



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

% Judgment delivered on: 04.07.2022

+ **FAO 166/2021 & CM. APPLS. 23481/2021, 23483/2021**

BIRENDER PRASAD Appellant

versus

TEJINDER PAL SETIARespondent

Advocates who appeared in this case:

For the Appellant: Mr. Nikhilesh Krishnan, Advocate.

For the Respondents: None.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Appellant impugns order dated 03.06.2021 whereby, by way of an ad interim order, appellant/defendant has been restrained from causing interference in the peaceful enjoyment by plaintiff/respondent in property No. 102, measuring 333.60 sq. mtrs, situated in B-10, Sector-13, Dwarka, New Delhi and has been further restrained from dispossessing the respondent/plaintiff from the suit property or creating any kind of third party interest in the suit property.

2. Notice in this appeal was directed to be served on the respondent, returnable on 10.12.2021. On 10.12.2021 appellant was



permitted to serve the respondent before the Trial Court on 14.12.2021 when the suit was listed before the Trial Court. On 21.12.2021 it was informed that the respondent had been served through counsel before the Trial Court on 14.12.2021.

3. Appellant has also placed on record an affidavit of service dated 18.12.2021 along with a copy of the *dasti* summons with an endorsement by the counsel for the respondent of having received the same on 14.12.2021.

4. None had appeared for the respondent on 21.12.2021 despite pass over. The case was thereafter listed for 22.12.2021. On 22.12.2021 also none appeared for the respondent. Accordingly, respondent was proceeded *ex parte*.

5. Impugned order dated 03.06.2021 emanates out of an application filed under Order 39 Rule 1 & 2 by the respondent/plaintiff seeking a restraint on the appellant/defendant from interfering in the peaceful enjoyment by the respondent of the suit property.

6. Subject suit was filed by the respondent seeking specific performance of an agreement to sell, permanent and mandatory injunction and damages.

7. It is contended in the plaint that parties are known to each other



and appellant had agreed to sell the suit property for a total consideration of Rs.1,88,00,000/- and a *bayana* agreement was entered into.

8. It is contended that a sum of Rs.45 lakhs was paid by the respondent to the appellant on 15.05.2018 when the *bayana* receipt dated 15.05.2018 was entered into. It is contended that the said receipt is witnessed by one Sh. Sunil Sharma and Sh. Tarun Kumar Mittal.

9. It is contended in the plaint that further part payment of Rs.65 lakhs was to be paid on 31.10.2021 and balance sale consideration of Rs.78 lakhs was to be paid after getting the suit property freehold from DDA.

10. It is alleged in the plaint that it was decided that original documents would be handed over at the time of making part payment of Rs.65 lakhs along with physical vacant possession being delivered.

11. It is contended that further amount of Rs.65 lakhs was paid in cash on 31.10.2018 consequent to which the original documents as well as possession was handed over.

12. It is contended that when the appellant was requested to get the property freehold, he evaded the same on one pretext or the other. Consequently, the subject suit was filed.



13. Certain very glaring facts have emerged from the perusal of the records.

14. Subject plaint is dated 01.06.2021 and was listed for the first time on 02.06.2021, when summons were directed to be issued, returnable for the next day i.e. 03.06.2021. Summons of the suit, returnable on 03.06.2021, were served at 4.40 PM on 02.06.2021.

15. The alleged sale consideration alleged to be agreed upon is Rs.1,88,00,000/- out of which the entire payment of Rs.1,10,00,000/- is alleged to have been paid in cash. There is no banking transaction recording any transfer of money.

16. Appellant has denied the execution of any document in favour of the respondent. Impugned order dated 03.06.2021 categorically records that the counsel for the appellant had disputed the execution of the agreement or receipt of any sale consideration. It was also contended that the original documents except the conveyance deed executed by DDA had been lost and a police complaint was lodged by the appellant.

17. Trial Court has merely acted upon the allegation of the Respondent that the original documents are in possession of the respondent. The original agreement/bayana receipt had not been produced by the respondent before the Trial Court.



18. Trial Court has merely believed the averments in the plaint without any further material being placed on record by the respondent/plaintiff of the execution of an Agreement to Sell in his favour or payment of the sale consideration or even his possession.

