

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on : September 15th, 2017

+ RFA 236/2010 & Cross-objections 11920/2010

SARDAR KANWAL TEJ SINGH Appellant

Through: Mr. J.P. Singh, Ms. Richa Sandilya,
Mr. Preet Pal Singh, Advocates

versus

RITA JOSHI & ORS Respondent

Through: Mr. Joydip Bhattacharya, Mr. Mayank
Sharma, Mr. Hitesh Kumar,
Advocates

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

JUDGMENT

P.S.TEJI, J.

1. The present appeal has been filed by the appellant under Section 96 of the CPC against the judgment and decree dated 20.02.2010 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiff/appellant for specific performance of agreement to sell has been partly allowed to recover a sum of Rs.9,71,000/- with interest but disentitling him to specific performance, injunction and possession of the suit property.

2. The facts enumerating from the plaint are that one Sh.S.R. Joshi obtained a perpetual lease deed dated 14.05.1969 from the President of India of a residential plot no.179, Block No.B, East of Kailash

Residential Scheme, New Delhi measuring about 300 sq. yards. Father of the plaintiff/appellant and Sh.S.R. Joshi were having family relations between them. It was decided to build apartments on the said plot of land by the name of Abha Apartments and on the request of Sh.S.R. Joshi, the plaintiff/appellant agreed to purchase entire ground floor in the said building. The terms of the sale were orally agreed and a sum of Rs.30,000/- was paid by the plaintiff/appellant on 19.05.1988 through a cheque as part payment of the sale consideration. Sh.S.R. Joshi issued a receipt in this regard. The total sale consideration was Rs.9,70,767/-. A three and a half storey building with four apartments was to be constructed on the said plot. Sh.S.R. Joshi handed over a copy of the perpetual lease deed dated 14.03.1969, copy of approved plan and a copy of letter dated 31.08.1979 issued by DDA to the plaintiff/appellant. Thereafter the payments were made from time to time by the plaintiff/appellant and he had paid a total sum of Rs.9,71,000/- up till February, 1993. Thereafter, Sh.S.R. Joshi expired in March, 1993. The defendants/respondents are the legal heirs of late Sh.S.R. Joshi. In the year 1995, the defendants/ respondents handed over the possession of the first floor to its purchaser. The plaintiff/appellant asked the defendants/respondents to get the work of the ground floor completed and hand over its possession to him but they refused. On 15.02.1996, the plaintiff/ appellant came to know that the defendants/respondents were negotiating for sale of ground floor in the said building with third parties. Thus the plaintiff/appellant filed a suit against the respondents/defendants claiming the specific performance of

execution of sale deed of the ground floor of the said apartments, mandatory injunction to the defendants/respondents to execute documents of the ground floor and handing over of the said floor to the plaintiff/appellant.

3. A joint written statement was filed on behalf of all the defendants/respondents in which it was admitted that late Sh.S.R. Joshi and Sh.Inder Singh were akin to brothers. The developments took place after the death of Sh.S.R. Joshi. It was contended that no apartment as alleged had ever been booked for the plaintiff. It was admitted that a sum of Rs.30,000/- was paid but it was denied in as much as it being a part payment of the alleged sale consideration. It was contended that the entire ground floor and basement was constructed by Sh.S.R. Joshi for his and his family's use. Late Sh.S.R. Joshi gave a friendly loan of Rs.1,95,000/- to the father of the plaintiff and when Sh.S.R. Joshi had severe heart problem, the plaintiff was requested to return the amount and on this, the plaintiff paid Rs.30,000/-. Thereafter, the plaintiff paid back the loan amount in the form of part payments and in total he had paid Rs.1,85,500/-. It was further contended that no other amount has ever been paid by the plaintiff. Writing of letter dated 19.05.1988 has been denied. It was contended that the market value of the ground floor was Rs.90 lacs and there was no question that the same was being sold for Rs.9,71,000/-. Rest of the case of the plaintiff/appellant was denied.

