

(2012) 05 DEL CK 0453

Delhi High Court

Case No: Regular First Appeal (OS) 68 of 2008

Vimla Sethi

APPELLANT

Vs

Anisuddin and Others

RESPONDENT

Date of Decision: May 17, 2012

Hon'ble Judges: Siddharth Mridul, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: J.P. Sengh, Instructed by Mr. G.L.N. Murthy and Mr. Deepak Dewan, for the Appellant; J.K. Seth Instructed by Mr. Rakesh Saini and Ms. Kriti Arora, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

Suit filed by respondents No. 1 and 2, Anisuddin and Khalid Riaz, seeking a declaration that they are the owners in possession of property bearing No. 226, Block-A, New Friends Colony, New Delhi and requiring appellants to execute a sale-deed in respect thereof with respect to the agreement to sell dated Ex.DW-1/P.1 has been decreed by the learned Single Judge vide impugned judgment and decree dated July 02, 2008. The appellant, impleaded as defendant No. 1 is aggrieved by the decree. DDA and Delhi Administration, impleaded as defendants No. 2 and 3 in the suit have evinced no concern with the decree.

2. Appellant Vimla Sethi, as a member of the New Friends Cooperative House Building Society Limited, was allotted the plot of land bearing Municipal No. A-226, New Friends Colony, New Delhi and vide perpetual sub-lease deed Ex.DW-1/P.16 dated March 24, 1973 acquired perpetual lease-hold rights in the land under the Union of India, requiring her, in terms of Clause II(5) of the Sub-Lease Deed to construct a residential building on the plot within two years of the lease being executed under pain of forfeiture of the perpetual lease.

3. Undisputably, appellant executed a series of documents on April 23, 1981 and May 05, 1981, including the agreement to sell Ex.DW-1/P.1 recording therein that

the appellant had received Rs. 1,80,000/-(Rupees One Lakh Eighty Thousand) from Anisuddin and Khalid Riaz. Other documents are, a construction agreement Ex.DW-1/P.13 (also Exhibited as Ex.DW-1) recording that Anisuddin and Khalid Riaz have agreed to construct a building on the plot of land by using their own funds, Clause VI whereof records that Anisuddin and Khalid Riaz have agreed to pay a sum of rupees (space left blank) as security to construct the building; Ex.DW-1/P.2, an unregistered General Power of Attorney appointing Riazuddin as her General Attorney and conferring upon him the power to receive money in his own name and sell the property bearing No. A-226, New Friends Colony, New Delhi after constructing a building thereon; Ex.PW-1/7 (having blanks), but acknowledging that she was in receipt of a letter that the house was ready for occupation and she was unable to pay the costs of construction and the amounts received by her under the agreement to sell as also the construction agreement and thus she had no objection if the property was registered in the name of the builder; Ex.DW-1/P.3, a General Power of Attorney in favour of Riazuddin authorising him to act on her behalf in respect of the property with the Municipal and Statutory Authorities; Ex.DW-1/P.4, a Special Power of Attorney empowering Riazuddin to obtain sale permission, receive sale consideration and sell the property; an affidavit Ex.DW-1/P.5 affirming that neither she nor her husband or dependent children owned any property at Delhi at the time of purchase of the plot; an affidavit Ex.DW-1/P.6 affirming that she would not revoke the power of attorney; an affidavit Ex.DW-1/P.7 affirming that she would transfer all her rights; an affidavit Ex.DW-1/P.8 affirming that the land was within the ceiling limit under the urban land (Ceiling and Regulation) Act, 1976; Ex.DW-1/P.9, an unfilled application to the competent authority under the urban land (Ceiling and Regulation Act, 1976); Ex.DW-1/P.10 a letter addressed to the Secretary, New Friends Cooperative Housing Building informing that she had nominated Anisuddin as her nominee with the society; Ex.DW-1/P.12 being and an indemnity bond in favour of DDA.

