

(2007) 05 DEL CK 0048

In the Delhi High Court

Case No : FAO (OS) No's. 276 and 343 of 1995 and 378 of 1999

Capricorn One and Another

APPELLANT

Vs

Raghibir Singh and Others
 Maj. Bhajan Pratap Singh
and Another Vs Capricorn One and Others

RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 6 Rule 7, Order 6 Rule 8,
Order 6 Rule 9, Order 8 Rule 9
Income Tax Act, 1961 — Section 230A

Citation : (2007) 96 DRJ 306

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Pinky Anand and Ritika Goyal, in FAOOS No. 276/1995 and FAO anOS No. 378/1999 and A.S. Chadha and Kunal Sinha, in FAOOS No. 343/199, for the Appellant; A.S. Chadha and Kunal Sinha, AdvocateFAO(OS) No. 276/1995 and FAO (OS) No. 378/1999, Pinky Anand and Ritika Goyal, in FAO(OS) No. 343/1995, for the Respondent

Judgement

Sanjiv Khanna, J.—The present appeals arise out of different orders passed in Civil Suit No. 2280/1991 titled Capricorn One and Anr. v. Raghibir Singh and Ors.

2. FAO(OS) No. 276/1995 has been filed by M/s. Capricorn One and Mr. I.S. Bawa against order dated 16th October, 1995 disposing of injunction application is No. 8803/1991 and Anr. similar application being is No. 8561/1995. By the said order, learned Single Judge partially allowed the injunction application, inter alia, holding that the defendant Mr. Raghibir Singh who is the respondent No. 1 in appeal No. 276/1995 should be restrained from selling the property comprised in khasra No. 207 as per the description given in the plaint. In view of the stand taken by Major Bhajan Pratap Singh and Ms. Usha Pratap Singh, the respondent Nos. 2 and 3 in this appeal, who were also imp led as parties to the suit by the same order dated 16th October, 1995, learned Single Judge held that the said defendants claim their right in respect of property purchased by them from

Mr. Raghbir Singh, in khasra No. 162 and the said khasra is no subject matter of the suit and, Therefore, the appellants-plaintiffs have nothing to do with the said land. Accordingly no injunction order was passed against the Respondent Nos. 2 and 3 herein.

3. FAO (OS) No. 343/1995 is a cross appeal filed by Major Bhajan Pratap Singh and Ms. Usha Pratap Singh against the appellants in FAO(OS) No. 276/1995, M/s Capricorn One and Mr. I.S. Bawa. Mr. Raghbir Pratap Singh is also a respondent. The appellants Major Bhajan Pratap Singh and Ms. Usha Pratap Singh have challenged order dated 16th October, 1995 allowing is No. 3240/1994 by which the said parties were impleaded as defendants.

4. FAO(OS) No. 378/1999 is directed against order dated 27th July, 1999 passed in is No. 3900/1997 dismissing the application filed by Capricorn One, under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Act, for short).

5. As all the appeals are inter-connected and common facts and issues are involved, they are being disposed of by this common order.

6. For the sake of convenience, M/s Capricorn One, the appellant in FAO(OS) No. 276/1995 and FAO(OS) No. 378/1999 has been referred to as "Capricorn", Mr. Raghbir Singh has been referred to as "Raghbir" and Major Bhajan Pratap Singh and Ms. Usha Pratap Singh appellants in FAO(OS) No. 343/1995 have been collectively referred to as "Singhs".

7. For deciding the present appeals, it is necessary to capitulate facts as found from a reading of the pleadings and the orders passed. It is, however, clarified that the facts as stated below are on the basis of prima facie opinion formed by this Court and should not be construed as final determination of the factual position. The final determination can take place only after parties have been given opportunity to lead oral evidence.

8. Capricorn has filed a Suit No. 2280/1991 for specific performance of contract, possession and perpetual injunction. Capricorn claims to have entered into an agreement to sell dated 6th March, 1990 with Raghbir for purchase of 432 square yards of land situated at village katwaria Sarai, Mehrauli, New Delhi in khasra No. 207 (Min) as per the jababandi dated 26th -28th August, 1986. It is, however, stated in the plaint that the original agreement to sell has been lost and photocopy thereof is available with Capricorn. It is further alleged in the plaint that Raghbir had agreed to sell the said land @ Rs. 5,500/- per square yard i.e. for total consideration of Rs. 23,76,000/- out of which Rs. 4,00,000/- was paid by cheque at the time of the signing of the agreement to sell leaving a balance payment of Rs. 19,76,000/-. Boundaries of the said plot/land subject matter of the suit has been described in paragraph 3 of the plaint as under:

East - Village street West - Property of Shri Pratap Singh North - Service Lane (Gali) South - The main road of Qutab Hotel

9. Similar description is also given in the photocopy of the agreement to sell dated 6th March, 1990 relied upon by Capricorn. Along with the plaint, Capricorn has also filed Form No. 37-I for furnishing statement of transfer of immovable property before appropriate authority under Chapter XX-C of the Income Tax Act, 1961 and Form No. 34-A u/s 230A of the same Act. In Form No. 37-I, the immovable property intended to be transferred has been described as "F26, Katwaria Sarai Village, New Delhi". Capricorn also rely upon an affidavit dated 16th March, 1990 purportedly executed by Raghbir in which the property made subject matter of the sale measures 432 square yards in Katwaria Sarai, Mehrauli, New Delhi located in khasra No. 207(Min) has been described as plot No. 126. Along with the plaint, a copy of the site plan of the property subject matter of the plaint has been enclosed.

10. Raghbir, in the very first paragraph of the written statement has stated that the suit has not been properly valued as the land subject matter of of the plaint is 539 square yards in area and it was verbally agreed by Raghbir that he would sell the said land to Capricorn @ Rs. 6,000/- per square yard i.e. for total consideration of Rs. 32,34,000/-. It is, however, alleged that there was no written agreement between Raghbir and Capricorn. In paragraph 6 of the preliminary objections, Raghbir has stated as under:

6. That the plaintiffs want to grab the property namely F-126, Katwaria Sarai, Delhi measuring 539 sq. yds. through the forged agreement prepared by the plaintiffs. In fact there was no written agreement dated 6.3.1990 between the parties to the suit.

11. Similarly in paragraphs 3 and 4 of the reply on merits, it has been stated as under:

3. That para 3 of the plaint as it is stated is wrong and denied. It is denied that the plaintiffs approach the defendant through Shir Vinod Khatri, a property dealer for the purchase of the land in suit of the defendant. It is denied that the defendant agreed to sell the land measuring 432 sq. yds. as alleged out of khasra No. 207 situated in the revenue estate of Village Katwaria Sarai, New Delhi to the plaintiff's firm. However it is disclose that the suit property is measuring 539 sq. yds. It is denied that the suit property is measuring 432 sq. yds. or it is 452 sq. yds. It is mentioned that the figure 452 sq. yds. was misprint in the notice of the Advocate and it is a typographical mistake of the typist. The exact measurement of the plot is 539 sq. yds (77"x63").

4. That para 4 of the plaint is wrong and denied. It is denied that in accordance with the aforesaid agreement as alleged, the plaintiffs agreed to purchase a land of the defendant for a sum of Rs. 5500/- per sq. yds. totalling the approximate sale consideration of Rs. 23,76,000/- (Rupees Twenty three lacs and seventy six thousand only) etc. etc. It is admitted that the defendant took Rs. 4,00,000/- as the earnest money against the total sale consideration of Rs. 32,34,000/- in respect of the suit property. The aforesaid amount was given by Shri Vinod

Varshneya in terms of the verbal agreement. Annexure "E" filed by the plaintiff is wrong and denied. The defendant challenges the genuineness and authenticity of Annexure "E". The contents of para 4 of the plaint are totally false and the same are denied.

That Shri Varshney approached Shri Raghbir Singh, the defendant on 6.3.90 and proposed him for the sale for his plot No. F-126, Katwari Sarai, New Delhi measuring 539 sq. yds. and (77"x63") at the rate of Rs. 6000/- per sq. yds. which Shri Raghbir Singh the defendant accepted the offer of Shri Varshneya and a sum of Rs. 4,00,000/- through cheque was paid to Shri Raghbir Singh as an earnest money against the total sale consideration of Rs. 32,34,000/- and it was verbally agreed that Shri Raghbir Singh shall sign all the documents namely agreement to sell, Receipts, General Power of Attorney, Special Power of Attorney, Will and any other document which may help Shri Varshneya for the transfer of the said plot in his name when the balance amount will be paid to Shri Raghbir Singh and this was to be done within 90 days with effect from 6.3.90. However, it is disclosed that Shri Raghbir Singh put his signatures on the five blank papers on the assurance of Shri Vinod Varshneya and Shri Rajvir Singh. The said papers are in the custody of Shri Varshneya. The present suit is the net result of the bed(sic) intentions, ill motives, and bed designs between Shri Varshneya and Shri Rajvir Singh.

