

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

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Date of decision: 5th May, 2016

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RFA 76/2016

MUKESH KUMAR GUPTA

..... Appellant

Through: Dr. N. Pradeep Sharma, Mr. S.K.
Rout and Mr. Pawan Kumar, Advs.

Versus

RAJNEESH GUPTA & ORS

..... Respondents

Through: None.

AND

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RFA 79/2016

MUKESH KUMAR GUPTA

..... Appellant

Through: Dr. N. Pradeep Sharma, Mr. S.K.
Rout and Mr. Pawan Kumar, Advs.

Versus

RAJNEESH GUPTA & ORS

..... Respondents

Through: None.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 15th February, 2016, when these appeals came up first before this Court, *inter alia* the following order was passed:

“1. The two appeals impugn the dismissal at the threshold/without trial of two separate suits filed by the appellant for specific performance of two separate Agreements for sale of ground floor and mezzanine floor of a property. The respondents being defendants to the suits did not oppose the suit.

2. However one Mr. Vinay Gupta filed an application for impleadment in the suits stating (a) that he/his predecessor had filed a suit for partition of several properties including the

property subject matter of the said Agreements to Sell against the respondents and the said suit was pending as CS(OS) No.2365/1986 of this Court and there was an interim stay therein against the respondents from dealing with the property; (b) however the said suit was dismissed in default on 13th November, 2014 and an application for restoration was filed on 18th November, 2014 and vide order dated 8th December, 2014 the interim orders were again passed. It was the contention of the said Mr. Vinay Gupta that the Agreements to Sell by the respondents in favour of the appellant were in violation of the injunction order in the suit pending in this Court.

3. *The learned Additional District Judge (ADJ) on the very same day rather than dealing with the applications for impleadment, dismissed the suits holding, (i) that the parties hereto were guilty of suppressing material facts; (ii) that the suits were not maintainable in view of the interim order in the suit in the High Court; (iii) that two separate suits were not maintainable and had been filed to create pecuniary jurisdiction of the learned ADJ and which otherwise has no jurisdiction as per the value of the property in accordance with the circle rates and Section 12 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015; and (iv) that the suits were collusive.*

4. *It is the case of the appellant that the Agreements to Sell of which specific performance was claimed are dated 28th November, 2014 i.e. of a date on which there was no interim order against the sale of the property.*

5. *Prima facie it appears that even if the suits were collusive, the other reasons for dismissal thereof are not correct. As aforesaid, the Agreements to Sell are stated to be of a date when there was no interim order in force. Moreover the suits for specific performance are required to be valued as per the consideration disclosed in the Agreement to Sell and not as per*

the valuation of the property as per the circle rates. It also appears that Commercial Courts Act would not be applicable. It also appears that it is for this Court to, in the suit pending before it, determine and deal with violation if any of interim order therein and the learned ADJ could not have for the said reason dismissed the suits.

6. *Issue notice to the respondents by all modes including dasti, returnable on 23rd March, 2016.*

7. *I am also of the opinion that the aforesaid Mr. Vinay Gupta is an appropriate party to the appeal.*

8. *Though the senior counsel for the appellant states that Mr. Vinay Gupta is not a necessary or appropriate party in the suit for specific performance but still since he had filed an application for impleadment in the suit and though without allowing the same the learned ADJ has acted on the application, it is deemed appropriate to hear him at the time of this appeal at least.*

9. *Accordingly the said Mr. Vinay Gupta is impleaded as respondent no.4 in each of the appeals. Amended memo of parties be filed within two days and notice of the appeals be issued to the said Mr. Vinay Gupta as well.*

10. *In the meanwhile, the direction of payment of costs is stayed.*

11. *Trial Court record be requisitioned.”*

2. The notice of the appeals issued to respondents/defendants No.1 to 3 remained unserved but the respondent No.4 Mr. Vinay Gupta was served and appeared in person on 23rd March, 2016 and sought adjournment to engage an advocate. Fresh notice was also ordered to be issued to the respondents No.1 to 3.

3. The respondents No.1 to 3 remain unserved with the report that the premises, address of which was given of the respondent No.1 was found

locked and the respondents No.2&3 had left the premises of which address was given. The appellant had filed affidavit of service of respondent No.2.

