(1994) 02 DEL CK 0064

In the Delhi High Court

Case No : Interim Application No''s. 4537 of 1989, 14936 of 1991 and 6890 of 1993 and Suit No. 1638 of 1989

Rakesh Goel APPELLANT

Vs

Mehar Singh Sura Charitable Hospital Trust and Another RESPONDENT

Date of Decision : 07-02-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4

Citation : (1994) 53 DLT 461

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : P.R. Monga, N.N. Agarwal, G.S. Vohra, M.S. Vohra and Manjari Dingwaney, for the Appellant;

Judgement

Sat Pal, J.

(1) is 4537/89 has been filed on behalf of the plaintiff under Order 39 Rules 1 & 2 read with Section 151 of the CPC (hereinafter referred to as ''the Code'') and in this application it was prayed that defendant and its agents be restrained from alienating, selling and transferring the property No. 9-A/75 and 9-A/76, Western Extension Area, Karol Bagh, New Delhi. This application came up for hearing on 4th July, 1989 and a notice of this application was issued to the defendant. On the same date the defendant and its agents were restrained from alienating, selling and transferring the property bearing No. 9-A/75 and 9-A/76, Western Extension Area, Karol Bagh, New Delhi till further orders.

(2) is 14936/91 was filed on behalf of the defendant Under. Order 39 Rule 4 read with Section 151 of the Code and in this application it has been prayed that is 4537/89 be heard early and the same be dismissed and ad interim injunction granted on the aforesaid application on 4th July, 1989 be vacated.

(3) is 6890/93 was filed on behalf of the plaintiff under Order 39 Rules 1 & 2 read with Section 151 of the Code and in this application it was prayed that Smt.

Urmila Rani Gupta wife of Shri Rajinder Nath Gupta, who is a tenant in suit property No. 9-A/75, Western Extension Area, Karol Bagh, New Delhi, be restrained from transferring or parting with possession of the premises under her tenancy. This application came up for hearing on 4th August, 1993 and on that date notice of this application was issued to the non-applicant through their Counsel and also to Smt. Urmila Rani Gupta. On the same date Smt. Urmila Rani Gupta was restrained from parting with the possession of the tenanted premises under her possession i.e. 9-A/75, Western Extension Area, Karol Bagh, New Delhi. Since all the three applications pertain to the same property the same are being disposed of by this common order.

(4) Briefly, the facts of the case as stated in the plaint arc that the defendant agreed to sell the house bearing Nos. 9-A/75 and 9-A/76, Western Extension Area, Karol Bagh, New Delhi to the plaintiff for a total sum of Rs. 8,50,000.00 and in this connection Shri Gursaran Singh, one of the trustees of the defendant executed an earnest money receipt on 28th October, 1988 for a sum of Rs. 21,000.00 which was received by him towards earnest money from the plaintiff. It has further been alleged that the plaintiff had been at all material time ready and willing to abide to perform his part of the contract but the defendant has refused to perform their part of the contract. Accordingly, the present suit has been filed by the plaintiff for passing a decree for specific performance of the agreement dated 28th October, 1988.

(5) In the written statement filed on behalf of the defendant it has been alleged that the plaintiff is a complete stranger to the defendant and has forged the signatures of Shri Gursaran Singh on the alleged agreement dated 28th October, 1988. It has further been stated in the written statement that on 28th October, 1988, the date on which the earnest money receipt is alleged to have been executed by Shri Gursaran Singh, he was not even in India. It has further been stated in the written statement that the defendant trust had already entered into two agreements for sale of the suit property on 16th June, 1988, one with Smt. Kuljit Kaur and the other with Shri Gajender Singh. It was also stated that with regard to the property bearing No. 9-A/76 even sale deed had already been executed and registered.

