

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

% Date of decision : 20th January, 2012

+ RFA 333/2010

PARMANAND KANSOTIA Appellant
Through : Ms. Manasi Sahoo, Adv.

versus

SEETHA LATH & ANR Respondents
Through : Mr. Partap Singh, Adv.

+ RFA 362/2010

PARMANAND KANSOTIA Appellant
Through : Ms. Manasi Sahoo, Adv.

versus

SEETHA LATH & ANR Respondents
Through : Mr. Partap Singh, Adv.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

JUDGMENT

1. Vide sale agreement dated 20th September, 2005, Rajinder Prashad Rathi as attorney of Seetha Lath (hereinafter referred to as 'the Seller') agreed to sell the first floor without terrace rights of property bearing No.6549, Ward No.XVI, plot No.172, measuring about 1125 sq.ft. covered area, Khasra No.453/152 in Block 9-B, Gali No.1-2, Dev Nagar, Karol Bagh, New Delhi (hereinafter referred to as 'the suit property') to Parmanand Kansotia (hereinafter referred to as 'the Purchaser') for a total sale consideration of ₹15,65,000/-. The

Purchaser paid a sum of ₹3,00,000/- to the Seller at the time of the sale agreement and agreed to pay the balance sale consideration on or before 21st November, 2005.

2. On 2nd November, 2006, the Purchaser instituted a suit for specific performance, permanent injunction and recovery bearing Suit No.182/2006 against the Seller on the following averments:-

- (i) At the time of the execution of the sale agreement dated 20th September, 2005, the suit property was not complete, furnished, decorated and renovated and it was agreed that the Purchaser shall spend his own funds for renovation, furnishing, decoration and construction with modern fittings and shall deduct/adjust the said amount from the sale consideration.
- (ii) The Seller handed over the vacant and peaceful possession of the suit property to the Purchaser at the time of the sale agreement on 20th September, 2005 with liberty to renovate, furnish, decorate and construct with modern fittings.
- (iii) The Purchaser spent a sum of ₹4,00,000/- towards the renovation, furnishing, decoration and construction with modern fittings and adjusted the said amount against the sale consideration.
- (iv) In the middle week of November, 2005, the Purchaser approached the Seller to execute the sale deed and receive the balance sale consideration of ₹8,65,000/- but the Seller sought time to execute the sale deed. Despite repeated requests and reminders, the Seller did not execute the sale deed in favour of the Purchaser.
- (v) In February, 2006, the Purchaser made cash payment of ₹2,00,000/- to the Seller for which Purchaser did not issue a receipt.

- (vi) In June, 2006, the Purchaser again approached the Seller for execution of the sale deed against the payment of balance sale consideration of ₹6,65,000/-.
- (vii) On 2nd July, 2006, the Seller visited the Purchaser and demanded further payment of ₹2,00,000/-. The Purchaser again offered to pay the balance sale consideration of ₹6,65,000/-. However, the Seller threatened the Purchaser with dire consequences.
- (viii) On 29th October, 2006, the Seller again visited the Purchaser and threatened his wife and minor child to vacate the suit property. The Purchaser made a complaint with police on 30th October, 2006.
- (ix) The Purchaser is ready and willing to make the payment of ₹6,65,000/- towards the balance sale consideration.

3. The Seller raised the following defence in his written statement:-

3.1 The Purchaser committed the breach of the sale agreement dated 20th September, 2005 by failing to make the payment of balance sale consideration of ₹12,65,000/- on or before 21st November, 2005 and, therefore, the earnest money of ₹3,00,000/- has been forfeited by the Seller.

3.2 The Purchaser has encroached upon the suit property. The Seller came to know of the encroachment on 17th March, 2006 at about 2:30pm whereupon he lodged a complaint with the police on 22nd July, 2006 in respect of which DD No.15B was recorded on 4th August, 2006.

3.3 There was no agreement for renovation, furnishing, decoration and construction with modern fittings in the suit property between the parties.

3.4 The Seller never agreed for any amount to be spent by the Purchaser for renovation, furnishing, decoration and construction with modern fittings by the Purchaser or for deduction/adjustment of the same from the sale consideration.

3.5 The Seller had agreed to hand over the vacant and peaceful possession of the suit property at the time of the payment of the balance sale consideration of ₹12,65,000/-.

However, the Purchaser who got the sale agreement typed, dishonestly mentioned 'at the time of execution of sale agreement' instead of 'at the time of execution of sale deed and payment of balance amount of ₹12,65,000/-' in clause 2 of the agreement.

