

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) No. 1445 of 2005

Reserved on: September 17, 2013

Decision on: October 9, 2013

GANESH

..... Plaintiff

Through: Mr. B.L. Chawla, Advocate

versus

KAILASH CHAND

..... Defendant

Through: Mr. S.C. Singhal, Advocate

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

9.10.2013

1. The Plaintiff, Mr. Ganesh, has filed this suit for specific performance against Mr. Kailash Chand, the Defendant, for a direction to the Defendant to perform the obligations under the Agreements dated 18th June 2004 and 14th September 2004 and execute a registered Sale Deed in favour of the Plaintiff in respect of the Defendant's 1/3rd share (2 bigha and 8 biswas) out of Khasra No.28/11, Village Kakrola, New Delhi and deliver to the Plaintiff the vacant possession thereof. The other relief is for injunction, restraining the Defendant from alienating, transferring or parting with the possession of the suit property to anyone except the Plaintiff. As an alternative prayer, the Plaintiff seeks compensation/damages in the sum of Rs.8,00,000, in addition

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to the refund of the sum of Rs. 8,00,000 paid by the Plaintiff to the Defendant as earnest money.

2. According to the Plaintiff, the aforementioned two agreements were entered into between the parties, whereby the Defendant agreed to sell to the Plaintiff the suit property for a total consideration of Rs. 20,00,000. It is stated that the Defendant received a token sum of Rs. 2,00,000 on the date of the signing of the agreements. It is stated that it was agreed between the parties that the balance consideration of Rs. 18,00,000 would be paid and the transaction of sale be completed by 15th September 2004. A bayana receipt dated 18th June 2004 to the said effect has been exhibited as Exhibit P-1. Another sum of Rs. 4,00,000 is stated to have been paid by the Plaintiff to the Defendant by cash on 22nd June 2004. A sum of Rs. 1,00,000 was paid through cheque Nos. 59091 and 59092. Thus, the Defendant received a total sum of Rs. 8,00,000. The receipt executed to this effect is Exhibit P-2.

3. According to the Plaintiff, although he was ready and willing to perform his part of the obligation, the Defendant got a false notice issued to the Plaintiff in the beginning of September 2004, to which the Plaintiff replied on 6th September 2004. Since the registered cover in which the reply was sent, was returned 'undelivered', the Plaintiff sent a telegram dated 14th

September 2004. It is stated that on the same date, a 'mutual agreement' was entered into between the parties and reduced to writing. A copy of the said agreement has been exhibited as Exhibit P-6. In the said agreement, the Defendant acknowledged receipt of the sum of Rs. 8,00,000 out of the total sale consideration of Rs.20,00,000. It was agreed that the final date for payment of the balance consideration and the execution of the documents would be 4th October 2004.

4. The Plaintiff states that he had obtained the pay orders and the bankers' cheques on 14th September 2004 for the balance consideration but got them cancelled as a result of the above mutual agreement between the parties.

5. The Plaintiff claims to have sent a telegram on 2nd October 2004, calling upon the Defendant to complete the sale transaction by 4th October 2004, but no reply was received to the said telegram. The Plaintiff states that he nevertheless went to the office of the Sub-Registrar at Janak Puri, New Delhi and got his attendance recorded before a notary public on that date. He also obtained an inspection receipt from the office of the Sub-Registrar on that date. The affidavit dated 4th October 2004 and the receipt issued by the Sub-Registrar on that date have been marked as Exhibits P-9 and P-8 respectively. On coming to know that the Defendant was trying to sell the

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property to some other parties, the Plaintiff filed the present suit on 7th October 2005.

6. Summons were directed to be issued in the suit on 18th October 2005. On 28th April 2006, the following issues were framed:

(i) Whether the suit of the plaintiff is barred by Sections 4 and 5 of the Delhi Land (Restriction on Transfer) Act, 1972? **OPD**

(ii) Whether the plaintiff was ready and willing to perform his obligations under the Agreements dated 18.06.2004 and 14.09.2004 in respect of the suit property? **OPP**

(iii) Whether the Plaintiff is entitled to specific performance of the two Agreements? **OPP**

(iv) If Issue No.3 is decided against the plaintiff; whether the plaintiff is entitled to the alternative relief of damages? If so, the extent thereof? **OPP**

(v) Whether the plaintiff is entitled to any interest? Is so, at what rate, on what amount and for which period? **OPP**

(vi) Relief.

7. On the same date, IA No. 8264 of 2005 was disposed of by recording the agreement between the parties that “the Defendant shall not sell, alienate, transfer or part with possession of the suit property without leave and liberty of the Court.”

8. The Plaintiff has filed his affidavit of examination-in-chief and was cross-examined as PW-1. The Defendant was cross-examined as DW1. Mr. Ashok Kumar, the witness from the State Bank of Bikaner and Jaipur, was examined as DW2. One Mr. Ram Kailash from Syndicate Bank was examined as DW3.

9. As regards issue No. (i), the burden was on the Defendant to show that the suit is barred under Sections 4 and 5 of the Delhi Land (Restriction on Transfer) Act, 1972. In his affidavit of examination-in-chief, it is stated by the Defendant that the Plaintiff got his signatures on some forms for that purpose but did not take any further steps. In his cross-examination, however, the Defendant admitted “no sale permission was required to be obtained from any authority.” According to him, only a mutation of the land in his favour was required. In that view of the matter, issue No. (i) is answered against the Defendant.

