

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

+ **RFA No. 86/2012**

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14th February, 2012

BABITA

..... Appellant

Through : Mr. Jai Bansal, Advocate.

versus

RAVINDER VERMA & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J. (ORAL)

C.M. No. 2768/2012 (Exemption)

Application allowed, subject to all just exceptions.

C.M. stands disposed of.

RFA No. 86/2012

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 14.12.2011 rejecting the plaint under Order 7 Rule 11 CPC. In my opinion, though the conclusion arrived at by the trial Court is correct, really the provision which ought to have been applied, in addition to Order 7 Rule 11 CPC, was Order 12 Rule 6 CPC, inasmuch as, the suit was sought to be dismissed on certain admitted

facts which were found on record. The impugned order, therefore, will be treated both as under Order 7 Rule 11 CPC as also under Order 12 Rule 6 CPC, inasmuch as, merely because an incorrect provision of law is mentioned or another provision of law which ought to have been mentioned is not mentioned, will not render an otherwise correct judgment as an incorrect judgment.

2. The facts of the case are that the appellant/plaintiff entered into a collaboration agreement with defendant No. 1 on 22.9.2009. This collaboration agreement was for construction of property of the appellant/plaintiff bearing No. B-1/296, Yamuna Vihar, Delhi-110 053. The property was already constructed so far as the ground floor and the first floor are concerned, which floors were to be renovated by the defendant No.1, and, as per the collaboration agreement the appellant/plaintiff was to in addition receive a sum of ₹27,50,000/-. The defendant No. 1 in consideration of performing his obligations under the collaboration agreement was to receive the second floor and the third floor of the suit premises which were to be constructed by him at his cost. The case of the appellant/plaintiff in the plaint was that the sale deed executed by the appellant/plaintiff in favour of defendant No. 1 on 15.3.2010 be declared illegal, and consequently, the subsequent sale deed executed on 30.4.2010 by defendant No. 1 in favour of the purchaser/defendant No. 2

be also declared void.

3. The trial Court has rejected the plaint on the following grounds:

(i) The sale deed executed by the appellant/plaintiff in favour of defendant No. 1 talks of payment of consideration of ₹10,00,000/- and as per which registered sale deed, on receipt of the consideration, title of the property passed to defendant No. 1.

(ii) It is also held, though in a very general sort of manner, that once the sale deed is executed by the appellant/plaintiff in favour of defendant No. 1, and the allegation is that the entire consideration is not received then, the right of the appellant/plaintiff/seller was only to file a suit for recovery of the balance price and not for setting aside the sale deeds.

4. Before proceeding further the provision of Section 55(4)(b) of the Transfer of Property Act, 1882 is required to be noted. The said provision reads as under:-

“55. Rights and liabilities of buyer and seller.

xxx

xxx

xxx

(4) The seller is entitled—

(a) ...

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase- money, to a charge upon the property in the hands of the buyer, 1[any transferee without consideration or any transferee with notice of the non-payment], for the amount of the purchase- money, or any part

thereof remaining unpaid, and for interest on such amount or part
1[from the date on which possession has been delivered].”

5. A reading of the aforesaid provision shows that once a sale deed is executed with respect to an immovable property, however the entire price is not received by the seller, then in such a case, the seller has a right to sue for the balance price, and which balance price is a charge on the property. The fact that the entire consideration is not paid will not result in the sale deed being void, but there will only be an entitlement of the seller to receive the balance price of the property sold. Of course, if the sale deed talks of payment of consideration as a pre-condition for transfer of title in the property then obviously since the payment of consideration would be a pre-condition, hence the title would not pass unless the entire consideration is paid. The latter is, however, not the case of the appellant/plaintiff, because in the present case, under the sale deed dated 15.3.2010 it is not noted that the title of the property will not pass unless as a precondition the entire consideration is in fact paid to the appellant/plaintiff. Accordingly, on the execution and registration of sale deed dated 15.3.2010, defendant No. 1 became the owner of the second and third floors of the property, and the ownership of which floors in any case he was entitled to under the collaboration agreement dated 22.9.2009. Of course, an amount of ₹10,00,000/- is written in the sale deed dated 15.3.2010, executed by the

appellant/plaintiff in favour of defendant No. 1, but the parties know best as to why instead of writing consideration of ₹27,50,000/- only a consideration of ₹10,00,000/- is mentioned. Unfortunately, transactions in this country have an undisclosed element in the same and many of the problems arise because of this undisclosed element.

