

Time Properties and Promoters Vs. Delhi Development Authority

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Court : Delhi

Decided On : May-29-1985

Reported in : AIR1986Delhi317; 28(1985)DLT133; 1985RLR398

Judge : Sultan Singh, J.

Acts : [Court Fees Act, 1870](#)

Appeal No. : Civil Revision Appeal No. 245 of 1984

Appellant : Time Properties and Promoters

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : S.C. Nigam,; R.K. Khanna and; Ram Paul, Advs

Judgement :

Sultan Singh, J.

(1) This revision petition under Section 115 of the Code of Civil Procedure (for short the Code) is directed against the judgment and order dated 21st February, 1984 requiring the petitioner to pay ad valorem court fee on the plaint. Briefly these are the facts. On 12th November, 1982 the petitioner-plaintiff made a bid of Rs. 24,95,000.00 for acquiring commercial Plot No. 5, measuring 243 sq. meters in the Community Centre, Wazirpur Industrial Area, Delhi at a public auction held by the Delhi Development Authority, defendant respondent and he was declared to

be that highest bidder. He paid a sum of Rs. 6.50,000/- as earnest money by cheques which were encashed. The defendant by letter dated 24th March, 1983 accepted the bid of the plaintiff and required him to pay the balance amount of Rs. 18,45,050.00 within 45 days thereafter. The plaintiff by letter dated 7th May, 1983 requested the defendant to grant extension of time for a period of three months. By letter dated 12th June, 1983 the defendant extended the time for payment up to 4th August, 1983. On 15th July, 1983 the plaintiff while acknowledging the defendant's letter dated 29th June, 1983 wrote to it that there existed a municipal primary school on the plot in question and there were remote chances of physical possession being delivered to him just after making full payment. The defendant was also informed that the petitioner after taking possession of the plot intended to start the construction of complex without any loss of time. The petitioner required the defendant to inform him that the possession would be delivered to him as soon as the payment was made. It appears that the defendant did not send any reply.

(2) On 3rd August, 1983 the petitioner filed the present suit fixing the value of the suit for purposes of court fee and jurisdiction at Rs. 1301/- and paid court fee of Rs. 131/-. The plaintiff has prayed that the defendant be restrained by a decree of perpetual injunction from demanding or claiming interest on the so' called belated payment, cancelling the bid made in respect of the plot in question on 12th November, 1982 forfeiting the earnest money deposited by him and re- auctioning the plot. The defendant resisted the suit and amongst various other pleas it was pleaded in the written statement that the suit was not property valued for purposes of court fee and jurisdiction and that proper court fee had not been paid. The trial court by the impugned order held that the plaintiff wanted to avoid his liability under the contract and an injunction restraining defendant from forfeiting the sum of Rs. 6.50,000/- paid as earnest money and further restraining the form re-auctioning the plot. The trial court concluded that substantial relief in the plain was seeking relief from forfeiture of the earnest money of Rs. 6,50,000.00 and as such the plaintiff was liable to pay ad valorem court fee.

(3) Learned counsel for the plaintiff submits that in short the suit is purely for the relief of injunction restraining the defendant from revoking the bid accepted by it and nothing more. His submission is that the petitioner has always been prepared

to pay the balance about of the auction bid but he apprehends that after payment of balance as demanded he would not be delivered possession of the plot as the same has been in possession of the M.C.D. who is even now running a school on the plot. In the written statement it is admitted that there is temporary encroachment on the plot in question but it does not amount to any hindrance as alleged by the plaintiff. The fact remains that the encroachment by the Municipal Corporation of Delhi on the plot in question is still in existence although the auction had taken place in 1982. Term No. 7 and the terms and conditions regarding auction of plot in question reads as under :

'7Delivery of Possession of Plots: After the acceptance of the bid and payment of full amount of premium offered by the bidder, the possession of the plot will be handed over and lease deed executed'.

THE grievance of the petitioner is that the defendant is not in a position to hand over possession after receipt of balance payment according to the terms and conditions and therefore the petitioner is entitled to an injunction restraining it from revoking the bid accepted by it. Learned counsel submits that the plaint being purely for the relief of injunction within the meaning of Section 7(iv)(d) of the Court Fees Act the petitioner is entitled to put his own valuation for the purposes of court fee and the same value shall be the value for purposes of jurisdiction. He submits that the plaintiff has valued the suit for purposes of court fee at Rs. 1301- and has paid court fees accordingly. Learned counsel further submits that the present suit is not for recovery of Rs. 6,50,000.00 and no decree can be passed, in a suit for it junction for the recovery of Rs. 6,50,0001-. The petitioner's claim is that on account of inability of the defendant to deliver possession to the plaintiff the defendant has no right to revoke or cancel the bid accepted by it. He further argues that for claiming the relief of injunction it is not necessary for the plaintiff to seek any other declaration, that the action of the defendant's unlawful and it is liable to be restrained from cancelling the bid accepted by it without any further declaration.

