

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

% **Date of decision: 5th March, 2020.**

+ **CS(COMM) 89/2020 & IAs No.2627/2020 (u/O XXXIX R-1&2 CPC), 2628/2020 (for exemption), 2629/2020 (u/S 80(2) CPC) & 2630/2020 (for condonation of 4 days delay in re-filing)**

AJIT KUMAR MITTAL & ANR.

..... Plaintiffs

Through: Mr. Chetan Sharma, Sr. Adv. with
Ms. Meena C. Sharma and Mr. Amit
Gupta, Advs.

Versus

REKHA GARG & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The two plaintiffs namely (i) Ajit Kumar Mittal; and, (ii) Flowmech Engineers Private Limited have instituted this suit impleading, (i) Rekha Garg; (ii) Mahesh Garg; (iii) Yogesh Aggarwal; (iv) Amar Aggarwal; (v) Sudhir Aggarwal; (vi) Hari Om Prasad Sharma; (vii) Bhero Baba Info Solutions LLP; (viii) Chakradev Devcon Private Limited; and, (ix) The Sub-Registrar-IIA, District West, Paschim Vihar, New Delhi, as defendants, for:-

- (i) declaration cancelling Sale Deed dated 13th January, 2017 of land measuring 4 *bighas* 8 *biswas* in Khasra No.67//22/1/1 min. (1-08) and 67//19/2 min. (2-00) and Khasra No.67//22/1/2 (0-17) and 111//22/2 min. (0-03), situated in the revenue records of Village Mundka, Delhi and to the effect that the defendants no.1 to 7 have no right, title or interest in the said land and all subsequent mutations, sale deeds of the said land are

unauthorised, null, void and ineffective upon the rights of the plaintiffs;

- (ii) possession of the land aforesaid;
- (iii) declaration that the entire sale consideration of Rs.58,50,000/- for purchase of the land having been paid by the plaintiffs, the plaintiffs alone are the owners of the said land;
- (iv) mandatory injunction directing the defendant no.9 to correct entries in its records; and,
- (v) permanent injunction restraining the defendants from claiming any rights in the land aforesaid and/or from dealing with the same.

2. On a reading of the plaint, it was felt that the suit is not maintainable. The suit came up first before the Court on 25th February, 2020, when on the ground of non-availability of Ms. Meena Chaudhary Sharma, Advocate for the plaintiffs, adjournment was sought and the suit adjourned to today. Today the senior counsel for the plaintiffs has been heard on admission.

3. It is the case of the plaintiffs in the plaint, that (i) the plaintiff no.1 was a director and shareholder of SAS Info Solutions Private Limited (SAS) which has been illegally converted into defendant no.7 Bhero Baba Info Solutions LLP (BBISLLP) by defendants no.1 to 6; (ii) the basic asset of SAS, of which Sunil Jain was one of the directors, was the land aforesaid at Village Mundka; Sunil Jain was interested in selling the said land; (iii) the plaintiff no.1 approached Sunil Jain for purchase of the land aforesaid, value whereof was assessed at Rs.52,00,000/- in the year 2011; (iv) the plaintiffs

talked about the same with the defendant no.2, an acquaintance of the plaintiffs, who suggested that instead of purchasing the land in the name of the plaintiff no.1, the land be purchased in the name of a company, to enable use thereof for commercial purposes; (v) Sunil Jain offered to the plaintiff no.1, the entire shareholding of SAS, and it was finalised that the plaintiffs will purchase the entire shareholding of SAS and thereby also acquire title to the land aforesaid; (vi) the defendant no.2 induced the plaintiff no.1 to appoint his wife, defendant no.1 as director of SAS; the defendant no.2 also requested the plaintiff no.1 that although the total capital had been invested by the plaintiffs but the share distribution could be done later on as defendant no.1 was to be projected as Woman Entrepreneur before the Railway Department, to seek tender of solar project from the Indian Railways with whom the defendant no.2 was employed at a senior position; (vii) the plaintiffs paid the entire amount of Rs.58.50 lakhs for acquiring 100% shareholding of SAS and the erstwhile directors of SAS handed over physical possession of the land to the plaintiff no.1; (viii) the plaintiff no.1, in good faith, handed all title documents to defendants no.1&2; (ix) the plaintiffs and the defendant no.1, on 20th September, 2011, together purchased the shareholding, assets and liabilities of SAS against the payment of Rs.58.50 lakhs, through the funds of the plaintiff no.2 Company; (x) the plaintiffs, on 27th September, 2010, paid a sum of Rs.30 lakhs to SAS from the account of plaintiff No.2 for purchase of liabilities of SAS and pursuant to the said payment, the defendant no.1 was appointed as director of SAS on 29th September, 2010; (xi) the plaintiff no.2 transferred a sum of Rs.5,00,000/- to the account of defendant no.1 in October, 2010 and the same was transferred from the account of defendant no.1 to the account of

