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

+ RFA 462/2016, C.M. 36482/2016 (Cross-objections) & C.M.
2629/2017

VINOD KUMAR Appellant

Through Mr.Prag Chawla, Adv.

versus

GOPI KISHAN Respondent

Through Mr.Kamal Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI (ORAL)

ORDER

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21.08.2017

1. The present appeal has been filed under Section 96 of the CPC against the order dated 04.04.2016 passed by the Court below vide which the suit filed by the plaintiff/respondent has been decreed holding the plaintiff/respondent entitled for possession of the suit property with mesne profit/damages @ Rs.2,000/- per month along with pendentelite and future interest @ 9% per annum from the date of filing of the suit till handing over the possession of the suit property. A decree of permanent injunction has also been passed restraining the defendant/appellant to create any third party interest in the suit property.

2. Arguments advanced by the learned counsel for the parties were heard and this Court has gone through the record of the trial court.

3. From the pleadings placed on record, the plaintiff/respondent in his plaint had alleged that he had purchased flat no.2-H/DV/7741, first floor, Ram Nagar, Pahar Ganj, Delhi from Sh.Ajesh Kumar, GPA of Sh.Jang Banadur Relan and Smt.Neena Relan through sale deed dated 14.11.2003. The defendant being closed friend of the plaintiff approached him to allow the use the said suit property. The plaintiff allowed the defendant to use the said property without any charges in August, 2005. The plaintiff had requested the defendant several times to vacate the suit property but he had been avoiding on one pretext or the other. A legal notice dated 26.05.2012 was issued to the defendant thereby revoking the licence and asking him to pay use and occupation charges.

4. In the written statement filed by the defendant/appellant, the case of the plaintiff/respondent was denied. It was submitted that he had paid Rs.10 lacs as part payment of the suit property which was fixed at Rs.15 lacs. After receiving Rs.10 lacs, the plaintiff disposed of the suit property for Rs.15 lacs. The plaintiff demanded Rs.2,000/- as rent w.e.f. 01.01.2012. The defendant started paying rent of Rs.2,000/- per month till the balance payment of Rs.5 lacs is paid. The defendant started residing in the suit property in the year 2005 and in 2009 he made an offer to the plaintiff to purchase the same. In the meantime, the plaintiff purchased the property from Ms.Neelu Sethi for a sum of Rs.10.01 lacs. On the asking of the plaintiff, the defendant had paid the amount of sale consideration to Ms.Neelu Sethi on behalf of the plaintiff. Neelu Sethi executed the sale deed in favour of the plaintiff, but the plaintiff failed to execute any document

in favour of the defendant despite making payment on his behalf.

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

(1)Whether the court has no pecuniary jurisdiction to entertain and try the present suit? OPD

(2)Whether the plaintiff is guilty of suppression of material facts? If so, its effects? OPD

(3)Whether the suit is barred under Section 50 of Delhi Rent Control Act, 1950? OPD

(4)Whether there is any contract regarding sale of the property in favour of the plaintiff? If so, its effect? OPD

(5)Whether the plaintiff is entitled for decree for possession in respect of the suit property? OPP

(6)Whether the plaintiff is entitled for decree for damages/mesne profits? If so, at what rate and for what period? OPP

(7)Whether the plaintiff is entitled for decree for permanent injunction, as prayed? OPP

(8)Relief.

6. Issue No.1 to 3 were decided against the defendant and in favour of the plaintiff. Rest of the issues were decided in favour of the plaintiff and against the defendant. Feeling aggrieved by the decree of the suit of the plaintiff/respondent, the present appeal has been preferred.

7. Argument advanced by the counsel for the defendant/appellant

is that it was the defendant who had made the payment of Rs.10 lacs to Ms.Neelu Sethi for the purchase of suit property on behalf of the plaintiff/respondent. It was further submitted that despite making the payment on behalf of the plaintiff, the sale deed was executed in favour of the plaintiff and the plaintiff never executed any document of sale in favour of the defendant. It was further submitted that Rs.2 lacs were paid through cheque no.20281, Rs.1.5 lacs paid in cash on 16.03.2009, Rs.1.5 lacs were paid in cash on 19.03.2009 and Rs.1.5 lacs were paid in May, 2009. It is further submitted that Ms.Neeltu Sethi was made a defendant's witness but she was not served and the trial court had closed the defendant's evidence without affording due opportunity to him to bring Ms.Neeltu Sethi before the Court to depose.