10. Turning to issue (ii) regarding Plaintiff’s readiness and willingness to perform his part of obligation, there is ample evidence to show that the Plaintiff had, in fact, paid the Defendant Rs. 8,00,000 towards the total sale consideration of Rs. 20,00,000. In his affidavit of examination-in-chief, the Plaintiff has stated that he was present in the office of the Sub-Registrar on CS(OS) No. 1445 of 2005

4th October 2004. Apart from the series of suggestions given to the Plaintiff to the contrary, which he denied, there is no answer elicited in the cross-examination to contradict the assertions made by the Plaintiff that he paid Rs. 8,00,000 to the Defendant by 14th September 2004; that he had obtained pay orders of that date from the Syndicate Bank and the State Bank of Bikaner and Jaipur ('SBBJ') for the balance sum; that a telegram was sent by him to the Defendant on 4th October 2004 asking that the sale deed be executed transaction and that the Plaintiff was present in the office of the Sub-Registrar on 4th October 2004 for the purpose of execution and registration of the sale deed.

11. In his cross-examination, the Defendant admitted that "the time for completion of the sale was extended upto 4th October 2004 vide exhibit P-6." Exhibit P-6 itself sets out the fact that the Defendant had already received a sum of Rs. 8,00,000 out of the total consideration of Rs. 20,00,000. DW2, an official from the SBBJ, has confirmed that three banker's cheques dated 14th September 2004 for Rs.1,00,000, Rs. 1,70,000 and Rs. 6,00,000 were prepared and later cancelled. Likewise, DW3, an official from the Syndicate Bank has confirmed that a pay order dated 14th September 2004 for Rs. 2,00,000 and two other drafts for Rs. 1,30,000 each

and Rs. 1,00,000 were prepared from different accounts on that date. The important thing to note is that they were in favour of the Defendant, as is evident from the photocopies thereof been placed on record.

12. The Court concludes that there is sufficient evidence placed on record to show that the Plaintiff was ready and willing to perform his part of contract and was ready with the balance sale consideration. Issue No.(ii) is, accordingly, answered in favour of the Plaintiff and against the Defendant.

13. Issue No. (iii) is taken up next. The question is whether the Plaintiff is entitled to specific performance of the two agreements.

14. On behalf of the Defendant, reliance was placed by Mr. S.C. Singhal, Advocate, on the decisions in *Saradamani Kandappan v. S. Rajalakshmi AIR 2011 SC 3234*, *Pramod Buildings & Developers (P) Ltd. v. Shanta Chopra AIR 2011 SC 1424* and *Citadel Fine Pharmaceuticals v. Ramaniyam Real Estates P. Ltd. AIR 2011 SC 3351*.

15. In *Saradamani Kandappan v. S. Rajalakshmi*, the Supreme Court explained the settled legal position as under:

“28. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in *K.S. Vidyadnam* (supra):

(i) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.”

16. As far as the present case is concerned, the Plaintiff has shown that he has performed his part of contract within time, as agreed between the parties.

It is the Defendant who deliberately did not come forward to complete the

sale transaction. The evidence of the Plaintiff shows that he was ready with the money for the stamp paper and the attempt by the Defendant to discredit the Plaintiff in his cross-examination on this aspect failed. There appears to be no justification for denying the Plaintiff the relief of specific performance in the present case. The Defendant has been unable to show how the decision in *Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son AIR 1987 SC 2328*, which states that the Court is not bound to grant specific performance, applies to the facts of the present case. It cannot be said that the agreements to sell in this case are being used as instruments of oppression. Considering that the parties are closely related, the Plaintiff perhaps waited for some time, but realizing that the Defendant was planning to sell the property, approached the Court with the present suit. He has stated that his mother is the owner of an adjoining land. When his father visited the said land on 1st October 2005, he found that the Defendant was showing the said land to certain interested parties. This part of the evidence of the Plaintiff has not been discredited by the Defendant in his cross-examination. Accordingly, it is held that the Plaintiff is entitled to specific performance of the agreements to sell. Issue No. (iii) is accordingly answered in favour of the Plaintiff. Consequently, Issue No.(iv) does not survive.

17. The suit is, accordingly, decreed by directing the Defendant to come forward to execute the Sale Deed in favour of the Plaintiff by receiving the balance sale consideration of Rs 12,00,000 in respect of the suit property. Within a period of four weeks from today, the Plaintiff will write to the Defendant, enclosing a photocopy of the demand draft favouring the Defendant for the aforementioned sum, calling upon the Defendant to appear before the Sub-Registrar on a date not later than 15 days thereafter. If, on the said date, the Defendant fails to appear in the office of the Sub-Registrar, it will be open to the Plaintiff to deposit the said sum in the Court, which will then be kept in a fixed deposit by the Registry, initially for a period of one year, and will be subject to further orders, that may be passed in the execution proceedings. In that event, it will be open for the Plaintiff to have the decree executed in accordance with law.

18. The suit is decreed in the above terms with costs of Rs. 10,000, which shall be paid by the Plaintiff to the Defendant within eight weeks from today.

19. Decree sheet be drawn up accordingly.

S. MURALIDHAR, J.

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