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

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Reserved on: 27.09.2022
Pronounced on: 18.10.2022

+ RFA 793/2015 and C.M. No. 15672/2017 (under Section 340 Cr.P.C.) & 7828/2021 (early hearing)

NARESH & ANR Appellants

Through: Mr. Sunil Satyarthi and Mr. Amit Saxena, Advocates alongwith petitioner in person.

versus

VIJAY RAM Respondent

Through: Mr. Yogesh Saini, Advocate alongwith respondent in person.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH
J U D G M E N T

GAURANG KANTH, J.

CM No.15672/2017 (under Section 340 Cr.P.C.)

1. The aforementioned application was filed on behalf of the Appellants under Section 340 of the Code of Criminal Procedure, 1973 for initiation of action of perjury against the Respondent on the false statement given by the Respondent and recorded by this Hon'ble Court during the course of hearing on 23.03.2017. Vide order dated 26.04.2017, this Hon'ble Court had ordered the aforesaid application to be taken up at the time of final hearing of the appeal. The same has not been addressed by the learned counsel for the Appellants at the time when the final arguments were being advanced. In view of the same, the present application is being dismissed as not pressed.

RFA 793/2015

2. The case at hand is a regular first appeal which has been filed under Section 96 of the Code of Civil Procedure, 1908 to set aside and quash the judgment & decree dated 23.07.2015 passed by Shri Dr. T.R. Naval, District & Sessions Judge, Shahdara, Karkardooma Courts, Delhi in *CS No. 506/2012* titled as *Shri Vijay Ram vs. Shri Naresh & Anr.* (hereinafter referred to as the “**Impugned Judgment**”).
3. Vide the Impugned Judgment, the Respondent (Original Plaintiff) was held entitled to the relief of recovery of possession and permanent injunction. A decree of possession was passed directing the Appellants (Original Defendants) to vacate and hand over the vacant and peaceful possession of the property bearing No. G-179, Gali No. 11, 5th Pusta, Block-G, Sonia Vihar, Delhi measuring 50 square yards out of Khasra No. 387/391/1 (hereinafter referred to as “**Suit Property**”) to the Respondent.

FACTS RELEVANT FOR CONSIDERATION OF THE PRESENT APPEAL ARE AS FOLLOWS:

4. It is the case of the Respondent herein (original Plaintiff) that he purchased the Suit Property from one Mr. Deep Chand by virtue of GPA, Agreement to Sell, Receipt and Possession Letter, all dated 21.01.2011. The Respondent alleged in the plaint that he had locked the premises and left for his native place and upon returning in the month of January 2012, he found that not only his articles were stolen but he also learnt that in his absence, Appellant Nos.1 & 2 (Original Defendant Nos.1 & 2) in collusion with one Mr. Braham Dutt, a

property dealer, have trespassed over the Suit Property. It was further alleged by the Respondent in his plaint before the Trial Court that the Respondent asked the Appellants to remove their articles from the room but the Appellants extended threats as a result of which a complaint dated 25.02.2012 was filed with the local police and subsequently a criminal complaint before the Court of Metropolitan Magistrate, Karkardooma was filed. It was also alleged that the Respondent put his own lock also on the main gate of the property. It was further alleged that a legal notice dated 08.02.2012 was also sent to the Appellants to which reply dated 15.02.2012 was received. Being aggrieved by the action of the Appellants, the Respondent had filed a Suit for Recovery of Possession and Permanent Injunction which resulted in the judgment which is being impugned in the present appeal.

5. The Appellants had filed written statement before the learned Trial Court claiming that Appellant No. 1, on 07.02.2011, pursuant to an agreement to purchase the Suit Property with the Respondent for an amount of Rs.14,00,000/-, had paid an amount of Rs.12,00,000/- in cash to the Respondent in the presence of witnesses. Consequently, the Respondent had handed over peaceful and vacant possession of the Suit Property to Appellant No. 1. It was further alleged that on 06.05.2011, when Appellant No. 1 asked the Respondent to execute necessary sale documents, the Respondent had given an excuse that the original documents of the Suit Property were lying with someone else as the Respondent had borrowed some loan against the documents and that he would execute documents of sale after he has the ability to

clear the said loan amount. It was further alleged that Appellant No. 1 did not take any action against the Respondent for the reason that he was already in possession of the Suit Property.

