

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

% **Date of decision: 18<sup>th</sup> October, 2019.**

+ **CS(OS) 491/2019 & IAs No.13052/2019 (u/O XXXIX R-1&2 CPC), 13054/2019 (u/S 80(2) CPC) & 13055/2019 (for condonation of 303 days delay in re-filing the suit)**

**KARTAR SINGH**

**..... Plaintiff**

Through: Mr. Bharat Bhushan and Mr. Sahil Aeron, Advs.

Versus

**DELITE TECHNO BUILD PVT. LTD. AND ORS. ....Defendants**

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. The plaintiff has instituted this suit against four defendants namely (i) Delite Techno Build Pvt. Ltd., (ii) Sushil Kumar Gupta, (iii) Mahender Kumar and (iv) The Govt. of NCT of Delhi, for

(a) declaration as null and *void ab initio* of the Sale Deed dated 13<sup>th</sup> March, 2010 executed by the plaintiff in favour of the defendant No.1 and duly registered on 13<sup>th</sup> March, 2010 in the office of the Sub-Registrar, Delhi in respect of (I) agricultural land measuring 14 bighas and 17 biswas bearing Khasra Nos.17/18/1 (4-1), 26/7/2 (2-7), 26/14 (4-9) and 27/12 (4-0) situated in the area of village Neelwal, Delhi-110041; (II) half share in land measuring 52 bighas 2 biswas i.e. 26 bighas 1 biswas out of Khasra Nos.13/3 (4-16), 4 (5-18), 26/3/2 (2-2), 7/1 (2-6), 8 (4-11), 13/2 (3-6), 17/1 min. (3-12), 27/18 (4-16), 23 (4-16), 24 (4-16), 25/2 (4-5), 27/14/2 (0-10), 17 (4-16) and 31/7/2 (1-12)

situated in the area of village Neelwal, Delhi-110041; and, (III) 1/4<sup>th</sup> share in land measuring 4 biswas i.e. 01 biswa out of Khasra No.27/27 (0-4) situated in the area of village Neelwal, Delhi-110041;

and in the alternative, for a direction to the defendants to pay the remaining sale consideration amount along with interest @ 24% per annum from 13<sup>th</sup> March, 2010 till realisation of the amount to the plaintiff;

(b) declaration as null and void of the mutation entry affected on 12<sup>th</sup> July, 2017 in the records of Sub Divisional Magistrate, Punjabi Bagh, Delhi; and,

(c) permanent injunction restraining the defendants from dealing with the agricultural land and/or from creating any encumbrances with respect thereto.

2. The plaintiff, in the plaint has pleaded (i) that the cheques for total Rs.15,30,00,000/- recorded in the Sale Deed to have been handed over by the defendant No.1 to the plaintiff towards sale consideration were in fact not handed over by the defendant No.1 to the plaintiff; (ii) that the plaintiff repeatedly reminded the defendant No.1 to pay the sale consideration but the defendant No.1 failed to do so; (iii) that the plaintiff moved an application on 12<sup>th</sup> May, 2010 before the Tehsildar with request that no mutation be affected in the name of defendant No.1; (iv) that in a joint meeting between the plaintiff and the defendant No.1, it was agreed that some amount of the sale consideration would be adjusted in the payment made by Robot Properties Pvt. Ltd. to the plaintiff and the defendant No.1 assured payment of remaining sale consideration, representing that he will take possession and file application for mutation only after the consideration had been paid;

(v) however, the defendant No.1, without paying the sale consideration, on 15<sup>th</sup> July, 2013 applied for mutation of the property and mutation was effected in favour of the defendant No.1 on 12<sup>th</sup> July, 2017; (vi) that the plaintiff filed objections to the mutation and proceedings in which regard were pending but the defendant No.3 Mahender Kumar, Advocate engaged by the plaintiff concealed from the plaintiff the factum of mutation having been affected; (vii) that the plaintiff is still in physical and cultivatory possession of the land; and, (viii) that the plaintiff has also lodged complaint dated 8<sup>th</sup> April, 2018 against the defendant No.1 and its Director defendant No.2 with the Economic Offences Wing, Delhi Police and has also filed a complaint against the defendant No.3 Mahender Kumar, Advocate.

