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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **RFA 47/2016**

Between: -

OM PRAKASH

S/O. SH. BHAGWAN SAHAI

R/O E-5, WEST JYOTI NAGAR EXTN.

100 FEET ROAD, SHAHDARA,

DELHI-1100032

.....APPELLANT

(Through: Mr.Ram Lal and Mr.Resham Lal, Advs.)

AND

1. SHEESH RAM @SHEESH PAL (SINCE DECEASED)

THROUGH LEGAL REPRESENTATIVES:

A. DINESH KUMAR (LR NO. A OF DEFENDANT N0.1)

S/O LATE SH. SHEESH RAM @ SHEESH PAL

B. KUNWAR PAL (LR NO. B OF DEFENDANT N0.1)

S/O LATE SH. SHEESH RAM @ SHEESH PAL

C. ANIL KUMAR (LR NO. C OF DEFENDANT N0.1)

S/O LATE SH. SHEESH RAM @ SHEESH PAL

D. JITENDRA KUMAR (LR NO. D OF DEFENDANT N0.1)

S/O LATE SH. SHEESH RAM @ SHEESH PAL

PRIYA HALL KE BARABAR WALI ROAD,
MURADNAGAR, DISTT. GHAZIABAD, U.P.

E. SMT. REKHA W/O SH. ASHOK KUMAR
(LR NO. E OF DEFENDANT NO.1)
D/O LATE SH. SHEESH RAM @ SHEESH PAL
R/O VILLAGE LILYANA, POST DHIKOLI,
POLICE STATION CHANDI NAGAR,
TEHSIL KHEKRA, DISTT. BAGHPAT, U.P.
.....RESPONDENT NO.1

2. MUNESH GUPTA
S/O SH. SOHAN LAL GUPTA,
R/O 1-13, GALI NO.2, (INFRONT OF
SHANTI NAGAREXTN.) EAST
JAWAHAR NAGAR, LONI, GHAZIABAD,
U.P.

ALSO AT
C/O: NAVDURGA PROPERTY DEALER,
MAIN 33 FT. ROAD, PHASE-IV (NEAR NAVEEN
MEDICAL STORE), SHIV VIHAR, KARAWAL NAGAR,
DELHI-110094 RESPONDENT NO.2

(Through: None.)

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Reserved on : 24.07.2024
Pronounced on : 20.08.2024

J U D G M E N T

This appeal is directed against the impugned judgment and decree dated 23.09.2015 passed by the Court of Additional District Judge-II (North-East), Karkardooma Courts, New Delhi in Civil Suit No.131/2014 partly decreeing the civil suit for specific performance to the extent of refund of the earnest consideration in favour of the appellant/plaintiff and against the respondents/defendants. However,

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the plaintiff/appellant has preferred the present appeal as the
of the plaintiff to the extent of the relief of specific performance of

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KUMAR RAURAV

agreement to sell dated 29.07.2008, possession of property in question, declaration of documents dated 01.11.2008 as null and void, cancellation of documents dated 01.11.2008 and permanent injunction to the appellant/plaintiff holding the respondent/defendant No. 2 as *bona fide* purchaser of the property in question were denied.

2. A brief account of the facts would portray that the appellant/plaintiff and respondent/defendant No.1 (since deceased) entered into an agreement to sell on 29.07.2008 (Ex. PW-1/B) with respect to property No. B-100, Gali No. 12, Phase-10, Poll No. 6721, Shiv Vihar, East Karawal Nagar, Delhi-94, measuring 120 Sq. yards (hereinafter '**suit property**'). The respondent/defendant No.1 agreed to sell the suit property to the appellant/plaintiff for a total consideration of Rs.18,45,000/-, out of which Rs.2,00,000/- was paid as earnest money at the time of execution of the agreement to sell by the appellant/plaintiff to respondent/defendant No.1 in the presence of witnesses. The said transaction was noted in the agreement to sell and a separate *bayana* receipt (Ex. PW-1/C) was also executed. Both the parties agreed to the execution of the sale deed after payment of the balance consideration of Rs.16,45,000/- on or before 31.10.2008 before the Sub-Registrar.