6. On the pleadings filed by the parties, following Issues were framed by the learned Trial Court:

- i. *“Whether the plaintiff is entitled to decree of recovery of possession of suit property bearing no. G-179, Gali no. 11, 5th Pushta, Block G, Sonia Vihar, Delhi measuring 50 sq. yards consisting of Khasra No. 387/391/1 against the defendants as claimed?*
- ii. *Whether the plaintiff is entitled to a decree of permanent injunction in his favour against the defendants in respect of the suit property, as claimed?*
- iii. *Whether the plaintiff has sold the suit property to the defendant No. 1 for Rs.14,00,000/- and received Rs. 12,00,000/- on 7.2.2011 as claimed?*
- iv. *Whether the plaint has not been properly valued and requisite court fee has not been paid as claimed?*
- v. *Relief”*

7. In support of his case, the Respondent had examined two witnesses before the Trial Court. He also relied on documents, i.e. GPA in favour of the plaintiff as Ex. PW1/1A, Agreement to Sell as Ex. PW1/1B, possession letter as Ex. PW1/1C, Receipt as Ex. PW1/1D, Deed of Will as Ex. PW1/1E, site plan as Ex. PW1/2, certified copy of order dated 22.11.2012 as Ex. PW 1/3, copy of legal notice as mark 'A', copy of receipt of speed post as mark 'B' and copy of receipt of courier as mark 'C'. On the other hand, the Appellants examined themselves and two other witnesses who had witnessed the transaction of sale with the Respondent. They had also placed on record ATR Report dated

07.05.2012 in which the SI had stated that the investigation revealed that the defendant had paid an amount of Rs.12,00,000/- for purchase of the house out of Rs.14,00,000/- which was the agreed amount. Another ATR filed by ASI Desh Raj has also been placed on record to support the case of the defendant wherein it had been stated by the ASI that the dispute in question was of civil nature and there was no need of interference of police.

8. Upon perusing the evidence adduced, the learned Trial Court vide its judgment dated 23.07.2015 decided all the four issues in favour of the Respondent and against the Appellants, thereby granting relief to the Respondent. Consequently, the Respondent was held entitled to the relief of recovery of possession and permanent injunction. A decree of possession was passed directing the Appellants to vacate and hand over the vacant and peaceful possession of the Suit Property to the Respondent. A decree of permanent injunction was also passed in favour of the Respondent and against the Appellants restraining them and their representatives, attorneys, agents, etc., from selling, transferring, alienating and parting with possession or interfering with the peaceful possession of the Respondent in respect of the Suit Property.
9. It is pertinent to mention that during the pendency of the present Appeal, vide ex-parte order dated 19.02.2016, this Court restrained both the parties from taking possession of and/or otherwise dealing with the Suit Property as the Appellants apprised this Court that the Suit Property is lying vacant and no one is in occupation thereof.

Subsequently, this Court, vide order dated 26.04.2017, allowed the Application filed by the Respondent for recalling the order dated 19.02.2016 (CM No. 34453/2016) and permitted the Respondent to occupy the Suit Property subject to the condition that during the pendency of the present Appeal, the Respondent will not transfer, alienate or create any third-party interest in the Suit Property. Hence, as on date, the Suit Property is in possession of the Respondent.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

10. Learned counsel for the Appellants submitted that the Impugned Judgment is completely erroneous and is liable to be set aside as it was based on incorrect appreciation of law and facts. The learned counsel submitted that the judgment was completely devoid of any evaluation of evidence of the parties. It was submitted by the learned counsel that the oral testimony of the parties of the course of events as well as transaction had not been appreciated by the learned Trial Court. The learned counsel further alleged that the Impugned Judgment justified the case of the Respondent on the basis of hypothetical conclusions.
11. Learned counsel for the Appellants pointed out that the Impugned Judgment was based on entirely incorrect appreciation of law. He submitted that the relevant law on the issue of contract for sale as enshrined in Section 54 of the Transfer of Property Act as well as the proviso to Section 40 of the Act had not been taken into account by the learned Trial Court.

12. It was further submitted by the learned counsel for the Appellants that the learned Trial Court should have appreciated the arguments of both the parties. However, the same had not been done in the present case. In this regard, it was submitted by the learned counsel for the Appellants that the evidence of the Respondent himself had serious discrepancies with respect to the event of trespass and the evidence of the other witnesses was completely false. To buttress his arguments, it was further highlighted by the learned counsel for the Appellants that the evidence of all the witnesses of the Appellants in support of transaction of purchase of the Suit Property was throughout consistent and no discrepancy was brought forth in the cross-examination of any of the witnesses. In view of the inconsistencies in the testimony of the Respondent, the learned Trial Court should have disbelieved the oral statement/ evidence of the Respondent in support of allegations of trespass and the Suit should not have been decreed in favour of the Respondent.

