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

Reserved on : 12th March, 2018

Date of Decision: 1st June, 2018

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RFA 119/2007

SATNAM CHAND KOHLI & ANR. Appellants

Through: Ms. Chandrika Gupta, Advocate for
Mr. Rajat Aneja, Advocate.
(M:9910122455)

versus

SATYAM CONSTRUCTION CO. & ORS. Respondents

Through: Mr. Kundan Kumar Mishra, Ms.
Shreya Mathur and Mr. B. D. Balna,
Advocates. (M:9958861250)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present appeal involves a transaction in respect of property bearing Plot No. H situated in Layout Plan of Delhi, Bengali Hindu Cooperative Group Housing Society Ltd. Known as Tagore Park, Delhi measuring 240 sq. yds (*hereinafter the 'suit property'*). The Appellants/Plaintiffs (*hereinafter, 'Plaintiffs'*) were the owners of the suit property. The Respondent No.1/Defendant No.1 - Satyam Construction was a partnership firm of the Respondent No.2/Defendant No.2 - Mr. Harbans Lal Kumar and Respondent No.3/Defendant No.3 - Mr. Ish Julka (*'hereinafter Defendants'*). A transaction of sale was entered into between the Plaintiffs and the Defendants. As per the said transaction which was agreed to between the parties, the total sale consideration for the suit property was to be Rs.4 Lakhs. A sum of Rs.1.25 Lakhs was to be,

however, given to or kept back with the Defendants. The said amount of Rs.1.25 Lakhs was to be released in favour of the Plaintiffs upon mutation of the plot in favour of the sub-lessees who had issued the GPA in favour of the Plaintiffs and supporting documents for submission of the building plans.

2. The property was a lease hold property allotted by the DDA in favour of the Smt. Usha Chhabra and Smt. Urmil Kapoor who had in turn sold the property to the Plaintiffs through a power of attorney. Since the building plans and other sanctions would be given only after mutation was done in favour of the sub-lessees, this condition was imposed by the Defendants.

3. Along with this agreement dated 13th April, 1992, an agreement to sell, Will and GPA were executed between 13th April, 1992 and 16th April, 1992. Since the sale deed was not being executed, the Plaintiff appointed Mr. Raj Kumar Julka, the father of Defendant No.3 Mr. Ish Julka as PoA holder.

4. It appears that the Plaintiffs gave whatever documents were in their possession, but the Defendants continued to contend that the mutation and the documents required for the building plans were not given. Accordingly, the sum of Rs.1.25 Lakhs was not returned by the Defendants to the Plaintiffs. The Plaintiffs then sought revocation of the Power of Attorney issued in favour of the Defendants. Despite repeated notices, the Defendants did not return the amount of Rs.1.25 Lakhs and the Plaintiff then filed a suit being 274/1995 for declaration and permanent injunction. Due to some technical defects, the said suit was withdrawn and the subject suit was filed seeking following reliefs.

“.....

It is, therefore, most respectfully prayed that a

decree for recession of contract/agreement dated 13.4.1992 may kindly be passed in favour of the Plaintiffs and against the Defendants.”

5. It is relevant to note that in this suit, initially the Plaintiffs did not seek recovery of Rs.1.25 Lakhs. Following issues were framed on 29th January, 1999.

- “1. Whether the suit of the plaintiff is not maintainable as framed? OPP*
- 2. Whether there was any agreement between the parties dated 13/4/92 and plaintiff violated the terms thereof? OPD*
- 3. Whether the suit is barred by time? OPD*
- 4. What is the effect of power of attorney executed by the plaintiff in favour of the defendants and the registered deed of revocation dated 16/9/94? OPP*
- 5. Whether the plaintiff is entitled to injunction and decree of recession of contract prayed for? OPP*
- 6. Relief.”*

6. On 25th August, 2006, the Plaintiff moved an application under Order VI Rule 17 CPC seeking to add a prayer for recovery of Rs.1.25 Lakhs. The same was dismissed on 7th September, 2006 on the ground that the said relief is barred by limitation.

7. Thereafter, the Plaintiff appeared as PW-1 and he submitted that he had carried out his obligations under the agreement. His basic contention in his evidence was that the Defendants had gone ahead and raised a basement in the property after completion of the formalities by the Plaintiff. No further formalities were left to be completed by the Plaintiff. In fact, the Defendants apart from the basement also raised further construction. In view of this, the

Power of Attorney, he had granted to the Defendants, was cancelled by him. He claimed that he had given all the documents as required in the agreement dated 13th April, 1992 within 30 days, though he did not have any receipt to show the same.

