

inder Sharma Vs. Vikas Nagpal

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Court : Delhi

Decided On : Mar-18-2014

Judge : Pradeep Nandrajog

Appellant : inder Sharma

Respondent : Vikas Nagpal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: February 05, 2014 Judgment Delivered on: March 18, 2014 + RFA(OS) 143/2013 INDER SHARMA Represented by: Appellant Mr.Arun Singh Bawa, Advocate with Ms.Sonali Chopra, Advocate versus VIKAS NAGPAL Represented by: Respondent Mr.Amit Dayal, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE JAYANT NATH PRADEEP NANDRAJOG, J.

1. Holding that the Courts at Delhi lack territorial jurisdiction to entertain the plaint filed by the appellant in the Delhi High Court vide impugned order dated September 16, 2013 the plaint has been directed to be returned for being presented to the Court having jurisdiction, which Court has not been identified by the learned Single Judge, but has to be the City Civil Court in Gurgaon, Haryana, for the reason the view taken by the learned Single Judge is that since the decree as per prayer (c) pertaining to the receipt dated August 28, 2009 impinged upon property No.A-119, Sushant Lok, Phase-I, Gurgaon, Courts at Delhi would not

have territorial jurisdiction to entertain the plaint. In passing the impugned order the learned Single Judge has placed emphasis on prayer (c) made in the plaint and has inferred therefrom that the relief prayed directly relates to the determination of a right to or interest in immovable property. The oral plea by the plaintiff/appellant to give up relief (c) has been negated in paragraph 8 of the impugned order and we quote :

8. Mr.Bawa, learned counsel for the Plaintiff, repeatedly stressed that he was prepared to either give up relief (c) or even amend the plaint to that effect. However, the fact remains that the Court has to take the plaint as it reads and decide the preliminary issue in the context of pleadings as they exist. It is not possible for the Court at this stage to accept any oral prayer of the Plaintiff to drop any of the prayers or to even amend the plaint.

2. Case of appellant Inder Sharma as per the plaint instituted by him is that he was the owner in possession of property bearing No.A-118, Sushant Lok, Phase-I, Gurgaon, Haryana and that in August, 2008 Vikas Nagpal, the defendant, expressed a desire to purchase the property from him and to show his bona-fides handed over `5,00,000/- (Rupees Five Lakhs only) as token money receipt whereof was acknowledged by him in writing on August 28, 2009 at New Delhi at the Branch Office of a company NU-TECH India Ltd. B-14A, Devika Tower, Nehru Place, New Delhi - 110019. As per Inder Sharma the agreed sale consideration was `6,78,13,200/- (Rupees Six Crores Seventy Eight Lakhs Thirteen Thousand and Two Hundred only) and it was expressly agreed that balance sale consideration in sum of `6,73,13,200/- (Rupees Six Crores Seventy Three Lakhs Thirteen Thousand and Two Hundred only) would be paid within 30 days because he required money urgently, and thus time was of the essence of the contract. He had needed at least `2,25,00,000/- (Rupees Two Crores and Twenty Five Lakhs only) most urgently because in his capacity as Managing Director of a company he had subscribed to `15,00,000/- (Rupees Fifteen Lakhs only) warrants to be converted into equity shares on a preferential basis pursuant to an Extra Ordinary General meeting of the company held on September 30, 2009 entitling him to so do. He pleaded that SEBI Regulation 77, required him to pay ` 2,25,00,000/- (Rupees Two Crores and Twenty Five Lakhs only) immediately. He pleaded that

he was an allottee of an apartment No.907B at a residential complex called Magnolias being developed by Delhi Lease & Finance Ltd. and he had made a request for the allotment to be changed to another apartment being No.708B which request was accepted and Delhi Lease & Finance Ltd. had required him to pay `3,65,77,500.65 (Rupees Three Crores Sixty Five Lakhs Seventy Seven Thousand Five Hundred and Paise Sixty Five only) towards further sale consideration. He pleaded that repeated requests made by him to Vikas Nagpal to pay the balance sale consideration were not heeded to by him. Making a reference to the property in question being provided as a collateral security to the State Bank of India against credit facility he pleaded that there was no charge created on the property. Pleading further that firstly the receipt of `5,00,000/- (Rupees Five Lakhs only) by him was a pre-condition to enter into a sale agreement and there was no concluded contract between the parties he pleaded in the alternative that Vikas Nagpal was in breach. He pleaded that by threatening to lodge criminal proceedings against him, Vikas Nagpal had caused damage to him for which he needs to be compensated `5,00,000/- (Rupees Five Lacs only). Pleading territorial jurisdiction on the fact that the receipt dated August 28, 2009 was executed at Delhi and additionally that Vikas Nagpal resided at Delhi, five reliefs were made as under:- a) To pass a decree of declaration making a declaration that the receipt dated August 28, 2009 is terminated and cancelled. b) To pass a decree of permanent injunction in favour of the plaintiff and against the defendant his agents/employees/assigns/nominees/representatives etc. restraining the defendant his agents/employees/assigns/nominees/representatives etc. from disturbing the peaceful vacant possession of the plaintiff at the said premises at No.A-118, ad-measuring 968.76 square yards (810 square meters) situated at colony Sushant Lok, Phase-I, Gurgaon, Haryana. c) To pass a decree of declaration making a declaration that the defendant has no right/title/interest in the said premises bearing No.A-118, ad-measuring 968.76 square yards (810 square meters) situated at colony Sushant Lok, Phase-I, Gurgaon, Haryana. d) To make a decree granting damages in favour of the plaintiff and against the defendant for an amount equivalent to `5,00,000/- (Rupees Five Lakhs only) along with interest payable @ 24% per annum from the date of filing of the suit. e) Pass any such orders which this Honble Court may deem fit.

