
(2017) 10 DEL CK 0166

In the Delhi High Court

Case No : Regular First Appeal No. 66 Of 2007

Narender Kumar Gupta

APPELLANT

Vs

Alka Gupta

RESPONDENT

Date of Decision : 27-10-2017

Acts Referred:

Indian Partnership Act, 1932 — Section 69
Evidence Act, 1872 — Section 91

Citation : (2017) 10 DEL CK 0166

Hon'ble Judges : P.S.Teji, J

Bench : Single Bench

Advocate : Atul Nigam, Raghav Tibriwal, Hetu Arora Sethi, Abhimanyu Verma, Anuj Kapoor

Final Decision : Dismissed

Judgement

P.S.Teji, J

1. The present appeal has been filed by the appellant against the judgment and decree dated 25.11.2006 passed by the learned Additional District Judge, Delhi whereby the suit filed by the plaintiff/respondent for recovery of money was decreed in her favour and against the appellant/defendant for a sum of Rs.12 lakhs along with interest @7% p.a w.e.f 30.08.2004 till realization and cost.

2. The facts enumerating from the record are that the appellant and respondent constituted a partnership through a partnership agreement dated 5th April, 2000 to run an institute for preparing students for competitive exams, under the name of Takshila Institute, Paschim Vihar, Rohini and other places. The plaintiff/respondent and wife of appellant/defendant, Deepa Gupta jointly acquired immovable properties including the second floor of the built up property, without roof rights, at Rohini, Delhi. The appellant/defendant allegedly took advantage of the inexperience of the plaintiff/respondent and excluded her from the partnership business and took under his own exclusive control all the funds and assets of the said business. Thereafter, the appellant/defendant along with his

wife filed a Suit No. 438/04 for perpetual injunction against the respondent herein, her husband and her brother-in-law, which was subsequently dismissed. The said suit apparently demonstrated the intention of the appellant/defendant to end the partnership with the respondent herein however no dissolution of partnership agreement had taken place. Further, an agreement to sell dated 29.06.2004 called the "Bayana Agreement" was executed, between the appellant/defendant and respondent herein at Delhi in respect of the undivided half share of the respondent herein in respect of the second floor of the built up property in question. It was stated that under the said agreement, in consideration of the sale of the half share of the respondent herein in the said property of the partnership firm, the appellant/defendant had agreed to pay to the respondent herein a sum of Rs.21.5 lakhs. The price of the share of the respondent herein in the said immovable property had been agreed to be between Rs.2 lakhs and the balance Rs.19.5 lakhs was to be paid in lieu of her share of the goodwill of the Institute, her share in the furniture etc. The appellant/defendant sent legal notices dated 29.07.2004 and 30.07.2004 to the respondent herein calling upon her to execute the requisite sale-deed for the property in question and to take the balance of consideration. The respondent herein allegedly executed a sale-deed in respect of her share of the immovable property in favor of the appellant/defendant on 13.08.2004 for a sum of Rs.12 lakhs towards her further rights and interests in the Institute. It was further stated that the appellant/defendant has paid the plaintiff/respondent only Rs.9.5lakhs out of the agreed consideration of Rs.21.5 lakhs, leaving the balance of Rs.12 lakhs due upon him.

3. In the written statement filed on behalf of the appellant/ defendant, it was stated that the plaintiff/respondent had filed a false and fabricated case. It was further submitted that an unregistered partnership deed dated 05.04.2000 between the plaintiff/respondent and appellant/defendant was only with respect to the Takshila Institute which had been functioning since April 1st, 2000. The appellant/defendant submitted that the plaintiff/respondent was nothing but a sleeping partner in the working of the institution, and the appellant/defendant alone was responsible for the management of the institute. Further, the husband of the plaintiff/respondent was looking after all her interests in the partnership business and regularly actively participated in the activities of the partnership business of the institute. The appellant/defendant has also submitted that the entire balance consideration was paid and only thereafter the plaintiff/respondent affixed her signatures on the sale-deed in respect of the said property. Lastly, the appellant/defendant submitted that the plaintiff/respondent is not entitled to recover any interest or cost from him.

