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

% *Judgment delivered on: 20.04.2017*

+ **RFA 13/2010**

RAMESH KUMAR Appellant
Through: Mr. Mohinder Madan, Adv.

versus

RAM LUBHAYA Respondent
Through: Mr. Manmeet Singh, Mr. Kunal Aganpal
and Mr. Yash Batra, Advs.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The appellant had filed a suit for specific performance and permanent injunction against the respondent on the ground that immovable property No. T-139, Baljit Nagar, Delhi (the suit property) was orally agreed to be sold by the respondent to the appellant in the year 1987 for an amount of Rs. 1.65 lacs, of which Rs. 20,000/- had been accepted as part payment by the respondent. The date of the oral agreement had not been specified nor was this oral agreement ever proven. The appellant contends that subsequently a written agreement was arrived at with the intervention of 'respectables' in the neighbourhood in the presence of the temple pujari Mr. Radha Krishan (P5) and a fresh "biradari faisla" (fraternity decision) was arrived at on 02.06.1995. This document was allegedly signed by the respondent by which it was agreed that the appellant would pay an enhanced sale consideration of Rs. 4 lacs instead of Rs. 1.65 lacs, and the said amount

would be paid within three months i.e. on or before 01.09.1995.

2. The appellant contends that on 31.08.1995 he approached the respondent for payment of the said monies, however, the latter declined to accept the balance sale consideration. The appellant has based his case on a photocopy of the aforesaid purported 'fraternal decision' (Ex. P-1). Its original copy was never produced. He contends that the original was kept with the *Pujari* (PW5) of the temple. This, however, has been categorically denied by the *Pujari* (PW5) in his deposition.

3. The Trial Court found it unlikely that an intending purchaser would hand over the original 'agreement to sell' to a seller, with whom his relationship had evidently turned bitter in the previous eight years. Furthermore, the respondent had admitted that he had signed a blank document under duress on 02.06.1995 i.e. the date of the alleged 'fraternal decision' (Ex. P-1) during which about 15-16 people were present prior to the respondent arriving at the place of the meeting. The respondent had denied his signatures on the said document and no effort was made by the appellant to prove the signatures through any of his witnesses. The Trial Court further found that although the document i.e. 'fraternal decision' (Ex. P-1) is stated to have been brought into existence on 02.06.1995, the plaint claims it to be dated 02.07.1995. Furthermore, in the document, there are no specifications of the suit property i.e. its dimension or description and the address is wrongly mentioned as T-739 whereas the property in question is T-139. No earnest money is recorded as having been received or paid on 02.06.1995 i.e. the date of the execution. Interestingly, the said fraternal decision (Ex. P-1) mentions two sale considerations i.e. Rs. 3.75 lacs and

Rs. 4 lacs.

4. The Trial Court did not find the appellant's evidence creditworthy in view of the admission that multiple criminal cases were pending against him; his admission that FIR No. 428/95, PS Patel Nagar registered against him in respect of the suit property apropos two other tenants in the same property i.e. Mr. Kuldeep Raj and Vidhyawati @ Darshan; the ration card produced by the appellant had his name as well as of one Mr. Ravi Gaba (PW2), but the latter was not related to him and Mr. Ravi Gaba admitted that he was living at a different address although the appellant had shown him as his cousin; Mr. Ravi Gaba (PW2) also admitted to his being an accused in (i) FIR No. 445/91 under Section 147/148/149/186/332/353 IPC P.S. Patel Nagar; (ii) FIR no. 428/95 u/s 448/506 IPC P.S. Patel Nagar, and (iii) FIR No. 470/95 u/s 186/332/353 IPC P.S. Patel Nagar. These criminal cases are related to attack on public servants, and one of them relates to trespass on property of another person.

5. The learned counsel for the appellant submits that the original 'fraternal decision' (Ex. P-1) was given to the *Pujari* (PW5) for safe keeping and was subsequently handed over to Mrs. Neelam, wife of the respondent. However, in his evidence the *Pujari* (PW5) has deposed as under:

“the original of that ‘faisla’ was not handed over to the plaintiff. The original of the said faisla is not in my possession. Vol. As already stated above, the original of ‘faisla’ document was handed over to Mrs. Neelam wife of the defendant. The defendant and his wife were not present in the biradari meeting held on 1/9/95 and 3/9/95”

6. Relying upon ***Lakshmi Chand vs Municipal Corporation of Delhi***,

1988, Rajdhani Law Reporter, 117 the appellant contends that a photocopy of the ‘fraternal decision’ (Ex. P-1) should be accepted as an evidence when the original is lost. The Trial Court distinguished the same on the ground that in **Lakshmi Chand** (supra) case the sale deed had been accepted only for the purposes of determining the house tax. The Trial Court also distinguished the present case from the decision of this Court in **Ashok Kumar vs Lakshmi 1991 Rajdhani Law Reporter 463** in which the photocopy provided by the police during investigation proceedings was accepted since the original had been destroyed. The appellant’s case, however, is not that the original document had been destroyed. Hence there was no question of the photocopy being accepted as the proof of agreement to sell. Accordingly, the Trial Court rightly concluded that there was no agreement to sell. The first issue i.e. whether the said agreement to sell was not executed between the parties for sale of the suit property as alleged, was decided against the appellant.

