

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 28th March, 2014

Judgment Pronounced on: 01st July, 2014

CS(OS) 1397/2009

T. MURLIDHAR

..... PLAINTIFF

Through: Mr. Rajan Khosla,
Advocate.

versus

P.V.R. MURTHY

..... DEFENDANT

Through: Mr. Ankit Jain,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

1. The Plaintiff has filed the present suit for specific performance of an oral agreement to sell. On 29.08.2013, issues were framed and issue No.1 i.e. "Whether the plaint in the present Suit discloses any cause of action? (OPD)" was treated as a preliminary issue.
2. The Plaintiff has contended that the Defendant is the owner of a flat bearing No. 7430, Sector B-10, Vasant Kunj, New Delhi and that he agreed to sell the said flat

to the Plaintiff for a total sale consideration of Rs.26,00,000/-. The Plaintiff paid a sum of Rs.50,000/- in cash to the Defendant as advance and the Defendant handed over the keys to the Plaintiff as part performance of the deal.

3. As per the Plaintiff at that point of time, he was employed with a Government of India Undertaking and was drawing a salary of Rs.21,000/- per month and did not have enough savings to pay the balance sale consideration.
4. It is contended that the parties agreed that the Defendant would execute the agreement to sell in favour of the Plaintiff to enable him to generate a loan from the financial institutions and pay to the Defendant the balance sale consideration. However, the said agreement was not executed but the Defendant promised to visit Delhi to complete the formalities for execution of the same.
5. As per the Plaintiff, at the time of taking over of possession of the said flat, the said flat was in a complete ramshackle condition and was not habitable and the Plaintiff, at the request of the Defendant, spent

Rs.75,000/- in renovating the said flat.

6. As per the Plaintiff, the Defendant failed to visit Delhi citing ill health of his mother but promised to complete the formalities. However, the Defendant did not do so. Since the agreement to sell was not executed, the Plaintiff was not able to generate the required loan. As the Plaintiff was not able to generate the required loan, the Defendant is stated to have requested the Plaintiff to start paying Rs.4,000/- each month as part of the sale consideration towards the said flat and accordingly, the Plaintiff started depositing Rs.4,000/- each month in cash in the Defendant's account.
7. The Plaintiff contends that the said amount was the part payment towards the sale consideration and the said amount was accepted by the Defendant every month. The Plaintiff claims to have deposited the said amount @ Rs.4,000/- per month in the bank account of the Defendant till May/June, 2004.
8. The Plaintiff is stated to have visited Secunderabad on 19.06.2005 but the Defendant was not available and the Plaintiff claims to have paid a sum of Rs.50,000/- to one of the Defendant's relatives in the house. The

Plaintiff claims to have thereafter continued to pay Rs.4,000/- per month by depositing the same in the Defendant's accounts.

9. It is contended that on 16.05.2009, the Plaintiff was informed by his neighbours that three persons had visited the flat. The Plaintiff is stated to have then requested the Defendant to execute the necessary sale document but he refused to do so. The Plaintiff has filed the present suit seeking specific performance of the oral agreement to sell.
10. The Defendant has contested the suit and filed his Written Statement and has prayed for dismissal of the suit for failure to show any cause of action. The issue has accordingly been framed.
11. The Supreme Court of India in the case of ***SOPAN SUKHDEO VS. ASSISTANT CHARITY COMMISSIONER 2004 (3) SCC 137*** has laid down that for the purposes of deciding an application under Order 7 Rule 11, the averments made in the plaint are germane and the pleas taken by the Defendant in the written statement would be irrelevant. Further, the court also emphasized that a meaningful and not formal reading of the plaint was to

be adopted so as to nip in the bud any clever drafting of the plaint to create an illusion of a cause of action.

12. The court has to see the averments in the plaint to decide whether the suit discloses a triable cause of action. A meaningful and not a formal reading of the plaint has to be adopted to determine whether the plaint discloses a cause of action or a clever drafting methodology has been used to create a semblance of a cause of action. Where the Court comes to a conclusion that by adopting a method of clever drafting a semblance of a cause of action is being created, the court has to nip the vexatious and meritless litigation in the bud.

13. The Supreme Court in the case of ***T. ARIVANDANDAM VS. T.V. SATYAPAL 1977 (4) SCC 467*** has laid down as under:-

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must

remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage.....”

14. The Supreme Court in the case of *T. ARIVANDANDAM (SUPRA)* has laid down that where the suit is a flagrant misuse of the mercies of the law in receiving a plaint, the court has to give a meaningful reading of the plaint and not a mere formal meaning. Where on a meaningful reading of the plaint it is manifestly vexatious or meritless in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 taking care to see that the grounds mentioned therein is fulfilled. If by clever drafting illusion of a cause of action is created, the court can nip it in the bud. The Supreme Court further laid down that an activist Judge is the answer to

irresponsible law suits.

