

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

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Date of decision: 26th March, 2019

+ **CS(OS) No.169/2019 & IA No.4367/2019 (u/O XXXIX R-1&2 CPC).**

RAVINDER SINGH & ANR.

..... Plaintiffs

Through: Mr. Vijay Kr. Gupta and Mr. Mehul
Gupta, Advs.

versus

SARESH CHAND PUNJ ALIAS SURESH CHAND PUNJ

(SINCE DECEASED) THROUGH LRs & ORS Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.4368/2019 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CS(OS) No.169/2019 & IA No.4367/2019 (u/O XXXIX R-1&2 CPC).

3. The two plaintiffs viz Ravinder Singh and Puneet Bahri have instituted this “suit for specific performance and permanent injunction” pleading:-

- (i) that a) the deceased defendant no.1 Suresh Chand Punj @ Suresh Chand Punj (represented by his wife, daughter and two sons); b) defendant no.2 Vinod Kumar Punj @ Venode Kumar; and, c) Late Smt. Shashi Bala were the auction purchasers from the Office of Settlement Commissioner, Ministry of Rehabilitation, of leasehold property built on land *ad measuring* 200 sq. yds. bearing no.30 Block No.47-E, East Patel Nagar, Delhi;

- (ii) that M/s Zenith Exports (India), a partnership of defendants no.1&2 had availed of financial assistance from Punjab & Sindh Bank;
- (iii) that the deceased defendants no.1&2 had mortgaged their 1/3rd share each in the aforesaid property with Punjab & Sindh Bank and Smt. Shashi Bala had stood as personal guarantor for repayment of the financial assistance availed of from Punjab & Sindh Bank; Smt. Shashi Bala died intestate on 10th September, 1982 leaving deceased defendant no.1 and defendant no.2 as her sons and the deceased defendant no.1 and defendant no.2 equally inherited 1/3rd share in the suit property of Smt. Shashi Bala, making the deceased defendant no.1 and defendant no.2 owners in equal share of the property;
- (iv) that in the year 1985, Punjab & Sindh Bank instituted a suit for recovery of Rs.2,93,779.84/- in the High Court of Delhi and vide judgment and decree dated 20th February, 2002 the said suit was allowed and the decree therein subsequently transferred to the Debt Recovery Tribunal (DRT)-02, New Delhi and Recovery Certificate No.85/2009 issued with 2/3rd share of the property continuing to be mortgaged with Punjab & Sindh Bank;
- (v) that vide order dated 18th September, 2017 the remaining 1/3rd share of the property was also attached; in this manner the whole property was attached; however the matter remained sub

judice before the Recovery Officer, DRT-02, Delhi and the property could not be auctioned;

- (vi) that the defendant no.1 died leaving his wife, daughter and two sons;
- (vii) that the defendants no.1&2 made the defendant no.3 Deepak Sharma their agent and an Agreement to Sell dated 31st August, 2017 was executed between defendant no.3 and defendant no.1(c) who is one of the sons of the defendant no.1 acting on behalf of other heirs of defendant no.1 as well as defendant no.2, whereunder the defendant no.3 paid a sum of Rs.1 crore to the defendant no.1 and deposited Rs.4.90 crores with the DRT; the defendants no.1&2 also nominated the defendant no.3 to look for a buyer with respect to the subject property;
- (viii) that the defendant no.3 acting on behalf of defendants no.1&2 and claiming to be successful buyer in DRT proceedings vide Recovery Certificate No.85/2009, entered into an Agreement to Sell dated 30th October, 2017 with the plaintiff no.2, of sale of the said property to the plaintiff no.2 for Rs.7.75 crores; the plaintiff no.2 paid earnest money of Rs.50,00,000/- vide cheques dated 28th October, 2017 and 4th November, 2017 to the defendant no.3; the plaintiff no.2 transferred another sum of Rs.5,00,000/- to the defendant no.3 via RTGS on 15th December, 2017;
- (ix) that the defendant no.3, acting on behalf of defendants no.1&2 entered into another Agreement to Sell dated 2nd November,

2017 with the plaintiff no.1 for sale of the said property for a total consideration of Rs.8.64 crores and received earnest money of Rs.10,00,000/- from the plaintiff no.1 vide cheque dated 2nd November, 2017;

