(2018) 03 DEL CK 0391

In the Delhi High Court

Case No : Reguilar First Appeal No. 269 Of 2017, Civil Miscellaneous Application No. 9385 Of 2017

Rajendari Devi & Anr — APPELLANT

Vs

Pramod Kumar Basotia — RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:
Code Of Civil Procedure, 1908 — Section 151, Order 20 Rule 12

Citation : (2018) 03 DEL CK 0391

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Babul Lal, Kaljeevan Siddharth, Saurabh Duggal

Judgement

Prathiba M. Singh, J. (Oral)

1. The present appeal arises out of a decree passed for possession, permanent injunction and damages/mesne profits.

2. The case of the Respondent/Plaintiff (hereinafter, "Plaintiff") is that a sale transaction was entered into with the Appellant/Defendant (hereinafter `Defendant'), in respect of property bearing H. No.74, Pocket B-6, Sector-8, land measuring 25.9 sq. mtrs. in the layout plan of Rohini Residential Scheme also known as Rohini, Delhi (hereinafter, "suit property"). The documents executed were -

(i) General Power of Attorney dated 26th February, 1997,

(ii) Agreement to Sell dated 25th February, 1997,

(iii) Receipt dated 25th February, 1997,

(iv) Will dated 26th February, 1997,

(v) Special Power of Attorney dated 26th February 1997,

(vi) Possession letter dated 26th February, 1997.

The General Power of Attorney, the Special Power of Attorney and the Will were registered with the Sub-Registrar's office on 26th February, 1997.

There is a dispute as to the consideration amount. It is the Plaintiff's case that the consideration amount was Rs.65,000/- which was not paid, but it is the Defendant's case that the consideration amount was Rs.5,00,000/- which was paid. The Plaintiff submits that a post-dated cheque bearing no. 639084 of Rs.65,000/- was issued by Defendant No.1 in favour of the Plaintiff but the Defendant had issued "stop payment" instructions and hence the consideration was not received. The Plaintiff was then forced to cancel all the documents by registered Cancellation Deed dated 6th August, 1999.

Under these circumstances, since the sale consideration was not paid, the Plaintiff sought decree of possession, recovery of Rs.76,000/- and for mesne profits. The reliefs prayed for in the suit are as under:

"(a) Pass a decree for POSSESSION, in favour of the plaintiff and against the defendants in respect of the property bearing No.74, Pocket B-6, Sector 8, land measuring 25.9 sq. mtrs. in the layout plan of Rohini Resdl. Scheme, known as Rohini, Delhi, more clearly shown in Red colour in annexed site plan, directing the defendants to deliver the possession of the said property to the plaintiff.

(b) Pass a decree for recovery of Rs. 76,000/- (Rupees Seventy Sic Thousand only) towards damages/mesne profits @ Rs.2000/- per month for the period w.e.f 26.7.1997 to 25.9.2000 for the illegal and unauthorised use and occupation of the property bearing No. 74, Pocket B-6, Sector 8, land measuring 25.9 sq. mtrs. in the layout plan of Rohini Resdl. Scheme, known as Rohini, Delhi, more clearly shown in Red colour in annexed site plan, in favour of the plaintiff and against the defendants;

(c) Pass a decree for PERMANENT INJUNCTION in favour of the plaintiff and against the defendant thereby restraining the defendants, their servants, agents, attorneys, etc. from alienating, transferring, subletting or parting with possession of whole or any part of the said property bearing No.74, Pocket B-6, Sector 8, land measuring 25.09 sq. mtrs in the layout plan of Rohini Resdl. Scheme, known as Rohini, Delhi, more clearly shown in Red colour in annexed site plan, as also from creating any third party interest in the said property;

(d) Pass a decree U/o 20 Rule 12 C.P.C. in favour of the plaintiff and against the defendants for recovery of damages/mesne profits @ Rs.2000/- or at such other rate as this Hon"ble Court deems fit and proper, in respect of property bearing No.74, Pocket B-6, Sector 8, land measuring 25.9 sq. mtrs in the layout plan of Rohini Resdl. Scheme, known as Rohini, Delhi, more clearly shown in Red colour in annexed site plan, for the period w.e.f. 26th September, 2000 till delivery of the possession of the said property to the plaintiff;

(e) Award costs of the suit in favour of the plaintiff and against the defendants.

