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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 08.08.2022*

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RFA 371/2022

RAVINDER KUMAR SHARMA

..... Appellant

Through: Mr. S.K. Sinha, Adv.

versus

SHRI RAMA KANT MISHRA

..... Respondent

Through: Mr. Adarsh Kumar, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)****CAV 228/2022**

Since learned counsel for the respondent enters appearance, the Caveat 228/2022 stands discharged.

RFA 371/2022 & CM APPL. 34777/2022 (stay)

1. The present Regular First Appeal under Section 96 of CPC seeks to assail the judgment and decree dated 31.05.2022 passed by the learned ADJ-08, West District, Tis Hazari Courts, Delhi in CS No. 288 of 2018. Vide the impugned judgment, the learned Trial Court has decreed the respondent/plaintiff's suit by directing the appellant to pay a sum of Rs.35,00,000/- alongwith interest @9% p.a. to the plaintiff/ respondent.
2. For the sake of convenience, the parties will hereinafter be referred to as per their position before the learned Trial Court.
3. The plaintiff preferred a suit for recovery of a sum of Rs.



35,00,000/- with interest. It was the respondent's claim that the defendant approached him claiming to be the owner of approximately 24 bighas of land in Khasra No. 266 in Village/PO/Police Station Chhapar, District Muzaffarnagar, U.P (hereinafter 'suit property'). The plaintiff, being interested in buying the suit property, entered into an agreement to sell dated 20.10.2015 with the defendant, for a total sale consideration of Rs. 4,92,00,000/- crores. In terms of the aforesaid agreement, the plaintiff paid a sum of Rs. 15,00,000/- to the appellant as token/earnest money/part payment against the suit property admeasuring 24 bighas and further agreed to pay the balance amount on or before 16.10.2016. The defendant also assured the plaintiff that the suit property was free from all sorts of encumbrances and also agreed to procure a No-Objection Certificate (NOC) in favour of the plaintiff.

4. It was the further case of the plaintiff that on 03.11.2015, the defendant approached him with a request to pay a further sum of Rs. 20,00,000/- from the remaining amount of sale consideration, which amount was paid by the plaintiff. Despite having received the sum of Rs. 35,00,000/-, the defendant did not issue the requisite NOC or the sale deed in plaintiff's favour. The plaintiff, apprehending foul play on the part of the defendant, enquired with the local residents only to find out that the defendant was not the registered owner of the suit property. The plaintiff then issued a legal notice dated 15.01.2018 to the defendant requiring him to return the amount of Rs. 35,00,000/- paid by him as an advance/earnest money/part payment towards sale consideration of the suit property. The defendant replied to the notice stating therein that the advance money paid by the plaintiff stood forfeited. It is in these



circumstances that the plaintiff filed the suit seeking recovery of a sum of Rs. 35,00,000/- along with interest.

5. The suit was defended by the appellant by filing a written statement wherein the defendant opposed the suit on the ground that despite the plaintiff being aware that the defendant was not the owner of the suit property but had entered into the agreement to sell on the basis of an agreement dated 23.07.2015 entered into between him and the true owners namely Md. Khalid and Md. Sabbir, had failed to implead the true owners. It was therefore urged that the suit was not maintainable on account of non-joinder of parties. It was the defendant's further plea that the earnest money had been rightly forfeited by him as the plaintiff had failed to pay the balance consideration in time, i.e., on or before 16.10.2016. Moreover, the plaintiff had violated the terms of the agreement dated 20.10.2015 and had, instead of paying 10% of the amount of sale consideration, i.e., Rs. 4,92,00,000/- crores as advance in terms of the agreement, paid only a sum of Rs. 20,00,000/- as advance and therefore the suit was not maintainable on this ground as well.

6. Based on the pleadings of the parties, the learned Trial Court framed the following issues:

- “1. Whether plaintiff is entitled for recovery of Rs.35 lacs from the defendant? If yes, at what rate of interest and for what period? OPP*
- 2. Whether this Court does not have the territorial jurisdiction to try this case? OPD.”*

7. In support of their respective pleadings, while the plaintiff examined himself as PW-1, the defendant examined himself as DW-1.