- (x) the plaintiffs no.1&2, upon coming to know of the Agreements to Sell entered into with each of them by the defendant no.3 of the same property, came together;
- (xi) on 27th November, 2018, the defendants approached the plaintiff no.1 for further payment of Rs.20,00,000/- for deposit with the Recovery Officer, DRT-02 to complete the sale of the property to the plaintiff no.1; the plaintiff no.1 paid the said amount of Rs.20,00,000/- vide Demand Draft dated 28th November, 2018;
- (xii) that towards December, 2018 the mortgage money/outstanding dues were deposited by the defendants no.1&2 and the DRT proceedings came to an end and title documents of the suit property released to the defendants;
- (xiii) that subsequently defendant no.3 has been arrested in a criminal case and at the time of institution of the suit also was in judicial custody;
- (xiv) that the defendants no.1&2 are refusing to execute the Sale Deed in favour of the plaintiffs inspite of repeated requests; and,
- (xv) that the plaintiffs no.1&2 are jointly seeking a decree of specific performance in their favour for a total sale consideration of

Rs.8,64,00,000/- and against which the plaintiffs have jointly paid Rs.80,00,000/- to the defendants;

4. The plaintiffs along with the plaint have *inter alia* filed (i) Agreement to Sell dated 31st August, 2017 between defendants no.1&2 on the one hand and defendant no.3 on the other hand; (ii) e-mails exchanged between the defendants; (iii) order dated 18th September, 2017 of the Recovery Officer-I, DRT-02, Delhi of attachment of property aforesaid; (iv) Agreement by defendant no.3 to sell the suit property to the plaintiff no.2; (v) Receipt dated 2nd November, 2017 executed by defendant no.3 of receipt of Rs.10,00,000/- from plaintiff no.1; and, (vi) Agreement dated 27th November, 2018 between defendant no.1(c) and the defendant no.3.

5. The star argument of the counsel for the plaintiffs is that though the defendant no.3 vide Agreement dated 30th October, 2017 had agreed to sell the property to plaintiff no.2 for consideration of Rs.7.75 crores and though the defendant no.3 vide Agreement dated 2nd November, 2017 had agreed to sell the same property to the plaintiff no.1 for a sale consideration of Rs.8.64 crores but the plaintiffs, upon joining hands, are claiming specific performance of the Agreement to Sell with higher consideration and without causing any prejudice to the seller.

6. The plaintiffs however forget that, (i) the agreement of each of the plaintiff is with the defendant no.3, who as per the averments in the plaint itself, has no title to the property; (ii) the property, as per the averments of the plaintiffs also, belongs to defendants no.1&2; (iii) the defendants no.1&2 have not agreed to sell the property to either of the plaintiffs or to the plaintiffs together; (iv) the case of the plaintiffs is that the defendants no.1&2

had agreed to sell the property to the defendant no.3; and, (v) till the defendants no.1&2, in pursuance to the Agreement to Sell in favour of the defendant no.3, transfer the property to the defendant no.3 and/or till the defendant no.3 seeks specific performance of the Agreement to Purchase from the defendants no.1&2 and in pursuance to the decree if any passed in the said suit for specific performance acquires title to the property, the defendant no.3 cannot convey any title in the property to the plaintiffs.

7. Thus, as of today the plaintiffs have no cause of action for the relief of specific performance of agreement of purchase of property against the defendant no.3 who himself has no title or possession of the property.

8. I may highlight that it is not the case of the plaintiffs that the defendant no.3 is seeking or is interested in seeking the relief of specific performance of the Agreement to Sell by the defendants no.1&2 of the property in favour of the defendant no.3. There is no plea that the defendant no.3 has performed his part of the agreement with the defendants no. 1 and 2 or is ready and willing to do so. There is no plea of the plaintiffs having performed their part of the Agreement with defendant no.3. It is not the case that the plaintiffs have paid the entire amounts paid by the defendant no.3 to defendants no. 1 and 2 or on behalf of defendants no. 1 and 2.

