

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

% Order delivered on: 19th September, 2014

+ **CS(OS) No. 246/2011 & I.A. No. 1158/2014**

NARESH KUMAR GUPTA Plaintiff
Through Mr. Vidit Gupta, Adv.

versus

ANKIT JAIN & ORS Defendants
Through Mr. Alok Gupta, Adv.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. By way of this order I propose to decide application being I.A. No. 1158/2014 under Order 7 Rule 11 CPC filed by the defendants seeking rejection of the suit.

2. The plaintiff has filed a suit for declaration, possession and injunction in respect of property bearing No. 1/3723, Timber Market, Loni Road, Ram Nagar, Shahdara, Delhi-110032 (hereinafter referred to as the "suit property") against the defendants.

3. Brief facts of the case are that the Plot No.8 measuring 150 sq. yds. (30' X 45') in Maha Laxmi Block, Ram Nagar, Loni Road, Shahdara, Delhi – 110032 (hereinafter referred to as the "plot"), situated out of Khasra No. 399 in the area of village – Sikdarpur was purchased by one Sh. Sri Chand, s/o Late Sh. Bhola Ram from its owner namely Sh. Sohan Lal, s/o Sh. Ganga Prasad, which was later sold to Sh. Mohan Lal vide registered sale deed dated 30th June,

1966. Thereafter, Sh. Mohan Lal and Sh. Dharambir, defendant No.2, real brother of plaintiff purchased the plot, received physical possession thereof and executed documents of sale on 17th August, 1978. The plaintiff and defendant No.2 developed the plot by constructing 8 shops therein, further plaintiff's brother /defendant No.2 for his bonafide necessity sold the suit property to the plaintiff against valuable consideration and vides registered sale deed plaintiff received possession of the suit property and became the owner of the suit property. The property No. 1/3724, Ram Nagar, Loni Road, Shahdara, Delhi (hereinafter referred to as the "another property") which was adjoining to the suit property was owned by the plaintiff's mother and on her expiry, all her remaining legal heirs voluntarily relinquished all rights in the said another property by executing registered relinquishment deed dated 9th June, 2000 in favour of defendant No.2. Thereafter, plaintiff and defendant No.2 respectively became absolute owners of the said properties.

4. It is stated in the application that the defendant No.2 on 26th October, 2010 was constrained to file a suit CS (OS) No. 2200/2010 seeking declaration, permanent and mandatory injunction when the plaintiff misbehaved with the father and against the wishes of the father entered into an agreement to sell and accepted token money of Rs. 26 lacs in respect of father's another property. As a counterblast to the said suit instituted by the defendant No.2, the plaintiff on 31st January, 2011 simultaneously instituted two civil suits against the brother and the father : (i) CS (OS) No. 247/2011 seeking possession and damages in respect of another property, which is also the subject matter of CS(OS) No. 2200/2010; (ii) CS(OS) No. 246/2011, i.e. this

suit, seeking declaration, possession and injunction in respect of the suit property, which was initially purchased by defendant No.2 and then subsequently transferred to plaintiff who further transferred the same to defendant No.3 by executing documents in the year 1989 and further sold the same to defendant No.1. It is stated that however, in the present suit the plaintiff has taken an entirely different stand and challenged his own documents executed in the year 1989 in favour of defendant No.3, which is also contrary to the plaintiff's legal notice dated 15th November, 2010 whereby the plaintiff took an entirely different stand *qua* the ownership of the suit property. Hence, the malafide intention as well as ulterior motive on the part of the plaintiff to counter act and exert more pressure through litigation against the defendants is apparently clear and self-explanatory.

5. However, CS(OS) No.2200/2010 was settled between both the brothers and a statement dated 31st July, 2012 of defendant No.1 was recorded before this Court, whereby the plaintiff undertook to execute sale deed in respect of the another property in favour of defendant No.2 within 3 months upon receipt of the balance consideration amount of Rs. 49 lacs (total being Rs.75 lacs out of which Rs.26 lacs have been already received by plaintiff as token money) and defendant No.2 agreed to settle with the purchaser on his own including facing legal consequences. It has been stated that despite of tender/offer of a demand draft of Rs.49 lacs dated 23rd October, 2012 by defendant No.2 within the stipulated time, plaintiff intentionally avoided to accept the said demand draft and consequently defendant No.2 was constrained to file applications for extension of time as well as for enforcement of the statement of

plaintiff. However, during the pendency of the aforesaid applications in CS (OS) No. 2200/2010, the aforesaid applications were withdrawn to initiate execution proceedings as per law.