8. After considering the evidence on record, the learned Trial Court,



vide its impugned judgment, has decreed the suit of respondent/plaintiff, by directing the defendant to pay a sum of Rs. 35,00,000/- with interest @ 9% per annum to the plaintiff.

9. Being aggrieved, the appellant has preferred the present appeal. In support of the appeal, Mr. S.K. Sinha, learned counsel for the defendant submits that the impugned judgment is wholly perverse and is liable to be set aside as the learned Trial Court did not have the necessary territorial jurisdiction to entertain the suit. He submits that though the agreement to sell dated 20.10.2015 entered into between the parties was executed in Delhi, the suit property was situated in Muzaffarnagar, U.P and therefore, the learned Trial Court had no jurisdiction to entertain the suit.

10. By placing reliance on the agreement dated 23.07.2015 entered into between the appellant, Md. Khalid & Md. Sabbir, Mr. Sinha contends that the learned Trial Court has erred in directing the appellant to pay the sum of Rs. 35,00,000/- along with interest @ 9%. He submits that in terms of the aforesaid agreement, the defendant was merely an agreement holder of the suit property and not the real owner, who was, for reasons, best known to him, not impleaded by the plaintiff. He submits that as per the agreement to sell dated 23.07.2015, the defendant was conferred with the right to further sell/transfer the suit property, which fact was within the knowledge of the plaintiff while entering into the agreement to sell dated 20.10.2015. Moreover, copies of all the revenue records as also of the agreement dated 23.07.2015 entered into between the defendant and the true owners of the suit property were supplied to the plaintiff. He ,therefore, submits that once the plaintiff was



always aware that the defendant had entered into the agreement to sell authorized only on behalf of the true owners, no such direction for payment of Rs. 35,00,000/- could have been passed by the learned Trial Court against the defendant.

11. Without prejudice to his aforesaid submissions, he contends that even otherwise, once the agreement to sell dated 20.10.2015 did not contain any stipulation for the refund of the earnest money coupled with the fact the plaintiff failed to comply with the terms and conditions thereof by not paying the balance consideration, the defendant was justified in withholding the amount received as earnest money from the plaintiff.

12. On the other hand, Mr. Adarsh Kumar, learned counsel for the plaintiff supports the impugned judgment by urging that the defendant had, by receiving a huge amount from the plaintiff and entering into an agreement to sell, played a fraud upon the plaintiff. He submits that the defendant never disclosed to the plaintiff that he was not the true owner of the suit property and therefore, it was evident that the defendant had not only, without any authority, received a sum of Rs. 35,00,000/- from the plaintiff but was continuing to wrongfully hold the same.

13. He further submits that the defendant's plea regarding lack of territorial jurisdiction was rightly rejected by the learned Trial Court as the suit preferred by the plaintiff was not for possession of property situated in Muzaffarnagar but was only for refund of the amount which had been paid to the defendant at Delhi. Furthermore, the defendant was a resident of Delhi and the agreement to sell was also entered to between the parties at Delhi. He, therefore, prays that the appeal be dismissed



with costs.

14. Before dealing with the rival submissions of the parties, it would be apposite to note the relevant findings of the learned Trial Court which read as under-

17. During cross examination of PW1 or of DW1, there was no impediment in the way of defendant in producing originals of Ex.DW1/IP 1.e, stated Agreement between defendant and actual owners now filed alongwith synopsis. List of documents filed by defendant with written statement on record depicts the original of such documents to be in power and custody of defendant only and very much available at the opportune time when evidence was led by the parties. It was for the witness of defendant and Counsel for defendant to ensure production of originals of those documents, whose copies were filed and originals were relied upon. When after conclusion of final arguments, the defendant preferred to file stated original of Ex, DW1/1 P without moving any application under Order XVIII Rule 17 A read with Order XIII (2)CPC, for praying for recall of DW 1 and proving original of said documents, executed between so called owners of the property in question and defendant, is per se an exercise to fill up lacunae in the case. Defendant has failed to prove the execution of such documents as the said owners or any attesting witness of such documents present at the time of execution of such documents were not brought in the witness box by defendant and the originals of documents, DW1/IP have not been proved during the course of testimony of DW1 despite specific objection taken by the Ld. Counsel for the plaintiff and admitted by DW1 that it is with him only. DWI was not re-examined by Ld. Counsel for defendant nor any application moved to recall the said witness.

