

**K.L. Bhatia Vs. Gurmit Singh**

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**Court :** Delhi

**Decided On :** Mar-01-1996

**Reported in :** 1996(37)DRJ189

**Judge :** Manmohan Sarin, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1

**Appeal No. :** Interim Application Nos. 7668 of 1989 and 6621 of 1990 and Suit No. 2684 of 1989

**Appellant :** K.L. Bhatia

**Respondent :** Gurmit Singh

**Advocate for Pet/Ap. :** A.S. Chandhiok,; Rajiv Mehra,; S.K. Luthra,;

**Judgement :**

**Manmohan Sarin, J.**

(1) By this order I shall be disposing of is No.7668 of 1989 and is No.6621 of 1990. is No. 7668 of 1989 is filed by the plaintiff under Order Xxxix rules I and 2 Cpc, seeking a restraint on the defendants from alienating, encumbering or parting with possession of property No. K-79B, Kalkaji, New Delhi. is 6621 of 1990, is the application moved by defendant No.1 for vacation of interim orders dated 3-10-1989 and 3-7-1990 by which the defendants were restrained from alienating,

encumbering or parting with possession of the suit property.

(I)The application for injunction is filed in a suit for Specific Performance. The suit was filed on 3-1-1989. The plaintiffs case is that defendant No.2 Mr.Kuljit Singh Gorkal, holding himself out to be the owner of house No. K-79B, Kalkaji, New Delhi, agreed to sell the same for a consideration of Rs. 13.25 lacs to the plaintiff. A sum of Rs.20,000.00 was paid by the plaintiff to the defendant No.2, who executed a receipt-cum- agreement dated 16-7-1988 acknowledging the receipt of the said sum of Rs.20,000.00 as token money.

(II)The case of the plaintiff further is that the defendant No.2 had agreed to obtain all requisite permissions and have the sale deed registered in favor of the plaintiff. The defendant No.2 it is stated had approached the plaintiff with one Mr. Arora of M/s. Shiv Estate Agency for the sale of the property.

(iii) The plaintiff alleges that defendant No.2 avoided completing the sale on one pretext or the other and finally contended that the suit property which originally belonged to his father Late Shri Ranbir Singh, now stood bequeathed to the son of the defendant No.2 i.e. Mr.Gurmit Singh, defendant No.1 herein. Further that the property had been mutated in favor of defendant No.1.

(iv) The plaintiff it appears being aggrieved lodged a Fir against the defendant No.2 under Section 420 Indian Penal Code, pursuant to which a case was registered and defendant No.2 was arrested and application for bail was also rejected. The Fir is dated 19-9-1988. The allegations in Fir are that the defendant No.2 had falsely represented himself to be the owner and on this false representation made him part with Rs.20,000.00 as token money. Further the defendant No.2 did not turn up within two days as promised. The plaintiff accused defendant No.2 of cheating. In para 9 of the plaint it was claimed that defendant No.1 being the son of defendant No.2, defendant No.1 is bound by the acts of defendant No.2 and/or defendant No.2 is deemed to be the agent of defendant No.1. It was further alleged that the entire transaction took place with the consent and knowledge of defendant No.1.

(V)The plaintiff subsequently moved an application is 11837 of 1992, wherein he sought to implead the defendant No.3, who is the subsequent purchaser of the property from defendant No.1. The said amendment was allowed vide orders dated 28-10-1993 and defendant No.3 was imp leaded as the purchaser. Amended plaint was filed and written, statement to the amended plaint had also been filed and pleadings completed.

(3) The defendant No.1 in the written statement filed has contended that the plaint does not disclose any cause of action against him. The defendant No.1 admittedly did not enter into any contract with the plaintiff. It is further claimed that there was no concluded contract even with the defendant No.2 father of defendant No.1, to whom also a token advance subject to direct negotiation with defendant No.1 had been given, which ultimately also did not materialize. The defendant No.1 claims to have sold the property in question to defendant No.3 and delivered possession of the same on 2-5-1989 to the said defendant.

