

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

% Order delivered on: 24th December, 2014

+ **CS(OS) 1569/2008**

JAGJIT SINGH OBEROI Plaintiff
Through Mr.Sanjeev Singh, Adv.

versus

RANJEET KAUR & ANR Defendants
Through Mr.Mukul Sharma, Adv. for D-1.
Mr.Rahul Sharma, Adv. for D-2.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

1. The plaintiff has filed this suit for specific performance of contract and permanent injunction against the defendants in respect of property bearing No. I-34, Jangpura Extn., New Delhi-110014 (hereinafter referred to as the "suit property") built up on a plot of land admeasuring 200 sq. yards.

2. The plaintiff is an individual who is residing at 1/64, Jangpura Extension, New Delhi-110014. Defendants namely, Ranjit Kaur and Abnash Kaur are the co-owners of the suit property. Defendant No. 1 is the daughter of defendant No.2.

3. The defendant No.1 had entered into an agreement to sell dated 18th March, 2007 with the plaintiff for selling of basement and

second floor with its terrace rights over and above the second floor in the suit property for a total sale consideration of Rs.1,31,00,000/.

4. It is alleged by the plaintiff that the second floor with proportionate share in the land underneath of the suit property was sold and transferred in the name of defendant No.1 by defendant No.2 through a registered sale deed dated 25th January, 2005. The said sale deed was for a total sale consideration of Rs.8,00,000/- which was paid by defendant No.1 to defendant No.2 as per the said sale deed in the following manner:-

- (i) Rs.30,000/- in cash at the time of agreement dated 17th December, 2004.
- (ii) Rs.7,70,000/- vide Cheque No.150269 dated 4th January, 2005 drawn on ICICI Bank Limited.

It is further alleged that the basement and terrace rights of the second floor of the suit property was sold and transferred in the name of defendant No.1 by defendant No.2 through a registered sale deed dated 27th September, 2006 for a total sale consideration of Rs.3,00,000/-which was paid by defendant No.1 to defendant No.2 as per the said sale deed in cash.

5. It is submitted that by handing over the copies of the said two sale deeds dated 25th January, 2005 and 27th September, 2006 and also the Conveyance Deed of the suit property dated 6th August, 2004 registered on 12th August, 2004, the defendant No.1 made the plaintiff believe that she is the absolute owner of the said portions of the suit property which is free from all kinds of

encumbrances, such as, prior sale, mortgage, gift, will, lien, litigations and disputes, lease, loan, etc.

6. It is averred by the plaintiff that pursuant to the said agreement to sell, plaintiff paid to defendant No.1, a sum of Rs.10,00,000/- in part performance. The balance consideration was to be paid by the plaintiff to defendant No.1 at the time of execution of Sale Deed on or before 31st July, 2007 which was extended till 31st October, 2007. It is averred that when he had made arrangements for payment of balance sale consideration to defendant No.1, defendant No.1 on one pretext or other kept delaying the handing over the possession of the said portions of the suit property to the plaintiff.

7. The plaintiff has stated in the plaint that with malafide intention, after the execution of the agreement to sell dated 18th March, 2007, the defendants in connivance with each other on 1st August, 2007, filed a suit being Suit No. 204/07 through defendant No.2 against defendant No.1 wherein the defendants herein arrived at a settlement to get the suit property reconstructed by a builder and Handover possession thereof to three daughters of defendant No.2, one of whom is defendant No.1. it was also agreed that the sale deed between the defendants be treated as cancelled.

8. It is the case of the plaintiff that the said suit was a collusive suit with a view to defeat the contractual rights of the plaintiff. In view of the existence of the Agreement to sell dated 18th March, 2007, defendants could not deal with the said portions of the suit

property which were agreed to be sold to the plaintiff by defendant No.1.

9. Consequently, the plaintiff filed the present suit. The suit was listed before Court on 8th August, 2008 when status quo order was passed in respect of the basement, second floor and terrace over and above the second floor of the suit property. The said order was made absolute vide order dated 1st November, 2010.

Defendant No.1 has not filed any written statement in the matter and also because of non-appearance, defendant No.1 was proceeded ex-parte vide order dated 1st November, 2010

10. No written statement has been filed by defendant No.1. Defendant No.2 has filed the written statement *inter alia* taking the defence that she is aged approx. 84 years. She was the owner of the suit property which is built up to second floor comprising of basement, ground floor, first floor and second floor. She has three daughters and no son. Defendant No.1 and her husband took the defendant No.2 to the office of the Sub-Registrar several times for getting the property freehold from L&DO and took the signatures of the defendant No.2 on several documents on the pretext of execution of the Conveyance Deed. Defendant No.2 signed all the documents which were put before her in good faith and even otherwise there was no reason to disbelieve the defendant No.1 and her husband being daughter and son-in-law.

10.1 After execution of the Conveyance Deed of the property, defendant No.2 on the instance of the other two daughters decided to get the entire property partitioned amongst her daughters, but

defendant No.1 and her husband kept lingering on the matter. Finally, it was decided that let the property be re-constructed through a builder and thereafter, get the property partitioned. Consequently, a Collaboration Agreement was entered into between defendant No.2 and M/s Vir Developers on 25th April, 2007.

