

Jai Dev Sharma Vs. Ashok Kumar and anr.

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Court : Delhi

Decided On : Jul-08-1991

Reported in : 45(1991)DLT561

Judge : P.K. Bahri, J.

Acts : [Specific Relief Act, 1963](#) - Sections 10

Appeal No. : Suit No. 2023 of 1984

Appellant : Jai Dev Sharma

Respondent : Ashok Kumar and anr.

Advocate for Def. : Shri. N.N. Gupta, Shri. Gupta

Advocate for Pet/Ap. : K.L. Malhotra,; Ravinder Sethi and; Nandini Puri, Advs

Judgement :

P.K. Babri, J.

(1) In this suit the plaintiff has sought relief of Specific: performance of the agreement dated February 20, 1983, with directions to the defendants to deliver possession of the properties shown as marks 'A', 'B', 'C' & DI 'in plan mark X'. The facts of the case leading to the filing of the present suit, in brief, are that the plaintiff had vide two agreements dated January 20. 1975, agreed to sell 208 Sq.

Yadrs Along with the super structure for a consideration of Rs. 14,660.00 in the first agreement and passage 10' X 16' for a sum of Rs. 2500.00 in respect of the second agreement and possession of the aforesaid pieces of land was given to defendant No. 1. It is the case of the plaintiff that . later on, vide agreement dated April 9, 1978, the plaintiff agreed to sell 100 Sq. yards of land to defendant No. 1 for a sale consideration of Rs. 11, 500.00 but shortly thereafter the said agreement was cancelled and defendant No. 1 on May 16, 1978, executed the receipt of obtaining back Rs. 11.500.00 . The plaintiff has filed a civil suit seeking an injunction on the averments that defendants were trying to enter upon the land belonging to the plaintiff which is mark 'C' in respect of which the agreement to sell was cancelled and also on another plot belonging to the plaintiff which is mark 'D' in the plan mark 'X'. Before the summons in that suit were served the plaintiff on July 18, 1979, entered into an agreement for sale of plot mark 'D' measuring 60 sq. yards which was ' out of the land mark 'D' in the aforesaid plan mark 'X' for a sale consideration of Rs. 4,250.00 for which possession was also given to defendant No. 2. It appears that on account of serious disputes arising between the parties with regard to the factum whether the agreement for sale in respect of the portion mark 'C' was actually cancelled or not, some occurrence took place between the parties which led to the filing of cross criminal cases. Plaintiff and his two sons Vijay Kumar and Satish Kumar and one Hans Raj Vaid were prosecuted for offences punishable under Sections 307, 452 & 506 of the Indian Penal Code read with Section 34 of the Indian Penal Code while defendants and Brij Lal were prosecuted for offences punishable under Section 323, 452 & 506 read with Section 34 of the Indian Penal Code The cross criminal cases were pending in ' the Court of Shri K.B.Andley, Additional Sessions Judge, New Delhi while the civil suit was pending in the Court presided by Shri R.S. Mahla, Sub Judge. The criminal cases were fixed in between the period February 14, 198 3 to February 17, 1983, for recording evidence.

(2) It is the case of the plaintiff that during the course of recording the ^ evidence on February 17, 1983, Shri K.B. Andley suggested to the parties that they may make the efforts to settle their civil disputes as well as criminal litigation and he offered his assistance to the parties for bringing about a reasonable compromise. It is averred that the plaintiff and the defendants agreed to the suggestion of Sbri