(f) Award any other or further relief(s) as this Hon"ble Court deems fit and proper, under the facts and circumstances of the case, in favour of the plaintiff."

3. The case of the Defendants is that the property was actually sold for a consideration of Rs.5,65,000/- for which receipt dated Ex.DW-2/1 was executed which reads as under:

"I Pramod Kumar Basotia. Confirm that house No B.6/74/8 Rohini, New Delhi sold to Sri Bhagwan Singh and price of the sale is Rs. 5,65,000/- out of this Rs. 50,000/- received on dated 22/1/97"

As per the Receipt Rs. 50,000/- was already paid and a sum of Rs.4,50,000/- was paid in cash at the time when possession was given. The post-dated cheque for Rs.65,000/- was given towards house tax arrears, electricity charges, water charges and ground rent for the period 5th June, 1989 to 25th February, 1997. Thus, it is the case of the Defendant that the entire property was sold, consideration was paid and accordingly possession was handed over at the time of sale itself. The Defendant further submits that the payment for the cheque of Rs.65,000/- was directed to be stopped as the Plaintiff failed to get the various dues cleared, as mentioned in para 3 of the written statement. Further, since the original documents relating to the suit property were not being handed over by the Plaintiff to the Defendant, the Defendant had directed "stop payment".

4. Thereafter, notices and replies were exchanged between the parties and the subject suit was filed.

5. Before the Trial Court, the following issues were framed in the suit on 20 th July, 2001. The said order reads as under:

"Defendant has filed documents. Admission/denial done by the parties. On the pleadings of the parties the following issues are framed:

1) Whether the suit has been properly valued by the plaintiff ? OPP.

2) Whether the suit property has been sold by the plaintiff to the defendants for valuable consideration and as such, the defendants are in possession of the property? OPD.

3) If the answer to the above issue is in the affirmative whether the plaintiff is entitled to the return of the original documents and cheque to the defendant? OPP.

4) Whether plaintiff was owner of the suit property at the time of executing the documents between the parties? OPD.

5) Whether the plaintiff has right to execute General Power of Attorney, Special Power of Attorney and other documents?

6) Whether plaintiff is entitled to the relief claimed? OPP.

Defendant has moved an application U/s 151 CPC for keeping the receipt dated 22.1.1997 in a sealed cover. Heard. Let the documents of defendant be kept in sealed cover. No other issues claimed or arise. To come up for P.E. on 21.8.2001"

This order is important inasmuch as it also notices that an application was filed praying for original documents to be kept in a sealed cover. The said documents included the original of receipt dated 22nd January, 1997. It is the admitted position on record that the original documents which were directed to be kept in a sealed cover were duly noted by the Ahlmad on 24th July, 2001, but the same have thereafter remained untraceable on the Trial Court Record.

6. Subsequent to the settlement of issues, evidence was led of PW-1, Sh. Pramod Kumar Basotia. In his deposition, he categorically admits that he constructed the suit property and thereafter sold the property to the Defendant. He denied having executed the receipt dated DW-2/1. He admits in his cross-examination that the possession was handed over to the Defendant. He submits that the consideration agreed was Rs. 65,000/-. He admits the execution of the Agreement to Sell, GPA, Receipt, Special Power of Attorney, Will etc. He admits that the possession of the property is with the Defendant since 26th February, 1997.

7. The Defendant led the evidence of DW-1, Sh. Sardari Lal, an independent witness which is important. In his cross examination, DW-1 states as under:

"ON SA

I tender my evidence by way of affidavit which is Ex. DW-1/A which bears my signatures at points A and B respectively.

XXX by Sh. A.K. Shrivastava, counsel for plaintiff.

I do not remember when I got my affidavit prepared. My affidavit was prepared by my counsel at my instance. I do not remember the contents of my affidavit.