9. Faced therewith, the counsel for the plaintiffs states that the defendant no.3, while entering into the Agreement to Sell with the plaintiffs, was acting as the agent of the defendants no.1&2 and thus the Agreement to Sell by the defendant no.3 in favour of the plaintiffs is on behalf of the defendants no.1&2.

10. However the Agreement to Sell dated 30th October, 2017 by the legal heirs of the deceased defendant no.1 and by the defendant no.2 (though signed only by one of the sons of the deceased no.1 and not by any of the other defendants), shows the relationship even if any between the defendants no.1&2 on the one hand and defendant no.3 on the other hand to be only of an Agreement Seller and an Agreement Purchaser and does not show the defendants no.1&2 to have appointed defendant no.3 as their agent. It has been held in (i) *State of Mysore Vs. Mysore Spinning and Manufacturing Co. Ltd.* AIR 1958 SC 1002; (ii) *Gordon Woodroffe & Co. (Madras) Ltd. Vs. Shaik M.A. Majid* AIR 1967 SC 181; and, (iii) *Bhopal Sugar Industries Ltd. Vs. Sales Tax Officer, Bhopal* AIR 1977 SC 1275 that an Agreement Purchaser is not an agent of an Agreement Seller.

11. Else, an Agreement Purchaser has no rights in the property and no other right save to seek specific performance of the Agreement. Reference in this regard can be made to *Jiwan Dass Rawal Vs. Narain Dass* AIR 1981 Del 291, *Sunil Kapoor Vs. Himmat Singh* (2010) 167 DLT 806, *Satish Kapoor Vs. Ishwari Assudani* 2012 SCC OnLine Del 1808 (DB) [SLP (Civil) 21561/2012 preferred whereagainst was dismissed on 3rd August, 2012], *Cement Corporation of India Ltd. Vs. Life Insurance Corporation of India Ltd* (DB) 2014 SCC OnLine Del 4536 and *Chander Dutt Sharma Vs. Prem Chand* 2018 SCC OnLine Del 9903.

12. The counsel for the plaintiffs states that the defendants no.1&2 had orally constituted the defendant no.3 as their agent to sell the property. It is further argued that since the plaintiffs have pleaded so, the said plea of the plaintiffs has to be put to trial and the suit cannot be dismissed summarily.

13. To deal with the aforesaid contention, it is deemed appropriate to reproduce hereinbelow para 7 of the plaint. The same is as under:-

“7. That the Defendant no.3 has been made an agent of Defendant no.1&2 & Defendants had been together hand in glove with each other interalia on the grounds as under:-

- i. agreement to sell dated 31.08.2017 between Defendant no.3 & Defendant no.1*
- ii. Rs.1 crore was paid by Defendant no.3 to Defendant no.1.*
- iii. Deposited Rs.4.90 Crores before DRT.*
- iv. Power to nominate and look for buyer for better prices on behalf of Defendant no.1&2 and get benefitted by the difference of price.*

Pursuant to agreement to sell dated 31.08.2017 in respect of the suit property, Defendants were looking for a buyer who can pay more than Rs.6.50 crores as the sale consideration of the said property. This agreement to sell dated 31.08.2017 has been entered into as an agreement of agency by Defendant no.1(c) for and on behalf of Defendant no.1&2, appointing Defendant no.3 as their agent. On the basis of the said agreement, Defendant no.3 started looking for a potential buyer who could offer more than Rs.6.50 crores as the sale value of the said property to liquidate the bank dues.”

14. As would immediately be obvious from the aforesaid pleading, the plaintiff has not pleaded any separate verbal creation of agency and has merely pleaded the agreement in writing. A perusal of the said agreement in writing, photocopy only of which has been produced, shows the agreed sale consideration to be Rs.6.5 crores out of which Rs.1 crore vide Rs.20,00,000/-

in cheque and Rs.80,00,000/- in cash was paid/received prior to 31st August, 2017 and the balance Rs.5.50 crores was to be paid after 15 days of conversion of the leasehold rights in the land underneath the property into freehold. Though the said document refers to the defendants no. 1 & 2 by the term 'first party' and refers to the defendant no.3 by the term 'second party' and which terms are defined as including their respective heirs, executor, administrator and assignees but in my view the same also does not amount to the defendants no.1&2 constituting the defendant no.3 as their agent.