19. Original Agreement to Sell had not been produced before the Trial Court nor had the Trial Court satisfied itself with regard to the execution or authenticity of the agreement which was also disputed.

20. When neither the original is produced nor there is any record of transfer of any amount through a banking transaction, it was necessary for the Trial Court, particularly in the facts and circumstances of the case, to require the plaintiff to produce the original of the documents before any *prima facie* view was formed in the matter.

21. Appellant has also placed on record the subsequent orders passed by the Trial Court *inter-alia* order dated 26.07.2021 which records the statement of the counsel for the plaintiff/respondent that original documents have already been lost and a DD entry registered in this respect, which clearly establishes that the Trial Court has not satisfied itself, even *prima facie*, with regard to the existence or execution of any Agreement to Sell in favour of the respondent.

22. It was incumbent upon the Trial Court to have at least *prima facie* satisfied itself about the alleged transaction of an Agreement to



Sell particularly when a substantial amount of Rs.1,10,00,000/- was alleged to have been paid totally in cash, which payment was disputed.

23. Further, as noticed hereinabove the plaint was filed on 01.06.2021 and listed for the first time on 02.06.2021 and the impugned order has been passed on 03.06.2021. The Trial Court has not even *prima facie* satisfied itself with regard to the possession of the respondent/plaintiff before issuing a direction to the appellant not to interfere in the alleged peaceful possession of the respondent.

24. It was incumbent upon the Trial Court to have at least satisfied itself from the material on record that the respondent/plaintiff was in possession of the subject property.

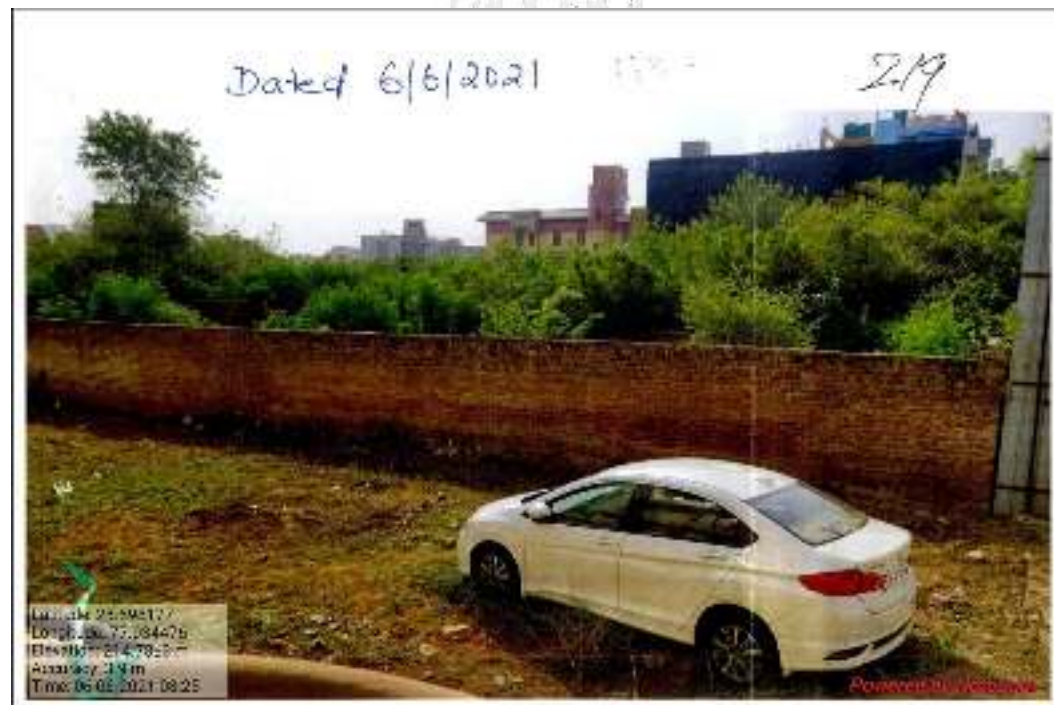
25. Appellant has placed on record photographs of the suit property taken on 03.06.2021, 04.06.2021, 05.06.2021 and 09.06.2021 and also a police complaint lodged on 04.06.2021.

26. The Photographs with the dates written by hand on top by the Appellant accompanied by the newspapers of the dates on which the photographs are taken expose the complete falsehood in the case set up by the Respondent.