4. Replications to the written statements were filed on behalf of the defendants. On the basis of pleadings of the parties, following issues were framed by the Court below :

(1) Whether the plaintiff is entitled to recover the suit amount, as prayed for?
(OPP)

(2) Whether the plaintiff is entitled to any interest, if yes, at what rate and for what period? (OPP)

(3) Relief.

5. To prove his case, the plaintiff examined herself as PW1 and the defendant examined himself as DW1.

6. Feeling aggrieved by the judgment and decree in the present suit, the present appeal has been filed.

7. The main contention of the appellant is that the Trial Court has erred in as much as passing the judgment and decree on the basis of an unregistered partnership deed contrary to the provisions of Section 69 of the Indian Partnership Act, which completely bar the filing of the suit as being not maintainable; that Section 69 of the Indian Partnership Act is mandatory in character and its effect is to render a suit by a partner in respect of a right vested in him or required by him under a contract which he entered into as a partner of an unregistered firm whether existing or dissolved, as void; that partner of an unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract following under the ambit of Section 69 of the Indian Partnership Act; that the partnership itself is not sustainable in the eyes of the law as the respondent is a government employee and she cannot enter into a gainful act while in the government job; that the Trial Court erred by ignoring the fact that the plaintiff in the suit has made a material concealment by not averting that there is an arbitration clause 12 in the unregistered partnership agreement dated 05.04.2000; that the Trial Court has ignored the material fact that the suit of the appellant was decreed as compromised on 16.10.2004 and till 17.01.2006 when the present suit for recovery of money was filed no grievance was ever raised at any stage for alleged non payment of 12 lakhs, neither any application was moved in the compromise suit for contempt or even for non fulfillment of the terms of the compromise; that the Trial Court erred by not appreciating the fact that the relation between the respondent and appellant herein got strained and there could not be a possibility that the respondent executed the sale documents without the full and final settlement which was the intent of the agreement dated 29.06.2004.

8. On the other hand, the case of the respondent/plaintiff is that in terms of the Bayana Agreement dated 29.06.2004, the total consideration of Rs.21.5 lakhs included the share of the plaintiff in the aforesaid property and also 50% share in the Takshila Institute established on the said property. There was no bifurcation in the value of both these interests of the plaintiff. Further, the respondent/plaintiff stated that the appellant/defendant had no intention to fully honor the Bayana Agreement and had paid her Rs.9.5 lakhs out of the agreed consideration of 21.5 lakhs i.e. Rs.2 lakhs for her share in the immovable property and Rs.7.5 lakhs towards a part payment for an agreed future right in Takshila Institute leaving the balance of Rs.12 lakhs due on him.

9. To appreciate the rival contentions of the parties, I have gone through the evidence adduced and the material placed on record.

10. The main controversy to be decided in the present case is whether the appellant had actually made the payment of Rs.12 lakhs recoverable from him by the respondent as per agreement Ex.P-2. The case of the plaintiff/respondent was that she had agreed to sell the property in question in favour of the appellant/defendant for a total consideration of Rs.21.5 lakhs for which a Bayana Agreement Ex.P-2 was executed. Out of Rs.21.5 lakhs a sum of Rs.9.5 lakhs was paid by the appellant/defendant, but the balance of Rs.12 lakhs was never paid not even at the time of execution of the sale deed Ex.P-4. On the other hand, the case of the appellant/defendant was that he had made the entire payment to the respondent/plaintiff and nothing is due to be paid to her. It is the case of the appellant/defendant that Bayana Agreement ExP-2 was executed towards sale of property in question as well as towards goodwill, reputation, rights and interests in Takshila Institute and the payment of Rs.12 lakhs was made to the respondent/plaintiff on 13.08.2004 i.e. on the date of execution of sale deed.

