

Devender Kumar Verma vs.tara Devi Thru I.r. Ram Kishor

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Court : Delhi

Decided On : Oct-31-2017

Appellant : Devender Kumar Verma

Respondent : Tara Devi Thru I.r. Ram Kishor

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on : October 31, 2017 RFA432007 DEVENDER KUMAR VERMA Through: Mr. Ajay Kumar, Ms. Nandini Nagpal, Advocates Appellant versus TARA DEVI THRU L.R. RAM KISHOR Through: Mr. S.N. Gupta, Advocate Respondent CORAM: HON'BLE MR. JUSTICE P.S.TEJI JUDGMENT P.S.TEJI, J1 Aggrieved by the judgment and decree dated 04.11.2006 passed by the learned Additional District Judge, Delhi in Suit No.268/2003, the appellant has preferred the instant appeal under Section 96 read with Section 151 of the Code of Civil Procedure, 1908 (CPC).

2. In a nutshell, the facts of the case are that plaintiff/respondent was the owner of property No.JD-18, measuring 300 sq. yds out of Khasra No.22 situated at Khirki Extension, Opposite Malviya Nagar, New Delhi. She entered into a collaboration agreement dated 09.09.1999 with the defendant/appellant for construction of flats over the plot of land, thereby agreeing that the plaintiff/respondent shall be the owner of six flats bearing Nos. JD-18/14, 17, 18, 21, 23, & 25 on different floors, and the defendant/appellant will retain six flats bearing Nos. JD-18/15, 16, 19, 20, 22, & 24. As per the agreement, Page 1 of 11

R.F.A.No.43/2007 further agreement to sell dated 04.01.2000 with the said flat In terms of the agreement flat No.JD- was to be retained by defendant/appellant but by way of the plaintiff/respondent, he agreed to sell for a total consideration of Rs.11 lakhs. the plaintiff/respondent paid a sum of Rs.8.5 lakhs as part consideration on 29.11.1999 and Rs.1.5 lakhs on 24.12.1999. Apart from the said amount the plaintiff/respondent sent a cheque for a sum of Rs. 1 lakh to the defendant/appellant as the balance sale consideration. However, when the plaintiff/respondent asked the defendant/appellant to execute a sale deed in respect of the said flat, she came to know that the defendant/appellant had entered into an agreement to sell with one Shri S.A. Naqvi. Thereafter, lodged a complaint with the police on 31.10.2000. The plaintiff/respondent also served a legal notice on the defendant on 03.10.2001. Therefore, the plaintiff/respondent specific performance of the agreement to sell dated 04.01.2000 in respect of flat No.JD-18/19, and in alternative prayed for a decree for recovery of Rs.11 lakh alongwith interest in her favour. Though the suit was initially filed against S.A. Naqvi as well, after recording statement of plaintiff/respondent the suit against him was allowed to be withdrawn and he was ordered to be deleted from the array of parties. the plaintiff/respondent seeking a decree of filed a suit 3. Defendant/appellant filed his written statement and denied the fact that the plaintiff/respondent was the exclusive owner of property No.JD-18 and claimed that after execution of collaboration agreement dated 09.09.1999 she did not remain the exclusive owner of the land in R.F.A.No.43/2007 Page 2 of 11 question. The fact of entering into a collaboration agreement was admitted by the defendant/appellant but with regard to the fact having entered into an agreement to sell in respect of flat No.JD- for a consideration of Rs.11 lakh was denied. Receipt of sum of Rs.8.5 lakh on from the plaintiff/respondent was also denied. The fact regarding sending of a cheque for a sum of Rs.1 lakh was also denied. and Rs.1.5 29.11.1999 lakh on 24.12.1999 4. Plaintiff/respondent filed her replication to the written statement wherein she reiterated the averments as were made in the plaint. After completion of pleadings, the court below framed the following issues:

- 1.

2. 3.

4. Whether the Agreement dated 04.01.2000 was executed by the defendant No.1 in favour of the plaintiff, if so to what effect?. Whether the plaintiff paid a sum of Rs.10,00,000/- (Ten Lakh) to D-1 vide agreement/receipt dated 04.01.2000?. OPP Whether defendant is a bonafide purchaser with notice and for consideration of the property in dispute?. OPD-2 Whether D-1 had no right to sell away the flat on question to D-2, if so to what effect?. OPP R.F.A.No.43/2007 Page 3of 11 5.

6.

7. Whether there was a novation of the contract in view of the averments made in para No.9, 10 of the plaint?. OPD Whether the plaintiff specific performance 04.01.2000?. is entitled to a decree of contract dated the of Whether the plaintiff is entitled to a decree for recovery of Rs.11,00,000/- (Eleven Lacs) against D-1 alongwith interest as prayed for?.