Andley and thereafter Sbri Andley suggested that a proper joint application be moved in the civil Court with a prayer to the Presiding Officer of the Civil Court for inspecting the spot on a particular day and on which date he would also come to the spot for making efforts for bringing about settlement between the partial regarding their civil dispute. The joint application dated February 17, 1983, was moved in the Court of Shri R.S. Mahla which was directed to be listed for February 19, 1983, and then on that day Shri Mahla passed the order for spot inspection at 10 A.M. on February 20, 1983. It is averred that on the fixed date and time Shri Andley and Sbri Mahla had arrived at the spot. The Ahlmad, as directed earlier, had brought the file of the civil case and there the parties entered into an agreement which was duly recorded in the file of the civil case and the agreement was signed by the parties. By virtue of that agreement the defendants agreed to return the land subject-matter ' of the aforesaid four agreements Along with super structure to the plaintiff for a consideration of Rs. 2,40,000.00 . Rs. 2,000.00 were paid as earnest money then and thereforee which a receipt was executed by the defendants in favor of the 563 plaintiff. The balance amount was to be paid on or before April 30, 1983 and on receipt of the said amount the defendants were to be left with no rights in the aforesaid land and the super structure except that defendants were given right to remove the machinery and other furnitures and fixtures from the factory and defendants. were to execute necessary documents in favor of the plaintiff. It appears' that defendants had moved applications before the learned Sub-Judge later on mentioning that Shri N.N.Gupta, Advocate, Who was present for the defendants at the spot was not conversant with civil matters and thus, could not give proper advice to the defendants and they prayed that the proceedings recorded by the Sub-Judge on February 20, 1983, be revoked. The applications were opposed by the plaintiff. Plaintiff also moved an application on April 28, 1983, mentioning that he was ready and willing to perform his part of the agreement and was ready to pay the balance amount but the defendants contested that application. Apparently defendants were not willing to go ahead with the terms of the agreement. The learned Sub-Judge dismissed the applications of the defendants. The defendants filed civil revision No. 663/83 against that order which was also dismissed after issuing show-cause notice on November 21, 1983.

(3) As the defendants failed to perform their part of the agreement, so, the present suit was filed by the plaintiff seeking the decree for specific performance with directions to the defendants to put the plaintiff in possession on receipt of Rs. 2,38,000.00 .

(4) defendants have contested this suit in which material facts have not been controverted. The plea taken is that the offences in the cases being tried by Shri Andley were non-compoundable and the two Judges visited the spot on Sunday and got the signatures of the defendants on numerous papers without explaining the defendants their implications. It was pleaded that defendant No. 2 was not a party to the civil suit at all and thus, the said agreement is not enforceable. It is pleaded that there was not saleable property in the eye -of law which could be agreed to be sold to the plaintiff by the defendants. Then it was averred that defendants are not bound by the alleged agreement which was just to get the acquittal of the parties from the criminal proceedings and defendants were forced to sign the said agreement on the order sheet and even the receipt of Rs. 2.000.00 was scribed by Shri Mahla for reasons best known to him and that the agreement was not executed on a stamp paper. It is pleaded that the proceedings carried out by Shri Mahia at the spot were just a fraud upon the defendants who were directed to put their signatures on the said agreement, A bald plea has been taken that the agreement has been brought about by exercising undue influence, misrepresentation and coercion. No particulars have been given about undue influence, misrepresentation or coercion in the written statement. Defendants also denied that agreement dated April 9, 1978, was ever cancelled or defendant No. 1 had receipt a sum of Rs. 11,500.00 vide any receipt dated May 16, 1978. It is pleaded that the said receipt is a forged document. The defendants disputed the correctness of the map filed by the plaintiff without showing in what manner the map is wrong. In the replication the plaintiff controverted the pleas of the defendants and reiterated the pleas taken in the plaint It is pleaded that the agreement arrived at by the parties was voluntarily and no undue influence, coercion or fraud has been practiced on the defendants for bringing about the said agreements. Following issues were framed: ^

(1) Whether the agreement between the parties recorded on February 20, 1983, in the statement of the parties before Shri K.B. Andley, Additional Sessions Judge and Shri R.S. Mahla, Sub-Judge 1st Class, Delhi, was arrived at as a result of fraud, misrepresentation, undue influence or coercion

(2) Whether the signatures on the order sheet dated February 29, 1983, were obtained from the defendants by Shri K.B. Andley and Shri R.S. Mahla without explaining the defendants their implications

(3) Whether the property in dispute is not saleable

(4) Whether the plaintiff was or is ready and willing to perform his part of the contract

(5) Whether the plans filed by the plaintiff are the correct plans of the property in dispute

(6) Whether the plans filed by the defendants are the correct plans of the property in dispute

