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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) No.918/2015

13th October, 2015

M/S. KMJ LAND DEVELOPERS INDIA LTD

..... Plaintiff

Through: Mr. Amit Baisoya, Advocate

versus

M/S. KARAN REALTECH PVT. LTD. & ANR.

..... Defendants

Through: Mr. Mahendra Rana, Advocate for
defendant no. 1.

Mr. Peeyoosh Kalra, Advocate, ASC
(Civil), GNCTD, with Ms. Mahua
Kalra and Ms. Sona Babbar, Advocate
for defendant no.2

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The suit today is listed for framing of issues. Counsel for the defendant no.1 very vehemently argues that no issue arises and the suit be dismissed under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) on the admitted facts.

2. The subject suit is a suit for declaration, permanent injunction, mandatory injunction and for cancellation of the Sale Deed dated 14.3.2014 (registered on 20.3.2014) executed by the plaintiff in favour of the defendant

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no.1 whereby plaintiff sold his half undivided share in plot no.D-14, Khasra no.446, Village Tihar, Fateh Nagar, New Delhi-110 018 admeasuring 200 sq yds (hereinafter referred to as the 'suit property'). Plaintiff had earlier purchased the suit property in terms of the registered Sale Deed dated 1.6.2013. Plaintiff states that the Sale Deed dated 14.3.2014 in favour of the defendant no.1 was executed by him for a consideration of Rs.54 lacs and the possession was also handed over to the defendant no.1 in terms of the registered Sale Deed, however, the suit had to be filed because the defendant no.1 has failed to pay an amount of Rs.34 lacs out of the consideration of Rs.54 lacs payable in terms of the Sale Deed dated 14.3.2014. The case of the plaintiff is that the Sale Deed refers to part payments by three cheques for Rs. 13,46,000/-, Rs.10,00,000/- and Rs.10,00,000/-, but these cheques were returned to the defendant no.1 because defendant no.1 said that there was an error in the account from where the cheques had been given. Defendant no.1 promised to replace the cheques within one week from the date of registration of the sale deed and which the plaintiff company agreed in view of the good relationship with the defendant no.1/company, however, the defendant no.1 has failed to give fresh cheques for the three cheques which were returned to the defendant no.1. Accordingly, plaintiff prays for

reliefs of cancellation of the Sale Deed dated 14.3.2014 and the related reliefs.

3. In the written statement filed by defendant no.1 it is stated that at the time of registration of the sale deed, entire consideration was paid to the plaintiff and the fact that the entire consideration is received by the plaintiff is mentioned as per the endorsement found on the back side of the first page of the sale deed made before the Sub-Registrar at the time of registration. The Sale Deed dated 14.3.2014 was registered on 18/20.3.2014. The defendant no.1 claims that the entire amount of Rs.54 lacs stood paid to the plaintiff at the time of execution and registration of the sale deed and no amount/balance remained payable by the defendant no.1 to the plaintiff. The defendant no.1 seeks dismissal of the suit by placing reliance upon Section 55(4)(b) of the Transfer of Property Act, 1882 which provides that in case in terms of the sale deed executed, a particular amount of balance price is not paid, then, there is no right to get the sale deed cancelled but the right is only to recover the balance price and for which there will be lien on the immovable property for payment of the balance price. In this regard, reliance is placed upon the judgment of the Supreme Court in the case of *Kaliaperumal Vs. Rajagopal and Another* (2009) 4

SCC 193 and two judgments of this Court in the cases of *Shiv Kumar Sharma Vs. Madhu Aggarwal 2011 X AD (Delhi) 273* and RFA No. 865/2003 decided on 8.5.2012 titled as *Man Mohan Batra Vs. Bharat Bhushan Batra*, and which judgments relied upon the ratio of the aforesaid judgment of the Supreme Court in the case of *Kaliaperumal (supra)*.

4. The relevant observations and the ratio of the Supreme Court in the judgment in the case of *Kaliaperumal (supra)* are contained in para 17 of the judgment and which para reads as under:-

“17. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of the Transfer of Property Act, 1882 (“the Act”, for short) defines “sale” as “a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.” If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act.”

5. Section 55(4)(b) of the Transfer of Property Act reads as under:

“55(4) The seller is entitled-

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a

charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amounts of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.”