3. We must firstly note that the appeal has wrongly been filed by the appellant as a Regular First Appeal under Section 96 of the Code of Civil Procedure and unfortunately for him, the counsel for the appellant had made him pay ad valorem court fee as was paid in the suit. The order in question is not a decree inasmuch as it has directed return of the plaint and has to be treated as an order in exercise of the power of the Court under Order VII Rule 10 of the Code of Civil Procedure and hence an appeal would lie against the order as per Order XLIII Rule 1 (a) of the Code of Civil Procedure.

4. Be that as it may, since an appeal would lie to a Division Bench of this Court against the impugned order passed by the learned Single Judge, we overlook the label of the appeal and treat it as a first appeal against an order.

5. As has been noted hereinabove, it was relief (c) prayed for which was treated by the learned Single Judge as requiring the plaint to be returned because the learned Single Judge was of the view that said prayer directly related to clause (d) of Section 16 of the Code of Civil Procedure inasmuch as the prayer was for the determination of a right to or interest in immovable property. The learned Single Judge has held that the prayer in question was specific : for declaring the rights and interests of the parties in immovable property.

6. Section 16 of the Code of Civil Procedure reads as under:

16. Suits to be instituted where subject-matter situate - Subject to the pecuniary or other limitations prescribed by any law, suits, (a) for the recovery of immovable property with or without rent or profits, (b) for the partition of immovable property, (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property, (d) for the determination of any other right to or interest in immovable property, (e) for compensation for wrong to immovable property, (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is

situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

7. A perusal of the Section 16 would reveal that pertaining to immovable property, subject to the proviso to the Section being attracted, a suit relating to immovable property falling within any one or more of clauses (a) to (f) has to be instituted within the local limits of the Court within jurisdiction whereof the property is situated. The proviso would be attracted where the relief respecting to immovable property or for compensation for wrong to immovable property can be obtained through the personal obedience of the defendant, and in such case residence of the defendant would confer jurisdiction on the Court with reference to whether the defendant voluntarily resides within the territorial jurisdiction of the Court, and the same would also be applicable where the defendant carries on business or personally works for gain in an area.

8. Sub-Rule 1 of Rule 1 of Order XXIII of the Code of Civil Procedure reads as under:- XXIII SUITS WITHDRAWAL AND ADJUSTMENT OF Withdrawal of suit or abandonment of part of claim (1) At any time after, the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

9. Ex-facie, the view taken by the learned Single Judge that the plaintiff cannot give up relief (c) runs contrary to the statutory provision i.e. Order XXIII Rule 1 of the Code of Civil Procedure. The conclusion by the learned Single Judge in paragraph 8 of the impugned decision that it is not possible for the Court to accept the oral prayer to drop any of the prayer is incorrect.

10. There is no impediment and in fact it is the unhindered, unqualified and absolute right of the appellant to abandon a part of his claim.

11. The prayer of the appellant that he be permitted to abandon prayer (c) could not be disallowed by the learned Single Judge.

12. While holding that Courts at Delhi would not have jurisdiction in view of prayer (c), the reasoning of the learned Single Judge is in paragraph 11 of the impugned decision, which reads as under:

11. The prayer (c) in the suit is specifically for declaring the rights and interests of the parties in the suit property. There can be no doubt that a court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In the present case, the suit clearly falls under Section 16(d), i.e., for the determination of any right to or interest in immovable property. The proviso would apply only where the property is held by or on behalf of the defendant. In the present case, the possession of the suit property is not with the defendant. Prayer (c) cannot be separated by the Court nor can it permit the suit to continue only in relation to the other reliefs claimed.