3. On the agreed date of execution of the sale deed i.e. 31.10.2008, though the appellant/plaintiff claimed to have appeared before the Sub-Registrar along with the balance consideration but the respondent/defendant no.1 did not turn up. On the following morning, the plaintiff went to the house of defendant No.1 which ended up in a quarrel between them. Thereafter, the appellant/plaintiff served a legal notice upon the respondent/defendant No.1 dated 03.11.2008 (Ex.PW-1/E). However, to the dismay of the appellant/plaintiff, the

documents namely, an agreement for sale (Ex.PW-1/L) a possession letter (Ex.PW-1/M), a General Power of Attorney (Ex.-PW1/K) and a will deed (Ex.PW-1/P), dated 01.11.2008 (all documents in favour of the respondent/defendant No.2). Aggrieved by the conduct of the respondent/defendant no.1, the appellant/plaintiff filed a civil suit for specific performance, declaration, cancellation of documents, possession and permanent injunction.

4. The respondents/defendants opposed the civil suit and had denied the claim of the appellant/plaintiff in the written statement filed therein. The respondent/defendant no. 1 has stated that the claims and statements made by the appellant/plaintiff were without any rational basis and the agreement to sell dated 29.07.2008 (Ex. PW-1/B) could not be executed because the appellant/plaintiff remained absent and had failed to pay the balance consideration amount to him. It was contended that the absence of the appellant/plaintiff on the date of execution of the sale deed and consequently, non-execution of the sale deed discharged respondent/defendant No.1 from all encumbrances and thus, he sold the suit property to the respondent/defendant No.2. During the pendency of the civil suit, the respondent/defendant No.1 had expired and his legal representatives have been brought on record.

5. The respondent/defendant No.2 in his written statement claimed that he was the *bona fide* purchaser of the suit property as the said property was sold by the respondent/defendant No.1 in his favour after the expiry of date of purchase between the appellant/plaintiff and the respondent/defendant No.1.

6. The trial court *vide* the impugned judgment and decree has partly decreed the suit in favour of the appellant/plaintiff and he was granted the relief for refund of the earnest money of Rs.2,00,000/-

29.07.2008 (Ex. PW-1/B) till the date on which the payment is made by the respondent/defendant No.1. However, the trial court dismissed the civil suit with respect to the execution of the sale deed on the ground that respondent/defendant No.2 is the *bona fide* purchaser and nothing had come on record to prove the contrary. The appellant/plaintiff, therefore, preferred the instant appeal.

7. Mr. Ram Lal, learned counsel appearing for the appellant/plaintiff has made the following broad submissions:

- i. Despite agreeing to the execution of the sale deed on 31.10.2008, the respondent/defendant no.1 left the appellant/plaintiff high and dry by not showing up before the Sub-Registrar. On the morning of 01.11.2008 at 09:30 a.m., the appellant/plaintiff went to the house of the respondent/defendant No.1 with a request for honouring the agreement and the execution of the sale deed. However, the situation there went haywire and a quarrel took place between the appellant/plaintiff and respondent/defendant No.1 in the presence of respondent/defendant No.2, who also took part in the assault of the appellant/plaintiff.
- ii. The appellant/plaintiff registered an FIR on 03.11.2008 (Ex. PW-1/I) narrating the entire incident against the respondents/defendants and served a legal notice (Ex. PW-1/E), upon respondent/defendant no.1 directing him to execute the sale deed in favour of the appellant/plaintiff but to no avail.
- iii. Learned counsel for the appellant/plaintiff submits that before the trial court, the onus was on the respondent/defendant No.2 to prove that he was a *bona fide* purchaser of the suit property. However, he did not examine himself and also did not put forward any other evidence before the trial court to prove this.

legitimate title of being the purchaser of the suit property. The finding of the trial court holding the respondent/defendant no. 2 to be the *bona fide* purchaser of the suit property is erroneous for it is based only on the documents executed by the respondent/defendant No.1 in favour of the respondent/defendant No. 2, wherein, the stamp paper for the execution of such documents dated 25.10.2008 also does not mention the name of the purchaser.