6. Apropos the second issue: whether the respondent had received a sum of Rs. 20,000/- as earnest money towards sale of the suit property, the Trial Court decided it against the appellant because the oral agreement pertaining to 1987, was never proven; there was no receipt of Rs. 20,000/-, nor was the suit instituted in time for execution of said oral agreement.

7. With respect to issue no. 3: whether the respondent had handed over vacant possession of two concerned rooms in furtherance of the alleged sale deed of the suit property, the Trial Court decided it against the appellant on the basis of the evidence on record. Both PW4 and PW5, appellant’s own witnesses, deposed against him stating that they did not support his claim

that he had made a payment of Rs. 25,000/- as earnest money for the aforesaid two rooms under a promise from the respondent that vacant possession of the property would be handed over to him in March, 1988. The appellant's claim that he had been given possession of the two rooms on the first floor and one room on the ground floor of the suit property after he paid Rs. 20,000/- to the respondent pursuant to the oral agreement in 1987 was denied by the respondent. He stated that the appellant had been given only one room on the first floor for rent at Rs. 500/- per month and the construction carried out by the appellant in the said room was done illegally and forcibly. The appellant's own witness i.e. PW5 Mr. Radha Krishan demolished the appellant's case by deposing that the respondent did not hand over the possession of the two rooms on the first floor and one room on the ground floor, nor did the respondent promise to handover the vacant possession of the rest of the property after his children's examinations in March, 1988. Although the appellant claims to have been running a photo studio in the name of Surya Photo Studio from one of the rooms on the ground floor, his witness Mr. Rajesh Khanna (PW4) deposed that it is the latter who was running the aforesaid photo studio since 1985. The Court noted that the statement of Mr. Rajesh Khanna (PW4) was recorded on 08.08.2002, therefore, it was clearly established that PW4 was in possession of the room concerned on the ground floor from 1985 – 2003. Hence, this issue too was decided against the appellant.

8. Apropos issue no.4: whether the appellant was a tenant of the respondent in respect of two rooms, the Trial Court answered in the affirmative. It noted that initially the respondent claimed that one room on

the first floor of the suit property was given on rent at Rs. 500/- per month to the appellant, and his associates Mr. Ravi Gaba and Mr. Premnath Saini jointly in 1987. He stated that the rent was later enhanced to Rs. 1,000/- per month. However, as they had not paid the rent for many months, a legal notice was issued to them demanding arrears of rent to the tune of Rs. 54,000/-. However, the respondent later admitted in his cross-examination on 04.09.2006 that he had never let out the premises to the appellant. He went on to depose that one room was let out to Mr. Ramesh Kumar, Mr. Ravi Gaba and Mr. Premnath Saini jointly, but one Mr. Rupak Sawhnay (DW-2) deposed that he was the appellant's tenant in the suit property for 17-18 years. Mr. Rupak Sawhnay (DW-2) further deposed that the appellant too was a tenant in the suit property for the last 17-18 years and the appellant got him inducted as a tenant as well and the rent was fixed at Rs. 2500/- per month. Another witness Mr. Mahender Madan (DW-4) stated that the premises were leased out at the aforesaid rent of Rs. 2,500/- per month. He also stated that the primary dispute between the appellant and the respondent was about the former not vacating the latter's premises which was taken on rent. Apropos the ground floor, PW4 had already admitted that he was in possession of one room from where he was running his photo studio under the name of Surya Photo Studio. The Trial Court, having considered all the depositions and evidence reasoned that the discrepancy apropos renting out of the premises could be on account of passage of time, during which memory fades, hence it concluded that the appellant was a tenant in respect of one room in the suit property.

9. Apropos whether the suit was instituted within time, the Trial Court

held in the negative, and with regard to whether the appellant was entitled to a decree of specific performance, the Trial Court was of the view that he was not entitled to any relief in the absence of an agreement to sell.

10. In view of the aforesaid discussion and appreciation of the evidence on record, the Court is of the view that the both the reasoning and the conclusion drawn by the Trial Court are sound and do not call for any interference of the Court. Accordingly, the appeal is dismissed. Interim orders are vacated.

APRIL 20, 2017/kk

NAJMI WAZIRI, J