(6) Mr. Monga, the learned Counsel appearing on behalf of the plaintiff submitted that Shri Gursaran Singh was duly authorised to enter into any agreement on behalf of the defendant trust in terms of the resolution dated 7th November, 1987and while entering into agreement with the plaintiff Shri Gursaran Singh had signed the earnest money receipt on 28th October, 1988 acknowledging a sum of Rs. 21,000.00 in cash as earnest money in consideration of having agreed to sell suit property. He also drew my attention to two copies of the letters dated 28th January, 1989 and 10th March, 1989 sent by the plaintiff to Shri Gursaran Singh to complete the sale. It may, however, be pointed out here that both these letters are alleged to have been sent under certificate of posting and not by registered post. The learned Counsel submitted that no reply to these

letters was received by the plaintiff. He further submitted that the order restraining the defendant was passed on 4th July, 1989 but the application seeking vacation of the stay was filed by the defendant, after lapse of more than two years, on 12th December, 1991. He also submitted that the plaintiff was a business man of reputation and he could not have forged the signatures of Shri Gursaran Singh as alleged by the defendant. He further submitted that even the original documents of the suit property were in possession of the plaintiff. He also submitted that the plaintiff was prepared to deposit the balance amount in the Court. He, Therefore, contended that the stay granted on 4th July, 1989 in is 4537/89 and stay granted on 4th August, 1993 in I A 6890/93 be confirmed.

(7) Mr. Aggarwal, the learned Counsel for the defendant submitted that the earnest money receipt dated 28th October, 1988 alleged to have been executed by Shri Gursaran Singh, who is one of the trustees of the defendant, is a forged document as Shri Gursaran Singh was not in India on that date. In this connection he produced in the Court the passport of Shri Gursaran Singh. The entries made in the passport indicate that said Shri Gursaran Singh wgan left India on 16th October, 1988 and reached Heathrow (UK) on the same date. The entries, inter alia, also show that on 25th October, 1988 he reached Windsor, Canada and arrived at Heathrow (UK) on 29th October, 1988. Entry at page 8 of the passport shows that he arrived back in India on 3rd November, 1988. Relying on these entries the learned Counsel contended that these entries, clearly showed that the alleged earnest money receipt was a forged document.

(8) The learned Counsel further submitted that in respect of the suit property the defendant had already entered into two agreements for sale-one with Smt. Kuljit Kaur and the other with Shri Gajender Singh. In this connection he drew my attention to the two applications submitted to the Income Tax Department for a certificate u/s 230(A)(1) of the Income Tax Act, 1961. Both these certificates are dated 12th July, 1988. The value of the property as per the agreements for sale with regard to house No. 9-A /76 has been shown as Rs. 5 lakhs and with regard to house No. 9-A/75 has been shown as Rs. 4 lakhs. The learned Counsel relying on these certificates contended that when the defendant had already agreed to sell these properties for a total consideration of Rs. 9 lakhs, the question of their entering into an agreement for sale for lesser consideration i.e. Rs. 8,50,000.00 on a subsequent date did notarise. He also drew my attention to a copy of the sale deed executed on 1st May, 1989 in favor of Smt. Kuljit Kaur with regard to property No. 9-A/76 for a total consideration of Rs. 5 lakhs which was duly Sub Registrar on the same date. The learned Counsel submitted that whereas the sale deed has been executed on 1st May, 1989, the present suit was filed later in the month of June 1989. As regards the possession of the original documents with the plaintiff, the learned Counsel drew my attention to a photocopy of letter dated 1st May, 1989 written to the S.H.O. Police Station Desh Bandhu Gupta Road, Delhi wherein the loss of the original documents pertaining to property bearing No. 9-A / 75 and 76 W.E.A. Delhi was reported. The learned Counsel submitted that on 1st May, 1989 when the sale deed in favor of Smt. Kuljit Kaur

was registered before the Sub Registrar, thereafter the original documents were lost. Regarding delay in filing of is 14936/91, the learned Counsel submitted that the defendant had to approach various authorities and persons to collect documents to prove that the alleged earnest money receipt was forged one and Shri Gursaran Singh wgan was not in India and in this connection he drew my attention to various documents filed on 9th December, 1991 on behalf of the defendant. The learned Counsel, Therefore, contended that IANos. 4357/89 and 6890/93 be dismissed.

