

Yeshoda Rani Vs. Maneesh Kumar

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Court : Delhi

Decided On : Mar-11-1997

Reported in : 1997IIAD(Delhi)531; 67(1997)DLT340; 1997(42)DRJ9

Judge : M.J. Rao and; Manmohan Sarin, JJ.

Appeal No. : First Appeal No. 199 of 1996

Appellant : Yeshoda Rani

Respondent : Maneesh Kumar

Advocate for Pet/Ap. : Mukul Rohatagi,; Ravi Gupta and; J.P. Singh, Advs

Judgement :

Manmohan Sarin, J.

(1) Appellants have preferred this appeal against the order dated 15.4.1996 passed by the learned Single Judge in IA.8057 of 1993 in Suit No.2065 of 1993, by which he confirmed the interim injunction restraining the appellants from alienating, transferring or otherwise parting with the possession of the suit property.

(2) The facts in brief may be noticed:

(I)Appellants are owners of property bearing No.500/3-B/2-A/2, admeasuring 200 sq.yards forming part of Khasra No.3882, 2192/800/1400 situated in Village Chandrawal, Shahdara.

(II)THEappellants vide an agreement dated 2.3.1993 had agreed to sell the said property to the respondents for a total consideration of Rs.5,89,500.00 . A sum of Rs.1,00,000.00 had been received by the appellants as earnest money. The balance sale consideration of Rs.4,89,500.00 was payable at the time of delivery of vacant possession of the first floor and upon execution and registration of documents, viz. General Power of Attorney, Agreement, Will, Sale Deed, etc. before the Sub-Registrar. The sale was to be completed by 30.6.1993.

THE agreement further provided that if the sellers/appellants herein failed to comply with the terms and conditions of the Agreement to Sell, then they shall refund the amount of Rs.1,00,000.00 received by them as earnest money together with penalty of Rs.1,00,000.00 to the purchasers. Further, if the purchasers failed to comply with the terms and conditions of the Agreement to Sell, then the amount of Rs.1,00,000.00 , paid as earnest money, shall be forfeited by the sellers and the Agreement to Sell shall be deemed to be cancelled.

IT is the admitted position between the parties that the ground floor of the property was under the tenancy of four tenants. The rent payable up to the date of transfer was receivable by the appellants/sellers while after the transfer the tenants were to attorn to the respondents and receive the rent thereafter.

THE execution of the Agreement to Sell and the receipt of the earnest money is admitted.

(III)IT is the case of the appellants that they discovered that the tenants who were in occupation of the ground floor of the property had stored their goods on the terrace and the roof as a result of which the appellants were unable to hand over possession of the terrace and the roof, described as first floor and above, to the respondents.

(IV)THEappellants, thereforee, bonafide, vide their notice dated 26.3.1993 intimated the respondents that the tenants had been asked to remove the goods lying on the first floor of the property so that they could deliver vacant possession of the same to the respondents but the said tenants had flatly refused to do so. The appellants, in these circumstances, intimated the respondents that they were unable to deliver the vacant possession of the first floor and are left with no option but to cancel the agreement, being unable to fulfill the conditions mentioned in the agreement. The appellants thereupon returned the sum of Rs.1,00,000.00 received by them as earnest money, to the respondents together with interest of Rs.1,500.00 by two cheques of Rs.50,750.00 each.

(V)THErespondents, in reply to the said notice dated 11.4.1993, pointed out to the appellants that the agreement stipulated refund of earnest money with penalty of Rs.1,00,000.00 . The respondents objected to the suo moto purported cancellation of the Agreement to Sell, by refund of the earnest money together with paltry amount of Rs.1,500.00 . The respondents also refuted the claim that the vacant possession of the first floor was not with the appellants. The appellants were notified that the agreement continued to be in force and if the appellants failed to comply with its terms the respondents would seek specific performance of the same.

