

(2010) 10 DEL CK 0088

In the Delhi High Court

Case No : Regular Second Appeal No. 117 of 2001

Shri P.K. Gupta

APPELLANT

Vs

Ansal Properties and Industries Ltd.

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Specific Relief Act, 1963 — Section 41

Citation : (2010) 10 DEL CK 0088

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : J.P. Sengh and Geeta Batta, for the Appellant; Gurinder Pal Singh, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal is directed against the impugned judgment dated 16.3.2001 which had endorsed the finding of the Trial Judge dated 26.7.1997. Vide judgment and decree dated 26.7.1997, the suit of the plaintiff Shri P.K. Gupta for permanent injunction had been decreed. The impugned judgment had reserved the finding thereby dismissing the suit of the plaintiff.

2. Briefly stated the factual matrix of the case is as follows:

i. The plaintiff Shri P.K. Gupta had applied for a residential plot in the complex of the defendant i.e. M/s Ansal Properties & Industries (P) Ltd. at Ansal Palam Vihar. Plaintiff was provisionally registered for plot No. J-1131 subject to payment of Rs. 30,600/- which the plaintiff had made vide receipt dated 17.7.1985 (Ex.PW-1/1). The layout plan of Ansal Palam Vihar Colony has been proved as Ex.PW-1/2. The registration for allotment of the aforesaid plot was acknowledged by the defendant vide its letter dated 18.8.1987 (Ex.PW-1/3). On 27.4.1988 plaintiff received a letter (Ex.PW-1/4) from the defendant cancelling his allotment. As per the plaintiff, the reasons were arbitrary and whimsical. Present suit has accordingly been filed seeking a mandatory injunction against

the defendant directing him to allot plot No. J-1131 in Ansal Palam Vihar Colony or any other alternate plot to pay the difference in the price not only of the principal but the market rate of the property with interest @ 24% per annum.

ii. Trial Judge had framed three issues. They inter alia read as follows:

1. Whether the plaintiff is entitled for the relief of declaration as prayed? OPP
2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed? OPP
3. Relief.

iii. Issue No. 1 and 2 were decided in favour of the plaintiff. It was held that the plaintiff had deposited initial amount of Rs. 30,600/- for the registration of the plot; merely because the licence had not been granted by the Government of Haryana to the defendant was no ground not to allot a plot to the plaintiff when DW-1 the witness of the defendant had himself admitted that out of 4700 plots in the colony most of the plots had already been allotted; this version of DW-1 had been relied upon by the Trial Court to decree the suit of the plaintiff.

iv. The impugned judgment had reversed the finding of the Trial Court; it had returned a finding that the defendant had only made an offer to the plaintiff; no contract had matured between the parties; although, the defendant was willing to perform his part of the contract yet he could do so for reasons beyond his control; the contract had become impossible to perform; it had frustrated. The impugned judgment had further held that u/s 41 of the Specific Relief Act an equally efficacious remedy was available to the plaintiff i.e. by filing a suit for specific performance. In this view of the matter the discretionary relief of injunction was disallowed. Suit was dismissed.

3. This is a second appeal. After its admission on 5.10.2010, the following substantial question of law has been formulated:

Whether findings in the impugned judgment dated 16.3.2001 amount to a perversity and if so its effect ?

4. The impugned judgment had scrutinized the evidence led on behalf of the parties. PW-1 the plaintiff himself had entered the witness box and proved the documentary evidence. Ex.PW-1/1 is the receipt dated 17.7.1985 issued by the defendant wherein a sum of Rs. 30,600/- had been received from the plaintiff which was on account of deposit for registration in terms of the application of the plaintiff. This application has not been proved by either of the party. It is, however, not in dispute as is evident from Ex.PW-1/1 that this amount had been paid by the plaintiff only for the initial registration with the defendant company. The second document Ex.PW-1/3 is a letter dated 18.8.1987 wherein the defendant had communicated that he would inform the plaintiff about further payments towards this plot i.e. plot No. J-1131, Ansal Palam Vihar; further reference in the letter was of another plot booking of the plaintiff i.e. of 01-9.

Contention of the appellant that an amount of Rs. 6,600/- was demanded as a second installment is belied by this document; this payment of Rs. 6,600/- was in lieu of the other booking i.e. booking of 01-9 and not of the plot in question. Vide Ex.PW-1/4 which is dated 27.4.1988 defendant informed the plaintiff that Government of Haryana had not issued a licence to the private developers, because of the change in their policy; it would therefore not be possible to allot a residential plot to the plaintiff. A sum of Rs. 38,501/- calculated with interest @ 15% per annum on the deposit of Rs. 30,600/- was refunded back to the plaintiff.

5. Learned Counsel for the respondent has drawn attention of this Court to certain documents which had been filed by the plaintiff before Trial Court which also includes newspaper cuttings informing the general public that the Government of Haryana had decided to promulgate an ordinance banning purchase of land for colonization; further that no new licence would be given to such colonizers. The submission of the learned Counsel for the respondent that that is a document which is filed by the plaintiff himself who clearly knew this fact that the Government of Haryana had refused licences to colonize land; this was the reason why the defendant could not colonize Ansal Palam Vihar Colony; pursuant to which the provisional allotment of the plot in favour of the plaintiff had to be cancelled.

6. In this background, the submission of the counsel for appellant that the grounds mentioned in Ex.PW-1/4 cancelling his allotment are arbitrary is thus without any merit; it was brought to the knowledge of the public at large which is evident from the filing of these news readings by the appellant himself; he being aware that such a policy had been adopted by the Government of Haryana, it did not now lie in his mouth to state that his provisional allotment had been cancelled on arbitrary terms. It is also relevant to state that in the plaint itself, the plaintiff in para 4 has stated that he was only "provisionally registered" for the aforestated plot.

7. The testimony of DW-1 also clearly establishes that there were various patches in Palam Vihar; some of which had been licenced and some remained unlicensed ;his version was clear to the effect that the provisional plot of the appellant had fallen in the unlicenced patch; it was for this reason that his allotment had to be cancelled as the defendant did not get the licence from the Government of Haryana.

8. These findings in the impugned judgment can in no manner be termed as perverse. The Supreme Court in *Gaya Din (D) Through Lrs. and Others Vs. Hanuman Prasad (D) Through Lrs. and Others*, has defined the expression "perverse" to mean a finding not supported by the evidence brought on record or against the law or suffering from the vice of procedural irregularity. The Courts below had correctly appreciated both the oral and the documentary evidence placed before it. Plaintiff was not entitled to relief.

9. The present suit was a suit for mandatory injunction. u/s 41 of the Specific

Relief Act 1963 injunction may be refused in the various contingencies mentioned therein; under sub Clause (h) where an equally efficacious relief can be obtained by any other usual mode of proceedings; injunction should not be granted. In this case the plaintiff could have filed a suit for specific performance of the purported agreement upon which he has relied to base his claim. This machinery was well available to him. The discretionary equitable relief u/s 41(h) of Specific Relief Act could not have been granted.

10. There is no merit in this appeal. It is dismissed.