

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : October 31st, 2017

+ RFA 124/2007
MAHENDER VIRMANI Appellant
Through Mr.Sanjeev K. Tandon, Mr.R.V.
Naik and Mr.Dev Pujari, Adv.

versus

BALBIR SINGH DUGGAL & ANR Respondent
Through None.

AND

+ RFA 46/2007
MAHENDER VIRMANI Appellant
Through Mr.Sanjeev K. Tandon, Mr.R.V.
Naik and Mr.Dev Pujari, Adv.

versus

BALBIR SINGH DUGGAL & ANRRespondent
Through None.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The appellant has filed two appeals being aggrieved by the common judgment and decree dated 20.10.2006 passed by the learned Additional District Judge, Delhi whereby the Suit no.120/06/99 filed by the appellant-Mahender Virmani was dismissed whereas Suit no.125/06/99 filed by the respondents-Balbir Singh Duggal and others was decreed in their favour.

2. It is apparent from the record that two suits were filed by the parties against each other. Suit no.120/06/99 was filed by the appellant-Mahender Virmani against the respondents-Balbir Singh Duggal and others. The said suit was filed for specific performance of contract. Suit no.125/06/99 was filed by the respondents herein-Sh. Balbir Singh Duggal and others against the appellant-Mahender Virmani. The said suit was filed for ejectment and recovery of damages. Both the suits were decided by a common judgment under challenge.

3. The facts in brief are that the appellant alleged that an oral contract was entered into between him and Sh.S.S. Duggal, father of the respondent-Balbir Singh Duggal on 24.04.1999 for the purchase of property bearing No.B-134, Duggal Colony, Devli Road, Khanpur, New Delhi comprising of ground, first and second floors measuring about 130 square yards for the total consideration of Rs.4,70,000/-. An amount of Rs.80,000/- was paid to Late Shri S.S Duggal by means of two post dated cheques bearing no.152201 and 152202 dated

22.04.1992 and 23.04.1992 respectively drawn on Punjab National Bank of Rs.40,000/- each. The appellant was handed over the vacant and peaceful possession of the suit premises. According to the appellant, he had made the payment of the amount of Rs.3,90,000/- on various dates and all the cheques were encashed by the respondents. After making the entire payment, he had asked late Sh.S.S. Duggal to execute the sale deed and other documents in favour of the appellant and he assured the appellant that he will execute the aforesaid documents in his favour in the next few days. It was unfortunate, that Sh.S.S. Duggal expired on 20.09.1996. According to the appellant, he had asked a number of times to the respondents to execute the documents in respect of the suit property but the respondents had not executed the same. Rather, respondent no.1 filed a suit for ejectment and recovery in the court of Ld. Addl. District Judge, Delhi vide suit no.165/99.

4. In the written statement filed on behalf of the respondents, it was objected that the appellant had no cause of action against the respondents as he was a tenant under respondents' suit property at the rate of Rs.8,000/- per month as the property was let out by the father of the respondents Sh.S.S Duggal to the appellant and he was in arrears of rent w.e.f 1.7.1996 upto the date and respondents duly terminated the tenancy of the appellant. Further the respondents had also denied that at any point of time their father ever sold or entered into any

agreement with the appellant for sale in respect of the suit property.

5. Suit No.125/06/99 was filed by the respondents for ejectment and recovery of damages on the ground that the appellant was the tenant of the first floor, ground floor, Devli road, Khanpur, New Delhi. In the written statement to the said suit, the appellant had denied the entire case of the respondents and claimed that he was the owner of the suit property as he had already made all the payment to deceased Sh.S.S. Duggal during his lifetime and after his death, the respondents-herein refused to execute the sale deed in his favour.

6. Replications to the written statements were filed on behalf of the defendants. On the basis of pleadings of the parties, following issues were framed in suit bearing No.120/06/99 by the Court below :

(1)Whether the plaintiff is entitled to a decree of specific performance of contract as prayed?
(OPP)

(2)Whether the suit is not maintainable as alleged? (OPP)

(3) Whether the suit is time barred? (OPP)

(4)Relief

7. On the basis of pleadings of the parties the following issues were framed in case bearing no. 125/06/99 which are as under :

(1) Whether the plaintiffs have validly terminated the tenancy of the defendants as alleged if so with what effect? (OPP)

(2) Whether the plaintiffs are entitled to recover Rs.2,84,000/- as arrears of rent/damages as alleged? (OPP)

(3) Whether the plaintiffs have no cause of action to file the suit as alleged? OPD

(4) Whether the suit is bad for non joinder of necessary parties as alleged? (OPD)

(5) Whether the suit has not been properly valued for the purpose of court fee and jurisdiction alleged? (OPD)

(6) Whether the suit is barred by principle of res judicata as alleged? (OPD)

(7) Relief

8. Feeling aggrieved by the common judgment and decree thereby dismissing the suit filed by the appellant-herein and allowing the suit filed by the respondents-herein, the present appeal has been preferred.