(4) The defendant No.2 in the written statement filed has contended that he was neither the owner of the property nor had entered into any agreement to sell with plaintiff. The defendant No.2 claims that in July 1988, when he happened to be in Delhi, he was approached by the plaintiff for the sale of the property. The plaintiff it is submitted insisted on Rs.20,000.00 being paid as token advance, pending his direct negotiations with defendant No.1 who was the owner of the property. The plaintiff had brought a typed receipt and the defendant in good faith signed the same on receiving Rs.20,000.00 which had been given. Since the negotiations were to be conducted and terms for sale were yet to be agreed, the defendant No.2 did not attach any importance to the words in the receipt, wherein defendant No.2 was mentioned as the owner. The plaintiff insisted and obtained copies of the documents of the property for verification. It is stated that the answering defendant requested the plaintiff to negotiate and settle the matter with the defendant No.1 but he did not do so and the defendant No.2 even visited the plaintiff for returning the token advance. The plaintiff had lease hold property from L.& D.O. and thereforee he was not interested in negotiating and completing the settlement with. defendant No.1. It is stated that the defendant never represented himself to be the owner and the plaintiff was exploiting and taking advantage of the receipt that he

had got signed from the defendant No.2 in good faith. The defendant No.2 having no right, title or interest in the property could not sell the same and there was no concluded and enforceable agreement in respect of the same. Additionally it was pleaded that the plaintiff had forged the receipt by adding the words 'the deal is settled at Rs-13.25 lakhs' as well as the name and address of the witness.

(5) The defendant No.3 states that in pursuance to and in part performance of the agreement to sell possession of the suit property was taken by defendant No.3 from defendant No.1. The defendant No.3 has filed an affidavit dated 23-2-1996 stating that out of the total sale consideration of Rs.16 lacs a sum of Rs.11 lacs has already been paid. It is stated that the income tax clearance and L & D.O. permission could not be earlier obtained due to the non-availability of defendant No.1 and by the time defendant No.1 came to Delhi, the restraint order had been passed by the Court on 3-10-1989. The defendant No.3 also supports the case set out by defendants 1 and 2.

(6) Before we consider the rival contentions, let me reproduce the contents of the receipt as filed by the plaintiff:-

'RECEIPT Received with thanks the sum of Rs.20,000.00 (Rupees Twenty thousand only) from Shri K.L. Bhatia son of Shri L.C. Bhatia R/o 13 Kasturba Gandhi Marg, New Delhi-110001, towards Token Money against the sale of my House Property bearing No.K-79 B, Kalkaji, New Delhi, The deal is settled at Rs.13.25 Lacs. (KULJIT Sing GARKAL) Son of Late Sh.Ranbir Singh Magnum Tower, 1605/6, Lokhand Wala Complex, 4, Bungalow, Andheri West, Bombay. Witness:- 1. Sd.S.K Arora, Proprietor Shiv Estate Agency, G-1A Kailash'

THE defendant No.2 has also produced the carbon copy of receipt that had been signed by him, which according to him had been given by the plaintiff. The said copy of receipt does not carry the words 'The deal is settled at Rs.13.25 lakhs'. Further there are no signatures of the witness in the carbon copy. The defendant No.2 has admitted only his signatures on the original receipt filed by the plaintiff. I have heard the learned counsel for the parties in respect of their respective pleas and contentions.

(7) Learned counsel for the plaintiff has argued that there are serious questions of facts and law to be tried. The case of the plaintiff requires investigation, inasmuch as, the authenticity or otherwise of the receipt-cum- agreement can be adjudged only after recording of evidence. The plaintiff thereforee has a prima facie case and is entitled to interim injunction.

(8) Let me now consider whether the plaintiff has a prima facie case for the grant of an interim injunction or not? It is the admitted position that the receipt-cum-agreement dated 16-7- 1988 on which the plaintiff bases his case has been executed by Kuljit Singh Gorkal i.e. defendant No.2. Admittedly defendant No.1 is the owner of the property and in whose name the property even stands mutated. The defendant No.1 neither received the money nor signed the receipt. The entire transaction on 16-7-1988 had taken place with defendant No.2 only.

(9) The case of the plaintiff in the plaint was that defendant No.1 being the son of defendant No.2 is bound by the said agreement since defendant No.2 is deemed to be an agent of the defendant No.1. There is no legal basis for this contention and the same deserves to be rejected. Admittedly the plaintiff himself lodged a Fir on the basis of which a case under Section 420 Indian Penal Code was registered against the defendant No.2. The allegation in the Fir was that the defendant No.2 had falsely held himself out as the owner of the property and by this false representation caused wrongful gain to himself and wrongful loss to the plaintiff by making him part with Rs.20,000.00 . The said Fir was lodged on 19-9-1988. The filing of the act of Fir and the allegations of cheating against the defendant No.2, negate the case which is subsequently sought to be set out by the plaintiff in the amended plaint of a meeting with defendant No.1 and agreement being reached. Besides it would be worth noticing that in the plaint as originally filed the plaintiff admits that copies of all relevant documents were handed over at the time of entering into the alleged agreement on 16-7-1988. If this be indeed so, then the said documents would have revealed to the plaintiff that the property stood mutated in the name of defendant No.1 and the defendant No.2 was not the owner as was mentioned in the receipt. The plaintiff would not remain under any wrongful impression in this regard.