3.6 The Purchaser was never ready to make the payment of balance sale consideration of ₹12,65,000/-. The Seller denied the receipt of cash amount of ₹2,00,000/- from the Purchaser in February, 2006.

4. On 5th December, 2006, the Seller instituted Suit No.219/2006 for possession, mesne profits, permanent and mandatory injunction seeking possession of the suit property, mesne profits at the rate of ₹12,000/- per month as well as permanent injunction on the ground that the Purchaser has trespassed into the suit property which came to the knowledge of the Seller on 17th March, 2006 at about 2:30 pm. The Seller lodged a written complaint with the police on 22nd July, 2006. According to the Seller, the Purchaser has committed the breach of the sale agreement dated 20th September, 2005 by failing to make the payment of balance sale consideration of ₹12,65,000/- on or before 21st November, 2005. The submissions made by the Seller in the plaint are same as set up in the written statement in Suit No.182/2006 whereas the defence set up by the Purchaser in this suit is same as the case set up in Suit No.182/2006.

5. Evidence in Suit No.182/2006

5.1 The Purchaser examined two witnesses. Shashi Bali, mother-in-law of the Purchaser appeared in the witness box as PW-1 and Rohtas Kumar Kansotia, the brother of the Purchaser appeared as PW-2. They both deposed about the sale agreement dated 20th September, 2005 and payment of ₹3,00,000/- at the time of the sale agreement to the Purchaser. They deposed that the Seller handed over the keys of the suit property to the Purchaser at the time of the sale agreement in their presence. They deposed that the building was old and without any fixtures and fittings, electricity connection and sanitary fittings and it was agreed between the parties to deduct the cost of renovation from the balance sale consideration. They deposed that ₹3,00,000/- was paid by the Purchaser to the Seller on 31st May, 2007. They also deposed that the Purchaser has spent ₹4,00,000/- towards renovation of electrical and sanitary fittings and has given cash amount of ₹2,00,000/- to the Seller in June/July, 2006 in their presence. The witnesses exhibited the affidavits as Ex.PW1 and Ex.PW1/A, photographs as Ex.PW1/B to Ex.PW1/E and bills towards cost of renovation as Ex.PW1/F to Ex.PW1/S which were objected to by the Seller.

5.2 PW-1, in cross-examination, could not tell the name of the photographer and the date when the photographs, Ex.PW1/B to Ex.PW1/E were taken. PW-1 could not tell the date of sale agreement. PW-1 did not visit the suit property prior to 20th September, 2005. She could not tell the amount paid by the Purchaser to the Seller on 20th September, 2005. She did not remember when the Purchaser had shifted to the suit property. She could not tell, if the Purchaser appeared before the Office of the Sub-Registrar on 21st November, 2005. She could not tell if the demand drafts for the balance consideration amount were purchased from any bank by the Purchaser. She could not tell anything about the repairs of the suit property and whether expenses incurred for the same, were mentioned in the sale agreement. She testified that ₹2,00,000/- was paid in cash to the Seller in her presence but admitted that no receipt was issued/given by him.

5.3 PW-2, in cross-examination, stated that he did not remember as to who else had signed the sale agreement as witness. He testified that besides him and his brother, two other persons, namely, Seller and his father, Nand Lal Rathi were present. He further testified that the key was handed over for carrying out the necessary repairs in the suit property as the same was not fit for habitation. He admitted that this

fact was not mentioned in the sale agreement. He testified that the key was handed to the Purchaser in good faith and that this fact was not mentioned in the sale agreement. He also admitted that it was not mentioned in the sale agreement that the amount to be spent on renovation would be adjusted against the amount of sale consideration. He could not tell when the sum of ₹2,00,000/- was given to the Seller. He admitted that there was no receipt regarding the payment of ₹2,00,000/- in cash. He testified that he could not say as to what rent the suit property can fetch in the market.