15. The plaintiffs along with the plaint have also filed a photocopy of the application claimed to have been filed by the defendant no.3 before the Recovery Officer of DRT-02. In the affidavit accompanying the said application also the defendant no.3 has described himself as the intending purchaser of the property and not as the agent of the defendants no.1&2.

16. Not only so, the defendant no.3 while entering into agreements to sell with each of the plaintiffs, as per documents in that respect filed by the plaintiffs, has described himself as the successful buyer in DRT, Delhi of the property and not as the agent of the defendants no.1&2.

17. The contention now of the counsel for the plaintiffs, faced with the difficulty pointed out is totally misconceived and not born out from pleadings and documents filed therewith.

18. The counsel for the plaintiffs has then contended that the plaintiffs, as the ultimate purchaser of the property, are entitled to specific performance against the owners of the property.

19. I may in this context reproduce hereinbelow the prayer paragraph 'a' of the plaintiffs qua the relief of specific performance as under:-

“a. Decree of Specific Performance of agreement to sell dated 02.11.2017 may kindly be passed against the Defendants & in favour of the Plaintiff no.1 by which Defendants jointly and/or severally may kindly be ordered to execute sale deed in respect of Property No.47/30 East Patel Nagar, Delhi in favour of the Plaintiff No.1 and if in any case the Defendant no.1 does not execute the said sale deed, then a nominee/representative of the court may kindly be appointed to execute the sale deed in this regard in favour of the Plaintiffs coupled with appropriate directions etc.”

20. It would be clear from above that the plaintiffs in this suit are claiming specific performance of the Agreement to Sell by the defendant no.3 in favour of the plaintiff no.1 and not of the Agreement to Sell dated 31st August, 2017 executed by the defendants no.1&2 in favour of the defendant no.3. It is not the plea of the plaintiffs that the plaintiffs as assignees of the rights of the defendant no.3 under the Agreement to Sell dated 31st August, 2017 executed by the defendants no.1&2 in favour of the defendant no.3, are entitled to seek specific performance of the Agreement by defendants no.1&2. The Agreement to Sell by the defendant no.3 in favour of the plaintiff no.1 and the receipt executed by the defendant no.3 in favour of the plaintiff no.2 also do not show assignment by the defendant no.3 of his rights under the Agreement to Sell with the defendants no.1&2 in favour of the plaintiffs or either of them. The defendants no. 1 and 2, being not parties to agreement dated 2nd November, 2017 of which specific performance is claimed, cannot be directed to perform the same. Moreover, if the defendant

no.3 has forfeited his right to seek specific performance from defendants no. 1 and 2, the defendants no. 1 and 2 cannot be directed to sell the property to the plaintiffs, to whom the defendant no.3 had agreed to sell the property. The defendants no. 1 and 2, cannot also be deprived of their right to contest the entitlement of defendant no.3 to seek specific performance.

21. The counsel for the plaintiffs then contends that by mere payment of monies by the defendant no.3 to defendants no.1&2 and by the plaintiffs no.1&2 to the defendant no.3, an agency is constituted.

22. I am unable to agree. Payment of money if without consideration creates a relationship of debtor and creditor and not a relationship of agency.

23. Section 15 of the Specific Relief Act, 1963 provides “Who may obtain specific performance” and the plaintiffs do not fall within the ambit thereof. The plaintiffs have no privity with defendants no. 1 and 2 who alone are owners of the property. The plaintiffs as aforesaid are also not representative in interest or the principal of any party to the agreement. Similarly, Section 19 provides, against whom specific performance may be obtained and against the defendants no. 1 and 2 do not fall within the ambit of persons against whom plaintiffs can enforce specific performance.

24. Besides the relief of specific performance, the only other relief claimed is of injunction. Since the plaintiffs are not found entitled to assert any rights in the property against the defendants no.1&2, the question of restraining the defendants no.1&2 from dealing with the property at the instance of the plaintiffs does not arise.

25. Thus the suit by the plaintiffs, as Agreement Purchasers from defendant no.3, of an immovable property which the defendant no.3 does not have title to, is not found to be maintainable and is misconceived and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

MARCH 26, 2019

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(corrected and released on 16.4.2019)

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