

(2004) 12 DEL CK 0031

In the Delhi High Court

Case No : IA 5955/04 in CS (OS) No. 82/97

Sardar Gurbachan Singh and Others

APPELLANT

Vs

Sardar Avtar Singh and Others

RESPONDENT

Date of Decision : 02-12-2004

Acts Referred:

Transfer of Property Act, 1882 — Section 54

Citation : (2004) 12 DEL CK 0031

Hon'ble Judges : Om Prakash Dwivedi, J

Bench : Single Bench

Advocate : Sandeep Sethi and Ila Kapoor, for the Appellant; V.N. Kaura Paramjeet Benipal, for D-1 and 3, Girdhar Govind and N.N. Firdausi for D-2, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Dwivedi, J.—By this order I propose to dispose of is No. 5955/2004 under O. 39 R. 1 and 2 filed by the defendant No. 1 and 4 for an interim injunction restraining plaintiffs from in any manner transferring, alienating, mortgaging, encumbering the suit property or otherwise creating third party interest in the suit property i.e property No. 12, Curzon Road (Kasturba Gandhi Marg), New Delhi.

2. plaintiffs together owned 66% undivided share in the said property and the land underneath. The remaining 34% was owned by Sardar Ujjal Singh. According to the defendant No. 1, plaintiffs entered into an agreement to sell in respect of their 66% share in the said property in the favor of defendant No.1 for a consideration of Rs. One Crore Five Lakh, each of the plaintiff getting Rs. 35 Lakh for his 22% share in the property. Neither specific date of any such agreement has been mentioned nor specific date for executing the sale deed is indicated. According to the defendant, the sale deed was to be executed after the death of Sardarni Santsev Ujjal Singh (widow of Sardar Bahadur Ujjal Singh) who owned remaining 34% share in the property. plaintiff have completely

denied any such agreement. plaintiffs" case is that defendant No.2, Mr. O.S. Kohli, had approached them sometime in the year 1984 with a proposal for collaboration agreement regarding re-development of the property and had paid a sum of Rs. 21 lakh in this regard. However, Mr. Kohli disappeared thereafter. He was also inducted as tenant in garage block of the property and he inducted some sub tenant also for which an eviction petition has been filed before the Rent Controller. Since defendant No. 1 had served a legal notice dated 1.5.96 regarding the alleged agreement to sell, the plaintiffs have filed the present suit in January 1997 seeking declaration to the effect that no such agreement was ever entered into nor possession was handed over to the defendant No.1 in part performance of the said agreement. A decree for possession in respect of portion in possession of defendant No.1 has also been sought. In the written statement/ counter claim of defendant No. 1,3 and 4, they have taken the stand that initial introduction was through Mr. Kohli but all material dealings in connection with the agreement to sell in respect of this property were held directly between plaintiff No. 1 and 2 and defendant No.1. On one such meeting Sardar Tejinder Singh, husband of the plaintiff No. 3 was also present. Defendant accordingly got paid Rs. 21 lakh, Rs. 7 lakh each to plaintiff No. 1 to 3 through various bank drafts whose particulars are given in para No. 7 (G) of the written statement. defendants" further case is that since plaintiff did not want to cause any disturbance to Sardareni Santsev Ujjal Singh during her life time, the execution of sale deed was to take place only after her demise. She died sometime in the year 1994. Now, defendant No. 1 and 4 have filed this application being IA.No. 5955/2004 seeking restraint order against the plaintiffs from disposing off the property and creating any third party interest therein during the pendency of the suit. plaintiffs have vehemently opposed the application.

3. I have heard learned counsel for the parties and perused the record. From the above narration of facts as pleaded by the parties it can be seen that there is no written agreement to sell. Defendant himself does not plead that there was any written agreement to sell. His case is based solely on the understanding, alleged to have been arrived at sometime in the year 1984. plaintiffs have admitted the receipt of Rs.21 Lakh from Mr. Kohli, defendant No.2 sometime in the year 1984-85 in relation to collaboration agreement for re-development of the property. Presuming that this money come from coffers of defendant No.1, will it per se prove the existence of an agreement to sell between the plaintiff and defendant No.1. At this stage when court has to take only a prima facie view of the matter, I think, answer must lie in the negative. In order to make out agreement to sell, the existence of following four ingredients has to be proved :- (1) the consideration, (2) certainty as to the parties namely the vendor and vendee; (3) certainty as to the property to be sold; (4) certainty as to other terms relating to conveyance e.g. time for completion of the contract etc.,. Reference in this case may be had to the decision of this Court's decision in the case of M/s Aggarwal Hotels (P) Ltd. Vs. M/s S. Focus Properties (P) Ltd.. 6 (1996) DLT 52. In the present case two of the ingredients (1) name of the vendee (2) date of