SAS and whereafter the plaintiff no.1 was appointed as director of SAS; (xii) the plaintiff no.2 thereafter transferred Rs.13,00,000/- to the account of SAS for purchase of liabilities of SAS and a sum of Rs.10,00,000/- to the account of defendant no.1 for purchase of shares on 20th December, 2010 and the defendant no.1 transferred the said amount to SAS – in this manner, the total amount of Rs.58.50 lakhs was paid by the plaintiffs only for purchase of shareholding, assets and liabilities of SAS and defendant no.1 was placed as director of SAS with maximum shareholding, inspite of her having not contributed any money; (xiii) SAS, through defendant no.1, on 10th February, 2015, admitted that Rs.43,00,000/- was lying deposited as SHARE APPLICATION MONEY for allotment of shares to plaintiff no.2 but no shares were ever allotted to either of the plaintiffs; SAS also admitted Rs.15.50 lakhs was lying towards other head; (xiv) believing the defendants no.1&2, the plaintiffs agreed to only 100 shares being transferred in the name of plaintiff no.1 and the remaining 89000 shares being allotted in the name of defendant no.1; (xv) the plaintiffs, from time to time, asked the defendant no.2 about the project, who always assured that it was in progress; (xvi) the plaintiff no.1 used to sign the balance sheet of SAS as and when got prepared by the defendants no.1&2 from their own Chartered Accountant and the plaintiff no.1 signed the balance sheet of SAS till the Financial Year 2013-2014; (xvii) no board meetings of SAS were held; (xviii) in the month of January, 2015 the plaintiff no.1 started smelling some foul play and asked his own Chartered Accountant to obtain the records of SAS from the office of Registrar of Companies; (xix) from perusal of the balance sheet and master data of SAS, the plaintiff no.1 came to know that no progress had been made about the solar project; (xx) the plaintiff no.1

approached the defendants no.1&2 but they pacified the plaintiff no.1; (xxi) believing the defendants no.1&2, the plaintiff no.1 did not take any action; (xxii) the plaintiff no.1, on further enquiries learnt that others had been appointed as directors of SAS by the defendant no.1; (xxiii) the plaintiff no.1 requested the defendants no.1&2 to supply to him the copies of the resolution of the Board of Directors and of the shareholders of SAS but none were delivered; (xxiv) in October, 2015, the plaintiff no.1 learnt that the defendants no.1&2, with the connivance of defendants no.3 to 6, fabricated a resignation letter dated 3rd February, 2014 and submitted the same to the Registrar of Companies, showing that the plaintiff no.1 had resigned from SAS and appointed defendants no.3 to 5 as directors of SAS; (xxv) the plaintiff no.1, on 16th October, 2015 made a complaint to the Registrar of Companies against the aforesaid actions of the defendants; (xxvi) the defendant no.1 alone could not have appointed the defendant no.3 as director of SAS; (xxvii) the defendants no.1 to 5, in furtherance of their fraudulent design changed the name of SAS to Bhero Baba Info Solutions Private Limited; (xxviii) the plaintiff no.1, on 5th February, 2016 filed another complaint dated 23rd December, 2015 with the Registrar of Companies against the defendants; (xxix) the defendants no.1 to 5, in furtherance of their illegal design, in 2016 further converted Bhero Baba Info Solutions Private Limited to BBISLLP, without even allotting shares to the plaintiffs; (xxx) the plaintiffs also learnt that the defendant no.1 had transferred her 89000 shares in SAS to one Mamta Aggarwal on 10th July, 2014, who held the same till September, 2015; (xxxi) the plaintiffs, on 11th April, 2016 filed a suit for declaration and permanent injunction, for declaration that the appointment of defendants no.3 to 6 as directors was