12. The stand taken by Raghbir in the written statement is that he can write his name in Hindi and English language but otherwise is illiterate. He denied authenticity of the Form No. 37-I, 34-A, affidavit dated 16th March, 1999 and the agreement to sell claiming that these are forged and bogus and have been prepared by Capricorn to grab the property. It is also alleged that Raghbir had signed papers produced before him. Raghbir admitted that legal notice dated 16th August, 1990 was issued on his behalf to Capricorn for payment of the balance sale consideration and execution of papers by 2nd September, 1990 but claimed that the date mentioned for execution of the said documents i.e., 2nd September, 1990 was wrongfully typed by the typist and is a mere typographical error and time for making balance payment had already expired. It was further alleged that Raghbir is bed ridden since November, 1991. In the written statement Raghbir further states that there were various defaults by Capricorn. However, Raghbir admits that he was paid Rs. 4,00,000/- as earnest money.

13. It is the case of the Capricorn that during the pendency of the said suit, there were some talks of compromise and Capricorn relies upon a compromise deed dated 21st January, 1994 purportedly executed by it's partner Ms. Mohinder Kaur and Raghbir. As per the said compromise deed, Capricorn had agreed to pay balance sale consideration of Rs. 19,76,000/- and Raghbir Singh had agreed to execute sale deed of the property described as 126, Katwaria Sarai, New Delhi measuring 432 square yards comprised in 207 (Min) as per the site plan enclosed. The compromise deed also records that cheque of the aforesaid balance amount has been handed over.

14. It appears that the compromise was never recorded in the court and later on Raghbir filed an affidavit dated 16th May, 1994 before the learned Single Judge claiming that he owned and was in possession of two lands viz. 432 square yards in khasra No. 207 (Min) and approximately 536 square yards in khasra No. 162 (Min) also situated in Katwaria Sarai, Tehsil Mehrauli, New Delhi. In this affidavit, Raghbir has further stated that in 1990 he had offered to sell the two plots, @ Rs. 5,500/- per square yards for the plot measuring approximately 432 square yards in khasra No. 207 (Min) and Rs. 6,000/- per square yards for 536 square yards of land in khasra No. 162 (Min) katwaria Sarai, New Delhi. It is further alleged that Capricorn had agreed and Raghbir had entered into an agreement to sell of land situated in khasra No. 207 (Min), Katwaria Sarai, New Delhi for Rs. 23,76,000/- @ Rs. 5,500/- per square yard and accordingly made payment of Rs. 4,00,000/- leaving a balance payment of Rs. 19,76,000/-, which was to be paid within 90 days. Raghbir also alleges that he had signed blank papers and documents as he is old and is not well educated. His age as mentioned in the affidavit dated 16th May, 1994 was 62 years. It is also averred in the affidavit that on 5th January, 1994, Raghbir had sold 536 square yards of land in khasra No. 162 (Min) Katwaria Sarai, New Delhi to the Singhs vide separate sale deeds. The affidavit states that the land for which the suit has been filed consists of 432 square yards in khasra No. 207 (Min) and the same is distinct and separate from 536 square yards" of land in khasra No. 162 (Min) in village Katwaria Sarai, New Delhi sold by Raghbir to the Singhs. It is stated that the two lands are not in any manner connected or common. In this regard Raghbir has also relied upon the records enclosed with the affidavit. The 536 square yards of land in khasra No. 162 (Min) has been described as plot No. 126 (new number F-126) in the affidavit.

15. It may be stated that Raghbir has not amended the written statement. Normally an affidavit cannot be filed contrary to averments made in the written statement. Provisions of Order VI Rules 7, 8 and 9 read with order VIII, Rule 9 of the Code are clear in this respect. They prohibit and bar a party from filing contradictory pleadings. (Refer Kedar Nath v. Ram Prakash, reported in 1998 (76) DLT 755 However, this aspect will have to be examined and gone into by the learned trial court. We refrain from expressing and giving final opinion in this regard lest it causes prejudice to any side and our opinion is only prima facie and tentative for the purpose of deciding the present appeals.