13. From a perusal of the plaint it is apparent that case of Inder Sharma is two folds. Firstly that the receipt dated August 28, 2009 cannot be treated as an agreement to sell, and secondly because Vikas Nagpal did not pay the balance sale consideration in sum of `6,73,13,200/- (Rupees Six Crores Seventy Three Lakhs Thirteen Thousand and Two Hundred only) he was entitled to terminate the jural relationship between the parties. Prayer (a) for a declaratory decree to be passed would relate to said case pleaded by him. The second prayer (b) for injunction would be premised on his pleadings that since Vikas Nagpal was in breach of his obligation and the agreement had been terminated, Vikas Nagpal cannot disturb his vacant peaceful possession. The third prayer for declaration that Vikas Nagpal has no right/title/interest in the suit property is a superfluous prayer. The decree for damages is premised on the plea that when Vikas Nagpal threatened to initiate criminal proceedings against him for breach of the agreement it caused damage to him. The same has nothing to do with the immovable property.

14. On the reasoning of the learned Single Judge the impugned order cannot be sustained.

15. But we are constrained to pen a few more paragraphs because the real issue pertaining to jurisdiction has not even been touched by the learned Single Judge.

The same would be : Whether a claim by the owner of an immovable property that because the defendant : the proposed purchaser, was in breach of the agreement to sell and hence he is entitled to a declaration that the agreement to sell stood terminated with further prayer that the defendant should be restrained from interfering with his possession would be a claim for the determination of a right to, or interest in immovable property.

16. Now, it is well recognized by law that an agreement to sell does not create any right, title or interest in any immovable property. It creates a personal right inter-se the parties to sue each other on the basis of the document i.e. the agreement to sell. If the agreement to sell relates to immovable property and the proposed buyer were to seek specific performance as also possession, the Court within territorial jurisdiction whereof the property is situated would alone have the jurisdiction because possession/recovery of immovable property would be prayed for. Thus we have decisions that where only specific performance of an agreement to sell concerning immovable property is prayed for, since the same can be enforced by the personal presence of the defendant, as long as the defendant would not be compelled to proceed to a place outside the territorial jurisdiction of the Court concerned, a suit seeking specific performance simplicitor of an agreement to sell can be filed in a Court within territorial jurisdiction whereof the defendant resides.

17. On the subject of territorial jurisdiction of a Court concerning immovable property, we find a very illuminating decision of the Federal Court reported as AIR 1950 FC83M/s.Moolji Jaitha & Co. Vs. The Khandesh Spinning & Weaving Mills Co.Ltd. Five learned Judges have authored five opinions and the common thread which weaves the opinions, notwithstanding that three learned Judges opined that the appeal filed by Moolji Jaitha & Co. should be dismissed and two opined that the appeal should be allowed, is that the law of equity that Courts for purposes of doing justice possess jurisdiction to pass decrees in personam would apply in India as well, notwithstanding that the exercise of jurisdiction by the Court may affect immovable properties situated beyond the jurisdiction of the Court. The majority opinions penned by Chief Justice Kania, Justice Fazal Ali and Justice Patanjali Shastri took the view that only where the subject matter of the suit directly, as distinct from indirectly, affects a title to, or possession in immovable

property, that Court alone could take seisin of a plaint where the property was situated. Justice Mahajan and Justice B.K.Mukherjee took a slightly different view holding that notwithstanding some relief would be required to be given pertaining to immovable property, but so long as title is not in dispute, in the real sense of the term, such a suit need not be instituted where the property is situated. We note that the different conclusion between the majority and the minority view was premised on the interpretation to the claim in the suit.

18. We would thus state that the claim in every suit concerning immovable property would have to be considered on case to case basis.

19. In the instant case, Inder Sharma does not claim declaration of any title to immovable property. Concededly he is the recorded owner of the property. He seeks a declaration to unburden himself of the agreement to sell entered into, if the receipt in question is to be treated as an agreement to sell. Since an agreement to sell immovable property creates no right, title or interest in immovable property and affords a cause of action to sue in personam, the declaration sought by him cannot be treated as one pertaining to determination of any right to, or interest in immovable property. The relief of injunction as is well known is a relief in personam. The relief for damages is unconcerned and unconnected with the property. The ill-advised prayer (c) being given up, we hold that the Court at Delhi had territorial jurisdiction to entertain the plaint.

20. The appeal is allowed. Impugned order dated September 16, 2013 is set aside. Inder Sharma is permitted to abandon prayer (c). CS (OS) No.540/2010 is restored for adjudication on merits.

21. The suit shall be listed for directions before the learned Single Judge on March 24, 2014. (PRADEEP NANDRAJOG) JUDGE (JAYANT NATH) JUDGE
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