18. First I shall be dealing with the legal issue of Whether this court does not have the territorial jurisdiction to try this case:- The onus to show the same is upon the defendant.



Plaintiff has claimed that this Court has territorial jurisdiction to try and entertain the present suit as the cause of action first arose at Delhi and the defendant resides and work for gain in Delhi. It is further mentioned in the plaint that the agreement Ex. PW-1/3 was executed at Delhi and payment was made at Delhi and the remaining payment was also to be made at Delhi and the entire transaction between the parties took place within the jurisdiction of this court. On the other hand, in the Written Statement the defendant has claimed that since the property is situated in Uttar Pradesh which is beyond the territorial jurisdiction of this Court, therefore this Court has no jurisdiction to try and entertain the present suit. Even though it is admitted that the agreement between the parties was executed at Delhi.

As per Ex. PW-1/3 same was notarized at Delhi on 03.11.2015 and the defendant is stated to be having address of Vikaspuri and also residing at Meenakshi Garden, New Delhi which falls under the West District. Furthermore, in terms of Section 12 CPC, the suit is to be instituted where defendant resides or cause of action arises. Since the defendant is residing within the jurisdiction of this Court and the agreement and transaction took place in Delhi even though for a property situated outside at Delhi, I am satisfied that this Court has territorial jurisdiction to try and entertain the present suit. According, the issue no. 2 is decided in favour of plaintiff and against the defendant.

20. Now I shall deal with the issue Whether plaintiff is entitled for recovery of Rs.35 lacs from the defendant? If yes, at what rate of interest and for what period:- The onus to prove the same is upon the plaintiff. The execution of agreement PW-1/3 and receipt Ex. PW-1/4 is not denied by the defendant but it has been claimed that since the plaintiff has not performed his part of the agreement, the amount given by him to the defendant stands forfeited.



21. On the other hand, the plaintiff has claimed that after entering into the Agreement to Sell Ex.PW-1/3 it has come to his knowledge that the defendant is not the owner of the property to be purchased and there are some litigation is pending in respect of the said property and therefore, he has chosen not to go ahead with the transaction and request the defendant to return back the money. During cross examination PW-1 admitted that he had visited the property once after execution of the documents and making the payment of Rs. 35 lacs to the defendant. He had also stated that he had not seen the papers of the property before deal was finalized as defendant was stated to be highly reputed person of the locality as told by the dealer Ravi Jadwani and Sunder Wadhwa. PW-1 had also denied the suggestion that all paper was shown to him and only after satisfying the genuineness of the document he made the payment. He also denied that defendant was ready and willing to perform his part of the contract. He has also denied that defendant had shown his agreement with the actual owners. He had admitted that he had not filed any document showing availability of funds with him but stated that he had entered into deal to sell off agricultural land for Rs. 4.20 crores to execute the deal. He denied that he has failed to perform part of his contract, Whereas defendant while being examined as DW-I admitted that he is not the owner of the property and stated that he is only an Agreement Holder. DW-1 also admitted that he has received Rs. 35 lacs from the plaintiff but denied that he has not disclosed that he is not the owner of the property. However, he admitted that in Ex. PW-1/3 and Ex. P I it is not mentioned that he is not the owner and only and agreement holder. I have gone through the contents of Ex. PW-1/3. It is captioned as MONEY RECEIPT TOKEN RECEIPT EARNEST MONEY RECEIPT INITIAL AGREEMENT TO SELL, however, in the entire body of the document it is nowhere mentioned who is the owner of the property and in what capacity the defendant is executing the said agreement. It appears that Ex.PW1/3 is nothing but a