10.2 In July, 2007, M/s Vir Developers approached defendant No.2 and asked for refund of amount paid under the Collaboration Agreement on the pretext that defendant No.2 has sold the basement and second floor of the suit property to someone else. Then, upon inquiry, it revealed that defendant No.1 and her husband somehow managed two sale deeds from defendant No.2, i.e. one for second floor on 25th January, 2005 and other for basement and roof rights of the second floor on 27th September, 2006.

11. Defendant No.2 being aggrieved on 2nd August, 2007 filed a suit for declaration with consequential relief of cancellation of the sale deeds dated 25th January, 2005 and 27th September, 2006 and permanent injunction. The said suit which is alleged by the plaintiff herein as collusive suit was compromised between defendants No.1 & 2 herein before the Mediation Cell at Tis Hazari Courts, Delhi vide compromise-cum-settlement deed dated 16th November, 2007 and accordingly a compromise decree dated 19th November, 2007 was passed by the learned Addl. District Judge, Tis Hazari, Delhi. The terms of which are reproduced herein:

- “1. That whereas the plaintiff is absolute owner of property bearing No.34m Block-I, Jangpura Extn., New Delhi consisting of basement, ground floor, first floor and second floor.
2. That the plaintiff has agreed to give one floor each to her all the three daughters full share with ground floor to Smt. Ajit Kaur, 1st Floor to Smt. Maninder Kaur and 2nd Floor to Smt. Ranjeet Kaur. The plaintiff has already executed separate documents on the basis on which all of them have come into possession of the said property.
3. That I has been agreed between the parties that the entire property is to be built-up through builders by her own choice and rebuilt all the three floors at par to the accommodation between all the daughters.
4. That it has been further agreed in between the parties that after completion of the building of the entire three floor, the builder/constructor shall handover the physical possession of the same to all the three daughters accordingly to their respective floors.
5. It has been further agreed that on the possession of the same granted to all the three daughters the sale deed dated 27.09.2006 executed in between plaintiff and the defendant in respect of the basement and terrace of property shall be treated as cancelled.
6. It has been further agreed between the parties that they shall not claim any third party interest into property and shall occupy the above respective portions, after taking the possession from the builder more specifically basement and the terrace of the property for a period of one and a half year w.e.f. 01.11.2007 or as agreed in between the parties.
7. It has been agreed that as per the agreement the plaintiff has to give the basement and the terrace floor to the builder after the completion of the same.

8. That the court fees shall be returned to the plaintiff.”

12. It is stated in the written statement that defendant No.1 intentionally and deliberately concealed the fact of the present Agreement to Sell dated 18th March, 2007 entered in between the plaintiff and the defendant No.1 at the time of entering into Compromise cum Settlement Deed dated 16th November, 2007. The defendant No.2 along with her other two daughters in terms of settlement dated 16th November, 2007 on 5th April, 2008 entered into Collaboration Agreement with M/s. Vir Developers for reconstruction of the property but the defendant No.1 refused to sign the said Collaboration Agreement and consequently the defendant No.2 got sent a legal notice to the defendant No.1 and also filed the execution petition for the decree dated 4th December, 2007. Defendant No.2 came to know about the present Agreement to Sell dated 18th March, 2007 only upon the receipt of the summons in the present suit.

13. On 1st November, 2010 following issues were framed in the suit :

- “1. Whether the Plaintiff is entitled to the decree of specific performance against the Defendant No.1 directing her to perform her contractual obligations in terms of Agreement to Sell dated 18th March, 2007 by executing the Sale Deed/General Power of Attorney and other related documents for a valid and legal transfer and for possession of the suit property ? OPP
2. Whether the Plaintiff is entitled to the decree of injunction restraining the Defendants, their legal heirs,

agents assignees from selling, transferring, alienating the suit property ? OPP

3. Whether there is no privity of contract between the Plaintiff and Defendant No.2 ? OPD-2
4. Whether the Plaintiff has not come with clean hands and the agreement between the Plaintiff and Defendant No.1 is unlawful ? OPD-2
5. Whether the Plaintiff was not ready and willing to perform his part of the contract ? OPD-2
6. Relief.”

14. The defendant No.2 did not adduce any evidence. The plaintiff on the other hand has filed his affidavit proving the following documents :

- (i) Agreement dated 18th March, 2007, exhibited as PW 1/1.
- (ii) Photocopy of the Sale Deed dated 25th January, 2005, marked as Mark X.
- (iii) Photocopy of the Sale Deed dated 27th September, 2006, marked as Mark Y.
- (iv) Copy of conveyance deed dated 6th August, 2004, marked as Mark A.
- (v) Certified copy of the entire record of Suit No. 204/07, exhibited as PW 1/4.
- (vi) Legal Notice dated 28th April, 2008, exhibited as PW 1/5.
- (vii) Postal Receipts, exhibited as PW 1/6.
- (viii) Reply dated 12th May, 2008, exhibited as PW 1/7.

