

(2014) 03 DEL CK 0300
In the Delhi High Court
Case No : CS(OS) No. 827/2008

Shri K.K. Mehta and Another

APPELLANT

Vs

Paras Poly Films (P) Ltd. and Others

RESPONDENT

Date of Decision : 27-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16

Citation : (2014) 143 DRJ 307

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Amiet Andlay and Mr. Arun K. Sharma, Advocate for the Appellant

Judgement

Rajiv Sahai Endlaw, J.—It is the case of the two plaintiffs:-

(i) that the defendant No. 1 Company of which the defendant No. 2 Shri Anil Kumar Jain is the Director / Chairman, is the owner of land ad measuring 6700 sq. yds. together with building, plant and machinery comprised in Khewat No.60/41 min Khata No. 89 Rect. & Kill No. 21 & 42/2 situated in the Revenue Estate of Village Liwaspur, Distt. Sonapat; Haryana;

(ii) that the defendant No. 1 Company had, by mortgaging the said property, availed loan facilities from the defendants no.3 Bank of India, Sonapat Branch and Senior Manager of which and Zonal Manager of Chandigarh Branch of which Bank have been impleaded as defendants No. 5&4 respectively (only by position and without giving any name);

(iii) that the defendant No. 1 Company was unable to repay the loan and loan account of the defendant No. 1 Company with the defendant No. 3 Bank became a "Non-Performing Asset";

(iv) that in June, 2005 the defendants No. 4&5 together with the defendant No. 8 Mr. Anil Aggarwal, Sr. Manager of Bank of India, Sonapat approached the plaintiffs and their associate Mr. M.L. Goel impleaded as defendant No. 7, offering

the aforesaid mortgaged property for a total consideration of Rs. 65 lacs;

(v) after negotiations, the plaintiffs along with the defendant No. 7, vide their letter dated 26th July, 2005 addressed to the defendant No. 4 made a settlement offer for settlement of the aforesaid loan account of the defendant No. 1 Company for a total sum of Rs. 65 lacs and the two plaintiffs and defendant No. 7 also opened their accounts with the defendant No. 3 Bank to facilitate speedy transfer of the said amount from their account to the loan account of the defendant No. 1 Company;

(vi) that the defendant No. 1 Company acting through the defendant No. 2 entered into an Agreement to Sell the aforesaid property to the two plaintiffs and the defendant No. 7 and whereunder the defendant No. 1 Company agreed to complete the sale in favour of the plaintiffs and the defendant No. 7 after obtaining sale permission, No Objection Certificate (NOC) from the HUDA or any other specified authority;

(vii) that the defendants No. 4&5 vide their letter dated 10th November, 2005 accepted the offer of the plaintiffs and the defendant No. 7 contained in the letter dated 26th July, 2005 supra;

(viii) that the defendants No. 1&2 however did not execute the Sale Deed in favour of the plaintiffs and the defendant no.7 on account of the sale permission and NOC from the appropriate authorities having not been received;

(ix) that the plaintiffs and the defendant No. 7 also handed over to the defendants No. 1&2 cheque for a sum of Rs.60,000/- towards expenses to be incurred in obtaining the permissions, though the same were to be obtained by the defendants No. 1&2 at their own costs;

(x) that the defendant No. 2 vide his letter dated 6th December, 2005 to the defendant No. 4 also sought extension of time up to 31st December, 2005 for completion of the compromise settlement;

(xi) that the defendant No. 2 however got served a legal notice dated 19th January, 2006 on the plaintiffs and the defendant No. 7 alleging that the plaintiffs and the defendant No. 7 had failed to deposit the entire amount with the Bank on or before 10th December, 2005 and cancelling the Agreement to Sell dated 20th August, 2005;

(xii) that the plaintiffs vide reply dated 30th January, 2007 to the legal notice supra contended that they had already deposited Rs. 65 lacs in their accounts aforesaid opened with the defendant No. 3 Bank and also handed over Rs. 60,000/- to the defendants No. 1&2 for getting the sale permission and were not in default of their obligations under the Agreement to Sell;

(xiii) that the defendant No. 7 filed CS(OS) No. 598/2006 in this Court against the defendants No. 2,4&5 for injunction, without impleading the plaintiffs as parties thereto; and,

(xiv) that the defendant No. 2 in the said suit disclosed execution of Agreement to Sell dated 15th February, 2006 of the said property in favour of the defendant No. 6 Mr. Mukesh Gupta.

Accordingly, this suit was filed, seeking the relief of (i) cancellation of Agreement to Sell and General Power of Attorney dated 15th February, 2006 with respect to the property aforesaid executed by the defendants No. 1&2 in favour of the defendant No. 6; (ii) for permanent injunction restraining the defendants No. 1&2 from executing the Sale Deed of the said property in favour of the defendant No. 6 or his assignees; (iii) for declaration that the Agreement to Sell dated 20th August, 2005 of sale of the property by the defendants No. 1&2 in favour of the plaintiffs and the defendant No. 7 is final and binding; and, (iv) for specific performance thereof by directing the defendants No. 1&2 to execute the Sale Deed of the said property in favour of the plaintiffs and the defendant No. 7.

2. As the aforesaid would show, the suit is primarily for the relief of specific performance of an Agreement of Sale of immovable property situated at Sonapat. Though the Supreme Court in Harshad Chiman Lal Modi Vs. DLF Universal and Another, held that Section 16 of the CPC recognizes the well established principle that actions against res or property should be brought in the forum where such res is situated and a Court within whose territorial jurisdiction the property is not situated has no power to deal with and decide the rights or interests in such property or to give an effective judgment with respect thereto, but the suit was entertained and summons thereof issued on 5th May, 2008 though no ex-parte ad-interim relief as sought granted.