5.4 The Seller, Rajinder Prashad Rathi appeared in the witness box as DW-1 and deposed that he as a special attorney of Seetha Lath agreed to sell the suit property to the Purchaser for a total sale consideration of ₹15,65,000/- vide sale agreement dated 20th September, 2005, Ex.DW1/2. The site plan was proved as Ex.DW1/3. DW-1 admitted the payment of ₹3,00,000/- at the time of the sale agreement. The last date for payment of balance sale consideration of ₹12,65,000/- was on or before 21st November, 2005 as per the agreement. The Purchaser failed to make the payment of balance sale consideration of ₹12,65,000/- on or before 21st November, 2005 and, therefore, the earnest money of ₹3,00,000/- stood forfeited. DW-1 visited the suit property on 17th March, 2006

at about 2:30 pm and found that the lock of the outside gate was broken and the Purchaser was residing there. DW-1 lodged a written complaint with the police on 22nd July, 2006 which was converted into FIR No.101/2007 under Sections 454/448/380/506 IPC, P.S. Prasad Nagar, marked as Ex.DW1/4, against the Purchaser. The Purchaser filed application for anticipatory bail before the learned District and Sessions Judge and agreed to make payment of ₹6,65,000/- without prejudice to his rights out of which he paid ₹3,00,000/- on 31st May, 2007. The balance amount of ₹3,65,000/- was agreed to be paid on 16th July, 2007 but was not paid. The copy of the orders dated 16th May, 2007, 31st May, 2007 and 8th August, 2007 were proved as Ex.DW1/5 to Ex.DW1/7. The power of attorney dated 8th December, 2004 and 4th January, 2007 were proved as Ex.DW1/8 and Ex.DW1/9.

5.5 DW-1, in cross-examination, stated that he did not receive any amount in cash after execution of the sale agreement. DW-1 stated that he never handed over the key of the suit property to the Purchaser. DW-1 stated that he had shown the suit property to the Purchaser before execution of the sale agreement. DW-1 denied that he had asked the Purchaser to renovate the suit property. DW-1, however, admitted the receipt of ₹3,00,000/- at the time of execution of

sale agreement and further sum of ₹3,00,000/- by the order of Sessions Court.

6. Evidence in Suit No.219/2006

6.1. The Seller, Rajinder Prashad Rathi appeared in the witness box as PW-1 and made the same statement as made by him in Suit No.182/2006 as DW-1 and proved on the documents Ex.DW1/1 to Ex.DW1/9 in Suit No.182/2006 as Ex.PW1/1 to Ex.PW1/9.

6.2 Head Constable, Vikas Kumar, P.S. Rajinder Nagar appeared as PW-2 and proved the FIR No.101/2007 under Sections 454/448/380/506 IPC dated 22nd February, 2007 against the Purchaser.

6.3 The Purchaser examined two witnesses, Shashi Bali, mother-in-law of the Purchaser as DW-1 and Rohtas Kumar Kansotia, brother of Purchaser as DW-2 and they both made the same statement as made in Suit No.182/2006 as PW-1 and PW-2 and they relied on the documents Ex.PW1 and Ex.PW1/A to Ex.PW1/S in Suit No.182/2006.

7. Findings of the learned Trial Court in Suits No.182/2006 and 192/2006

The learned Trial Court dismissed the Purchaser's suit for specific performance, permanent injunction and recovery and decreed the Seller's suit for possession, mesne profits,

permanent and mandatory injunction. The findings of the learned Trial Court are as under:-

7.1 The Purchaser has committed the breach of the sale agreement dated 20th September, 2005 by failing to make the payment of balance sale consideration of ₹12,65,000/- on or before 21st November, 2006 and, therefore, the Seller has rightly forfeited the earnest money of ₹3,00,000/- in terms of clause 9 of the sale agreement.

7.2 The Purchaser has failed to prove the condition of the suit property at the time of the sale agreement. The Purchaser himself did not appear in the witness box. His mother-in-law, Shashi Bali appeared as PW-1 in Suit No.182/2006 and admitted that she had never visited the suit property prior to 20th September, 2005 and she could not be aware of its real condition at the time of the sale agreement. She could not tell when the Purchaser shifted to the suit property or visited the office of Sub-Registrar for execution of the agreement. The Purchaser's brother Rohtas Kumar Kansotia appeared as PW-2 in Suit No.182/2006 and deposed that the keys of the suit property were handed over in good faith and the condition of the suit property was seen after the execution of the sale agreement. He, however admitted that the sale agreement was silent about the alleged expenditure required to be incurred on the renovation of the suit property and could not tell if the same was subject to adjustment against the sale consideration amount.

7.3 The Purchaser was not entitled to deduct any amount towards the renovation, furnishing, decoration and construction in the suit property from the sale consideration as there was no clause in the sale agreement dated 20th September, 2005 that the Purchaser shall be entitled to carry out renovation, furnishing, decoration and construction in the suit property and to adjust the same from the sale consideration. The Purchaser has failed to prove any agreement with the Seller in this regard. The Purchaser has also failed to prove that he has incurred ₹4,00,000/- towards renovation, furnishing, decoration and construction in the suit property.