4. It was the case of Anisuddin and Khalid Riaz, as pleaded in the plaint, that they paid Rs. 1,80,000/-by means of demand drafts to the appellant and under the documents afore-noted she had transferred her right, title and interest in the land in their favour and they had constructed a building thereon from out of their own funds. Anisuddin and Khalid Riaz pleaded that on September 25, 1989 and August 03, 1991, the appellant had addressed two letters which clearly indicate that they were the owners of the land and the building. Pleading that they had paid the entire sale consideration for the plot in question which was agreed to be Rs. 1,80,000/-, they claimed the afore-noted reliefs.

5. The two letters dated September 25, 1989 and August 03, 1991, Ex.DW-1/P.14 and Ex.DW-1/P.15 read as under:-

Sir,

This has reference to our agreements entered into by is in respect of A-226, plot in New Friends Co-operative Society Ltd., about six-years back. It was hundred per cent our understanding that you would get these agreements concluded to their logical end at an earliest date but nothing has happened till today.

I am facing increasing difficulty in my income tax and wealth tax assessments in consequence.

Now, I understand that DDA has also made arrangements and they have become very liberal.

I would appreciate if you take immediate action in this regard which would be fair to me and to you both. If the long delay on your part continues and later on I suffer or your interest jeopardized in any way, I would not like it and the responsibility will be entirely yours.

I will appreciate immediately hearing from you in this matter. I am sending a copy of this letter to the person who brought us together, Mr.Gulshan Nayyar.

Yours faithfully,

Sd/

(Vimla Sethi)

Md.Zaki,

A-226, New Friends Co-operative Society Ltd.

New Delhi-110065"

x x x x

Mr.Khalid Riaz,

Mr. Anisuddin,

A-226, New Friends Colony,

Mathura Road, New

Delhi - 110065

Sir,

Ref:-Plot No:8226 at New Friends Colony, New Delhi - Agreement entered into on or about 23/4/1981 - Request for assurances.

Your will recollect that over a decade ago, on or about 23rd April, 1981, some documents were exchanged between us in relationship to plot No. A-226, New Friends Colony, New Delhi. But thereafter, nothing much seems to have been done causing immense hardships to me in more ways than one because of lack of follow

up action of the agreements entered into on or about 23rd April, 1981. While in equity, justice and law, all those agreements signed on or about 23rd April, 1981 are fast losing relevance because of having not been acted upon for over a decade. I am still willing to cooperate with you and your brother in the above matter so that whatever was agreed upon between us can be acted at least in the spirit in which it was agreed upon but without any loss to me materially or otherwise. Since most of the items in the agreement have become out dated because of not having been acted upon, I am ready to sign any new agreements also to give effect to our understandings, provided I do not suffer any loss in the process.

At my instance legal notice had also been issued to you by Mr.Gopendra Nath Datta, High Court Advocate, Calcutta, but nothing seems to have transpired for the last over one year though my husband Mr. S.P. Sethi also met Md.Zaki, your uncle in between three or four times. I would like assurances on the following two points immediately:

(1) No documents would be submitted either to Delhi Development Authority or to Secretary, New Friends Colony Co-operative Society or any other Govt. Authority in relation to the agreements entered into on 23/4,1981 till I have been intimated in writing at least 15 days earlier in that direction.

(2) Nothing would be done in relation to the above plot without taking a Tax Clearance Certificate from my Assessing Officer as the laws applicable in 1991 do require the same. In case you are advised differently, I do feel the advice to you is completely incorrect but in any case the matters will have to be brought to the notice of the Income Tax Authorities in Calcutta actively in writing before any further action in relation to the plot is to be taken.

I am ready to cooperate with you in every way still so that the spirit of the agreement can be honoured but it does not look to me that you are at least appreciative of my difficulties created solely by your inaction over the agreements for the last ten years continuing with your disregard of my problems.

