

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

+ **RFA No. 342/2017**

% **5th September, 2018**

OM PRAKASH GUPTA Appellant

Through: Mr. Jaideep Malik and Mr.
Avinash Kapoor, Advocates
(9811106556)

versus

VED PRAKASH Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 19.11.2016 by which the trial court has dismissed the suit filed by the appellant/plaintiff for recovery of a sum of Rs.36,38,500/- from the respondent/defendant. Appellant/plaintiff claimed the amounts from the respondent/defendant pursuant to the Agreement dated 6.5.2011, Ex.PW3/4, and which Agreement acknowledged that the

respondent/defendant had sold excess land as an Attorney of the appellant/plaintiff and had not paid the sale consideration of the excess land to the appellant/plaintiff, and therefore by the Agreement dated 6.5.2011 a sum of Rs.40,68,500/- was agreed to be paid to the appellant/plaintiff.

2. The facts of the case are that the appellant/plaintiff pleaded that he was the owner of the total land measuring 6931 sq. yds comprising of K.No.94/1 to 94/4 in the Revenue Estate of Village Karala, New Delhi. The appellant/plaintiff had entered into an Agreement to Sell of only 2100 sq. yds. out of total land of 6931 sq. yds. but the respondent/defendant sold the entire area of 6931 sq. yds. When confronted, the respondent/defendant by the Agreement dated 6.5.2011, hence agreed to pay the sum of Rs.40,68,500/- to the appellant/plaintiff. The respondent/defendant however only paid to the appellant/plaintiff a sum of Rs.2 lacs on 26.5.2012, and a further sum of Rs.2 lacs on 17.12.2012 and thereafter another sum of Rs.30,000/-, but thereafter the respondent/defendant changed his attitude and failed to pay the balance amount. The appellant/plaintiff

therefore served the legal notice dated 1.5.2014 on the respondent/defendant, and thereafter the subject suit was filed.

3. Respondent/defendant appeared in the suit through counsel but did not file the written statement nor paid the cost imposed. Respondent/Defendant also therefore did not lead evidence. On the other hand the appellant/plaintiff led evidence and proved the Agreement dated 6.5.2011 through the attesting witness namely Sh. Brij Mohan Singh who deposed as PW-2 and another witness who was present at the time of the execution of the Agreement Sh. Harbans Kataria who deposed as PW3. The respondent/defendant even in spite of service in this appeal has failed to appear. The issues framed in the suit and evidence led by the appellant/plaintiff before the trial court are as under:-

“Following issues are framed for consideration of ex parte evidence:

(i) Whether plaintiff is entitled to recovery alongwith interest as prayed for? OPP

(ii) Any other relief.”

4. In ex parte evidence, plaintiff has examined three witnesses.

PW-1 is Om Prakash Gupta, who is plaintiff himself. He has relied upon certain documents i.e. copies of GPA, Deed of Will, agreement to sell, affidavit dated 23.06.1998 and receipt dated 23.06.1998 are Mark PW1/1 (colly), copies of GPA, Will, agreement to sell, affidavit dated

29.09.1998 dated and receipt dated 29.09.1998 are Mark PW1/2 (colly), copies of GPA, Will, agreement to sell, affidavit dated 29.09.1998 dated and receipt dated 29.09.1998 are Mark PW1/3 (colly), copies of GPA, deed of Will dated 29.06.1998 are mark PW1/5, the agreement dated 07.05.2011 is Mark PW1/6, copy of legal notice and postal receipts are Ex.PW1/7(colly).

Except the above, PW-1 has reiterated all the facts during his examination in chief as alleged in the plaint and the same are not repeated here for the sake of brevity.

5. PW-2 is Brij Mohan Singh who has deposed that in May 2011, he was residing in Jammu and he knew about certain dealings about land as Sh. Ved Prakash had sold the lands belonging to Om Prakash and he was required to pay some money to Om Prakash. He stated that they all had gathered to reach at an amicable settlement. It is stated that an agreement dated 06.05.2011 was executed between the plaintiff and defendant at Jammu and he had put his signature on the said agreement as witness. It is stated that Rs.40,68,500/- was agreed to be paid by Sh. Ved Prakash to Om Prakash in his presence at relevant time.

6. PW-3 is Harbans Kataria who has deposed that he is family friend of plaintiff for more than 30 years and well conversant with the facts and circumstances of the case. He has stated that the plaintiff was the owner of the land measuring 6931 sq. yards, details of which is mentioned in para no.2 of his affidavit. He has further stated that the plaintiff and defendant, in his presence, had entered into an agreement to sell in respect of only 2100 sq. yards out of total 6931 sq. yards, however, the defendant without any authority, permission or knowledge of the plaintiff, had sold the excess land 4831 sq. yards and did not pay the amount for the same to the plaintiff and later on when it was revealed to the plaintiff, an agreement was executed between the plaintiff and defendant in presence of PW-3 on 07.05.2011, wherein the defendant agreed to pay a sum of RS.40,68,500/- to the plaintiff in lieu of said excess portion of land sold by the defendant. He has further stated that the defendant only made a payment of Rs.2 Lakhs on 26.05.2012, another Rs.2 Lakhs on 17.12.2012 and thereafter an amount of Rs.30,000/- was paid and the remaining amount of Rs.36,38,500/- was not paid by the defendant despite repeated requests of the plaintiff. He has also relied on various document which have been relied upon by the plaintiff.

The document marked as Mark PW1/1, Mark PW1/2, Mark PW1/3, Mark PW1/6 are exhibited as Ex.PW3/1 (colly), Ex.PW3/2 (Colly), Ex.PW3/3 (colly) and Ex.PW3/4 respectively during the evidence of PW-3.”

4. Trial court has dismissed the suit by holding that the suit of the appellant/plaintiff is vague because how the appellant/plaintiff was the owner of total of 6931 sq. yds has not been pleaded and proved. It is also held by the trial court that why the appellant/plaintiff did not object when possession of his excess land was taken away from the appellant/plaintiff. The suit of the appellant/plaintiff was hence dismissed.

5. In my opinion, the trial court has clearly erred in dismissing the suit because the Agreement dated 6.5.2011 has been proved through two witnesses and which has been exhibited as Ex.PW3/4. There is no evidence in rebuttal of the respondent/defendant, and therefore the trial court was bound to believe the case as set up by the appellant/plaintiff. It may be noted that the appellant/plaintiff proved his ownership by proving the requisite documents which are stated in para 4 of the impugned judgment and as has been reproduced above. If the

respondent/defendant had a valid defence then there was no reason for him not to contest the suit and not to appear in this appeal.

6. In view of the aforesaid discussion, this appeal is allowed. The impugned judgment of the Trial Court dated 19.11.2016 is set aside. Suit of the appellant/plaintiff is decreed against the respondent/defendant for a sum of Rs.36,38,500/-. Appellant/plaintiff will also be entitled to *pendente lite* and future interest till payment at 9% per annum simple. Parties are left to bear their own costs.

7. The appeal is allowed and disposed of as stated above. Decree sheet be prepared.

SEPTEMBER 05, 2018/ib

VALMIKI J. MEHTA, J