
(2009) 11 DEL CK 0311
In the Delhi High Court
Case No : C.S. (OS) 4604 of 1992

Sh. Sudhish Kumar Gupta	Vs	APPELLANT
Sh. Deepak Kalia and Others		RESPONDENT

Date of Decision : 30-11-2009

Acts Referred:

Citation : (2009) 11 DEL CK 0311

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : N.K. Thanai, for the Appellant; Saurabh Tiwari, for D-7 and Rajeshwar Kr. Gupta, for D-2, for the Respondent

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—Heard counsel for the parties.

2. The plaintiffs here sues the defendant Nos. 1, 6 & 7 for specific performance of an agreement to sell the property being C-667, New Friends Colony. It is contended that the Agreement to Sell was entered into with the first defendant, s/o Late K.R. Kalia on 27.11.1992 for this purpose. In terms of the agreement, the total consideration payable by the plaintiff was Rs. 40,000,00/-. Concededly, Rs. 5 Lakh was paid. Apparently, disputes arose between the first defendant and defendant Nos. 6&7, the latter claiming to represent the estate of original owner Late K.R. Kalia on account of a Will dated 30.09.1992. In terms of the Will, the owner had allegedly bequeathed the property in favour of defendant Nos. 7. It was contended that in terms of the Will, the defendant Nos. 6&7 were constituted as executor and given directions to dispose of the proceeds of the sale to charities in terms of the directions of the testator. This dispute led to institution of probate proceedings. The probate Court accepted that the Will had been validly proved and allowed the petition. That order was carried in appeal to the Division Bench being FAO No. 298 of 2002.

3. During the pendency of the appeal, the rival parties, i.e., defendant No. 1 on

the one hand and defendant No. 7 (the defendant No. 6 having died in the meanwhile) entered into a compromise whereby it was agreed that the sale transactions with the plaintiff ought to be completed and that the balance consideration - lying in the deposit with this Court, i.e., Rs. 35,000,00/- with accrued interest would be shared in the manner indicated in the compromise. In terms of the arrangements, the defendant No. 7 agreed to accept Rs. 10,000,00/- with accrued interest and the defendant No. 1 is entitled to the balance amount.

4. These developments have been disclosed by the defendant in I.A.-4863/2009. The said application encloses copies of the application moved before the Division Bench, embodying a settlement. The relevant extract of the said compromise application (before the Division Bench) is as follows:

7. Defendant No. 7, the sole surviving executor of the Will of Mr. K.R. Kalia is desirous of compromising the long drawn dispute between him, the plaintiff and defendant No. 1 to the following effect:

(i) That without prejudice, the appeal filed by Defendant No. 1 against the Executors being FAO (OS) No. 298 of 2002 and the objection of Defendant No. 1 be allowed. Defendant No. 1 as the sole surviving legal heir of late Shri K.R. Kalia be authorized to deal with the estate of late Shri K.R. Kalia and Defendant No. 7 be relieved of his office as the executor of the estate of the late Mr. K.R. Kalia. True copy of the Application that has been filed by Defendant No. 1 and Defendant No. 7 in the said FAO (OS) No. 298/2002 is annexed herewith for ready reference of this Hon'ble Court.

(ii) That the Defendant No. 1, through Power of Attorney, would execute the sale deed in favour of the Plaintiff in accordance with the Agreement to Sell dated 27.11.1992.

(iii) (a) That as on date a sum of Rs. 35 Lakhs is lying deposited in the present suit. Out of the said sum, a sum of Rs. 10 Lacs along with prorated/proportionate interest (in addition to a sum of Rs. 5 Lacs paid to the late Shri L.C. Lai for expenses of the estate by the named executors since the death of Shri K.R. Kalia) be released in favour of Defendant No. 7 to enable him to disburse it to two charities named in the Will of Shri K.R. Kalia namely (1) all libraries situated at the Delhi High Court and District Court (where late Shri K.R. Kalia practiced); and (2) to the Jeewan Nursing Home (where Shri K.R. Kalia and his late wife received medical treatment and care) and to meet other expenses of the Estate:

(b) The remaining amount be released in favour of Defendant No. 1.

(iv) That the Defendant No. 1 shall make all endeavour to get property No. 667, New Friends Colony, New Delhi registered in favour of the Plaintiff at the earliest. Defendant No. 1, through its attorney, does hereby agree that the sum received by Defendant No. 1 as a part of the present settlement would be repaid to the plaintiff in case for any reason whatsoever, Defendant No. 1 is unable to execute

the Sale Deed as agreed hereinabove within a period of three years from the acceptance of this settlement by this Hon"ble Court. The plaintiff does hereby undertake not to raise any other claims and/or demand upon Defendant No. 1 in case the Sale Deed for property No. C-667, New Friends Colony, New Delhi is not registered as stipulated hereinabove.

(v) That the suit of the plaintiff be decreed in terms thereof.

5. The application was moved jointly by the defendant No. 7 and the defendant No. 1 through his attorney. It is submitted by the learned Counsel for the plaintiff that the averments in the application and its enclosures constitutes unequivocal admissions entitling the Court to decree the Suit and direct execution of the sale deed. It is submitted that all the essential ingredients, i.e., the existence of an agreement to sell the property, the consideration amount and the plaintiff's willingness have been established on the record. For the purpose of the last requirement, learned Counsel relies upon the order of the Court dated 4.4.2000 whereby the balance consideration of Rs. 35,000,00/- had to be deposited in the Court, and was complied with.

6. The Court has considered the submissions. Neither the defendant No. 1, nor defendant No. 7 dispute that the plaintiff had entered into an agreement to purchase the suit property. Their inter se disputes concern the succession to the estate of original owner (vendor); this led to initiation of probate proceedings. The probate was granted by the Court - the matter was ultimately settled before the Division Bench where the parties agreed that the present Suit may be decreed and the amount lying in deposit of the Court be shared in a particular manner.

7. This Court is of the opinion that having regard to the materials on record, the essential elements that are necessary to decree the suit for specific performance are all present. None of the contesting defendants i.e. D-1&7 dispute the existence of the agreement to sell, indeed they appear to be relying on it, as is evident from their terms vis-?-vis sharing of the consideration. That the plaintiff had the capacity to pay and was, therefore, ready and willing to perform his part of the contract, also established by deposit of the balance consideration of Rs. 35,000,00/- before this Court.

8. In view of the above discussion, the Court is of the opinion that the suit has to succeed. Accordingly, a decree for specific performance of the contract dated 27.11.1992 shall be drawn against first defendant, in respect of the suit property being C-667, New Friends Colony. The defendant No. 1 is directed to execute the sale deed and have the same registered before the Sub-Registrar within six weeks. It is open to the defendants to withdraw the amount of Rs. 35,000,00/- deposited pursuant to the Court's order dated 4.4.2000 along with accrued interest in the ratio agreed by them (i.e. defendant No. 7 has been entitled to Rs. 10,000,00/- with accrued interest and the balance of Rs. 25,000,00/- with accrued interest going to the share of defendant No. 1), after due execution of

the sale deed. The defendant No. 2 was impleaded in this case as attorney of the first defendant. The defendant Nos. 3-5 appear to have been occupying portions of the suit premises as tenants. The plaintiff has been handed over other portion of the suit premises. It is open to him to deal with it in accordance with law.

9. The Suit is accordingly decreed in the above terms, without any order as to costs, in the circumstances of the case. All the pending applications are also disposed of.