16. The stand of the Singhs has been that the properties purchased by them are located in khasra No. 162 (Min) and are known as plot No. F-126, Katwaria Sarai, New Delhi and the said properties are not subject matter of the suit, they being distinct and separate. The Singhs referred to the averments made in the plaint wherein the suit property has been described as located in khasra No. 207 (Min) comprising of 432 square yards whereas property No. F-126, it is claimed is located in 162 (Min) and comprises of 539 square yards of land. Reliance in this regard is also placed upon the records given by Patwari, village katwaria Sarai dated 4th January, 2007 in which he has stated that khasra No. 207 (Min) and

162 are mutually distinct and separate and are located approx. 2500 ft. apart.

17. However, in the said report, the Patwari has stated that plot No. F-126 falls in khasra No. 171 and does not fall in khasra No. 162 or 207. Thus, as per the report given by the Patwari, plot No. 126 does not form part of the khasra No. 162 (Min), which had been purchased by the Singhs as per the documents filed by them. It is further stated by the Patwari that khasra No. 207 is owned by the Government and is in possession of Housing Department.

18. It may be relevant to state here that the learned Single Judge had also appointed a Local Commissioner to visit the spot for identification of the suit property. The Local Commissioner appointed by the learned Single Judge had submitted his report. He had also prepared a site plan. As per the report, property No. F-126 or 126 is one and the same and the plot is open on three side. On one side of the plot there is the main road and back side there is a small service or by- lane. On the North side of the property, is plot No. 125 which is owned by Choudhary Pratap Singh. The report also reveals that construction and demolition on Plot No. F 126, Katwaria Sarai was started as per the statement made by neighbours, two months before the date of the report i.e. in April, 1994.

19. The facts stated above reveal that the Singhs have raised a dispute about identity of the property which was subject matter of the agreement between Raghbir and Capricorn. It is the case of the Singhs that plot No. F-126 is not the suit property and was never subject matter of the agreement between Capricorn and Raghbir, as the property which is the subject matter of the agreement as per the plaint is located in khasra No. 207 (Min). Raghbir had not disputed the identity of the property in the written statement. In the written statement he had referred to the suit property as F-126. Raghbir had infact in the written statement stated that the property is not 432 Square yards in size but 539 Square yards in size. The relevant portion of the written statement has been quoted above. In the affidavit dated 16th March, 1990 purportedly executed by Raghbir the property subject matter of the agreement between Raghbir and Capricorn has been described as F-126. There is also dispute with regard to total area of the plot No. F-126. Raghbir and the Singhs claim that it is 539 square yards whereas as per the Capricorn, the agreement between Raghbir and the Capricorn was in respect of 432 square yards of land. However, we may mention here that the report given by Patwari shows that F-126 does not fall in either khasra No. 207 or 162 and, Therefore, is not owned by either by the Capricorn or by the Singhs, if one goes by the khasra nos. mentioned in the documents relied upon by them. However, we also have copy of the site plan relied upon by Capricorn and the description of the property given in paragraph 3 of the plaint which has not been disputed and denied by Raghbir, in the corresponding paragraph of the written statement which has also been reproduced above in the present order.

20. The demarcation of property which was subject matter of agreement between Raghbir and Capricorn will be subject matter of trial. Only after the

parties have led oral evidence on this issue, can this factual question be finally decided. However, in the plaint and in the alleged agreement to sell, description of the property by giving boundaries of the same has been given. In view of the factual position discussed above, we feel that on the basis of documents and pleadings, the appellant has been able to make out a prima facie case for injunction in respect of the plot purchased by the Singhs from Raghbir.

21. Learned Counsel for the appellant and the learned Single Judge in the order dated 27th July, 1999 while disposing of application for amendment viz. is No. 3900/1997 has referred to some decisions of this Court and other High Courts in the case of *Bimla Khanna Vs. M.S. Pawar and Others*, , *Bhagwan Dass and Anr. v. Union of India*, reported in *Bhagwan Das etc. Vs. Union of India*, , *Umsala Bibi and Others Vs. M. Jayaraman*, , *Krishan Lal Dutta Vs. Behari Lal Chhabra*, and *Chhajju Ram Vs. Lachhman Singh*, . In the said decisions, the courts have referred to the manner and the mode in which the identification of the property is decided in case of a dispute. In some of the decisions it has been held that description by giving details of boundaries can be a relevant criteria for determining identity of the plot or land. Therefore, it is not the plot number or description by khasra number which is the final, determinative or conclusive criteria for finding out the identity of the plot, but the boundary details given in the document and the pleadings. We do not want to express any final opinion in this regard as all these aspects are required to be examined by the trial court at the time of final decision.