- iv. It is stated by the learned counsel that the agreement to sell executed in favour of the respondent/defendant No.2 on 01.11.2008 (Ex.PW-1/L) was executed only one day prior to the expiry of the previous agreement to sell in favour of the appellant/plaintiff. The appellant/plaintiff has further deposed in his testimony that the respondent/defendant No.2 was fully aware of the transaction which was entered into between the appellant/plaintiff and the respondent/defendant No.1.
- v. The trial court has accepted the entire case of the appellant/plaintiff by holding that he was able to prove his readiness and willingness to conclude the agreement to sell that he had entered into. The respondent/defendant No. 1 did not obtain any NOC from the appellant/plaintiff and neither did the respondent/defendant No.1 supply the complete chain of documents to the appellant/plaintiff. Therefore, it is a proven fact that a prior agreement to sell subsisted when another purported document of sale was deliberately executed in the name of respondent/defendant no.2. Thus, the second agreement to sell dated 01.11.2008 has no legal sanctity and the same appears to have been executed to frustrate the agreement to sell dated 29.07.2008 (Ex. PW-1/B).

vi. Learned counsel for the appellant/plaintiff invites the Court's attention to the testimony of Mahipal Singh (PW2) which reflects that the agreement to sell dated 29.07.2008 was executed in his presence and the earnest money also exchanged hands on the same day. A further perusal of the testimony of Mahipal Singh (PW2) utterly proves the presence of respondent/defendant No.2 at the time of the scuffle on the morning of 01.11.2008 and also that the respondent/defendant no.2 assaulted the appellant/plaintiff. The case is set out by the appellant/plaintiff (PW1) in his favour and his testimony is reinforced from the testimony of Mahipal Singh (PW2).

8. In order to buttress his submissions, learned counsel for the appellant/plaintiff has also placed reliance on the case of *Deendayal v. Harjot Kanwar*¹.

9. None has appeared on behalf of the respondents/defendants. The order sheet dated 07.09.2017 indicates that the service is complete. The Court is, therefore, obligated to proceed *ex parte* against the respondents/defendants.

10. The sole question that arises for adjudication by this Court in the instant appeal is:-

‘Whether the appellant/plaintiff has been able to make out a case for the specific performance of contract/agreement to sell, thereby necessitating directions for the execution of the sale deed in his favour?’

11. The Court takes note of the fact that during the pendency of the suit, the balance sale consideration was directed to be deposited before the Civil Court. The said amount, later on, got deposited before the Registrar of this Court.

12. It would be of significance to examine the legal position with respect to the grant of decree for specific performance of contract. The law in this regard is fairly well-settled and is discussed comprehensively by the Supreme Court in the case of ***Sughar Singh v. Hari Singh (dead)***². The relevant excerpt of the said decision is extracted below:-

“28. Now, so far as the finding recorded by the High Court and the observations made by the High court on Section 20 of the Act and the observation that even if the agreement is found to be duly executed and the plaintiff is found to be ready and willing to perform his part of the Agreement, grant of decree of specific performance is not automatic and it is a discretionary relief is concerned, the same cannot be accepted and/or approved. In such a case, many a times it would be giving a premium to the dishonest conduct on the part of the defendant/executant of the agreement to sell. Even the discretion under Section 20 of the Act is required to be exercised judiciously, soundly and reasonably. The plaintiff cannot be punished by refusing the relief of specific performance despite the fact that the execution of the agreement to sell in his favour has been established and proved and that he is found to be always ready and willing to perform his part of the contract. Not to grant the decree of specific performance despite the execution of the agreement to sell is proved; part sale consideration is proved and the plaintiff is always ready and willing to willing to perform his part of the contract would encourage the dishonesty. In such a situation, the balance should tilt in favour of the plaintiff rather than in favour of the defendant – executant of the agreement to sell, while exercising the discretion judiciously.”

