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

Reserved on : 30th May, 2018
Date of Decision: 4th July, 2018

\+ **RFA 400/2017, CM APPLs. 15029/2017 & 30450/2017**

SAROJ BALA YADAV ..... Appellant
Through: Ms. Biji Rajesh, Ms. Eshita Baruah and Mr. Diwankar Sethi, Advocates. (M:8006627614)

versus

VED PRAKASH YADAV ..... Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This appeal has been preferred against the impugned judgment and decree dated 4th February, 2017 by which the suit filed by the Appellant was dismissed. Notice was issued initially in the Appeal upon which Respondent's counsel appeared and accepted notice on 25th August 2017. Subsequently the Respondent stopped appearing. On 8th March 2018, fresh notice was issued Dasti to the Respondent. Service was effected, as recorded in order dated 4th April 2018. Again notice was issued through the Process Server of the High court. Despite service, none has appeared and the matter has been heard.

2. Briefly, the case of the Appellant/Plaintiff (*hereinafter 'Plaintiff'*) is that she entered into an agreement to sell dated 5th March, 2004 in respect of Plot bearing no.43, Krishan Kunj Colony, Laxmi Nagar, Delhi-110092, admeasuring 150 sq. yards (approximately) with the whole of the structure

built thereon i.e. not including three shops upto the extent of ceiling level bearing private Nos. l, 2 & 3 (*hereinafter the 'Suit Property'*). As per the agreement with the Respondent/Defendant (*hereinafter 'Defendant'*), it is the Plaintiff's case that Rs.9 Lakhs was paid in cash to the Defendant. However, despite receiving the said payment and the Plaintiff trying to finalize the sale transaction, the Defendant did not honour his commitments. The Plaintiff further submits that she had adequate funds to pay the remaining sale consideration. However, the Defendant avoided performing his obligations. Various reminders were given to the Defendant for execution of the sale deed, however, to no avail. Finally, the Plaintiff realised on 9th May, 2005 that the Defendant was planning to sell the property to a third party and accordingly the present suit was filed seeking the following reliefs:

> "*It is prayed that a decree of specific performance be passed in favour of the plaintiff and against the defendant ordering the defendant to perform his part of the contract and accept the balance sale consideration of rupees 20,00,000/- and execute the sale deed and get registered in favour of the plaintiff, thereby selling the property No.43, Kishan Kunj colony, Laxmi Nagar, Delhi-92 - built on an area 150 sq. yards approximately excluding three shops upto ceiling level, (shown in red colour in the plan annexed and in the photographs),and in case of his failure, this Honourable court may be pleased to execute the sale deed itself, in favour of the plaintiff.*
>
> *It is further prayed that a decree of Injunction be passed in favour of the plaintiff and against the defendant, restraining the defendant, from selling, transferring/alienating the property no. 43, Kishan Kunj Colony, Laxmi Nagar, Delhi -92 (as shown in red colour in the plan annexed and also shown in*

photographs), to any third person or to any person other than the plaintiff."

3. In the Trial Court, the defence of the Defendant was that the agreement to sell was a forged and fabricated document and that fraud was played upon the Defendant and the Defendant also denied the receipt of the amount of Rs.9 Lakhs. The following issues were framed in the matter on 15th September, 2011:

> "*1. Whether the Agreement to Sell is a forged and fabricated document? OPD*
> *2. Whether the amount as mentioned in the agreement has not been paid? OPD*
> *3. Whether there was any loan transaction between the defendant and brother of the plaintiff, if so its effect? OPD*
> *4. In case issue no.1 is decided against the defendant, whether the plaintiff was ready and willing to perform his part of obligation as contained in the agreement? OPP*
> *5. Whether the plaintiff is entitled to a decree of specific performance as prayed for? OPP*
> *6. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP*
> *7. Relief."*

4. The Plaintiff filed her evidence as PW-1. She exhibited the following documents:

- Ex PW1/1 – original agreement for sale;
- Ex.PW1/2 – site plan of the suit property;
- Ex.PW1/5 & Ex.PW-1/6 – legal notice dated 26th April, 2005, along with UPC receipt;
- Ex.PW-1/3 – receipt issued by the Sub-Registrar office for inspection

on 25th April, 2005;

- Ex.PW-1/4 - Deposit slip for Rs.20 Lakhs.