7.4 The Purchaser failed to prove the payment of ₹2,00,000/- in cash to the Seller in February, 2006.

7.5 The Purchaser failed to prove that the keys of the suit property were handed over by the Seller to him at the time of execution of the sale agreement dated 20th September, 2005.

7.6 The possession of the Purchaser over the suit property was held to be illegal.

7.7 The Purchaser was not entitled to a decree of specific performance, permanent injunction as well as recovery of money.

7.8 The Seller was entitled to possession, permanent injunction as well as mesne profits @ ₹8,000/- per month with effect from 17th March, 2006.

8. Grounds

The Purchaser has urged following grounds at the time of hearing of both the appeals:-

8.1 The Purchaser is entitled to decree of specific performance because the Purchaser has made the payment of earnest money of ₹3,00,000/- to the Seller on 20th September, 2005; cash amount of ₹2,00,000/- in February, 2006; lawfully adjusted the expenditure of ₹4,00,000/- on renovation, furnishing, decoration and construction; and was always ready and willing to make the payment of balance sale consideration of ₹6,65,000/- to the Seller. A further sum of ₹3,00,000/- out of ₹6,65,000/- has been paid to the Seller at the time of seeking the anticipatory bail from the Session Court and the Purchaser is ready to make the payment of balance sale consideration of ₹3,35,000/- to the Seller.

8.2 The Seller committed breach of the agreement dated 20th September, 2005 by failing to receive the balance sale consideration of ₹3,35,000/-.

8.3 At the time of execution of the sale agreement dated 20th September, 2005, the Seller had agreed that the Purchaser shall be entitled to adjust the amount incurred on renovation, furnishing, decoration and construction with modern fittings from the sale agreement.

8.4 The Purchaser is in lawful possession of the suit property since 20th September, 2005 when the Seller handed over the

vacant and peaceful possession of the suit property to the Purchaser.

8.5 The Seller, Rajender Prasad Rathi had a limited Power of Attorney and could not execute the sale deed in favour of the Purchaser.

9. Findings

9.1 The Purchaser has committed the breach of the sale agreement dated 20th September, 2005 by failing to make the payment of balance sale consideration of ₹12,65,000/- to the Seller on or before the 21st November, 2005 in terms of clause 9 of the sale agreement and, therefore, the Seller has rightly forfeited the earnest money in terms of the clause 9 and is entitled to the possession of the suit property from the Seller.

9.2 The Purchaser was admittedly never ready and willing to pay ₹12,65,000/- to the Seller. The Purchaser's own case is that he was ready and willing to pay Rs. ₹6,65,000/- after adjusting Rs. ₹4,00,000/- towards the cost of renovation, furnishing and decoration and cash payment of Rs. ₹2,00,000/- alleged to have been made in February, 2006.

9.3 The Purchaser has failed to prove the cash payment of ₹2,00,000/- in February, 2006 to the Seller.

9.4 The Purchaser has failed to prove that the possession of the suit property was handed over by the Seller to him on 20th September, 2005. Although the sale agreement dated 20th September, 2005 records that the Seller shall handover the vacant and peaceful possession of the suit property to the Purchaser at the time of the sale agreement but the factum of actual handing over of the physical possession of the suit

property has not been proved by the Purchaser. The Purchaser is, therefore, in unlawful possession of the suit property since 17th March, 2006 and is liable to pay mesne profits from the said date.

9.5 There was no agreement between the parties for renovation, furnishing, decoration and construction with modern fittings in the suit property by the Purchaser and for adjustment of the amount from the sale consideration and, therefore, the Purchaser is not entitled to adjust ₹4,00,000/- towards the alleged cost of renovation, furnishing, decoration and construction. There was no such clause in the sale agreement dated 20th September, 2005. No oral agreement in this regard has been proved by the Purchaser.

9.6 The Purchaser's contention that at the time of the sale agreement dated 20th September, 2005, there was an oral agreement that the Purchaser shall spend an unspecified amount for renovation, furnishing, decoration and construction with modern fittings and shall deduct/adjust the same from the sale consideration is barred by Section 29 of the Indian Contract Act. Section 29 of the Indian Contract Act declares all uncertain contracts to be void. The reason is obvious. What if the Purchaser would have claimed to have spent the entire balance sale consideration on renovation and sought the adjustment or would have spent more than a balance sale consideration and made a claim against the Seller. Section 29 of the Indian Contract Act is reproduced hereinbelow:-

“29. Agreements void for uncertainty-
Agreements, the meaning of which is not certain, or capable of being made certain, are void.”

