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

***Date of decision: 20th May, 2019***

\+ **CS(OS) 3116/2015**

SH KUSHAL K RANA ..... Plaintiff

Through: Mr. Aditya Singh, Advocate (M-9971919212)

versus

MAKHAN SINGH & ORS ..... Defendants

Through: None.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**<u>Prathiba M. Singh, J.</u> (Oral)**

1. The Plaintiff has filed the present suit for recovery for a sum of Rs.5,54,69,178/- against the Defendants – Sh. Makhan Singh and Smt. Balbir Kaur @ Smt. Mohinder Kaur as also Sh. Sarwan Singh.

2. The Plaintiff had entered into a agreement to sell dated 1st October, 2012 with Defendants No.1 and 2 in respect of agricultural land measuring 8 Bighas 11 Biswa, Khasra Nos. 1572/2 (3-18), 1731 Min (4-13), situated in revenue Estate of Village Chattarpur, Tehsil Hauz Khas (Mehrauli), known as "Farm No.5, Mulberry Drive, DLF Chattarpur, New Delhi" (*hereinafter 'suit property'*). As per the said agreement to sell, Defendants No.1 and 2 agreed to sell the suit property for a sum of Rs.10 crores to the Plaintiff. It is the case of the Plaintiff that he paid a total sum of Rs.4.25 crores to the Defendants, however, they refused to honour the commitments made under the said agreement to sell. Accordingly, he has preferred the present suit seeking recovery of the sum paid, along with interest.

3. The suit was listed on 14th October, 2015, on which date, summons

were issued. On 9th December, 2016, the right of Defendant No.1 to file the written statement was closed. Defendant No.2 entered appearance on 10th October, 2017. Defendant No.3 failed to appear despite service. Hence, on 10th October, 2017, the right of Defendant No.3 to file written statement was closed. On 27th September, 2018, the following issues were framed:

> *"1. Whether there is no privity of contract between the plaintiff and defendant no.4, if so what effect? OPD-4 and 5.*
> *2. Whether the plaintiff is entitled for a decree of recovery of Rs. 5,54,69,178/- against the defendants? OPP.*
> *3. Whether the plaintiff is entitled for interest, if so at what rate and for what period? OPP*
> *4. Relief."*

On the same date, Defendants No.1 to 3 were proceeded *ex-parte.*

4. The Plaintiff has thereafter led his evidence. On behalf of the Plaintiff, the Plaintiff himself has appeared as PW-1 and a Judicial Assistant from the Saket Courts Complex has appeared as PW-2. On 29th November, 2018, the Plaintiff's evidence was closed. On the said date, the Plaintiff made a statement that he does not claim any amounts from Defendant No.4- Sh. Ravinder Sharma and Defendant No.5 – Sh. Gurmeet Singh. The evidence now stands recorded and none appears for the Defendants.

5. In support of the case of the Plaintiff, the following documents, inter alia, have been exhibited on record:

- Ex.PW-2/5 – Agreement to sell dated 1st October, 2012;
- Ex.PW-2/6 – Receipt for a sum of Rs.1,50,00,000 dated 1st October, 2012;
- Ex.PW-2/7 – Registered Special Power of Attorney executed by Smt.

Mohinder Kaur in favour of the Plaintiff dated 4th October, 2012;

- Ex.PW-2/8 – Indemnity bond dated 4th October, 2012 executed in favour of the Plaintiff by Smt. Mohinder Kaur;
- Ex.PW-2/9 – Possession letter dated 4th October, 2012;
- Ex.PW-2/10 – Receipt for a sum of Rs.50 lakhs dated 25th October, 2012;
- Ex.PW-2/11 – FIR No.195/2013 dated 6th August, 2013, PS, Economic Offence Wing;
- Ex.PW-2/12 – Seizure memo document dated 24th September, 2013;
- Ex.PW-2/13 – Order dated 12th March, 2015 in bail application no.91/2013;
- Ex.PW-2/14 – Charge sheet

