Sher Mohammad Vs Mohan Magotra

Court: Delhi High Court

Date of Decision: July 10, 2013

Acts Referred: Specific Relief Act, 1963 â€" Section 20, 21

Citation: (2013) 202 DLT 708

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: S.K. Taneja and Mr. Arvind Sharma, for the Appellant; J.K. Jain, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.
The appeal impugns the judgment and decree dated 09.02.2004 of the Additional District Judge, Delhi dismissing

suit No. 94 of 1997 filed by the appellant for specific performance of an Agreement dated 13.03.1995 with the respondent for sale of agricultural

land falling in Khasra Nos. 1273, 1286, 1287, 1288, 1289, 1320, 1321 and 1322, total measuring 7.125 acres in village Punjab Khore, New

Delhi. Notice of the appeal was issued and appeal thereafter admitted for hearing on 16.02.2005. Vide ad-interim order of the same date, the

parties were directed to maintain status quo with regard to the nature, title and possession of the said land. The Trial Court record was

requisitioned. However the same on receipt was found to be incomplete and the record shows that the missing parts of the Trial Court record were

reconstructed before the District Judge.

2. The counsels have been heard between yesterday and today.

3. The case of the appellant/plaintiff in the plaint was:

(i) that the respondent/defendant had represented himself to be the owner of the aforesaid land by virtue of a Family Settlement dated 28.05.1993

between the legal heirs of Late Sh. Datar Singh, forming part of the consent Decree dated 25.08.1993 of this Court in CS(OS) No. 1495 of 1989

and CS(OS) No. 63 of 1989;

(ii) that the respondent further represented that he was in need of money and had agreed to sell his other lands also in the vicinity;

(iii) that the respondent had agreed to sell his aforesaid land for a total sale consideration of Rs. 4,98,750/- at the rate of Rs. 70,000/- per acre;

(iv) that since the land continued to be recorded in the revenue records in the name of Smt. Ranjit Kaur, though under the Family Settlement

aforesaid had fallen to the share of the respondent, the respondent also agreed to first have the land mutated in his name and thereafter obtain

NOC from the Patwari/Tehsildar;

(v) that the terms and conditions agreed between the parties were reduced into a writing dated 13.03.1995 in which the respondent admitted

receipt of advance/part sale consideration of Rs. 4,25,000/- leaving a balance of Rs. 73,750/- payable at the time of registration of the Sale Deed

and further admitted having delivered vacant peaceful physical possession of the said land to the appellant;

(vi) that the appellant after so coming into possession of the said land started tilling the same and approached the respondent repeatedly to enquire

about the status of the permissions and sanctions required for execution of the Sale Deed and was always assured that the necessary steps were

being taken;

(vii) that though the parties had agreed that the Sale Deed would be signed and executed on or before 31.07.1995 but the respondent towards the

end of July, 1995 sought further 15 days time, again with the assurance to execute the Sale Deed thereafter; and,

(viii) however the respondent on 12.08.1995 purported to take over possession of the said land from the appellant; hence the appellant filed the

suit from which this appeal arises on or about 16.08.1995 claiming besides the relief of specific performance, the relief of permanent injunction

restraining the respondent from forcibly dispossessing the appellant from the land.

4. The respondent contested the suit by filing a written statement pleading:

(i) that the writing dated 13.03.1995 forming the basis of the suit of the appellant was forged;

(ii) that the said land was in power and possession of the respondent, though the appellant had after the institution of the suit illegally trespassed on

the said land;

(iii) that the land had been grossly under-valued and no specific performance could thus be ordered;

(iv) that no amount, let alone the amount of Rs. 4,25,000/-, was ever paid by the appellant to the respondent;

(v) that Family Settlement in CS(OS) No. 1495 of 1989 was under challenge in CS(OS) No. 1790 of 1994 and the respondent for the said

reason also as on 13.03.1995 had no right to enter into an Agreement to Sell with respect thereto;

(vi) that the writing dated 13.03.1995 appeared to have been prepared in collusion with other persons who were the recorded owners of the land;

(vii) that the signatures of the respondent on the Family Settlement in CS(OS) No. 1495 of 1989 had been obtained fraudulently;

It would thus be seen that the defence of the respondent/defendant was of denial of the Agreement of which specific performance was sought.