(7) Whether defendant No. 2 is not bound by the agreement dated February 20, 1983, as he was not a party to the proceedings in the Court of Shri R.S. Mahla, Sub-Judge 1st Class, Delhi

(8) Relief. issues 1 & 2 :

(5) Issues 1 & 2 are being dealt with together. The undisputed facts are that on January 20, 1975, vide agreement for sale the plaintiff agreed to sell 208 sq. yards plot which is shown as mark A in green colour in plan Ex. P7 to defendant Ashok Kumar and on the same date by virtue of another agreement, another plot measuring 16' x 10' mark B also shown in green colour in plan Ex. P7 was agreed to be sold by the plaintiff to Ashok Kumar defendant. The possession of these plots was given to Ashok Kumar. On April 9, 1978, another plot measuring 100 sq. yards was agreed to be sold to Ashok Kumar by the plaintiff and the same is shown as mark C in yellow colour in plan Ex. P7. It is the case of the plaintiff that this particular agreement was later on cancelled " and the consideration of Rs.

Rs. 11,500.00 was returned to Ashok Kumar and Ashok Kumar gave a receipt in respect of the same although the original agreement was not returned as Ashok Kumar was not having the same at the time of the execution of the receipt and had promised to return the same after tracing it out. Defendant Ashok Kumar had disputed the factum of cancellation of the said agreement and took up the plea that he continued to be in possession of the said plot mark C under the agreement dated April 9, 1978 and he had not executed the receipt dated May 16, 1978. As the disputes had arisen between the parties with regard to the plot mark C and plaintiff also apprehended that defendant may not encroach upon other two plots belonging to the plaintiff marks D & DI in plan Ex. P7, had instituted a civil suit seeking injunction against Ashok Kumar restraining him from disturbing the possession in respect of the said three plots marks C, D & DI in plan Ex, P7. It is a case of the plaintiff that in order to have some admission of defendant with regard to ownership of plaintiff in respect of plot Nos. D & DI, the plaintiff agreed to sell plot measuring 60 sq. yards mark DI in plan Ex. P7 to Kuljit Rai vide agreement to sell dated July 18, 1979, and possession of plot Ex. DI was given to Kuljit Rai and in the agreement the plot mark O was shown as boundary of mark DI and was shown as belonging to the plaintiff. Copies of the said four agreements are Exs. P8 to P11. It appears that parties resorted to some criminal proceedings because of disputes arising about the possession of the plot mark C and plot mark D and cross criminal cases were registered. Plaintiff and his two sons Vijay Kumar and Satish Kumar and one Hans Raj were cited as accused in a case registered on the basis of complaint of defendants vide Fir No. 987 of 1979 under Sections 323, 324, 452, 307 read with Section 34 of the Indian Penal Code and under Sections 25 & 27 of the Arms Act. A cross case on the complaint of the plaintiff was registered vide Fir No. 986 of 1979 against the defendants Ashok Kumar and his father Kuljit Rai and one Brij Mohan under Sections 323, 452, 506 read with Section 34 of the Indian Penal Code. At the relevant time the civil suit for injunction was being tried by Shri R.S. Mahla, Sub-Judge, while the aforesaid two cross criminal cases were being tried by Shri K.B. Andley, the then Additional Sessions Judge, New Delhi. Ex. P12 is the copy of the plaint in the civil suit. Ex. P13 is the copy of the receipt allegedly signed by Ashok Kumar while receiving back the sale consideration of plot mark C. The criminal cases were fixed for hearing from

