

**Dharmender Singh vs.amit**

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**SooperKanoon Citation :** [sooperkanoon.com/1211066](http://sooperkanoon.com/1211066)

**Court :** Delhi

**Decided On :** Dec-04-2017

**Appellant :** Dharmender Singh

**Respondent :** Amit

**Judgement :**

\* + IN THE HIGH COURT OF DELHI AT NEW DELHI RFA No.1001/2017  
Reserved on:

29. h November, 2017 Pronounced on:

4. h December, 2017 % DHARMENDER SINGH ..... Appellant Through: Mr. Charan Singh, Advocate Sharma, S.C. with Mr. Advocate. AMIT CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA versus ..... Respondent To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) C.M. Nos.43384/2017 (exemption) 1. Exemption allowed subject to just exceptions. C.M. stands disposed of. C.M. Nos.43381/2017 (for condonation of delay in filing) & 43382/2017 (for condonation of delay in re-filing) 2. For the reasons stated in the application, delay of 20 days in filing the appeal and 59 days in re-filing the appeal is condoned. C.M.s stand disposed of. RFA No.1001/2017 and C.M. No.43383/2017 (stay) 3. This Regular First Appeal is filed under Section 96 of Code of Civil Procedure, 1908 (CPC) by the defendant in the suit RFA No.1001/2017 Page 1 of 10 impugning the judgment of the Trial Court

dated 31.5.2017 by which the trial court has decreed the suit filed by the respondent/plaintiff for recovery of Rs.15 lacs along with interest at 6% per annum.

4. The facts of the case are that the respondent/plaintiff pleaded that he had agreed to purchase the property No.K-540, Gali No.7, Gautam Vihar, Delhi-110053 from the appellant/defendant for a consideration of Rs.12 lacs and with respect to which an agreement to sell dated 9.4.2012 was entered into between the parties. The respondent/plaintiff paid a sum of Rs.5.15 lacs as earnest money to the appellant/defendant at the time of entering into of the agreement to sell dated 9.4.2012. The execution of the sale deed which was to be on or before 9.6.2012, at the request of the appellant/defendant got postponed firstly to 9.8.2012, then to 20.9.2012 and then to 5.10.2012. Respondent/plaintiff pleaded that he further paid certain amount to the appellant/defendant resulting to a total amount of Rs.5.97 lacs being paid to the appellant/defendant and which factum was duly recorded by an endorsement on the overleaf of the first page of the agreement to sell dated 9.4.2012. It was pleaded that on 23.9.2012 the appellant/defendant refused to perform the agreement to sell as the RFA No.1001/2017 Page 2 of 10 property price had shot up from the agreed price of Rs.12 lacs to Rs.15 lacs. It is then pleaded in the plaint that since the respondent/plaintiff was still keen to purchase the property therefore he agreed to pay the higher consideration of Rs.15 lacs to the appellant/defendant. The respondent/plaintiff on 3.10.2012 paid the balance amount of Rs.9.03 lacs to the appellant/defendant who simultaneously executed the documents being the agreement to sell, power of attorney, receipt in favour of the respondent/plaintiff stating that the sale deed could not be executed for some technical reason. The appellant/defendant however failed to hand over possession of the property to the respondent/plaintiff on one pretext or the other and the respondent/plaintiff thereafter came to know that in fact the appellant/defendant had no right in the property no.K-540, Gali No.7, Gautam Vihar, Delhi-110053. Respondent/plaintiff therefore served a legal notice dated 27.12.2012 upon the appellant/defendant and thereafter filed the subject suit for recovery of Rs.15 lacs along with interest.

5. The appellant/defendant contested the suit by pleading that respondent/plaintiff gave a loan of Rs.4.50 lacs to the RFA No.1001/2017 Page 3 of 10

