
(2010) 11 DEL CK 0108
In the Delhi High Court
Case No : CS (OS) No. 1325 of 2007

Rajesh Kumar

APPELLANT

Vs

Madan Lal and Another

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Citation : (2010) 11 DEL CK 0108

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

Bench : Single Bench

Advocate : H.M. Singh, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This is a suit for declaration, permanent injunction and mandatory injunction. It has been alleged in the plaint that defendant No. 2 Golden Projects Ltd. which was the owner of agricultural land described in para 2 of the plaint, authorized one Rakesh Kumar Arora as its representative to implement/effect the sale/transfer of the aforesaid land. He was further authorized to sale/transfer/dispose of the aforesaid land to any person and to sign all relevant documents on receipt of sale consideration. On 02.04.2003, Rakesh Kumar Arora entered into an agreement to sell the aforesaid land to defendant No. 1 Madan Lal for a consideration of Rs. 50 lakhs and executed documents such as Agreement to Sell, Power of Attorney, Receipt, Affidavit, Will and Possession Letter in his favour. Defendant No. 1 Madan Lal agreed to sell 70 bighas 14 biswas of land out of the aforesaid land to one Sangeet Aggarwal vide Agreement to Sell, Power of Attorney, Will, Possession Letter and received the sale consideration from him. He sold 48 bighas 17 biswas out of Khasra No. 7/15/1 (3-16), 14/1 (3-16), 7/2 (2-8), 18/2 (2-1), 22/2 (3-8), 23(4-9), 5(2-16), 6(4-16), 3/2(1-19), 4(3-10), 7/1(2-8), 17 Min.(4-16), 24(4-16), 19 (4-8) to the plaintiff and received the sale consideration. The plaintiff claims to be in actual physical possession of the aforesaid land as its owner. It has also been alleged that defendant No. 2 became dishonest and passed a relation authorizing another person to deal with the

aforesaid land. It has been further alleged that on 11.07.2007, a number of persons came to the land of the plaintiff and claimed to be its owner and expressed intention to fence the aforesaid land. Thereafter, two brokers approached the plaintiff and informed him that the suit land was available in market for sale by defendant No. 2. The plaintiff has, therefore, sought a declaration that he is the lawful owner in possession of the suit land. He has also sought permanent injunction restraining the defendants from interfering with his possession and has further sought mandatory injunction directing defendant No. 1 to execute the sale deed in his favour.

2. The defendants were proceeded ex-parte since they did not appear despite service on them.

3. The plaintiff has filed his own affidavit by way of ex-parte evidence in which he had supported on oath, the case set up in the plaint. He also stated that he was in possession of the suit land having purchased it from defendant No. 1 Madan Lal by paying the entire sale consideration.

4. Ex.PW-1/A is the Power of Attorney purported to have been executed by Rakesh Kumar Arora, Authorized Signatory of Golden Projects Ltd. in favour of defendant No. 1 Madan Lal, in respect of the land described in the document. The Power of Attorney has been executed by Rakesh Kumar Arora as Authorized Signatory of defendant No. 2 Golden Projects Ltd. and he claimed such an authority by virtue of a Resolution dated 30.08.2000 in his favour. Ex.PW-1/B is the affidavit sworn by Rakesh Kumar Arora claiming to be Authorized Signatory of Golden Projects Ltd. and confirming sale of the land mentioned in para-1 of the affidavit to defendant No. 1 Madan Lal. He has also confirmed having delivered vacant possession of the aforesaid land to the purchaser on the spot. Ex.PW-1/C is the possession letter whereby possession purports to have been delivered by Rakesh Kumar Arora to defendant No. 1 Madan Lal. Ex.PW-1/D is the receipt executed by Rakesh Kumar Arora on behalf of Golden Projects Ltd. However, the document does not disclose the amount received by Rakesh Kumar Arora. The column of the sum has been left blank in this document. The receipt also refers to Agreement to Sell dated 02.04.2003 between the parties. Ex.PW-1/E is the receipt executed by Rakesh Kumar Arora while receiving Rs. 32,50,000/- from defendant No. 1 Madan Lal towards sale consideration in respect of the land described in the document.

5. Ex.PW-1/G is the Power of Attorney purported to have been executed by defendant No. 1 Madan Lal in favour of the plaintiff Rakesh Kumar Arora. Ex.PW-1/N is the Agreement to Sell executed by defendant No. 1 Madan Lal in favour of the plaintiff. In this document, he claimed to be the owner in possession of the land measuring 48 bighas 17 biswas out of Khasra No. 7/15/1(3-16), 14/1 (Min) (1-4), 5(2-16), 6(4-16), 7/2 (2-8), 14/1 Min. (2-12), 18/2 (2-1), 22/2 (3-8), 23(4-9), 3/2(1-9), 4(3-10), 7/1(2-8), 17(4-6), 24(4-16), 19(4-8), 29/2/1 (1-6), 9/2(2-0), 11/1(1-18), 12/1(1-4), 22(4-16), 23(4-16), 27(0-7), 13(4-16), 18(4-16), 19(4-16), 20(4-16), 21(4-9), 7(4-16), 8(4-16),

9/1 (12-16), 3(4-8), 4(4-8), 11/2(2-16), 2/2 (2-12), 12/2 (3-12). Ex.PW-1/I is the receipt of Rs. 7,50,000/- executed by defendant No. 1 in favour of the plaintiff. Ex.PW-1/J is the Possession Letter whereby possession of the aforesaid land measuring 48 bighas 17 biswas purports to have been delivered by him to the plaintiff. Ex.PW-1/L is the affidavit of defendant No. 1 Madan Lal claiming to be owner in possession of land measuring 48 bighas 17 biswas in Village Issapur, Delhi and confirming that he had entered into an agreement for sale and purchase of the aforesaid property with plaintiff Rajesh Kumar and delivered vacant possession of the said land to the purchaser.

