

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

% *Judgment Reserved on: February 12, 2014*
Judgment Delivered on: March 19, 2014

+ **RFA(OS) 101/2013**

JASWANT SINGH Appellant
Represented by: Mr.Rajat Aneja and Ms.Rashmi
Verma, Advocates.

versus

ATMA SINGH Respondent
Represented by: Mr.Sanjiv Kumar Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. Appellant's suit seeking specific performance of the agreement to sell dated May 14, 2005, Ex.PW-2/D, for sale of property bearing J-3/37, Rajouri Garden, New Delhi and for a decree for permanent injunction to restrain the defendants from dealing with the property in contravention of Ex.PW-2/D has been dismissed by the learned Single Judge vide impugned decision dated July 10, 2013.
2. The reasoning of the learned Single Judge in paragraphs 12 to 20 of the impugned decision would evidence that the learned Single Judge has held that appellant's claim of having paid ₹4,00,000/- (Rupees Four Lacs only) as further sale consideration as per Ex.PW-1/D, being the receipt executed on August 31, 2005 and further sum of ₹10,00,000/- (Rupees Ten

Lacs only) paid on May 26, 2006 vide receipt Ex.PW-1/G has not been proved; the MOU dated October 30, 2005 Ex.PW-1/D-2 had superseded the agreement to sell Ex.PW-2/D and that the appellant had not sought specific performance of the MOU; and that the appellant had assigned his rights in favour of one Jagmohan who had sought specific performance of the agreement in question against the respondent.

3. As we would be noting hereinafter, the plaint has been drafted in a confused manner and the written statement, probably misled by the plaint, has also not brought out the real contention between the parties. The party mainly responsible for this misfortune is the plaintiff himself. The result is that neither the learned Single Judge nor we as the appellate Court had the benefit of proper pleadings and thus neither the learned Single Judge nor we in appeal are able to approach the real issue arising in the case. But we hasten to add; on a meaningful reading of the pleadings with the colour it would take from the documents proved at the trial, it is apparently a case where appellant ought to have sued for specific performance of the MOU dated August 30, 2005 Ex.PW-1/D-2 and not the agreement to sell dated May 14, 2005, Ex.PW-2/D.

4. It is trite that the requirement of Order VI of the Code of Civil Procedure is that a pleading must contain a statement in a concise form of the material facts on which the party pleading relies for his claim or defence and not the evidence and that pleadings shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, put in separate paragraphs. In cases where the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be

necessary, the same have to be stated. Where the contents of a documents are material the pleading must sufficiently state the effect thereof as briefly as possible. Thus, while pleading concisely the material facts, the same have to be pleaded in a sequential manner and not haphazardly. To wit : If a relevant fact has taken place on a date prior to the occurrence of another material fact, the former has to be pleaded before the latter so that to the reader of the pleading the purpose thereof is conveyed clearly and not in a defused state.

5. Aforesaid rules of pleadings have been given a complete go bye in the plaint. Pleading that the defendant approached the plaintiff in March 2005 to sell the suit property, portion whereof was in his occupation and a portion whereof was in portion of his brothers Pyara Singh and Jagat Singh the appellant pleaded that on May 14, 2005 the bargain was struck and reduced into a written agreement recording that the respondent would sell the suit property to him for ₹30,00,000/- (Rupees Thirty Lacs only) and he received ₹6,00,000/- (Rupees Six Lacs only) as advance sale-cum-earnest money. Subsequently, on May 19, 2005, the respondent received further sum of ₹4,00,000/- (Rupees Four Lacs only) vide receipt Ex.PW-2/F. Appellant pleaded that the property belonged to late Sh.Atar Singh, the father of the respondent who was litigating with his siblings and a civil suit No.31/2002 was pending before a learned Additional District Judge. He pleaded that in the suit a compromise was effected between the parties on August 01, 2005. The respondent thus came into possession of the entire suit property. Decree was drawn on November 17, 2005. It was pleaded that the siblings were litigating with respect to a will. Pleading as aforesaid till paragraph 6 of the plaint, (and going back to the events of the past) in paragraph 7 it was