appellant/defendant in the presence of Sh. Yameen and Sh. Arshad Ali. It was pleaded that Sh. Yameen and Sh. Arshad Ali were in fact the owners of the property in question and since the appellant/defendant did not have the requisite amount for purchase of the property hence the appellant/defendant took a loan of Rs.4.50 lacs from the respondent/plaintiff. The appellant/defendant pleads that he got a loan of Rs.10 lacs from Kangra Cooperative Bank on 1.8.2011 and thereafter purchased this subject property from Sh. Yameen on 5.8.2011 for consideration of Rs.14.50 lacs. It was pleaded that Sh. Yameen had purchased the subject property from Sh. Ajay Kumar for an amount of Rs.13.70 lacs and therefore how could the respondent/plaintiff be sold the subject property by the appellant/defendant only for Rs.12 lacs. The appellant/defendant claimed to be an illiterate person and that he never executed the agreement to sell, GPA etc in favour of the respondent/plaintiff on 3.10.2012. Appellant/defendant pleaded that he had returned Rs.3.75 lacs to the respondent/plaintiff and further an amount of Rs.2.25 lacs was returned in the presence of Sh. Yameen and Sh. Arshad Ali. In fact Sh. Yameen had contributed a sum of Rs.40,000/- out of an RFA No.1001/2017 Page 4 of 10 amount of Rs.2.25 lacs. The appellant/defendant further pleaded that he got a loan of Rs.2 lacs in February, 2014 from Delhi Nagrik Sehkari Bank and thereafter returned a sum of Rs.1.50 lacs to the respondent/plaintiff in the presence of Sh. Manoj son of Sh. Jasbir. Accordingly, the suit was prayed to be dismissed.

6. After pleadings were complete, the trial court framed the issues and parties led evidence and which aspects are recorded in paras 6 to 9 of the impugned judgment, and which paras read under:-

"After completion of the pleadings, following issues were framed and for what period ?. (OPP) Whether plaintiff is entitle to recover Rs.16,12,500/- as prayed for?. (OPP) (i) (ii) Whether plaintiff is entitle for interest, if so, at what rate (iii) What reliefs. In support of his case, plaintiff examined two witnesses i.e. he 6. vide order dated 31/03/2016:-

"7. himself as PW-1 and his father Sh. Mahender Singh as PW-2. 7A. PW-1 led his evidence on affidavit Ex.PW1/A. He generally deposed on the same lines of his

plaint. PW-1 relied upon agreement to sell dated 09/04/2012 as Ex.PW1/1, receipt dated 03/10/2012 as Ex.PW1/2, GPA dated 03/10/2012 as Ex.PW1/3, agreement to sell dated 03/10/2012 as Ex.PW1/4, Will dated 03/10/2012 as Ex.PW1/5, copy of legal notice dated 27/12/2012 as Ex.PW1/6, postal receipt as Ex.PW1/7, copy of defendants affidavit dated 03/10/2012 as Mark A. 7B. same line of PW-1.

8. examined two witnesses i.e he himself as DW-1, Sh. Manoj as DW-2. 8A. DW-1 led his evidence on affidavit Ex.DW1/1, DW-1 relied and proved site plan of suit property as Ex.DW1/1, request for grant of secured loan as Ex.DW1/2, passbook of Delhi Nagrik Sehkari Bank Ltd. as Ex.DW1/3, documents executed by Mohd. Yameen in his favour qua suit property on 05/08/2011 i.e GPA as Ex.DW1/5, agreement PW-2 also deposed on affidavit Ex.PW2/A. He deposed on the After examination of plaintiffs witnesses, defendant also RFA No.1001/2017 Page 5 of 10 to sell as Ex.DW1/6, receipt as Ex.DW1/7, possession letter as Ex.DW1/8, Will as Ex.DW1/9, affidavit as Ex.DW1/10, documents executed by Sh. Ajay Kumar in favour of Mohd. Yameen qua suit property on 18/05/2011 i.e GPA as Ex.DW1/11, agreement to sell as Ex.DW1/12, receipt as Ex.DW1/13, possession letter as Ex.DW1/14, Will as Ex.DW1/15 and affidavit as Ex.DW1/16.

9. DW-2 also deposed on affidavit Ex.DW2/A that Sh. Dharmender has taken a loan of Rs.2,00,000/- from Delhi Nagrik Sehkari Bank in February 2014 and he has given Rs.1,50,000/- in his presence to Sh. Amit, who has not issued any receipt. 7. Trial court in my opinion has rightly found that the respondent/plaintiff proved the agreement to sell dated 9.4.2012 as Ex.PW1/1 and which shows payment of earnest money of Rs.5.15 lacs by the respondent/plaintiff to the appellant/defendant. Trial court has rightly disbelieved the case of the appellant/defendant that the agreement to sell Ex.PW1/1 was a document which was obtained allegedly in blank and containing the signatures of the appellant/defendant. Trial court has also rightly observed that the agreement to sell Ex.PW1/1 bears not only the signatures of the appellant/defendant but also the thumb impressions of the appellant/defendant and that the appellant/defendant had never made any police complaint that the respondent/plaintiff took his signatures on

blank papers. Another reason for the trial court to hold the agreement to sell Ex.PW

to be proved was that the attesting witness RFA No.1001/2017 Page 6 of 10 of this agreement to sell Sh. Mahender Singh appeared as PW-2 and confirmed the execution of the agreement to sell by the appellant/defendant putting his signatures and thumb impression on the agreement to sell Ex.PW1/1.