27. For the purposes of appreciating the case of the appellant the photographs are extracted herein below:









28. The Photographs show that the property is enclosed by tin sheets. The photograph taken on 03.06.2021 shows that the name of the appellant along with his details is painted on the same.

29. Same is the position on 04.06.2021. However, on 05.06.2021 it is apparent that someone has blacked out the name of the appellant and a banner with the name of the respondent has been placed on the said tin sheet.

30. The Photographs taken on 06.06.2021 show that the passage in from has been cleared and the big sewer pipes that were blocking the entrance gate until 05.06.2021 has been cleared and a case driven and



parked inside the property.

31. Thereafter the photograph of 09.06.2021 shows that the name of the appellant has been completely obliterated and the name of the respondent has been painted on the board.

32. The Appellant was served with the summons on 02.06.2021, impugned order passed on 03.06.2021 and thereafter as is evident from the photographs the status of the property has been sought to be changed by the respondent.

33. It may also be noticed that a complaint was lodged by the appellant against the respondent of forging and fabricating the *Bayana* receipts, based on which the Suit has been filed.

34. Appellant contends that appellant was served with two separate sets of the documents *inter-alia* the *bayana* receipt. One of which does not contain the names and signatures of the witnesses and in the other the names and addresses of the witnesses have been interpolated and added later.

35. Reference is also drawn to a status report filed in the proceedings initiated on the complaint of the appellant wherein reference is made to a statement given by the alleged witness Sunil Sharma.



36. It is reported that Sunil Sharma, the alleged witness, was required to join investigation and he denied his signatures on the *bayana* receipt. With regard to his signature on the part payment receipt, he has stated that his signatures were put in the office of a lawyer and when he had signed the said document as a witness, it did not bear any revenue stamp or signatures of anybody else. He has stated that the appellant was not present when he signed the document. He has further stated that appellant was seen taking the photographs of the suit property when he had gone to park the car of the respondent. He had also stated that the respondent had sent a painter who painted the name of the respondent in place of the appellant and placed his banner there.

37. The facts as emerged and as noticed hereinabove clearly shows that the Trial Court has acted in undue haste and without even satisfying itself with regard to either the execution or the authenticity of the alleged *bayana* receipt. Trial Court has also not satisfied itself with regard to the payment of the alleged part sale consideration or delivery of possession prior to passing the impugned order restraining the Appellant from interfering in the alleged possession of the Respondent/Plaintiff.

38. As noticed hereinabove, the execution of the *bayana* agreement is denied. Payment of the alleged part sale consideration alleged to



have been paid in cash is also denied. Handing over of possession has been denied. There is no material on record to show that any *bayana* receipt was executed, any payment made or possession delivered.

39. Consequently, the Trial Court has clearly committed an error in holding that possession was delivered merely on the ground that the original documents were allegedly in the possession of the respondent/plaintiff.

40. As noticed from order dated 26.07.2021 of the Trial Court the original records have not been even produced before the Trial Court for its perusal. The observation of the Trial Court that there is no explanation on the part of the appellant/defendant as to how the originals are in possession of the respondent is also not substantiated from document or material on record.

41. Clearly, the Trial Court has committed a grave error in the facts and circumstances of the case in passing the impugned injunction order.

42. Perusal of the photographs show that the respondent, after obtaining an order from the Trial Court has systematically tried to create his possession on the subject property which clearly cannot be countenanced. Further plaintiff/respondent has failed to show any *prima facie* material to establish that any *bayana* agreement was either



executed or any payment made or possession delivered.

43. In view of the above, order dated 03.06.2021 cannot be legally sustained and consequently, the impugned order dated 03.06.2021 is set aside.

44. In view of the above, the appeal is allowed. The impugned order dated 03.06.2021 is set aside.

45. Since respondent/plaintiff has clearly attempted to create his possession after obtaining an order from the Trial Court, Respondent is directed to forthwith remove his locks from the subject property and remove any articles that he may have placed inside the said property failing which it would be open to the appellant/defendant to take assistance of the Court for the purposes of breaking open of the lock and removal of the articles of the respondent, if any lying in the subject plot.

46. The appeal is disposed of in the above terms.

SANJEEV SACHDEVA, J

JULY 04, 2022

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