I had gone through agreement to sell already exhibited as Ex. PW-1/3 and thereafter signed it at point A but the sale consideration was not agreed as Rs.65,000/-. I had signed EX. PW-1/1 at point A. I had also signed documents already exhibited as Ex.PW-1/2, PW-1/4 to PW-1/8 at point A and the sale consideration in these documents has been mentioned as Rs.65,000/-. No document was prepared regarding payment of sale consideration as Rs.5,65,000/-. It is incorrect to suggest that the sale consideration was for sum of Rs.65,000/- only. It is incorrect to suggest that I have filed false affidavit in evidence. It is incorrect to suggest that no deal was executed for purchase of the suit property for a sum of Rs.5,65,000/-. Bayana receipt of Rs.50,000/- was prepared but I had not signed it. No one had signed as a witness on said Bayana receipt. I do not remember whether any receipt was prepared for payment of Rs.4,50,000/-. I also do not remember whether I had signed any receipt if prepared for the payment of Rs.4,50,000/-. I know defendant no.2 Bhagwan Singh as he runs a Dairy and I take milk from there. In his family there is wife, two sons and three daughters. It is incorrect to suggest that I am deposing falsely at the instance of defendant no.2."

8. Evidence of DW-2, Sh. Bhagwan Singh who is the husband of Smt. Rajendari Devi, the purchaser was also led. Paras 6 and 7 of the affidavit in evidence reiterated that the total sale consideration was Rs.5.65 lakhs and DW-2/1, the receipt was executed when the Bayana amount of Rs.50,000/-was paid. In his cross-examination, DW-2 states that the cheque for Rs.65,000/- was given to the Plaintiff towards payment of electricity, water and house tax and lease charges. He admits that there is no record regarding payment of Rs.4,50,000/- which was paid in cash. It was because the Plaintiff did not give the house tax receipt, receipt relating to payment of water and electricity charges, etc. that he directed stopped payment of the cheque for Rs.65,000/-.

9. In these circumstances, the Trial Court decreed the suit for possession on the ground that the sum of Rs.65,000/- was the sale consideration and since the same was not paid, the Plaintiff was entitled to the decree of possession. Damages for use and occupation were also awarded by the Trial Court, in favour of the Plaintiff.

10. This court has heard the submissions of the parties and has perused the Trial Court record. The court notices with concern, the allegations and the manner in which it appears that the original documents have been misplaced in the Trial Court record. Original of the receipt DW-2/1, is stated to be part of the said set of original documents. The said receipt copy of which was on the Trial Court record was initially marked as Mark A and vide order dated 1st June, 2007, secondary evidence was allowed to be led. What is strange is that the Trial Court did not conduct any enquiry or fix responsibility for the loss of the said original documents. The order dated 1st June, 2007, which permits leading of secondary evidence for the receipt Exhibit DW-2/1, records that some efforts was made to trace the documents but the same were not found. The order dated 20th July, 2001, and the noting of the Ahlmad on the said order sheet to the effect "Sir, documents filed by Defendant are sealed in an envelope", leaves no doubt as to the fact that the documents were kept in sealed cover. The order dated 20th July, 2001 also records:

"Defendant has moved an application under Section 151 CPC for keeping the receipt dated 22nd January, 1997 in a sealed cover. Heard. Let the documents of Defendant be kept in sealed cover."

From this it is clear that the documents were taken on record in a sealed cover, but could not subsequently be traced.

11. Perusal of the pleadings and the documents on record shows that the possession letter, the Agreement to sell, GPA and all the accompanying documents are admitted between the parties. Further the fact that these documents were registered with the Sub-registrar is also admitted. The letter of possession and the affidavit dated 26th February, 1997 are important documents. The possession letter records as under:

"POSSESSION LETTER

I/WE, PRAMOD KUMAR BASOTIA SON OF SHRI M.D. BASOTIA RESIDENT OF HOUSE NO.51, POCKET C-4, SECTOR 6 ROHINI DELHI-110085 have sold the BUILT UP PROPERTY NO.74, POCKET B-6, SECTOR 8, BUILT ON LAND MEASURING 25.9SQ.MTRS. SITUATED IN THE LAY OUT PLAN OF ROHINI RESI. SCHEME KNOWN AS ROHINI DELHI-110085 to SMT. RAJENDRI DEVI WIFE OF SHRI BHAGWAN SINGH RESIDENT OF HOUSE NO.68,POCKET B-6,SECTOR 8 ROHINI DELHI-110085 and have received the entire consideration amount from him/her and, have handed over the peaceful vacant physical possession of the same to him/her alongwith all the original documents to him/her.