6. A perusal of the agreement to sell dated 1st October, 2012 exhibited as Ex.PW-2/5 and the remaining documents including indemnity bond, letter of possession, the Registered Special Power of Attorney and the two receipts shows that the transaction is not in dispute. In fact, in the bail application filed by Defendant no.1, vide order dated 12th March, 2015, Defendant No.1 was directed to pay a sum of Rs.10 lakhs, subject to final outcome of the matter, which amount, according to Ld. Counsel for the Plaintiff, Defendant No.1 has paid. The agreement to sell is an unregistered document. However, the receipts issued along with the agreement to sell clearly show that receipt of an amount of Rs.2 crores has, in fact, been acknowledged by the Defendants. The Plaintiff has appeared before the Court and has stated, on oath, that the property was offered to him through earlier Defendants No.4 and 5, who had negotiated the deal and Defendants No.1 and 2 had agreed to

sell the same and had received the advance/earnest money deposit. Apart from the documents which were executed at the time of entering into the agreement to sell, the Plaintiff paid a further sum of Rs.50 lakhs, which was also acknowledged by the Defendants. As per the affidavit-in-evidence filed by PW-1, in the last week of October, 2012 again, Defendant No.1 approached the Plaintiff for payment of Rs.2.25 crores. The Plaintiff has deposed that he had received cash amount of Rs.3.47 crores as agricultural income from sale of some other property and since the same was available, cash payment of Rs.2.25 crores was further made to the Defendants.

7. Defendant No.3 is stated to be the brother of Defendant No.2. It is stated by PW-1, that the said payment in cash was paid in the presence of Mr. Ashish Abrol. Thus, out of the said total sale consideration of Rs.10 crores, Rs.4.25 crores stood paid by the Plaintiff to the Defendants and the remaining sum of Rs.5.75 crores was outstanding.

8. The Plaintiff's case is that around November, 2012, he came to know that the property in question was a disputed property and various litigations were going on in respect of the same. He also came to know that various criminal complaints were pending in respect of the said property. PW-1 relies on FIRs lodged against one Smt. Mohinder Kaur who, according to him, has now turned out to be a fictitious person. Thereafter, when the Plaintiff tried to verify the identity of Defendant No.2, he realised that all the identity documents, ID proofs, address proof, etc. were also fake and fictitious and that fabricated Ids and address proofs were given to the Plaintiff for the purpose of this transaction. Despite repeated follow ups with Defendant No.1 and assurances by Defendant No.1 that the advance amount shall be returned, the amounts were not paid. After persistent follow ups,

Defendant No.1 paid to the Plaintiff a sum of Rs.50 lakhs through RTGS and also issued a cheque of Rs.1.19 crores in favour of the Plaintiff. The said cheque was dishonoured due to insufficient funds. That led to the filing of a complaint under Section 138 of the Negotiable Instruments Act being complaint case no.2001/2014 titled as ***Kushal K. Rana v. Makhan Singh*** which is stated to be pending.

9. Thus, out of the total amount paid by the Plaintiff, only a sum of Rs.50 lakhs was returned by Defendant No.1. Thereafter, Defendant No.1 stopped taking telephone calls of the Plaintiff and started avoiding the Plaintiff. The Plaintiff then, lodged an FIR being FIR No.195/2013 dated 16th August, 2013 for cheating, defrauding and impersonation. Defendant No.1 was arrested and taken into judicial custody. The investigation was going on. In his bail application, the Court directed Defendant No.1 to pay a sum of Rs.10 lakhs as a condition for release on interim bail. The said amount was then paid by Defendant No.1 to the Plaintiff. Thus, the case of the Plaintiff is that the Defendants No.1 to 3 are jointly and severally liable for returning the entire amount paid by the Plaintiff.

10. The Plaintiff has also produced PW-2 – Mr. Shiv Kumar Yadav from the Saket Courts Complex. He has exhibited various documents. Charge sheet has also been exhibited as Ex.PW-2/14. The adjudication thereof is stated to be still pending.