8. I therefore hold that the trial court was justified in holding that the agreement to sell Ex.PW

was executed by the appellant/defendant and which showed receipt of Rs.5.15 lacs by the appellant/defendant with the further fact that additional payment made was shown by an endorsement on the back of the first page of the agreement to sell and thus in total a sum of Rs.5.97 lacs stood paid by the respondent/plaintiff to the appellant/defendant as per the first agreement to sell dated 9.4.2012. Trial court has in my opinion also rightly held that the respondent/plaintiff has succeeded in proving the documents dated 3.10.2012 being the GPA Ex.PW1/3, agreement to sell Ex.PW

and Will Ex.PW

and which documents duly record the factum of increasing of the prices of the subject property from Rs.12 lacs to Rs.15 lacs and also the factum with respect to the balance consideration of Rs.9.03 lacs being received by the RFA No.1001/2017 Page 7 of 10 appellant/defendant at the time of execution of documents dated 3.10.2012.

9. Before the trial court, the appellant/defendant contended that respondent/plaintiff had no amount to pay Rs.15 lacs in cash to the appellant/defendant as the respondent/plaintiff admitted in his cross-examination that he is only earning Rs.200 to Rs.400/- per day from his hardware shop, however as per the case of the appellant/defendant he himself admitted that he took a loan of Rs.4.50 lacs from the respondent/plaintiff, and therefore, trial court has rightly held that once respondent/plaintiff could give a loan of Rs.4.5 lacs to the appellant/defendant then it cannot be held that the respondent/plaintiff had no means to pay the consideration of Rs.15 lacs and which was received by appellant/defendant partly under the first agreement to sell Ex.PW

dated 9.4.2012 of Rs.5.97 lacs and the balance payment of Rs.9.03 lacs when the second set of documents were executed on 3.10.2012 by the appellant/defendant in favour of the respondent/plaintiff. Trial court has also in my opinion further rightly held that the subject documents did not require registration because registration is required when benefit of an agreement to sell is RFA No.1001/2017 Page 8 of 10 sought to be taken under Section 53A of the Transfer of Property Act, 1882 containing the doctrine of part performance, whereas the subject agreements to sell Ex.PW

and Ex.PW

were being asserted by the respondent/plaintiff only for recovery of the amounts paid there under and not for seeking rights in the immovable property.

10. I cannot agree with the arguments urged on behalf of the appellant/defendant that the respondent/plaintiff is habitual of creating false transactions and one such false transaction was with one Ms. Razia who had filed the police complaint dated 1.8.2016. I also do not agree with the argument urged on behalf of the appellant/defendant that because of certain contradictions in the statements of the respondent/plaintiff and his witnesses the suit should be dismissed inasmuch as a civil case is decided on balance of probabilities after considering the entire evidence of both the parties and seeing the result thereof. Since in the present case, respondent/plaintiff has proved his case by means of documents any minor contradictions in the cross-examination will not have the effect of courts discarding the agreement to sell Ex.PW

dated 9.4.2012 and the subsequent set of documents dated 3.10.2012 proved as RFA No.1001/2017 Page 9 of 10 Ex.PW

to Ex.PW1/5, and these documents clearly show receipt of total amount of Rs.15 lacs by the appellant/defendant from the respondent/plaintiff.

11. Learned counsel for the appellant/defendant then urged that the respondent/plaintiff failed to prove his financial capacity of having paid a sum of Rs.15 lacs to the appellant/defendant, however, as already stated above, and so rightly held by the trial court, that the financial capacity of the respondent/plaintiff cannot be doubted as the appellant/defendants own case was that he had taken a loan of Rs.4.50 lacs in cash from the respondent/plaintiff. This argument of the

appellant/defendant is also therefore rejected.

12. In view of the above, I do not find any merit in the appeal. Dismissed.  
DECEMBER04 2017 Ne/ib VALMIKI J.

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