(2013) 02 DEL CK 0322

In the Delhi High Court

Case No : CS (OS) 2552 of 2008

Shri Varinder Sahni	APPELLANT
Vs	
Pratap K. Kaula and Others	RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(a), 151
Specific Relief Act, 1963 — Section 20

Citation : (2013) 135 DRJ 500

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : N.S. Vasisht, for the Appellant; Rajiv Nanda, Advocate for Defendants Nos. 2 to 4, Mr. Kajal Chandra and Ms. Prachi Gupta, Advocates for Defendants Nos. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.

I.A. 8821/2012 in CS(OS) 2552/2008

1. Present application has been filed by defendant Nos. 5 and 6 u/s 151 CPC praying for dismissal of the plaintiff''s suit in view of the order dated 26th April, 2012 passed by a Division Bench of this Court in RFA(OS) 8/2008. In the present application, it is stated that applicants being defendants No. 5 and 6 had filed a suit for specific performance for Agreement to Sell dated 30th September, 1986 against defendants No. 1 to 4 in suit being CS(OS) 2630/1994 and the plaintiff herein with respect to the suit property.

2. In CS(OS) 2630/1994 an issue was framed "Whether Defendant no. 6 (plaintiff herein) is a bonafide purchaser for valuable consideration without notice of the suit property? If so, its effect."

3. A learned Single Judge of this Court vide judgment and order dated 20th December, 2007 decreed the applicants suit being CS(OS) 2630/1994 in favour

of the applicants and against the defendants No. 1 to 4 and the plaintiff herein.

4. Against the said judgment and order of learned Single Judge, plaintiff preferred an appeal being RFA(OS) 8/2008 before the Division Bench of this Court.

5. The Division Bench vide its judgment and order dated 26th April, 2012 in RFA(OS) 8/2008 dismissed the appeal of the plaintiff and upheld the judgment and order dated 20th December, 2007 passed in CS(OS) 2630/1994. The relevant portion of the Division Bench''s order is reproduced hereinbelow:-

15. Qua R.N. Sahni, Varinder Sahni and Sahni International Pvt. Ltd. the learned Single Judge has held that they were aware of the agreement to sell Ex. PW-1/2 and that the tenancy in favour of the company and the agreement to sell in favour of Varinder Sahni created/executed by the legal heirs of Mrs. Vijay Malini Kaula were intended to weaken the right of Mrs. Nisha Raj and Ranjit Raj.

16. We need not note the reasoning of the learned Single Judge with respect to the issues settled on 13.11.1995, for the reason the impugned decree was challenged by the legal heirs of Mrs. Vijay Malini Kaula vide RFA(OS) No. 5/2008. During the pendency of the said appeal they settled the dispute with Mrs. Nisha Raj and Ranjit Raj and filed CM No. 14086/2008 in said appeal, bringing on record the settlement that they would receive Rs. 3 crores and would simultaneously execute the sale deed in favour of Mrs. Nisha Raj and Ranjit Raj. The settlement has been given effect to.

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22. Thus, unless Varinder Sahni can show that he was unaware of the agreement to sell Ex. PW-1/2 when the legal heirs of Mrs. Vijay Malini Kaula and he entered into the agreement to sell Ex. DW-6/1 on 30.12.1994, he cannot predicate any defence to defeat the right of Mrs. Nisha Raj and Ranjit Raj, which has been acquired by them after they compromised the dispute with the legal heirs of Mrs. Vijay Malini Kaula.

23. Narration of some facts may be necessary to show whether Varinder Sahni was a bona-fide purchaser or not. As noted above, after the death of Mrs. Vijay Malini Kaula, Mrs. Nisha Raj and Ranjit Raj filed CWP No. 3314/1994 where Mr. P.K. Kaula, the husband of the seller was impleaded as respondent No. 3. This writ petition was disposed of by order dated 10.11.1994 leaving the parties to resolve their problems elsewhere. However, the statement of the counsel for Income Tax Authorities was recorded that the possession of the property would be handed over if the payment was made within one week by the owner. Mr. P.K. Kaula, accordingly, made payment to the Income Tax Department on 16.11.1994. The possession was, however, not handed over to Mr. P.K. Kaula.

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29. From the admissions made by Varinder Sahni it needs to be highlighted that

he admits having discussed the transaction with his father before signing the agreement to sell Ex. DW-6/1. He admits being aware of the Income Tax Authority''s requisitioning the property, which requisition was with respect to the agreement to sell Ex. PW-1/2. It is apparent that the knowledge of his father pertaining to Ex. PW-1/2 was passed on to him, dehors the fact that his admission of being made aware of the property being requisitioned by Pawan Kaula establishes his knowledge of the existence of Ex. PW-1/2.

