

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (OS) No. 885 of 2005

DR. PANKAJ KUMAR Plaintiff
Through: Ms. Huma Mahfooz, Advocate.

versus

K.L. KATYAL Defendant
Through: Mr. M.S. Vinaik, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER
03.09.2013

1. Dr. Pankaj Kumar has filed this suit against Shri K.S. Katyal for a decree of specific performance of the agreement to sell and purchase dated 19th February 2005 thereby directing the Defendant to perform his part of the contract and execute title deeds in respect of the suit property i.e. Flat No. C-1/A/98A, Pankha Road, Janakpuri, New Delhi (hereafter 'the suit property') in favour of the Plaintiff and in the alternative to direct the Defendant to pay the amount equivalent to the difference between the sale price and the market price of the suit property prevalent at the time of filing of the suit to the Plaintiff. The Plaintiff has also sought a decree of permanent injunction restraining the Defendant from selling, transferring, alienating, creating any third party interest and/or parting with possession of the suit property in favour of any third person other than the Plaintiff.

2. The case of the Plaintiff as narrated in the plaint is that an agreement

dated 19th February 2005 was entered into between the Plaintiff and the Defendant whereby the Defendant agreed to sell the suit property for a total sale consideration of Rs.20,25,000. On the same date, Plaintiff paid Rs.1 lakh to the Defendant as earnest money in cash. The said payment was duly acknowledged by the Defendant by putting his signatures on the revenue stamp in the agreement executed by the Defendant.

3. The Plaintiff states that the Defendant also represented to the Plaintiff that he is the exclusive owner of the suit property and the same is free from mortgage and encumbrances. The Defendant undertook to execute the sale deed in favour of the Plaintiff on or before 30th June 2005 in the office of the Sub Registrar, Delhi. It was agreed that the balance sale consideration of Rs.19,25,000 would be paid by the Plaintiff to the Defendant in the Sub Registrar's Office and vacant possession of the suit property would be handed over by the Defendant to the Plaintiff on the spot. In the second week of March 2005, the Defendant approached the Plaintiff asking him to complete the deal by March 2005 itself. The Plaintiff states that he immediately applied for a loan from HDFC Bank on 20th March 2005 for a sum of Rs. 16 lakhs. The loan was sanctioned on 25th March 2005 and a final disbursement advice was issued by HDFC Bank to the Plaintiff on 30th March 2005. The Plaintiff also paid interest of Rs.596 for the month of March 2005. The Plaintiff states that the balance sale consideration was ready with the Plaintiff by the end of March 2005. The Plaintiff states that he also purchased stamp papers worth Rs.1,40,000 on 29th March 2005 for the purposes of execution of the sale deed. He stated that although the agreed last date for execution of the sale deed was 30th June 2005, the

Plaintiff was ready with balance sale consideration of Rs.19,25,000 by the end of March 2005 itself.

4. The Plaintiff states that the Defendant, however, avoided receiving payment on one pretext or the other and demanded an additional sale consideration of Rs.5 lakhs on the ground that the property prices had gone up. Finding no alternative, Plaintiff issued a legal notice dated 18th May 2005 calling upon him to complete the sale transaction. The Defendant is stated to have sent a reply stating that he did not have copy of the agreement and, therefore, could not reply to the legal notice. The Plaintiff sent a rejoinder on 3rd June 2005 stating that he is still ready and willing to perform his part of the contract. The Plaintiff then filed the present suit for the aforementioned reliefs.

5. On 1st July 2005 while directing summons in the suit and notice in the application, the Court restrained the Defendant from selling, transferring, alienating and creating third party interest or parting with possession of the suit property.

6. In his written statement, the Defendant contended that in the month of January 2005 the Defendant was in the urgent need of Rs.20,000. The Defendant claims to have approached Mr. Sanjoo Anand proprietor of M/s. Westend Estates who then provided him a loan of Rs.20,000 @ 24% per annum. The Defendant claims that he showed Mr. Sanjoo Anand the original documents of the suit property. Mr. Sanjoo Anand is stated to have kept photocopies thereof with him. The Defendant states that at the time of

availing the aforementioned loan he only executed a promissory note which was formatted on the letter pad of Westend Estates. The Defendant claims that the Plaintiff and Mr. Sanjoo Anand manipulated the said documents to make it appear to be an agreement to sell. According to the Defendant, the handwriting on the alleged agreement is not his. The Defendant claims that he has “not even seen/known to Pankaj Kumar”. It is claimed that the agreement to sell “is forged and fabricated and manipulated document and has been prepared by the Plaintiff in collusion with Mr. Sanjoo Anand proprietor of Westend Estates and other witness mentioned in the alleged agreement”. It is stated that despite request by the Defendant, the Plaintiff has not supplied the copy of the alleged agreement. The letter addressed by the HDFC Bank is also stated to be not addressed to the Plaintiff but to one Mr. Kumar Pankaj at a different address. It is pointed out that the Plaintiff has not placed on record the original stamp papers evidencing purchase of stamp papers of Rs.1,40,000 as claimed by the Plaintiff. It is stated that the Plaintiff has not come to Court with clean hands.

