. The credibility of the appellant/plaintiff was also in doubt inasmuch as it was admitted by him that the sale deed by which he purchased the suit property stated the amount as ₹ 1.92 lakhs, however, the real price was ₹ 8,95,000/-. Therefore, it is clear that there was a practice

of getting a sale deed registered for less than the actual amount of consideration and, therefore, the contention of the appellant/plaintiff that the transaction was really of ₹ 5 lakhs and out of which a sum of ₹ 4 lakhs was not paid was not proved on record. There are also other inconsistencies in the deposition of the appellant/plaintiff and which have been noted in the impugned judgment of his having purchased the suit land not from Sh. Raj Singh but from the respondent No.1/defendant No.1.

8. Trial Court has also rightly arrived at a finding that the suit was bad for non-joinder of necessary parties as the suit land had been bifurcated/sold in four parts, but the actual subsequent owners were not parties to the suit.

9. A civil case is decided on balance of probabilities. The balance of probabilities shows that the appellant/plaintiff failed to prove that when he executed the sale deed in favour of the respondent No.1/defendant No. 1 he had not received the entire sale consideration. Merely because two views are possible, an Appellate Court will not interfere with the findings of the trial court unless such findings are illegal or perverse. I do not find any illegality or perversity which calls interference of this Court in this appeal.

10. In view of the above, the appeal being without any merit, is

accordingly dismissed leaving the parties to bear their own costs. Trial court record be sent back.

APRIL 24, 2012
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VALMIKI J. MEHTA, J.