completion of the contract are conspicuously uncertain. As already stated plaintiffs have completely denied that there was any such agreement with the defendant No.1. According to them there was some initial discussion with Mr.Kohli in this regard and Kohli had paid Rs. 21 lakh but thereafter he disappeared and negotiation did not fructify into agreement of sale. The uncertainty on the other aspect i.e date of execution of the sale deed is all the more baffling. Property of such high value cannot be tied down indefinitely by paying token money/advance money in connection with the alleged agreement to sell. According to the defendant No. 1 agreement was arrived 1984. The defendant has not specified the date on which the alleged agreement to sell was entered into. Thereafter, for next twelve years, the defendant kept complete silence. First legal notice was sent in May 1996 calling upon the plaintiff to execute the sale deed. Sardarni Santsev Ujjal Singh died in the year 1994. Even then defendant No. 1 appeared to be in no hurry to get the sale deed executed. From the pleading of defendant No. 1 it does not appear that there was any consensus between the parties to formally execute an agreement to sale. Since the execution of the sale deed was going to be deferred for indefinite period, one would expect that parties would at least execute a written agreement to sale to give a definite legal shape to decision already taken. But this does not appear to have been the case here. In these circumstances it is difficult to infer that any concluded agreement to sell existed between the parties.

4. In the case of Jiwan Das Vs. Narain Das, , this Court observed as under :-

"" Adverting, Therefore, to the merits of the controversy, it may at the outset be taken note that unlike the law in England where an agreement of sale creates an equitable estate in the purchaser, the law in India does not recognise any such estate. Section 54 of the Transfer of Property Act in specific terms provides that a contract for sale does not, of itself, create any interest in or charge on such property. Such contract is merely a document creating a right to obtain another document in the form of sale deed to be registered in accordance with law. In other words, a contract for sale is a right created in personam and not in estate. No privity in estate can be deduced there from which can bind the estate, as is the position in cases of mortgage , charge of lease. Of course, such personal right created against the vendor to obtain specific performance can ultimately bind any subsequent transferee who obtains transfer of the property with notice of the agreement of sale. (See in this respect Rambaran Prosad Vs. Ram Mohit Hazra and Others,). Till, Therefore, a decree for specific performance is obtained, the vendor or a purchaser from him is entitled to full enjoyment of the property. In fact, even if a decree for specific performance of contract is obtained, and no sale deed is actually executed, it cannot be said that any interest in the property has passed. (See in this respect Govinda Chandra Ghose Vs. Provabati Ghose, , and S. Ramalingam Pillai Vs. G.R. Jagadammal and Another).

5. Recently in the case of M/s Pelikan Estates Pvt. Ltd. Vs. Shri Kamal Pal Singh

and Ors. 2004 VI AD 185 decided on 20.8.2004, where specific performance was sought on the basis of oral agreement and interim injunction was sought during the pendency of the suit, Vikramajit Sen, J. declined the injunction with the observation that "" where immovable property is in question I would always be reluctant if not loathe to accept the evolution of a transaction which is not evidenced in writing. Learned Judge further observed that "" where emergence of an oral agreement is being set up, there must be no possibility of doubt in essential concomitants of the contract"". In the case of Vinod Saluja Vs. Sita Rani, , another learned Single Judge of this Court declined to grant ad-interim injunction in a suit for specific performance where the existence of alleged agreement was disputed.

6. As already stated, in the present case plaintiffs have totally denied any sort of negotiation regarding sale of property with defendant No.1 much less entering into agreement to sale. There is complete uncertainty about the date of execution of sale deed. Even after the death of Sardarni Santsev Ujjal Singh, defendant No. 1 did not come forward to take any action to enforce the specific performance of the oral agreement. It is only in defense to the plaintiffs suit that they have come out with the theory of alleged agreement to sale . In the case of Brij Mohan and Others Vs. Sugra Begum and Others, , the Hon"ble Supreme Court had opined as under:-

"" We have given our careful consideration to the arguments advanced by learned counsel for the parties and have thoroughly perused the record. We agree with the contention of the learned counsel for the appellants to the extent that there is no requirement of law that an agreement or contract of sale of immovable property should only be in writing. However, in a case where the plaintiffs come forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the plaintiffs to prove that there was consensus ad idem between the parties for a concluded oral agreement for sale of immovable property. Whether there was such a concluded oral contract or not would be a question of act to be determined in the facts and circumstances of each individual case. It has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties orally and a written agreement if any to be executed subsequently would only be a formal agreement incorporating such terms which had already been settled and concluded in the oral agreement.""

7. I am Therefore of the view that at this stage, defendants have failed to make out a prima facie case to the effect that a binding contract to sell the property was arrived at between the parties. One of the most important condition for grant of ad interim injunction is not fulfilled in this case. Accordingly is 5955/2004 is hereby dismissed.

CS (OS) No. 82/97

List on 22.02.2005.