

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

Judgment Reserved on: August 17, 2015

% *Judgment Delivered on: August 27, 2015*

+ **RFA(OS) 79/2015**

LATE PREM RAJ CHAUDHARY

THR LEGAL HEIRS

..... Appellants

Represented by: Mr.Sumit, Advocate

versus

BABU RAM & ORS

..... Respondents

Represented by: Mr.Dinesh Kumar Gupta,
Advocate with Mr.Vidit Gupta,
Advocate for R-4 & 9

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Prem Raj Chaudhary, the deceased plaintiff filed a suit being CS(OS) 2043/89 in respect of Plot No.5, Block No.60, WEA, Ramjas Road, Karol Bagh, New Delhi admeasuring 569 sq. Yards (in short the suit property) inter alia claiming declaration that the plaintiff was not competent to deal with the suit property, qua the sale deed dated September 03, 1983 executed in favour of Babu Ram Gupta/ defendant No.1 and Smt. Swaran Kanta Gupta/ defendant No.2 as null and void, subsequent sale deed dated August 06, 1984 executed by defendant No.1 and 2 in favour of defendant No.4 M/s. Ashoka Metal Decor (Pvt.) Ltd. through its Director Ashok Gupta as null and void, possession and mesne profit.

2. A written statement was filed by defendants No.1 to 3 jointly and

another by defendant No.4. Defendant No.9 adopted the written statement of defendant No.4. In the written statement defendant No.4 claimed that the plaintiff transferred complete rights in the plot by means of agreements to sell dated February 09, 1981 and April 14, 1981 and the total consideration of ₹95,000/- was received by the plaintiff. On the basis of a validly registered power of attorney dated April 14, 1981 executed in favour of defendant No.3, sale deed was executed and finally the property vested in defendant No.9 by virtue of the sale deed dated September 14, 2006.

3. The following issues were settled in the suit:

- “1. Whether the suit of the plaintiffs is within limitation? (OPP)
2. Whether the suit has been valued properly for the purpose of jurisdiction and court fee affixed on the plaint in accordance with law? (OPP)
3. Whether the suit of the plaintiffs is barred by the provisions of Order 23 & Order 2 Rule 1 of the Contract Act? (OPP)
4. Whether the sale deed dated 3rd September, 1983 executed by late Shri Prem Raj Chaudhary in favour of the defendant Nos. 1 & 2 is null and void and illegal for the reasons stated in the plaint? If so, to what effect? (OPP)
5. Whether the sale deed dated 6th August, 1984 executed by the defendant Nos. 1 and 23 in favour of the defendant No.4, is null and void? If so, to what effect? (OPP)
6. If the foregoing issues are decided in favour of the plaintiffs then whether the plaintiffs are entitled to possession of the suit property from defendant No.4? (OPP)
7. Whether the plaintiffs are entitled to the relief of mesne profit? If so, for what period, at what rate and from whom? (OPP)

8. Whether the plaintiffs are entitled to a relief of declaration, as prayed for? (OPP)”

4. During the course of hearing issues No.1 to 3 were not pressed by the defendants and thus decided in favour of the plaintiff. In relation to issues No.4 to 8 relating to entitlement of the plaintiff for cancellation of the sale deeds and consequent declaration; learned counsel for the plaintiff/appellant contended that the suit property was not a constructed property but only a piece of plot and thus was subject to the provisions of Urban Land (Ceiling and Regulations) Act, 1976 (in short the Act). In terms of Section 26 of the Act since a fraud was sought to be played on the authorities by entering into subject agreements to sell dated February 09, 1981 and April 14, 1981 showing the property built up, the transactions in question were illegal. Since the defendants have failed to prove any permission having been granted under Section 26 of the Act there could not have been a valid transfer in favour of defendant No.1 and 2 and thereafter to defendant No.4 and finally to defendant No.9.