9. Argument advanced by the counsel for the appellant is that the Ld. Trial Court failed to hold that the appellant by cogent evidence on record established that on 24.04.1992 late Shri. S.S Duggal father of the respondents had entered into an oral agreement of sale with the appellant for the sale of entire premises of the suit property. The appellant had requested Shri

S.S Duggal several times on different times and occasions but due to ill health, Shri S.S Duggal did not come forward to execute the sale deed and he expired on 20th Sept. 1996. The judgment and decree of Ld. Trial Court suffers from material irregularity omitting the important evidence on record such as acknowledging receipt of having paid the sale consideration of Rs.4,70,000/- in respect of the suit property.

10 In support of the above submissions, counsel for the appellant has relied upon judgments in case of ***Shankarlal Narayandas Mundade v. The New Mofussil Company Ltd. and others*** AIR (33) 1946 Privy Council 97, ***Moturi Seeta Ramabrahmam v. Bobba Rama Mohana Rao and others*** AIR 2000 Andhra Pradesh 504 and ***K.Nanjappa v. R.A. Hameed*** (2016) 1 SCC 762. The ratio of the judgment in case of ***Shankarlal Nayarandas Mundade*** (supra) was that an oral agreement was a valid one. While delivering the judgment, it was observed that there was ample evidence to prove that both parties intended to make and believed that they had made a binding oral agreement and their desire and intention to put that agreement into formal shape does not affect its validity. In case of ***Moturi Seeta Ramabrahmam*** (supra) it was observed that the oral agreement of sale supported by the testimony of witnesses was sufficient to establish the case of the plaintiff. In case of ***K. Nanjappa*** (supra) it was observed that a decree for specific performance can be granted on the basis of oral contract. It was

further observed that if specific performance of contract of sale of immovable property on the basis of an oral agreement has been claimed, heavy burden lies on the plaintiff to prove that there was consensus between the parties for the concluded agreement for sale of immovable property.

Further, counsel for the appellant relied upon judgments in case of ***Chand Rani v. Kamal Rani (1993) 1 SCC 519***, ***Govind Prasad Chaturvedi v. Hari Dutt Shastri and another AIR 1977 SC 1005*** and ***M/s Nanak Builders and Investors pvt. Ltd. v. Vinod Kumar Alag AIR 1999 Delhi 315*** to press the contention that the suit was not barred by limitation.

11. On the contrary, counsel for the respondents-Balbir Singh Duggal and others has argued that Sh. S.S. Duggal had never entered into an oral agreement with Mr. Mahender Virmani in respect of the suit property. He further argued that the property was let out by late Sh.S.S. Duggal to Sh. Mahender Virmani for the rent of Rs. 8,000/- per month. The appellant has not paid the rent w.e.f 01.07.1996. The counsel for the respondents further argued that appellant did not pay the rent and therefore the respondents got served a legal notice for demand and termination of tenancy dated 22.02.1999. He proved the copy of notice as Ex. DW1/2; two postal receipts jointly as Ex.DW1/3; AD Card as Ex.DW1/4 and DW1/5; certificate of posting as Ex.DW1/6. The appellant after the death of S.S. Duggal started illegal construction in the suit property. He further argued that late

Sh.S.S. Duggal never agreed to sell the property in suit to the appellant and did not receive any sale consideration of Rs. 4,70,000/- as alleged.

12. I have heard the arguments advanced by the counsel for the parties and have gone through the record available on record.

13. Issue no.1 in suit no.120/06/99 was with regard to entitlement of the appellant for specific performance and issue no.2 was with regard to maintainability of the suit of the appellant. To prove its case, both the parties examined witnesses. Case of the appellant was based on the ground that he had entered into an oral agreement with the father of the respondent no.1 for the purchase of the suit property. He had alleged that he had made the entire payment of Rs.4,70,000/- to late Sh.S.S. Duggal by way of cash and two cheques. Apart from deposition made by the appellant, he had also examined PW3 R.S. Sehgal. PW3 had deposed that he used to do work of tubewell boring in the entire Duggal Colony and that late Sh.S.S. Duggal told him that the suit property was given to the appellant-herein. PW3 had prepared the quotation and receipt Ex.PW3/A for tubewell boring in the suit property and had proved the bill as Ex.PW3/B.

14. The only thing that came up in the testimony of PW3 is that he was told by Sh.S.S. Duggal that the suit property was given by him to the appellant-herein. Apart from this, there

is nothing in the testimony of PW3 to support the case of the appellant that any oral agreement was entered into between the appellant and late Sh.S.S. Duggal with regard to purchase of the suit property.