February 14 to February 17, 1983, before Shri KB. Andley, Additional Sessions Judge, On February 17, 1983, while the plaintiff was being cross-examined in the criminal cases the reference came to be made to the four aforesaid agreements for sale and it was suggested by Shri Andley that parties may settle their disputes about the said agreements and on being apprised that a civil suit was pending in the Court of Shri R.S Mahla, Sub-Judge, he offered to help the parties in settling their disputes and it was suggested that he may visit the spot and see the real position, it was suggested by Shri Andley that the parties may move a joint application before the learned Sub-Judge so that the learned Sub-Judge may also inspect the site and be present at the spot so that some settlement could be arrived at between the parties. A joint application signed by the plaintiff and Ashok Kumar defendant was moved in the Court of Shri Mahia on the same day which was directed to be listed on February 9, 1983, and on that day Shri Mahia passed the order that he would inspect the site on February 20, 1983, at 10 A.M. and directed the Ahalmad to bring the file at the spot. Ex. P14 is the copy of the joint application moved by the parties. In that application it was clearly recorded that Shri Andley had only given a suggestion that parties may settle their civil dispute and defendant Ashok Kumar had prayed that Shri Andley should also visit the spot for settling the disputes of the parties with regard to the land.

(6) On February 20, 1983, besides the parties Shri RC. Behl and Shri K.L. Malhotra, Counsel of the plaintiff in civil as well as criminal case and Shri Andley and Shri Mahla, Judicial Officers and Shri N.N. Gupta, Counsel for Ashok Kumar and Kuljit Rai in the criminal case had come to the spot. Hans Raj Vaid js stated to be also present. Ahalmad of the Court was also present with the file. Judicial Officers are stated to have inspected the site and thereafter talks for compromise took place and it is the case of the plaintiff that a compromise was willingly and voluntarily arrived at and the statements of Ashok Kumar, his father Kuljit Rai and of the plaintiff were duly recorded incorporating the terms of the compromise by virtue of which Ashok Kumar and his father Kuljit Rai agreed- to re transfer the land and also the super-structure constructed there upon, the subject-matter of the said four agreements, to the plaintiff for a consideration of Rs. 2,40,000.00 and Rs. 2,000.00 were paid as advance to Ashok Kumar and Kuljit Rai and a separate receipt was duly scribed by Shri R.C. Behl,. Advocate and was signed by A run

Kumar and Kuljit Rai which Ex. P1. Copies of the statements recorded by Shri Mahia in the judicial file are Exs. P15 to P17. In terms of the compromise balance payment was to be made by the plaintiff on or before April 30, 1983.

(7) Shri Mahla had passed the necessary orders in the judicial file, copies of which are Exs. P18 & P19 and had consigned the file of the civil suit to the record room. It appears that Ashok Kumar and his father Kuljit Rai had second thought about the said agreement and thus, they moved review applications in the Court of Shri Mahla pleading that they were perplexed and confused at the spot on February 20, 1983, because of presence of the judicial officers and did not know the contents of the statements recorded and had signed the same under undue influence and they never agreed to re-transfer the land and the super-structure for a paltry consideration of Rs. 2,40,000.00 . They pleaded that they had received Rs. 2,000.00 thinking the same to be the litigation expenses being awarded to them and they were under the impression that in fact, the civil suit was to be withdrawn and the parties were not to pursue their criminal cases. They mentioned that on inspecting the record on February 22, 1983, they came to know about the contents of the statements and thus, they moved the review applications on the following day. These review applications were dismissed by Shri Mahia, copy of the order is Ex. P20. A petition was filed in the High Court against the said order which was dismissed by the High Court. Plaintiff had on April 28, 1983, moved an application in which he offered to make the balance payment to the defendant. Notice of the said application was given to the defendants but the defendants refused to accept any balance payment and the application was filed vide order Ex. P21A. Ex. P21 is the copy of the said application. Copy of the order of the High Court is Ex. P22. Ex P23 is the plan which shows the land which was agreed to be returned to the plaintiff by the defendants vide compromise statements recorded by Shri Mahla. The said land is shown in red colour. >

(8) PW2 plaintiff came into the witness box and proved the above facts in his statement. He also examined Shri R.S. Mahla as PW3 and Shri K.B. Andley PW4 and R C. Behl, Advocate, as PW6 to prove that the compromise statements incorporating the terms of the agreement arrived at between the parties were voluntarily and willingly made by the defendants and no undue Influence or

coercion or misrepresentation was practiced on the defendants and defendants signed the statements after understanding the contents of the same and in the presence of their Counsel Shri Gupta.

