(2013) 12 DEL CK 0250

In the Delhi High Court

Case No : CS (OS) No. 2204 of 2007

Didi Manjeet Kaur Pavlicek APPELLANT

Vs

Rekha Dagar and Another RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:
Registration Act, 1908 — Section 49

Citation : (2014) 2 AD 312

Hon'ble Judges : S. Muralidhar, J

Bench : Single Bench

Advocate : A.S. Dateer, for the Appellant; Amar Nath, Advocate for D-2 and Pallav Pandey, Advocate for D-1, for the Respondent

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J.—Didi Manjeet Kaur has filed this suit against Smt. Rekha Dagar and Maa Gayatry Properties, Defendants 1 and 2 respectively seeking specific performance of an agreement-cum-receipt dated 22nd June 2007 whereby Defendant No. 1 agreed to sell to the Plaintiff the property being MIG Flat No. 96, Third Floor, Block-A-2, Sector-18, Rohini, Delhi-110085 shown in red in the site plan (hereafter ''suit property'') in favour of the Plaintiff. The Plaintiff describes herself as an Indian born American citizen. She has filed this suit through her attorney Smt. Meena Rani, a resident of Rohini, Delhi. The Plaintiff states that Smt. Meena Rani is her maternal aunt and that she executed a General Power of Attorney (''GPA'') dated 19th September 2007 in her favour. The original of the GPA has been placed on record by the Plaintiff.

2. The case of the Plaintiff is that pursuant to negotiations that took place between Defendant No. 1 and the Plaintiff''s power of attorney (''PoA'') and husband a receipt-cum-agreement dated 11th June 2007 was prepared by the property dealer, Defendant No. 2. It is stated that the sale consideration was settled at Rs. 28.50 lakhs. Rs. 50,000 was paid as earnest money to Defendant No. 1. According to the Plaintiff, the balance sum of Rs. 28 lakhs was to be paid

by August 2007. A sum of Rs. 3.5 lakhs towards tax, water and electricity bills was to be paid by Defendant No. 1 before 14th June 2007.

3. The Plaintiff states that since Defendant No. 1 could not arrange to pay for water, tax and electricity, a further sum of Rs. 4 lakhs was paid by the Plaintiff to Defendant No. 1. A fresh consolidated receipt dated 22nd June 2007 for the sum of Rs. 4.5 lakhs was executed by Defendant No. 1. A ''Bayana Agreement'' was also executed and typed on a stamp paper. Under the Bayana Agreement it was agreed that the balance sum of Rs. 24 lakhs "shall be paid by the second party to the first party on or before 14th August 2007". The original of the said Bayana Agreement has been placed on record. It has been attested by two persons. It has been signed by the Plaintiff and the maternal uncle of the Plaintiff, Shri Devender Singh.

4. The Plaintiff states that at the time of negotiations, the Plaintiff was informed that a loan had been obtained from HSBC Bank by deposit of title deed and that Defendant No. 1 still has to pay the balance sum of Rs. 15 lakhs. With the sale deed not being executed in terms of the Bayana Agreement, Defendant No. 1 insisted that a further sum of Rs. 15 lakhs should be paid by the Plaintiff to enable Defendant No. 1 to clear the loan and retrieve the original title deeds. It is further averred that Defendant No. 2 represented to the Plaintiff that he could get the time for execution of sale deed extended by one month if the Plaintiff paid Rs. 40,000 which was one month''s interest on the loan amount which Defendant No. 1 had to pay to the HSBC Bank. The Plaintiff states that she readily agreed to pay the said sums which she gave to Defendant No. 2. On 13th August 2007 when the Plaintiff''s PoA contacted the Defendants to enquire if the loan amount of the HSBC Bank had been cleared, no satisfactory answer was forthcoming.

5. The Plaintiff states that with the Defendants not coming forth to execute the sale deed, a legal notice dated 11th September 2007 was sent which was answered by Defendant No. 1 in an evasive manner. In the above background, the present suit was filed seeking a decree of specific performance of the agreement-cum-receipt dated 22nd June 2007 and for a permanent injunction restraining the Defendants from dealing with the suit property.

6. While issuing summons in the suit and notice in the application IA No. 12793 of 2007, the Court restrained Defendant No. 1 from creating any third party interest in the suit property.

