

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

% *Judgment Reserved on: August 19, 2014*
Judgment Delivered on: August 22, 2014

+ **FAO(OS) 417/2013**

SAJJAN PAL Appellant

Represented by: Mr.A.K.Bajpai and
Mr.M.F.Khan, Advocates

versus

USHA MEHTA Respondent

Represented by: Mr.Pradeep Dewan, Sr.Advocate
instructed by Mr.Anupam Dhingra
and Mr.Shashank Khurana,
Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The appellant Sajjan Pal has filed a suit seeking specific performance of a written Agreement to Sell dated July 07, 2010 executed between him and the respondent Usha Mehta.

2. The Agreement to Sell concerns flat bearing No.C-105, Sai Baba Cooperative Group Housing Society Ltd., Sector-9, Plot No.4, Rohini, Delhi. It records that the agreed sale consideration is ₹25,00,000/- (Rupees Twenty Five Lacs only). It records that Sajjan Pal has paid Usha Mehta ₹20,00,000/- (Rupees Twenty Lacs only) through RTGS clearance on July 07, 2010 i.e. on the date when the Agreement to Sell was executed. It records that balance payment would be paid by December 07, 2010. It is

the case of Sajjan Pal that on December 07, 2010 whereas he reached the office of the Sub-Registrar Usha Mehta did not reach the office of the Sub-Registrar.

3. Alleging that when the Agreement to Sell was entered into the property was under tenancy of ICICI Bank Ltd. for a period of 11 months and that the bank vacated the property on November 30, 2010, Sajjan Pal asserts that on December 02, 2010 the defendant handed over physical possession of the property to him. As per Sajjan Pal, Usha Mehta was threatening to sell the property to somebody else.

4. Issuing summons in the suit vide order dated December 14, 2010 it was directed that parties shall maintain status quo with respect to the flat.

5. In the written statement filed by her, Usha Mehta pleaded that she was a widow and of lately had turned saintly being a disciple of Sai Baba. She would spend most of her time at a Sai Ashram in Mussoorie (Uttarakhand) or at Dehradun (Uttarakhand). She pleaded that Sajjan Pal met her through one Jitender who claimed to be an advocate. It was Jitender who struck the bargain requiring the flat to be converted from leasehold tenure to freehold tenure and sale consideration being ₹1,85,00,000/- (Rupees One Crore Eighty Five Lacs only). As per her at the asking of Jitender she came to Delhi on July 06, 2010. She was handed over various documents and after the draft of the Agreement to Sell was settled recording sale consideration of ₹1,85,00,000/- (Rupees One Crore Eighty Five Lacs only) a computer generated print out on a stamp paper was prepared. She was told to sign two copies of the Agreement to Sell i.e. in duplicate. She signed the same. She was handed over a photocopy evidencing agreed sale consideration to be ₹1,85,00,000/- (Rupees One Crore Eighty Five Lacs only). It recorded that she had received ₹20,00,000/- (Rupees Twenty Lacs

only) and that balance sale consideration in the sum of ₹1,65,00,000/- (Rupees One Crore Sixty Five Lacs only) would be paid to her at the time of sale. As per her Sajjan Pal in connivance with Jitender obtained her signatures and thumb impression on blank papers. She denied having taken possession from the tenant and thereafter handing over the same to Sajjan Pal. She pleaded that Sajjan Pal trespassed into the property after the tenant vacated.

6. Sajjan Pal filed a replication to the written statement denying each and every averment made by Usha Mehta in the written statement. He denied that two Agreements to Sell were got prepared. He denied that in any document the agreed sale consideration mentioned was ₹1,85,00,000/- (Rupees One Crore Eighty Five Lacs only). He maintained that only one Agreement to Sell was executed recording the agreed sale price at ₹25,00,000/- (Rupees Twenty Five Lacs only).