6. As per Order 6 Rule 4 CPC whenever there is alleged a plea of coercion or undue influence or any other averment which requires detailed facts, then all detailed facts have to be given in the pleadings. Order 6 Rule 4 CPC reads as under:

“4. Particulars to be given where necessary.- In all cases in which the party pleading relief on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

7. In the present case, the only averments of coercion/pressure which have been made by the appellant/plaintiff in the plaint, are contained in paras 5 to 7 of the plaint which read as under:-

“5. That the defendant had created the pressure on the plaintiff as well as his family members and plaintiff has moved the complaint application regarding diary No. 41-B on dated 19.1.2010 with the PS Bhajanpura, Delhi. The police has not taken the action against the defendant on the basis of the said complaint and thereafter husband of the plaintiff moved an application to the police commissioner on dated 6.3.2010 but the action was not taken by the police against the defendant.

6. That the plaintiff and her family was under pressure and terrorized by the defendant and his associates.

7. That on 15.3.2010 the defendant had succeed to got the sale deed in his name of second floor in property No.B-1/296, Yamuna Vihar, Delhi which is shown in the attached site plan in red colour.

7-A: That the defendant no. 2 had purchased the PROPERTY On 30.4.2010 which is illegal unjust and defendant no. 1 has no right to execute the sale deed in favour of the defendant no. 2.

“That the defendant no. 1 had not paid the whole consideration amount which was fixed between the plaintiff and defendant no.1 and he had paid only Rs.16,00,000/- out of Rs.27,50,000/- and the plaintiff was agreed to sale only second floor to the defendant no.1 with the malafide intention to defendant no.1 had sold the second floor and third floor while the defendant no. 1 was not authorized to sale the second floor because he had not paid the whole consideration amount to the plaintiff.

“That the sale deed of the defendant no.2 is a fake document and she has no right to construct of the third floor while dispute is continue pending between the plaintiff and defendants, so the question does not arise to get the title of the disputed property.”

8. A reading of the aforesaid paras shows that there is no specific averment that the sale deed which was executed on 15.3.2010 by the appellant/plaintiff in favour of defendant No. 1 was on account of coercion or undue influence. Execution of sale deed is a fact which is mentioned in para 7 however there is a conspicuous absence in this para 7 of the plaint of any factual detailed averment of fraud, undue influence, pressure or coercion. I have already referred to Order 6 Rule 4 CPC, and as per which detailed facts were required to be stated in the plaint. The plaint however contains no particulars whatever of what was the type of coercion, what was the undue influence or what was the type of pressure, and, as a result

of which the sale deed dated 15.3.2010 was said to have been got executed by defendant No. 1 from the appellant/plaintiff. The entire plaint is conspicuously silent with regard to the details of alleged coercion or undue influence or pressure.

9. In view of the above, though strictly the action of the trial Court of rejecting the plaint under Order 7 Rule 11 CPC may not be wholly correct, inasmuch as, it is really the suit that has to be dismissed on the admitted facts under Order 12 Rule 6 CPC. A 'decree' within the meaning of the said expression in Section 2(2) of CPC includes dismissal of the suit. The defendant therefore can very much file an application under Order 12 Rule 6 CPC to dismiss the suit on the basis of admitted facts, admitted documents and admitted pleadings. In the present case, on the basis of the facts, documents and pleadings, as admitted, it is clear that the trial Court was justified in passing the impugned judgment, however, though not under Order 7 Rule 11 CPC but as per the provision of Order 12 Rule 6 CPC.

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.

VALMIKI J. MEHTA, J.

FEBRUARY 14, 2012

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