4. On the basis of pleadings of the parties, following issues were framed :

1. Whether the letter dt. 19.05.88 referred to in para no.6 of the plaint was issued by S.R. Joshi in connection with the sale of 1622 sq.ft. space on the ground floor in Abha Apartments to the plaintiff or his nominee, as alleged?

2. Whether the plaintiff paid Rs.9,71,000/- to S.R. Joshi during the period from 19.05.88 to February, 1993 towards sale consideration of Rs.9,70,767/-, as alleged?

3. Whether the plaintiff has always been ready and willing and is still ready and willing to perform his part of the contract, as alleged?

4. Whether the plaintiff has not paid sufficient court fee as alleged in para no.1 of the preliminary objections of the written statement?

5. Whether S.R. Joshi gave friendly loan of Rs.1,95,000/- to the plaintiff's father and out of this amount, Rs.9,500/- still remains to be paid by the plaintiff's father as alleged in the written statement?

6. Relief.

5. Issue no.1 was decided partly in favour of the plaintiff while observing that that letter dated 19.05.1988 was issued by Sh.S.R. Joshi in connection with sale of an apartment in Abha Apartments to the plaintiff but it was not proved that this agreement was in respect of ground floor of the suit property. Issue no.2 was decided partly in favour of the plaintiff while observing that payment of Rs.9,71,000/- was made by the plaintiff/appellant but it was not proved that the total sale consideration was Rs.9,70,979/-. Issue No.3 was decided in favour of the plaintiff, whereas issue nos.4 and 5 were decided against the defendants.

6. Feeling aggrieved by the findings of the trial court that the sale consideration was not Rs.9,70,767/- despite proving that the plaintiff/appellant had made the payment of Rs.9,71,000/- and is ready and willing to perform his part, the present appeal has been preferred.

7. The main grouse of the plaintiff/appellant is that there is enough document and evidence on record to prove that the total sale consideration of the ground floor of Abha Apartments was Rs.9,70,767/- and it was duly established that a sum of Rs.9,71,000/- was paid by the plaintiff/appellant to late Sh.S.R. Joshi but despite that the Court below erred in observing that the said amount was not sale consideration for the said floor.

8. Argument advanced by the counsel for the plaintiff/appellant is that it was duly established on record that a letter dated 19.05.1988 was issued by Sh.S.R. Joshi in connection with the sale of an apartment in Abha Apartments to the plaintiff and it was for the entire ground floor of the suit property. It was wrongly observed by the trial court that there is no evidence to substantiate the claim of the plaintiff that the said letter was issued with regard to ground floor of the apartments. It was further argued that the amount paid by the plaintiff/appellant had duly been established on record through the receipts and statement of account which shows that the said payments were made towards sale consideration of ground floor of Abha Apartments.

9. On the other hand, the defendants/respondents had filed the cross objections 11920/2010 against the judgment and decree dated 20.02.2010 passed by the learned Trial Court in the same suit. It was alleged in the cross objections that the late father of the objector/respondent had good relations with the father of the appellant, which turned sour after the death of Sh.S.R.Joshi, as the plaintiff harbored ill intensions and had an evil eye towards the properties of late Sh.S.R.Joshi. Further, during the lifetime of Sh.S.R.Joshi, father of the appellant was advanced a loan of Rs.1,95,000 /- for establishing a shop of arms and ammunitions in Kanpur, while Sh.S.R.Joshi was posted in Kanpur. In view of the good relations between the late fathers of both the parties, no receipt and documents of loan was ever executed for the said loan of Rs.1,95,000/- which was given in cash to Sh. Inder Singh, by Sh. S.R.Joshi. It was further mentioned that Sh. S.R.Joshi was a chronic heart patient and he requested the plaintiff to pay back the loan amount advanced to his late father in discharge of his liabilities, the plaintiff issued a cheque of Rs.30,000/-. Besides the said above, other payments from time to time were also made, however the entire amount of Rs.1.95.000/- was never repaid and Rs.9,500/- remained unpaid from the total amount. The cross objections by the respondents/defendants further states that late Sh.S.R.Joshi was never a promoter nor builder of Abha Apartments and the construction in the premises was proposed in view of the family requirements, i.e for personal use by keeping the ground floor for himself and other floors for his daughters and sons.