null and void and for declaration that the conversion of SAS into BBISLLP was null and void and for restraining the defendants from dealing with the property; (xxxii) the plaintiff no.1 also lodged a complaint and in pursuance to which an FIR No.0259 dated 3rd September, 2016 was registered with P.S. Mayapuri and which FIR is pending investigation; (xxxiii) that during the pendency of suit aforesaid filed by the plaintiffs vide plaint dated 11th April, 2016, the National Company Law Tribunal (NCLT) having exclusive power and jurisdiction to deal with the dispute was constituted; the plaintiffs thus withdrew the suit and vide order dated 18th October, 2016, the suit was disposed of with liberty to the plaintiffs to approach the NCLT; (xxxiv) the defendants no.1 to 7 sold the land aforesaid vide Sale Deed dated 13th January, 2017 to defendant no.8; (xxxv) the plaintiffs, on 13th July, 2018 filed an application under Sections 7(7), 119(4), 241(1), 169(8) and 251 of the Companies Act before the NCLT, which is now pending adjudication as Company Petition No.270/241/242/ND/2018; and, (xxxvi) the Sale Deed dated 13th January, 2017 does not create any right in favour of defendant no.8; (xxxvii) the cause of action paragraph 32 of the plaint is as under:-

“32. That the cause of action arose on various dates of year 2010 when the plaintiffs made payment to the directors of transferor-company for purchaser of suit property as well as to the creditors / directors of or to the transferor-company for allotment of shares of it so that the plaintiffs could acquire entire assets of the transferor-company including the suit property and handed over the possession of the suit property to the plaintiff. The cause of action further arose in 2010 when the plaintiff No.1 was appointed as Director of transferor-company as well as the defendant No.1, at the request and inducement of the defendants No.1

and 2 and when the defendant No.1 transferred maximum / large elephant portion of shareholding in her name and on various dates when the plaintiffs approached the defendants No.1 and 2 for allotment of shares in the transferor-company, for which the plaintiffs paid the value entirely. The cause of action arose on various dates when the plaintiffs approached the transferor-company and the defendant No.1 to transfer the shares to either of the plaintiffs as payment of which were already made, but no such shares were allotted. The cause of action arose on 10.02.2015 when the transferor-company admitted through defendant No.1 it owed Rs.43.00 Lakhs as share application money and Rs.15.50 Lakhs on other heads, but till date no such shares were allotted. The cause of action arose in October 2015, when the plaintiffs came to know that the defendant No.1 by creating forged and fabricated documents showed that the plaintiff No.1 resigned from the transferor-company before the Registrar of Companies in March 2015 and in his place appointed defendants No.2 to 6 as directors from time to time, that too by playing fraud. The cause of action further arose in 2016 when the defendants illegally changed the name of the transferor-company. The cause of action further arose in 2016 when the defendants No.1 to 6 in connivance with each other and to play fraud upon the plaintiffs and to government authorities, without following the provisions of Companies Act, the Rules and Regulations, converted the transferor company into an LLP i.e. the defendant No.7 herein. The cause of action arose in favour of the plaintiffs and against the defendants on 13.01.2017 when the defendants No.1 to 7 in connivance of each other, sold the property belonging to the transferor company, which in fact was of the plaintiffs, as the plaintiffs from their hard earned money bought the

shareholding in the transferor company, to the defendant No.8, which is actually their benami, bogus and fictitious company, vide the impugned sale deed, which is a result of fictitious, baseless and fraudulent act and conduct of misrepresentation and thus, without consideration being sham and bogus. The cause of action is still continuing.”