5. The learned Single Judge vide the impugned judgment noted that the size of the suit property was 569 sq. yards i.e. less than 500 sq. Meters thus the provisions of the Act are not applicable. In relation to the question whether the agreement to sell and subsequent sale deeds, fall foul of provision of Section 26 and 28 of the Act, the learned Single Judge further held that in view of the sale deeds being registered as per illustration (e) of Section 114 of the Evidence Act there is a presumption that the sale deeds were validly registered and the plaintiff has not been able to show that the permission under the Act was not obtained. The mere fact that the record

under the Act in relation to suit property has been destroyed does not lead to the presumption that no permission was taken. The photocopy of the letter dated April 18, 1983 was not an exhibited document and thus having not been proved could not be considered in evidence. Further the letter was dated April 18, 1983 whereas the sale deeds in favour of defendant Nos. 1 and 2 and defendant No.4 were dated September 03, 1983 and August 06, 1984 and thus subsequently permission could have been taken. The onus to prove this fact was on the plaintiff which he did not discharge. If anybody who was entitled to dispute the transfer of title in the suit property it was the Government which has taken no action to cancel the sale deeds. The plaintiff has no locus standi in this regard. Every agreement which is against the law is not necessarily illegal. Further the plaintiff has already received consideration under the agreements to sell dated February 09, 1981 and April 14, 1981 and thus deemed to have waived the right to challenge the illegality or violation of the provision of the Act and he cannot be now permitted to blow hot and cold.

6. Referring to the second contention that necessary permission from the income tax authorities was not obtained and thus the transaction was void the learned Single Judge again referred to illustration (e) of Section 114 of the Evidence Act i.e. registering authorities would have seen the income-tax clearance certificate before registration of the sale deeds dated September 03, 1983 and August 06, 1984. Deciding the issues No.4 to 8 against the plaintiff the learned Single Judge dismissed the suit and noted that plaintiff having received the entire sale consideration of the suit property from defendants No.1 and 2 was trying to harass on legal and technical grounds and involving the defendants in multifarious litigations. The suit was

dismissed with actual cost.

7. This order dated September 03, 2012 was challenged by the legal heirs of the plaintiff as the plaintiff had expired by that time before this Court in RFA(OS) 94/2013. Learned counsel for the plaintiff/ appellant urged before the Division Bench that the learned Single Judge has wrongly recorded about the plaintiff having conceded that full sale price under the two agreements to sell dated February 09, 1981 Ex.P-2 and April 14, 1981 Ex.PW-1/5 was received and withdrew the appeal to prefer an application before the learned Single Judge.

8. Review petition No. 314/2014 was dismissed by the learned Single Judge vide the order dated November 28, 2014. The learned Single Judge noted that the judgment was passed on September 03, 2012 and the statement that no concession was made was being made nearly after one year and eight months and in view of the delay in filing the review petition and the grounds being wholly frivolous and abuse of process of Court, dismissed the review petition with a cost of ₹50,000/-. Hence the present appeal.

9. The main plea urged before this Court is that there was no material before the learned Single Judge to come to the conclusion that the entire sale consideration had been received and that the review petition dismissed on the ground of delay was an illegal order as only after the appeal was withdrawn the review petition was filed.

10. A perusal of the plaint itself would reveal that though the plaintiff claims that he could not have entered into a transaction to sell contrary to the terms of the perpetual lease of land in favour of the plaintiff vide lease deed dated August 27, 1943 without the prior consent of DDA, however admits

entering into agreement to sell with defendant No.1 on February 09, 1981 wherein the plaintiff agreed to sell the lease rights in the said land for a total consideration of ₹95,000/- of which the plaintiff received ₹45,000/- on February 09, 1981. It is further admitted that another agreement dated April 14, 1981 was also executed in continuation of the agreement dated February 09, 1981 when the plaintiff received a further sum of ₹40,000/- and thus only a balance amount of ₹10,000/- remained which was agreed to be paid after the completion of the formalities. The amount of ₹85,000/- out of total sale consideration of ₹95,000/- cannot be treated as an earnest money and subjected to be forfeited for non-fulfilment of the other conditions as claimed by the plaintiff. Further the letter dated April 18, 1983 on the basis of which the plaintiff claims that the DDA rejected the permission for sale and hence the two agreements to sell dated February 09, 1981 and April 14, 1981 became null & void and earnest money stood forfeited, has not been proved in accordance with law as only a photocopy has been filed.