13. Learned counsel for the Appellants relied on *Ram Gopal Reddy v. Additional Custodian Evacuee Property* reported as (1966) 3 SCR 214 to submit that documents such as GPA, Agreement to Sell, Will or Receipt could not have formed the basis of the Suit for Recovery of Possession. It was further submitted that the Respondent had relied upon unregistered documents such as above as basis of the Suit, which was not maintainable at the threshold. These documents could only be used for the limited purpose as a defence to a plea of recovery of possession upon satisfying requirements of Section 53A of the

Transfer of Property Act and not for claiming possession of the Suit Property or seeking an injunction in respect thereof.

14.It was further submitted by the learned counsel that the law had been incorrectly applied in the present case since it had never been contended by the Appellants that there was a concluded transaction of sale. It was only a case of oral agreement for sale. Learned counsel relied on *Aloka Bose v. Parmatma Devi and Ors.* reported as *AIR (2009) SC 1527* to argue that the agreement for sale can also be oral and the evidence to establish the aforesaid agreement had not been appreciated by the learned Trial Court. Making the aforementioned submissions, learned counsel for the Appellants prayed that the Impugned Judgment be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

15.Mr. Yogesh Saini, learned counsel on behalf of the Respondent submitted that the Appellants were not entitled for any relief and prayed that the present Appeal filed by them be dismissed with cost. The learned counsel further submitted that despite the Appellants claiming that Income Tax Returns were being filed since the year 2001 through Chartered Accountant, there was nothing on record to suggest that a payment of Rs.12,00,000/- had been made by the Appellants for purchase of the Suit Property in their Income Tax Returns. The learned counsel for the Respondent further submitted that Appellant No.1 had only one savings bank account since the year 2000 and no amount was ever withdrawn from the said account during the time period in which the alleged amount of Rs.12,00,000/- has been paid to the Respondent.

- 16.The learned counsel for the Respondent further highlighted that there was no receipt, Income Tax Return or written record filed by Appellant No.1 to suggest that they had cash amount of Rs.6,00,000/- lying with them and had received an amount of Rs.4,00,000/- from a Committee/Chit Fund. It was further submitted by learned counsel for the Respondent that the Appellants did not have the capacity to have so much of cash available at home.
- 17.It was further submitted by learned counsel for the Respondent that the Appellants did not have any cash transaction with the Respondent on any occasion. He also submitted that the Appellants had not placed on record any document in the nature of agreement to sell or receipt qua their claim of paying Rs.12,00,000/- in cash to the Respondent.
- 18.The learned counsel further submitted that the Appellants had on no occasion lodged any complaint or filed legal process to seek chain of documents, execution of title deeds or return of alleged amount against the Respondent. This conduct on the part of the Appellants suggests that they did not have any case against the Respondent in the first place.
- 19.It was further submitted by the learned counsel that neither of the Appellants handed over the copy of sale agreement or receipt during investigation by the Investigating Officer despite being asked for the same. The Appellants instead replied that they would file the agreement and the receipt in Court.

20. It was finally submitted by the learned counsel that none of the defence witnesses could prove and support the defence taken by the Appellants. It was submitted that in view of the afore-stated facts, the falsity of the case put forth by the Appellants has been exposed and that they are not entitled to get the relief claimed by them from this Hon'ble Court.

LEGAL ANALYSIS BASED ON THE FACTS OF THE CASE

21. This Court has heard the learned counsels for the parties and also examined the evidence placed on record and the judgments relied upon by the parties.

22. The sole issue which arises for consideration in this case is - *Whether the Appellants could claim the Suit Property on the plea of an oral Agreement to Sell?* At the very outset, it should be highlighted that the entire case of the Appellants hinges upon the existence of the oral contract for sale as alleged by them. It is to be noted that the alleged oral contract constitutes the basis for their action of entering into occupation of the Suit Property. Bearing this in mind, this Court shall now proceed to examine the facts and circumstances of the present case in order to find whether the Appellants have been able to prove that there was a concluded oral agreement between the parties in order to justify their acquiring of possession of the Suit Property.