15. Plaintiff was cross examined by defendant No.2 on 20th July, 2011 and the plaintiff's evidence was closed vide order dated 23rd November, 2011. It was stated on behalf of defendant No.2 stated

that she did not wish to lead any evidence and accordingly evidence of defendant No.2 was closed on 25th September, 2012. However, later an application was moved by defendant No.2 seeking to recall the order dated 25th September, 2012. Since, no explanation at all was given for the delay of about 10 months in moving the said application, the said application was dismissed vide order dated 9th October, 2013.

16. As a matter of fact, the entire case of the plaintiff has gone unrebutted. Defendant No.2 has not been able to demolish the case of the plaintiff. This Court is of the considered view that the defence taken up by the defendant No.2 in the written-statement is totally unbelievable. There is no valid reason as to why the relief of specific performance in the present should not be granted as the plaintiff has satisfied all the requirements of Section 20. As it is clear that the plaintiff was ready and willing to perform his part of the agreement, the plaintiff has successfully discharged his burden of the issues and is entitled to decree as prayed for.

17. Learned counsel appearing on behalf of defendant No.2 submitted at the time of arguments that the plaintiff is a builder. His client, defendant No.2, is a widow having three daughters. Somehow the plaintiff has been able to get the agreement to sell executed through defendant No.1 who is the daughter of defendant No.2 without her consent. He submitted that the plaintiff has purchased the portions of the suit property i.e. basement, second floor and terrace for low price. At present, price of the suit property

is more than Rs. 8 crores. Rather, the plaintiff can build another floor at the terrace. He submitted that there is no source of income of his client. She has to manage her livelihood. Thus, it would be appropriate if this Court may direct the plaintiff to pay compensation in addition to paying the remaining consideration at the market price. He also submitted that in any case the balance consideration was not received by her client and defendant No.1 for the last more than seven years and even the interest at the rate of 12-15% is more than one crore which have to be paid by the plaintiff.

18. With regard to the current value of the suit property, he referred to the decision of the Supreme Court in the case of **Satya Jain (D) Thr. LRs and Ors. vs. Anis Ahmed Rushdie (D) Tr. LRs. & Ors.** in a Civil Appeal arising out of SLP (C) No.1891/2012 wherein the Supreme Court in paras 28 and 29 held as under :

“28. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasized that

efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in *P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi*[14] and more recently in *Narinderjit Singh v. North Star Estate Promoters Ltd.*[15] may be usefully recapitulated.

29. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalizing the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final Court.”

19. Having considered the said judgment of the Supreme Court, this Court is of the view that similar factor cannot be applied in the present case as in that case, the agreement was executed on 22nd December, 1971. There was a long delay of 40 years, then the Court exercised its discretion. However in the present case, no doubt the agreement was executed more than seven years ago and there is an increase in the value of the suit property in many fold. Thus, some compensation, in view of facts and circumstances of the present case, is to be paid by the plaintiff who is admittedly a builder.

20. It is settled law that the grant of decree of specific performance lies in the discretion of the Court and it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further settled law that a Court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while grant or refusing decree for specific performance.

21. Even then if the Court examined the case purely from the point of view of equity, no doubt there has been increase in the price of the suit property. Under these circumstances, the Court can direct a party that as a matter of fact good gesture to make additional payment to the defendant so as to persuade him to agree to complete the transaction. (See **Nirmala Anand vs. Advent Corporation (P) Ltd. and Ors**(2002) 8 SCC 146, **Laxman Tatyaba Kankate and Anr. vs. Taramati Harishchandra Dhatrak**(2010) 7 SCC 717, **Vishwa Nath Sharma vs. Shyam Shanker Goela and Anr.** (2007) 10 SCC 595, and **Surinder Kumar vs. Brahm Prakash**2012 (4) AD (Delhi) 466).

22. Considering the above settled law and in view of the facts and circumstances of the present case and applying the principles of equity, the plaintiff is directed to pay an amount of Rs.1 crore to defendant No.2 apart from the balance sale consideration payable to the defendant No.1 as per the agreement. Accordingly, as per the agreement to sell dated 18th March, 2007, a sale deed in respect of the basement, second floor and terrace over and above

the second floor in the property bearing No. I-34, Jangpura Extn., New Delhi-110014 be executed by the defendant No.1, which shall also be signed by defendant No.2 as the confirming party, within ten weeks on the plaintiff paying the balance sale consideration i.e. Rs.1,21,00,000 to defendant No.1 and Rs.1 Crore as compensation to defendant No.2. Registry of this Court after execution of the sale in favour of the plaintiff shall release the amount deposited by the plaintiff in view of interim order passed on 8th August, 2008 alongwith the interest accrued.

23. In case the defendant No.1 fails to execute the sale deed in favour of the plaintiff and to hand over the possession of basement and second floor with its terrace over and above the second floor of the suit property, it is open to the plaintiff to apply to the Court for appointment of Local Commissioner to execute the sale deed and for issuance of warrants of possession of said portions of the suit property in his favour. The requisite stamp duty and other charges would also be paid by the plaintiff.

24. Decree be drawn accordingly.

25. No costs.

(MANMOHAN SINGH)
JUDGE

DECEMBER 24, 2014