

(2012) 07 DEL CK 0313

In the Delhi High Court

Case No : CS (OS) 1806 of 2011 and CS (OS) 1509 of 2007

Malkiat Singh Johal

APPELLANT

Vs

Pran Chopra and Others
 Iqbal Chand Khurana Vs Mr.
Malkiat Singh Bawa

RESPONDENT

Date of Decision : 26-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11

Citation : (2012) 6 ILR Delhi 700

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : B.B. Gupta in CS OS 1806/2011 and Mr. Sanjiv Puri with Mr. Kumar Dushyant, CS OS 1509/2007, for the Appellant; Sanjiv Puri, with Mr. Kumar Dushyant, Advocates in CS (OS) 1806/2011 and Mr. B.B. Gupta, Advocate in CS (OS) 1509/2007, for the Respondent

Judgement

V.K. Jain, J.

IA No. 16007/2011 in CS (OS) 1806/2011

1. This is a suit for specific performance of an Agreement to Sell alleged to have been executed on 18.08.2007 whereby defendants No. 1 and 2 agreed to sell the second floor of the property bearing number F-7/7, Vasant Vihar, New Delhi - 110057, along with terrace rights, to plaintiff for a consideration of Rs.65,00,000/-. The plaintiff was a tenant in the aforesaid premises and a notice dated 16.7.2007 terminating the tenancy of the plaintiff was given to him. The case of the plaintiff is that after issuance of notice to him, the defendants expressed desire to sell the premises in question and the matter was negotiated through Anil Kumar and Rahul Arora, both dealing in real estate. It is also the case of the plaintiff that the defendants No. 1 and 2 executed a receipt on 18.8.2007 after receiving a sum of Rs. 5 lac in cash and Rs.2 lac by way of two separate cheques. According to plaintiff, it was also agreed that the sale deed will be executed within one year and the balance sale consideration would be paid at

the time of execution of the sale deed. It has been further alleged in para 8 of the plaint that thereafter to plaintiff had continued to approach defendants No. 1 and 2 with the offer of the entire balance sale consideration for the suit property but on each and every such request of the plaintiff, the defendants No. 1 and 2 always sought extension of time on one or the other pretext. The plaintiff, on the request of defendants, agreed to defer the execution of the sale documents and kept on waiting for signal from them. However, on 9.5.2011, the Court Bailiff came to the suit premises to execute a warrant of possession which defendant No. 3 had obtained against the plaintiff in respect of the premises, subject matter of the agreement. The case of the plaintiff is that only then he could realize the malafide intentions of the defendants and came to know that the aforesaid second floor with terrace rights had been sold to defendant No. 3. The plaintiff is now seeking specific performance of the agreement dated 11.8.2007. He is also seeking declaration that the sale deed executed by defendants No. 1 and 2 in favour of defendant No. 3 is null and void and not binding on him.

2. This application has been filed by defendants for rejection of the plaint. The contention of learned counsel for the defendants is that the plaint does not disclose any cause of action and the suit is barred by limitation.

3. It is settled preposition of law that while considering an application under Order VII Rule 11 CPC, the Court can take into consideration only the averments made in the plaint and the documents filed by plaintiff. Neither the written statement nor the documents filed by the defendant can be considered at this stage. It is also settled preposition of law that the truthfulness or otherwise of the averments made in the plaint cannot be gone into at this stage and the averments have to be taken at their face value and as correct. In *Avtar Singh Narula & Anr. Vs. Dharambir Sahni & Anr.* 150 (2008) DLT 760 (DB), this Court reiterated that the power to reject the plaint has to be exercised sparingly and cautiously though it does have the power to reject the plaint in a proper case.

In *Popat and Kotecha Property Vs. State Bank of India Staff Association*, , Supreme Court noted that the real object of Order 7 Rule 11 of the CPC is to keep irresponsible law suits out of the Courts and discard bogus and irresponsible litigation. It was further held that dispute questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 of CPC. 5. In view of the averments made in para 8 of the plaint, as referred earlier in this order, as well as other averments made in the plaint, it is difficult to say at this stage that the plaint does not disclose any cause of action to file the present suit for specific performance of the agreement set up by the plaintiff or for grant of declaration claimed by him. He claims an Agreement to Sell in his favour, he says that he was all along ready and willing to perform his part of contract and it is the defendants 1&2, who avoided completion of the transition. All the averments essential in a suit for specific performance of an Agreement to Sell have thus been made.