6. In the present case, the terms of the sale deed do not show that in the absence of payment of consideration the sale deed will become void and it is not stated in the sale deed that payment of sale consideration is a pre-condition for the title to be transferred to the defendant no.1. This becomes clear from the 14 clauses of the Sale Deed dated 14.3.2014, and which read as under:-

“1. That in consideration said sum of **Rs.54,00,000/-(RUPEES FIFTY FOUR LACS ONLY)** has received from the VENDEE by the VENDOR and thus left with no balance/no claim thereto whatsoever. The details of payment are given hereunder:-

- A. Rs.20,00,000/- THROUGH R.T.G.S. VIDE U.T.R. NO.CBINH14064304619 DATED 05.03.2014 DRAWN ON CENTRAL BANK OF INDIA, TILAK NAGAR, NEW DELHI
- B. Rs.13,46,000/- VIDE CHEQUE NO.018489 DATED_____ DRAWN ON CENTRAL BANK OF INDIA, TILAK NAGAR, NEW DELHI
- C. Rs.10,00,000/- VIDE CHEQUE NO.018490 DATED_____ DRAWN ON CENTRAL BANK OF INDIA, TILAK NAGAR, NEW DELHI
- D. Rs.10,00,000/- VIDE CHEQUE NO.018832 DATED_____ DRAWN ON CENTRAL BANK OF INDIA, TILAK NAGAR, NEW DELHI
- E. Rs.54,000/- paid by the VENDEE in the name of VENDOR to the Income Tax Department on account of TDS.

2. That the actual physical possession of the said PROPERTY has been delivered to the VENDEE by the VENDOR on the spot.
3. That all the relevant documents/papers relating to the said PROPERTY have already been handed over to the VENDEE by the VENDOR on the spot.
4. That all the expenses stamp fee, regn./attestation charges etc.etc. to be borne by the VENDEE.
5. That the VENDOR do hereby sell convey, transfer and assigns the said PROPERTY under the VENDEE, absolutely and forever and the VENDEE shall use, hold or enjoy the same in any manner as he likes.
6. That the VENDOR hereby assures the VENDEE that the said PROPERTY is free from all sorts of encumbrances such as prior sale, mortgage, gift, exchange, lease, decree, charges, order etc.etc. and if it is proved otherwise owing to any person, then the VENDOR shall be responsible for the same with cost and damages.
7. That all the local dues and demands such as house tax, electric & water charges, if pending in any department regarding above said PROPERTY, shall be paid by the VENDOR, upto the time of registration of this sale deed and thereafter paid by the VENDEE.
8. That if any legal defect in the title regarding the said PROPERTY, the VENDOR shall be responsible for the same with costs and damages.
9. That the VENDOR or his legal heirs, successors, nominee/s or any other person/s shall have no rights, title and interest regarding the said PROPERTY, today and in future.
10. That the VENDEE can mutate the said PROPERTY in his own name as a owner in the records of the Mpl. Corporation of Delhi or any other concerned authority, under the departmental policy, by virtue of this sale deed.
11. That the VENDEE thus enjoy all rights of ownership/ possession of the said PROPERTY and shall be liable to get it transferred/mutated with the concerned authority, under the departmental policy by virtue of this sale deed.

12. That on the basis of this sale deed, the aforesaid VENDEE is the sole and absolute owner of the said PROPERTY with all rights, title and interest, mentioned hereinabove.

13. That the VENDOR further declare that I or my legal heirs, successors, nominee or any other person/s shall have no rights, title and interest regarding the said PROPERTY, today and in future.

14. That the VENDEE has full right to get the fresh electric and water connection in his own name from the concern authority, regarding the above said PROPERTY.”

7. None of the aforesaid 14 clauses of the Sale Deed provide that in case consideration, either in whole or in part, is not paid, then, the title will not be conveyed under the sale deed. There is no mention in the sale deed that payment of the entire sale consideration is a condition precedent for transfer of the title in the suit property. Clearly, therefore, assuming for the sake of arguments that plaintiff has not received the complete consideration under the sale deed, though the defendant no.1 has claimed that the entire consideration has been paid, the entitlement of the plaintiff will not be for filing the present suit seeking the relief of cancellation of the sale deed and the related reliefs but for recovery of the balance price allegedly not paid by the defendant no.1.

8. In view of the above, the suit is dismissed and the plaintiff obviously is at liberty to file a suit for recovery of the balance monies of Rs.34 lacs as claimed by the plaintiff which according to the plaintiff has not

been paid to the plaintiff by the defendant no.1 in terms of the sale transaction under the Sale Deed dated 14.3.2014. The suit is accordingly dismissed. Parties are left to bear their own costs.

OCTOBER 13, 2015
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VALMIKI J. MEHTA, J