7. Usha Mehta filed a complaint with the Delhi Police which has been assigned to EOW Cell of the Delhi Police.

8. Investigations conducted by the police revealed as under:-

- (a) One Dinesh Rajoura, a stamp vendor has sold two non-judicial stamp papers in denomination of ₹50/- on July 07, 2010 recording that the purchaser was Usha Mehta.
- (b) One Sanjay Sharma is the person at whose shop the Agreement to Sell relied upon by Sajjan Pal was got prepared. As per him, on instructions of one Jitender he had prepared two sets of Agreement to Sell. One recording sale consideration in sum of ₹25,00,000/- (Rupees Twenty Five Lacs only) and the other in sum of ₹1,85,00,000/- (Rupees One Crore Eighty Five Lacs only).
- (c) The computer on which the two Agreements to Sell disclosed by

Sanjay Sharma were got printed were seized and sent for forensic examination to the CFSL expert at Hyderabad. Two Agreement to Sell were generated from the memory of the hard disk of the computer one recording sale consideration to be ₹25,00,000/- (Rupees Twenty Five Lacs only) and the other ₹1,85,00,000/- (Rupees One Crore Eighty Five Lacs only).

9. Faced with aforesaid, Sajjan Pal produced documents including receipts purportedly executed by Usha Mehta evidencing that she had received from him a sum of ₹1,20,00,000/- (Rupees One Crore Twenty Lacs only).

10. Vide impugned order dated August 30, 2013, noting facts noted by us in paragraph 8 above, the learned Single Judge has opined that it is a fit case to appoint a Receiver for the subject property.

11. In the appeal Sajjan Pal has stated that he had paid ₹1,20,00,000/- (Rupees One Crore Twenty Lacs only) to Usha Mehta. But on what account has not been pleaded.

12. Order 40 Rule 1 of the Code of Civil Procedure empowers a court to appoint a receiver of a property where it appears to the court that it would be just and convenient to do so.

13. If the facts prima facie establish that a person in possession of a property is not entitled thereto, a receiver thereof may be appointed, more so if prima facie fraud emerges.

14. In this context it assumes importance to note that in the suit filed by Sajjan Pal he has categorically pleaded that the agreed sale consideration was ₹25,00,000/- (Rupees Twenty Five Lacs only). In the replication filed he maintained said stand and disputed Usha Mehta's stand that she was shown an Agreement to Sell recording sale consideration in sum of

₹1,85,00,000/- (Rupees One Crore Eighty Five Lacs only) and she signed the same, but was tricked to sign another Agreement to Sell as she was told that two copies of the Agreement to Sell were being prepared. Sajjan Pal denied two Agreements to Sell being executed. It was only when evidence noted by us in paragraph 8 above emerged, and he was confronted therewith, that he took the stand that he had paid ₹1,20,00,000/- (Rupees One Crore Twenty Lacs only) in cash to Usha Mehta. It may be true that on the receipts signatures of Usha Mehta are to be found, but she explains the same as being obtained on blank papers. From the hard disk of the computer of Sanjay Sharma not only the Agreement to Sell relied upon by Sajjan Pal could be generated from the memory another Agreement to Sell could be generated which records agreed sale consideration to be ₹1,85,00,000/- (Rupees One Crore Eighty Five Lacs only). The record of the stamp vendor would evidence two non-judicial stamp papers in denomination of ₹50/- being sold on July 07, 2010.

15. The learned Single Judge has correctly exercised the discretion to appoint a receiver for the flat in question.

16. There is no force in the contention advanced that once an order for maintaining status quo was passed a receiver could not be appointed. There is no law to said effect. Decisions cited being AIR 1997 SC 2183 Brig. Sawai Bhawani Singh Vs. M/s. Indian Hotels Co. Ltd., 2010 (3) LJR 291 Jeet Singh Vs. Bahadur Singh, AIR 1993 Delhi 293 Hari Mohan Sharma Vs. C.S.R. Poultry Research and Breeding Farm and AIR 1995 Delhi 175 Ravi Kumar Vs. Misha Vadhera are not applicable in the instant case because in said facts prima facie fraud played to gain possession of the property appointment of receiver whereof was an issue were not made out, in fact not even pleaded. It is trite that fraud vitiates every transaction.

17. In fact in Ravi Kumar's case (supra) the Division Bench of this court affirmed the law declared in the opinion reported as 1908 (1) KB 79 Leney & Sons Ltd. Vs. Callingham & Thompson observing that where a party shows a strong prima facie case or a special equity requiring immediate dispossession of the opposite party, a receiver of a property needs to be appointed.

18. Needless to state it is not a sine qua non to be established in every case that the property is in danger of being wasted if allowed to remain in the hands of the possessor. If the prima facie facts are so telling and stark, as in the instant case, a trickster should not be entitled to retain possession of a property illegally gained.

19. The appeal is dismissed with costs against the appellant and in favour of the respondent.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 22, 2014

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