

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

% *Judgment reserved on : 14.05.2015.*
Judgment delivered on : 18.05.2015.

+ CS(OS) 564/2011 & I.A. No.3684/2011 (under Order XXXIX
Rules 1 & 2 of the CPC)

DEEPAK RANA AND ANOTHER

..... Plaintiffs

Through Mr. Arvind Kumar Gupta, Adv
versus

RAJBIR SINGH UPPAL AND ANOTHER

..... Defendants

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Present suit has been filed by the two plaintiffs seeking permanent injunction, declaration and cancellation of a memorandum of understanding/agreement dated Nil attested on 25.02.2011 executed by Rajbir Singh Uppal (defendant No. 1) as attorney of the plaintiffs and Rahul Sharma (defendant No. 2). This memorandum of understanding was qua property bearing No. F-3/2, Vasant Vihar, New Delhi (hereinafter referred to as the 'suit property').

2 The averments in the plaint disclose that plaintiff No. 1 and plaintiff No. 2 are both brothers, children of late Shri Umrao Singh Rana. Defendant No. 1 Rajbir Singh Uppal is the brother-in-law of plaintiff No. 1.

3 The defendants in collusion and conspiracy with one another had fabricated and forged certain documents including the alleged memorandum of understanding/agreement dated Nil attested on 25.02.2011 qua the suit property. This property is jointly owned by the plaintiffs. The modus operandi adopted by the defendants was that defendant No. 1 as a power of attorney holder of plaintiff No. 1 had entered into an agreement/MOU with defendant No. 2 wherein he had agreed to sell the rights in the suit property to defendant No. 2 on the strength of a fabricated power of attorney (dated 18.02.2011) which he was holding qua plaintiff No. 1.

4 The plaintiffs are the only legal heirs of late Umrao Singh Ranan who had died on 22.06.2008. Their mother Sheili Ran had predeceased him. A joint Will had been executed by their parents in favour of the

plaintiffs wherein the suit property had been bequeathed to them. The property also stood mutated in the name of the plaintiffs on 02.09.2008.

5 On 24.02.2011, the plaintiffs received a call from an unknown person claiming that the suit property is on sale. It was only thereafter that the plaintiffs learnt about the fraud which defendant No. 1 had played upon them in connivance with defendant No. 2. Defendant No. 1 is an unscrupulous person and earlier also he had forged documents for which criminal proceedings are pending against him.

6 The plaintiffs called upon defendant No. 2 requesting him not to use the documents i.e. the alleged memorandum of understanding/agreement qua the suit property which had been forged and fabricated by defendant No. 1. The plaintiffs had never executed any power of attorney or any memorandum of understanding dated Nil attested on 25.02.2011. The entire set of documents is forged and fabricated and created in collusion and conspiracy of defendant No. 1 and defendant No. 2. The plaintiffs have also not received any amount for the alleged sale of the suit property by defendant No. 1 in favour of

defendant No. 2 which had been allegedly sold vide memorandum of understanding/agreement for a sum of Rs.30 lacs.

7 Present suit has been filed seeking a decree of declaration declaring the memorandum of understanding/agreement dated Nil attested on 25.02.2011 executed by defendant No. 1 and defendant No. 2 qua the suit property and power of attorney dated 18.02.2011 be null and void. A separate decree of permanent injunction had also been sought for restraining the defendants from interfering in the peaceful possession of the plaintiffs in the suit property.

8 Defendants were served. Written statement was filed by both the defendants.

9 The defence of defendant No. 1 was that he has no interest in the suit property. He admitted that both the brothers i.e. both the plaintiffs are the owners of the suit property. Submission was that plaintiff No. 2 had executed a power of attorney in his favour on 18.02.2011 pursuant to which at the asking of the plaintiffs, a memorandum of understanding/agreement had been entered into by defendant No. 1 in

favour of defendant No. 2. Present suit is without any cause of action. It is liable to be dismissed.

10 Replication was filed reiterating the averments contained in the plaint and refuting the submissions made in defence.

11 On the pleadings of the parties, the following issues were framed on 01.08.2013:-

- 1 Whether the plaintiffs have authorized the defendant no. 1 to enter into alleged agreement to sell the property bearing no. F-3/2, Vasant Vihar, New Delhi? OPD*
- 2 Whether the plaintiff no. 1 had executed Power of Attorney dated 18.02.11 in favour of Defendant no. 1 at Mumbai and bears the signatures of plaintiff no. 1? OPD1*
- 3 Whether the Memorandum of Understanding / Agreement dated nil entered by defendant no. 1 is binding on plaintiff? OPD*
- 4 Whether the suit of the plaintiff is undervalued for the purpose of the court fees? OPD*
- 5 Relief*

12 The onus to discharge all these issues was upon defendant No. 1. The Local Commissioner had been appointed to expedite the trial. The Local Commissioner has since filed his report which shows that despite repeated notices having been served upon the parties to appear before

him and to lead evidence, the defendants did not produce any evidence. List of witnesses had also not been filed. This was noted in the order passed by this Court on 09.12.2013. Matter was again thereafter re-fixed before the Local Commissioner on 17.12.2013. None had appeared for the defendants even thereafter. On 12.03.2014, defendant No. 1 was proceeded ex-parte. One more opportunity was granted to defendant No. 2 to appear before the Local Commissioner to lead his evidence. The report of the Local Commissioner dated 11.11.2014 has been perused. It was noted that neither defendant No. 1 and nor defendant No. 2 or their authorized representative had appeared before the Local Commissioner pursuant to the directions of this Court. They had also not filed their evidence.

13 The onus to discharge all these issues as already been noted supra was upon the defendants. They had never appeared in the witness box and not having discharged the onus which was upon them, it is clear that the averments which are made in the plaint are deemed to be admitted. The plaintiffs are accordingly entitled to the decree as prayed for. It has been established that the power of attorney executed and notarized on

18.02.2011 allegedly executed by plaintiff No. 1 in favour of defendant No. 1 is forged and fabricated document and so also the memorandum of understanding/agreement dated Nil attested on 25.02.2011 entered inter-se defendant No. 1 and defendant No. 2.

14 Accordingly, a decree of declaration is passed in favour of the plaintiffs and against the defendants holding that the power of attorney dated 18.02.2011 executed allegedly by plaintiff No. 1 in favour of defendant No. 1 and the subsequent memorandum of understanding/agreement dated Nil attested on 25.02.2011 between defendant No. 1 and defendant No. 2 qua the suit property (F-3/2, Vasant Vihar, New Delhi) is declared null and void. A decree of permanent injunction is also passed in favour of the plaintiffs and against the defendants permanently restraining them not to interfere in the peaceful possession of the plaintiffs in the suit property.

15 Suit disposed of in the above terms.

16 Decree-sheet be drawn. File be consigned to the Record Room.

MAY 18, 2015/A

INDERMEET KAUR, J