

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

Date of Reserve: 23.10.2009
Date of Order: November 11, 2009

IA No. 932/2009 in CS(OS) No. 176/2007

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11.11.2009

Sobhag Narain Mathur

... Plaintiff

Through: Mr. Arjun Harkauli, Advocate

Versus

Pragya Agrawal & Ors.

... Defendants

Through: Mr. Deshraj, Advocate &
Mr. D.K.Kaushik, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.

2. To be referred to the reporter or not? Yes.

3. Whether judgment should be reported in Digest? Yes.

ORDER

By this application under Order 7 Rule 11 CPC, the applicant/defendant has sought rejection of the suit on the ground that no cause of action had been disclosed by the plaintiff for specific performance of the alleged contract. The contract relied upon by the plaintiff was merely a contract for entering into a further agreement and the Court could not compel the parties to enter into an agreement to sell.

2. Before dealing with further averments made by the applicant, it would be fruitful to reproduce the contract which is the basis of this suit. The contract as disclosed by on 'bayana' receipt executed by the defendant, reads as under:

BAYANA RECEIPT

I, Pragya Aggrawal w/o Manoj Agrawal, residing at 58A/4 Sainik Farms, New Delhi-110062. I have agreed to sell my plots no. A, B, C, D Local Shopping Center, Madangir, area is 82.5 meters per plot, altogether 330 meter, approximately 44 guz, to S.N.Mathur, s/o Late Sh. Swarup Narainji Mathur r/o 152/10 Swarup Narain Mathur Marg Civil Lines Ajmer for a total consideration of Rs.6,20,00,000/- (Six Crore twenty lac). I hereby acknowledge the acceptance of Rs.20 lac in cash as bayana. The remaining

payment of Rs.6 crore shall be paid by 15.2.2007. Installments towards the same as part payment will be decided as per this agreement on the day of payment of 10% bayana day. The tea vendor, tyre puncture repair vendor and scooter repair mechanic, squatting in front of the plots would be removed by me. The detailed agreement will be signed on 14.12.2006 on receiving the 10% of the sale consideration.

Sd/-

Sellers Signature

Buyers Signature

Witness:

1) Bhagmal Jindal

2) Shri Pal Gupta

3. It is contended by the applicant that the above 'bayana' receipt does not amount to an agreement to sell and it only provides that a detailed agreement would be signed between the parties on 14th February 2006 on receiving 10% of the sale consideration. Thus, the 'bayana' receipt was an agreement to enter into a further agreement in respect of the property in question and does not amount to a concluded contract and cannot be specifically performed. It is submitted that the 'bayana' receipt does not contain mode or installments of payment. It does not record the responsibility of obtaining mandatory prior consent of the perpetual lessor and also does not contain as to who shall be liable to pay the unearned increase for the property. The document does not record as to who shall obtain prior consent of income tax authorities and 'bayana' receipt was not even stamped and thus, is no document in the eyes of law in view of provisions of the Stamp Duty Act. It was also silent about the obligation of the defendant to obtain sale deed in her favour from the predecessor in interest from whom she allegedly acquired rights in respect of the property in question. It is stated that in absence of any agreement regarding material aspects, 'bayana' receipt would not amount to a concluded contract between the parties and this is clear from the receipt itself where parties had agreed to enter into a sale agreement after payment of 10% earnest money by the plaintiff.