receipt. The body of the document is reproduced for ready reference

"Received a sum of Rs. 15,00,000 (Rupees Fifteen Lacs Only from Shri Rama Kant Mishra S/o Shri Ram Adhar Mishra R/o Village Gaura Gosaini P.O. Bhainsaha, Tehsil. Hariya Distt. Basti (UP) as token/earnest money part payment against the land approximately 24 Bighas in Total consideration amount of Rs.4,92,00,000/- (Rupees Four Crore Ninety Two Lacs Only). The rest of the payment will be made to the on or before 16.01.2016 and at that time the detail agreement will be executed till then this very money receipt will be treated as agreement in case Sh. Rama Kant Mishra failed to turn up with the balance amount of Rs.4,77,00,000 (Rupees four Crore Seventy Seven Thousand Only) up till 16.01.2016 in that very case, this very part payment/earnest money/token money will be forfeited without any intimation and without excuse and Mr. Rama Kant Mishra will have no claim in future in this regard. It has been settled between the parties in any case regarding this very matter only Delhi Court will have jurisdiction"

15. Having considered the submissions of the parties and perused the record, I find absolutely no infirmity with the impugned judgment. In my view, the learned Trial Court was justified in holding that the defendant had miserably failed to show under what authority he had entered into the agreement to sell dated 20.10.2015 and received a sum of Rs. 35,00,000/- from the plaintiff. Even before this Court, the defendant has not been able to show in what capacity, he had entered into the agreement to sell with the plaintiff and received the aforesaid sum of Rs. 35,00,000/- from him. Learned counsel for the defendant has vehemently urged that the defendant was justified in entering into the agreement to sell with the plaintiff as he had a valid and subsisting agreement dated



23.07.2015 with the true owners namely, Md. Khalid and Md. Sabbir, which authorized him to sell the suit property. Once the defendant failed to produce any NOC for sale of the suit property and did not examine any of the true owners as witnesses, his bald plea that the plaintiff was fully aware that he was authorized to sell the suit property on behalf of the true owners, was rightly rejected by the learned Trial Court.

16. Mr. Sinha, learned counsel for the appellant has also vehemently urged that there was no clause in the agreement dated 20.10.2015 that the amount will be refunded back to the respondent or that the appellant was the owner of the suit property. Once there was absolutely no evidence led by the defendant to show that he was authorized to enter into an agreement with the plaintiff in respect of the suit property or to receive any amount from him, there is absolutely no justification on his part to retain the amount. Moreover, the defendant has also admitted during cross examination that there was no forfeiture clause in the agreement to sell entered into between the parties and therefore there was no justification on the part of the defendant to forfeit the amount, which he was, in the first instance, not entitled to receive from the plaintiff. The relevant extract of the defendant's cross examination reads as under-

It is correct that Ex.DW-1/IP is not with the plaintiff. The conditions of forfeiture are mentioned in the agreement which is part of Ex.PW-1/3 from point B to B. it is correct that agreement to sell which is part of Ex.PW-1/3 in which forfeiture clause is mentioned from B to B does not bear the signatures of plaintiff. It bears only my signatures. (Vol. The receipt Ex.P1 clearly mentions that it is part of agreement to sell Ex.PW-1/3). It is correct there is no default clause against me/ seller in agreement Ex.PW-1/3 as well as Ex.PI. (Vol. Same were discussed orally). It is wrong to suggest that I had deliberately not mentioned the default clause against me and the seller in Ex.PW-1/3 and Ex.PI. It is correct I had not issued any legal notice informing the plaintiff about the forfeiture of his earnest money. (Vol. Same was informed orally to him



when he visited my office). It is correct that there are no documentation between the original owner and the plaintiff. It is also correct that there are no documentation between the original owner, the plaintiff and myself. It is correct that all payments were received in my account. (Vol. I had transferred the said sum of money to the landlords).

17. I have also considered the defendant's plea that the learned Trial Court did not have the necessary territorial jurisdiction to entertain the suit but find no merit therein. The suit filed by the plaintiff was not for specific performance of the agreement; the plaintiff was also not seeking any direction qua the suit land in Muzaffarnagar but was seeking refund of the amount paid by him to the defendant at Delhi. The defendant who is admittedly a resident of Delhi had no authority to receive the said amount and therefore the learned Trial Court was justified in rejecting the defendant's objection of territorial jurisdiction.

18. In the light of the aforesaid, the appeal being meritless is dismissed without any orders as to costs.

(REKHA PALLI)
JUDGE

AUGUST 8, 2022
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