22. We may, however, mention here that while issuing notice in FAO (OS) No. 276/1995 in order dated 27th October, 1995, the Division Bench of this Court had noticed various contentions raised by Capricorn and finding merit in the same had restrained Raghbir and Singhs from executing and entering into transaction to sell etc. in respect of property which is subject matter of the suit and also subject matter of the sale deed. While doing so, court also recorded the submission of Capricorn that there was no distinction between the suit property and plot No. F-126. This aspect was again considered by the Division Bench of this Court in the order dated 14th August, 1997. It was noticed that the dispute prima facie relates to identification of the property. It was recorded that the Singhs will be bound by the injunction order if they have purchased the suit property as described in the plaint and covered by the agreement. Liberty was given to the Singhs to file objections to the report of the Local Commissioner. The said injunction order has continued.

23. In the light of the above position, we feel that for the purpose of interim injunction, the restraint order already passed should continue against Raghbir as well as the Singhs. For the sake of clarification and lest there be any ambiguity, Raghbir and Singhs are specifically restrained from further transferring, alienating, mortgaging or creating any further charge in respect of plot No. F-126, Katwaria Sarai, New Delhi till the disposal of the suit. The Singhs have constructed on the property and rented it out. They shall file an affidavit in the

suit before the learned Single Judge giving details of the tenants, the area occupied by them and the monthly rental being received by them from the tenants. Copy of the agreements between them and the tenants will be filed along with the affidavit. The Singhs will be entitled to re-let the property without creating any other right, charge or mortgage but will file an affidavit in the court informing the court the name and address of the tenant, Along with copy of the agreement between them and the tenant and the rent being received.

24. As far as amendment application is concerned, we feel the same should also be allowed and Capricorn should be permitted to allege that the property which is subject matter of the agreement to sell between them and Raghbir is none other than plot No. F-126, Katwaria Sarai, New Delhi. As already stated above, identity of the plot subject matter of the plaint is disputed. The amendment, Therefore, is only clarificatory. However, this will be subject to the condition that Capricorn will not delete the averment made in the plaint that the said plot is located in khasra No. 207, village Katwaria Sarai, New Delhi. Of course, it will be open to the parties to explain by leading evidence that the plot which was subject matter of the agreement to sell between Raghbir and Capricorn is different or same as that purchased by Singhs from Raghbir and in case khasra number has been incorrectly mentioned, the reason and cause for the same and effect thereof shall be considered by the Learned Single Judge. Accordingly, amended para 3 of the plaint will read as under:

That the plaintiff approached the defendant through Shri Vinod Khatri Associates, Kishangarh, Mehrauli, New Delhi for the purchase of the land and the defendant agreed to sell the land measuring about 432 Sq.yards out of Khasra No. 207 (min) situated at Village Katwaria Sarai, New Delhi, to the plaintiff firm and accordingly the plaintiff firm through its authorised signatory i.e. plaintiff No. 2 Shri I S Bawa entered into a written agreement with the defendant, Shri Raghbir Singh son of late Shri Shiv Lal resident of C-971, Netaji Nagar, New Delhi, executed on 6-3-1990 and the same was duly signed by both the parties. The said plot is also identified as 126 (old) and F-126 (new), Katwaria Sarai, Tehsil Mehrauli, New Delhi. The boundaries of the said plot/land is as under:

East : Village street North : Service lane (Gali) West : Property of Shri Pratap Singh South : Main Road of Qutab Hotel

The copy of the said agreement is annexed herewith as Annexure "A". The defendant also gave his sworn attested affidavit on 16.3.1990 in support of this agreement dated 6.3.1990 and the proposed site plan and other relevant papers like income tax clearance form 37-I, 34-A were also signed by the defendant, from time to time, the photocopies of the same are annexed herewith as Annexures "B" to "D". However, some construction exists at the site and the existing site plan is annexed herewith as Annexure D-II.

25. The appeal filed by the Singhs challenging the impleadment is accordingly liable to be dismissed. Accordingly appeal Nos. 276/1995 & 378/1999 are partly

allowed and disposed of. The appellants in the appeals Nos 276/1995 and 378/1999 are also entitled to costs which are assessed at Rs. 10.000/-.