5. In her cross examination, PW-1 stated that she resides with her parents and she has a son. She also stated that apart from her salary, she does not have any other source of earning. In her affidavit, she primarily proved the agreement to sell dated 5th March, 2004. She stated that she was always ready and willing to perform her part of the contract, however, the Defendant failed to honour his obligations. She visited the office of the Sub-Registrar on 30th December, 2004 and waited till 4:00 pm but the Defendant did not turn up. Thereafter, she got the legal notice issued. She stated that the Defendant had received a sum of Rs.9 lakhs but despite repeatedly approaching him, he refused to execute the sale deed. She deposed that a sum of Rs.9 Lakhs was paid in total. She denied the transaction of Rs.35. Lakhs between the Defendant and her brother. She also denied that the agreement was executed fraudulently. She did not have any document to prove the source of funds and deposed that she had arranged the amounts through her brother, father and *Maasi*. She claimed that she had taken the loans from them and some amounts have been cleared by her. She further stated that she had paid Rs.9 Lakhs and the remaining Rs.20 Lakhs has been deposited in the Court as per order dated 18th August, 2005. She stated that on the day when she had gone to the Sub-Registrar's office, since the Defendant did not turn up, she deposited the amount in the bank and later withdrew the same and deposited it in the Court. She also stated that she had the full amount with her prior to the agreed date in March and April, 2005. She denied the suggestion that the suit was a proxy litigation on behalf of her brother.

6. One Mr. Nasiruddin, who was a witness to the agreement to sell, deposed as PW-2. He confirmed the execution of the agreement. He stated that out of the total consideration of Rs.29 Lakhs, Rs.20 Lakhs was to be paid on or before 30th December, 2004. He identified his own signatures as also the signatures of other witness Mr. Ashok Sharma and as also the signatures of the Plaintiff & Defendant. In his cross-examination, he stated that the amount of Rs.4 to Rs.5 Lakhs was given in March, 2004 in his presence. He stated that the agreement was attested by the Oath Commissioner/Notary Public. He claimed that he had accompanied the Plaintiff to the Defendant's house to offer the payments to the Defendant. To a suggestion put as to on what date Mr. Vinod Yadav got the signatures of the Defendant on Ex.PW-1/1, he responded by stating that "*Vinod Yadav ji ne nahi plaintiff ne karvay hain*". He also stated that it is incorrect for the Defendant to allege that Mr. Vinod Yadav procured the signatures by representing the same to be loan document. He also confirmed that Ex.PW-1/1 was totally typed and there were no blanks in the same. One Mr. Ashok Sharma filed his affidavit as PW-2 but did not appear for cross-examination.

7. The Defendant filed his affidavit as DW-1. He stated that he had no dealing, whatsoever, with the Plaintiff and he only knew the Plaintiff's brother. He claimed that the Plaintiff and her brother have played a fraud upon him. He also claimed that the suit property is the only accommodation where he lives with his family members and that he has no alternate accommodation. He also claimed that he had already sold 2 shops out of total 5 shops. He continues to be the owner of shop nos.1, 4 & 5. He stated that he has given possession of shop no.1 to the Plaintiff's brother. He claimed that the agreement to sell was a forged and fabricated document.