4. Thus, the question which arises and to be answered is - whether the above 'bayana' receipt is a concluded contract of sale or not. The Counsel for the plaintiff submitted that the 'bayana' receipt shows that the parties had concluded a contract for sale of the property. The parties were ad idem on the identification of properties which were to be sold to the plaintiff. They had also agreed to the sale consideration of Rs.6,20,00,000/- as is clear from the agreement. Parties also agreed that this consideration was to be paid by the plaintiff to the defendant on or before 15th February, 2007. It was also agreed that tea vendor, tyre puncture repair vendor and scooter repair mechanic, squatting in front of the plots would be removed by the defendant. The only unconcluded part of the contract was the details of payment of consideration that is how the consideration would be paid between 14th December, 2006 and 15th February, 2007 by the plaintiff. On 14th December, 2006 plaintiff was to pay 10% of the total sale consideration after adjusting Rs.20 lac already paid. Thus, the only details to be given were in respect of remaining 90% payment and merely because the parties had not put down as to how the payment of this 90% amount would be spread between 14th December, 2006 and 15th February, 2007 do not make the contract an unconcluded contract. It is submitted that in any case the defendant was to receive the entire payment of Rs.6,20,00,000/- by 15th February, 2007 and was liable to execute the sale deed on receiving the entire payment by that day. It is submitted that absence of all other details like, who will obtain income tax clearance, who will pay unearned profits, who will pay for stamp papers etc. were not material to the agreement and absence of these details does not make the contract unenforceable under the Specific Relief Act. There is always an implied covenant to do all things necessary by the seller and purchaser, wherever the liability lies to give effect to the agreement. For this he relied on Motillal & Ors. v. Nanhelal & Ors. AIR 1930 PC 287 AIR, Rojasaara Dahyabhai v. Jani Narottamdas AIR 1986 SC 1912 and Nirmala Anand v. Advent Corporation Pvt. Ltd. & Ors. 2002 (5) SSC 481. He also submitted that absence of covenant regarding unearned increase is agreement to enter into a future formal contract, does not make the existing contract invalid.

5. On the other hand defendant relied on *Shri Satya Prakash Goel v. Ram Krishan Mission & Ors.* 1991 (Allah.) AIR 343 to argue that mere acceptance of offer of price on behalf of seller which referred to future negotiations for finalization of more terms of contract does not amount to a concluded contract of the parties and for such a contract a decree for specific performance cannot be granted.

6. Each case has to be considered on its own facts. While considering whether the contract between the parties was a concluded contract or not the Court has to scrutinize the contract as entered between the parties and see what was the intention of the parties and whether the contract between the parties stood concluded or the agreement was only an intention of the parties to enter into a future contract. A perusal of 'bayana' receipt would show that in this case, the defendant categorically stated that she had agreed to sell the property in question for sum of Rs.6,20,00,000/-. There is no averment that in future negotiation had to take place in respect of consideration or in respect of extent of the property. It is thus clear that the defendant agreed to sell the property in question to plaintiff for a determined consideration. At the time of entering into this agreement, she also received a part consideration of Rs.20 lac however, since in the normal parlance earnest money is 10% of the consideration the 'bayana' receipt provided that the plaintiff would make up this 10% of the amount by 14th December, 2006. Thus, it was settled between the parties that upto 10% of the consideration would be paid by plaintiff upto/on 14th December, 2006. The last date of payment of remaining 90% consideration was also agreed between the parties. The only part left unsettled was spreading of this payment of 90% between 14th December, 2006 and 15th February, 2007. There was no other unsettled part. It is obvious that the parties had not specified many things as to who will pay for the papers, when the parties will approach the Registrar office for registration of the sale deed etc. however, these are not material things. In any sale transaction the basic and material thing is the consideration and the date by which consideration is to be paid by the Purchaser to the Seller. It is because the prices in the market keep varying. The Seller is normally more particular that he should receive the consideration by a certain date. Once the consideration is received,

the seller is bound to execute the sale deed which can be executed on an agreed date. Since the properties in question were vacant plots, the possession of the vacant plot would have gone by the title therefore there was no question of obtaining possession. Clearance from income tax authorities etc. could be obtained jointly by the parties similarly, unearned increase was headache of DDA and DDA would have recovered it as per law. I, therefore consider that non-settlement of sundry matters would not make this contract prima facie an unconcluded contract or unenforceable contract.

I, therefore consider that the application under order 7 Rule 11 CPC filed by the defendant is not maintainable and is hereby dismissed.

CS(OS) No. 176/2007

List on 13th January, 2010.

November 11, 2009
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SHIV NARAYAN DHINGRA, J.