(emphasis supplied)

13. The Supreme Court has effectively reiterated this position of law in the case of ***P. Ramasubbamm v. V. Vijaylakshmi and Ors.***³, wherein, the subsequent sale deeds, executed by the buyer during the subsistence of previous sale deed, were held to be invalid.

14. The decision relied upon by the appellant/plaintiff in the case of ***Deendayal (supra)*** of the High Court of Rajasthan adjudicates upon a

homogenous issue, wherein, without frustrating a previously executed agreement to sell, the seller sold the plot to subsequent purchasers.

15. It becomes necessary to take note of the advancement in the legal position with respect to the **Specific Relief Act, 1963** which has now been substituted by the **Specific Relief (Amendment) Act, 2018**. The pre-amendment provision provided for a discretionary remedy and despite proof of foundational facts, the grant of relief was subject to discretion of the court which was largely exercised on the parameters of equity. However, the discretionary remedy as persisted under the erstwhile Section 20 has now been made a statutory remedy. The shift in legislative intent was largely a result of the uncertainties which had crept in the enforcement of contracts. Earlier, contractual violations were largely covered by providing damages or compensation for breach of contract, and the focus on performance was diminishing. The amendment effectively brought back the focus on specific performance so as to ensure that the sanctity of contracts is maintained and contractual obligations are enforced. The amended position and its cogency have been discussed by the Supreme Court in the case of *C. Haridasan v. Anappath Parakkattu Vasudeva Kurup & Ors.*⁴

16. In light of the above discussion and application thereof to the facts of the present case, it can be emphatically held that the appellant/plaintiff did prove his readiness and willingness to execute the sale deed on the required date and at the required place. The respondent/defendant no.1 is undoubtedly culpable by not keeping his end of the covenant.

17. Learned trial court in paragraph No. 22 records the following conclusion:-

“22. In view of the aforesaid discussions, materials on the records and testimony of the witnesses, it is proved that the plaintiff proved that he was ready to make the payment on the day when the documents were to be executed or on the day when the suit was filed. The payment of the balance sale consideration and execution of title documents was a simultaneous act. The plaintiff was under obligation to pay the balance sale consideration for execution of the sale documents. This Court does not find any substance in the contention of the defendant No. 1. The plaintiff is accordingly entitled for the amount of Rs. 2,00,000/- which was paid by him to the defendant No.1 as the earnest money alongwith interest @10 % per annum from the date of agreement i.e. 29.07.2008 till the payment is made.”

18. Despite drawing observations on all the issues contested before it in favour of the appellant/plaintiff, the trial court has declined to grant the relief for execution of the sale deed only on the ground that there is nothing on record to conclude that the respondent/defendant No.2 is not a *bona fide* purchaser. This view is recorded in paragraph No.17 of the impugned judgment.

19. The Court is of the opinion that the aforesaid findings of the trial court does not hold water and are wholly perverse as the evidence of Mahipal Singh (PW2) and Om Prakash (PW1) clearly establishes that the respondent/defendant No.2 was well aware of the pre-existing transaction entered into between the appellant/plaintiff and the respondent/defendant No.1. Therefore, possession of knowledge of existence of a preceding agreement before entering into the transaction related to the suit property, cannot make him a *bona fide* purchaser. On a reading of the deposition of Mahipal Singh (PW 2), it is clearly established that the agreement dated 29.07.2008 between the plaintiff and the defendant No.1 was executed in presence of the deponent himself, his wife, son of defendant No.1, defendant No. 2-3 and the tenants. The deponent PW2 along with both the parties had signed the agreement. Further, the presence of the defendant No.2, on the

morning of 01.11.2008 is clearly established on a reading of the account of events of that day as illustrated by Mahipal Singh (PW2).

20. For any transfer of an immovable property, a sale has to be effected from the seller to the buyer in accordance with the **Transfer of Property Act, 1882** (hereinafter “TPA”) which incorporates the provisions governing the transfer of immovable properties. Section 54 of the TPA provides for the definition of sale and the essentials required therein.

