

Prem Khera Vs. Subhash Goyal

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Court : Delhi

Decided On : Sep-30-2011

Judge : J.R. Midha, J.

Acts : Code of Civil Procedure (CPC) - Order 37

Appeal No. : RFA No.75/2010

Appellant : Prem Khera

Respondent : Subhash Goyal

Advocate for Def. : Mr.Gurbaksh Singh; Ms.Meenakshi Sharma, Advs.

Advocate for Pet/Ap. : Mr.Ashish Upadhayay, Adv.

Judgement :

1. The appellant has challenged the judgment and decree for `2,00,000/- along with interest @ 10% per annum passed by the learned Trial Court in favour of the respondent.
2. The respondent, hereinafter referred to as "the plaintiff", instituted a suit for recovery of `4.00 lakh under Order XXXVII of the Code of Civil Procedure against the appellant, hereinafter referred to as "the defendant".
3. Vide Agreement to sell dated 28th February, 2007, the plaintiff agreed to purchase property bearing No.462, Pocket D-16, Sector 7, Rohini, Delhi-110085

from the defendant for a total consideration of `18.37 lakh, out of which the plaintiff paid a sum of `2.00 lakh at the time of the agreement and the remaining amount was agreed to be paid on 29th April, 2007 and the sale deed was agreed to be executed on 30th April, 2007. According to the plaintiff, the defendant did not show the original documents of title and the documents relating to clearance of house tax, electricity and water bills to the plaintiff. The plaintiff claimed to have visited the office of the Sub-Registrar on 30th April, 2007 along with the balance sale consideration of `16.37 lacs, but the defendant did not turn up. The plaintiff issued a legal notice dated 30th April, 2007 and reminder notice dated 10th August, 2007 to the defendant demanding double of the earnest money, i.e., `4.00 lacs from the defendant and thereafter, instituted a suit before the learned Trial Court on 2nd November, 2007.

4. The defendant contested the suit on the ground that the balance sale consideration of `16.37 lacs was to be paid by the plaintiff on 29th April, 2007 and the sale deed was to be executed thereafter on 30th April, 2007. The defendant claimed to have visited the plaintiff on 30 th April, 2007 for the balance payment. The defendant also visited the office of the Sub-Registrar and thereafter sent a telegram to the plaintiff on 30th April, 2007. The defendant claimed that original documents of title were seen by the plaintiff at the time of execution of the sale agreement and there were no dues against the property.

5. The plaintiff appeared in the witness box as PW1 and proved the sale agreement, Ex.PW1/A, the legal notice, Ex.PW1/C and reminder notice, Ex.PW1/D. In cross- examination, PW1 admitted that the balance sale consideration was payable by 29th April, 2007. PW1 also admitted that no notice of his intention to purchase the suit property was issued by him. He did not make any written request to the defendant for inspection of the original documents and the documents relating to the dues of house tax, electricity and water bills. The plaintiff did not produce any proof with respect to the availability of `16.37 lacs as on 29th April, 2007 before the Trial Court.

6. The defendant appeared in the witness box as DW1 and proved the receipt of appearance before the Sub-Registrar on 30th April, 2007 as Ex.DW1, telegram

receipt as Ex.DW2 and the receipts of house tax, electricity and water bills as Ex.DW3 to Ex.DW5. DW1 admitted having sold the suit property prior to the filing of the suit in July 2007.

7. The learned Trial Court held that both the parties failed to fulfill their respective obligations as the plaintiff did not prove the availability of `16.37 lacs with him as on 29th/30th April, 2007 and did not issue any notice to the defendant show his intention to purchase the suit property after 30th April, 2007 whereas the defendant sold the suit property without notice to the plaintiff and forfeited the earnest money without informing the plaintiff. The learned Trial Court held both the parties to be in default. The learned Trial Court held that the plaintiff was entitled to the refund of `2.00 lacs along with interest at the rate of 10% per annum from the defendant.

8. The learned Trial Court has not taken into consideration two vital aspects: first that the payment of the balance sale consideration was to be made by the plaintiff to the defendant on 29th April, 2007 and the sale deed had to be executed one day thereafter on 30th April, 2007. In that view of the matter, there was no occasion for the plaintiff to have visited the office of the Sub-Registrar on 30th April, 2007. The plaintiff has also not shown the availability of `16.37 lacs with him. The second material aspect is that the defendant issued a telegram to the plaintiff on 30th April, 2007 at 5.43 PM in which he notified that the plaintiff has neither made the payment on 29th April, 2007 nor shown any interest to get the sale documents executed on 30th April, 2007 and, therefore, the earnest money stand forfeited. The finding of the learned Trial Court that the defendant sold the suit property without notice to the plaintiff is, therefore, erroneous.

9. This Court is of the view that the plaintiff has committed the breach of the agreement dated 28th February, 2007 by failing to make payment of the balance sale consideration of `16.37 lakh to the defendant on 29th April, 2007. The plaintiff has failed to prove the availability of `16.37 lakh with him before the learned Trial Court. The plaintiff's plea that the defendant did not show the original documents of title and the documents relating to clearance of house tax, electricity and water bills to him is self-contradictory to his plea that he visited the office of the Sub-

Registrar on 30th April, 2007 along with the balance sale consideration of `16.37 lakh. If the plaintiff was not satisfied with the inspection of original documents of title and clearance of house tax, electricity and water bills, there was no occasion for him to have visited the office of the Sub-Registrar on 30th April, 2007. On the other hand, if the plaintiff visited the office of the Sub-Registrar on 30th April, 2007 along with the balance sale consideration of `16.37 lakh, the plaintiff must have satisfied himself with respect to the title of the suit property and the clearance of the dues. Be that as it may, the plaintiff has committed the breach of the agreement dated 28th February, 2007 by failing to make the payment of balance sale consideration of `16.37 lakh to the defendant on 29th April, 2007 and, therefore, the forfeiture of the earnest money of `2.00 lakh by the defendant vide telegram dated 30th April, 2007 is valid in terms of clause 2 of the sale agreement dated 28th February, 2007. The plaintiff is thus not entitled to the refund of any amount from the defendant.

10. In the facts and circumstances of this case, the appeal is allowed and the impugned judgment and decree of the learned Trial Court is set aside and the respondent's suit is dismissed. The appellant has deposited a sum of `2.22 lakh with the Registrar General of this Court in terms of order dated 10th March, 2010 of this Court. The Registrar General is directed to refund the said amount to the appellant along with interest accrued thereon. CM No.2461/2010 is also dismissed.