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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on : March 06, 2012  
Judgment Pronounced on: March 15, 2012

+ RFA(OS) No.53/2007

C.L.JAIN ..... Appellant  
Represented by: Ms. Archana Agrawal, Advocate.

versus

RAGHUBIR SINGH .... Respondent  
Represented by: Mr. N.S. Vasisht, Advocate and  
Mr. Arpan Sharma, Advocate.

CORAM:  
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG  
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. On the strength of an agreement to sell dated February 17, 1995, Ex.P-1, appellant sought a decree for specific performance alleging that under the agreement to sell the respondent had agreed to sell his one-fourth share in the agricultural land detailed in para 1 of the plaint for a total consideration of ₹35,64,583/- and had received ₹8,80,000/- on various dates with respect to the agreement to sell as detailed in paragraph 4 of the plaint. Alleging appellant being ready and willing to pay the balance sum of ₹26,84,583/- and asserting the respondent to be in default, decree for specific performance was prayed for.

2. In the written statement filed, the respondent denied any valid agreement between the parties as also having received any payment on the dates stated in the plaint.

3. Unfortunately for the respondent the counsel engaged was negligent in appearing when the suit was listed for admission/denial on May 13, 2003 and as a result 13 documents filed by the appellant came to be exhibited as Ex.P-1 to P-13; being deemed to be admitted documents.

4. The description of the 13 exhibited documents is as under:-

- (a) Agreement to sell dated February 17, 1995 – Ex.P-1.
- (b) Receipt dated February 17, 1995 in sum of ₹1 lakh– Ex.P-2.
- (c) Receipt dated February 17, 1995 in sum of ₹50,000/- - Ex.P-3.
- (d) Receipt dated December 20, 1995 in sum of ₹5 lakhs – Ex.P-4.
- (e) Receipt dated March 15, 1995 in sum of ₹1,50,000/- - Ex.P-5.
- (f) Receipt dated December 11, 1995 in sum of ₹30,000/- - Ex.P-6.
- (g) Receipt dated February 22, 1995 in sum of ₹1 lakh – Ex.P-7.
- (h) Legal notice dated February 19, 1997 sent by the appellant to the respondent – Ex.P-8.
- (i) Postal receipt dated February 22, 1997 – Ex.P-9.
- (j) Envelope with postal endorsement that respondent had refused to accept the docket – Ex.P-10.
- (k) Legal notice dated February 12, 1997 – Ex.P-11.
- (l) Postal receipt – Ex.P-12.
- (m) Envelope with postal endorsement that respondent had refused to accept the docket – Ex.P-13.

5. Counsel for the respondent started appearing thereafter, but never challenged the said order. Before trial

commenced, counsel for the respondent disappeared once again and noting repeated defaults, vide order dated December 09, 2005, the respondent was proceeded against ex-parte and this resulted in the appellant's examination-in-chief filed under cover of an affidavit remaining unchallenged since none appeared for the respondent.

6. In spite of no contest, the suit has been dismissed by the learned Single Judge who has opined that neither Ex.P-1 nor the receipt Ex.P-2 inspires any confidence.

7. The impugned judgment has not discussed the evidentiary worth of the remaining documents, nor has the learned Single Judge discussed the effect of the order dated March 13, 2003.

8. It was urged by learned counsel for the appellant that since all documents filed by the appellant were exhibited, being deemed to have been admitted by the respondent upon respondent's failure to admit/deny the documents, the learned Single Judge could not have gone into the veracity of Ex.P-1 and P-2 and thus counsel urged that the appeal ought to be allowed.

9. Learned counsel for the respondent urged that the respondent is a simple villager and thus this Court should satisfy its judicial conscience qua the authenticity and genuineness of the documents.

10. Merely because a document is exhibited, does not mean that contents of the document have to be treated as a gospel truth. A document being exhibited would mean that it stands proved with reference to the testimony of a witness and not that the witness is telling the truth. To put it differently, when during evidence a document is exhibited it would be a case of the document being proved improperly so called. If

the execution of the document is in dispute, notwithstanding the document being exhibited on the statement of the person who relies upon the document, it is the duty of the Court to analyze the surrounding evidence as also the evidence intrinsic to the document and form an opinion upon the credibility of the document.

11. Ex.P-1 is a typed document having blanks. The month January which is in typed script has been scored off and in hand the month February has been overwritten. The blank space before the month has been utilized to put the date '17<sup>th</sup>' and one finds that the ink used is different than the one in which the month 'February' is written. The recital where the sale price per acre is recorded had been kept blank when the document was type scripted and with hand the sum has been written. The ink is entirely different. This means that using three different pens, the document was completed.

12. In the agreement to sell Ex.P-1 it is recorded that the respondent has received ₹1 lakh as advance. It is recorded that ₹50,000/- has been received by cheque and ₹50,000/- in cash.