pleaded that on August 22, 2005 the respondent, by sending a legal notice (Ex.PW-1/D-1), threatened the appellant by taking a stand that the agreement to sell dated May 14, 2005 stood revoked. Appellant approached the respondent who demanded further sum of ₹4,00,000/- (Rupees Four Lacs only) to waive the notice Ex.PW-1/D-1 and thus appellant paid ₹4,00,000/- to the respondent on August 31, 2005 evidenced by the receipt Ex.PW-1/D. In para 9 it was pleaded that on same day i.e. August 31, 2005 appellant purchased non-judicial stamp paper worth ₹40,000/- (Rupees Forty Thousand only) for a sale-deed to be executed but respondent informed appellant that since the property was not a free-hold property the sale deed could not be executed. In para 10 thereafter the appellant pleaded that being confident of a sale-deed being executed in his favour he approached a builder carrying on business in the name of '*Janak Properties*' who agreed to build on the suit property after taking possession from the appellant. The builder told the appellant to bring the original documents before he undertook the construction on the building. In para 11 the appellant pleaded that on October 30, 2005 he took the respondent with him to the aforesaid property dealer and thereafter, on the same day i.e. on October 30, 2005 the respondent, the property dealer and the appellant signed a Memorandum of Understanding Ex.PW-1/D-2. In para 12 thereafter it was pleaded that the respondent increased the sale price to ₹50,00,000/- (Rupees Fifty Lacs only). In para 13 it was pleaded that the appellant approached the defendant in number of times and even requested other people to intervene. The respondent agreed to execute the necessary documents provided he was paid further sum of ₹10,00,000/- (Rupees Ten Lacs only) which amount was paid by the appellant to the respondent on May 26, 2006 vide Ex.PW-

1/G. Pleading in the same para that the date by which the transaction had to be completed was agreed to be August 07, 2006, in para 14 the appellant pleaded that he received a summons from the Court of Sh.Praveen Singh, Civil Judge, Delhi and he realized that the respondent was no longer interested in selling the suit property and thus he was constrained to sue for specific performance of the agreement to sell dated May 14, 2005. Since he had paid ₹6,00,000/- (Rupees Six Lacs only) when the agreement to sell was executed followed by three more payments in sum of ₹4,00,000/- (Rupees Four Lacs only) on May 19, 2005, ₹4,00,000/- (Rupees Four Lacs only) on August 31, 2005 and ₹10,00,000/- (Rupees Ten Lacs only) on May 26, 2006 respectively; appellant pleaded that since sale consideration agreed to was ₹30,00,000/- (Rupees Thirty Lacs only) he was only to pay a further sum of ₹6,00,000/-, (Rupees Six Lacs only) which he was ready and willing to pay.

6. Now, the appellant has himself categorically pleaded, in para 10 and 11 of the plaint that when he took the defendant to the proprietor of Janak Properties, the three i.e. the respondent, the property dealer and the appellant had signed a Memorandum of Understanding dated August 30, 2005 Ex.PW-1/D-2. The same is an admitted document. It reads as under:-

“M.O.U

30.10.2005

Today on 30-10-2005, Sh.Atar Singh Sodhi son of late Sardar Atar Singh Sodhi R/O J-3/37, Rajouri Garden, New Delhi and Sh.Jaswant Singh son of Sardar Gyan Singh R/O A-1/39, Shiv Vihar, Nalothi Extn. Delhi-110041 have mutually agreed and deposited their original documents in the custody of Sh.Ashwani Suri of M/s Janak Properties as per the terms agreed as follows:-

(i) That Sh.Atma Singh Sodhi will execute a proper sale

deed of Ground Floor and First Floor of the property J-3/37, measuring 160 sq.yds, Rajouri Garden in favour of Jaswant Singh or his nominee/s.

(ii) That a builder agreement will be executed in favour of Sh.Atma Singh Sodhi to construct the Second Floor of the above said property within eight months of the execution of the proper sale deed and handing over of the possession of the above said property in favour of Jaswant Singh or his nominee/s.

(iii) Sh.Atma Singh Sodhi has deposited a original conveyance/sale deed, executed in favour of Sardar Attar Singh Sodhi by DLF and copy of the compromise order issued by Sh.Manish Gupta (Civil Judge).

(iv) Sh.Jaswant Singh has deposited agreement to sell in favour of Sh.Jaswant Singh executed by Sh.Atma Singh regarding sale of the above said property, relinquishments and agreements (three in number) of the remaining legal heirs of the above said property and two possession letters of Sardar Pyara Singh and Sardar Jagjit Singh.

(v) That Sh.Jaswant Singh has also agreed to hand-over the actual, vacant physical possession of the portion of the above said property to Sh.Atma Singh Sodhi today after depositing the above said original documents to Sh.Ashwani Suri.