5. The appellant filed a replication to the written statement aforesaid of the respondent but need to advert to the contents thereof is not felt.

6. On the pleadings of the parties, the following issues were framed in the suit from which this appeal has arisen:

1. Whether defendant represented himself as owner of the suit property? OPP.

2. Whether the defendant entered in agreement dated 13.3.95? OPP

3. Whether a sum of Rs. 4,25,000/- was as advance/part sale consideration paid by plaintiff to the defendant and defendant executed valid receipt

dated 13.3.95? OPP

4. Whether defendant has filed and neglected to carry out his part of the obligation? OPP

5. Whether the documents alleged have been forged? OPD

6. Whether the alleged agreement is void for non compliance of provisions of Income Tax Act? OPD

7. Whether the plaintiff is not in lawful possession of suit property? OPD

8. Whether the suit property is the subject matter of suit No. 1790/1994 pending in High Court? OPD

9. Whether the suit property is undervalued and proper court fee is not paid? OPD

10. Whether this Court has no pecuniary jurisdiction to entertain the suit? OPD

11. Relief.

7. The appellant examined himself as PW-1 and a witness to the writing dated 13.03.1995 as PW2 and the Local Commissioner appointed in the

proceedings as PW3 and closed his evidence. The respondent examined himself as DW1 another villager as DW-2 and the clerk from this Court

as DW3 and Patwari of village Punjab Khore as DW-4 and closed his evidence. No evidence was led by the appellant/plaintiff in rebuttal.

8. The learned Additional District Judge in the impugned judgment, discussing Issues 1, 2, 3, 5 and 7 together has held:

(i) that a perusal of the writing dated 13.03.1995 titled ''Receipt'' on which Ex. PW1/1 was put, showed that it was on a plain paper with no

margin left on the top;

(ii) that there was hardly a space of 2 mm on top end where the word ""Receipt"" starts and there was no margin on the right side;

(iii) that the words ended just 2 mm before the end of the paper and there was very little margin (of less than an inch) on the left hand side;

(iv) that the signatures of the respondent appeared on the right side end of the paper;

(v) that though there was a revenue stamp affixed on the left side of the signatures which was crossed in black ink, the signatures of the respondent

were in blue ink;

(vi) that under the word ''Witnesses'', there was hardly any space; while one witness has signed under the word ""Witnesses"", the other witness has

signed near the revenue stamp in the middle of the paper;

(vii) the learned Additional District Judge thus concluded that the contents of the receipt had been pre-prepared and squeezed into the space

available on the paper;

(viii) the learned Additional District Judge accepted the evidence of the respondent that he was doing business in partnership with Smt. Ranjit Kaur

and in that regard had signed certain blank papers and given to Smt. Ranjit Kaur since he used to be out of Delhi for most the time and one of

those papers appeared to have been misused to forge the writing Ex. PW1/1;

(ix) that the circumstances in which the appellant had deposed the Agreement to Sell to have come about also seemed highly unlikely;

(x) that the appellant had deposed that he had met the respondent for the first time in 1991 in the office of Anant Raj Builders where both appellant

and the respondent were suppliers of building material;

(xi) that after 1991, he met the respondent in the first week of March, 1995 by chance in the parking of the Defence Colony market and when the

respondent had informed the appellant that he wanted to sell his land and gave the appellant the Settlement Deed forming part of the decree of this

Court in CS(OS) 1495/1989;

(xii) that thereafter the respondent had come to the house of the appellant where the appellant had called him and the next meeting was on

13.03.1995 when the Receipt was signed and payment of Rs. 4,25,000/- made;

(xiii) that the appellant could not also explain the source of Rs. 4,25,000/- paid as part sale consideration to the respondent;