5. As regards, limitation, Article 54 of the Limitation Act applies to a suit for

specific performance of a contract and the period of limitation provided is three year from the date fixed for the purpose or if no such date is even when the plaintiff has noticed that the performance is refused. In the present case, the case of the plaintiff is that the transaction was to be completed within one year from 17.8.2007 i.e. by 17.8.2008. The suit filed on 26.7.2011, is well within the time, if the period of limitation is computed from 17.8.2008. Mr. Puri points out that neither the original receipt has been filed nor was any notice sent to defendants asking them to perform the agreement set up on the plaint. As far as filing of the original receipt is concerned, the learned counsel for the plaintiff states that case of the plaintiff is that the document has been lost and an FIR in this regard has already been filed. Non-filing of the original documents in these circumstances cannot be a ground for rejection of the plaint. As regards service of notice, it is not a legal requirement that before seeking specific performance of an agreement, a notice in writing is to be given to the party for default. Therefore, failure on the part of plaintiff to give a notice in writing to the defendants asking them to perform the agreement dated 18.8.2007 cannot be a ground for rejection of the plaint, which can be rejected only on one or more of the grounds specified in Order VII Rule 11 of Code of Civil Procedure.

There is absolutely no merits in the application and the same is dismissed with costs. The cost is quantified at Rs. 25,000/-.

IA No. 11823/2011 in CS (OS) No. 1806/2011 (under Order XXXIX Rule 1 and 2 CPC)

Dismissed as not pressed at this stage.

CS (OS) 1806/2011 & CS (OS) 1509/2007

The learned counsel for the parties submits that CS (OS) No. 1509/2011 and CS (OS) No. 1509/2007 be consolidated. Ordered accordingly. CS (OS) 1509/2007 would be treated as main suit and the evidence would be recorded in that suit but will be read for the purpose of disposal.

Pleadings in the cases are complete. On the pleadings of the parties, following common issues are framed:

(i) Whether the defendants No. 1 and 2 in CS (OS) No. 1806/2011 vide agreement to sell/ receipt dated 18.8.2007 had agreed to sell the second floor with terrace rights of the property bearing number F-7/7, Vasant Vihar, New Delhi - 110 057 to the plaintiff namely Shri Malkiat Singh Juhel for a consideration of Rs.65 lac and had received a part consideration of Rs.10 lac from him? OPP in CS(OS) No. 1806/2001.

(ii) Whether the plaintiff in CS (OS) No. 1806/2011 has always been ready and willing to perform his part of the alleged agreement to sell dated 18.8.2007? OPP

(iii) Whether the plaintiff in CS (OS) No. 1806/2011 is entitled to specific performance of the alleged agreement/ receipt dated 18.8.2007? OPP

(iv) Whether the plaintiff in CS (OS) No. 1806/2011 is entitled to specific performance of the alleged agreement dated 18.8.2007? OPP

(v) Whether the plaintiff in CS (OS) No. 18.8.2007 is entitled to a declaration sought by him? OPP

(vi) Whether this Court has no pecuniary jurisdiction to try the suit CS (OS) 1509/2007? OPP in CS (OS) No. 1509/2007

(vii) Whether termination of the tenancy of the defendant in CS (OS) 1509/2007 was illegal? OPD in CS (OS) No. 1509/2007

(viii) Whether the plaintiff in CS (OS) 1509/2007 is entitled to possession of the suit premises? OPP in CS (OS) 1509/2007

(ix) Whether the plaintiff is entitled to damages for use and occupation and, if so, at what rate and to what amount? OPP in CS (OS) No. 1509/2007

Affidavits by way of evidence be filed by the parties within six weeks. At the request of learned counsel for the plaintiff in CS (OS) No. 1509/2007, which is not opposed by Mr B.B. Gupta, Mr. D.S. Bawa (Retired Additional District & Sessions Judge) is appointed as Local Commissioner to record the evidence of the parties. The fee of the Local Commissioner is fixed at Rs. 50,000/-, which shall be paid by the plaintiff in CS (OS) No. 1509/2007. The parties are directed to appear before the Local Commissioner on 31.8.2012 for fixing dates of recording of cross examination of the witnesses. Registry is directed to produce the original files before the Local Commissioner as and when required by him.