(VI)Respondents, it appears, in a further exchange of correspondence, vide their letter dated 28.6.1993, while refuting the appellants case, intimated that they were willing to pay the entire balance sale consideration and taking over the peaceful possession of the first floor portion. It was stated 'even my aforesaid clients are ready to take over the possession of the property in question in the position as alleged in the reply under reference.' It is the appellants case that the aforesaid reply was ante- dated by the respondents and, in fact, the said communication was received by them on 2.7.1993 at 8.00 pm. by speed post, by which time they had already entered into a fresh agreement to sell dated 30.6.1993 with third parties.

(VII)Respondents, thereafter, filed the present suit for specific performance in which interim order dated 15.9.1993, confirmed by the impugned order, was

passed.

(3) Learned senior counsel for the appellants, Mr. Mukul Rohtagi, assailed the order submitting that the appellants had acted bonafide as they were not in position to fulfill the obligation of handing over vacant possession of the first floor and had promptly notified the respondents of the same. Mr. Rohtagi further submitted that time was the essence of the contract. He explained that the appellants daughter's marriage had been fixed for 18.11.1993 and the appellants had entered into an agreement for sale of the property as they were in dire need of finances. He further submitted that the respondents did not intimate to the appellants their willingness to accept the suit property in its existing condition. According to him, the letter dated 28.6.1993 was ante dated and was received only on 2.7.1993, by which time the appellants had entered into a fresh Agreement to Sell with third parties. He submitted that impugned order does not record any prima facie finding of breach on the part of the appellants. It does not consider that the third parties were not even imp leaded and the agreement with them was entered into prior to the filing of the suit.

(4) Learned counsel for the appellant did not press the ground taken in the appeal that specific performance could not be granted since the agreement carried a provision for penalty in view of the judgment of the Apex Court in Prakash Chandra Vs . Angadlal and others : AIR 1979 SC1241 and M.L. Devender Singh & Others Vs . Syed Khaja : [1974]1SCR312 .

(5) Learned counsel for the appellants also submitted that one of the plaintiffs was a minor and he could not have entered into an agreement to sell.

(6) We have considered the submissions made by learned counsel for the appellants. It is the admitted position that the appellants were unable to fulfill their obligations undertaken in the agreement regarding the handing over of vacant possession of the first floor of the property. The agreement does not carry any stipulation that time is the essence of the contract. It does not refer, either in the recitals or otherwise, to the reason or the urgency for the appellants requirements for funds or the impending marriage of the appellant's daughter. Appellants had knowingly undertaken the obligation to deliver vacant possession of the first floor

and above. It appears incredible that the appellants were not aware that the possession of the roof or terrace, which is referred to as the first floor had been taken over by the tenants. The learned Single Judge, in these circumstances, was fully justified in not accepting, prima facie at this stage, the appellants' contention, raised before him, that plaintiff No.2 was a minor and could not enter into the agreement to Sell and the second question that since the agreement provides for penalty in the event of non-performance of the conditions of the agreement, specific performance of the agreement could not be granted. As noticed earlier, the appellants have now given up the second plea. There is no error or infirmity in the learned Single Judge ignoring, at this stage, the plea regarding alleged invalidity of the agreement on account of it being entered into by a minor, for the purposes of the injunction application.

(7) Learned counsel for the respondents pointed out that the agreement had been signed by the mother and witnessed by the father. As noticed earlier, there is nothing in the agreement to show that time was the essence of the contract. Besides, the appellants, who have admittedly failed to perform their obligations under the contract, cannot be permitted to take advantage of their own default and transfer, alienate or part with the possession of the property to third parties.

(8) As regards the non-impleadment of the parties with whom appellants have entered into a fresh agreement to sell, in case the said persons are aggrieved by any injunction granted by the learned Single Judge, it was for them or the appellants to seek their impleadment and not for the respondents, who cannot be attributed the knowledge of the same.

(9) We find no merit in the appeal and the same is dismissed. The findings and observations made in this order will not come in the way of the disposal of the suit on its own merits.

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