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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 988/2009

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Judgment dated 16.03.2012

SH. DHIRAJ TOKAS

..... Plaintiff

Through: Mr.Milan Deep Singh and Mr.Pankaj
Vivek, Advocates

versus

SH. PARVESH & ANR

..... Defendant

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. Plaintiff has filed the present suit for recovery of Rs.67,52,739/- against the defendants. Despite service, defendants have not entered appearance and by order dated 24.05.2010 the defendants were proceeded *ex parte*. In support of his case, plaintiff has led *ex parte* evidence and has filed his affidavit by way evidence, which is exhibited as Ex.PW-1/A. Plaintiff has also filed affidavit by way of evidence of Mr.Ravinder Kumar (PW-2), which is exhibited as Ex.PW-2/A. Plaintiff has also examined Mr.Sanjeev Mehta, reader of Deputy Commissioner, South West Kapashera, Delhi, as PW-3.
2. PW-1 has deposed on the lines of the plaint and stated that family members of defendants approached him on 18.1.2008 showed a Khatoni of their land which they offered to sell to him. The defendant no. 1 held 1/8 share in the land comprised in Khata

Khatoni No. 101/79 bearing Kh. No.'s 20//19(4-9), 20(4-12), 21(4-16), 22(3-11), 25// 1/2/2(1-15), 5(4-16), 8(4-12), 9(4-9), 10(4-12), 11(4-16), 12(4-16), 13(4-16), 17/2(1-6), 18(4-16), 19(4-16), 20(4-16), 22(4-16), 23(5-8), 27(0-5) 26//1(4-19) total measuring 87 Bighas 18 situated in the revenue estate of Village Paprawat, Delhi. The remaining 7/8 share was held by other family members.

3. PW-1 has also deposed that the defendant no.1 was a minor at the relevant time, but his mother and natural guardian i.e. the defendant no. 2 acting for and on behalf of him agreed to sell and the PW-1 agreed to purchase the said land on the assurance of the defendant no. 2 that the land was free from all encumbrances and owned by defendant no. 1 as per land revenue records.
4. This witness has also deposed that the other family members of defendants viz. Sh. Jaipal & Sh. Harpal showed the lands to him which site was free from all kinds of structures and accordingly the plaintiff agreed to purchase the land abovementioned from the defendants as well as their other family members. The price of land was agreed at rate of Rs. 2,50,00,000/- (Rupee Two Crores and Fifty Lacs only) per acre and the value of share of defendant came to Rs. 5,72,26,563/- (Rupees five crores seventy two lacs twenty six thousands five hundred and sixty three only).
5. Mr.Dhiraj Tokas has also deposed that he paid a sum of Rs.57,22,660/- (Rupees fifty seven lacs twenty two thousand six hundred and sixty only) as advance sale consideration vide cheque no.811485 drawn on Punjab National Bank, Dwarka, New Delhi. Accordingly a written agreement to sell/purchase was executed by

the defendant no.2 on behalf and for the defendant no.1 on 18.1.2008 which is exhibited as Ex.PW-1/1. It is also deposed that he had handed over duly signed NOC forms to the defendants on the day of the agreement for facilitating the obtaining No-Objection Certificates from Land Acquisition and Revenue Authorities, as the NOC was to be obtained by the defendants prior to execution of sale deeds. It was further obligatory on part of defendants to inform the plaintiff in writing at least 15 days prior to date for execution of sale deed regarding grant of NOC's, but in spite of many reminders, the defendants failed to obtain NOC and due to fault of defendants the time limit of 18.4.2008 elapsed although time itself was never essence of the contract.

6. That the deponent on or around 20th of April 2008 received a legal notice dated 17.4.2008 issued on behalf of Smt. Jagmal Devi W/o Sh.Rajpal R/o Mulahera Village, Gurgaon who is a family member of the defendants, wherein it was claimed in that notice Smt.Jagmal Devi was in possession as a co-owner of the part of land which was agreed to be sold by the defendants and that she had been forcibly dispossessed. Photocopy of the notice is marked as Mark-A.
7. PW-1 has also deposed that the defendants sought extension of time for performance of contract in order to settle with Smt.Jagmal Devi and upon such insistence of defendants, deponent agreed to execute a Supplementary Agreement on 26.4.2008. This agreement was executed by both the defendants as it was informed that the defendant no.1 had attained majority in March 2008. It was now agreed that the defendants would obtain NOC and thereafter the

deponent would get the sale deed executed within 30 days thereafter upon receipt of such intimation. The supplementary agreement is exhibited as Ex.PW-1/2.