6. Accordingly, in terms of settlement between the parties a joint application being I.A.No. 12656/2013 in CS (OS) No. 246/2011 was filed for referring the matter before the Mediation Centre which was allowed by this Court and both the suits were sent to the Mediation Centre Delhi High Court. During the proceedings before the Mediation Centre, the plaintiff showed reluctance to withdraw both the suits as agreed in writing by the plaintiff. But upon being confronted with the registered sale deed dated 12th July, 2013 and other full and final settlement documents executed in July 2013, the plaintiff admitted having signed and executed the same but tried to manipulate the situation by alleging that he had not received the entire money and he wanted more money otherwise he would not withdraw the suits. However, the plaintiff having already executed the registered sale deed in respect of the another property which is subject matter of CS(OS) No. 247/2011 which had accordingly become infructuous, a settlement/agreement dated 24th September, 2013 was accordingly recorded before the Mediation Centre whereby the plaintiff agreed to withdraw CS(OS) No. 247/2011 and accordingly the statement of the plaintiff herein was also recorded before this Court on 3rd December, 2013 and CS(OS) No.247/2011 was dismissed as withdrawn.

7. It is stated by the defendants that the plaintiff had been acting with malafide intention and continuing with the present suit with the ulterior motive to misuse the process of law to blackmail the

defendants and to further bargain and extract more money from the defendants. After execution of the aforesaid documents mentioned in Para 6(a) to (e) in terms of the full and final settlement between the parties and the plaintiff having received the entire money in terms of full and final settlement in July, 2013 itself and having agreed in writing to withdraw both the suits, the present suit does not survive. All claims and disputes between the parties have come to an end and thus, no cause of action survives. The defendants therefore vide this application seek rejection of the suit.

8. The only plea now taken by the plaintiff is that the defendant No.1 has played a fraud. The defendant No.2 had promised to pay Rs.49,00,000/- on the date of registration of documents but the said amount was not paid. The said documents have been signed under mis-representation made by the defendants. Copies of the said documents were not provided. The putting of his photographs were also under the pretext that the said documents relate to sale deed in respect of property no. 1/3724. The plaintiff has never agreed to withdraw the suit. The plaintiff only received Rs.39,00,000/- by way of RTGS instead of Rs.49,00,000/-. The defendant No.2 proposed to pay Rs.10,00,000/- but the same is not paid. Thus, the plaintiff is not ready to withdraw the suit as the remaining amount is not paid.

9. The defendants have filed documents i.e. original undertaking and mutual understanding which are signed by the plaintiff who is not denying his signatures. The said documents are read as under:

(i) Original No-Objection/Undertaking – Notarized dated
12.07.2013 (e-stamp certificate No.IN-

DL35857586445195L) executed by Naresh Kr. Gupta and his family members, along with true copy of the same :

“WE, (1) NARESH KUMAR GUPTA SON OF SH. KISHAN CHAND (2) SHRIMATI PRABHA GUPTA WIFE OF SHRI NARESH KUMAR GUPTA (3) SHRI AMRIT GOYAL (4) KM. VARSHA GOYAL ALL RESIDENT OF 1/9047-A, TOP FLOOR, GALI NO.1, WEST ROHTAS NAGAR, SHAHDRA DELHI-110032 DO HEREBY SOLEMNLY AFFIRM AND UNDERTAKES/DECLARE AS UNDER :

1. That Mrs. Anju Gupta Wife of Shri Ashok Kumar Gupta Resident of 1/4732, Gali No.6, Balbir Nagar Extn. Shahdara Delhi, was the owner of one built-up property bearing No.1/3723, Measuring area 150 sq.yds., situated in the layout plan of Ram Nagar, Shahdara Delhi, by way of General Power of Attorney executed on year 1989. Which is executed Shri Naresh Kumar Gupta and she has already sold/dispose off to other person, and Mr. Ashok Kumar Gupta is the owner of property No.1/6701 and 1/6702, measuring area 56 sq. yds. Ech, situated in the layout plan of East Rohtas Nagar, Shahdara, Delhi.

2. That Mr.Ashok Kumar Gupta is the owner of above mentioned properties i.e. 1/6701 and 1/6702, by way of Regd. Relinquishment Deed in the office of the S.R.IV Delhi.

3. That we have no objection in any manner, in respect the above mentioned properties, and which Suit has been pending in Delhi High Court of Delhi at New Delhi Vide Suit No.247/2011 and CS 246/11.

4. That We assure to our brother/brother in law/uncle that We have take back above mentioned Suit immediately.

5. That We or none of our legal heirs, executors, representatives will have no objection no demand, no claim in respect the above mentioned both properties.

6. That We have execute this NOC in favour of our brother/brother in law/uncle without any pressure, from anybody. And this No Objection is the part of Family settlement.”

