
(2019) 01 DEL CK 0072

In the Delhi High Court

Case No : Regular First Appeal No. 213 Of 2007

Vinod Khurana (Since Deceased) Through His Lrs

APPELLANT

Vs

Ishwar Devi & Others

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Code of Civil Procedure, 1908 — Section 96

Citation : (2019) 01 DEL CK 0072

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Akshay Chandra, Kamalakshi Singh

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit (since deceased and now represented through his legal heirs) impugning the Judgment of the trial court dated 25.11.2006 by which trial court has dismissed the suit filed by the appellants/plaintiff for the recovery of Rs. 6,14,304/-. The suit amount was claimed by the appellants/plaintiff as being the balance due and payable by the respondent/defendant to the appellants/plaintiff as this due amount was said to have been paid by the appellants/plaintiff for and on behalf of the respondent/defendant so as to finish off the litigation against the respondent/defendant initiated by one Sanatan Dharam Shiv Sewa Mandal Shiv Mandir (Regd.) (hereinafter 'Sewa Mandal'). The appellants/plaintiff was the builder/collaborator with respect to the property of the respondent/defendant of 200 sq. yds. situated at H-13/8, Malviya Nagar, New Delhi and on account of the injunction order having been obtained by Sewa Mandal, the appellants/plaintiff could not commence construction on the property of the respondent/defendant under the Collaboration Agreement dated 15.02.1993.

2. The facts of the case are that the appellants/plaintiff filed the subject suit pleading that the respondent/defendant was the owner of the suit property with respect to which a Collaboration Agreement was entered into between the parties on 15.02.1993. The appellants/ plaintiff had to incur the entire costs for raising the construction and the newly constructed property was to be divided between the respondent/defendant and the appellants/plaintiff as stated in the collaboration agreement. Another Collaboration Agreement containing identical terms was also entered into between the parties on 13.05.1993. The Sewa Mandal had instituted a litigation in this Court against the respondent/defendant, and to finish this litigation, the appellants/plaintiff pleads that he paid a total sum of Rs. 7,50,000/- to the said Sewa Mandal on behalf of the respondent/defendant and the respondent/defendant only returned a sum of Rs. 1,45,000/- out of the sum of Rs. 7,50,000/- thereby leaving a balance of Rs. 6,05,000/- payable to the appellants/plaintiff. The appellants/plaintiff also claimed a sum of Rs. 9,304/- as paid by the appellants/plaintiff for electricity charges of the property of the respondent/defendant.

3. The respondent/defendant contested the suit and denied any liability. It was pleaded that the liability for any litigation including with the Sewa Mandal was of the appellants/plaintiff in terms of the Clauses 26 of the two Collaboration Agreements dated 15.02.1993 and 13.05.1993. It was pleaded that in fact the compromise entered into with the Sewa Mandal by the appellants/plaintiff and making payment of Rs. 7,50,000/- was on the immediate next date of entering into of the second Collaboration Agreement dated 13.05.1993 i.e. on 14.05.1993. The respondent/defendant pleaded that the amount of Rs. 1,45,000/- which was paid by the respondent/ defendant to the appellants/ plaintiff was not towards refund of Rs. 7,50,000/- but this amount of Rs.1,45,000/-was given as security for a premises being one shop in the basement of property no. L-81, and which was vacated by the respondent/defendant.

4. The only issue to be decided by this Court is as to whether the amount of Rs.7,50,000/- paid by the appellants/plaintiff to Sewa Mandal was the liability of the respondent/defendant and therefore the respondent/defendant had to reimburse the amount paid by the appellants/plaintiff to the Sewa Mandal or that the liability of this payment was to the account of the appellants/plaintiff under the two Clauses 26 of the two Collaboration Agreements.

5. At this stage, let us reproduce the two Clauses 26 in the two Collaboration Agreements dated 15.02.1993 and 13.05.1993 entered into between the parties by also noting that the Clause 26 in the first Collaboration Agreement dated 15.02.1993 was written in hand whereas the Clause 26 in the subsequent Collaboration Agreement dated 13.05.1993 is a running typed clause. The same read as under:

"Clause 26 of the Collaboration Agreement dated 15.02.1993

All types of litigation with temple. Shri Sanatan Dharam Shiv Mandir (Regd.) with the owner is the responsibility of the builder."

Clause 26 of the Collaboration Agreement dated 13.05.1993

Any type of litigation with Shri Sanatan Dharam Shiv Sewa Mandal (Regd.) which are pending against with Smt. Ishwari Devi is now the responsibility of the builder."

6. The only interpretation of the two Clauses 26 is that the entire liability to deal with Sewa Mandal was of the appellants/ plaintiff. Once Clauses 26 of the two Collaboration Agreements are clear, the appellants/plaintiff cannot claim that he was entitled to be reimbursed the amounts paid by him for compromising the litigation with the Sewa Mandal. In fact, it is noted that the second Collaboration Agreement was entered into on 13.05.1993 and immediately on the next date i.e. on 14.05.1993, the deceased plaintiff appeared in person and was made a party to the litigation initiated by the Sewa Mandal in the High Court, and in this litigation a sum of Rs. 7,50,000/- was agreed to be paid and was thus paid by the appellants/plaintiff to the Sewa Mandal. I may also note that as per the language of the compromise of the appellants/plaintiff with the Sewa Mandal, the payment which was made by the appellants/plaintiff to Sewa Mandal was as a donation, but, irrespective of the fact that whether the payment made was a donation or a consideration for the Sewa Mandal to withdraw the litigation, the fact of the matter is that the Clauses 26 of the two Collaboration Agreements clearly crystallize this liability for being fastened only upon the appellants/ plaintiff i.e. there was no liability on the respondent/defendant to reimburse the same to the appellants/plaintiff. Therefore, I do not find any illegality in the impugned judgment of the trial court by which the trial court by interpreting Clauses 26 of the two Collaboration Agreements has held that the payment made by the appellants/plaintiff to the Sewa Mandal was the liability of the appellants/ plaintiff and the respondent/defendant was under no obligation to reimburse the same.

7. I may note that once the interpretation of Clauses 26 of the two Collaboration Agreements is clear, one need not go into the aspect of payment of Rs. 1,45,000/- by the respondent/defendant to the appellants/plaintiff, but in any case, it is also noted that the trial court has dealt with this aspect by observing that the statement made by the respondent/defendant that such payment of Rs. 1,45,000/- was made as refund of security with respect to premises no. L-81, the same was a statement to which there was no cross-examination done by the appellants/plaintiff.

8. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.