(xiv) that the value of the land at the time of execution of writing dated 13.03.1995 was Rs. 6,50,000/- per acre and the respondent could not be

believed to have agreed to sell the same at Rs. 70,000/- per acre;

(xv) that if the revenue stamp had been affixed on the receipt dated 13.03.1995 at the time of execution, there was no reason why the signatures

were not over the revenue stamp;

(xvi) that had the respondent been in need of money, he would have contacted brokers for sale of the land and would not have sold the same to

the appellant on a chance meeting in a parking of Defence Colony market;

(xvii) that the writing Ex. PW1/1 was forged and fabricated on a plain paper which had come into possession of the appellant through someone;

(xviii) that the appellant had been unable to prove the payment of Rs. 4,25,000/- to the respondent;

(xix) that since the wife, daughters and other family members of the respondent had in 1994 filed a suit against the respondent and certain other

persons including with respect to the land aforesaid and claiming rights with respect thereto, the respondent on 13.03.1995 could not have

represented himself to be the sole owner of the land; and,

(xx) that the report of the Local Commissioner appointed vide ex parte order on the very first date when the suit was admitted reporting the

appellant to be in possession did not inspire confidence.

The learned Additional District Judge thus held that the agreement to Sell sought to be enforced being forged, there was no question of the

respondent fulfilling his obligations therein. Qua Issue no. 6, it was held that merely because the payment under the purported agreement to Sell

was made in cash did not make an Agreement void. The Issue no. 8 was also decided in favour of the respondent. However under Issue No. 10,

the suit was held to be properly valued for the purpose of court fees and jurisdiction. Resultantly, the suit was dismissed with exemplary costs of

Rs. 20,000/-.

9. The senior counsel for the appellant has argued; (i) that though the plea of the respondent in the written statement was of the writing titled

''Receipt'' dated 13.03.1995 containing the Agreement to Sell being forged and fabricated but the respondent in his evidence deposed his

signatures having been obtained on a blank paper and the said Receipt having been fabricated thereon; the said evidence is thus beyond pleadings

and the learned Additional District Judge could not have on the basis thereof returned a finding of the Receipt dated 13.03.1995 being forged and

fabricated; (ii) that the learned Additional District Judge erred in holding the appellant to have not explained the source of Rs. 4,25,000/- paid to

the respondent; the appellant in his testimony had deposed that the said money was lying in his house and PW2 being a witness to the Receipt

dated 13.03.1995 examined by the appellant had also deposed of payment in cash having been made to the respondent; it is argued that no

suggestion was given to PW2 that the said cash was not paid and thus the payment stands proved and in any case the onus shifted to the

respondent and which the respondent has failed to discharge; (iii) that though the respondent has denied handing over possession of the land to the

appellant on 13.03.1995 but DW2 examined by the respondent, in his cross examination on 23.10.2003 admitted the appellant to have been

cultivating the land; (iv) that inadequacy of sale consideration is no ground for not decreeing specific performance u/s 20 of the Specific Relief Act,

1963; that the learned Additional District Judge thus fell in error in disbelieving the Agreement for the reason of sale consideration being Rs.

70,000/- per acre when the price approved was of Rs. 4,65,000/- lacs per acre; and, (v) that there was no case of the appellant having taken any

unfair advantage of the respondent or the respondent being under any hardship and the discretion in the matter of grant of relief of specific

performance thus ought to have been exercised in favour of the appellant.

10. Per contra, the counsel for the respondent has invited attention to the judgment dated 04.07.2008 of the Division Bench of this Court in LA.

