

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

Date of Decision: March 10, 2017

+ RFA 19/2009
ALKA

..... Appellant

Through: Mr. B L Chawla, Advocate

Versus

SURJEET SINGH GUJRAL

..... Respondent

Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Appellant is the plaintiff whose suit for specific performance has been dismissed vide impugned judgment of 17th September, 2008 while granting alternative relief i.e. compensation of ₹4 lacs which includes part of sale consideration of ₹2 lacs. A decree for alternate relief has been granted by learned trial court with interest @ 10% p.a.

In this appeal, relief of specific performance of Agreement to Sell of 17th August, 2006 in respect of immovable property bearing No.37/2, Double Storey, Ashok Nagar, New Delhi (*hereinafter referred to as suit property*) is sought. During the pendency of this appeal, it was directed that *status quo* in respect of suit property be maintained.

It is evident from order of 27th April, 2009 that respondent has been served but none has appeared on his behalf. When this appeal was taken up for regular hearing on 15th February, 2017, none had appeared on

behalf of respondent. Learned counsel for the appellant was called upon to apprise respondent's counsel about pendency of this appeal and he informs that counsel opposite has been duly intimated. None appears on behalf of respondent when this appeal is taken up for final hearing today.

The facts culled out from the impugned judgment are as under:-

"Plaintiff's case

Case of plaintiff, in brief, is that the defendant while representing himself as owner of the aforesaid property, on the basis of registered Will dated 5-5-92, agreed to sell the same to her on 17-8-06, for a total consideration of Rs.9,00,000/-. The defendant assured the plaintiff all his rights and title to the said property. He is also alleged to have received a sum of Rs.2,00,000/- from the plaintiff in cash and executed a receipt in this regard in her favour. The defendant agreed to complete the sale transaction on or before 15-2-07 and to execute documents in favour of the plaintiff, after completion of requisite formalities.

Further, it is case of the plaintiff that she repeatedly approached the defendant for completion of sale transaction and registration of sale deed while receiving the balance amount of consideration on or before the stipulated date, but the defendant has been avoiding to complete the sale transaction or to execute and to get sale deed registered in her favour on one pretext or the other.

As alleged in the plaint, plaintiff sent a legal notice dated 21-7-07, to the defendant calling upon him to perform his part of contract dated 17-8-06, but he failed to do so. Instead thereof the defendant sent a reply dated 26-2-07, even denying the execution of receipt dated 17-8-06. Plaintiff has alleged that all this shows malafide intention of the defendant and that he is not interested to perform his part of the

contract, whereas she has always been ready and willing to perform her part of the contract and to pay the balance amount of consideration. Plaintiff has shown her readiness and willingness to deposit the balance amount of consideration in court for completion of sale transaction and to perform all other requisite and necessary acts.

It has been further alleged that damages in terms of money shall not be adequate relief, particularly when plaintiff has already paid a sum of Rs.2,00,000/-, to the defendant as advance.

It has been prayed in the plaint that in case the court comes to the conclusion that relief for specific performance of the contract is not to be granted, then the plaintiff be granted compensation of Rs.2,00,000/-. As alleged by the plaintiff, she has no other equally efficacious or alternative remedy.

Stand of the defendant

Plaintiff has valued the suit at Rs.9,00,130/-, for the purposes of court fees and jurisdiction-so far as relief of specific performance and relief of injunction is concerned. For the relief of possession, this suit has been valued at Rs.9,00,000/- whereas, for the purposes of relief of injunction, this suit has been valued at Rs.130/-.

The defendant has filed written statement contesting the suit by raising preliminary objections that the suit is not maintainable being based on forged and fabricated documents; that suit is not maintainable in present form; that market value of the suit property is more than Rs.14 lacs; that this court has no jurisdiction to try and decide this suit; that plaintiff has not paid proper court fees; that plaintiff has no locus-standi to file the present suit as no contract or agreement was ever executed between the parties.

On merits, defendant has pleaded that he is owner of the property and at liberty to enjoy the same in any manner.