10. Arguments advanced by the counsel for the parties were heard and I have gone through the evidence and documents available on record.

11. In order to prove its case the plaintiff placed on record various documents Ex.PW1/2, Ex.PW2/2, Ex.PW1/18 and Ex.PW1/19 which bear signatures of Sh. S.R.Joshi and examined witnesses PW1- plaintiff himself, PW2-Dr. Hardarshan Kaur, PW3-Raj Kumar Sagar, and PW4- Om Prakash. The defense examined DW1- Abha Astavans as their witness.

12. To appreciate the rival contentions of the parties, I have gone through the evidence adduced and the material placed on record. In as much as a sum of Rs.30,000/- that was paid on 19.05.1988 to Sh.S.R.Joshi is concerned, the same is an admitted fact by both parties and thus is undisputed. The appellant/plaintiff has stated that the said payment was made as a part payment towards the sale consideration with respect to the ground floor of the property in question, for which a receipt was also issued to him, being Ex.PW1/1. The said sale consideration is said to have been an oral agreement of sale. In the above facts and circumstances, the burden of proof lies heavily on the appellant/plaintiff to prove the terms of the said oral agreement and remove all ambiguities with respect to the same.

13. The primary question that remains to be explained is whether a specific apartment was agreed to be sold or any apartment was to be sold to the plaintiff at all. In furtherance of the above said oral

agreement, the document Ex. PW1/1 which is a receipt of the payment of Rs.30,000/- is completely silent with respect to the consideration, description or dimensions of the property to be sold. The appellant/plaintiff has failed to prove beyond satisfaction as to why the alleged oral agreement was not reduced into writing when the parties to the agreement had in fact executed an acknowledgment Ex.PW1/1 and Ex.PW1/5 in writing. Even the document Ex. PW1/5, merely mentions the amounts paid on different occasions but the same has not been explained as to why details in regard to the sale of the apartment were not mentioned.

14. In as much as contractual agreements are concerned, the same must be free from ambiguity or any vagueness that could warrant a case of non execution, as it would fall under the ambit of Section 29 of the Indian Contract Act. The basis of the entire agreement is an oral contract not supported by any written agreements and thus does not induce faith in the veracity of the same. As there is no evidence corroborating the oral agreement, the amount of Rs.30,000/- paid by the late father of the appellant/plaintiff cannot be said to be a part payment towards the alleged sale consideration in question. The document Ex.PW1/1 does not mention about the consideration, description or the dimensions of the property to be sold. It merely states that one apartment in apartments known as Abha Apartments at B-179 East of Kailash, New Delhi had been booked in the name of the plaintiff/appellant. This document is limited to the extent as stated above and thus does not provide with the needed details of the sale

consideration, thus, not inducing faith in the correctness of the document. For the sake of argument, if the apartment was booked and a document in furtherance of intention to sell was in fact executed, it is unclear as to why the fact that the ground floor was the area under sale was not mentioned in the documents. There is no satisfactory explanation as to why the alleged oral agreement was not reduced into writing when the parties had in fact cared to execute acknowledgment with respect to the payments being made from time to time in writing, being Ex.PW1/1 and Ex.PW1/5. Also, it is evident from the evidence placed before the court that there are no witnesses whatsoever who could depose that the said agreement for conveyance was in fact entered into between the parties, in their presence. There is no cogent evidence for a definite contract for the purchase of the ground floor of the suit property.

15. In view of the discussion made above, no error has been found in the judgment and decree passed by the Court below and the same is accordingly upheld.

16. The present appeal stands disposed off.

17. No order as to costs.

(P.S.TEJI)
JUDGE

SEPTEMBER 15, 2017
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