8. Mr.Dhiraj Tokas has also deposed that he was served with a legal notice dated 09.07.2008 issued on behalf of the owners of other 7/8 share of this land wherein all sorts of false allegations were made by them. Legal notice dated 9.7.2008 is exhibited as Ex. PW-1/3 and the postal envelope is exhibited as Ex.PW-1/4. Photocopy of the reply to this notice sent on behalf of plaintiff on 6.9.2008 is marked as Mark B and postal receipts of registered post are collectively marked as Mark C and postal Certificate is marked as Mark D.
9. That upon receipt of legal notice dated 9.7.08, plaintiff inquired about the claims of Smt.Jagmal Devi and discovered that she had filed an appeal no.26/2008 before the Dy. Commissioner (SW) and on 25.4.2008 obtained an order which restrained the defendant no.1 and other recorded owners from creating any third party interest in the land. Copy of order dated 25.4.2008 is marked as Mark E. The appeal is still pending and the plaintiff bonafidely believes that the litigation with Smt.Jagmal Devi may take a long time before it concludes.
10. PW-1 has also deposed that the plaintiff has after detailed inquiry also learnt that the co-owners of defendant no.1 had shown a different land than the one owned by them, as upon visiting the actual site deponent discovered that over 6 acres of land a High Tension Power line passes, making the land practically useless for any kind of developmental work. Such a land is worth only a third of

the price of other land free from structures and the family members of defendant no.1 had negotiated a higher price with the deponent in order to cheat him by practicing fraud and showing a different land.

11. PW-1 has also deposed that in the circumstances there appears to be no reasonable probability of the defendants being able to obtain NOC and conveying the land; and the plaintiff cannot wait endlessly for the land as he has to develop the land for his business and if he waits for the litigation to end then he may suffer incalculable losses as his business may get delayed endlessly. PW-1 has also deposed that plaintiff is no longer interested to purchase the land as the defendants obtained moneys from the deponent by practicing fraud and deception with the intention to cheat him; and the plaintiff is entitled to seek refund of the moneys alongwith interest and accordingly vide legal notice dated 2.12.2008, the plaintiff through his advocate raised the demand for refund with damages i.e. interest @18% p.a. w.e.f. date of payment till repayment. This legal notice was never replied by the defendants. Office copy of legal notice is exhibited as Ex.PW-1/5, postal receipts of regd. post are exhibited as Ex.PW-1/6 & Ex.PW-1/7 and certificate of posting is exhibited as Ex.PW-1/8. The AD cards of acknowledgement received back are exhibited as Ex.PW-1/9 & Ex. PW-1/10. Hence, it is prayed that the plaintiff is entitled to recover the amount of Rs.57,22,660/- paid as advance on 18.1.2008 alongwith interest @18% p.a. till recovery as the defendants have utilized the money although they had no intention to convey the land under the agreement dated 18.1.2008.

12. Plaintiff has also filed affidavit by way of evidence of Mr.Ravinder

Kumar (PW-2). This witness has deposed that the deponent is resident of the same locality as the parties and knows them personally and was a mediator and a witness to the sale/purchase transaction between the plaintiff and defendants and is thus aware of the facts and circumstances of the case and competent to swear this affidavit.

13. PW-2 has deposed that since he was acquainted with both the parties therefore he had arranged the meeting between the parties as the plaintiff was interested in buying land in the locality and family members of defendant no. 1 were desirous of selling the lands. Defendant no.1 was a minor at that time, but his mother and natural guardian i.e. the defendant no. 2 acting for and on behalf of him agreed to sell his entire 1/8 share in the and the plaintiff agreed to purchase the said land from the defendants as well as their other family members.
14. PW-2 has also deposed that the negotiations between the plaintiff and defendant no. 2 as well as other family members who held remaining 7/8 share regarding the purchase of the defendant no. 1's 1/8 share as well as the 7/8 share of other family members in the land comprised in Khata Khatoni No.101/79 bearing Kh. No.'s 20//19(4-9), 20(4-12), 21(4-16), 22(3-11), 25// 1/2/2(1-15), 5(4-16), 8(4-12), 9(4-9), 10(4-12), 11(4-16), 12(4-16), 13(4-16), 17/2(1-6), 18(4-16), 19(4-16),20(4-16), 22(4-16), 23(5-8), 27(0-5) 26//1(4-19) total measuring 87 Bighas 18 situated in the revenue estate of Village Paprawat, Delhi took place in presence of deponent on 18th January 2008.