3. The suit instituted on 1<sup>st</sup> November, 2018 and re-filed on 31<sup>st</sup> August, 6<sup>th</sup> September and 11<sup>th</sup> September, 2019 came up first before this Court on 20<sup>th</sup> September, 2019, subject to office objection as to valuation and court fees. However, on it being enquired from the counsel for the plaintiff, as to how the suit valued for the purposes of court fees and jurisdiction in paragraph 37 of the plaint as under:

*“37. That the suit for the purpose of valuation of jurisdiction is valued at Rs.15,30,00,000/-, and for the purpose of court fee is ascertained as per the article 17(i)(iv) of the Court Fees Act, as the Plaintiff is in continued possession of the entire Suit Property and fixed court fee of Rs.20/- has been affixed. For the relief of permanent injunction is valued at Rs.130/- on which requisite court fees has already been affixed on the plaint. Court fee on damages shall be paid on the basis of damages which may be awarded by this Hon’ble court.”*

was correctly valued for court fees and jurisdiction, the counsel for the plaintiff, notwithstanding office objection, sought adjournment and which was granted subject to the plaintiff depositing costs of Rs.2,000/- with the Delhi High Court Advocates Welfare Trust and the suit posted for today.

4. The counsel for the plaintiff, on enquiry states that costs have been deposited.

5. The counsel for the plaintiff has today first drawn attention to “landmark judgment in ***Suhrid Singh Vs. Randhir Singh*** (2010) 12 SCC 112” and particularly to paragraph 7 thereof as under:

*“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs.19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a*

*declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.”*

and has contended that since the plaintiff is in possession of the land, the plaintiff is entitled to institute the suit with fixed court fee. It is further contended that the plaintiff has not sought the relief of possession and only sought the relief of declaration of possession of the plaintiff.

6. I have enquired from the counsel for the plaintiff, whether the plaintiff claims to be in position of A or B, in the illustration in the paragraph reproduced above of **Suhrid Singh** supra.

7. The counsel for the plaintiff states that the plaintiff is in position of A.

8. As per **Suhrid Singh** supra, an executant to a document, seeking annulment thereof, is required to sue for cancellation thereof as distinct from, for declaration of the document as invalid, and to pay ad valorem court fee as per consideration stated in the Sale Deed. The plaintiff has not sued for cancellation but for declaration of invalidity and which is the remedy provided for a non-executant to a document, and also not valued the suit for the purposes of court fee and jurisdiction as per the consideration set out in the Sale Deed. Thus the claim of the plaintiff is contrary to the “landmark judgment” of the counsel for the plaintiff and the said judgment, rather than helping the plaintiff, is against the plaintiff.

9. The counsel for the plaintiff having also argued that the plaintiff is not seeking the relief of recovery of possession, I have enquired from the counsel for the plaintiff, (i) whether not the law as laid down in **Anathula Sudhakar Vs. P. Buchi Reddy** (2008) 4 SCC 594, **Savyasachi K. Sahai Vs. Union of India** (2017) SCC OnLine Del 8818 (DB) [SLP(C) No.16449-

16451/2017 preferred whereagainst was dismissed on 10<sup>th</sup> December, 2018], *Pankaj Bajaj Vs. Meenakshi Sharma* 2013 SCC OnLine Del 2303, *Institute of Human Behaviour & Allied Sciences Vs. Govt. of NCT of Delhi* 2012 SCC OnLine Del 1373, *S.S.P. Buildcon P. Ltd. Vs. M.C.D.* 2010 SCC OnLine Del 3260, *Ishmal Devi Vs. Delhi Development Authority* 2009 SCC OnLine Del 2550 and *Navalram Laxmidas Devmurari Vs. Vijayaben Jayvantbhai Chavda* 1997 SCC OnLine Guj 83 with respect to open land is, that the possession thereof is presumed to be of title holder thereof and whether not as of today, the defendant No.1, having registered Sale Deed of the land in its favour, is the title holder thereof; (ii) whether not the mutation sought by the defendant No.1 of the agricultural land in its favour as far back as in 2013 and effected on 12<sup>th</sup> July, 2017 also shows the possession of the land to be of the defendant No.1; (iii) what is there to show that the plaintiff is in possession of the land; and, (iv) once it is so, whether not the claim of the plaintiff for declaration without seeking the consequential relief to which the plaintiff as per own averments is entitled to, is barred by the proviso to Section 34 of the Specific Relief Act, 1963.