8. Defendant No.2 - Mr. Harbans Lal Kumar appeared as DW-1 when he appeared on 8th October, 2003 he stated that he had already sold the suit property but failed to disclose when he had sold the same. He confirmed that the property was sold after construction and the site plan was also got sanctioned before construction. He stated that mutation was not done and, therefore, he had approached the Court to get mutation of the property before selling the same. He did not recall the name of the person in whose favour the mutation was to be done. He confirmed that the property was sold on the basis of the Power of Attorney and agreement to sell. He stated that a part of the property was sold prior to the filing of the written statement and remaining property was sold after the suit was filed. DW-2 – Mr. Ish Julka, another partner of Satyam Construction Co. Ltd. stated that the Plaintiffs did not get the mutation done and hence the plans could not be passed but thereafter they somehow managed to get the building plans sanctioned both in the name of Ms. Urmil Kapoor and Ms. Usha Chhabra. Thus, sanctioning of building plans was due to their own effort and the Plaintiffs did not perform their part of agreement. He confirmed that the person in whose favour of Power of Attorney had been issued was Mr. Raj Kumar Julka, his father. While confirming the execution of GPA, he stated as under:

“.....I know Mr. Raj Kumar Julka who is my father. It is correct that Mr. Satnam

Chand Kohli had executed a general power of attorney in favour of Sh. Raj Kumar Julka. It is correct that after executing GPA in favour of Sh. Raj Kr. Julka, my father, the plaintiff left no concern with the property. It is wrong to suggest that Raj Kr. Julka was a person who could appear before DDA and other authorities for mutation of the property. Voltd. Satnam Chand had got an agreement with us to get the property mutated.....”

9. A perusal of the evidence on record and the pleadings shows that initially a transaction of sale in favour of the Defendants was accompanied with the agreement dated 13th April, 1992 by which a sum of Rs.1.25 Lakhs was deposited with the Defendants as security for delivery of the documents of mutation and for submission of sanctioned building plans. As per the evidence of PW-1 he delivered the documents which were required to be delivered. This fact of delivery of all the documents is also established by the subsequent events i.e. that construction was actually carried out in the property and that it was partly sold even before the written statement was filed.

10. The date of filing of the present suit is 14th October, 1996. Within a span of four years i.e. from 13th April, 1992 to 14th October, 1996, the Defendants had obtained mutation, obtained sanction of building plans and constructed the property. They had even gone a step further i.e. they had even sold the property.

11. Moreover, after the agreement dated 13th April, 1992 was entered into, a GPA was executed by the Plaintiffs in favour of the Defendant No.3's father on 16th April, 1992. The clauses in the GPA permitted the Attorney-

holder to carry out the following acts:

- To manage and control the property in all respects;
- To represent the owner before each and every concerned authority;
- To give said property on rent, to receive the rent, to execute, sign and present the rent deed/lease deed before the Sub-Registrar and get the same registered;
- To get the property/premises vacated on behalf of the owner;
- To get plan prepared by any architect, to file the same for sanction of the authorities;
- To obtain permits and quotes of building materials;
- To raise construction, engage the contractor, get building completed, installation of water and electricity connections, and to obtain complete certificate;
- To deposit house tax, water and electricity charges and other dues and demands of any department;
- To appear and act in M.C.D./ D.E.S.U./ D.D.A./ Society etc and other authorities, and give statement, affidavit, application etc on behalf of the owner;
- To execute sign and present the suppl. deed/ rectification deed before the proper registering authority and get it registered;
- Apply for Income Tax Clearance Certificate;
- To sell the property in whole or in parts, enter into agreement to receive the advance, issue receipts, apply for sale permission before the concerned authorities, etc;
- To appear before all or any concerned authority to get the property

converted to free hold;

- To execute sign and present the sale deed/s before the Registrar/Sub-Registrar, or any other competent registering authority;
- To receive the consideration amount for such sale and issue receipts;
- To execute sign and present all suits, complaints, written statement, affidavits, application, in proper courts of law and proceed in all such proceedings filed in the owner's name;
- To compromise, compound, or withdraw any such proceedings, appoint arbitrators, engage lawyers, deposit and withdraw money, execute decrees, receive or recover the decretal amount;
- To appoint further attorney;

The factum of execution of GPA is clearly admitted by DW-2, in the cross examination extracted above. He admits that after the execution of the GPA in favour of his father, the Plaintiff was left with no concern in the property. He deposed that *"It is correct that after executing GPA in favour of Sh. Raj Kumar Jhulka, my father, the plaintiff left no concern with the property"*. When this is the position, there was impossibility on behalf of the Plaintiffs to get the mutation done as they had already delivered all the documents and had also appointed Defendant No.3's father as GPA holder. The Plaintiffs could not have approached any authority to get the mutation done once they had sold the property.