3. Written statements were filed by the defendants No. 1&2 and defendant No. 8 Mr. Anil Aggarwal. The defendants No. 3 to 5 adopted the written statement of defendant No. 8, as recorded in the order dated 26th May, 2009. The defendant No. 7 failed to appear despite service and was on 26th May, 2009 proceeded against ex-parte. The defendant No. 6 was permitted to be served by publication and the order dated 27th October, 2010 records that the defendant No. 6 was so served. None appeared for the defendant No. 6.

4. Though the defendants No. 1&2 also stopped appearing however on the pleadings of the plaintiffs, defendants No. 1&2 and defendants No. 3 to 5 & 8, the following issues were framed in the suit on 20th July, 2011:

1. Whether the plaintiffs are entitled to a decree of declaration declaring that the agreement to sell dated 20.08.2005 is final and binding upon the parties and the defendants are liable to execute the Sale Deed in favour of the plaintiffs? OPP

2. Whether the plaintiffs are entitled to a decree of Cancellation of Agreement to Sell and General Power of Attorney dated 15.02.2006? OPP

3. Whether the suit of the plaintiffs is barred by res judicata? OPD-1&2

4. Whether this court does not have the territorial jurisdiction to try and decide the present suit? OPD-1&2

5. Relief?

and the suit put to trial.

5. The defendants No. 1&2 did not appear thereafter also and the defendants No. 3 to 5 & 8 also stopped appearing and vide order dated 13th July, 2012, the defendants No. 1 to 6 & 8 were proceeded against ex-parte. The plaintiffs have led their ex-parte evidence and the two plaintiffs besides examining themselves have also examined the Zonal Manager, Chandigarh of the defendant No. 3 Bank of India as PW-3, the Chief Manager of the Sonapat Branch of the defendant No. 3 Bank of India as PW-4, Retired Manager of Sonapat Branch of the respondent No. 3 Bank of India as PW-5 and another Retired Assistant General Manager of the Parliament Street Branch of the defendant No. 3 Bank of India as PW-6.

6. The counsel for the plaintiffs has been heard.

7. At the outset it has been enquired from the counsel for the plaintiffs, as to how in the light of Harshad Chiman Lal Modi supra this Court has territorial jurisdiction over the subject matter of suit. Attention of the counsel is also invited to the judgment of the Division Bench of this Court in Vipul Infrastructure Developers Ltd. and Another Vs. Rohit Kochhar and Another, laying down that relief of possession is inherent in the relief of specific performance of the contract and location of institution of a suit would be guided by the location of the property in respect of which and for determination of any right or interest wherein the suit is instituted and further holding that the suit for specific performance of an Agreement of Sale of property in Gurgaon does not lie before this Court. Attention is also invited to Pantaloon Retail India Ltd. Vs. DLF Limited and Others, taking the same view.

8. The counsel for the plaintiffs in response, has referred to the judgment dated 18th March, 2014 of a Division Bench of this Court in RFA(OS) No. 143/2013 titled Inder Sharma Vs. Vikas Nagpal. However a reading of the said judgment shows the same to be concerned with a suit filed by a seller against the purchaser of an immovable property, for declaration that the Agreement to Sell stood terminated and cancelled and for permanent injunction restraining the purchaser from disturbing the possession of the seller of the property agreed to be sold and for declaration that the purchaser had no right, title or interest in the property and for damages. Upon objection as to territorial jurisdiction being taken, the seller/plaintiff offered to give up the relief of declaration that the purchaser had no right, title or interest in the property which was situated outside the territorial jurisdiction of this Court. However, the same was not permitted. The Division Bench in appeal held that the plaintiff could not be prohibited from giving up the relief of declaration of rights in the property which take the suit outside the territorial jurisdiction of the Court and further held that this Court, insofar as the other reliefs claimed in the suit, had territorial jurisdiction to adjudicate the same. No reference is found to have been made to the judgments aforesaid.

9. In my opinion, *Inder Sharma supra* would have no application to the factual controversy in this suit. That case, after the plaintiff therein had given up the relief of declaration of rights in immovable property situated outside the territorial jurisdiction of this Court, was concerned only with declaration of rights in an agreement though of sale of immovable property and permanent injunction restraining the agreement purchaser from disturbing the possession of the seller of the said property and both of which reliefs were found to be *de hors* immovable property. Per contra, this suit is concerned primarily, as aforesaid, with the relief of specific performance of an agreement of sale of immovable property situated outside the territorial jurisdiction of this Court and which as aforesaid has been held to be not maintainable. The Supreme Court in *Harshad Chiman Lal Modi supra* also held that when a Court has no jurisdiction owing to the property not being situated within its jurisdiction, the objection goes to the extent of making the order of that Court a nullity on the ground of want of jurisdiction and jurisdiction could not have been conferred by non traverse or consent. Thus, the factum of the defendants having not contested the suit is irrelevant. As far as the other reliefs claimed in the suit are concerned, the same are dependent upon the grant of the relief of specific performance (since without being entitled to the relief of specific performance, the plaintiffs would have no rights in the property so as to be entitled to seek cancellation of documents of the property created in favour of another or to seek the relief of injuncting the property from being dealt with).

10. No other argument has been raised on the aspect of territorial jurisdiction, though the counsel for the plaintiffs has made argument on the merits of the claim. However, once it is found that this Court does not have territorial jurisdiction as aforesaid, need is not felt to go into the merits of the claim of the plaintiffs.

11. The suit thus fails on the ground of this Court not having territorial jurisdiction to entertain the suit and is dismissed.

No costs. Decree sheet be drawn up.