

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.66/2015**

Decided on : 17th March, 2015

PUSHPA HURRIA & ORS. Appellant
Through: Mr.Sanjiv Bahl, Mr.Eklavya Bahl and
Mr.Vikrant Arora, Advs.

Versus

JASVINDER SINGH Respondent
Through:

+ **R.S.A. No.68/2015**

PUSHPA HURRIA & ORS. Appellant
Through: Mr.Sanjiv Bahl, Mr.Eklavya Bahl and
Mr.Vikrant Arora, Advs.

Versus

UMAKANT UPADHYAY & ANR. Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. These are two regular second appeals being RSA No.66/2015 titled Pushpa Hurria & Ors.v. Jasvidner Singh and RSA No. 68/2015 Pushpa Hurria & Ors. vs. Umakant Upadhayay & Anr.

2. The learned counsel for the appellants has contended that while passing a decree of specific performance, the trial court has not considered the fact that the grant of specific performance is a discretionary relief which has to take into consideration various factors including the gross injustice to which a party may be subjected in the event of specific performance. He has drawn the attention of the court to case titled A.C.Arulappan v. Smt.Ahalya Naik; AIR 2001 SC 2783 where in para 7, it has been observed as under:

“The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the Court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the Court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue

hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the Court would desist from granting a decree to the plaintiff.”

3. On the strength of these observations, the case which has been set up by the learned counsel for the appellants is that although he does not deny the agreement to sell having been entered with the respondents on 12.10.2004, however, his contention is that when the agreement was executed the appellants were not aware of the huge amount of nearly 27 lakhs being raised by the DDA in respect of the alleged misuse of the basement by one of the tenants in contravention of the provisions of the Master Plan and, therefore, notwithstanding the fact that such a tenant had been evicted, the appellants could not be forced to perfect the title of the respondents without the respondents coming forward to share part of the misuse charges levied by the DDA. It contended that the respondents had made false averments in the plaint and, therefore, they were not entitled to the relief of specific performance. The false averment which was purported to have been made by the respondents was in para 7 of the plaint wherein they had stated that according to the agreement the expenses of converting the property from leasehold to freehold were to be

borne by the present appellants and not by the respondents which according to the learned counsel was factually incorrect if seen in the context of clause 7 of the agreement entered into between the parties.

4. I have considered the submission made by the learned counsel for the appellants. However, in my considered opinion, none of the submissions which have been urged by the learned counsel for the appellants raises any substantial question of law which may warrant issuance of a notice to the respondents. However, before parting with the case, it may be pertinent to give a brief background so as to appreciate the fact that the matter does not involve any substantial question of law.

5. It is also pertinent here to mention that the facts of both these appeals are same including the dates of agreement etc. except that the shop number is different and the person in whose favour the agreement was executed are different.

6. The undisputed facts of RSA No.68/2015 are that one Sh.Bhagwan Das Kalra (since deceased) and presently represented by two legal heirs namely Smt.Pushpa Hurria and late Smt.Saroj Bala had entered into an agreement to sell with the respondents/Sh.Umakant Upadhayay and Smt.Archana Upadhayay for sale of a shop No.5, 32, Community Centre,

East of Kailash measuring 15'9" x 10'10" for a sale consideration of Rs.2,87,000/- out of which a sum of Rs. 60,000/- was received by the present appellants at the time of signing of the agreement and the balance was to be received at the time of execution of the sale deed by him or through his nominee. Various documents such as GPA etc. were also executed and the respondents were also put in possession.

7. One of the conditions in the agreement to sell dated 12.10.2004 was contained in clause 7 which reads as under:

“7. That the First party will apply and get the said property converted from leasehold into freehold from DDA and all the expenses relating to freehold shall be paid and borne by the second party near Rs.70,000/- and the first party shall execute the proper sale deed for conveying the same in favour of the second party or his nominee before the Sub Registrar, New Delhi.”

8. The appellants did not perfect the title of the respondents. Consequently, it resulted in filing of a suit for specific performance wherein the respondents have wrongly stated that all the expenses of conversion of the property from leasehold to freehold were to be borne by the appellants/defendants.