15. Learned counsel for the Defendant has relied on the judgment in the case of ***IG BUILDERS & PROMOTERS PVT. LTD. VS. DR. AJIT SINGH AND ORS., 2011 (183) DLT 138*** wherein this court has laid down that the following ingredients are necessary to make an agreement to sell:

- (i) *particulars of the consideration;*
- (ii) *certainty as to party i.e. the vendor and vendee;*
- (iii) *certainty as to the property to be sold; and*
- (iv) *certainty as to other terms relating to probable cost of conveyance to be borne by the parties, time etc.*

16. Learned counsel for the Defendant further relied on the case of ***BRAHAM SINGH VS. SUMITRA & ORS., 2011 (125) DRJ 570*** to contend that if any of the essential ingredients necessary to constitute an agreement to sell are missing, the agreement between the parties would not amount to a concluded contract. Learned counsel for the Defendant further relied on the judgment in the case of ***MOOL CHAND BAKHRU AND ANR. VS. ROHAN AND ORS, 2002 (2) SCC 612*** to contend that where the

admissions of an oral agreement to sell do not spell the other essential terms of the agreement to sell such as the time frame within which the sale deed was to be executed and as to who would pay the registration charges etc. It would not afford protection of 63A of the Transfer of Property Act.

17. As per the Plaintiff the Defendant had agreed to sell the flat for a total consideration of Rs. 26,00,000/- in March 2001. A sum of Rs. 50,000/- is alleged to have been paid in cash. No agreement or receipt evidencing the payment has been placed on record or relied upon. The Plaintiff has thereafter paid a sum of Rs 4,000/- per month. Another sum of Rs. 50,000/- is claimed to have been paid in cash to a relative of the Defendant on 19.06.2005. Neither any receipt is produced on record nor the name of the relative is mentioned in the plaint.
18. The Plaintiff in support of his averments in the plaint has filed on record the bank slips to show deposit of Rs. 4,000/- per month in the account of the Defendant. However, the said receipts do not indicate the purpose for which the amount is deposited. The Plaintiff has further relied on the letter dated 25.06.2005 (*sic* 22.06.2005). The letter is denied by the Defendant. The

letter dated 22.06.2005 relied upon by the Plaintiff is a letter written by the Plaintiff himself. No proof of dispatch or delivery of the said letter has been filed. The letter, at best, indicates that there is some discussion for the sale of the flat but does not indicate any terms or conditions for the sale. There is nothing on record to indicate that the amount of Rs.4,000/- had been deposited in the bank account towards any part sale consideration.

19. The Plaintiff has relied upon the e-mail dated 01.07.2009 (Exhibit P – 2) sent by the Defendant to the Plaintiff. The email shows that the Defendant had requested the Plaintiff to fasten the process of shifting.
20. The Plaintiff has relied on the letter dated 05.04.2002 written by the Defendant to the Plaintiff wherein the Defendant has written to the Plaintiff that he has a quote from one NRI acquaintance but has not decided on the said offer but would like to know what was the present ongoing rate for the sale of such flats and in case the Plaintiff was interested, he could indicate his quotes/terms. This letter filed and relied upon by the Plaintiff clearly indicates that even as on 05.04.2002, there was no concluded contract between the Plaintiff

and the Defendant. As per the Plaintiff, the oral agreement for the sale of the flat had taken place in March, 2001 and allegedly part sale consideration had been paid. This averment is falsified by the document filed and relied upon by the Plaintiff itself i.e. letter dated 05.04.2002 written by the Defendant to the Plaintiff wherein the Defendant is mentioning that he has a quote from an NRI acquaintance and enquiring about the ongoing rate for the sale of the flat and also asking for a quote from the Plaintiff. The letter dated 05.04.2002 relied upon by the Plaintiff written after the alleged oral agreement completely demolishes and falsifies the case set up by the Plaintiff that there was any concluded contract in March 2001.

21. There is no document produced on record whereby it can be deciphered that there was ever any agreement to sell between the parties. If there was any agreement then what was the sale consideration agreed upon and what were the terms and conditions of sale.
22. The bundle of facts pleaded, read in the light of the documents of the Plaintiff, do not disclose a cause of action rather they show a clear contradiction in the stand of the Plaintiff. The Plaintiff does not disclose any

clear cause of action and a clever drafting methodology has been adopted to create a semblance of cause of action. Even if it were to be assumed that there was an agreement between the parties in March, 2001, then the Suit is highly belated as the same has been filed on 31.07.2009 i.e. after a gap of over 8 years and 4 months.

23. The preliminary issue No. 1 framed on 29.08.2013, is decided in favour of the Defendant, the Plaint is accordingly rejected with costs quantified at Rs. 25,000/-

SANJEEV SACHDEVA, J

July 01, 2014
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