(2014) 12 DEL CK 0252

In the Delhi High Court

Case No : CS (OS) 170/2008

Akhileshwar Prasad Narayan Singh APPELLANT

Vs

Shashi Shekhareshwar Prasad Narayan Singh RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2014) 12 DEL CK 0252

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Sandeep Sethi, Sr. Advocate and Pragya Nalwa, Advocate for the Appellant; A.S. Chandhiok, Sr. Adv., Saurabh Kirpal, Manmeet Kaur, Manan Chadha and Siddharth Tyagi, Advocate for the Respondent

Judgement

G.S. Sistani, J.

I.A. 11296/2014

1. Present application has been filed by plaintiff/applicant under Section 151 of the Code of Civil Procedure seeking the following prayers:

a. Allow the instant application and direct Defendant No. 1/Mrs. Nalini Singh and Promont to provide full and complete details and documents pertaining to the entire consideration that was received by Defendant No. 1/Mrs. Nalini Singh and/or paid by Promont in lieu of the Property and on this basis to direct Defendant No. 1/Mrs. Nalini Singh to pay unto the Plaintiff 1/4th (one-fourth) of the entire sale proceeds of the Property (adjusted by the sum of Rs.54.5 crores already paid unto the Plaintiff).

b. Pending disposal of the Application, injunct and restrain Promont, its agents, employees, assigns, officers and nominees from undertaking any development or construction works on or in respect of the Property.

2. The plaintiff had filed a suit for partition with respect to property bearing no. 2

and 2A, Hailey Road, New Delhi, bearing Municipal No. II-P/R-7 and 8.

3. By an order dated 24.9.2008 a preliminary decree was passed defining the shares of the parties as under:

plaintiff, defendant no. 1 and defendant no. 2 as 1/4th undivided share, each, and defendants no. 3 to 6 as remaining 1/4th undivided share (together) in the suit property.

4. Subsequently the parties entered into a Memorandum of Settlement on 2.2.2009, which was duly signed by the parties. As per this Memorandum of Settlement, which was arrived at before Delhi High Court Mediation and Conciliation Centre, the sale price of the suit property was fixed at Rs.160 crores. It was also agreed that the property would be put to sale and the sale consideration would be divided amongst the parties as per their share. As per Clause 5.1 of this Memorandum of Settlement, it was agreed that none of the parties would create any third party rights or encumber the property. It is not in dispute that the parties were unable to get a buyer for the estimated sum of Rs.160 crores. In the order dated 3.6.2011 fresh terms of settlement, which were agreed between the parties, were recorded by the Court. Pursuant to the settlement recorded in Court on 3.6.2011 the plaintiff was paid Rs.54.50 crores by defendant no. 1, as defendant no. 1 had agreed to purchase 1/4th share of the plaintiff. The property was sold to M/s. Promont Hillside Private Limited, a nominee of defendant no. 1, which fact was brought to the notice of the Court by defendant no. 1 by filing an application, being I.A.14300/2012. It is not in dispute that the plaintiff, defendant no. 2 and defendants no. 3 to 6 were paid their share. Details of demand drafts drawn in the name of other defendants were detailed in I.A.14300/2012. Subsequently, a Local Commissioner was appointed, possession of the property was handed over to the buyer, nominee of defendant no. 1, and a sale deed was executed by all the parties in favour of the nominee.

5. Mr. Sethi, learned senior counsel appearing on behalf of the plaintiff, submits that material facts were not disclosed by defendant no. 1 to the plaintiff, which include:

(i) That defendant no. 1 had approached the L&DO for conversion of the property from lease hold to free hold on the premise that defendant no. 1 was the sole and exclusive owner of the suit property.

(ii) Defendant no. 1 did not disclose his arrangement with his nominee (purchaser).

(iii) Defendant no. 1 did not disclose that he had approached the office of competent authority i.e. Government of NCT Delhi and Archaeological Survey of India for grant of permission for reconstruction and construction at the suit property.

(iv) Defendant no. 1 did not inform the plaintiff of his proposal to take permission for construction of a group housing society at the suit property.

6. Learned senior counsel for the plaintiff submits that the above facts are material suppressions on the part of defendant no. 1 and had the plaintiff knowledge of all the future plans of defendant no. 1, plaintiff would not have agreed to accept Rs.54.50 crores as was offered to him.

7. Mr. Chandhiok, learned senior counsel appearing on behalf of defendant no.1, submits that by a preliminary decree dated 24.9.2008 the shares of the parties were defined. In the Memorandum of Settlement dated 2.2.2009 the parties had arrived at a tentative figure for sale of the property, for Rs.160 crores. At that stage, it was open for any of the parties to approach a prospective buyer as none of the parties were in a financial position to pay approximately Rs.40.00 crores or above for the individual share of each party. Learned senior counsel further submits that no buyer could be found who was willing to pay Rs.160 crores, the tentative figure, which finds mention in the Memorandum of Settlement, to purchase the suit property. It is further submitted by learned senior counsel that on 3.6.2011, when the matter was listed before the Court, another settlement was arrived at between the parties, whereby parties agreed to sell the property for Rs.218 crores and defendant no.1 took upon plaintiff to pay Rs.54.5 crores. It is also contended that stringent conditions were imposed upon the defendant no.1 as the said amount was to be paid within 75 days of mutation irrespective of the fact whether the suit property was converted from lease hold to free hold or not. It is also clarified that defendant no.1 approached L&DO for conversion of the property from lease hold to free hold on a mandate given to him which is evident upon reading of the agreed terms of settlement between the parties in the order dated 3.6.2011. Mr. Chandhiok contends that the parties were ad idem that defendant no.1 would sell the property and the money would be paid either by defendant no.1 or his nominee. It is further contended that in this backdrop defendant no.1 had approached L&DO and an application was made for conversion of the property into a group housing project.

8. Mr. Chandhiok, learned senior counsel for defendant no.1, further submits that once a preliminary decree was passed, it was open for either of the parties to take any step for sale entered into a collaboration agreement or any form of agreement with any purchaser to buy each others? share. It is further submitted that, at this stage, the present application in a disposed of suit is neither maintainable nor any direction can be sought calling upon defendant no.1 to disclose complete details and documents, and the sale consideration that was received by defendant no.1 or paid by the purchaser. It is further submitted by Mr. Chandhiok that since a copy of the sale deed is on record, by which the entire property was sold to Promont Hillside Private Limited, wherein sale consideration has been disclosed besides other details, thus, no further disclosure of any kind is warranted.

9. I have heard learned senior counsel for the parties and considered their rival submissions. I have also perused the present application and the documents

placed on record. It may be noticed that after the order dated 3.6.2011 was passed, an application, being I.A.18945/2012, was filed by defendant no.2, wherein the following prayers were made:

a) modification of order dated 5.9.2012 in C.S.(O.S) No. 170/2008 passed by this Hon''ble Court to enable Defendant No. 2 to appear before the L&DO and direct the L&DO to hear defendant No. 2 as per their rules.

b) direct the L&DO to recalculate and apportion the misuse charges of Rs.85,27088/- in line with their order dated 6.6.2012 and 14.6.2012.

c) direct the purchaser not to demolish any of the building/structure at No. 2 Hailey Road, New Delhi till it is evaluated by the L&DO.

d) direct the purchaser to disclose this Hon''ble Court the full price paid and if any charges levies have been reimbursed to D1.

10. I.A.18945/2012 was disposed of by an order dated 1.11.2012, which reads as under:

