Rohtash Singh vs.new Zone Buildtech Pvt Ltd & Ors

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Court : Delhi

Decided On : Mar-19-2019

Appellant : Rohtash Singh

Respondent : New Zone Buildtech Pvt Ltd & Ors

Advocate for Def. : Mr. Badal Dayal

Advocate for Pet/Ap. : Mr. Mahesh Singh

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

19. h March, 2019. CS(OS) 546/2016 & IAs No.13256/2016 (u/O XXXIX R-1&2 CPC), 13258/2016 (for condonation of delay) & 3327/2019 (u/O VI R-17 CPC) ROHTASH SINGH ..... Plaintiff Through: Mr. Mahesh Singh, Adv. Versus Through: Mr. Badal Dayal, Adv. for D-1&2. ..... Defendants NEW ZONE BUILDTECH PVT LTD & ORS CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW1 The plaintiff has instituted this suit against defendants No.1 to 4 namely (i) New Zone Buildtech Pvt. Ltd.; (ii) Mohan Kumar; (iii) Dharambir; and, (iv) Sub-Registrar-VIB, Alipur, Delhi, for (a) declaration that the Sale Deed dated 7th February, 2013 executed by the plaintiff in favour of the defendant No.1 New Zone Buildtech Pvt. Ltd. with respect to agricultural land of the plaintiff bearing Khasra No.4
(4-16), 8(4-11), 13(4-16), 18(4-16), 23(4-16), 49/15/6(3-00), 50/9(4-16), 11(4-16), 12(4-16) & 13(0-07) situated in the revenue estate of Village Dariyapur Kalan, New

Delhi is null and void and non est owing to having been got executed by playing a fraud on the plaintiff and the Government bodies; (b) mandatory injunction directing the Revenue Authorities to rectify the revenue records / Khatauni with respect to the land aforesaid by including the name of the plaintiff as owner / bhumidar thereof; and (c) permanent injunction CS(OS) 546/2016 Page 1 of 15 restraining the defendants from alienating, encumbering or parting with possession of the land.

2. The suit came up first before this Court on 25th October, 2016, when though summons thereof were issued but no ex-parte relief sought granted.

3. The suit, besides being accompanied with an application for interim relief, was also accompanied with IA No.13258/2016 under Section 5 of the Limitation Act, 1963 for condonation of the delay, if any in institution of the suit. In view of the same, in the order dated 30th August, 2018 it was observed that the said application prima facie showed that the plaintiff also admits the suit to be beyond limitation and which delay could not be condoned. However, on request of the counsel for the plaintiff, the hearing was adjourned to 4th December, 2018.

4. On 4th December, 2018, the counsel for the plaintiff could not even tell which Article of the Schedule to the Limitation Act applied to the suit and again sought adjournment. While granting the said adjournment, it was inter alia recorded (i) that the suit, first filed on 5th September, 2016, thereafter on 19th September, 2016 and lastly on 21st October, 2016 had come up first before this Court on 25th October, 2016; and, (ii) that though the plaintiff was seeking setting aside of Sale Deed on the ground that the entire promised consideration was not paid but had nowhere in the plaint pleaded that there was any agreement that in the event of entire sale consideration being not paid, the Sale Deed would have no effect; attention of the counsel for the plaintiff was invited to Section 55(4)(b) of the Transfer of Property Act, 1882 in this regard. CS(OS) 546/2016 Page 2 of 15 5. The counsel for the plaintiff again on the next date of hearing i.e. 13th December, 2018 sought adjournment. While granting adjournment subject to costs, it was observed that the defendant No.4 Sub-Registrar, Alipur was not a necessary and proper party and was ordered to be deleted from the array of defendants.

6. The plaintiff has now filed IA No.3327/2019 under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) for amendment of the plaint.

7. I may record that the defendant No.3 Dharambir failed to appear despite service and has been proceeded against ex-parte and only the defendants No.1&2 are contesting the suit by filing a written statement and to which a replication has been filed by the plaintiff.

8. The plaintiff has instituted the suit pleading (a) that the defendant No.3 Dharambir is resident of the same village of which the plaintiff is a resident of and has a long past association with the plaintiff; (b) that the defendant No.3 is also carrying on business of a property broker in the name and style of Balaji Properties; (c) that on 19th December, 2012, the plaintiff entered into an Agreement to Sell with the defendant No.3 with respect to his aforesaid land, for a total sale consideration of Rs.2,54,99,999/- and under the said Agreement to Sell, the defendant No.3 was entitled to get the Sale Deed executed either in his own name or in the name of his nominee; (d) that the defendant No.3, out of the agreed sale consideration of Rs.2,54,99,999/-, paid a sum of Rs.40 lakhs to the plaintiff in cash as bayana / earnest money and the balance sale consideration of Rs.2,14,99,999/- was payable on or before 19th June, 2013; (e) that on 7th February, 2013, the plaintiff, at the asking of defendant no.3 and in pursuance to the Agreement to Sell with the defendant No.3, executed and registered a Sale Deed in favour of the defendant No.1 acting through defendant No.2; (f) however the Sale Deed, on the asking of the defendant no.3, was for a total sale consideration of Rs.1,65,00,000/-; (g) that the defendant No.3 witnessed the said Sale Deed; (h) that in the Sale Deed, the sale consideration of Rs.1,65,00,000/- was shown to have been paid to the plaintiff by cheque dated 23rd January, 2013 for Rs.10 lakhs, demand draft dated 5th February, 2013 for Rs.65 lakhs and demand draft dated 5th February, 2013 for Rs.90 lakhs; (i) that thus the plaintiff, after adjusting Rs.40 lakhs received earlier, received a total sum of Rs.2,05,00,000/- only; (j) that in payment of the balance sale consideration of Rs.49,99,999/-, post- dated cheques signed by the defendant No.3 were issued to the plaintiff; (k) that the said cheques when presented, were dishonoured and fresh cheques were given by the defendant No.3 to the plaintiff

but which were also dishonoured; (l) that the Sale Deed got executed is also in violation of Section 33 of the Delhi Land Reforms Act, 1954; (m) that the plaintiff subsequently learnt from newspaper that proceedings were initiated against the Sub-Registrar, Narela, Delhi who had registered the Sale Deed aforesaid, for allowing registration of Sale Deeds in violation of Section 33 of the Delhi Land Reforms Act and that the Sub-Registrar, Narela was arrested; (n) that the plaintiff remained recorded owner in the revenue records and also in possession of the property; (o) that various complaints were made by the plaintiff against the defendants; but despite the complaints, the plaintiff found out that the land had been mutated in the name of the defendant No.1; (p) that the plaintiff was misguided, allured and wrongfully influenced by the CS(OS) 546/2016 Page 4 of 15 defendant No.3 on false promises and misrepresentation, to execute the Sale Deed; and, (q) that the defendant No.3 was in collusion with the defendants No.1&2.

9. The plaintiff, in paragraphs 30&33 of the plaint has pleaded as under: 30. Therefore the cause of action has arisen in favour of the Plaintiff to get the said Sale Deed cancelled and the wrongful mutation done in the Records, in respect of the said Sale Deed before the Revenue Authorities, ought to be rectified. In the meantime no interference in the peaceful possession and enjoyment of Plaintiffs agricultural land may be allowed to be done by any party on the basis of such illegally transaction. Thus the cause of action arose on each and every date when steps were taken for the execution and registration of the above said Sale Deed dated 07.02.2013. Further, the cause of action also arose, when the said Sale Deed was registered on the basis of the NOC No.469 dated 11.02.2013, which made the entire transaction illegal. Because the NOC dated 11.2.2013 had to be obtained prior in time and not after the execution of the Sale Deed. Thus the Sale Deed is null and void. The cause of action further arose when balance sale consideration paid by post-dated cheques were not received by the Plaintiff and the Plaintiff was compelled to report the matter on 03.06.2013 to the competent authorities named above. The cause of action again arose on 06.06.2015 when the illegal activities were published in the Newspaper namely Navbharat Times. The cause of action finally arose on 16.03.2016 and 29.07.2016 when the Plaintiff managed to procure, with a great deal of difficulty, the certified copies of the

Khatouni Consolidation from the Revenue Authorities, CS(OS) 546/2016 Page 5 of 15 Narela District, Village Darya Pur Kalan, Tehsil Narela, Delhi, from which he came to know that wrongful mutation had taken place without the knowledge of the Plaintiff and without any prior notice to Plaintiff despite of the Plaintiffs written Complaints to the Authorities as mentioned above. Thus the cause of action is still continuing and subsisting in favour of the Plaintiff as the said Sale Deed dated 07.02.2013, had been executed and registered in a clandestine manner as narrated above. Which renders the said Sale Deed as null and void and non est as it is based on fraud. The cause of action continues till cancellation of the said Sale Deed dated 07.02.2013 and till rectification is done under the appropriate declarations and directions of this Honble Court. The legal title ought to be declared in favour of the Plaintiff and the said Sale Deed in question ought to be declared as null and void or cancelled by this Honble Court.

33. That the present Suit is within limitation as the cause of action arose on 03.06.2013 when the Plaintiff filed three Complaints before the Revenue Authorities, to halt the Mutation and the cause of action further arose on 06.06.2015, when the illegal activities of the Sub- Registrar VI-B Alipur was reported and exposed in the Newspaper Navbharat Times, the cause of action finally arose on 26.03.2016 and 29.07.2016 when certified copies of the Revenue Records were obtained, exposing the illegal Mutation carried out without Notice to the Defendant No.3 has acknowledged his debt and liability in respect of the balance payment by issuing the last Cheque No.876984 dated 09.02.2016 for Rs.20 Lacs drawn upon Corporation Bank in favour of the Plaintiff, which was deposited by the Plaintiff. That CS(OS) 546/2016 Page 6 of 15 the Plaintiff in his Bank but the same got dishonoured due to FUNDS INSUFFICIENT, which was return by the Plaintiffs Bank alongwith Cheque Return Memo dated 11.02.2016 drawn upon Corporation Bank in favour Plaintiff, which was issued by Defendant No.3 Sh. Dharambir. The originals of which are annexed alongwith the list of documents filed on behalf of the Plaintiff. Hence the present Suit is within limitation. (emphasis added) 10. The plaintiff, in IA No.13258/2016 under Section 5 of the Limitation Act for condonation of delay in institution of the suit, inter alia stated as under: 3. That, the Suit is within the period of three years from date of acknowledgement of debt and liability as the last Cheque was issued on

09.02.2016 by the Defendant No.3 for part payment of the balance amount in respect of the said Sale Deed dated 07.02.2013. However, if the period of limitation is to be calculated three years from the date of execution of the Sale Deed dated 07.02.2013, then in that case there is a delay of 7 months in filing the present Suit. Hence this Application.3.

4. the delay to is caused due the bonafide That understanding and impression given by the Defendant No.3 that he was acknowledging his debts and liabilities by issuing fresh Cheques in favour of the Plaintiff in respect of the part balance payment, which remained due in respect of the said Sale Deed dated 07.02.2013. Thus the plaintiff was under the bonafide belief that the period of limitation would start running from the last cheque issued in favour of the Plaintiff. CS(OS) 546/2016 Page 7 of 15 5.

6.

7. That further the Plaintiff came to know about the illegal Mutation done by the Defendants on 26.04.2013, when he obtained the Revenue Records on 16.03.2016. Thus the Suit is within limitation of three years which ought to be calculated from the date of knowledge of such Mutation. That the delay, if any, is due to bonafide reasons mentioned above, which is neither intentional nor to cause any disrespect or inconvenience to this Honble Court. That no prejudice will be caused to the Opposite Party in any manner if the delay, if any, is condoned by this Honble Court, because the Sale Deed itself is null and void, which does not create any right or title in favour of the Defendants, which would prejudice them in any manner. the present Application is filed herewith. in support of An Affidavit (emphasis added) 11. The plaintiff now seeks to substitute the existing paragraph 30 of the plaint as under: 30. That the cause of action has arisen in favour of the Plaintiff, when the facts entitling the Plaintiff to have the instrument / Sale Deed cancelled and the wrongful mutation done in the Records, rectified. Thus the cause of action arose when the facts entitling the Plaintiff to have the Sale Deed cancelled became known as execution and registration of the above said Sale Deed was done in a fraudulent manner. The cause of action arose on 06.06.2015 when the illegal activities were published in the Newspaper namely Navbharat

Times. The cause of action also arose when the last Cheque No.876984 dated CS(OS) 546/2016 Page 8 of 15 the certified copies of 09.02.2016 for Rs.20 Lacs in favour of the Plaintiff was dishonoured on 11.02.2016. The cause of action finally arose on 16.03.2016 when the Plaintiff managed to procure the Khatouni Consolidation from the Revenue Authorities, from which he finally came to know that wrongful mutation had taken place without the knowledge of the Plaintiff and without any prior notice to Plaintiff. Thus the Plaintiff is entitled to have the Sale Deed cancelled, since the present Suit is filed within three years as contemplated under Article 59 of the Limitation Act, 1963. The said Sale Deed was executed and registered in a clandestine manner as narrated above, which renders the said Sale Deed as null and void and non est as it is based on fraud, which vitiates all transactions as reported in State of Orissa and Ors. Vs. Harapriya Bisoi, AIR 2009 SC2991 Hence, the present Suit is within Limitation. That the Amended Plaint now consists of total 35 Paras instead of 36 Paras as in the Original Plaint, because the contents of the Para No.30&33 relating to cause of action and limitation etc. are amalgamated and reframed accordingly. (emphasis added) 12. As would immediately become obvious, the plaintiff, by amendment is seeking to withdraw the admissions that the cause of action arose on i) each and every date when steps were taken for execution and registration of the Sale Deed dated 7th February, 2013; (ii) when the Sale Deed was registered on the basis of No Objection Certificate (NOC) dated 11th February, 2013; and, (iii) when the balance sale consideration was not received and the plaintiff was compelled to report the matter on 3rd June, 2013 to the Competent Authorities, and to which effect attention of the CS(OS) 546/2016 Page 9 of 15 counsel for the plaintiff was drawn on 4th December, 2018 as recorded in the order of that date.

13. However the facts aforesaid, constituting admissions of the plaintiff, which are sought to be withdrawn by seeking amendment of the plaint, were pleaded also in the application under Section 5 of the Limitation Act duly supported by affidavit and for withdrawal whereof no request is made, and which facts supported by affidavit continue to exist in the application and as per which the suit claim is barred by time.

14. Even otherwise, the settled principle of law is, that no amendment of pleadings in withdrawal of admissions can be permitted. Reference, if any required in this respect can be made to Gurcharan Kaur Vs. Ranjeet Singh Sandhu 2017 SCC OnLine Del 11489 [SLP(C) Diary No.19586/2018 preferred whereagainst was dismissed on 17th July, 2018]. and D.P. Mahajan Vs. Alok Mahajan 2017 SCC OnLine Del 12684.

15. As per the admissions in the plaint as existing, the suit instituted first on 5th September, 2016 is clearly beyond three years from the date when the cause of action is pleaded to have accrued.