7. The prayer of Defendant No. 2 to be deleted as a party to the suit, was declined by an order dated 5th March 2008.

8. On behalf of the Plaintiff, PW-1 Smt. Meena Rani and PW-2 Shri J.S. Rawat were examined as witnesses. Mr. Narender Sharma, the Assistant Manager (Sales) of HSBC Bank was examined as PW-3.

9. The husband of Defendant No. 1 filed an affidavit of evidence dated 9th

November 2010. Defendant No. 1 filed her affidavit of evidence dated 20th October 2010.

10. The Court on an analysis of the pleadings and the evidence proceeds to answer the issues.

Issue No. 1: Whether the Plaintiff has any locus to file/maintain the present suit in view of admitted fact that the entire suit transactions were done by Shri Devender Singh having no authority in law from the Plaintiff/or her alleged attorney holder Smt. Meena Rani? OPP

11. Learned counsel for the Defendants pointed out that the GPA placed on record does not in fact authorise Smt. Meena Rani to file the suit on behalf of the Plaintiff. On the other hand, Mr. A.S. Dateer, learned counsel for the Plaintiff referred to the recitals in the GPA and urged that although the operative portion did not specifically authorise the Plaintiff to file the present suit, the background recitals in fact did so.

12. The GPA dated 19th September 2007 contains the following recitals:

Whereas the Executant intending to purchase the property at Delhi and enter into an agreement with Smt. Rekha Dagar W/o Shri Rakesh Dagar R/o A-2/96, Sector-18, Rohini, Delhi-85, who offer to sell the property bearing No. A-2/96, Sector-18, Rohini, Delhi-85 and had paid ''Bayana'' to the tune of Rs. 4,50,000/-. However, some dispute has arisen in correction with the said sale transaction.

Whereas to institute/execute/sign file/defend all kinds of suits, writs, complaints, petitions, revision, written statement, appeals, vakalatnama, etc. in courts of law, i.e. Civil, Criminal or Revenue Tribunal or authorities and to present proceedings before court. Arbitrator or any other authority in my name and on my behalf in any manner concerning my said property and/or any matter incidental thereto and to engage or appoint any advocate, pleader, attorney, etc., and to make any statement, application, affidavit, apply to the court for obtaining certified copies, understanding, etc., on my behalf under my name.

13. However, in the operative portion there is no clause which actually authorises the PoA holder Smt. Meena Rani to file the present suit. The filing of the suit by the PoA holder is a specific act which cannot be performed without appropriate authorisation. It is only on the basis of such specific authorisation that the PoA holder can sign the plaint, the affidavit in support of the plaint, vakalatnama etc. The GPA placed on record lacks the specific authorisation of the PoA holder to file the suit. In the considered view of the Court, even though the recitals to the GPA may indicate that it has been executed in the context of the suit property and the transactions in relation thereto, since it fails to specifically authorise the PoA holder to file the suit, the suit in the present form is not maintainable.

14. Consequently, Issue No. 1 is answered in favour of the Defendants and against Plaintiff. It is held that Smt. Meena Rani was not duly authorised to file the suit on behalf of the Plaintiff. Although the above finding on Issue No. 1 is

sufficient to dismiss the suit, the Court nevertheless proceeds to give its finding on the other issues.

Issue No. 2: Whether the agreement to sell/Bayana agreement dated 18th June 2007 is a valid agreement in law as per Section 17(1-A) of Registration Act, 1860 as amended up to 2002? OPD

15. Mr. Dateer, learned counsel for the Plaintiff, does not dispute the fact that u/s 17(1-A) of the Registration Act, 1860 amended in 2002, the Bayana Agreement had to be compulsorily registered as it relates to an immovable property. He, however, contends that since there is no corresponding amendment to Section 49 of the Registration Act, the failure to get the Bayana Agreement registered and stamped in terms of Section 17(1-A) is not fatal.

16. The Court is unable to agree with the above submission. The statutory requirement of registration of the Bayana Agreement in terms of Section 17(1-A) of the Registration Act is mandatory and cannot be explained away in the manner sought to be done by Mr. Dateer. In any event, the Court holds that the above agreement dated 18th June 2007 was in fact substituted by the subsequent agreement dated 22nd June 2007 and it is in fact that agreement which has been relied upon by the Plaintiff.