7. In his replication, the Plaintiff has reiterated the averments made in the plaint. It is reiterated that the Plaintiff, the Defendant and Mr. Sanjoo Anand appended signatures on the agreement to sell in the presence of each other at the office of M/s. Westend Estates. The details of the loan applied for, and the amount disbursed by HDFC Bank in favour of the Plaintiff, have been set out. In the documents filed, the Plaintiff has included a copy of the agreement dated 19th February 2005, a copy of the sanction letter dated 25th March 2005 from HDFC Bank, a copy of the final disbursement advice dated 30th March 2005, a copy of the challan for the purchase of stamp

papers, copies of six stamp papers worth Rs. 1,40,000, a copy of the legal notice dated 18th May 2005, copies of reply and rejoinder notice and copies of postal receipts.

8. The originals of the above documents have also been placed on record. The site plan of the suit property is Exhibit P-1. The agreement is Exhibit P-2. The Defendant has admitted only his signature thereon and not the contents. HDFC Bank's advice letter is Exhibit P-4. The final disbursement advice is Exhibit P-5. The loan agreement is Exhibit P-6. The description of the property in the loan agreement is marked with letter 'A' and the receipt executed by the Plaintiff of the loan amount as 'B'. The challan for purchase of stamp papers worth Rs.1,40,000 is Exhibit P-7 and photocopies of the stamp papers is Exhibit P-8. The refund certificate for Rs.1,26,000 is Exhibit P-9, the legal notice is Exhibit P-10. The Defendant did not file any documents.

9. The interim order was made absolute on 17th January 2006 after the filing of the written statement by the Defendant. On the basis of the pleadings and documents, the following issues were framed on 6th July 2006:

1. Whether there was an agreement for sale and purchase of suit property executed between the Plaintiff and the Defendant? OPP
2. To what relief, if any, the Plaintiff is entitled? OPP

10. The Plaintiff examined himself as PW-1, Mr. Sanjoo Anand as PW-2 and Mr. B.R. Jagia as PW-3. Their affidavits of evidence by way of examination-in-chief were also filed.

11. In his cross-examination, the Plaintiff stated that he had met the Defendant at the house of the Defendant. He asserted that the agreement to sell was executed by the Defendant in the presence of the Plaintiff as well as in the presence of the witness and Rs.1 lakh was paid to Mr. Katyal in cash. Although the agreement to sell Exhibit P-2 did not mention the name of the Defendant it was admittedly signed by the Defendant. It was reiterated that the Defendant has written his address in his own handwriting and appended his signature. It was stated that the Defendant changed the rate of commission from 2% as originally written to 1% in his own handwriting. Nothing was elicited from the Plaintiff to discredit his evidence. The cross-examination of Mr. Sanjoo Anand also did not bring out anything which would substantiate the case of the Defendant. He too asserted that the agreement to sell had been signed by the Defendant. It was denied that the Defendant had signed the said document believing it to be a promissory note. It was denied that a revenue stamp had been placed on the said document in order to mislead the Defendant. PW-3 Mr. B.R. Jagia was also cross-examined. He asserted that the Plaintiff was present with Mr. Sanjoo Anand and Mr. Jagia on 19th February 2005 and that the Defendant signed the agreement Exhibit P-2 and wrote his address therein in his own hand. It is apparent that the case of the Plaintiff could not be discredited by the Defendant during the cross-examination of the witnesses for the Plaintiff. In particular, the case of the Plaintiff that the agreement to sell was signed by the Defendant in favour of the Plaintiff could not be dislodged.

12. In his cross-examination the Defendant, who examined himself as DW-1, admitted his signature on Exhibit P-2 both on the revenue stamp as well

as at point 'A'. He also admitted that the address in the document was in his own handwriting. He also identified the signature of Mr. Sanjoo Anand at point 'B' and of Mr. Jagia at point 'C'. He was unable to recall the date when he went to Mr. Sanjoo Anand for a loan. He claimed to have returned the money to Mr. Sanjoo Anand by cheque in February 2006 but without any covering letter.

13. The Defendant claimed in his cross-examination that at the time of signing of the revenue stamp at point 'A' Exhibit P-2 was blank having only the heading of Westend Estate. He sought to modify the above statement and "again said below Westend Estate, it was written promissory note as a heading. Below the heading promissory note it was printed on the document that a loan of Rs.20,000/- is taken by me at 24% interest to be paid in one year but in the document nothing was mentioned regarding my showing the original property papers to Mr. Anand or my handing over one set of photocopies to him. Ex.P-2 is the same page on which I have signed but the contents were different".

14. At this stage the cross-examination was deferred and was resumed on 13th December 2008. On this date the following questions and answers were recorded:

"Q. It is correct that Mr. Sanjoo Anand is witness No.1 in agreement dated 19th February 2005 Exhibit P2?

Ans. It is correct that Mr. Sanjoo Anand has signed as attesting witness No.1 on agreement dated 19th February

2005 exhibit P-2. Volunteered he has signed only on the Promissory Notes in my presence.

