

(2009) 08 DEL CK 0266
In the Delhi High Court
Case No : CS (OS) No. 1095 of 2006

Ramesh Kumar Dutta

APPELLANT

Vs

Delhi Auto and General Finance (P) Ltd.

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 16, 20

Citation : (2009) 7 ILR Delhi 542

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Arun Vohra, for the Appellant; Gridhar Govind, Ms. Reena Jain Malhotra, Ms. Noor Nahar Firdausi, Advocate for Defendant Nos. 1 and 2, Mr. Kavin Gulati, Rashmi Singh and Mr. Avnish Pandey, Advocate for Defendant Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.

I.A. 3369/2007 (for amendment of plaint)

1. On 22.05.2009, adjournment was sought by the plaintiff for today to satisfy the Court that amendments sought can be granted and that the Suit would then be maintainable before this Court. The plaintiff claims a decree for specific performance against the defendant No. 1 in respect of two Agreements to Sell, dated 23.12.2004 and 6.1.2005. The plaintiff also seeks a declaration to the effect that the Agreement to sell dated 29.12.2005 and Sale Deeds dated 28.1.2006 and 29.4.2006, executed by the defendants inter se are null and void.

2. The plaintiff premises his cause of action in this Suit on a transaction said to have been entered into with the first defendant through Agreements to Sell dated 23.12.2004 and 6.1.2005, in respect of properties described in paragraph-4, namely, 4 acres of land in district Gautam Budh Nagar, Uttar Pradesh. The particulars of these lands - apparently agricultural in nature, have

been disclosed in paragraph - 6 too. The plaintiff claims the total consideration payable for the said property was about Rs. 8,91,000,00/-; he claims to have been paid a sum of Rs. 1,00,000,00/-.

3. The defendants' position is that this Court lacks territorial jurisdiction to entertain and try the Suit since the Subject matter i.e. immovable property is located outside the jurisdiction of this court. The defendants press Section 16 of the CPC in support, and contends that in such circumstances, the Suit can appropriately be instituted in the Court which has territorial jurisdiction over the subject matter. It is, therefore, argued that the Suit should have been filed before the appropriate Court in Noida or Gautam Budh Nagar, as the case may be.

4. The previous order of this Court dated 22.05.2009 records that the plaintiff wished to amend the claim by appropriately deleting the relief of specific performance and instead claiming damages. In these circumstances, I.A. - 3369/2007 for amendment of the plaint was filed.

5. It is pointed out by the defendants/non-applicants that the amendment sought cannot be granted as it the Court lacks primary jurisdiction, to entertain and try the cause pleaded, it cannot, in the guise of permitting the amendment, assume such jurisdiction and try the Suit. The defendant upon the authority of the Supreme Court judgment in Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar, .

6. The Supreme Court there had held that if the Court had no jurisdiction over the subject matter of the Suit, it cannot decide any question on the merits and that it can merely decide the question of jurisdiction and if such issue is not decided in the affirmative, proceed to return the plaint. The defendants place reliance on the decision of the Allahabad High Court in Tirkha Vs. Ghasi Ram, , which is much to the same effect. Reliance is lastly placed upon the decision of Anil Goel Vs. Sardari Lal, , Where it was held as follows:-

5. I am in agreement with the opinion expressed by Hon''ble the Single Judge in Lok Kalyan Samiti Vs. Jagdish Prakash Saini & Ors. (supra) that if a Court does not have jurisdiction to try the suit, no amendment can be allowed to bring the suit within the jurisdiction of the Court. The Court having no jurisdiction in the matter cannot pass orders so as to assume jurisdiction and the plaint in such a case has to be returned for presentation in proper Court. In this view of the matter, the application is without any merits and the same is, accordingly, dismissed.

7. This Court is of the opinion that defendant's contentions are well founded. If the Court does not possess primary jurisdiction over the subject matter - which concededly is immovable property located outside the Court's jurisdiction, as in this case, consequentially it would be devoid of jurisdiction to entertain the application for amendment. The Supreme Court's ruling in Sri Athmanathaswami Devasthanam case (supra) is sufficient authority on that issue. It is also affirmed

by this Court in Anil Goyal's case.

8. For this reasons, this application cannot be accepted; it is accordingly rejected.

CS (OS) 1095/2006

9. As far as jurisdiction is concerned, the defendants rely upon Harshad Chiman Lal Modi Vs. DLF Universal and Another, , where commenting on a similar fact situation (where the plaintiff had sought declaration about the existence of a valid contract pertaining to immovable property located at DLF, Qutab Enclave and further declaration that the defendant had to abide by the contract), it was held that the residual provisions u/s 20 of the CPC could not apply and that on a proper construction of the suit, the reliefs claimed could not be enforced through personal obedience, the only exception carved out by way of explanation to Section - 16. The judgment in Harshad Chiman Lal Modi (supra) had also been affirmed in a subsequent judgment Begum Sabiha Sultan Vs. Nawab Mohd. Mansur Ali Khan and Others, . The same reasoning has been favoured and applied by this Court in Sidharth Choudhary Vs. Mahamaya General Finance, and more recently in Pantaloon Retail India Ltd. Vs. DLF Limited and Others, .

10. What the plaintiff seeks in the Suit is specific performance of an agreement to sell, pertaining to immovable property concededly located outside of this Court's jurisdiction. No attempt has been made to even whisper let alone establish as to how such decree can be made - assuming the Court can exercise some manner of jurisdiction - by personal obedience of the defendants. The very nature of the relief is such that it can be enforced by process of Court after the decree on merits at the location where the property is situated.

11. In view of the above decision, the Court is of the opinion that the suit is not maintainable. The plaint and all the listed documents are hereby returned; it is open to the plaintiff to approach the competent Court having jurisdiction, over the matter, within four weeks. CS (OS) 1095/2006 is accordingly returned, under Order 7 Rule 10, Code of Civil Procedure, 1908.