
(2012) 10 DEL CK 0372
In the Delhi High Court
Case No : CS (OS) 1232 of 2010

S.P. Singh Chandel

APPELLANT

Vs

Utam Singh Thapa and Another

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Contract Act, 1872 — Section 65

Delhi Municipal Corporation Act, 1957 — Section 343, 344(1)

Citation : (2012) 10 DEL CK 0372

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Vijay Srivastava, for the Appellant;

Judgement

V.K. Jain, J.—This is a suit for recovery of Rs. 24,32,667/- as well as perpetual and mandatory injunction. It is alleged that on 18.06.2002, a Collaboration Agreement was executed between the plaintiff, defendant No. 1 and defendant No. 2, for construction of a building on property No. D-100, measuring 40 square yards at Katwaria Sarai, New Delhi. Under the Collaboration Agreement, the plaintiff was to develop basement, ground floor, first floor, second floor, third floor, fourth floor, fifth floor, sixth floor of bearing property No. D-100, measuring 40 square yards at Katwaria Sarai, New Delhi. The entire cost of construction was to be borne by the plaintiff. On construction, half basement, ground floor, third floor, half fourth floor, sixth floor and half of the terrace rights of the sixth floor were to come to the share of the defendants, whereas half basement, first floor, second floor, half fourth floor, fifth floor and half terrace rights of sixth floor were come to the share of the plaintiff. The passage, staircase, parking, etc. were to be common. The agreement was executed by defendant No. 1 for himself as well as on behalf of defendant No. 2. He also executed a power of attorney in favour of the plaintiff, authorizing him to do all acts and deeds in respect of half basement, first floor, second floor with half terrace rights. The case of the plaintiff is that he constructed basement, ground floor and first floor as per collaboration agreement between the parties and thereafter, the construction was

stopped due to litigation pending in District Court with respect to access to the suit property. The plaintiff claims to have spent Rs. 24,32,667/- for the aforesaid construction. It is also alleged that on 13.11.2009, some persons visited the first floor premises which was in possession of the plaintiff and threatened the plaintiff asking him to vacate the first floor of the suit premises on the ground that defendant No. 1 had agreed to sell the first floor to them. On 08.04.2010, some persons again visited the first floor and threatened the plaintiff, asking him to vacate the same. The plaintiff has now sought recovery of Rs. 24,32,667/- which he claims to have spent on construction. He has also sought an injunction restraining the defendant from creating any third party interest in the suit property and dispossessing the plaintiff from portion occupied by him.

2. The defendants were proceeded ex parte vide order dated 23.02.2012 since they failed to appear despite service by publication.

3. The plaintiff has filed his own affidavit by way of evidence in which he has supported, on oath, the case set out in the plaint.

4. Ex. PW-1/1 is the Collaboration Agreement dated 18.06.2002 executed between the defendants and the plaintiff. The following terms of the agreement are relevant for the purpose of this suit:-

2. That the Second Party undertake to develop Basement, Ground Floor, First Floor, Second Floor, Third Floor, Fourth Floor, Fifth Floor, Sixth Floor, bearing property No. D-100, Land measuring 40 Sq. Yds., situated at Katwaria Sarai, New Delhi.

3. That in lieu of the First Party providing the property/land to the builder for development/reconstruction and in consideration of the second party/builder incurring and bearing the entire cost of construction of the proposed building, his initiative, expertise, all other services rendered in connection therewith, the first party/owner and the builder/second party shall share the proposed building as under:-

a) OWNER'S SHARE

Half basement, entire ground floor, entire third floor, Half fourth floor, entire sixth floor with half terrace rights of 6th floor, built on land measuring 40 sq. yds. on Plot No. D-100, situated at Katwaria Sarai, New Delhi with the right of use of common passage, staircase, parking.

b) BUILDER'S SHARE

Half basement, entire first floor, entire second floor, half fourth floor, entire fifth floor with half terrace rights of 06th floor, built on land measuring 40 sq. yds on plot No. D-100 situated at Katwaria Sarai, New Delhi with the right of use of common passage, staircase, parking.

4. That the entire amount required for cost of construction of Basement, Ground Floor, First Floor, Second Floor, Third Floor, Fourth Floor, Fifth Floor & Sixth Floor

shall be borne by the second party.

16. That the second party is entitled to sell the portion comes in his share and also receive the advance against portion which falls in his share and the First Party shall execute the G.P.A., WILL, AGREEMENT, POSSESSION LETTER, INDEMNITY BOND, AFFIDAVIT & RECEIPT in favour of the intending purchasers.

5. Ex. PW-1/2 is the power of attorney executed by defendant No. 2 in favour of defendant No. 1. Vide this document, defendant No. 2 authorized defendant No. 1 amongst others, to enter into collaboration agreement with any person or party for the construction or re-development of the suit property. He was also authorized to sell, transfer, mortgage, gift, convey, assign or exchange the said property or any portion thereof to any person(s), to execute and sign proper sale deed and to present the same for registration before the Sub-Registrar. He was also authorized to enter into an agreement to sell, to receive the advance, obtain necessary permission and execute documents. All these evidence were given in respect of property No. D-100, measuring 40 square yards at Katwaria Sarai, New Delhi.

6. Ex. PW-1/3 is the Power of Attorney executed by defendant No. 1 in favour of the plaintiff, authorizing him to do the acts and deeds mentioned therein in respect of property No. D-100, measuring 40 square yards at Katwaria Sarai, New Delhi. In particular, he was authorized to make additions, alterations in the suit property and to manage, control and supervise the same in all respects.

7. Ex. PW-1/4 to PW-1/23 are various bills, vouchers, etc. evidencing expenditure which the plaintiff claims to have incurred for raising construction of basement, ground floor and first floor on property No. D-100, measuring 40 square yards at Katwaria Sarai, New Delhi.

8. I see no reason to disbelieve the unrebutted deposition of the plaintiff which finds corroboration from the documentary evidence produced by him. The plaintiff has thereby been able to prove the agreement executed between him and the defendants whereunder he got a right to raise construction of property No. D-100, measuring 40 square yards at Katwaria Sarai, New Delhi, using his own funds for the purpose. Had the plaintiff completed construction in terms of the collaboration agreement Ex. PW-1/1, he would have been entitled to the half of the basement, whole of the first floor, second floor and fifth floor and half of the fourth floor and half terrace rights of sixth floor.

9. The plaintiff has today placed on record the notice of demand dated 04.08.2003 issued by MCD to defendant No. 1 Uttam Singh, whereby MCD demanded Rs. 7050/- from him for demolition of the unauthorized construction in property No. D-100, Katwaria Sarai, which is the subject matter of the present suit. He has also placed on record a copy of the reply sent by defendant No. 1 to a notice dated 19.05.2003 received by him from MCD under Sections 344 (1) and 343 of DMC Act. A perusal of this document shows that one Rishal Singh R/o 101-C, Katwaria Sarai had filed a civil suit for restraining from raising

unauthorized construction and obtained injunction against raising of any construction in the suit property.

10. The Learned Counsel for the plaintiff very fairly states that in fact the construction which was agreed to be raised by the plaintiff on property No. D-100, Katwaria Sarai, New Delhi was unauthorized construction since no site plan was got sanctioned from MCD. He further states that the construction could not be carried out beyond the first floor, on account of the injunction order passed by the civil court in the suit filed by Rishal Singh against defendant No. 1. The contention of the Learned Counsel for the plaintiff is that since the agreement between the parties could not be completed, he is entitled to reimbursement of the amount which he has spent on the construction carried out by him in property No. D-100, Katwaria Sarai, New Delhi. He very fairly conceded that the plaintiff would have to hand over the first floor of the property to the defendants before he can claim the suit amount from them.

11. Section 65 of Contract Act, to the extent it is relevant, provides that when an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

The defendants are therefore bound to compensate the plaintiff for the expenditure incurred by him on construction in their property bearing No. D-100, Katwaria Sarai, New Delhi, subject of course to handing over possession of the first floor portion to them.

The Learned Counsel for the plaintiff states that the first floor portion which is in possession of the plaintiff would be locked and keys would be deposited in the registry within two weeks from today. Subject to the plaintiff depositing keys of the first floor in the court within two weeks from today, a decree for recovery of Rs. 24,32,667/- with cost is hereby passed in favour of the plaintiff and against the defendants.

If the decretal amount is not paid within four weeks from depositing of the keys of the first floor premises, by the plaintiff in the registry, under intimation to the defendants, it would also carry interest at the rate of 6 % per annum from the date of deposit of keys in the registry till the date of realization.

Decree sheet be drawn accordingly.