He also stated that he has not received any money from the Plaintiff. He claimed that the signatures on the agreement are not his signatures. In paragraphs 7 and 8 of his affidavit, however, he stated as under:

> "*7. That the advance made by the plaintiff stand forfeited and the agreement stood cancelled. The defendant has categorically denied the agreement; but he has merely interpreted the terms mentioned in the so called agreement.*
> *8. That neither did I execute any agreement nor received any money or consideration thereof. No question ever arose for the plaintiff to offer any amount to me as I never intended to sale the suit property. The plaintiff never met me before the filing of this case. I never received any notice or money from the plaintiff. The plaintiff did not have sufficient money and filed the false case against me in connivance with her brother Vinod Kumar with mala-fide intention to grab the property.*"

8. In his cross-examination, he deposed that he had not filed any complaint against the Plaintiff and her brother for the alleged fraud which he claimed that they have committed. He also stated that he did not have any document to prove the loan amount of Rs.3.5 lakhs taken from Mr. Vinod Yadav. On seeing the agreement to sell, he admitted his signatures at points A, A1, and A2 but denied the signatures at page 4 i.e., at points A3 and A4. He also claimed that none of the thumb impressions are his. He also denied that he had gone with the Plaintiff to Tis Hazari to prepare the agreement. He completely denied having entered into the agreement to sell for a consideration of Rs.29 Lakhs. He also denied having received the amount of Rs.9 Lakhs. He further denied that the Plaintiff approached him on 29th December, 2004 with the further sum of Rs.20 Lakhs. He categorically

denied that he visited the Tis Hazari courts or that PW-2 Mr. Nasiruddin was present. He denied that the stamp paper was purchased by him. He denied almost all the suggestions which were put to him.

9. The Trial Court, after looking at the evidence on record, dismissed the suit of the Plaintiff as being meritless. The Trial Court arrived at a finding that the agreement to sell is forged and fabricated.

10. A perusal of the documents on record reveals that the agreement dated Ex.PW-1/1 is admitted to have been signed by the Defendant at points A, A1 and A2. He only disputes signatures at points A3 and A4. The signatures at points A2 and A4 clearly appear to be from the same pen and the Trial Court's finding, that the signatures at points A3 and A4 are fraudulent, seems to be incorrect. The Trial Court is comparing the signatures at points A3 and A4. At point A3 there is a thumb impression below which some person has written the name of the Defendant. The name which is written is completely in a different pen and in different writing. However, what is relevant is the signature at point A4 which cannot be seriously disputed. Moreover, at the time of admission/denial the noting put by learned counsel for the Defendant is "*only signatures are admitted and contents denied*". This admission/denial took place on 9th March, 2007. The order passed by the Joint Registrar on the said date is as under:

> "*9.03.2007*
> *CS(OS) 1148/2005*
> *Present : Mr. Ramesh Saraf, Counsel for plaintiff.*
> *Mr. L. S. Chaudahry, Counsel for defendant.*
> *Cost Rs. Two thousand stated to have been paid and received by the plaintiff counsel. Defendant counsel has taken up documents of the plaintiff side for*

admission-denial wherein <u>Agreement to Sell, subject matter of this suit, has been admitted only by signatures of the defendant and denying the contents. Accordingly, document is not given exhibit mark.</u> No further document has been filed from defendant side. Matter is already fixed before the Hon'ble Court on 3.5.2007 for hearing on issues. Let the matter be placed before the Hon'ble Court on the date already fixed."

11. From this, it is clear that the Defendant did not seriously dispute his signatures in the agreement to sell. It appears that the Defendant had a re-thinking by the time he filed his affidavit in evidence and his oral evidence wherein he claimed that the signatures at points A, A1 and A2 are his signatures and he denied his signatures at points A3 and A4. Point A3, in any case, is not the Defendant's signature but is a thumb impression. Even if the thumb impression is disputed, the signature at point A4 is clear and is with the same pen and in the same writing as the signatures at points A, A1 and A2. The Defendant is, therefore, wrongly denying his signatures.

12. Another interesting aspect of this case is paragraphs 7 & 8 of the affidavit in evidence of the Defendant. These two paragraphs are contradictory to each other. Whereas in the paragraph 7, the Defendant stated that the advance money has been forfeited and the agreement stood cancelled and in very next paragraph, the Defendant submits that he did not execute any agreement and had not received any consideration. These are both self-destructive pleas.