4. As recorded in the order dated 15th February, 2016, the respondents No.1 to 3 who were the defendants in the suits from which these appeals arise, had otherwise also not opposed the claim of the appellant/plaintiff and the suits were dismissed only on the basis of the application for impleadment filed by the respondent No.4 Mr. Vinay Gupta.

5. In this view of the matter, the service of respondents No.1 to 3 is dispensed with.

6. The respondent No.4 having failed to appear today, is proceeded against *ex-parte*.

7. I have, in the order dated 15th February, 2016, reproduced above, already recorded the reasons for which the learned Additional District Judge (ADJ) dismissed the suits from which these appeals arise. I am unable to agree therewith.

8. I will first take up the reason given by the learned ADJ, of the suits being not maintainable in view of the interim order in the suit in the High Court.

- A. The appellants / plaintiffs are not pleaded to have been parties to the suit in the High Court.
- B. The suit in the High Court was stated to be a suit for partition including of the properties of the Agreements of Sale whereof specific performance was sought in the suits from which these appeals arise.

- C. As per the respondent no.4 Mr. Vinay Gupta, in the said suit in the High Court, there was an interim order *inter alia* restraining the respondents / defendants no.1 to 3 from selling the property and the Agreements to Sell executed by the respondents no.1 to 3 in favour of the appellants / plaintiffs were in violation thereof.
- D. The learned ADJ appears to have proceeded on the premise that the suits were thus not maintainable, without considering the plea that the Agreements to Sell are of a date when the restraint order in the suit in the High Court of Delhi was not in force.
- E. The question further arises that even if the Agreements to Sell by the respondents / defendants no.1 to 3 in favour of the appellants / plaintiffs and of which specific performance was sought were in violation of the interim order in the suit in the High Court of Delhi, whether it made the Agreements to Sell void, for it to be held that no suit for specific performance thereof was maintainable.
- F. I had occasion to deal with the said question in ***A.K. Chatterjee Vs. Ashok Kumar Chatterjee*** (2009) 156 DLT 475 and again in ***Om Prakash Vs. Santosh Chaddha*** MANU/DE/3945/2013.
- G. In the former, on a consideration of the judgments of the Supreme Court, it was concluded that even a sale deed of immovable property executed in violation / contempt of interim order of injunction is not *non est* or void and it cannot be said

that no right in immovable property subject matter of the said sale deed has passed on to the purchaser.

- H. The latter judgment also considered the subsequent judgment of the Supreme Court in ***Thomson Press (India) Ltd. Vs. Nanak Builders & Investors Pvt. Ltd.*** (2013) 5 SCC 397 in which Justice T.S. Thakur in a supplementary judgment held that it was a settled legal position that a transfer *pendente lite* is not illegal *ipso jure* but remains subservient to the pending litigation and further held that though it was so held in the context of *lis pendens* and not in the context of transfer in breach of an order of injunction but there was no reason why the breach of any such injunction should render the transfer ineffective inasmuch as though the party committing the breach may incur the liability for consequences thereof but the sale or transfer by itself may remain valid as between the parties thereto subject only to any direction which the Court which had granted the injunction may issue against the transferee or vendor. Noticing the same, I have in ***Om Prakash*** supra held that the Court which is approached for specific performance of an agreement entered into in violation of the order of injunction of another Court, after acquiring knowledge of such violation of order of injunction of another Court is required to direct the plaintiff in such a suit to approach the Court which had granted the injunction for permission to proceed with his claim for

specific performance and only if that Court grants such permission, to proceed with the suit for specific performance.

I. Unfortunately, the learned ADJ, without considering or even citing the law proceeded to summarily dismiss the suit.

9. Another reason given by the learned ADJ, of two separate suits being not maintainable and had been filed to create pecuniary jurisdiction of the Court of the learned ADJ which otherwise had no jurisdiction as per the value of the property in accordance with the circle rates and Section 12 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, is also contrary to law.