(9) PW3 Shri Mahia was cross-examined first on behalf of the defendants. It was suggested to him that Shri Andley had directed the parties not to bring their Counsel at the spot when the judicial officers were to inspect the spot. It is surprising that such a suggestion has been given on behalf of the defendants when admittedly Counsel of the plaintiff and Shri N.N. Gupta, Counsel of the defendants, were present at the spot when the compromise statements were recorded. No suggestion was given to Shri Mahia that judicial officers had exercised any undue influence or coercion on the defendant a for obtaining their signatures on the statements. Only suggestion was given that defendant a had signed the statements as they were aware that judicial officers were present and they wanted the criminal case to be finished. A bald suggestion was given that defendants had not signed the statements voluntarily or with a free will which suggestion was denied by Shri Mahia. Another suggestion given was that Shri Mahia had suggested that Ashok Kumar should pay Rs. 50,000.00 to the plaintiff which suggestion was denied by Shri Mahla. It appears that Shri Mahia was under some misapprehension that a separate agreement was also executed between the parties incorporating the terms but it is admitted case of the parties that no such separate agreement was executed and only a separate receipt was executed by virtue of which Rs. 2,000.00 was paid as earnest money by the plaintiff to the defendants. It appears that Shri Mahia had due to lapse of memory confused the receipt with the agreement by mentioning that a separate agreement was executed between the parties. Nothing substantial came out from the cross-examination of Shri Mahla which could lead to any inference that the parties had not signed the statements willingly or voluntarily or there was practiced any misrepresentation, coercion or undue influence on the parties by the judicial officers for bringing out the compromise between the parties. No specific facts have been put to Shri Mahla in crossexamination to show that any coercion, fraud or misrepresentation or undue influence had been exercised by the judicial officers.

(10) In cross-examination of Shri Andley it was suggested to him that he had dealt with a petition for restitution of conjugal rights filed by plaintiff Jai Dev Sharma against his wife which he decided on October 11, 1977. Mr. Andley had stated that he did not recollect such a fact. From his cross-examination it came out that the two judicial officers had come to the spot in the Car of Shri Behl, Advocate, who also accompanied them in that Car to the spot which fact was admitted not only by Shri Andley but also by Shri Mahla. I do not think that any significance can be attached to this fact. Shri Andley categorically denied the suggestion that he had advised the parties not to bring their Counsel to the spot. Shri Andley also made reference to execution of separate agreement. A bald suggestion was given that the defendants had not signed the statements willingly and voluntarily which suggestion was, of course, controverted by Shri Andley. He emphasized that the statements were explained by Shri Mahla to the parties before they put their signatures on their statements. It is significant to mention that neither to Shri Mahla nor to Shri K.B. Andley any suggestion had been given that the statements were recorded by Shri Mahla in absence of Shri N.N. Gupta, Counsel for the defendants. In cross-examination of Shri R.C. Behl, Advocate, again no suggestion was given that Shri Gupta, Counsel for the defendants, was not present when the compromise statements were recorded by Shri Mahla. A bald suggestion was given to him that signatures of defendants were procured by him along with others which suggestion was denied.

(11) In cross-examination of plaintiff (Public Witness 2), which took place later on other date, for the first time a mischievous suggestion was given that Shri Andley had talked with the plaintiff separately at the spot. This suggestion perhaps was given to show that Shri Andley was interested in the plaintiff. In the cross-examination of earlier witnesses, no such suggestion had been given that Shri Andley had any confabulation separately with the plaintiff at the spot. It was suggested to him that in fact the statements of the defendants came to be recorded at his house and Shri N.N. Gupta, Counsel of the defendants was not present when the statements were recorded. This is a new story introduced by the defendants for the first time while cross-examining PW2 when no such story had been put to Shri Mahla, Shri Andley and Shri Behl, who were cross-examined on earlier dates. It is significant to mention that even in the review applications moved

by the defendants no such story had been put forward and no such story had been given in the written statement in the present case. Another mischievous suggestion given for the first time to PW2 is that the judicial officers were entertained with tea and cold drinks at the expense of the parties which suggestion was, of course, denied by PW2. Again no such suggestion had been given to judicial officers in their cross-examination.