17. Consequently, Issue No. 2 is answered in favour of the Defendants and against the Plaintiff.

Issue No. 3: Whether the agreement/receipt dated 22nd June 2007 relied upon by the Plaintiff cancels all the past documents/agreement to sell executed before 22nd June 2007? OPD

Ans: The scanned copy of the receipt dated 22nd June 2007 is reproduced as under:

18. On the Plaintiff''s own showing she paid Rs. 4.50 lakhs to Defendant No. 1. The validity of the above receipt is not in dispute. The receipt expressly cancels the earlier Bayana Agreement dated 18th June 2007.

19. Consequently, this issue is answered in the affirmative and held in favour of the Plaintiff and against the Defendants.

Issue No. 4: Whether the Plaintiff is entitled to the discretionary decree of specific performance and permanent injunction/any other relief on the facts and circumstances of the present case? OPP

20. In a suit for specific performance, the Plaintiff has to aver and show that the Plaintiff was ready and willing to perform the Plaintiff''s obligations under the agreement of which specific performance is sought. There can be no doubt that in terms of the Agreement dated 22nd June 2007 the balance payment had to be made before 14th August 2007. The Bayana Agreement acknowledged the receipt of sum of Rs. 4,50,000 by the Defendants. This is a document admitted by both parties. The Plaintiff has to show that prior to the deadline of 14th

August 2007, the Plaintiff was ready with the balance sale consideration.

21. Mr. Dateer, learned counsel for the Plaintiff referred first to the legal notice sent by the Plaintiff to the Defendants on 11th September 2007. In the said notice there is no mention of the fact that Defendant No. 1 had informed the Plaintiff that a sum of Rs. 15 lakhs was still owed to the HSBC Bank. Nothing is stated in the said notice about the Plaintiff having kept the amount of Rs. 24 lakhs ready for payment prior to the deadline of 14th August 2007. Even in the subsequent legal notice dated 1st October 2007, there is nothing stated in that behalf. The affidavit of evidence of Meena Rani only mentions the issuance of a fresh consolidated receipt dated 22nd June 2007 for Rs. 4,50,000. In para 11 of the affidavit, it is averred that the attorney of the Plaintiff contacted the Defendants on 13th August 2007 to ask whether the loan had been paid and the original documents retrieved. It is alleged that no satisfactory reply has been given by the Defendants. Thereafter it is stated that the Defendants failed to execute the sale deed on the stipulated date, i.e., 14th August 2007, "....because of the facts that defendant No. 1 could not arrange the amount for clearance of home loan".

22. In the affidavit of Mr. Rakesh Dagar, husband of Smt. Rekha Dagar, Defendant No. 1, it is stated in para 10 that Shri Devender Singh was not at all ready and willing to perform his obligations in regard to the sale transactions of the suit property "neither on and nor before 14/8/2007, the last date stipulated in the agreement for completion of the sale transactions". In the cross-examination of Mr. Rakesh Dagar, the following answer has been elicited:

The total sale consideration of the suit property that was agreed between the parties was Rs. 28,50,000/-, out of which Rs. 4,50,000/- was to be earnest money and further amount of Rs. 15,00,000/- was to be paid prior to execution of sale deed. It is correct that on 14.08.07, original title deeds of the suit property were not in our possession. It is correct that as on 20.05.2010, I owed a total sum of Rs. 15,21,660.30 paisa to HSBC bank as loan amount. It is correct that by 20.05.2010 I had not cleared the loan. It is correct that from 2006-07 till 2010 I could not pay back Rs. 15,00,000/- to the bank.

23. The above answer does not help the Plaintiff because there is nothing that contradicts the statement made in the affidavit of Shri Rakesh Dagar that the Plaintiff was not ready and willing to perform the Plaintiff''s obligations under the contract. The Plaintiff has not been able to prove that the Plaintiff was ready and willing to perform the Plaintiff''s obligations under the contract. Consequently, Issue No. 4 is answered against the Plaintiff and in favour of the Defendant.

24. In view of the above issues having been answered in favour of the Defendants and against the Plaintiff, Issue Nos. 5 and 6 are not required to be answered. The suit is dismissed but, in the circumstances, with no order as to costs.