15. Mr.Ravinder Kumar has also deposed that the family members of defendants showed a fard khatoni of their as well as defendant no. 1's land, and the defendant no. 2 agreed to sell the share of defendant no.1 and the plaintiff agreed to purchase the said share of the defendant no.1 at a rate of Rs.2,50,00,000/- (Rupees two crores and fifty lacs only) per acre; and the value of share of defendant no.1 came to Rs.5,72,26,563/- (Rupees five crores seventy tow lacs twenty six thousands five hundred and sixty three only).
16. PW-2 has also deposed that the plaintiff paid a sum of Rs.57,22,660/- (Rupees fifty seven lacs twenty two thousand six hundred and sixty only) as advance sale consideration vide cheque. Accordingly a written agreement to sell/purchase was executed by the defendant no.2 in favour of plaintiff on 18.1.2008 which is already exhibited as Ex. PW-1/1. This witness has also deposed that the agreement Ex.PW-1/1 bears his signatures at point X; and the defendant no.2 marked her thumb impressions at points A-1 to A-6 on Ex.PW-1/1 and at also at some other places in presence of the deponent. It has also been deposed by this witness that in his presence, defendant put his signatures as well as thumb impression at points B-1 to B-5 on Ex. PW-1/1 and at also at some other places. Thereafter the plaintiff also appended his signatures at points C -1 to C-5 on Ex. PW-1/1.
17. PW-2 has also deposed that the plaintiff then handed over duly signed NOC forms to the defendant no.2 on the same day for facilitating the obtaining of No-Objection Certificates from Land Acquisition and Revenue Authorities, as the NOC was to be obtained by the defendants prior to execution of sale deeds. It had been agreed

between the parties that the defendants would inform the plaintiff in writing at least 15 days prior to date for execution of sale deed regarding grant of NOC's. It is also deposed by Mr.Ravinder Kumar that the deponent on various days visited the defendants and reminded them to obtain NOC but in spite of many reminders, the defendants failed to obtain NOC and due to fault of defendants the time limit of 18.4.2008 expired.

18. PW-2 has also deposed that the plaintiff informed the deponent on or around 20th of April 2008 that he had received a legal notice dated 17.4.2008 issued on behalf of Smt. Jagmal Devi W/o Sh. Rajpal R/o Mulahera Village, Gurgaon who is a family member of the defendants. It was claimed in that notice that Smt. Jagmal Devi was in possession as a co-owner of part of land which was agreed to be sold by the defendants and that she had been forcibly dispossessed. The defendants at that time sought extension of time for performance of contract in order to settle with Smt.Jagmal Devi and upon such insistence of defendants, parties entered into a Supplementary Agreement on 26.4.2008. This agreement was executed by both the defendants as it was informed by them that the defendant no. 1 had attained majority in March 2008. It was now agreed that the defendants would obtain NOC and thereafter the deponent would get the sale deed executed within 30 days upon receipt of such intimation. The supplementary agreement is already exhibited as Ex. PW-1/2. PW-2 has also deposed that the agreement Ex. PW-1/2 bears his signatures at point Y. It is also deposed that Ex. PW-1/2 bears thumb impressions of defendant no. 2 at points A-7 to A-9 and

signatures and thumb impressions of defendant no. 1 at points B-7 to B-9. The said agreement bears signatures of plaintiff at points C-7 to C-9. It is also deposed by PW-2 that all the parties signed on Ex. PW-1/2 in his presence.

19. Plaintiff has also examined PW-3 (Mr.Sanjeev Mehta, Reader to Deputy Commissioner, South West, Kapashera, Delhi), who has brought the relevant record, photocopy of which has been exhibited as Ex.PW-3/1, which shows that the Deputy Commissioner, South West, Kapashera, Delhi had passed a restraint order with respect to the suit land.
20. I have heard counsel for the plaintiff and perused the evidence led by the plaintiff by way of affidavits. The evidence of the plaintiff remained unrebutted. As per the agreement to sell executed by defendant no.2 on behalf of defendant no.1 on 18.01.2008, Ex.PW-1/1, would show that the plaintiff had agreed to enter into an agreement for purchase of the suit property. It is also established that a sum of Rs.57,22,660/- was paid by the plaintiff to the defendants. Plaintiff has also placed evidence on record to show that Smt. Jagmal Devi had raised a dispute with regard to the suit land and she claimed that she had been dispossessed from the same. Plaintiff has also been able to establish that a supplementary agreement was entered into between the parties on 26.04.2008 after the defendant no.2 had become a major and it was agreed that NOC would be obtained within 30 days. PW-1 has also accepted the legal notice and the postal envelopes, PW-1/3 and 1/4 sent by the owners of 7/8th share of the land, which was duly replied by him. The plaintiff has also

placed on record the legal notices by which he called upon the defendants to refund the amount together with 18% interest, as he was no longer interested in the purchase of the suit property on account of various disputes between the defendants and their family members. Copies of the notice and the postal receipts have been exhibited as PW-1/6 to PW-1/10. The stand taken by the plaintiff in his evidence is duly supported by PW-2, who was the witness to the transaction. PW-2 has identified the signatures of defendant no.1 on the agreement to sell and stated that he was acting as a mediator and further that the plaintiff had paid a sum of Rs.57,22,660/- to the defendant.

21. Having regard to the evidence on record, the plaintiff has been able to prove the case of recovery. Accordingly, the suit is decreed in favour of the plaintiff and against the defendants to the tune of Rs.67,52,739/- along with interest @6% from the date of filing of the suit, till realization. Decree sheet be drawn up accordingly.

G.S.SISTANI, J

MARCH 16, 2012

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