13. Moreover, even taking the Defendant by his statement, that he admits the signatures at point A2, it is implausible to believe that he signed on any blank papers. The clause at page 3, where signatures at point A2 appear,

reads as under:

> "*And whereas the First Party has agreed to sell and the Second Party has agreed to purchase the above said property for a total sum of Rs.29,00,000/- (Rs. Twenty Nine Lac Only). That the First Party has now received a sum of Rs.4,16,220/- (Rs. Four Lacs & Sixteen thousand two hundred twenty only) in cash & a sum of Rs.4,83,780/- (Rs.Four Lacs & eighty three thousand seven hundred eighty only) by cash (Sd/- Ved Prakash) on dt. ____ towards the earnest money, which is hereby acknowledged by the First Party, and the balance consideration amount of Rs.20,00,000/- (Rs.Twenty Lacs only) Shall be payable on or before 30/12/2004.*
> ...."

14. From the above clause it is clear that the Defendant received a sum of Rs.9 Lakhs from the Plaintiff. The Trial Court has highlighted the contradiction in the Plaintiff's deposition that she initially said that a sum of Rs.4.22 lakhs has been paid, whereas from the clause it appears that only Rs.4.18 Lakhs was paid. The Plaintiff's deposition reads as under:

> "..................
> *I paid the consideration in 2-3 installments. I cannot say how much amount was paid in each instalments, however, I paid about Rs.4.22 lacs and paid the remaining amount in one go and paid Rs. 9 lacs in total. I do not remember the dates of payment. I paid the aforementioned amount of Rs.4.22 lacs prior to entering into the agreement to sale.*
> ...."

15. A perusal of the same shows that she has, during cross-examination, given the approximate amounts that have been paid by her but she is clear that Rs.9 Lakhs were paid in total. This amount is consistent with the plaint

as well the agreement to sell. In paragraph 3 of the plaint, the Plaintiff clearly states that she had paid Rs.9 Lakhs. Thus, there is no contradiction as has been found by the Trial Court. Insofar as the source of funds are concerned, the Plaintiff said that she has borrowed the same from relatives.

16. The manner in which the Trial Court has arrived at the conclusion that the signatures are forged is improper. The allegation of forgery is a serious one and finding of forgery ought not to be arrived at without proper expert evidence. A Court of law is not fully equipped to analyse signatures. On the documents, the noting of the counsel during the admission/denial, appears at point A4. The said noting clearly confirms that the signatures are admitted. In the light of such a categorical noting, the Trial Court could not have arrived at a conclusion that the signatures were forged and fabricated. There was no answer by the Defendant to page 3 of the agreement to sell, except raising an issue that the words cheque were cut out and cash was written. So long as the signatures at page 3 at point A2 were admitted, the receiving of Rs.9 Lakhs cannot be disputed.

17. It cannot be disputed that the present suit came to be filed on 18th August, 2005 itself, which is just a few months after the last date of concluding the transaction and the date 30th December, 2004. The Plaintiff, in compliance of the order dated 18th August, 2005, deposited the entire balance sale consideration in the Court. From the overall facts it is clear that the agreement is not forged or fabricated. The Plaintiff was ready and willing to pay the entire amount of the sale consideration. Even the receipt showing the visit to the Sub-Registrar's office has been placed on record by the Plaintiff, though that has no meaning as the same relates to an inspection dated 25th April, 2005.

18. In the facts and circumstances of the present case, this Court is of the opinion that the Defendant is liable to return to the Plaintiff a sum of Rs.9 Lakhs, which he has received, along with interest @ 8% per annum from the date of filing of the suit till the date of payment. Decreed accordingly. The amount lying deposited with this Court is liable to be returned to the Plaintiff along with all the interest accrued thereon. In the facts and circumstances of the present case, considering that the Defendant took contradictory pleas in his affidavit and disputed his signatures, after admitting them during admission/denial, the Plaintiff is also entitled to costs of Rs.1 Lakh.

19. The appeal is allowed. Decree sheet be drawn up. All pending applications stand disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 04, 2018/*dk*