8. Relief. 5. To prove her case, the plaintiff/respondent examined herself as PW1 and her husband - Mr. Ram Kishore (PW-2) who was the power of attorney of the plaintiff/respondent and proved on record the documents Ex.PW- to Ex. PW-1/9. Plaintiff/respondent also examined Shri Bhawani Shanker (PW-3) who was a witness to Agreement to Sell Ex. PW- and corroborated the case of the plaintiff/respondent that the said agreement was entered into between the parties on 04.01.2000 in his presence and that he had signed as an attesting witness. On the other hand, defendant/appellant examined Laxmi Narayan (DW-1) to prove that the plaintiff/respondent had not met the defendant either on 29.11.1999 or on 24.12.1999 in the office of (DW-2) was examined on behalf of the defendant/appellant, who was produced to prove that the plaintiff/respondent was aware of the fact of sale of the the defendant. The other witness D.K. Grover Page 4of 11 R.F.A.No.43/2007 flat in question in favour of Shri S.A. Naqvi and that she had not raised any objection to the sale. The defendant examined himself as DW-3. After considering the pleadings of 6. the parties, evidence recorded and the documents relied upon by the parties, the learned ADJ decided issue nos.1, 2 and 7 in favour of the plaintiff/respondent and against the defendant/appellant and had decreed the suit of the

plaintiff/respondent in the sum of Rs.10 lakh alongwith interest @ 12% per annum w.e.f. 01.01.2000 till the date of its realization, besides the cost of the suit.

7. The defendant/appellant has challenged the impugned judgment and decree feeling aggrieved by the finding on issue nos.1, 2 and 7 on the ground that suit filed by the plaintiff/respondent was for specific performance against the provisions of Chapter II of the Specific Relief Act, 1963 and therefore, the suit ought to have been dismissed at the very outset on the basis of the preliminary objection raised by the defendant/appellant. the defendant/appellant that Shri Ram Kishore (PW-2), the husband and power of attorney of the plaintiff/respondent was not a witness to the alleged agreement to sell dated 04.01.2000 nor the same was executed in his presence and yet he claimed that he was present when the same was executed. It was contended on behalf of the defendant/appellant that plaintiff/respondent was not cross-examined but her husband deposed as PW-2 after her death, as her power of attorney, who initially failed to produce any receipts in respect of the amounts further contended on behalf of It is R.F.A.No.43/2007 Page 5of 11 the defendant/appellant having been paid to the defendant/appellant, but later on relied on a piece of document which was accepted as a receipt by the trial court, despite protest by the defendant/appellant. The next ground taken on behalf of the plaintiff/respondent herself had sold two similar flats on the first floor and second floor in the same building for about Rs. 2 lakhs each, therefore, the market price of the flat in question could not be Rs.11 lakhs, as alleged and still a decree was passed on the basis of her false averments. is that 8. To support his contentions, the defendant/appellant relied on the judgments in case of Jayakantham and others vs. Abaykumar, (2017) 5 SCC178in which it was observed that jurisdiction to decree specific performance is discretionary which is indicated in S-20 (1) of Specific Relief Act, 1963. Section 20(2) contains stipulation of cases where court may exercise its discretion not to grant specific performance; Man Kaur (Dead) by Lrs. Vs. Hartar Singh Sangha, (2010) 10 SCC512in which it was observed that third party who has no personal knowledge cannot give evidence about readiness and willingness to perform his part even if he is an attorney holder of the person concerned ; Vidhyadhar vs. Mankikrao and Anr, AIR 1999 SC1441in which it was observed that where a party to the suit does not appear into the witness box and states its own case on oath and does not offer himself to be cross- examined by

the other side, presumption would arise that the case set up by him is not correct; Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksalre (Dead) and others, (2007) 6 SCC737 in which it was observed that R.F.A.No.43/2007 Page 6 of 11 the weakness of the defence or the failure of the defendants to establish the title set up by them would not enable the plaintiff to a decree; Smt. Asharaj and Others vs. S.G. Nagaraj @ Suga Nagaraj, ILR 2014 KAR5778 in which it was observed that a Court dealing with a suit for Specific Performance will have to make a serious effort to ascertain as to whether the document in question is an out and out agreement of sale or not.

9. The counsel representing the plaintiff/respondent, on the other hand, contended that the impugned judgment and decree passed by the learned ADJ need not to be interfered with as it is based on the correct appreciation of the evidence and the documents relied on by the plaintiff/respondent and it does not suffer from any illegality or infirmity. However, the appeal filed by the appellant is liable to be rejected.

10. I have heard the submissions made on behalf of the counsel appearing for both the sides and also gone through the material placed on record as well as the impugned judgment and decree passed by the learned ADJ.