21. The basic understanding of the concept of sale would outline that there has to be an exchange of ownership and price between the seller and the buyer of a tangible immovable property. The buyer of the property cannot claim to hold an authorized title over the property hitherto; a sale deed without any impediment has been duly executed and registered in his name.

22. The position of the respondent/defendant No. 2 being a *bona fide* purchaser of the suit property can be questioned on the grounds that *firstly*, the respondent/defendant no. 2 entered into the agreement to sell even after being cognizant of the fact that there already existed an agreement regarding the same property in the favour of the appellant/plaintiff and *secondly*, the sale of the suit property *per se* did not take place in accordance with the provisions of TPA. The documents relied upon by the respondent/defendant No. 2 for proving his entitlement to the property include an agreement for sale, a possession letter, a general power of attorney and a will deed. However, none of these documents indicate that any valid sale deed has been executed in favour of the respondent/defendant No.2.

23. The case of ***Crest Hotel Ltd. v. Assistant Superintendent of Stamps***⁵ explicates the position of a contract for sale in the following words:-

“A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself create any interest in or change on such property. An agreement for sale is merely a document creating a right to obtain another document of sale on fulfilment of terms and conditions specified therein. On the strength of such an agreement a buyer does not become the owner of the property. The ownership remains with the seller. It will be transferred to the buyer only on execution of the sale deed by the seller. The buyer obtains only a right to get the sale deed executed in his favour.”

(emphasis supplied)

24. The case of ***Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana & Anr.***⁶ lays down the law with respect to an agreement to sell in precise and crisp terms by holding that transfer of immovable property by way of a sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

25. Further, the settled position of law has been reiterated by this Court in the case of ***Imtiaz Ali Vs. Nasim Ahmed***⁷, wherein, it was observed that where Section 54 of TPA is in force, it could not be ignored for completing the transaction of sale. Nobody could be conferred with a right of title and ownership merely on the basis of an agreement to sell and a power of attorney executed by the seller in favour of the prospective purchaser. Thus, there ought to be presence of a registered deed of sale for the purpose of a lawful transfer of

⁵ AIR 1994 Bom 228

(2012) 1 SCC 656

⁷ AIR 1987 Del 36

ownership of property. Even otherwise, when the statute prescribes a mode of action, such act could only be done in accordance with the statute and not otherwise.

26. It is discernible on a perusal of the order passed by this Court on 25.01.2016 that the respondent/defendant No.2 has been restrained to alienate, encumber or part with the possession of the property agreed to be sold *qua* the civil suit. Further, nothing has been brought on record by any of the respondents/defendants to prove that any valid sale deed has been executed in their favour. In view of the foregoing discussion, the respondent/defendant No.2 cannot be held to be a *bona fide* purchaser as no sale deed has been executed till the passing of the impugned judgment and decree.

27. The plaintiff, who is the appellant before this Court, has taken this Court through a series of oral and documentary evidence and the respondents, as stated above, have been proceeded ex-parte. The appellant/plaintiff has successfully proved the agreement to sell, his readiness and willingness to comply with the terms of agreement and default on the part of the respondents. The case set up by the plaintiff/appellant fell within the purview of the Specific Relief Act, 1963. Keeping in mind the contentions raised and examination of the facts and evidence thereto, this Court finds that the trial court has gravely erred in dismissing the civil suit with respect to the decree for execution of the sale deed and specific performance of the agreement to sell. The civil suit, therefore, stands decreed in the favour of the appellant/plaintiff and the balance consideration remained deposited with the Registry of this Court is directed to be remitted back to the trial court. Let the decree sheet be prepared accordingly.

28. The executing court is thus, directed to execute the sale deed in favour of the appellant/plaintiff on the payment of balance

consideration to the respondent/defendant No.1. The consequential reliefs of peaceful possession etc. shall follow.

29. The present appeal stands disposed of in terms of this order, along with pending application(s), if any. No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 20, 2024/priya