13. The agreement does not bear the signatures of the appellant. The place where the respondent has signed is at the end of the document where 'FIRST PARTY' is typed. The signatures are halting. Just adjoining the signatures is a revenue stamp which is crossed.

14. Now, nobody affixes a revenue stamp while signing an agreement to sell which is drawn up on a stamp paper.

15. The inherent suspicious features of the agreement to sell are: three different pens used to fill up the blanks or make over writings in the agreement to sell; revenue stamp

being affixed on the third page of the agreement to sell and lastly appellant's signatures being missing.

16. Now, the agreement to sell Ex.P-1 refers to ₹1 lakh received by the respondent by two modes; ₹50,000/- in cash and ₹50,000/- by cheque. The receipt dated February 17, 1995, Ex.P-2, which bears the signatures of the respondent, not on the revenue stamp affixed, but adjacent thereto, notes that the respondent has received ₹1 lakh: ₹50,000/- in cash and ₹50,000/- by cheque. Surprisingly, the receipt Ex.P-3 dated February 17, 1995 records the respondent having received ₹50,000/- in cash. The signatures of the respondent are to be found not on the revenue stamp affixed, but adjacent thereto.

17. Now, it is the case of the appellant, as pleaded in paragraph 4 of the plaint that only ₹1 lakh was paid on February 17, 1995 and surprisingly we have two receipts evidencing that ₹1,50,000/- was paid.

18. The receipts Ex.P-2 and P-3 are not in sync with the agreement to sell Ex.P-1. The signatures on the two receipts are not on the revenue stamp affixed, which is also the position in the agreement to sell Ex.P-1. This highly probablizes that blank signed pages have been used to create the three documents.

19. The receipts Ex.P-4, P-5, P-6 and P-7 bear signatures of the respondent partly on the page on which the revenue stamp is affixed and partly on the revenue stamp. The signatures are halting.

20. On the halting signatures of the respondent, as they find themselves appended on Ex.P-1 to P-7, with reference to respondent's signatures on the written statement, it needs to be highlighted that it would be difficult to form any

opinion upon visual comparison of the signatures for the reason all signatures are halting. It would be wrong to call them signatures. It is more an attempt by an illiterate person, who has only learnt to write his name, to have written or rather to have attempted to have written his name.

21. Ex.P-8 to P-13 pertain to the two legal notices sent by the appellant to the respondent and we find that on the registered envelopes the endorsement by the postman is that the addressee has refused to receive the postal docket, in respect whereof we find that the postman concerned has not been examined.

22. Learned counsel for the appellant had no explanation to render as to why the appellant tendered ₹8,30,000/- in cash. Why did he not make payments by cheque? Where is the proof that the stated cheque in sum of ₹50,000/- given to the respondent was encashed? The answer to the former was that it was the wish of the respondent to receive money in cash and to the latter that since the respondent abandoned the battle midway, the appellant was advised not to summon the banker for the reason appellant's statement on oath had gone un rebutted. To the question as to how come three different pens were used to make over writings and filling up blank spaces on Ex.P-1, the counsel had no answer.

23. We have already commented upon the receipts Ex.P-2 and P-3 with reference to the place where respondent's signatures are to be found and the place where the revenue stamp has been affixed. We have already commented upon the revenue stamp being affixed on the agreement to sell Ex.P-1.

24. With respect to the receipts Ex.P-4 to Ex.P-7, whereas P-4 and P-6 are scribed by hand in Hindi, the other two receipts are scribed in Urdu. They are not in the handwriting of the appellant nor the respondent. Who scribed the receipts? Everything is a mystery. With reference to respondent's signatures on the receipt, the possibility of the same being contrived cannot be ruled out because the respondent does not sign as signatures signify. He is an illiterate person who has just about learnt to copy four letters to complete the word 'Rghbr'. He barely manages to put together the Hindi alphabets 'Ra', 'Ga', 'Ba' and 'Ra'.

25. Guided by the definition of the word 'proved' in the Indian Evidence Act 1872 which states that a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists as also guided by the definition of the word 'disproved' i.e. a fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it does not exist, we bring the curtains down by holding that the weight of the evidence, intrinsic to the documents, leads us as prudent persons would lead themselves to hold that the appellant has not been able to prove the case pleaded.

26. We need to highlight that the appellant is a businessman. He is literate. He knows the worth of making payments by cheque and by cash. He ought to know that while dealing with villagers, in relation to contractual matters,

documents of utmost purity should be got executed and not documents shrouded with suspicion, as we find in the instant case. He who is in a better bargaining position owes a greater duty of reasonable care and this would equally apply to a person having more knowledge and wisdom in the worldly affairs.

27. We dismiss the appeal and leave the parties to bear their own costs.

(PRADEEP NANDRAJOG)  
JUDGE

(PRATIBHA RANI)  
JUDGE

MARCH 15, 2012  
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