30. Thus, there is tell-tale evidence of R.N. Sahni and his son Varinder Sahni being aware of the existence of Ex. PW-1/2 and the claim of Mrs. Nisha Raj and Ranjit Raj under the same.

31. The claim of Varinder Sahni that the talks and the agreement between him and the legal heirs of Mrs. Vijay Malini Kaula pertaining to the subject property was discussed and settled on 30.12.1994 is patently false for the reason, the stamp papers pertaining to the lease deed Ex. DW-2/1 under which Sahni International Pvt. Ltd. was inducted as a tenant in the property and the agreement to sell Ex. DW-6/1 bear a stamp of having been issued on 29.12.1994. The same stamp vendor has sold the two stamp papers which bear serial issue number as entered in the sale register by the stamp vendor.

32. Thus, the appellants cannot predicate a stand that it would be iniquitous to enforce the agreement to sell Ex. PW1/2 and relief of specific performance as per Section 20 of the Specific Relief Act is discretionary. The claim for equity could be raised by the legal heirs of Mrs. Vijay Malini Kaula. They have settled the matter with Mrs. Nisha Raj and her husband Ranjit Raj. Appellants cannot urge the bar of limitation. Appellants cannot urge that with the requisition of the property by the Income Tax Authorities the agreement to sell Ex. PW-1/2 stood frustrated. They cannot urge that due to rise in the price of the property and that under Ex. PW-1/2 a paltry sum of 10,000/- was paid as earnest money-cum-sale consideration and thus Ex. PW-1/2 should not be specifically enforced. We reiterate, being not bona-fide prospective purchasers; and there being evidence that the appellants were only desiring to put spokes in the wheels set into motion by Mrs. Nisha Raj and her husband Ranjit Raj, the appellants are left with nothing to litigate with Mrs. Nisha Raj and her husband Ranjit Raj.

33. The appeals are dismissed with one set costs assessed in sum of Rs. 50,000/- against the appellants and in favour of Mrs. Nisha Raj and her husband Ranjit Raj.

6. In reply to the present application, plaintiff has only stated that a SLP has been preferred in the Supreme Court against the judgment and order dated 26th April, 2012 passed in RFA(OS) 8/2008 by the Division Bench.

7. In rejoinder, it has been pointed out that even the SLP filed by the plaintiff against the judgment dated 26th April, 2012 has been dismissed by the Supreme Court on 18th January, 2013. The order passed by the Supreme Court is reproduced hereinbelow:-

Delay condoned.

We find no merit in these petitions for special leave. These are dismissed.

8. Mr. N.S. Vasisht, learned counsel for plaintiff urges that the present suit is still maintainable as the plaintiff is a prior bonafide purchaser for valuable consideration.

9. In the opinion of this Court, there cannot be two decrees of specific performance with regard to the same suit property and that too, when the plaintiff''s version in the present suit which had been set up as a defence in CS(OS) 2630/1994 between the same parties has been specifically rejected by another learned Single Judge and Division Bench of this Court.

10. This Court is of the view that after the judgment of Division Bench dated 26th April, 2012, the cause of action in favour of the plaintiff to maintain the present suit does not survive.

11. It is pertinent to mention that in Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another, the Supreme Court has held as under:-

132. It is trite that a party should not be unnecessarily harassed in a suit. An order refusing to reject a plaint will finally determine his right in terms of Order 7 Rule 11 of the Code of Civil Procedure.

133. The idea underlying Order 7 Rule 11(a) is that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of a suit. Having regard to the changes in the legislative policy as adumbrated by the amendments carried out in the Code of Civil Procedure, the courts would interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the court''s resources being used up on cases which will serve no useful purpose. A litigation which in the opinion of the court is doomed to fail would not further be allowed to be used as a device to harass a litigant. (See Azhar Hussain Vs. Rajiv Gandhi, .)

12. The Supreme Court in Shipping Corporation of India Ltd. Vs. Machado Brothers and Others, has held as under:-

25. Thus it is clear that by subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice, which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application u/s 151 CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.

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31. For the reasons stated above, we are of the opinion that continuation of a suit which has become infructuous by disappearance of the cause of action would amount to an abuse of the process of the court, and interest of justice requires that such suit should be disposed of as having become infructuous. The application u/s 151 CPC in this regard is maintainable.

13. Consequently, in the opinion of this Court, the present suit has become infructuous in view of the subsequent judgment of the Division Bench of this Court dated 26th April, 2012. Accordingly, present suit is dismissed, but with no order as to costs. With the aforesaid observations, present application also stands disposed of.

