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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1087/2014**

Decided on 24th April, 2014

MEGHA SACHDEVA Plaintiff
Through: Mr. Suman Chauhan and Mr. Jivesh
Tiwari, Advs.
versus

SANJEEV NARULA Defendant
Through: None.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Plaintiff has filed this suit against the defendant for declaration, permanent and mandatory injunction as well as for specific performance of the three Agreements to Sell dated 15th January, 2013 and 16th January, 2013 respectively. In effect, main relief is that of specific performance of the Agreements to Sell and other reliefs are consequential to that relief.

2. Plaintiff has alleged that defendant, vide agreement to sell dated 15th January, 2013, agreed to sell the residential property bearing no. 1204, Palam Vihar, Gurgaon, Haryana for a total sale consideration of Rs.40 lacs to the plaintiff. Rs.25 lacs was paid by way of online transfer from the

account of plaintiff to the account of the defendant on 17th January, 2013. Further, a sum of Rs.10 lacs was paid in cash. Balance amount of Rs. 5 lacs was to be paid at the time of registration of sale deed. Another agreement to sell dated 16th January, 2013 was executed by the defendant; whereby defendant agreed to sell a commercial flat bearing no. 85, Block K, Sector-18, Noida, UP to the plaintiff for a total sale consideration of Rs.22 lacs, out of which Rs. 12.50 lacs was paid vide cheque no. 104482 dated 16th January, 2013 drawn on HDFC Bank, Greater Kailash and another sum of Rs.7.5 lacs in cash. Balance amount of Rs. 2 lacs was to be paid at the time of registration of sale deed. It is further alleged that vide agreement to sell dated 16th January, 2013, defendant agreed to sell a commercial flat bearing no. 86, Block K, Sector-18, Noida, UP for a total sale consideration of Rs. 22 lacs out of which Rs. 12.50 lacs was paid vide cheque no. 104483 dated 16th January, 2013 drawn on HDFC Bank, Greater Kailash and another sum of Rs.7.50 lacs in cash. Balance amount of Rs.2 lacs was to be paid at the time of registration of sale deed. Possession was given, however, sale deeds were not executed by the defendant despite repeated requests of the plaintiff, hence the suit.

3. From the facts narrated above, it is clear that none of the properties

involved in the agreements to sell, as referred to above, are situated within the territorial jurisdiction of this Court. One suit property is situated in Gurgaon within the State of Haryana and other two properties are situated in Noida within the State of Uttar Pradesh. Registration of sale deed has to take place in Gurgaon and Noida respectively.

4. In para 21 of the plaint plaintiff has alleged that this Court has territorial jurisdiction to entertain the present suit as the defendant is residing and working for gain within the jurisdiction of this Court and reliefs can be given by the personal obedience of the defendant himself, inasmuch as, cause of actions have arisen in Delhi from time to time as the plaintiff is permanent resident of Delhi and payments in cash as well as cheques were made in Delhi. Plaintiff has thus relied on Section 20 of the Code of Civil Procedure, 1908 (the 'Code', for short).

5. Learned counsel for the plaintiff has vehemently contended that Section 20 of the Code of Civil Procedure, 1908 vests jurisdiction in this Court in view of the averments made in para 21 of the plaint as present case falls within the proviso of Section 16 of the Code, which envisages that in case reliefs in respect of an immovable property can be obtained through the personal obedience of the defendant, suit can be instituted in the Court

within whose jurisdiction defendant resides or carries on his business or personally works for gain.

6. Relevant it would be to refer to Sections 16 and 20 of the Code which reads as under:-

“Section 16: Subject to the pecuniary or other limitations prescribed by any law, suits-

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

“Section 20: Other suits to be instituted where defendants reside or cause of action arises.

Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or

personally works for gain; or
(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
(c) the cause of action, wholly or in part, arises.”

7. It may be noted here that Sections 15 to 20 of the Code contain detailed provisions relating to jurisdiction of courts for the purposes of institution of suits. A perusal of aforesaid provisions makes it clear that Section 20 is a residuary provision and covers all those cases which are not covered under Sections 15 to 19.

8. In Harshad Chiman Lal Modi vs. DLF Universal and Anr. AIR 2005 SC 4446, Supreme Court has held thus:-

“Now, Sections 15 to 20 of the Code contain detailed provisions relating to jurisdiction of courts. They regulate forum for institution of suits. They deal with the matters of domestic concern and provide for the multitude of suits which can be brought in different courts. Section 15 requires the suitor to institute a suit in the court of the lowest grade competent to try it. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. Proviso to Section 16 declares that where the relief sought can be obtained

through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the jurisdiction of different courts. Section 18 applies where local limits of jurisdiction of different courts is uncertain. Section 19 is a special provision and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19.

Section 16 thus recognizes a well established principle that actions against *res* or property should be brought in the forum where such *res* is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in *rem* still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on well known maxim "*equity acts in personam*", recognized by Chancery Courts in England. Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in *personam*, i.e. by arrest of defendant or by attachment of his property.

In *Ewing v. Ewing*, (1883) 9 AC 34 : 53 LJ Ch 435, Lord Selborne observed :

"The Courts of Equity in England are, and always have been, courts of conscience operating *in personam* and not in *rem*; and in the exercise of this personal jurisdiction they have always been accustomed to compel the performance of contracts in

trusts as to subjects which were not either locally or *ratione domicilli* within their jurisdiction. They have done so, as to land, in Scotland, in Ireland, in the Colonies, in foreign countries."

The proviso is thus an exception to the main part of the section which in our considered opinion, cannot be interpreted or construed to enlarge the scope of the principal provision. It would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant."

9. In the instant case relief of specific performance of agreements to sell in respect of the properties situated outside the territorial jurisdiction of Delhi courts is paramount, therefore, Section 16 is attracted in this case. The said provision deals with the territorial jurisdiction of the courts involving immovable properties. Section 16 envisages that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property, or for the recovery of movable property actually under distraint or attachment shall be instituted in the court within the local limits of whose jurisdiction the property is situate. The proviso to the Section 16 further provides that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the

defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain. Meaning thereby that a suit involving immovable property has to be instituted in the court within whose territorial jurisdiction such property is situated. Only exception to the said rule is that if the relief in respect of immovable property held by the defendant can be entirely obtained through his personal obedience then it can be instituted in the court within the local limits of whose jurisdiction the defendant actually or voluntarily resides or carries on business or personally works for gain by taking aid of Section 20 of the Code. A paramount condition which, thus, is required to be fulfilled is that such a relief can be enforced through personal obedience of the defendant by the court where the suit has been instituted.

10. A decree of specific performance necessarily takes within its sweep execution of sale deed by the defendant so as to confer title in favour of the plaintiff in respect of the suit property. Execution and registration of sale documents will have to take place where the property is situated. In this case, suit properties are situated in Gurgaon and Noida, thus, sale documents

would have to be executed and registered at Gurgaon and Noida respectively, for which purpose directions have to be given to the defendant to move out of Delhi and go to Gurgaon and Noida and get the sale documents executed and registered. In case of reluctance of the defendant, Court Commissioner has to be appointed with the direction to go to Gurgaon and Noida and get the sale documents registered on behalf of the defendant. In appropriate cases certain directions may also be required to be given to the Sub Registrar if sale documents are not registered for one or the other reason. These reliefs cannot be entirely obtained through the personal obedience of the defendant who in any case has to go to the jurisdiction of another court for execution and registration of the documents. Admittedly, sale documents have not to be registered in Delhi, in this case.

11. In Vipul Infrastructure Developers Ltd. And Anr. Vs. Rohit Kochhar and Anr. (2008) ILR 2 Delhi 928 a Division Bench of this Court has held as under :-

“In the present case, it is an admitted position that the appellant had entered into the aforesaid alleged contract at its Corporate office at Delhi. It is the specific stand of the appellant that they were initially residents of Delhi and that they had moved to Gurgaon and their corporate office is now also located at Gurgaon. It is the contention of the counsel appearing for the respondents that the proviso to Section 16 of Code of Civil Procedure is applicable which is sought to be invoked, for, the

relief which is sought for could be entirely enforced through the personal obedience of the defendants in Delhi. There is however not only a prayer in the plaint for declaration of the right and title, but also to transfer the right, title and interest in the suit premises situate at Gurgaon. As, in our opinion, the suit can be decreed in favor of the plaintiff only when the Court can get the sale deed executed and registered in favor of the plaintiff which would confer the title of the suit premises on the plaintiff, and the execution and the registration of the sale document would have to take place at Gurgaon and, for this the Court will also have to pass a decree directing the defendant to get the sale deed executed and registered at Gurgaon, implication of the same will be that a direction will have to be given to the defendant that he shall have to move out of Delhi and go to Gurgaon and get the same registered. No sale deed is sought to be registered at Delhi and, therefore, in our considered opinion such a relief cannot be entirely obtained through the personal obedience of the defendant, who in this case has to go to the jurisdiction of another court to get the decree executed and the sale deed registered. (emphasis supplied)

12. Learned counsel for the plaintiff has placed reliance on a judgment rendered by the learned Single Judge of this Court vide Bhawna Seth vs. DLF Universal Limited and Anr. AIR 2007 Del. 189. This judgment is of no help to the plaintiff in view of the law laid down by the Division Bench in Vipul Infrastructure Developers (supra). Learned Single Judge has also not considered and discussed the issue of registration in Bhawna Seth (supra).

13. In the light of above discussions, plaint is returned to the plaintiff under Order 7 Rule 10 of the Code to present it in the courts of competent jurisdiction.

A.K. PATHAK, J.

APRIL 24, 2014
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