7. The admitted document, the MOU dated October 30, 2005 clearly envisages that the respondent would sell the existing structure to the appellant but would have the right to construct a second floor on the existing roof of the first floor. The MOU clearly enjoins upon the respondent to execute the sale deed in respect of the existing property. This has been clearly recorded by the parties in paragraph 1 of the MOU. In the second

paragraph the reference is to the fact that a builders agreement would be executed in favour of Atma Singh to enable him to construct a second floor on the property. The next three covenants are by way of recitals as a matter of fact recording that Atma Singh and Jaswant Singh have deposited various documents with Ashwani Suri.

8. Regretfully for the appellant his counsel unnecessarily pleaded that the proprietor of Janak Properties proposed to build on the suit property and that on October 30, 2005 a tripartite agreement being the MOU was executed.

9. A perusal of Ex.PW-1/D-2 i.e. the MOU in question would evidence that the same has been executed only by the appellant and the respondent. Of the two witnesses, Ashwani Suri has signed as the second witness.

10. The plaint should have simply stated that the agreement to sell dated May 14, 2005 as per which entire right in the suit property had to be sold by the respondent to the appellant, was modified by the MOU to the effect that on the roof of the existing first floor the respondent would have a right to construct a second floor, meaning thereby, the sale by the respondent to the appellant of the house would be sans the roof rights above the roof of the existing first floor on which the respondent would have a right to construct a second floor.

11. What has happened is that the confused pleading, making an incorrect reference to the MOU, has led the learned Single Judge to take the view that the agreement to sell dated May 14, 2005 was superseded by the MOU dated October 30, 2005. The fact of the matter being, as discussed hereinabove, which is evident from a plain reading of the MOU, that the parties to the agreement to sell bound themselves once again to the same, requiring Atma

Singh to sell the existing ground floor and first floor of the property to Jaswant Singh, who in turn agreed that Atma Singh Sodhi would have a right to construct a second floor on the roof of the existing first floor. The plaintiff ought to have averred that the appellant was ready and willing to let the respondent construct a second floor on the roof of the existing first floor.

12. We do not fault the learned Single Judge in taking the view which he took for the reason the appellant did not correctly plead his case.

13. We would thus be proceedings in our discussion in the appeal by giving a proper meaning to the pleadings with reference to the documents i.e. that the MOU dated October 30, 2005; embodied the agreement to sell dated May 14, 2005, and required the parties to be bound by the agreement to sell with a right further created in favour of the respondent i.e. apart from the right to receive the balance sale consideration as per the agreement to sell, to have a right to construct a second floor on the roof of the existing first floor. In other words, to put it pithily, the appellant's right to seek specific performance of the agreement to sell requiring the respondent to execute a sale deed in his favour with respect to the ground floor and first floor construction.

14. To establish the enforcement of said right the appellant had to prove his readiness and willingness to pay the agreed sale consideration in sum of ₹30,00,000/- (Rupees Thirty Lacs only) to the respondent.

15. As noted above, the appellant pleaded that at the time of execution of the agreement to sell he had paid ₹6,00,000/- (Rupees Six Lacs only), a fact admitted by the respondent and that five days thereafter, on May 19, 2005 he had paid ₹4,00,000/- (Rupees Four Lacs only) to the respondent, a fact admitted by the respondent, and even otherwise established from the receipts

Ex.PW-2/E and Ex.PW-3/F.

16. The appellant claimed to have paid sum of ₹4,00,000/- (Rupees Four Lacs only) on August 31, 2005 evidenced by Ex.PW-1/D and ₹10,00,000/- (Rupees Ten Lacs only) on May 26, 2006 evidenced by Ex.PW-1/G.

17. The readiness and willingness to comply with his obligations under the agreement to sell Ex.PW-2/B has been pleaded by the appellant as obliging him to pay only ₹6,00,000/- (Rupees Six Lacs only) further.

18. The respondent denied receiving any amount on August 31, 2005 and May 26, 2006 i.e. the respondent denied having executed the receipts Ex.PW-1/D and Ex.PW-1/G.