4. Shorn of verbosity, the case of the plaintiffs is that the defendant no.1, with the monies contributed by the plaintiffs acquired shareholding and control of SAS, which was the owner of the land aforesaid, but after illegally ousting the plaintiff no.1 from directorship of SAS, has converted SAS into BBISLLP and which in turn has sold the land to defendant no.8. The reliefs claimed of, cancellation of Sale Deed executed by defendant no.7 BBISLLP in favour of defendant no.8, recovery of possession of the land and injunctions, are all premised on the plaintiffs, by reason of having contributed monies with which defendant no.1 acquired shareholding and control of SAS, being the actual/real owner of shares held by defendant no.1 in SAS and having been illegally ousted from SAS.

5. Though the plaintiffs, in this suit also have sought declaration that the plaintiffs, by reason of having paid/contributed entire sale consideration are owners of the land, but,

(a) in law, merely by contributing/paying purchase consideration, the person paying does not become owner of the asset so purchased; the right of the person paying/contributing purchase consideration is only to recover the amount paid; reference in this context can be made to **Sudhir Khanna Vs. Jugal Kishore Khanna** MANU/DE/4695/2013, **K.L. Garg Vs. Rajesh Garg** 2013 SCC

OnLine Del 323 and *Satish Kumar Gupta Vs. Shanti Swaroop Gupta*
2018 SCC OnLine Del 9651;

(b) in law, in case of immoveable property, only the person in whose name Sale Deed is executed by seller, becomes the owner of the property, and not the person from whom purchase consideration flowed to the seller;

(c) the plaintiffs themselves have pleaded that the rights in the land were acquired not by having Sale Deed of land executed from SAS in favour of plaintiff no.1 but by acquiring shareholding and control of SAS; the plaintiffs thus cannot now claim adversely to SAS and claim that it was not SAS but plaintiffs who are owners; the plaintiffs, fully realizing the same, earlier filed a civil suit with the same averments as in the plaint in this suit, and asserting rights in SAS and impugning conversion of SAS into BBISLLP and to restrain the defendants no.1 to 7 herein from dealing with the land; however, the plaintiffs themselves plead that the said suit was not maintainable and was withdrawn, to approach the NCLT, which has been approached and which proceedings are pending; it is not understandable that if the Civil Court did not have subject jurisdiction to entertain earlier suit, how this civil suit, in effect claiming the same relief as claimed in earlier suit, is maintainable; though the Sale Deed executed by defendant no.7 BBISLLP in favour of defendant no.8 is of a subsequent date, but till the rights of plaintiffs in SAS are established and for which pleadings are pending before NCLT, the plaintiffs have no locus to challenge the Sale Deed or claim other reliefs.

6. As would be obvious from the aforesaid, the right of the plaintiffs to impugn sale deed of the land by defendant no.1 BBISLLP in favour of defendant no.8, is premised on the proceedings pending before the NCLT and till the plaintiffs succeed in the proceedings before the NCLT, the plaintiffs have no locus to challenge the sale of the land by BBISLLP in favour of defendant no.8 or to restrain defendant no.8 from dealing with the land.

7. I have thus enquired from the senior counsel for the plaintiffs how the plaintiffs, till succeeding in the NCLT, have any cause of action for this suit. It appears that once the plaintiffs succeed in the proceedings before the NCLT, the relief as sought in this suit shall follow. The plaintiffs themselves have pleaded that the exclusive jurisdiction to deal with the claims of the plaintiffs with respect to SAS is of NCLT. In fact the plaintiffs plead that they earlier instituted a suit for the reliefs without which the reliefs sought in the present suit cannot be granted but withdrew that suit on constitution of NCLT, with liberty to approach the NCLT.

8. The senior counsel for the plaintiffs states that there would be no restraint on defendant no.8 in dealing with the property in the interregnum.

9. The remedy if any of the plaintiffs therefore also is in the proceedings before the NCLT only and not before this Court. The cause of action cannot be so split up.

10. Though other questions on merits, as to the very maintainability of the suit, arise for consideration, but I am refraining from discussing the same lest the said discussion prejudices the plaintiffs before the NCLT.

11. The suit is thus dismissed as not maintainable.

No costs.

RAJIV SAHAI ENDLAW, J

MARCH 05, 2020

‘pp’..