9.7 The Purchaser's contention that at the time of the sale agreement dated 20th September, 2005, there was an oral agreement that the Purchaser shall spend an unspecified amount for renovation, furnishing, decoration and construction with modern fittings and shall deduct/adjust the same from the sale consideration is also barred by Sections 91 and 92 of the Indian Evidence Act as the terms of the sale agreement between the parties have been reduced into writing on 20th September, 2005 and evidence of any oral agreement for the purpose of contradicting, varying, adding and subtracting to its terms is barred by Sections 91 and 92 of the Indian Evidence Act.

9.8 This is a fit case for application of Section 114 of the Indian Evidence Act, which provides guidance for drawing natural presumptions. Section 114 of the Indian Evidence Act enables the Judge to infer one fact from existence of another proved fact having regard to the common course of natural events or human conduct. This section provides a guiding principle, namely that the Court shall be guided by its own experience and knowledge of the common course of natural events, and public and private affairs. Section 114 of the Indian Evidence Act is reproduced hereinbelow:-

“114. Court may presume existence of certain facts - The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

9.9 In natural course of events, the Seller hands over the vacant and peaceful possession of the suit property to the

Purchaser at a time of receiving the balance sale consideration and not before that. However, in exceptional cases, the possession is handed over where substantial payment has been made and there are special circumstances to secure the balance sale consideration such as relationship between the parties. There are no special circumstances in the present case. It is improbable that the Seller would have authorized the Purchaser to carry out renovation, furnishing, decoration and construction in the suit property without even specifying the amount.

9.10 The Purchaser's contention that the Seller had limited Power of Attorney was not raised before the Trial Court and no evidence was led with respect thereof. The Purchaser cannot raise a new and contradictory plea for the first time in appeal. The Purchaser entered into the sale agreement with the Seller and sought specific performance against him. The Purchaser is estopped from disputing the authority of the Seller to sell the suit property.

10. Conduct of the Purchaser

10.1 In **Dalip Singh v. State of U.P., (2010) 2 SCC 114**, the Supreme Court noted as under:-

“1. For many centuries, Indian society cherished two basic values of life i.e. 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic

changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

10.2 In **Padmawati and Ors. v. Harijan Sewak Sangh, 154**

(2008) DLT 411, this Court noted as under:

“6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.”

“9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is

the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately lose the case, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."

(Emphasis supplied)

10.3 I agree with the findings by the learned Judge in **Padmawati's case** (supra) and wish to add a few words.

There is another feature which has been observed and it is of unscrupulous persons filing false claims or defences with a view that the other person would get tired and would then agree to compromise with him by giving up some right or

paying some money. If the other party is not able to continue contesting the case or the Court by reason of falsehood falls into an error, the wrong succeeds. Many times, the other party compromises, or at other times, he may continue to fight it out. But as far as the party in the wrong is concerned, as this Court noted in **Padmawati's case** (supra), even if these litigants ultimately lose the lis, they become the real victors and have the last laugh.

10.4 In the present case, the conduct of the Purchaser does not appear to be honest. The Purchaser has raised a dishonest plea with the hope that the Purchaser can, with the Court delays, drag the case for years and the other side would succumb to buy peace. If the other side does not so settle in the end, they are hardly compensated and remains a loser. The Purchaser has set up a false, frivolous and dishonest plea of an oral agreement to spend unspecified amount on the renovation, furnishing, decoration and construction with modern fittings of the suit property, claim of ₹4,00,000/- towards the renovation, furnishing, decoration and construction with modern fittings in the suit property and handing over of the possession of the suit property by the Seller on 20th September, 2005. The Purchaser has made false statements on oath before the learned Trial Court and

this is a fit case to direct the prosecution of the Purchaser. However, considering that the Courts are already overburdened, directing prosecution of the Purchaser would further burden the system. I feel that such litigating parties should be burdened with heavy cost to be paid to the State which spends money on providing the judicial infrastructure.

11. Conclusion

11.1. In the facts and circumstances of this case, both the appeals are dismissed with exemplary cost of ₹2,00,000/- on the Purchaser. The cost shall be deposited by the Purchaser in the account of Delhi High Court Legal Services Committee within two weeks.

11.2. A copy of this judgment would be sent to the Secretary, Delhi High Court Legal Services Committee for his information and follow up action to recover the cost imposed if not paid as afore-directed.

J.R. MIDHA, J

JANUARY 20, 2012

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