That from the date of signing this document I/We or my/our legal heirs shall have no right, title and interests in the above mentioned property and shall not raise any claim in any manner in future relating to aforesaid property and the aforesaid purchaser(s) will be the sole and absolute owner of the same and shall use enjoy and transfer the same in any manner as he/she likes."

12. A perusal of the possession letter clearly reveals that the Plaintiff has admitted the receipt of the entire sale consideration amount from the Defendant. The Affidavit dated 26th February, 1997 also confirms the said fact in the following words:

"2.That I/We have entered in to an agreement to sell in respect of the above mentioned property with Smt. RAJENDRI DEVI WIFE OF SHRI BHAGWAN SINGH RESIDENT OF HOUSE NO.68, POCKET B-6, SECTOR 8 ROHINI DELHI-110085 and I/we have received the entire consideration amount from him and I/we have handed over the peaceful vacant possession to him."

13. Counsel for the Plaintiff, however, draws the attention of this court to a declaration dated 26th February, 1997 which records that the sale consideration was Rs.65,000/-. The text of the said declaration is also important and the same is set out below:

"DECLARATION

This Agreement is made at Delhi on this 26.2.1997; Between:- Shri Pramod Kumar Basotia son of Late Shri M.D. Basotia resident of House No.C-4/51; sector 6; Rohini Delhi-110085, hereinafter called the first Party AND Smt. Rajendri Devi wife of Shri Bhagwan Singh resident of House No.68, pocket B-6; sector 8; Rohini Delhi-110085, hereinafter called the Second party (Purchaser).

That the House No.74, pocket B-6; sector 8; land measuring 25.9 sq. Mtrs. Situated in the lay out plan of Rohini Resi. Scheme known as Rohini Delhi.

That the aforesaid property transferred by the Consideration of Rs.65,000/- (Rs. Sixty Five thousand only), which is to be cleared by Cheque No.639084; dated 8.7.1997; drawn on State Bank of Trabancore Rohini Commercial Complex, Delhi.

That the original documents of the property has been kept by the Seller i.e. Pramod Kumar Basotia till encashment of the above mentioned Cheque

That the Photocopy of the all documents of the property kept by the Purchaser i.e. Smt. Rajenderi Devi till the payment of Rs.65,000/- (Rs. Sixty Five thousand only).

That the Water & Electric Charges, shall be paid by the first party i.e. seller, till date.

That the original documents will be delivered/ given to the purchaser by the Seller at the time of relisation of Cheque issued by the Purchaser.

This Agreement is made at Delhi on this 26.2.1997; in the presence of the following witness.

1. Sardari Lal

Shri Sardari Lal son of Late Shri Daulat Ram, resident of House No.444, pocket C-8; Sector 8; Rohini Delhi.

"Seller" (Mr. P.K. Basotia)

2. Shri Ram Chander Sehgal son of Shri Kharaiti Lal Sehgal R/o B-6/188; sector 8; Rohini Delhi"

(Purchaser) Smt. Rajendri Devi

A perusal of the above Declaration shows that the water and electricity charges were to be borne by the Seller i.e., Plaintiff. The original documents of the suit property were to be delivered at the time of realisation of the cheque to the Defendant by the Plaintiff.

14. Even the fact that possession was handed over to the Defendant at the time when the documents were executed in her favour is not disputed. The court gets the clear impression from a perusal of the documents on record that both the parties have not disclosed the true and correct facts to the court. There has been a clear attempt to hide the actual consideration, may be because it was a cash transaction. It is for the tax authorities to look into this issue. Insofar as this Court is concerned, as per the evidence on record, no independent witness has been deposed by the Plaintiff to show that the market rate of the suit property in 1997 was only Rs.65,000/-. Judicial notice can be taken of the fact that on the basis of a post-dated cheque which was yet to be encashed, it is unlikely that the possession of the suit property would be handed over especially through registered documents. The declaration which has been relied upon by the counsel for the Plaintiff states that the original documents are being retained by the Plaintiff and the water and electricity charges were to be paid by the Plaintiff. There is no averment that in fact the Plaintiff ever paid the water and electricity charges. It thus appears, on a preponderance of probability, that the stand of the Defendant is correct. The court is also primarily going by the evidence of the independent witness Mr. Sardari Lal who has categorically said that he was a witness at the time when the initial payment of Rs.50,000/- and the payment of Rs.4,50,000/- was paid in his presence. The cross-examination does not in any