12. On the other hand, the Defendants have enjoyed the benefits of the entire transaction i.e. they sold the property without even the so-called

documents which still remained to be given by the Plaintiffs. This shows that there were no documents which were to be given by the Plaintiffs and the evidence of the Plaintiff on record is more credible and believable. The Defendants have unlawfully retained the amount of Rs.1.25 Lakhs. As per the agreement dated 13th April, 1992, once the documents are given “the second party is bound to return the amount afore mentioned at the receipt of these documents without any delay or excuse.” However, if the documents were not given, the deposits could have been forfeited. There is no notice on record issued by the Defendants calling upon the Plaintiffs to furnish the documents as per this agreement. First notice on record is a notice issued by the Plaintiffs dated 22nd September, 1994 calling upon the Defendants to *“release payment of Rs.1,25,000/- including interest @ 2% per month till date, within a period of 15 days from receipt of this notice.”* However, this notice was not replied to by the Defendants. No notice was ever issued by the Defendants calling upon the Plaintiffs to furnish the documents or informing the Plaintiffs that the amount stood forfeited. Upon the non-return of the money of the amount of Rs.1.25 Lakhs, the Plaintiff cancelled the Power of Attorney which was issued in favour of the Defendants.

13. Contemporaneous evidence on record clearly establishes that while the Plaintiffs categorically stated in the notice dated 22nd September, 1994, that upon the request of the Defendants that the Power of Attorney was executed in favour of the Defendants’ nominee and, therefore, upon the execution of the Power of Attorney, the amount was due and payable. The execution of the Power of Attorney was well within the knowledge of the Defendants, who illegally held back the amount which was due to the Plaintiffs. Thus, the Plaintiffs were justified in claiming rescission of the

agreement to sell dated 13th September, 1992. The prayer, though not very happily worded in fact, seeks to cancel the transaction of sale which took place between the parties.

14. Considering the subsequent developments i.e. sanctioning of building plans, the construction undertaken by the Defendants and the sale which has been made by the Defendants, too much water has flowed under the bridge for the transaction to be rescinded. There is, however, no doubt that the Defendants held back the Plaintiff's money despite enjoying all the benefits of the property and even having sold it further, without disclosing the same to the Court until the recordal of evidence.

15. Under such circumstances, the Court is not helpless in granting relief to the Plaintiffs, who have been wronged. It is the settled position in law that any Court is fully empowered to grant lesser relief in favour of the Plaintiffs when higher relief is sought. This position has been upheld by the Supreme Court in ***Bachhaj Nahar v. Nilima Mandal (2008) 17 SCC 491***, where the Supreme Court observed as under:

“22. The observation of the High Court that when a plaintiff sets forth the facts and makes a prayer for a particular relief in the suit, he is merely suggesting what the relief should be, and that it is for the court, as a matter of law, to decide upon the relief that should be granted, is not sound. Such an observation may be appropriate with reference to a writ proceeding. It may even be appropriate in a civil suit which proposing to grant as relief, a lesser or smaller version of what is claimed. But the said observation is misconceived if it is meant to hold that a civil court may grant relief it deems fit, ignoring the prayer.”

16. Thus, under the provisions of the Indian Contract Act 1872,

compensation under these circumstances, can be awarded. The Defendants' conduct lacks bonafides. On the one hand the Defendants, in fact, did not pay the full consideration for the property, i.e. out of the Rs.4 Lakhs paid, they took back Rs.1.25 Lakhs as security deposit, and secondly they got the Power of Attorney executed in favour of the father of one of the Defendants which vested the power in the GPA holder to get all plans of the property sanctioned from the authorities and to deal with the authorities as may be required. They also obtained the requisite documents from the Plaintiffs and thereafter, got the building plans sanctioned, construction on the property and sale of property. They did not need any further documents to enjoy the ownership of the suit property. They exercised their rights as owners of the suit property beyond any cavil. Having enjoyed the property they had no right to hold back the amount of Rs.1.25 Lakhs.

17. The Defendants' case is also unbelievable i.e. that the Plaintiffs did not give the documents as no notice was issued by the Defendants calling upon the Plaintiffs to supply the documents or to the effect that money is being forfeited. Even when the Plaintiffs got notice dated 22nd September, 1994 issued through their lawyers, the Defendants maintained stoic silence as they were obviously in the process of building and transacting with third parties in respect of the suit property by then. The written statement was filed on 9th May, 1997. The first appearance of the Defendants was in December, 1996. Despite this no disclosure was made by them that the suit property was sold until the recordal of the evidence of DW-1 & DW-2. Thus, the Plaintiffs are entitled to monetary compensation for the long drawn litigation they have been made to fight and to undo the wrong done to them.

18. Since the property has already been sold by the Defendants, in respect of the rescission/cancellation as sought by the Plaintiffs, the Plaintiffs are awarded a sum of Rs.5 Lakhs as compensation which shall be paid along with interest @ 8% per annum from the date of filing of the suit till the date of payment. The Defendants are directed to make the requisite payments within four weeks, failing which interest would be payable @ 12% per annum.

19. Appeal is allowed in the above terms.

**PRATHIBA M. SINGH
JUDGE**

JUNE 01, 2018/dk