I would like to have a written assurance on these two points mentioned above and by and large further assurance on the points indicated by Mr.Gopendra Nath Datta in his legal notice. Please rest assured however, that excepting in that event that I am put into any serious difficulty and which I am somewhat facing today even because of your inactivity, I am willing to cooperate with you in every way in the spirit of the agreements entered into on or about 23rd April, 1981.

I do hope, the assurances sought for in my present letter and also by Mr.Gopendra Nath Datta at my instance are most reasonable and carry an assurance also to you that I am still willing to cooperate with you in every way to execute the agreements entered into on or about 23rd April, 1981 in the spirit in which these were done and I do hope you would not blame me for any action I may take if these assurances are not immediately forthcoming.

A copy of this letter is being sent to Md.Zaki also because he has been looking after your interest for quite sometime.

Excepting (sic.) your early reply within 15 days at the latest.

Yours faithfully

Sd/-

(Mrs.Vimla Sethi)

C.C. to Md.Zaki, C/o Mr.Khalid Riaz,

A-226, New Friends Colony, Mathura Road, New Delhi - 110065

6. In the written statement filed by the appellant she pleaded that the agreement to sell Ex.DW-1/P.1 was a draft and thus no legally binding agreement came into existence. She pleaded that the document was never intended to be acted upon. She pleaded that the documents signed by her and relied upon in the plaint have blank spaces, which were never filled up and thus there was no meeting of the mind. She denied having received any money at the first instance, but contradicted herself when she admitted in para (iv) of the written statement that she had received Rs. 1,80,000/-. She pleaded that the actual transaction was that upon completion of the building she would have the right to take possession of the ground floor.

7. Needless to state the rival versions need to be analyzed with reference to what was going on in the city of Delhi, and taking a cue therefrom, spreading like a wild fire all over India: cheating on the Government revenue by transferring possession and conferring authority to deal with the property as an owner under general power of attorney, and after receiving the entire sale consideration entering into agreement to sell and/or construction agreement.

8. The learned Single Judge has analyzed the various documents executed by the appellant and with reference to the letters Ex.DW-1/P.14 and Ex.DW-1/P.15 has come to a conclusion that the transaction between the parties was one such transaction. A sale stood camouflaged under the foliage of the exhibits afore-noted by us and relied upon in the plaint.

9. The agreement to sell Ex.DW-1/P.1 has been signed on each page by the appellant and at the last page by describing herself as a vendor. The last page has been signed by the respondents by describing themselves as vendees. The agreement to construct a building Ex.DW-1/P.13 gives complete freedom to the respondents to construct a building after obtaining the municipal sanction, without indicating what would be the extend of construction and the material used.

10. Now, if an owner, employs a contractor to construct a building, least expected from the owner would be to indicate the number of bed-rooms, the size and the locations thereof. The size and location of the drawing-cum-dining room, the kitchen

and the toilets i.e. the aesthetics of the building. After all, the building to be constructed was a residential building; to be the house of a family. The two general power of attorney(s) Ex.DW-1/P.2 and Ex.DW-1/P.3, the special power of attorney Ex.DW-1/P.4, the four affidavits Ex.DW-1/P.5 to Ex.DW-1/P.8 and the indemnity bond Ex.DW-1/P.12 clearly evidence that the general attorney(s) were to act in their name and on their behalf and receives sale consideration for their own good and use. Ex.DW-1/P.4 authorizes the attorney to sell the property. The affidavit Ex.DW-1/P.5 acknowledges the appellant having sold the property. Undisputably, appellant received Rs. 1,80,000/- by means of bank drafts as under:-

1. D.D. No. 065236 for 90,000/- dated 04.05.1981;
2. D.D. No. 007967 for 10,000/- dated 21.04.1981;
3. D.D. No. 065235 for 45,000/- dated 04.05.1981;
4. D.D. No. 065237 for 35,000/- dated 04.05.1981.