manner challenge his testimony or establish anything to the contrary. The evidence of Sh. Sardari Lal, DW-1 has to therefore be taken into consideration and on the basis of his evidence, it is clear that the property was in fact sold to the Defendant and possession was thereafter handed over to the Defendant. Finally, this being a suit for possession, the court would have to give utmost importance to the possession letter which is an admitted document which states categorically, without any caveats whatsoever, that the entire consideration amount has been received. DW-2/1 having been accepted by the Trial Court, there is no reason why it should not be believed that the sale consideration of Rs.5,65,000/- was agreed between the parties out of which Rs.50,000/- was in fact paid as Bayana. This court has to also take judicial notice of the fact that during the said period i.e., sale transactions in Delhi were taking place with documents such as GPA, Agreement to Sell, Will etc., until the decision of Suraj Lamps and Industries Pvt Ltd v. State of Haryana (2012) 1 SCC 656 came to be passed by the Supreme Court.

15. Even going by the Plaintiff's own version and the agreement to sell, the sale consideration was Rs.65,000/- as mentioned in the said Agreement. The receipt exhibited as Ex. DW-2/1 shows that Rs.50,000/- was paid and only Rs.15,000/- remains outstanding. Thus, issue no.2 has to be answered against the Plaintiff, as the evidence is clear that the Defendants are in possession of the property. On issue no.3, it is held that the Defendants are entitled for the original documents from the Plaintiff. No submissions have been made that the Plaintiff had no right to sell the property or that he was not the owner of the property. Issue nos 4 and 5 are decided accordingly.

16. In the facts and circumstances of the case, in view of the registered documents including the Agreement to Sell read with the receipt EX.DW-2/1, it is held that the balance consideration would be only Rs.15,000/-. The Appellant has already deposited a sum of Rs.1,25,500/- which is earning interest. The balance amount of Rs.15,000/- shall be paid to the Plaintiff along with interest @ 8% per annum, from the date of filing of the suit till payment. The amount so computed which is lying deposited in this court be released in favour of the Plaintiff. The remaining amount is directed to be refunded to the Appellant. In the facts and circumstances, the Trial Court's judgment is set aside and the appeal is allowed. The suit for possession filed by the Plaintiff is dismissed in the above terms.

Filing and maintenance of Original documents before Trial Courts

17. Litigants file several original documents before the Trial Courts. Such documents could be Property documents like Sale deeds, Agreements to Sell, Possession letters, Receipts, General and Special Powers of Attorney; Wills and Codicils, Promissory Notes, Hundis, Cheques, Demand drafts, Agreements etc., these documents are needed in the adjudication of various disputes. It is seen that there is no consistent procedure followed for receiving, maintaining, documenting and preservation of such original documents. Trial Courts usually appear to pass orders that they be kept in sealed covers and the Ahlmad retains

them in his possession, as is seen in the present case. The Receipt Ex DW-2/1 and some other documents were claimed to have been filed in original. A specific order was passed on 20th July, 2001 directing that the documents be kept in a sealed cover. However, it is not clear as to in what manner the sealed cover was maintained. Clearly, when the same was required at the time of recordal of evidence, the sealed cover was not traceable. This led to the Court passing an order that secondary evidence would be led to prove the said documents.

18. Conflicting versions have been put forth before this Court. It is the submission of the Plaintiff that the sealed cover documents were never filed. However, the Defendant's counsel relies upon the specific order of the Trial Court as also the noting of the Ahlmad on the order sheet.

19. Thus, there is a need to frame a proper procedure and uniform guidelines for receiving and maintaining /preserving original documents in the Trial Courts.

20. Copy of this order may be placed before Hon'ble the Acting Chief Justice for consideration of framing guidelines in respect of receipt, maintenance and preservation of original documents in Trial Courts.