16. The counsel for the plaintiff has now argued that when he drafted the plaint, he was not aware of Article 59 of the Schedule to the Limitation Act which permits a suit to cancel or set aside an instrument or decree or for rescission of a contract, to be filed within three years from the date when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first became known to the plaintiff. CS(OS) 546/2016 Page 10 of 15 17. Not only is ignorance of law no ground, even otherwise, the plaintiff is not making amendments on pleas of law but on pleas of facts. There is an unequivocal admission in the plaint as existing, of the cause of action having accrued on 7th February, 2013 and 3rd June, 2013, when the plaintiff received sale consideration less than what he claims to be due and became aware of the illegality committed against him and when he reported the matter to the Competent Authorities. The plaintiff cannot now be permitted to withdraw the said admission of fact, in the guise of the counsels ignorance of Article 59 of the Schedule to the Limitation Act.

18. The counsel for the plaintiff has referred to State of Orissa Vs. Harapriya Bisoi AIR 2009 SC2991to contend that fraud vitiates everything.

19. There is no plea of fraud, within the meaning of law, in the plaint. It is the case of the plaintiff that he executed the Sale Deed being satisfied with the post-dated cheques for the balance sale consideration handed over by the defendant No.3 to the plaintiff and when the cheques were dishonoured, being substituted by other cheques. Once the plaintiff knowingly executed and registered the Sale Deed, satisfied receiving the balance sale consideration by way of post-dated cheques,

not from the purchaser i.e. defendant no.1 but from the broker i.e. the defendant no.3, the Sale Deed cannot be said to have been got executed from the plaintiff by playing a fraud. The remedy of the plaintiff can only be to recover the said amount from the broker i.e. defendant no.3 and the plaintiff cannot claim a fraud to have been committed on him. CS(OS) 546/2016 Page 11 of 15 20. The starting point of limitation, under Article 59 of the Schedule to the Limitation Act is the date of knowledge of the facts entitling the plaintiff to have the contract rescinded. Reference in this respect can be made to Md. Noorul Hoda Vs. Bibi Raifunnisa (1996) 7 SCC767 The plaintiff, as per his own pleas, though was allured, misguided and wrongfully influenced to execute and register the Sale Deed on 7th February, 2013 but on dishonour of the cheque for balance sale consideration, became aware of the same and reported the matter on 3rd June, 2013. Thus, the facts entitling the plaintiff to have the contract/Sale Deed rescinded, came to knowledge of plaintiff on 3rd June, 2013 and the suit filed beyond three years therefrom is barred by time. Reference can also be made to Prem Singh Vs. Birbal (2006) 5 SCC353and Suresh Chander Vs. Durga Dutta 2019 SCC OnLine Del 6673. Recently, in Murugan Vs. Kesava Gounder 2019 SCC OnLine SC270 the argument that the Sale Deed being in violation of Hindu Minority & Guardianship Act, 1956 was void per se, was rejected and it was held that without repudiation within time provided under Article 60, the Sale Deed could not be avoided.

21. As far as the aspect of cheques is concerned, I may also record that the plaintiff along with the plaint has filed cheque dated 30th December, 2012 for Rs.16 lakhs, cheque dated 14th February, 2013 for Rs.25 lakhs, cheque dated 9th April, 2015 for Rs.5 lakhs and another cheque dated 9th February, 2016 for Rs.20 lakhs, and which do not show that on the date of execution of the Sale Deed any post-dated cheques for the balance sale consideration were issued by the defendants to the plaintiff. Even otherwise, the dates of the cheques do not support what is being contended. The plaintiff in the plaint CS(OS) 546/2016 Page 12 of 15 also has not given particulars of the cheques, if any issued by the defendant No.3 to the plaintiff from time to time and has generally stated that cheques were issued and were dishonoured.

22. The counsel for the plaintiff states that all the cheques have not been filed and the defendant No.3 from time to time was issuing cheques for different amounts to the plaintiff.

23. Once admissions cannot be permitted to be withdrawn, IA No.3327/2019 for amendment of the plaint is dismissed.

24. Thus, the claim of the plaintiff is palpably barred by time as per the averments in the plaint and as per the admissions in IA No.13258/2016 under Section 5 of the Limitation Act for condonation of delay in filing the suit.

