

Rakesh Kumar Sharma Vs. Jiwan Dass Through Legal Representatives and ors.

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Court : Delhi

Decided On : Dec-21-2001

Reported in : 2002IIIAD(Delhi)360; 96(2002)DLT766

Judge : A.K. Sikri, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rules 1 and 2

Appeal No. : I.A. 5740/99 in Suit No. 1215/99

Appellant : Rakesh Kumar Sharma

Respondent : Jiwan Dass Through Legal Representatives and ors.

Advocate for Def. : Arun Khosla and ; S.K. Makkar, Advs.

Advocate for Pet/Ap. : Meenakshi Singh, Adv

Disposition : I.A. allowed

Judgement :

A.K. Sikri, J.

1. This suit filed by the plaintiff is for specific performance of Agreement dated 3.7.1996 as well as permanent injunction and declaration. The plaintiff has averred

in the plaint that vide Agreement to Sell dated 3.7.1996 he purchased entire ground floor of property bearing Shop No. 5, New Market, Malviya Nagar, measuring 84 sq.yards with rear portion measuring 12 ft 9 inch x 39 ft of the property bearing Shop No. 6, New Market, Malviya Nagar (hereinafter to be called as 'suit property) with structure standing thereon as well as fittings and fixtures installed thereon along with proportionate share to leasehold rights in the land. The Agreement to Sell was entered into between the plaintiff and defendant No. 8, namely, M/s. Shiv Ram Builders Pvt. Ltd. with late Shri Jiwan Dass, father of defendants 2 to 7 and husband of defendant No. 1 as confirming party. The case set up is that late Shri Jiwan Dass was the owner of the property in question who entered into a Construction Agreement dated 3.4.1995 with defendant No. 8 by virtue of which defendant No. 8 constructed the suit property with its own fund and resources. As per this construction Agreement between late Shri Jiwan Dass and defendant No. 8, late Shri Jiwan Dass was required to pay Rs. 29 lakhs as full and final settlement of construction. Clause-7 of the Agreement stipulated that this payment was to be made either during the construction or within six months from the date of sanction of the plans of the construction failing which he was liable to pay interest on delayed payment at the rate of 2% P.M. to defendant No. 8. Clause-10 further stipulated that in case late Shri Jiwan Dass failed to make full and final payment and failed to return the security deposit of Rs. 6 lakhs to defendant No. 8 within a maximum period of 9 months from the date of sanction of the plans by MCD then in such an event defendant No. 8 was to become sole, absolute and exclusive owner and was entitled to seek possession of the entire ground floor in lieu of cost of construction incurred by it and the security amount deposit along with interest on both the said amounts. Since late Shri Jiwan Dass did not make the payment, defendant No. 8 became the owner and took possession of the entire ground floor of the suit property.

2. Late Shri Jiwan Dass also executed several documents on 27.3.1996 in favor of defendant No. 8 thereby transferring his right, title and interest in the suit property. These documents included two special power of attorneys, affidavit, general power of attorney, will etc. On the strength of this general power of attorney and after becoming the owner of the suit property in the aforesaid manner, defendant No. 8 entered into an Agreement to Sell dated 3.7.1996 with the plaintiff whereby the suit

property was agreed to be sold to the plaintiff for a total consideration of Rs. 27 lakhs. The plaintiff took possession of the suit property on spot in part performance of the Agreement to Sell dated 3.7.1996 when on that date the plaintiff made payment of Rs. 26.50 lakhs vide Cheque No. 511645 of even date drawn on Punjab National Bank and Rs. 50,000/- was paid by cash. Late Shri Jiwan Dass was confirming party to this Agreement who signed the Agreement to Sell dated 3.7.1996 in token on his acceptance to the said deed.

3. It is also averred that the plaintiff is in possession of the suit property for valid consideration and entire consideration has been paid for which defendant No. 8 has also executed the receipts as well as other necessary documents. However, certain disputes arose when late Shri Jiwan Dass and defendants 1 to 7 illegally and unlawfully started obstructing the business activities of the plaintiff and causing harassment to him and even FIR was lodged by late Shri Jiwan Dass on 30-9-1998.

4. In these circumstances the plaintiff filed the present suit praying for decree of specific performance of Agreement dated 3-7-1996 and also prayed for decree of permanent injunction restraining defendants 1 to 7 their legal heirs, employees, servants etc. from obstructing the business activities of the plaintiff in the suit property. The plaintiff has also prayed for declaration to the effect that he is in possession of the suit property in part performance of Agreement to Sell dated 3-7-1996.

5. Along with this suit IA.No.5740/99 being an application under Order XXXIX Rules 1 and 2 CPC praying for ex-parte ad interim injunction restraining defendants 1 to 7 from interfering in the peaceful possession of the property has been filed. On 27.5.1999 while issuing summons in the suit, ex-parte injunction order was passed on this application restraining defendants from selling, transferring, alienating or creating third party rights in the suit property and also from obstructing ingress and egress of the plaintiff in the suit property.