- A. The valuation for the purpose of court fees of a suit for specific performance of a contract of sale, as per Section 7(x)(a) of the Court Fees Act, 1870, is to be according to the amount of the consideration. Such consideration is the consideration agreed in the contract for sale of which specific performance is claimed.
- B. The valuation of the suit for purposes of jurisdiction, as per Section 8 of the Suits Valuation Act, 1887, is to be the same as the value for the purpose of Court Fee.
- C. It is not understandable as to how the learned ADJ held that the valuation had to be in accordance with the circle rates.
- D. Circle rates have been notified by the Government of NCT of Delhi (GNCTD) in exercise of the powers under the Indian Stamp Act, 1899 read with the Delhi Stamp (Prevention of Under - valuation of Instruments) Rules, 2007 and for the purpose of guidance of the Sub-Registrars to whom the

documents / instruments of transfer of property are presented for registration, to ensure that stamp duty in accordance with law is paid thereon. The same have no relevance to the valuation of suits for the purpose of jurisdiction or to the payment of court fees thereon. The said circle rates also, vide order reported as *Manu Narang Vs. The Lieutenant Governor, Government of National Capital Territory of Delhi* MANU/DE/4234/2015 and *Amit Gupta Vs. Government of NCT of Delhi* MANU/DE/0841/2016 have been held to be only presumptive, open to rebuttal.

- E. Again, the learned ADJ has not even bothered to state what the circle rate of the property agreed to be sold was.
- F. The invocation by the learned ADJ of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 is also entirely misconceived. Though Section 2(1)(c) (vii) of the said Act brings a dispute arising out of agreements relating to immovable property used exclusively in trade or commerce within the definition of a commercial dispute but Section 6 thereof defines the jurisdiction of commercial court as over suits of specified value; Section 12 (1)(c) defines the specified value of subject matter of commercial dispute in a suit where the relief sought relates to immovable property or to a right therein as the market value of the immovable property. The said Act does not otherwise deal with valuation of the suits for the purpose of jurisdiction or

court fees payable thereon and in my view the valuation of a suit for specific performance of an agreement of sale even if relating to immovable property used exclusively in trade or commerce, for the purpose of court fees and jurisdiction will continue to be governed by the provisions of the Court Fees Act and the Suits Valuation Act as aforesaid and only those commercial disputes relating to immovable property will be triable by the Commercial Courts the consideration for sale of which property is in excess of the specified value.

G. Moreover, as aforesaid once even for the purpose of payment of stamp duty, the circle rates only raise a presumption which is rebuttable, the question of the learned ADJ dismissing the suit without giving any opportunity of hearing to the appellants / plaintiffs to rebut the presumption does not arise.

10. The reasoning given by the learned ADJ of deliberate splitting up of the agreement is also not understandable. In any case, the said findings as also the findings of collusion and suppression of material facts could not have been given without recording evidence.

11. The learned ADJ out of the 21 pages of which impugned judgment / order comprises of, has, devoted nearly 10 pages to quoting the judgments of the courts without even testing the facts of the suits from which these appeals arise on the anvil thereof and without noticing whether in the judgments cited, the findings had been given without recording evidence or otherwise. Rather another few paragraphs are devoted to the conduct of the counsel for the appellants / plaintiffs and which is indicative of the

impugned judgment / order being more out of angst against the counsel for the appellants / plaintiffs and without realising the expense and inconvenience to which the appellants / plaintiffs would be put to by such order.

12. The judgments and decrees of dismissal of the suits thus cannot be sustained and are set aside and the suits bearing CS No.12/2016 and CS No.74/2015 dismissed on 13th January, 2016 by the Court of ADJ-II (Central District), Tis Hazari Courts, Delhi are remanded for decision in accordance with law.

13. It is made clear that Mr. Vinay Gupta aforesaid who was impleaded as a respondent to these appeals would also be impleaded as a defendant in the suits and the learned ADJ would, on remand, proceed to issue notice to the defendants already impleaded in the suits as well as to the said Mr. Vinay Gupta.

14. The appellant to appear before ADJ-II (Central District), Tis Hazari Courts, Delhi on 1st June, 2016.

15. The Trial Court file requisitioned in this Court be returned forthwith to the Trial Court.

No costs.

Decree sheets be prepared.

RAJIV SAHAI ENDLAW, J

MAY 05, 2016/‘bs/gsr’..

P.S. A copy of the impugned judgments and decrees along with copy of this order be placed before the Committee of the Inspecting Judges of the Learned Additional District Judge.