11. It is true that the affidavit Ex.DW-1/P.7 has a blank space where the name of the person to whom appellant transferred her lease-hold right was to be written, but its language is important to be noted:

all my (appellant's) rights and interests in the said plot of land including building to be constructed there upon in favour of _____ (left blank) on receipt of permission from the authorities concerned. That the possession of the plot aforesaid has been handed over by me to the building contractor for construction of building thereon with his own money.

12. Who would hand over the title documents of the property to a builder? Only he, who knows that the construction agreement is a camouflage and the real object is the sale of the property. We take notice of normal course of conduct of sellers handing over their title documents to the buyer when a property is sold. It is not in dispute that the perpetual sub-lease Ex.DW-1/P.16 was handed over by the appellant to the respondents when the appellant executed the various documents to which we have briefly made a reference to hereinabove.

13. The letters Ex.DW-1/P.14 and Ex.DW-1/P.15 also have a story to tell. The appellant has written in Ex.DW-1/P.14 that with reference to the agreement it was her desire to conclude the same to their logical end. She expressed a difficulty with respect to income tax and wealth tax assessments in consequence. What does this mean? It simply means that since in the official records the property continued to be recorded in her name, she was facing a problem if she disclosed the same as under the ownership, or would have faced a problem if she never disclosed anything about the property. The conclusion is obvious, vide Ex.DW-1/P.14, the appellant was wanting a formal sale document to be executed.

14. Similar is the apprehension expressed by the appellant in Ex.DW-1/P.15.

15. Appellant's husband had written a letter Ex.PW-1/1 to the uncle of the respondents, Md.Zaki in which he wrote:

Dear Mr. Zaki,

I must thank you for your hospitality at Delhi.

I have been repeatedly requesting for the Photostat copy and your kind self has promised to give me such photocopies of all the documents at the earliest. I would appreciate if the same are given to us at an immediate date. You may kindly send these under Registered Cover. I will certainly pay the costs whatsoever.

I am very anxious that you get the plot transferred at the earliest. I would appreciate hearing from the persons" concerned about their views in the matter and also added assurance from them immediately that nothing whatsoever will be done behind our back and everything would be done with our consent. We are, however, very anxious that the plot be transferred immediately so that the matters stand closed, once for all.

Thanking you and with regards.

Yours sincerely

Sd/

(S.P. Sethi)

Mr. Md. Zaki,

F.D. Riasuddin & Co.

5251, Balllimaran Street,

Delhi - 110006

16. The facts of the instant case are strikingly similar to the facts which were noted in the decision reported as AIR 2008 Delhi 44 Sushil Bhasin & Ors. vs. Sandeep Gupta & Ors. as also a decision pronounced by a Division Bench as recently as on February 13, 2012 in RFA(OS) NO.124/1998 Ajay Goel vs. K.K. Bhandari & Ors., in which similar transactions pertaining to an agreement to sell, construction agreement etc. were held to be transactions conferring rights of a purchaser on the so called builder.

17. Suffice would it be to state that in the city of Delhi the situation was akin to a mutiny, every seller and every buyer was in rebellion with the law. Truce was announced by the Government when the Policy of Conversion of Lease-Hold Tenures to Free-Hold Tenures was promulgated in the year 1992. Under the policy existing perpetual lessee could pay the notified conversion charges requiring the lessor to execute a conveyance deed conferring free-hold interest in the land in favour of the lessee and those who were in possession under tainted documents being agreements to sell, power of attorney, collaboration agreements etc. could so

obtain a direct free-hold interest but after paying 33.33% more of the conversion charges.

18. We concur with the reasoning of the learned Trial Judge that it is a case of the sale. That the appellant received full sale consideration in sum of Rs. 1,80,000/-to transfer her interest in the land. The respondents spent money from their own pocket to construct a building on the plot. They own the superstructure and the appellant would be required to execute the necessary sale-deed in their favour.

19. We may only advise the respondents to proceed under the conversion policy because if they were to require the appellant to execute a sale-deed in their favour, they would have to shell out a considerable sum of money inasmuch as unearned increase would have to be paid to DDA. The appeal is dismissed but without there being any order as to costs.