10. The counsel for the plaintiff only states that Khasra Girdawari till the year 2015 is in favour of the plaintiff and the plaintiff along with the plaintiff has produced photographs of himself on the land, showing his own physical possession of the land.

11. I am afraid, the same does not answer the queries raised.

12. The counsel for the plaintiff has next referred to the judgment dated 24<sup>th</sup> January, 2018 of a Single Judge of the High Court of Madhya Pradesh in W.P. No.4995/2015 titled *Gangesh Kumari Kak Vs. State of M.P.* and to

the paragraph thereof referring to ***Government of Orissa Vs. Ashok Transport Agency*** (2002) 9 SCC 28.

13. The said judgment is with respect to void and voidable transactions and not relevant for the purpose of valuation of suit for purposes of court fees and jurisdiction.

14. As per the plaint of the plaintiff, the Sale Deed is void *ab initio* and the counsel for the plaintiff also contends so.

15. Attention of the counsel for the plaintiff is drawn to Section 55(4)(b) of the Transfer of Property Act, 1882, providing that where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, the plaintiff is entitled only to a charge upon the property in the hands of the buyer without consideration. The same suggests that even if the consideration of the Sale Deed executed by the plaintiff has not been received by the plaintiff, the same does not invalidate the Sale Deed and the plaintiff as seller is only entitled to recover the un-paid sale consideration. It has been enquired, how the Sale Deed can be said to be void *ab initio*.

16. The counsel for the plaintiff has referred to the dicta of the High Court of Punjab and Haryana in ***Surjit Kaur Vs. Karamjit Kaur*** MANU/PH/1176/2012 and ***Om Parkash Vs. Bimla Devi*** 2014 SCC OnLine P&H 10424 and contends that it is the possession which is material.

17. However, as per the “landmark judgment” cited by the counsel for the plaintiff himself, possession is relevant only when a non-executant to a document is suing for declaration of invalidity of the document and not when the executant of a document is seeking cancellation thereof.

18. I have in *Anuradha Gupta Vs. Veena Devi* 2017 SCC OnLine Del 9646 relying on *Suhrid Singh* supra, also held that a executant to a deed suing for cancellation thereof has to pay ad valorem court fees on consideration set out in the deed. To the same effect is judgment of a Co-ordinate Bench in *Manoj Kumar Gupta Vs. Sheela Devi* 2014 SCC OnLine Del 4474 and of the Division Bench of the High Court of Punjab & Haryana in *Tarsem Singh Vs. Vinod Kumar* 2011 SCC OnLine P&H 8146. Mention may also be made of *Harish Relan Vs. Kaushal Kumari Renal* 2015 SCC OnLine Del 11528 [DB].

19. The plaintiff is thus not found to have valued the suit properly for the purpose of court fees and jurisdiction and the plaint is liable to be rejected.

20. The plaintiff, if sues afresh, to along with the fresh proceedings if any, file a copy of the plaint in this suit as well as the order dated 20<sup>th</sup> September, 2019 and today's order in this suit and to, besides addressing on the aspect of valuation, also satisfy the Court on the necessity to implead the defendant No.3 Mahender Kumar, Advocate against whom no relief has been claimed and to show how the relief before a Civil Court, of cancellation of mutation is available and whether not the complete remedy thereagainst is provided in the Delhi Land Revenue Act, 1954.

The suit is disposed of.

**RAJIV SAHAI ENDLAW, J.**

**OCTOBER 18, 2019/‘bs’..**