23. The learned Trial Court, in the Impugned Judgment, has decided the issue of existence of the oral agreement against the Appellants and in favour of the Respondent giving the following reasons:

- i. In the cross-examination of the Respondent, nothing came out on the basis of which it could be inferred or even presumed that he negotiated the deal in respect of the Suit Property with the Appellant No. 1 for Rs. 14,00,000/- and received Rs. 12,00,000/-.
- ii. As per provisions of Section 54 of the Transfer of Property Act, an immovable property could not be transferred by an oral agreement. Even the written agreement transferring the title had to be compulsorily registered. This also provided benefit to the Respondent and demolished the plea of Appellant No. 1.
- iii. All the witnesses admitted that no document was executed at the time of negotiation or at the time of handing over of the alleged amount of Rs.12,00,000/-. Their testimonies in this regard were not convincing and acceptable as this would lead to bypassing of the law regarding transfer of property.
- iv. The conduct of the Respondent in the present case in availing the legal remedies also strengthened his case that he did not enter into an agreement with the Appellants.
- v. Not only did the Respondent resort to availing of legal remedies but he also made efforts to take possession of the Suit Property from Appellant No. 1 by putting his own lock on the main gate of the Suit Property. This fact had also been admitted by Appellant No. 1 in his cross-examination. This further strengthened the plea of the Respondent that he did not sell the Suit Property to Appellant No. 1.
- vi. Shri Braham Dutt would have been the best witness to reveal the truth however the Appellants had failed to examine him. A

presumption under Section 114 (g) of the Indian Evidence Act was thus drawn against them that his evidence was not favourable to them so they did not examine him.

24.It is the case of the Respondent that he purchased the Suit Property from Mr. Deep Chand, the erstwhile owner of the Suit Property. In order to prove the said factum, he entered into the witness box as PW1 and proved the following documents:

- (i) GPA dated 21.01.2011 executed by Mr. Deep Chand in favour of the Respondent (Exhibit PW1/1A)
- (ii) Agreement to sale dated 21.01.2011 executed by Mr. Deep Chand in favour of the Respondent (Exhibit PW1/1B)
- (iii) Possession letter dated 21.01.2011 executed by Mr. Deep Chand in favour of the Respondent (Exhibit PW1/1C)
- (iv) Receipt dated 21.01.2011 executed by Mr. Deep Chand in favour of the Respondent for a sum of Rs.4,50,000/- as a full and final settlement for the sale of the Suit Property (Exhibit PW1/1D)
- (v) Deed of Will dated 21.01.2011 executed by Mr. Deep Chand in favour of the Respondent qua the Suit Property (Exhibit PW1/1E)

25.That from the perusal of these documents, it is evident that the Respondent purchased the Suit Property from Mr. Deep Chand for a consideration of Rs.4,50,000/- and Mr. Deep Chand handed over the possession of the Suit Property to the Respondent.

26.It is the case of the Respondent that he left for his native place and in his absence the Appellants trespassed the Suit Property. However, it is

the case of the Appellants that an oral agreement to sell was executed between the Appellants and the Respondent for the sale of the Suit Property for a consideration of Rs.14,00,000/- out of which Rs.12,00,000/- was paid in cash. It is further the case of the Appellants that the Respondent handed over the possession of the Suit Property to them by virtue of the oral agreement to sale entered between the parties.

27.The Court shall now proceed to analyse into the *factum* of existence of the alleged contract for sale of the Suit Property between the Appellants and the Respondent.

28.It is true that a written contract has *prima facie* authenticity. However, in case of an oral agreement for sale, one has to prove it with sufficient evidence. The Court thus has to scrutinize the matter very carefully to come to any conclusion.

29.It is pertinent to note the observation of Hon'ble Supreme Court in ***Brij Mohan v. Sugra Begum*** reported as (1990) 4 SCC 147 regarding the proof of existence of an oral agreement of sale. The relevant portion of the said judgment is being reproduced below:

“We agree with the contention of the Learned counsel for the appellants to the extent that there is no requirement of law that an agreement or contract of sale of immovable property should only be in writing. However, in a case where the plaintiffs come forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the plaintiffs to prove that there was consensus ad-idem between the parties for a concluded oral agreement for sale of immovable property. Whether there was such a concluded oral contract or not would be a question of fact to be determined in the facts and

circumstances of each individual case. It has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties orally and a written agreement if any to be executed subsequently would only be a formal agreement incorporating such terms which had already been settled and concluded in the oral agreement.”

(emphasis supplied)

30. It is to be noted that although the abovementioned case pertained to specific performance of an agreement, the observations of the Hon'ble Court regarding proof of oral agreements are relevant to the present case.

31. In a similar vein, it will be relevant to note the observations of this Court in *Ritnand Balved Education Foundation v. Paul Nanda & Ors.* reported as *2013 SCC OnLine Del 4466*, wherein the following observation has been recorded:

“43. The totality of the evidence would establish that there was some serious conversation between the parties which were transactional in nature and the parties seriously discussed the sale of the suit property. But, the conduct of the parties as a whole has to be seen to determine whether a concluded oral bargain capable of being called as a contract came into existence and further whether the parties intended to bind themselves only when a written document evidencing the same was signed.”