(ii) Original Agreement of Mutual Understanding – Notarized dated 12.07.2013 (e-stamp certificate No.IN-DL36144842748384L) executed between Naresh Kr. Gupta and Ashok Kumar Gupta, along with true copy of the same :

“WE, (1) NARESH KUMAR GUPTA SON OF SHRI KISHAN CHAND (2). SHRIMATI PRABHA GUPTA WIE OF SHRI NARESH KUMAR GUPTA (3) SHRI AMRIT GOYAL (4). KM. VARSHA GOYAL ALL RESIDENT OF 1/9047-A, TOP FLOOR, GALI NO.1, WEST ROHTAS NAGAR, SHAHDRA DELHI-110032 DO HEREBY SOLEMNLY AFFIRM AND UNDERTAKES/DECLARE AS UNDER :

1. That Mrs.Anju Gupta Wife of Shri Ashok Kumar Gupta Resident of 1/4732, Gali No.6, Balbir Nagar Extn, Shahdara Delhi, was the owner of One Built-up property bearing No.1/3723, Measuring area 150 sq. yds. Situated in the layout plan of Ram Nagar, Shahdara Delhi, by way of General Power of Attorney executed on year 1989. Which is executed Shri Naresh Kumar Gupta and She has already sold/dispose off to other person, and Mr. Ashok Kumar Gupta is the owner of property No.1/6701 and 1/6702, measuring area 56 sq. yds. Each, situated in the layout plan of Eat Rohtas Nagar, Shahdara, Delhi.

2. That Mr.Ashok Kumar Gupta is the owner of above mentioned properties i.e. 1/6701 and 1/6702, by way of Regd. Relinquishment Deed in the office of the S.R.IV Delhi.

3. That we have no objection in any manner, in respect the above mentioned properties, and which suit has been pending in Delhi High Court at New Delhi vide Suit No.247/11 and CS 246/11.

4. That we assure to our brother/brother in law/uncle that we have take back above mentioned suit immediately.

5. That we or none of our legal heirs, executors, representatives will have no objection no demand, no claim in respect the above mentioned both properties.

6. That we have execute this NOC in favour of our brother/brother in law/uncle without any pressure, from anybody. And this No Objection is the part of Family settlement.”

(iii) Original No-Objection/Undertaking dated 12.07.2013 (e-Stamp Certificate No.IN-DL35857534224694L) executed by Naresh Kumar Gupta & his family members, along with true copy of the same :

This deed of Agreement of Mutual Understanding is made and executed at Delhi on this _____ day of July, 2013 between SHRI ASHOK KUMAR GUPTA SON OF SHRI KISHAN CHAND RESIDENT OF 1/4732, STREET NO.6, BALBIR NAGAR EXTN. Shahdara, Delhi-110032 hereinafter called the FIRST PARTY.

AND

SHRI NARESH KUMAR GUPTA SON OF SHRI KISHAN CHAND RESIDENT OF 1/9047-A, TOP FLOOR, GALI NO.1, WEST ROHTAS NAGAR, SHAHDARA, DELHI hereinafter called the SECOND PARTY.

The expression of both parties include their respective legal heirs, executors, representative and assigns.

Whereas the both parties enter into this agreement with their mutual understanding on the following terms and conditions.

1. That second party has executed sale documents in favour of first party regarding the property No.1/3724, area measuring 150 sq. yds. Situated in the layout plan of Ram Nagar, Loni Road, Illaqa Shahdara, Delhi-110032, before the Sub-Registrar, Sub Distt-IV A Delhi, without any hitch.

2. That second party has settle the dispute regarding the property No.1/3724, Ram Nagar, Loni Road, Delhi, with Shri Pawan Singhal and Shri Rakesh Singhal both sons of Shri Prem Chand Singhal for Rs.36,00,000/- (Rupees Thirty Six Lac only) on behalf of first party, as first party was liable for settling the claim in decree passed by Hon'ble High Court of Delhi at New Delhi.

3. That in view of the above payment, the both parties shall be responsible and liable for all consequences connected there with like litigation, suit for specific performance or any other disputes if any with Mr.Rakesh Singhal and Mr.Pawan Singhal.

4. That second party will hand over the documents of settlement to the first party at the time of execution and regn. of sale documents.

5. That both parties has exchange the No Objection regarding the other properties with each other.

6. That second party will withdraw Vide Suit No.247/11 and 246/11, which is pending in Hon'ble High Court of Delhi at New Delhi.

7. That after this settlement both parties will have no claim, no demand, no objection in any manner, and will not filing any litigation in any court against each other. Any such litigation regarding any of the property, if filed will stand as null and void."

10. In view of above said position, it is clear as per the documents which are admittedly executed by the plaintiff, no cause of action survives as the plaintiff had agreed to withdraw the suit but now he is not inclined to withdraw the same. Nothing remains to be tried in the subject matter in view of settlement. In case, the plaintiff has any issue for non-payment of amount, he is always at liberty to initiate the independent proceedings. The suit after settlement of the parties does not survive. The same is dismissed. I.A. No. 1158/2014 is also disposed of.

**(MANMOHAN SINGH)
JUDGE**

SEPTEMBER 19, 2014