(4) In Mahant Purushottan Dass and others vs . Har Narain and others, : [1978]113ITR389(Delhi) it has been observed that it is a matter of construction of

plaint in each case for determining if the suit was purely for permanent injunction and that a suit for injunction will be treated as a suit under Section 7(iv)(d) of the Court Fees Act if a plaintiff can get an injunction without the necessity of praying for any other declaration. Further it has been observed that the prayer for declaration will be surplusage if the plaintiff can get the relief for injunction without praying for declaration, but declaration has to be prayed where an obstacle has to be removed before the plaintiff can claim the relief of injunction simpliciter.

(5) In *Harchand Singh Gujjar Singh vs. Dalip Singh Pritam Singh* Air 1965 Punjab 568(2) it has been observed that the correct test is that where there is any legal necessity for the plaintiff to get a declaration of his right before he can get an injunction to protect it the suit will fall under section 7(iv)(c) of the Court Fees Act even though the plaintiff sought declaration by means of averments in the body of the plaint and not prayed for declaration specifically at the end of the plaint and if it is not necessary to pray for declaration the suit will fall under Section 7(iv)(d) of the Court Fees Act. Similar observations were made in *Sri Rajaah Nayani Venkata Ranga Rao Bahadur Zamindar Garu vs. Sri Raja Tadakaamalla Sita Rajanchandra Rao Bahadur Zamindar Garu*, Air 1941 Mad 91

(6) The ratio of these decisions is that if there is legal necessity for a declaration before grant of relief of injunction it would not be a suit for injunction and if grant of declaration is not necessary the suit would be purely a suit for injunction.

(7) In the present case the allegation of the plaintiff is that the plot in question has been encroached upon by the Municipal Corporation of Delhi and therefore the defendant is not in a position to fulfill its term regarding delivery of possession and that the defendant instead of removing the encroachment wants to take recourse to end the bid, re-auction the plot and forfeit Rs. 6.50 lacs collected as an earnest money. The defendant did not reply to the plaintiff's letter dated 15th July, 1983 in which plaintiff sought an assurance from defendant regarding delivery of possession after payment. Thus it is clear that the claim of the plaintiff is that the defendant in law is not entitled to revoke the bid accepted by it as it is not in a position to deliver possession of the plot in question according to terms of auction. It is not denied that Municipal Corporation of Delhi is running a primary school on

the plot. Reading the plaint as a whole I am of the opinion that it is purely a suit for the relief of injunction. The plaintiff is not obliged to seek any declaration before the grant of relief of injunction. The facts regarding auction on 12th November, 1982, payment of earnest money, extension of time for payment of amount up to 4th August, , are not disputed. The only dispute is whether defendant is in a position to hand over possession as soon as the balance payment is made by the plaintiff. In these circumstances the plaintiff is not under any obligation to seek any other declaration.

(8) Learned counsel for the defendant submits that there is no allegation in the plaint about the plaintiff being ready and willing to pay the balance of the premium price. Reading the plaint as a whole it is clear that the plot is in possession of Municipal Corporation of Delhi and that on 15th July, 1983 the plaintiff sought a clarification from the defendant but no reply was given. In a suit for injunction it is not necessary for the plaintiff to plead readiness and willingness to pay the balance of the premium price. It is only in a suit for specific performance of a contract that the plaintiff is under an obligation to allege readiness and willingness to perform his part of the contract. Thus specific allegation on the part of the plaintiff that he has been ready and willing to pay the balance of the premium price is not necessary. Learned counsel submits that before the grant of injunction the plaintiff is under an obligation to seek a declaration. He has, however, not clarified as to what type of declaration the plaintiff must seek before the grant of declaration.

(9) Learned counsel for the respondent refers to *M/s. Ratlam Straw Board Mills Pvt. Ltd. vs. Union of India and another*, : AIR1975 Delhi270 wherein the plaintiff had filed a suit for declaration that contract came to end by acts of defendants and injunction be issued restraining the defendants from recovering the specified amount. It was held that ad valorem court fee was payable. In *Punjab Exchange vs. Rajdhani Grains Ltd.* 1975 Raj. L.R 485 it has been observed that if, in a suit for mandatory injunction relief claimed by the plaintiff amounts to his asking for possession from a defendant in exclusive possession the court fee payable is as required by Section 7(v) of the Court Fees Act. In *Asit Baran Chaudhary and another vs. Profulla Chandra Bose*, : AIR1984 Cal366 the plaintiff was seeking to

avoid forfeiture of a sum of Rs. 91,900 which on terms of the contract the defendant No. 1 had forfeited. Under those circumstances it was held that the plaintiff was liable to pay ad valorem court fee. In the instant case it is not the case of the defendant that sum of Rs. 6,50,000 has already been forfeited by it. These precedents referred to by the learned counsel for the defendant are not relevant for the determination of court fee payable in the present case.

(10) The trial court acted illegally in the exercise of its jurisdiction by demanding ad valorem court fee. The impugned order is liable to be set aside. The revision petition is accepted setting aside the impugned order dated 21st February, 1984. It is held that the suit has been properly valued for purposes of court fee and jurisdiction and proper court fee has been paid. No order as to costs. Parties are directed to appear before the trial court on 22nd July, 1985.

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