(10) That the plaintiff in the amended plaint filed, deputs from the case as originally set out in the plaint. A further plea is raised that defendant No.1 met the plaintiff Along with the property dealer Mr. S.K. Arora on 20-7-1988, when the details of the entire transaction were once again reiterated and reconfirmed. It is stated that defendant No.1 had confirmed the receipt-cum- agreement executed by the defendant No.2 on his behalf and had agreed that the sale consideration as agreed between the plaintiff and defendants shall be adhered to. It is averred that defendant No.1 informed the plaintiff that defendant No.2 was holding power of attorney on behalf of the defendant No.1 and as such the receipt-cum- agreement executed by him dated 16-7-1988 would be valid and binding.

(11) This plea is now a complete departure from the plea earlier taken in the plaint and the report as lodged by the plaintiff with the Police on 19-8-1988. If indeed such a meeting had taken place, wherein defendant No.1 had confirmed and ratified the agreement into the agreement by defendant No.2, there would have been no occasion to file the Fir against only defendant No.2. Learned counsel for the defendants have denied any such meeting and state that plea taken up is a false one.

(12) Learned counsel for defendant No.2 laid considerable emphasis on the fact that there was no agreement whatsoever entered into with defendant No.1 owner of the property. There was no privity of contract. The defendant No.2 did not have any authority, action or power of attorney to bind defendant No.1. Even with regard to defendant No.2, learned counsel for the defendant has submitted that there was no concluded contract. No sale consideration had been agreed. The original receipt, it is argued had been forged and fabricated and the words 'deal is settled at Rs.13.25 lakhs' have been subsequently added.

(13) I have carefully examined the original receipt as filed by the plaintiff on record and the carbon copy of the receipt as filed by the defendant No.2. It is apparent to even the naked eye that the words 'the deal is settled at Rs.13.25 lakhs' do not appear in continuation. These appear to be subsequently typed. In fact the words 'deal is settled at Rs.13.25 lakhs' have been typed not in continuation and at the same level as the word 'Delhi'. The word 'the' is typed at an upper level, perhaps to

avoid overlapping on the revenue stamp. It would suggest that the above words have been subsequently added. I have compared the carbon copy of the receipt, which fits in exactly with the original receipt except for the sentence 'the deal is settled at Rs.13.25 lakhs'. The carbon copy of the receipt does not carry the name of any witness. Although, I am of the prima facie view that the words 'the deal is settled at Rs.13.25 lakhs' appear to have been subsequently added and there was no concluded contract even with defendant No.2, for the purposes of disposal of the present application, it is sufficient to hold that there was no privity of contract with defendant No.1, who was the owner of the property and the receipt executed by defendant No.2 would not be binding on the defendant No.1. Reference in this connection may be invited to *Radha Krishan Aggarwal v. Smt. Chandrawati And Others* 60(1995) DLT54.

(14) As discussed in paras 9 to 13 above, there are inherent contradictions in the case set up by the plaintiff. The defendant No.1 cannot be made liable on the basis of the receipt executed by defendant No.2. The plaintiff is not entitled to the discretionary and equitable relief of injunction. The plaintiff has failed to make out a prima facie case for the grant of injunction.

(15) Learned counsel for the defendant had relied on the meaning of the words 'earnest' and 'token' as given in Collins Law Dictionary.. Learned counsel also relied on the judgment of this Court in *M/s. Nanak Builders And Investors Pvt. Ltd. v. Vinod Kumar Alag* reported at Air 1991 Del 315 in support of his contention that merely because the document was titled as receipt the same would still be a contract capable of specific performance. It is not necessary to advert to this authority as I have proceeded on the assumption that the receipt could be an agreement which is specifically enforceable. However, as discussed, I have reached the conclusion that the plaintiff does not have a prima facie case.

(16) As defendant No.3 is already in possession of the property pursuant to an agreement to sell, learned counsel for the plaintiff has argued that to avoid multiplicity of litigation, it would be in the interest of justice to restrain defendant No.3 from parting further with possession of the property to any third party. I am of the view that since the plaintiff has not been able to establish a prima facie case

such a restraint would not be warranted. The doctrine of Lis pendens would cover the case. However, in the interest of justice, it is directed that defendants 1 and 3 in any agreement or transaction to be entered into for the sale/transfer or assignment of their rights in the property in favor of a third party or prior to parting with possession to any third party, will disclose the factum of the present suit. is 7668 of 1989 is dismissed and the interim stay order granted in is 7668 of 1989 stands vacated.

(17) This order disposes of both the IAs. The observations made hereinbefore are on a prima facie view of the matter and nothing expressed hereinabove would affect the disposal of the case on merits.

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