11. Issue no.1 was to the effect that whether the agreement dated 04.01.2000 was executed by the defendant/appellant in favour of the plaintiff/respondent and issue no.2 was whether the plaintiff/ respondent had paid a sum of Rs.10 lakhs to the defendant/appellant vide agreement dated 04.01.2000. R.F.A.No.43/2007 Page 7 of 11 12. The entire case of the plaintiff/respondent was based on the execution of agreement dated 04.01.2000 Ex.PW1/1. The said agreement was proved by Sh.Ram Kishore (PW2), husband of the plaintiff. He had deposed that the said agreement was entered into between the parties in his presence and in the presence of PW3 Bhawani Shankar. PW2 had further deposed that the said agreement bore the signature and handwriting of the defendant and also signatures of his wife i.e. plaintiff/respondent. He had also stated that a sum of Rs.8.5 lakhs was paid to the defendant in his presence on 29.11.1999 and thereafter a sum of Rs.1.5 lakhs was paid on 24.12.1999. He further stated that a

receipt of the said amount was given by the defendant. This witness was cross-examined at length, but the defendant/appellant had failed to put any dent to his testimony. The defendant/appellant had failed to show from the testimony of PW2 that he was not present at the time of execution of agreement Ex.PW1/1. The receipt of Rs.10 lakhs Ex.DW3/P-X1 was produced during the cross-examination of the defendant/appellant.

13. Testimony of PW2 has been duly corroborated by PW3 Bhawani Shanker. In his testimony, PW3 deposed that the plaintiff and defendant/appellant signed an agreement to sell in his presence and he signed the same as an attesting witness. He identified the signatures of the plaintiff and defendant on agreement Ex.PW1/1. He also stated that the dates in the agreement were filled by the defendant. During his cross-examination, PW3 had stated that he had met the defendant for the first time on 04.01.2000 in the presence of the R.F.A.No.43/2007 Page 8 of 11 plaintiff and her husband. He further stated that the document which was signed by him had been explained to him by the plaintiff. He further stated that the document was signed by the defendant and plaintiff.

14. From the testimony of PW3 Bhawani Shanker also it has been duly established that the agreement dated 04.01.2000 Ex.PW was executed by the defendant/appellant the plaintiff/ respondent. in favour of 15. Apart from the testimony of the plaintiff/respondent (PW1), her husband (PW2) and Bhawani Shanker (PW3), the defendant witness DW1-Laxmi Narayan had admitted his signatures on the agreement Ex.PW which the plaintiff/respondent that the agreement Ex.PW was executed by the defendant/appellant in favour of the plaintiff/respondent. DW1 also admitted the issuance of a receipt Ex.DW1/P-X1 which was the receipt of Rs.10 lakhs by the defendant/appellant. establishes further case the of a by sum of Rs.1,50,000/- was 16. A perusal of receipt Ex.DW21/P-X1 shows that a sum of Rs.8,50,000/- was received by the defendant/appellant on 29.11.1999 and him on 16.12.1999/24.12.1999. A perusal of agreement dated 04.01.2000 Ex.PW had acknowledged the receipt of Rs.8.5 lakhs on 29.11.199 and a sum of Rs.1.5 lakhs on 24.12.1999. it was established beyond reasonable doubt that the agreement dated 04.01.2000 was executed defendant/appellant received further

shows Thus, that the R.F.A.No.43/2007 Page 9 of 11 by the defendant/appellant in favour of the plaintiff/respondent and that the plaintiff had paid a sum of Rs.10 lakhs to the defendant. This court observes that relates to the specific performance of the judgments relied upon by the 17. appellant the agreement, however, the learned ADJ has passed the money decree in favour of the plaintiff/respondent on the basis of the execution of the agreement Ex. PW- duly proved by PW-2 Ram Kishore and PW-3 Bhawani Shanker and also by defendant/appellants own witness DW-1 Laxmi Narayan and admission of the defendant/appellant with regard to the receipt (Ex. DW-3/PX1) for a sum of Rs.10 lakhs. Therefore, the judgments relied upon by the appellant do not assist the case of the defendant/appellant.

18. Since it has already been established on record that the agreement Ex.PW was executed by the defendant/appellant in favour of the plaintiff/respondent and a sum of Rs.10 lakhs was received by him from the plaintiff and no refund of the said amount was ever made, the defendant/appellant was liable to refund the amount of Rs.10 lakhs to the plaintiff/respondent along with interest.

19. In the light of the aforesaid reasoning and finding of the learned ADJ, this court observes that the impugned judgment and decree is not only legal and valid but is passed on the basis of the evidence and material placed before the trial court. Therefore, this court does not find any irregularity or infirmity in the impugned judgment and decree R.F.A.No.43/2007 Page 10 of 11 passed by the learned ADJ and the same is hereby upheld and the appeal filed by the appellant is dismissed.

20. The parties are directed to bear their own costs.

21. Copy of this order be sent to the concerned court for reference and record.
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