(12) A new story had been introduced while cross-examining PW2 that in fact, defendants were not present when the statements were scribed by the judicial officer Shri Mahla and they were just called from their house and were required to sign the statements.

(13) Ashok Kumar defendant appeared as DW2 and he introduced a completely new story of deposing that it was on February 16, 1983, that Shri Andley observed that he knew the plaintiff very well, parties should compromise the matter and he asked the parties to move joint application for spot inspection in the Court of Shri R.S Mahla but no joint application was moved on February 16, 1983, and Shri Andley on the following day again insisted that such a joint application should be moved. This story is being put forward by Ashok Kumar in order to throw some suspicion on the conduct of Shri Andley. It is surprising that if Shri Andley had already shown his keenness to bring a compromise for helping the plaintiff why would defendants even agree to spot inspection and for efforts being made by the judicial officers at the spot for bringing about compromise. The story put forward in this connection by Ashok Kumar is totally false and frivolous. No such suggestions have been given to the plaintiff and his witnesses that Shri Andley at any time on February 16, 1983, made any suggestions for bringing about compromise and he made any statement that he knew the plaintiff very well. Ashok Kumar then stated that at the spot the judicial officers inspected the site and Shri Andley suggested that he should pay Rs. 10,000.00 more to the plaintiff whereas Shri Andley suggested that the amount should be Rs. 50,000.00 and he and his father felt annoyed and certain hot words were exchanged. Again, this is a new story being put forward by Ashok Kumar. It had found no mention anywhere in the review applications or in the written statement or any suggestions given in the cross-examinations to the plaintiff or his witnesses. According to the new version

given by Ashok Kumar, after these hot words were exchanged, the judges went to the house of the plaintiff whereas he and his father came back to the factory of Ashok Kumar and after sometime he was called to the house of the plaintiff and was asked to call his lawyer and then Shri Gupta, Advocate, was called and Shri Mahla and Shri Andley asked them to sign the papers and accept Rs. 2,000.00 as consideration for settlement and his query as to what 'settlement had been made was not answered and Shri Andley threatened that he should know that judges were bringing about the settlement and if they did not sign they 'r would be punished and out of fear he signed the papers and accepted Rs. 2,000.00 without knowing the contents recorded in the papers .and thereafter his father was also called and he also signed the papers without knowing the contents of the same. This whole story put forward by Ashok Kumar is not only an afterthought story but is also on the face of it a false story. As discussed above, the defendants had their Counsel Shri Gupta present when the compromise talks took place. No such suggestion was given to Shri Andley or Shri Mahla that hot words were exchanged and they went to the house of the plaintiff and later on Ashok Kumar was called and was asked to sign the papers. It is preposterous to imagine that when defendants were represented by a Counsel at the time of settlement they would sign the papers without being made aware of the contents recorded therein. In the review applications it was not at all mentioned that Shri Gupta, Advocate, was not present when the compromise statements were recorded, rather the plea taken was that Shri Gupta was representing the defendants in criminal case and thus, he could not advise the defendants - property in the civil matter. Surprisingly enough defendants had not bothered to examine Shri Gupta. Advocate, as a witness to support this fantastic story of the defendants that they signed the statements under the threats given by the judicial officers and without knowing the contents of the said statements.

(14) Kuljit Rai, defendant No. 2, appeared as DW3 and his statement also suffers from same infirmities as the statement of his son Ashok Kumar.

(15) Shri Ravinder Sethi, senior Counsel, appearing for the defendants in all fairness did not at all try to argue that the statements of the defendants were recorded by the judicial officers without explaining the contents of the same to the

defendants or Shri Gupta, Advocate, was not present when those statements were recorded. He had only argued that criminal cases of serious nature were pending between the parties and the two judicial officers were present at the spot and defendants who were somewhat illiterate persons were overawed by'. the situation and they had signed the statements under that situation without properly understanding the implications of the terms recorded in the statements. It is not possible to countenance such a contention particularly when the compromise had been arrived at between the parties in the presence of Shri Gupta, Advocate, who represented both the defendants in the criminal case. So, in view of the above discussion , hold that the said compromise was not arrived at as a result of any fraud, misrepresentation, undue influence or coercion and the defendants have entered into the compromise willingly after understanding the contents of the compromise statements. The two issues are decided against the defendants. Issue No. 3:

(16) The learned Counsel for the defendants has argued that the defendants were not the owners of the property In question, so the question of their selling the property in question in favor of the plaintiff does not arise and In this way the property being not saleable, no relief of specific performance could be granted to the plaintiff. We have to see the real implication of the compromise terms recorded in the statements of the parties. Earlier four agreements for sale were executed by the parties by virtue of which the plaintiff had agreed to sell four separate pieces of land to the defendants. By virtue of the compromise the defendants agreed to return the possession of the said four pieces of land to the plaintiff and receive the consideration of Rs. 2,40,000.00 . The superstructure constructed by the defendants was also to be transferred to the plaintiff under the terms of the compromise. There is no question of defendants executing any sale deeds in respect of the lands in favor of the plaintiff because under the compromise terms the real import of the agreement is that the agreements for sale entered into between the parties would be deemed to be cancelled and the defendants were to transfer back the possession of the property to the plaintiff on receiving the consideration of Rs. 2,40,000.00 and they were to transfer the super-structure raised by the defendant in favor of the plaintiff. So, it is not necessary for granting relief of specific performance of the agreement in question thereforee directions

should be given to the defendants for executing sale deeds in respect of the land in question in favor of the plaintiff. They can be directed to execute the transfer deed in respect of the super-structure in favor of the plaintiff and can be given directions for giving possession of the land in question Along with the super-structure to the plaintiff on plaintiff depositing the balance consideration. So, this issue is decided accordingly. - Issue No 4:

(17) Plaintiff has categorically stated that he has been and is ready and willing to perform his part of the contract. It is significant to mention that defendants had already decided not to go ahead with the agreement when they moved the review applications and contested the present suit. Plaintiff has even moved an application before the learned Sub-Judge for paying the balance consideration to the defendants. That application was directed to be filed by the learned Sub-Judge as defendants were not willing to go ahead with the agree meat. Plaintiff has, in his statement, referred to various sources from which he could easily raise, the balance consideration for being paid to the defendants. I have no reason to doubt the statement of the plaintiff in this respect. I, hence, bold that the plaintiff has been and in willing to perform his part of tbe contract. issued Nos. 5 & 6 :

(18) Issues 5 & 6 are being dealt with together. Plans Exs. P7 & P23 proved by the plaintiff in his statement were not challenged in the cross-examination. It was not shown that these plans are in any way incorrect. the defendants have not cared to prove any plan except the copies of the plans prepared by the Local Commissioner. When the plans proved by the plaintiff were not challenged in the cross-examination of the plaintiff, I have no hesitation in holding that those plans are the correct plans depositing the property in question. I bold accordingly. So, these issues are decided in favor of tbe plaintiff. issue No. 7:

(19) It is true that defendant No. 2 was not a party in the civil case pending before Shri Mahla, Sub-Judge but no law prevented him from entering into agreement with the plaintiff for returning the land taken by him from tbe plaintiff on receiving some consideration. The learned counsel for the defendant has not been able to show as to why defendant No. 2 cannot be considered bound by the terms of the agreement arrived at willingly and voluntarily by him in his statement recorded by

Shri Mahla. So, I hold that defendant No. 2 is bound by the terms of the agreement recorded in his statement and the statement of Shri Ashok Kumar defendant No. 1. This Issue is decided against the defendant. Issue No. 8:

(20) The suit is liable to be decreed. I decree the suit and direct that the plaintiff shall deposit in Court the balance consideration of Rs. 2,38,000.00 within two months and on such deposit being made the possession of the properties shown in plan Ex. P7 as marks A, & D shall be given to the plaintiff by the defendants along with the super-structure existing thereon. The defendants shall execute a transfer deed in respect of super-structure within three months failing which the Registrar shall execute the same. Plaintiff shall have costs of the suit from the defendants. In case the Plaintiff fails to deposit the balance consideration, as directed above, the suit of the plaintiff shall stand dismissed with costs.

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