11. A perusal of all the exhibited documents and proceedings shows that there is no doubt that Defendants No.1 and 2 entered into this agreement to sell with the Plaintiff. The special power of attorney is a registered document. Though, Defendant No.2 is the party signing the document, Defendant No.1 who was acting as the front of Defendant No.2 was the

person receiving the money and has returned some of the amounts to the Plaintiff, including the sum of Rs.50 lakhs. The manner in which the transaction has been entered into, and the documents that have been exhibited clearly shows that Defendant No.1 has tried to stay out of the transaction though he was fully involved in negotiating and receiving the money. The property was shown to have been originally purchased by the Defendant No.1 from Defendant No.2 and both acted as the first party and confirming party in the agreement to sell dated 1st October, 2012. The receipts, which have been exhibited, clearly show that the Defendants have received the sums paid by the Plaintiff. The Defendants have, chosen not to appear despite being served. They are well aware of the proceedings which are pending before this Court. The FIR, the charge sheet, exhibited as Ex.PW-2/14, the receipts and all the other exhibited documents clearly establish that the transaction has been entered into. Even in the bail application, the Court directed Defendant No.1 to pay a sum of Rs.10 lakhs to the Plaintiff which Ld. Counsel for the Plaintiff submits that he has paid.

12. The exhibited documents reveal the following:

a) The agreement to sell entered into with Defendant No.1 as the first party and Defendant No.2 as the confirming party represents that Defendant No.2 was the absolute owner of the suit property. Defendant No.2 had entered into an agreement to sell with Defendant No.1 in respect of the said property, and later due to bonafide need, they decided to sell the same to the Plaintiff, for a total sale consideration of Rs.10,00,00,000/-. Out of this total sale consideration, a sum of Rs.1,50,00,000/- was to be paid as advance/earnest money at the time of signing the document. The remaining sale consideration of Rs.8,50,00,000/- was to be paid on or before 30th September, 2013, at the time of execution of the sale deed. In the event of default by either party of its obligations under the agreement, the other party had a right of specific performance of the agreement.

b) Accordingly, and in keeping with the terms of the agreement, the Plaintiff paid to the Defendants a sum of Rs.1,50,00,000/- as earnest money. The receipt of the amount was acknowledged Defendant No.1 vide receipt dated 1st October, 2012.

c) Thereafter, on 25th October, 2012, the Plaintiff paid to the Defendants a further sum of Rs.50,00,000/-, the receipt of which was acknowledged by Defendant No.1.

d) Additionally, the Plaintiff states in his evidence that he paid a further sum of Rs.2.25 crores in cash, which evidence has gone unrebutted.

e) The only sum that is stated to have been repaid by the Defendant to the Plaintiff was a sum of Rs.50,00,000/-, as also the amount of Rs.10 lakhs, directed to be paid by the High Court of Delhi in the bail application.

f) The repayment of Rs. 50 lakhs by Defendant no.1 to the Plaintiff clearly reflects an admission of the obligation to pay back.

13. Since the case has gone completely unrebutted, the Defendants who have admitted to receive a substantial sum of money from the Plaintiff, the documents having been established on record by PW-2, the FIR, the charge sheet including the evidence of PW-1, repeatedly mentioned the payment made by the Plaintiff in cash and the same has not been rebutted in any

manner whatsoever, the suit is liable to be decreed for a sum of Rs.3.65 crores with interest @ 8% per annum from the date of filing of suit till date. If the payment is made within three months, no further interest would be liable to be paid. If payment is not made within 3 months, then simple interest @ 10% per annum would be liable to be paid on the decretal amount.

14. The suit is decreed in the above terms. Decree sheet be drawn. All pending applications also stand disposed of.

**PRATHIBA M. SINGH**
**JUDGE**

**MAY 20, 2019/***Rahul*
*(corrected and released on 27th May, 2019)*