25. Recently, in Om Prakash Vs. IOCL Officers Welfare Society 2019 SCC OnLine Del 6719 I was concerned with a suit for recovery of money, towards balance sale consideration for sale of immovable property. Finding, that the total sale consideration pleaded, was inconsistent with that mentioned in the registered Sale Deed of the property and further finding the plaintiff in the Sale Deed to have admitted the receipt of entire sale consideration, it was held that the plaintiff was barred by Section 92 of the Evidence Act, 1872 from pleading and proving in contradiction of registered Sale Deed, and for the detailed reasons given therein and which need not be reiterated here, the plaint was rejected. The facts of the present case are identical, if not worse. According to the plaintiff, the registered Sale Deed is in pursuance to the earlier unregistered Agreement to Sell. Once it is so, once the plaintiff, in the Sale Deed admitted receipt of entire sale consideration, the earlier unregistered Agreement to Sell will stand novated Page 13 of 15 CS(OS) 546/2016 and the reasoning in Om Prakash supra squarely apply. Mention may also be made of Andhra Pradesh Industrial Infrastructure Corporation Limited Vs. S.N. Raj Kumar (2018) 6 SCC410holding the terms in the allotment letter not incorporated in the Sale Deed to cease to have any effect.

26. The suit, besides being barred by time and as aforesaid, is also barred by Section 55(4)(b) of the Transfer of Property Act, as observed in the earlier order. The said provision provides, that in the absence of a contract to the contrary, where the ownership of the property has passed to the buyer before the payment of the whole of the purchase money, the seller is entitled to a charge upon the property in the hands of the buyer for the amount of the purchase money or any

part thereof remaining unpaid and for interest on such amount. Thereunder also, the seller is not entitled to seek cancellation of Sale Deed but is entitled only to seek recovery of the balance sale consideration. The relief claimed in the present suit for cancellation of the Sale Deed is thus clearly barred.

27. Though the aforesaid provision is subject to a contract to the contrary and intention in which respect, as per Kaliaperumal Vs. Rajagopal (2009) 4 SCC193 is to be gathered and determined from recitals in the Sale Deed. The Sale Deed in the present case, i) admits receipt by plaintiff of entire sale consideration with nothing remaining due to plaintiff; ii) records the defendant no.1 to be full and absolute owner of property conveyed, hereafter; iii) records delivery of possession of the property; iv) records delivery of title documents to defendant no.1; and, v) entitles the defendant no.1 to have the land mutated in its favour. The present case is thus covered by Butna Devi Vs. Amit Talwar 2014 SCC OnLine Del 3494 (DB). CS(OS) 546/2016 Page 14 of 15 28. Even otherwise, the registered Sale Deed admittedly executed by the plaintiff in favour of the defendant No.1 does not record that the same is in pursuance to the Agreement to Sell by the plaintiff in favour of the defendant No.3 and does not adjust the amount which the plaintiff claims to have received from the defendant No.3 as advance / earnest money. Had there been any transaction of Agreement to Sell between the plaintiff and the defendant No.3, the Sale Deed would have reflected so and the payments received by the plaintiff under the Agreement to Sell.

29. The registered documents have to be given sanctity and it is not the case of the plaintiff that he did not read the Sale Deed before signing the same. If such pleas are permitted to be taken, title to immovable properties would never attain finality. Reference in this regard can be made to Shanti Budhiya Vesta Patel Vs. Nirmala Jayprakash Tiwari (2010) 5 SCC104 Abhay Dewan Vs. Manoj Sethi (2013) 202 DLT392and Parshottam Parkash Vs. Swati Bharara 2013 SCC OnLIne Del 2447.

30. Thus, the plaint as per the averments in the plaint is not only barred by time, but even otherwise is misconceived and in contravention of law.

31. As far as the claim of the plaintiff with respect to violation of Section 33 of the Delhi Land Reforms Act and qua mutation entries is concerned, the remedies with respect thereto in any case do not lie before the Civil Court and lie before the Revenue Authorities.

32. The suit is thus dismissed. No costs. RAJIV SAHAI ENDLAW, J.

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