15. On the other hand, case of the respondents is that no such oral agreement was ever entered into between the appellant-herein and late Sh.S.S. Duggal and no such payment with regard to purchase of the suit property was made. It was contended that the payment of Rs.4,70,000/- was made by the appellant to late Sh.S.S. Duggal on account of purchase of another property no.202. The fact regarding purchase of another property by the appellant from late Sh.S.S. Duggal had been admitted by the appellant during his examination before the Court below. It has also come in his deposition that earlier he was inducted as tenant in the suit property.

16. It is highly improbable that basing on an oral agreement the appellant had made the huge payment of Rs.4,70,000/- without claiming any receipt. There is no basis in the contention of the appellant that he had ever entered into an oral agreement with regard to purchase of the suit property with late Sh.S.S. Duggal or that he had made the payment to him towards sale price of the suit property. Firstly, there is no evidence on record to substantiate the claim of the appellant that any such oral agreement was entered into between him and late

Sh.S.S. Duggal and secondly, there is no proof that the payment made by him was towards purchase of the suit property. It has also not come in evidence that whether late Sh.S.S. Duggal ever agreed to execute the sale deed after the receipt of money as alleged.

17. In view of the above discussion, this Court is of the considered opinion that the appellant-herein has failed to make out any case to show that any such oral agreement for sale and purchase of the suit property was entered into between him and late Sh.S.S. Duggal and that any payment with regard to purchase of the suit property was made by him to late Sh.S.S. Duggal. Therefore, the judgments relied upon by the appellant in case of **Shankarlal Nayarandas Mundade** (supra), **Moturi Seeta Ramabrahmam** (supra) and **K. Nanjappa** (supra) are of no help to him inasmuch as the appellant has failed to establish his case that any such oral agreement was ever entered into between him and late Sh.S.S. Duggal or that he had made any payment to late Sh.S.S. Duggal with regard to sale of the suit property or that late Sh.S.S. Duggal ever agreed to enter into a written agreement to sell. So, both these issues were decided accordingly against the appellant-herein and this Court does not find any error in the findings recorded by the Court below. Based on these findings, the suit of the appellant was liable to be dismissed.

18. Now coming to suit no.125/06/99 filed by the respondents-herein against the appellant-herein. In the said suit, issue no.1 was with regard to whether the plaintiffs (respondents-herein) have validly terminated the tenancy of the defendant (appellant-herein).

19. The case of the respondents-herein was that the appellant was never the owner of the suit property rather he was a tenant in the premises and the said tenancy was terminated. It was claimed that lastly the appellant had paid the rent of Rs.8,000/- per month to late Sh.S.S. Duggal and had not paid the rent w.e.f. 01.07.1996 to 30.04.1999. While considering issue no.1 and 2 in suit no.120/06/99, it has already been observed that the appellant has failed to establish his case that he was the owner of the suit property and that no oral agreement between him and late Sh.S.S. Duggal for purchase of suit property by the appellant was ever entered into or that late Sh.S.S. Duggal agreed to execute the sale deed or that the appellant had made the payment towards purchase of suit property.

20. It has come on record that the appellant had been making the payment of rent to late Sh.S.S. Duggal. The appellant-Mahender Kumar Virmani (PW2) during the course of his examination had deposed that he was in possession of the 2nd floor of the suit premises since 1991 as a tenant. On 20.04.1992, he was handed over the possession of the entire premises in the

capacity of owner in view of oral agreement. During cross-examination, he had stated that in the year 1990, he was a tenant in property no.E-182, Duggal Colony, Khanpur under Sh.S.S. Duggal and in the year 1991, Sh.S.S. Duggal asked them to vacate the said property and switch over to the suit property and he did so. He admitted that in the year 1991, he was paying rent of Rs.2500-3000 per month to Sh.S.S. Duggal. Later on, he paid Rs.3500/- per month upto March, 1992. In his examination in chief, he had also stated that Sh.S.S. Duggal used to charge a lump sum amount for water and electricity every month from the residents which was about Rs.3,000/- per month and the said amount was enhanced to Rs.5,000/- per month and the said amount was later on enhanced to Rs.8,000/- per month.

21. It has also been observed that the appellant has failed to establish his ownership on the suit property, rather it has been established by the respondents that the appellant was inducted as tenant in the suit property had been paying the rent/ user/occupation charges to late Sh.S.S. Duggal lastly at the rate of Rs.8,000/- per month. Thus, the findings on this issue was correctly arrived at by the Court below.

22. In view of the above discussion, this Court does not find any fault in the findings returned by the Court below while allowing the suit of the respondents-Balbir Singh and others and dismissing the suit of the appellant-Mahender Virmani. There is

no illegality or infirmity in the impugned judgment and decree. Same is accordingly upheld. Both the appeals are accordingly dismissed.

23. No order as to costs.

(P.S.TEJI)
JUDGE

OCTOBER 31, 2017
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