APP. 741/2006 titled Ishwar Singh Vs. Union of India and other connected matters and para 21 of which judgment sets out a Notification dated

03.05.1990 of the Land and Building Department, Delhi Administration fixing the minimum price of Rs. 4,65,000/- per acre for agricultural lands in

Delhi with effect from 27.04.1990. He has contended that no prudent person would sell his land, accepted by the government itself to be having

value of Rs. 4,65,000/- per acre (with the actual value being much more) at the rate of Rs. 70,000/- per acre. It is further argued that though there

may be concealment of the actual consideration in Sale Deeds but not in Agreements to Sell. It is argued that no cross examination on the said

aspect was done of the respondent appearing as DW1. It is further contended that there is no explanation as to why no proper Agreement to Sell

was got executed especially when 90% of the purported sale consideration was being paid at the time of Agreement to Sell itself. Reliance is

placed on para 7 of Shining India Developers Private Ltd. Vs. Lt. Col. P.S. Bhatnagar, , para 7 of Shri Deewan Arora Vs. Smt. Tara Devi Sen

and Others, and para 2 of Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others, to contend that remedy of specific

performance is an equitable remedy in the discretion of the Court; that the Court is required to examine whether the equities of the case demand a

decree for specific performance to be granted and specific performance is not to be granted in favour of a person who does not approach the

Court with clean hands.

11. I have considered the respective arguments.

12. It is the case of the appellant that he had agreed to purchase the said land from the respondent on the representation of the respondent that he

is the owner thereof on the basis of a Family Settlement filed in CS(OS) No. 1495 of 1989 and 63 of 1989 of this Court. The said Family

Settlement, the senior counsel for the appellant has contended has been proved as Ex. DW1/P1. The said document having not been found on the

Trial Court file, the senior counsel for the appellant has shown from his own file. Reference to the land, subject matter of this suit, is found in para 3

of the said Family Settlement dated 28.05.1993 and with respect whereto, it is recorded that Smt. Ranjit Kaur, Kumari Dayaneeta Singh, Smt.

Komal Kochhar, Smt. Kavita Singh & Kumari Rishma Singh, described as First Party in the said Family Settlement, had released and relinquished

their interest therein in favour of the ''Confirming Party''. ''Confirming Party'' has been described in the said Family Settlement as Mohan Magotra

i.e. the respondent herein, Smt. Kunti Devi, Kumari Shalu Magotra, Kumari Mitu Magotra, Sh. Mohan Magotra, Sh. Govind Ram, M/s. Govind

& Co. and Smt. Madhu Magotra.

13. It being the case of the appellant/plaintiff that the copy of the said Family Settlement on which his evidence Mark ''A'' was put, handed over by

the respondent to him in the very first meeting in the parking of Defence Colony market and that the respondent had represented himself to be the

sole owner of the land on the basis thereof, it is enquired from the senior counsel for the appellant as to how the appellant on the basis of the said

document could presume the respondent alone to be the owner of the land when as per the said document itself, the land, besides the respondent

belongs to several other persons, some of whom are minor.

14. No plausible answer has been forthcoming.

15. It was next enquired from the senior counsel for the appellant as to how, when as per the document relied upon by the appellant itself, the

respondent is only one of the several owners of the land, could the appellant under Agreement with the respondent alone, acquire the entire land.

16. The only answer which is forthcoming is that specific performance can be ordered to the extent of the share of the respondent in the land.

17. Though the aforesaid course of action is permissible in law but the facts in the present case do not justify the same, even if the appellants were

otherwise held to be entitled to the relief. The land agreed to be sold is agricultural land and division whereof is subject to the laws relating to

minimum holdings of agricultural land. As per the document produced by the appellant himself, besides the respondent, Smt. Kunti Devi, Kumari

Shalu Magotra, Kumari Mitu Magotra, Sh. Mohan Magotra, Sh. Govind Ram, M/s. Govind & Co. and Smt. Madhu Magotra are the owners of

the land. The total land is 7.125 acres. The shares of each, even if equal, would thus be less than 0.9 acres and which may result in an agricultural

holding not permitted to be transferred/conveyed. Though the learned Additional District Judge has not considered the matter in the said light but

therefrom it is apparent that even if the findings with respect to the existence of the Agreement to Sell were to be in favour of the appellant, it is not

possible to decree the suit and grant the relief of specific performance.