19. Disbelieving appellant's version the learned Single Judge has noted appellant's admission in cross-examination that he had no proof that he possessed ₹4,00,000/- (Rupees Four Lacs only) on October 31, 2005 and ₹10,00,000/- (Rupees Ten Lacs only) on May 26, 2006. Notwithstanding appellant examining two witnesses who have purportedly penned their signatures as witnesses on Ex.PW-1/D and PW-1/G the learned Single Judge has held that in the absence of appellant proving having the requisite funds, the appellant has to be disbelieved. Additional reason given by the learned Judge is that if ₹4,00,000/- (Rupees Four Lacs only) was paid by the appellant on August 31, 2005 a reference thereto would have been made in the MOU dated October 30, 2005. It was not. The further reason given by the learned Single Judge is that all relevant documents in possession of the parties were, as recorded in the MOU dated October 30, 2005, deposited with Sh.Ashwani Suri. Non-deposit of the receipt Ex.PW-1/D with Mr.Ashwani Suri was also indicative of the fact that no such receipts existed as of October 30, 2005. The learned Single Judge has noted that the

respondent had denied his signatures on the receipts.

20. We concur with the view taken by the learned Single Judge as regards the receipt Ex.PW-1/D and in particular for the reason in the MOU dated October 30, 2005 it has been recorded that Atma Singh has deposited the original conveyance deed in favour of his father as also a certified copy of the compromise decree where under Atma Singh and other siblings (legal heirs of deceased siblings) of late Sh.Attar Singh compromised their disputes and as regards Jaswant Singh he had deposited the agreement to sell in his favour executed by Atma Singh as also relinquishment agreement executed by other legal heirs. If further payment had been made as claimed by the appellant one would have logically accepted the receipt thereof to be deposited with Sh.Ashwani Suri. Add on the fact that the appellant admitted having no proof with him that he was having with him ₹4,00,000/- (Rupees Four Lacs only) on August 31, 2005, and we have the weight of the evidence limning further towards the respondent.

21. As regards the receipt dated May 26, 2006 Ex.PW-1/G, we find it strange that in spite of the MOU dated October 30, 2005 obliging Atma Singh to immediately sell the ground floor and first floor of the property to Jaswant Singh and that within eight months thereof Jaswant Singh executing a builder agreement permitting Atma Singh to construct a second floor on the roof of the existing first floor, without insisting on the sale deed being executed after receiving balance sale consideration, Jaswant Singh would pay ₹10,00,000/- (Rupees Ten Lacs only) to Atma Singh. This circumstance leans against the execution of the receipt. Further, as noted by the learned Single Judge, appellant admitted during cross-examination that he had assigned his rights under the agreement to sell dated May 14, 2005 in

favour of one Jagmohan Singh. The appellant did not produce a copy of the said agreement which he had entered into with Jagmohan Singh. But the agreement is dated December 29, 2005. We agree with the view taken by the learned Single Judge that if appellant had assigned his rights under the agreement to sell in favour of Jagmohan Singh on December 29, 2005, there would be no occasion for him to pay ₹10,00,000/- (Rupees Ten Lacs only) to the respondent on May 26, 2006.

22. Undisputedly, Jagmohan Singh exercised his right under the assignment by the appellant of the agreement to sell in his favour. He filed a suit for specific performance against the respondent.

23. The view taken by the learned Single Judge that to prove readiness and willingness under the agreement to sell, since appellant came to the Court pleading that he was only to pay ₹6,00,000/- (Rupees Six Lacs only) more and for which he relied upon Ex.PW-1/D and Ex.PW-1/G to have paid ₹4,00,000/- (Rupees Four Lacs only) on August 31, 2005 and ₹10,00,000/- (Rupees Ten Lacs only) on May 26, 2006, upon failure to prove said two payments being made by him, the appellant would not be entitled to a decree for specific performance of the agreement to sell, since readiness and willingness did not relate to the full sale consideration.

24. In fact the moment appellant admitted during cross-examination that he has assigned his rights under the agreement to sell in favour of Jagmohan Singh, who we note has sought specific performance of the agreement to sell in question as an assignee under the appellant, no right would subsist in favour of the appellant to maintain the action for specific performance of the agreement to sell.

25. In that view of the matter the appellant would not even being entitled

to refund of ₹10,00,000/- (Rupees Ten Lacs only) which respondent admits having received under the agreement to sell for the reason once appellant assigned his rights under the agreement to sell in question in favour of Jagmohan Singh he would be left with not even a shell, what to speak of the flesh inside. If at all, said right would not vests in Jagmohan Singh provided in the suit filed by him he could prove that no loss was occasioned to the respondent by breach of the agreement to sell. But we do not speak thereon any further because Jagmohan is not before us. We have penned our thought in paragraph 25, lest approaching the Supreme Court the appellant were to raise a plea that in the least he would be entitled to a refund of ₹10,00,000/- (Rupees Ten Lacs only).

26. The appeal is dismissed.

27. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MARCH 19, 2014

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