11. Further the plaintiff admits having executed two powers of attorneys in favour of defendant No.3 who was the wife of defendant No.1 and sister-in-law of defendant No.2, the two intending purchasers on April 14, 1981 pursuant where to a sale deed dated September 09, 1983 has been executed exhibited as Ex.PW1/16, Ex.P-3 & Ex.D4/9. The sale deed executed through the power of attorney of the plaintiff recites that the vendor has received the entire payment of ₹95,000/-. The special and general power of attorney dated April 14, 1981 Ex.D4/4 and Ex.D4/5 are duly admitted by the plaintiff however his claim was that they were revoked vide notices dated February 17, 1983 Ex.PW-1/6 and Ex.PW-1/7. It is well-settled that a registered document can be cancelled only by another registered document

and not by simply sending a notice. Thus on the basis of the valid power of attorneys Ex.D4/4 and Ex.D-4/5 defendant No.3 W/o defendant No.1 executed a valid sale deed Ex.PW-1/16 on September 09, 1983. Even if no concession is made by learned counsel for the appellant/ plaintiff of having received the entire sale consideration, the sale deed records so. Having received the consideration and by executing sale deed Ex.PW-1/16 through valid power of attorney where after further sale deed dated August 06, 1984 in favour of defendant No.4 was executed, the plaintiff cannot set the clock back.

12. It would be relevant to note that having executed valid registered documents, the plaintiff filed multifarious litigations against defendants which include the suit for injunction Ex.D4/1, further suits i.e. CS 162/91 Ex.D4/2 and CS 648/93 Ex.D4/3. The defendant in support of its claim have exhibited the agreement to sell and power of attorneys as admitted by the appellant besides the sale deeds, Will Ex.4/6, mutation order dated March 12, 1984 by DDA in favour of defendant No.1&2 in respect of suit property Ex.DW-1/2, letter of mutation dated July 15, 1991 by MCD Ex.DW-1/6, house tax receipts, and suit property being mutated in the record of DDA in the name of defendant No.4 subsequently as Ex.DW-1/13.

13. In the present appeal the prayer is two-fold i.e. challenge to the judgment dated September 03, 2012 dismissing the suit and the order dated November 28, 2014 dismissing the review petition No.314/2014. While withdrawing the earlier appeal challenging the judgment dated September 03, 2012 dismissing the suit being RFA(OS) 94/2013 the plaintiff/ appellant sought no liberty hence the present appeal to the extent it challenges the judgment dated September 03, 2012 is not maintainable. Even in regard to

the order dated November 28, 2014 dismissing the review petition the present appeal is not maintainable in view of the bar under Order XLVII Rule 7 CPC. [See *Shiv Charan Singh Vs. State of Punjab and Ors.* (2007) 15 SCC 370]

14. The appellant in the present appeal states that the review petition is dismissed by the learned Single Judge on account of delay. The contention in the review petition was that no concession was made by the counsel. Be that as it may it was very difficult for anybody to remember after one year eight months as to whether any concession was made and thus observation of the learned Single Judge that belatedly such review petitions cannot be filed cannot be faulted with.

15. We concur with the observation of the learned Single Judge that having received consideration which even as per the appellant is admittedly ₹85,000/- out of ₹95,000/- and executed valid documents the petitioner cannot now turn around and claim that no valid sale deed has been executed and earnest money stood fortified taking the cover of technicalities. Thus, we find no merit in the present appeal.

16. Appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 27, 2015
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