6. This is plaintiff's own case that the land subject matter of this suit was owned by defendant No. 2 Golden Projects Ltd. and by passing a Resolution on 30.08.2000, the Board of Directors of Golden Projects Ltd. had authorized Shri Rakesh Kumar Arora to sell the aforesaid land on behalf of the Company and to execute the sale deed in favour of the buyer. However, no such resolution has been proved by the plaintiff before this Court. Though one document purporting to be photocopy of the Minutes of the Meeting of Board of Directors of Golden Projects Ltd. held on 30.08.2000 has been filed by the plaintiff, the document has not been proved and, therefore, has not even been exhibited. It has simply been marked as mark "A". The document was required to be proved by summoning the minutes of the meeting of the Board of Directors of defendant No. 2, Golden Projects Ltd., which has not been done. Even Mr Rakesh Kumar has not been produced in the witness box to prove that defendant No. 2 Golden Projects Limited had authorized him to sell the suit land on its behalf. In these circumstances, it does not stand proved that the Rakesh Kumar was duly constituted attorney of defendant No. 2 Golden Projects Limited and was authorized by it to sell the suit land on its behalf. If that be so, he could not be sold or transferred the aforesaid land to defendant No. 1 Madan Lal or to any other person. Consequently, the transaction, if any, between Rakesh Kumar and defendant No. 1 Madan Lal does not bind defendant No. 2. It would be pertinent to note here that no sale deed is alleged to have been executed either by Rakesh Kumar in favour of defendant No. 1 Madan Lal or by defendant No. 1 in favour of the plaintiff. In these circumstances, it cannot be said that defendant N.1 Madan Lal was the owner of the land which he had agreed to sell to the plaintiff and possession of which was delivered by him to the plaintiff. Since defendant No. 1 did not acquire ownership rights in the suit land, he could not have transferred any such rights to the plaintiff. In any case, no sale deed is alleged to have been executed by defendant No. 1 Madan Lal in favour of the plaintiff. Since the plaintiff did not acquire ownership rights in the suit land, the relief of declaration sought by him cannot be granted to him.

7. As regards relief of mandatory injunction, since no agreement to sell has been executed by defendant No. 2 in favour of the plaintiff, it cannot be directed to execute a sale deed, transferring the suit land to the plaintiff. Since ownership of land in question continues to vest in defendant No. 2 Golden Projects Limited, defendant No. 1 Madan Lal, who himself is not the owner of the suit land, cannot

be directed to execute a sale deed in respect of the aforesaid land in favour of the plaintiff. The relief of mandatory injunction sought by the plaintiff, therefore, cannot be granted to him.

8. As regards relief of permanent injunction, since the plaintiff has not become the owner of the suit land and the ownership of the same continues to vest in defendant No. 2 Golden Projects Limited, he is not entitled to any injunction against defendant No. 2. Since there is no evidence of possession of the suit land having been delivered to the plaintiff either by defendant No. 2 or by anyone duly authorized by defendant No. 2 in this regard, he is not entitled to injunction against his dispossession by defendant No. 2. As regards grant of permanent injunction against dispossession of the plaintiff by defendant No. 1, I find that no cause of action in this regard has been pleaded by the plaintiff against defendant No. 1. This is not the case of the plaintiff that defendant No. 1 had attempted to dispossess him from the suit land or to interfere with his possession. Therefore, the plaint does not disclose any cause of action against defendant No. 1 as far as the relief of permanent injunction is concerned.

9. It would also be relevant to take note of the fact that though the plaintiff has sought execution of sale deed by defendant No. 1 in his favour, he has not paid the Court Fee which is required to be paid on the relief of specific performance of a contract. It would hardly make any difference that the plaintiff, instead of seeking specific relief of the agreement, alleged to have been executed by defendant No. 1 in his favour has sought mandatory injunction, claiming the same relief. What the Court has to see is the substantive relief being claimed by the plaintiff and the Court cannot go by the wording in which the relief, claimed by the plaintiff is couched. In pith and substance, the plaintiff is claiming specific performance of the agreement to sell, alleged to have been executed by defendant No. 1 in his favour on 15th April, 2004 for a sale consideration of Rs. 7,50,000/- and, therefore, if he wanted execution of sale deed in his favour in performance of that agreement, he was required to pay Court Fee on the sale consideration of Rs. 7,50,000/-. The plaintiff, on the other hand, has valued at Rs 130 for this purpose for the purpose of this relief and has paid requisite Court Fee on that amount. For this reason, the plaint to the extent it pertains to relief of mandatory injunction, sought by the plaintiff, is liable to be rejected.

10. For the reasons given in the preceding paragraphs, the suit is hereby dismissed. Decree sheet be prepared accordingly.