8. On the contrary argument advanced by the counsel for the plaintiff/respondent is that the suit property was purchased by the plaintiff out of his own funds and he himself paid the entire amount to Ms.Neeltu Sethi for which sale deed dated 01.06.2009 Ex.PW2/1 was executed. There is no basis in the submission of the defendant/appellant that he had made any payment to Ms.Neeltu Sethi on behalf of the plaintiff/respondent. It is further submitted that since Ms.Neelu Sethi was not available on the given address and no other address of hers was available with the defendant, therefore the evidence of the defendant was rightly closed by the trial court.

9. To appreciate the rival contentions of the parties, I have gone through the record of the trial court.

10. Issues were framed by the Court below on 22.07.2014.

Evidence of the plaintiff/respondent was closed on 24.11.2014 and the case was fixed for evidence of the defendant. On 25.05.2015, DW1 Sh.Vinod Kumar was examined and discharged. On 29.09.2015, two defendant's witnesses were examined, cross-examined and discharged and the case was adjourned for 27.01.2016. On 27.01.2016, DW4 Palvinder Singh was examined and discharged. On 29.02.2016, process was issued for 10.03.2016 for witness Smt.Neelu Sethi who was reported to be not residing on the given address and then on 10.03.2016 the case was fixed for final arguments. On 04.04.2016, the impugned judgment was passed.

11. It is apparent from the record that summon to witness Smt.Neelu Sethi was sent but she was reported to have left the given address. There was no other address available with the defendant/appellant of the witness Smt.Neelu Sethi and that was the reason in closing the evidence of the defendant by the Court below. There is nothing wrong in closing the defendant's evidence.

12. So far the contention of the defendant/appellant with regard to making payment of Rs.10 lacs to Ms.Neelu Sethi on behalf of the plaintiff/respondent is concerned, the same is falsified from the sale deed Ex.PW2/1 executed between Ms.Neelu Sethi and plaintiff/respondent, namely, Sh.Gopi Kishan. It is not in dispute that this sale deed was executed between Smt.Neelu Sethi and the plaintiff-Gopi Kishan on 01.06.2009. The only dispute raised by the defendant/appellant is that the payment to purchase the said property was made by him on behalf of the plaintiff/respondent.

13. It is claimed by the defendant/appellant that he made the

payment of Rs.2 lacs through cheque no.20281, Rs.1.5 lacs in cash on 16.03.2009, Rs.1.5 lacs in cash on 19.03.2009 and Rs.1.5 lacs in May, 2009, but a perusal of sale deed dated 01.06.2009 Ex.PW2/1 between Smt.Neelu Sethi and plaintiff/respondent-Gopi Kishan shows that the plaintiff/respondent had made the payment of Rs.7,61,000/- vide cheque no.326990 and Rs.2,40,000/- was paid in cash. The entire sale consideration for the purchase of property was Rs.10,01,000/-. The claim of the defendant/appellant that he made the payment of Rs.10 lacs to Smt.Neelu Sethi on behalf of the plaintiff/respondent does not find tally with the sale deed Ex.PW2/1. So, the defendant/appellant has failed to make out any case that he had made the payment towards purchase of property to Smt.Neelu Sethi on behalf of the plaintiff/respondent. However, it was duly established that there was contract regarding sale of the suit property in favour of the plaintiff.

14. So far the cross-objection bearing application C.M.No.36482/2016 filed by the respondent is concerned, the respondent has claimed the damages/mesne profits @ Rs.20,000/- per month w.e.f. 01.01.2010 till vacation of the suit property.

15. There is no merit in the cross-objections filed by the respondent for the reasons that no evidence was adduced by the plaintiff/respondent to the effect that the similarly situated properties in the same vicinity could fetch the rent of Rs.20,000/-. In the absence of any evidence in support of the said contention, there is nothing wrong in reaching the conclusion by the trial court to award the damages/mesne profits @ Rs.2,000/- per month.

16. In view of the above discussion, there is no merit in the present

appeal and the cross-objections. The trial court has rightly decided all the issues and there is no infirmity or illegality in the findings recorded by the trial court. The appeal is accordingly dismissed.

17. No order as to costs.

18. Pending application, if any, is also disposed of.

P.S.TEJI, J

AUGUST 21, 2017
dd