18. Though the senior counsel for the appellant faced therewith has faintly suggested that a decree for refund of Rs. 4,25,000/- be then passed but

upon attention of the senior counsel for the appellant being invited to Section 21 of the Specific Relief Act and the fact that the said relief has not

been claimed in the plaint, no further argument in this respect has been made.

19. As far as the finding of the learned Additional District Judge, of there being no Agreement to Sell is concerned, I tend to agree therewith. The

appellant/plaintiff in the present case has utterly failed to prove the availability with himself of the amount of Rs. 4,25,000/- paid in cash. Though in

the evidence on record, there is a reference to a passbook of a bank account of the appellant/plaintiff having been produced during the course of

the cross examination but the senior counsel for the appellant fairly admits that the said passbook does not justify the availability of Rs. 4,25,000/-

with the appellant. As far as the argument of suggestion having not been given to PW2 is concerned, I may mention that the tenor of the entire

cross examination by the respondent of PW2 is to challenge his statement; though of course no specific suggestion is given that he has lied on the

aspect of payment of Rs. 4,25,000/- in cash in his presence. However, I am of the opinion that in a civil trial which is based on pleadings, there is

no need for such suggestions to be given. The respondent in his written statement had already denied the said payment and it was for the appellant

to prove the same. The practice of giving suggestions in cross examination to witnesses is of criminal trials where there are no pleadings and the

defence is built up by giving such suggestions. However unfortunately the said practice of criminal trials has crept into the civil trials also to the

extent that most of the cross examinations being in the form of suggestions alone and which take considerable time. The purport of cross

examination is to challenge the testimony and/or to falsify the witness or his credit worthiness and not to give suggestions to the effect that each and

every deposition in examination-in-chief is false. Similarly, a party in a civil trial is not required to in cross examination put its case to the witness as

the same as aforesaid already exists in the pleadings.

20. I am also unable to agree with the contention of the senior counsel that upon the mere statement of the appellant and the appellant''s witnesses

of having paid the sale consideration of Rs. 4,25,000/- in cash, the onus shifted on the respondent. The appellant in cross examination sought to

explain the availability of the said amount with him by explaining his source of income but without any proof whatsoever. Without the appellant

proving any source of income from which he could have in his household over the years collected Rs. 4.25 lacs, the appellant cannot be said to

have discharged the said onus. Moreover, it was the appellant alone who could have led affirmative evidence of payment of such amount and the

respondent, besides denial of receipt could not have been expected to lead any evidence on the said aspect.

21. In the face of the appellant having failed to prove availability of funds for which Receipt dated 13.03.1995 was issued, the said claim in any

case falls.

22. There is considerable merit in the reasoning given by the learned Additional District Judge of the manner in which the said Receipt is engrossed,

also being indicative of the same having been manufactured on a plain paper bearing the signatures of the respondent.

23. In the ordinary course of transactions of sale-purchase of immovable property, documents of sale are not engrossed in such a manner. It is not

as if the parties had cursorily wanted to keep a bare Receipt. The receipt is quite exhaustive and in legal language. If the intent was to prepare such

a document, there was no reason why no proper Agreement to Sell could have been executed.

24. As far as the argument of the learned senior counsel for the appellant of the change in stand by the respondent qua the said Receipt is

concerned, a perusal of the record finds a reason therefor also. The record reveals that the said receipt was not filed by the appellant along with

the suit and was filed subsequently. The same was thus not available to the respondent at the time of filing of the written statement. In fact the

receipt came to be produced at the time of recording of the evidence of the appellant as PW1 pursuant to the direction on 25.01.1999. The

respondent was thus fully justified, on examination of the original document, to explain the signatures thereon which on such examination were

found to be genuine. Rather the same shows the conduct of the respondent to be bona fide.

25. No other argument has been urged.

26. The appeal resultantly fails and dismissed.

27. The Trial Court having already imposed exemplary costs on the appellant, I refrain from imposing any further costs. Though there is a

controversy between the parties as to possession also, with both, appellant as well as the respondent claiming to be in possession of the land today

also, but in view of the above need is not felt to return any findings thereon.

Decree sheet be drawn up.