Q. Did Mr. Sanjoo Anand sign as attesting witness No.1 in Promissory Notes as alleged by you?

Ans. No. He and I have signed on the Promissory Note”.

15. It appears to the Court that the evidence of the Defendant is not trustworthy. He appears to be shifting his stand. His case that the agreement to sell Exhibit P-2 is a fabricated and forged document is wholly unsubstantiated. He has not chosen to file documents. He has only produced himself as a witness and his evidence cannot be believed. The answers given by him are vague and do not prove his case at all. A perusal of the agreement to Sell Exhibit P-2 reveals no sign of it having been tampered or interpolated. The signature thereon of the Defendant is admitted. That he appended his address in his own hand is also admitted. That he changed the rate of commission from 2% to 1 % is also admitted. These admissions belie the stand of the Defendant that he signed a blank letterhead of Westend Estates and that he thought he was signing a promissory note.

16. In the written submissions filed on behalf of the Defendant reliance is placed on the decision in ***Aggarwal Hotels (P) Ltd. v. Pocus Properties (P) Ltd. 63 (1996) DLT 52*** to state that the agreement does not satisfy the requirements of an agreement to sell and cannot be acted upon in granting relief of specific performance. It is submitted that the agreement in question is “dubious document” since there is no certainty as to the vendor and vendee as to the property and particulars of consideration. Reference is also

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made to the decision in *Amarjeet Singh v. Sharda Obhrai* 135 (2006) DLT 190.

17. The Court is unable to agree with the above submissions. Exhibit P-2 in original clearly shows the signature of the Defendant under the caption 'Signature of Seller' and the said phrase is not shown to have been inserted subsequent to the appending of the signature of the Defendant which is admitted. The identity of the Seller is therefore not in doubt. The sale consideration of Rs. 20.25 lakhs, the payment of advance of Rs. 12 lakh and the balance of Rs. 19.25 lakhs are all clearly mentioned. It fully describes the property agreed to be sold. From the answers given in the cross-examination of the Defendant, it is apparent that he is not willing to speak the truth. His denial first that there was no agreement to sell at all and then changing that to admitting that there was an agreement to sell to which Mr. Sanjoo Anand was a witness shows that he is changing his stand and cannot be trusted. The evidence read as a whole together with documents placed on record substantiates the case of the Plaintiff that there was an agreement to sell in relation to the suit property entered into between the Plaintiff and the Defendant.

18. The other submission of the Defendant is that the stamp duty paid does not pertain to the property. When private parties enter into a transaction for purchasing of property it is possible that they do not use a precise terminology or pay the correct stamp duty. The agreement will have to be seen in the overall context of the negotiations that took place between the parties. The home loan agreement with the HDFC Bank mentions Pankaj

Kumar as the principal borrower. The Schedule to the loan agreement describes the suit property. It also bears the signature of the Plaintiff as borrower. The loan sanction letter (Exhibit P-4) is also addressed by HDFC Bank to the Plaintiff. The documents placed on record show that the Plaintiff was ready and willing to perform his part of the contract and that he had arranged for sufficient funds to pay the seller. The reliance on the decision in ***Veluyudhan Sathyadas v. Govindan Dakshyani JT 2002 (5) SC 357*** is misplaced inasmuch as in the instant case the Court has negated the plea that the agreement to sell is a suspicious document.

19. Consequently, none of the objections raised by the Defendant deserve acceptance. On analysis of the evidence the Court answers the issue framed as under:

Issue No.1: Whether there was an agreement for sale and purchase of suit property executed between the Plaintiff and the Defendant?

Ans: The above issue is answered in the affirmative and it is held that there was indeed an agreement to sell and purchase executed by the Plaintiff with the Defendant.

Issue No.2: To what relief, if any, the Plaintiff is entitled?

Ans: Issue No.2 is answered by holding that the Plaintiff is entitled to the relief of specific performance.

20. A direction is issued to the Plaintiff to write to the Defendant within four weeks enclosing a photocopy of the demand draft for the sum of

Rs.19,25,000 in favour of the Defendant (valid for not less than three months) and calling upon the Defendant to remain present in the office of the Sub Registrar on any date within ten days thereafter for execution of the sale deed in favour of the Plaintiff in respect of the suit property. If such a letter is sent, the Defendant shall remain present in the office of Sub Registrar on the date suggested by the Plaintiff and if such date is not convenient then on a date within one week thereafter (which will be communicated by the Defendant to the Plaintiff forthwith) to comply with all formalities and execute a sale deed in favour of the Plaintiff. If the Defendant does not come forward to execute the sale deed, the balance sale consideration of Rs.19,25,000 shall be deposited by the Plaintiff in the Court within one week of the said date and thereafter take appropriate steps in accordance with law for getting the decree executed. The amount so deposited shall be kept by the Registry in a fixed deposit initially for a period of six months and kept renewed from time to time subject to further directions of the execution Court.

21. The suit is decreed as prayed for and with the aforesaid directions with costs of Rs.5,000 which shall be paid by the Defendant to the Plaintiff within a period of four weeks. The decree sheet be drawn up accordingly.

S. MURALIDHAR, J.

SEPTEMBER 03, 2013

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