9. Be that as it may, the suit was contested by the appellants/defendants.

10. It was the case of the appellants/defendants that there was one shop on the basement which was misused by one of the tenants against whom eviction was sought and before agreement to sell having been entered into by the present appellants with the respondents, the said premises were vacated and at that point of time it was not known to the present appellants that they may be visited with imposition of misuse charges.

11. It is the case of the appellants that after the agreement to sell was executed, the DDA issued a demand for a sum of Rs.27 lakhs on account of misuse charges for the portion which was under the occupation of a tenant. It was averred by the appellants/defendants that the said misuse charges must be borne proportionately by the present appellants along with 4-5 vendees to whom he had agreed to sell the shops.

12. On the pleadings of the parties, the following issues were framed.

“1. Whether the suit of the plaintiff is liable to be dismissed for the plaintiff suppressing material facts from this court? OPD.

2. Whether the plaintiff has no cause of action to file the present suit? OPD.

3. Whether the plaintiff is entitled to the direction to be given to the defendant to specifically perform the contract dated 12.10.2004 as prayed for? OPP.

4. Whether the plaintiff is entitled to the decree of perpetual injunction as prayed for? OPP.

5. Relief.”

13. The parties produced their evidence and the trial court decreed the suit in favour of the respondents.

14. Feeling aggrieved, the first appeal was preferred by the appellants/defendants in which also he was unsuccessful. Still feeling dissatisfied, the appellants have filed the present second appeal raising the aforesaid point of payment of proportionate misuse charges despite the fact that the same were not mentioned in the agreement to sell.

15. For this purpose, the contention which has been advanced by the learned counsel for the appellants is that the property which has been sold by the appellants to the respondents is at a very low price only on account of the fact that at the time when the agreement dated 12.10.2004 was executed in favour of the respondents he was not aware that these misuse charges will be levied by the DDA and, therefore, these misuse charges must necessarily be paid by the respondents proportionately along with

other vendees and the appellants. It is in this context that the learned counsel has contended that the grant of specific performance is a discretionary relief under Section 20(2) and while exercising the said discretion in favour of the respondents, it should not work to the disadvantage of the appellants so as to cause serious financial loss to the appellants.

16. I have already observed hereinabove that the very fact that the said has been decreed in favour of the appellants not only by the trial court, but also by the first appellate court in itself shows that the two courts have concurrently exercised discretion in favour of the respondents and merely because it works out to be hard to the appellants/defendants, the specific performance could not be denied to the respondents or, in other words, merely because there is no detailed discussion with regard to the exercise of discretion in favour of the respondents, it cannot be presumed that this aspect of the matter was not in the mind of the court when the suit was decreed.

17. The contention of the learned counsel for the appellants that the property was sold at a much lesser price and had it been known to the appellant that they had to pay misuse charges to the DDA, the price

would have been much higher, is of no consequence because for grant of relief of specific performance, the court never looks upon the declaration of consideration at which the property has been sold or in other words, adequacy of consideration is not relevant for specific performance. Therefore, this plea of the learned counsel for the appellants also does not have any merit.

18. The third submission which the learned counsel for the appellants had urged was that the respondents had made a false averment in the plaint to say that all the expenses in getting the property converted from leasehold to freehold are to be borne by the appellants while as this fact was denied by the appellants and this fact is actually wrongly stated, as is reflected in clause 7 of the agreement to sell.

19. To that extent, there is no dispute about the fact that according to clause 7 of the agreement to sell dated 12.10.2004, the respondents were under an obligation to bear the expenses, which it has come in the evidence, that he already has paid to the appellant to the tune of Rs.70,000/-. Therefore, merely because they has made an incorrect statement in the plaint, which does not fit in with the agreement to sell,

does not mean that respondents can be denied the relief of specific performance for that reason.

20. In the light of the aforesaid facts and circumstances of the case, I feel that none of the submissions, which has been urged before this court by the learned counsel for the appellants, raises any substantial question of law which may warrant issuance of notice and accordingly the present regular second appeal is without any merit and the same is dismissed.

21. It may also be pertinent here to mention that RSA No.66/2015 which is at *para materia* with the present case except the shop number is different and so is the vendee as is reflected in the title above and thus the same is also dismissed on the same reasoning.

V.K. SHALI, J.

MARCH 17, 2015
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