6. On summons being served upon the defendants, the defendants have put in appearance. Defendants 1 to 7 have filed their written statement contesting the suit. Defendant No. 8 has filed written statement supporting the case of the

plaintiff. In the written statement filed on behalf of defendants 1 to 7 the main defense set up is that late Shri Jiwan Dass was not the owner of the suit property. In fact defendant No. 1 had filed Suit No. 544/95 in which court decree was passed on a compromise application filed by the parties and defendant No. 8 was signatory to the said compromise application and was fully in the knowledge of the fact that it is the defendant No. 1 who had the right in the ground floor of the suit property. Thus the ownership rights in the ground floor of Shop No. 5 were recognised by both late Shri Jiwan Dass and defendant No.8 in compromise application dated 31.1.1996 and in view of this defendant No. 8 could not have entered into Agreement to Sell dated 3.7.1996 in respect of the same portion of the property with the plaintiff. Likewise late Shri Jiwan Dass could not act as confirming party to the said Agreement. It is also sought to be highlighted that all documents relied upon by the plaintiff were either forged or drawn on blank papers on which signatures of late Shri Jiwan Dass were obtained fraudulently at the time of execution of the construction agreement dated 3.4.1995. The defendants 1 to 7 have also tried to demonstrate the circumstances on the basis of which it is sought to be contended that in normal course such documents could not have been executed and a fraud is played by defendant No. 8 in collusion with other henchmen who are land grabbers. These circumstances are not narrated in detail as it may not be necessary to do so for the purpose of present application.

7. At this stage while deciding the application under Order XXXIX Rules 1 and 2 CPC the Court has to satisfy itself about the presence of three conditions before the plaintiff becomes entitled to an injunction, namely, whether the plaintiff has good prima facie case and is likely to succeed; whether balance of convenience is in his favor and; whether the plaintiff shall suffer irreparable loss and injury if the injunction is not granted.

8. In order to appreciate the controversy in the light of aforesaid parameters, let us first scan through the admitted facts. Defendants 1 to 7 in fact have not denied the existence of either Construction Agreement dated 3.4.1995 between late Shri Jiwan Dass and defendant No. 8, or for that matter other documents executed between these two parties. They have also not denied the execution of Agreement to Sell dated 3.7.1996 between the plaintiff and defendant No. 8 on which late Shri

Jiwan Dass signed as confirming party. The thrust of the defense raised by defendants 1 to 7 is that these documents were got signed from late Shri Jiwan Dass when they were blank and late Shri Jiwan Dass was duped. However, at the time Construction Agreement dated 3.4.1995 was executed between late Shri Jiwan Dass and the defendant No. 8, the defendant No. 8 was to pay a sum of Rs. 6 lakhs by way of deposit and amount of Rs. 5,40,000/- was paid by means of account payee cheque drawn in favor of late Shri Jiwan Dass. Receipt of this amount is also not denied. Although there is a dispute about the payment of balance sum of Rs. 60,000/-, fact remains that a sum of Rs. 5,40,000/- was paid by cheque and accepted by Shri Jiwan Dass. If there was no such Construction Agreement, on what account he received the payment, needs to be answered by the defendants 1 to 7. Agreement dated 3.7.1996 is also not in dispute. The defendant No. 8 has accepted having signed this Agreement. As afore-mentioned signatures of late Shri Jiwan Dass as confirming party on this Agreement are not denied the only averment made is that his signatures were taken on blank document. The sale consideration as per Agreement dated 3.7.1996 was Rs. 27 lakhs and on this very date cheque No. 511645 in the sum of Rs. 26,50,000/- drawn on Punjab National Bank, Section-27, Noida was given by the plaintiff. The payment of such a huge amount by means of cheque given by the plaintiff on the execution of this Agreement lends credence to the plaintiff's case that such an agreement was in fact entered into. When the plaintiff made the payment of entire consideration on the same date, his averment that possession of the suit premises was given to him on that very date is highly probable. Fact remains that admittedly as on date of the filing of the suit, the plaintiff was in possession and continues to remain in possession. It would be worthwhile to mention at this stage that the defendants 1 to 7 filed various complaints against the plaintiff and the defendant No. 8 including complaint dated 11.6.1999 before the Metropolitan Magistrate, New Delhi and these complaints admit the possession of the plaintiff in the suit property. The plaintiff is running its business from this property. Thus possession of the plaintiff in the suit property also stands established.

9. It may also be significant to point out that the defendants 1 to 7 have not filed any case against the plaintiff to obtain possession of the property which they claim has been illegally usurped from them since 1995. They have also not filed any

case against defendant No. 8 or the plaintiff alleging that defendant No. 8 or late Shri Jiwan Dass could not enter into Agreement to Sell dated 3.7.1996 on the ground that it is the defendant No. 1 who is the owner of ground floor of the property.

10. Be that as it may, in view of there being Agreement to Sell dated 3.7.1996 in favor of the plaintiff in respect of suit property for which the plaintiff has paid the consideration and settled possession of the suit property, the plaintiff has made out a prima facie case in his favor. Balance of convenience also lies in favor of the plaintiff as the purpose of temporary injunction pending the suit is to maintain status quo in respect of the suit property. Furthermore the injury likely to be suffered by the plaintiff if the injunction is not granted would be more than the injury that may be caused to the defendants 1 to 7, in case injunction is granted and the plaintiff ultimately fails in the suit inasmuch as the defendants can take out appropriate proceedings for alleged unlawful possession by the plaintiff in case they ultimately succeed.

11. The defendants 1 to 7 are trying to argue that this Court should infer that the documents signed by late Shri Jiwan Dass were either blank or fraudulently taken by the plaintiff and the defendant No. 8. These are all disputed facts which can be thrashed out only after the evidence is led. At this stage these allegations cannot be presumed to be gospel truth and the injunction to the plaintiff cannot be refused who has produced on record number of documents in support of his case and has also proved his settled possession.

12. The result of the aforesaid discussion is that this IA.5740/99 stands allowed. Interim order dated 27th May, 1999 is made absolute till the disposal of the suit.