(emphasis supplied)

32. In both the decisions cited above, it has been made clear that the burden of proof lies on the person who claims the relief based on the

oral agreement and the existence of the oral agreement has to be gathered from the facts and circumstances of the case.

33. In view of the above discussion, this Court would now examine the evidence placed on record to decide the issue of existence of oral agreement.

34. It is the case of the Appellants that they had advanced a consideration amounting to Rs.12,00,000/- pursuant to the oral agreement entered between them and the Respondent. It has also been contended by them that a sale deed was to be prepared upon payment of the balance amount of Rs.2,00,000/-. In order to prove their case, the Appellants had examined DW-1 to 4 who testified the payment of the amount of Rs.12,00,000. However, it is to be noted that the same has been categorically denied by the Respondent (**PW-1**) in his cross-examination. A perusal of the records indicates that the fact of payment of any part of the consideration amount has not been established by the Appellants. There is no record of the alleged transaction and the Appellants have solely relied on the oral testimony of the witnesses to aver that a consideration amount of Rs.12,00,000/- was advanced by the Appellants to the Respondent. DW-1 has throughout maintained that the entire payment was in cash and there was no record as to withdrawal of the said amount from his bank account and the same has not been reflected in the Income Tax Return. Moreover, it must be kept in mind that all these are witnesses of the Appellants and are bound to speak in their favour. This Court is therefore not convinced of the veracity of the statements of these witnesses to establish the alleged transaction. It is pertinent to note that

the Learned Trial Court had also highlighted that in the cross-examination of the plaintiff, nothing came out on the basis of which it could be inferred or even presumed that he negotiated the deal of Suit Property with the defendant No. 1 for Rs.14,00,000/- and received Rs.12,00,000/-. In the considered opinion of this Court, it appears that there is nothing to show that the alleged amount was advanced by the Appellants to the Respondent.

35. It is an established judicial principle that the parties seeking performance of contract must satisfy all the requirements necessary for seeking relief. In exercising its discretion, the Court is obliged to take into consideration the circumstances of the case, conduct of the parties and the respective interests under the contract. Keeping these factors in mind, it becomes pertinent to note that the Appellants did not file any suit for specific performance or avail of any legal remedies against the Respondent with respect to the alleged contract. It is to be noted that according to the Appellants, an oral agreement to sell and purchase was entered into between the parties for the sale of the Suit Property in question for a sum of Rs.14,00,000/-, out of which Rs.12,00,000/- had been paid by them to the Respondent. However, DW-6 in his cross-examination stated that the Appellants had failed to produce before the I.O. any document and transaction details in regard to the payment of Rs.12,00,000/- to the Respondent. It is also evident from the records of this case that the Appellants have not even served a legal notice to the complainant for the Specific Performance of the agreement for sale. It can thus be deduced that the conduct of Appellants itself militates

against them on the issue of existence of an agreement between the parties.

36. Another averment by the Appellants to justify their entering into occupation of the Suit Property was that the vacant and peaceful possession of the Suit Property was handed over to them pursuant to the alleged oral agreement. However, a perusal of the record reveals that Appellant No. 1 in his cross-examination has said that he was not able to make entry in the Suit Property because of the lock placed on the property by the Respondent. This in fact shows that the Respondent never handed over the possession of the Suit Property to the Appellants who illegally entered into possession of the suit property. Moreover, the Appellants have been unable to establish that there was any oral agreement to sell between the parties. In the absence of such agreement, it is inconceivable that the possession of the valuable immovable property would be actually handed over by the Respondent to the Appellants.

37. This Court fails to understand how the evidence on record as discussed above can be read as proving the case of the Appellants that there was an oral agreement to sell between the parties, whereby the Suit Property was agreed to be sold by the Respondent to the Appellants. In the considered view of the Court, the Appellants have miserably failed to prove this crucial issue.

38. In view of the aforesaid discussion and appreciation of the evidence placed on record, this Court is of the view that both the reasoning and the conclusions drawn by the learned Trial Court are sound and do not call for any interference by this Court.

39. Accordingly, the present appeal is dismissed with cost of Rs.25,000/-.

The Appellants are directed to pay the cost of Rs.25,000/- to the Respondent within a period of 4 weeks from today and place the proof of the same before this Court thereafter. In case the Appellants do not file the proof of payment of cost within the stipulated time, the Registry is directed to place the matter before this Court for further directions.

40. All pending applications are disposed of accordingly.

OCTOBER 18, 2022

GAURANG KANTH, J.