11. The Bayana Agreement ExP-2 shows that the respondent/plaintiff had agreed to sell her undivided half share in the second floor of built up property no.8, Block C-9, Sector-8, Rohini, Delhi along with roof rights to the appellant/defendant for a sale consideration of Rs.21.5 lakhs. Out of Rs.21.5 lakhs, the respondent/appellant had received a sum of Rs.7.5 lakhs on that day itself and it was agreed that the appellant/defendant shall pay the balance of Rs.14 lakhs on or before 29.08.2004. A receipt Ex.P-3 confirming receipt of Rs.7.5 lakhs and balance of Rs.14 lakhs was also executed. A sale deed Ex.P-4 was executed on 13.08.2004 with regard to the sale of above said property which was in consequence to the bayana agreement Ex.P-2.

12. It was the consistent stand of the respondent/plaintiff that apart from Rs.7.5 lakhs, as mentioned in the bayana agreement, a sum of Rs.2 lakhs was paid by the appellant/defendant to her by way of pay order dated 11.08.2004, but despite agreeing, the appellant/defendant had not paid Rs.12 lakhs to her.

13. The appellant/defendant had not placed any documentary proof on the record to show that he had paid Rs.12 lakhs to the respondent/plaintiff. The contention of the appellant is that he had made the payment of Rs.12 lakhs on the day of execution of the sale deed dated 13.08.2004 but no receipt in this regard was ever executed. In the absence of any such document, it cannot be inferred that any such payment of Rs.12 lakhs was made by the appellant whereas as per Bayana Agreement Ex.P-2 the appellant was expected to make the balance payment against a valid receipt. It is also apparent from the cross-examination of the appellant that he had admitted to not having filed any receipt regarding payment of remaining amount of Rs.12 lakhs. Though he had admitted that a receipt in respect of payment of Rs.7.5 lakhs was taken by him, but no reason was given for not taking the receipt of balance of Rs.12 lakhs. The contention of the appellant was that he had made the payment of Rs.12 lakhs to

the respondent is without any merit in the absence of any documentary proof.

14. In the Bayana agreement Ex.P2, it is specifically mentioned that the appellant has to make the payment of balance of Rs.14 lakhs whereas as per the version of the appellant, on the day of execution of sale deed Ex.P4, he had made the remaining payment of Rs.12 lakhs. The plea taken by the appellant/defendant that he has made the oral payment does not contradict the documentary evidence in the form of Bayana Agreement Ex.P2 and the same was his liability as per the said agreement. The plea itself is not sustainable in the eyes of law as if the amount is accrued by a document i.e. Bayana Agreement Ex.P2 in the case at hand, the same is to be replied by way of document only. The oral contention cannot take the place of a document. This contention is contrary to section 91 of the Indian Evidence Act which reads as follows:-

"91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of documents.--When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained."

15. In similar situation, the Hon'ble Supreme Court in the case of Roop Kumar vs. Mohan Thedani, AIR 2003 SC 2418 held as follows:-

"13. Section 91 relates to evidence of terms of contract, grants and other disposition of properties reduced to form of document. This section merely forbids proving the contents of a writing otherwise than by writing itself; it is covered by the ordinary rule of law of evidence, applicable not merely to solemn writings of the sort named but to others known some times as the "best evidence rule". It is in reality declaring a doctrine of the substantive law, namely, in the case of a written contract, that of all proceedings and contemporaneous oral expressions of the thing are merged in the writing or displaced by it."

Thus, there cannot be any reason for not having receipt with respect to the amount so paid by the appellant/defendant which leads to the inference that the amount was never paid.

16. In view of the above discussion, I do not find any ground in the present appeal. The appellant has failed to make out his case and show any error in the impugned judgment and decree. The findings on the issues and the judgment and decree passed by the Court below are upheld and the appeal is accordingly dismissed being devoid of merit.

No order as to costs.