(9) Mr. G. S. Vohra, learned Senior Counsel, appearing on behalf of Smt. Kuljit Kaur and Shri Gajender Singh submitted that the sale deed in favor of Smt. Kuljit Kaur with regard to property No. 9-A/76, W.E.A. Karol Bagh, New Delhi was executed on 1st May, 1989 and was duly registered before the Sub Registrar. He submitted that this fact was stated by the defendant in their written statement filed on 14th February, 1990 but no allegations have been made in the plaint against Smt. Kuljit Kaur and Shri Gajender Singh so far. He further submitted that the plaintiff was not entitled to part performance in terms of Section 12 of the Specific Relief Act. He also submitted that no stay could be granted against a person who was not a party to the suit. In this connection he placed reliance on a judgment of Allahabad High Court in L.D. Meston School Society Vs. Kashi Nath Misra, .

(10) In rejoinder arguments Mr. Monga, the learned Counsel for the plaintiff, submitted that the plaintiff has already moved an application bearing is No. 827/94 under Order 6 Rule 17 of the Code for incorporating the allegations against Smt. Kuljit Kaur and Shri Gajender Singh.

(11) I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties and have perused the record. As stated earlier the passport of Shri Gursaran Singh was shown to me in the Court and from the entries made in the passport it is clear that Shri Gursaran Singh was not in India on 28th October, 1988, the date on which the plaintiff alleges to have entered into an agreement for sale of the suit property with Shri Gursaran Singh. Besides, though the learned Counsel for the plaintiff submitted during the course of arguments that the earnest money receipt was executed by Shri Gursaran Singh on 28th October, 1988, but in reply to is 14936/91 the plaintiff has stated that it was in the third week of November, 1988 when Shri Raj Pal Luthra, who is a witness to the alleged earnest money receipt, brought the said receipt having been duly executed by the said Shri Gursaran Singh on the agreement and due to inadvertence the plaintiff lost sight of the fact that it was dated 28th October, 1988 at the time when he received the agreement. The aforesaid averments made in the reply clearly show that the plaintiff was trying to cover the absence of Shri Gursaran Singh from India after it was stated in the written statement that Shri Gursaran Singh was not in India on 28th October, 1988. Further the applications dated 12th July, 1988submitted to the 28th October, 1988. Further the applications dated 12th July, 1988 submitted to the Income Tax Department

by the defendant show that the total consideration of the suit property shown in the agreement to sell and proposed sale deed was Rs. 9 lakhs, as such the defendant could not have possibly agreed to sell the suit property for a lesser amount i.e. Rs. 8,50,000 / - in October 1988 and with a meager earnest money of Rs. 21.000.00 only.

(12) As stated earlier the sale deed in respect of one of the property i.e. 9-A/ 76 Wea Karol Bagh, New Delhi was executed on 1st May, 1989 and the present suit has been filed thereafter. The written statement on behalf of the defendant was filed in February 1990 but the application seeking amendment of the plaint for incorporating allegations against Smt. Kuljit Kaur and Shri Gursaran Singh has been filed after lapse of period of about four years i.e. on 22nd January, 1994. Besides this application is yet to be disposed of. The interim stay granted on 4th July, 1989, Therefore, has to be vacated.

(13) In view of the above discussion I do not find any merit in the applications bearing is Nos.4357/89 and 6890/93 filed on behalf of the plaintiff. Accordingly, the aforesaid two applications are dismissed and the interim stays granted on 4th July, 1989 and 4th August, 1993 are hereby vacated. With this order IA14936/91 also stands disposed of. The parties are, however, left to bear their own costs. It may, however, be made clear that the observations given hereinabove are only for the purpose of deciding these applications and will have no bearing on the merit of the case.