Defendant, however, denied to have ever represented himself, to the plaintiff, as owner of the suit property on the basis of Will dated 5-5-92, left by Smt. Amar Kaur Gujral or that he assured his right or title to the aforesaid property or agreed to sell the same to the plaintiff on 17-8-06 for a total consideration of Rs.9,00,000/- or received a sum of Rs.2,00,000/- from the plaintiff or executed any receipt or that he agreed to put the plaintiff into possession of the said property.

Defendant has come forward with the plea that the receipt dated 17-8-06 is forged and fabricated. Defendant has also pleaded that plaintiff might have obtained photo copy of Will dated 5-5-92 and photocopy of identity card, from the employees of DSA of HDFC bank. Defendant has even denied to have seen the plaintiff.

Receipt of legal notice from the plaintiff has been admitted by the defendant by pleading that he sent reply thereto on 26-2-07. On these grounds, the defendant has pleaded that there was no question of execution of any sale deed by the defendant and receiving the balance amount from her."

With the assistance of learned counsel for appellant, impugned judgment and evidence on record has been perused and thereupon this Court finds that parties went on trial on three issues, which have been reproduced in impugned judgment and they are as under:-

- 1. Whether the agreement dated 17.8.2006 was entered into between the plaintiff and defendant with regard to sale of property bearing No. 37/2, Double Storey, Ashok Nagar, New Delhi, if so its effect?* *OPP*
- 2. Whether the suit of the plaintiff is not properly valued?* *OPD*
- 3. Whether the plaintiff is entitled for a decree for specific performance of the agreement dated 17.8.2006. If not*

whether he is entitled to compensation/damages? OPP

While deciding the first issue, learned trial court has returned the finding in favour of appellant-plaintiff by holding that the Agreement to Sell of 17th August, 2006 (*Ex. PW1/2*) was validly executed by the parties. While deciding the first issue, learned trial court has taken note of conduct of respondent-defendant of not resorting to criminal proceedings and that had the Agreement to Sell of 17th August, 2006 (*Ex. PW1/2*) been forged, then respondent-defendant would have certainly resorted to criminal proceedings.

The second issue regarding valuation of the plaint has been decided in favor of appellant-plaintiff. Even the third issue has been decided against respondent-defendant while holding that respondent-defendant had failed to execute the sale deed and thus, holding that respondent-defendant was not ready to perform his part of the contract.

However, learned trial court has refused to exercise the discretion to grant specific performance of Agreement to Sell by holding that it would be inequitable and unjust to grant specific performance of Agreement to Sell and so, the alternate prayer of appellant-plaintiff has been accepted and compensation as noted above has been granted. To adopt such a course, learned trial court has relied upon Supreme Court's decision in *S. Rangaraju Naidu v. S. Thiruvarakkarasu* AIR 1995 SC 1769.

Upon dwelling on the submission advanced, impugned judgment, the evidence on record, I find that in view of Supreme Court's dictum in *Jayakantham & Ors. v. Abaykumar*, 2017 SCC OnLine SC 157, *Ramesh*

Chand (Dead) Through Legal Representatives v. Asruddin (Dead) Through Legal Representatives & Anr., (2016) 1 Supreme Court Cases 653 and *Nanjappan v. Ramasamy & Anr.*, (2015) 14 Supreme Court Cases 341, no case for directing specific performance of Agreement to Sell is made out as in the instant case, learned trial court has found that respondent-defendant was in need of money and had to even borrow when he was called upon to perform Agreement to Sell. Considering the fact that only ₹2 lacs out of the sale consideration of ₹9 lacs was paid by appellant to respondent, grant of specific performance of Agreement to Sell would be inequitable. Such a view is taken in view of Supreme Court's decision in *Jayakantham & Ors. v. Abaykumar (supra)* wherein, the part payment of ₹60,000/- out of sale consideration of ₹1.60 lacs was made and in this decision, monetary compensation was granted.

In light of Supreme Court's decision in *Jayakantham (supra)*, impugned judgment is upheld as the compensation granted is in consonance with the terms of Agreement to Sell and interest @ 10% p.a. on the compensation awarded is more than adequate.

Consequently, finding no merits in this appeal, it is accordingly, dismissed.

(SUNIL GAUR)
JUDGE

MARCH 10, 2017

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