

\* **HIGH COURT OF DELHI : NEW DELHI**

+ **IA No.7438/2007 &IA No.7439/2007 in CS (OS) No.219/2007**

Judgment reserved on: 10<sup>th</sup> February, 2009

% Judgment decided on : 24<sup>th</sup> February, 2009

Shri Harpreet Sachdeva .....Plaintiff  
Through : Mr. Parag Chawla, Adv.

Versus

Shri Mukesh Garg & Anr. ....Defendants  
Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Sanjeev  
Sabharwal, Adv.

Coram:

**HON'BLE MR. JUSTICE MANMOHAN SINGH**

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not?  | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

**MANMOHAN SINGH, J.**

1. By this order, I shall dispose of two applications being I.A. No. 7438/2007 under Order VII Rule 11 CPC filed by defendant No.1 and IA No.7439/2007 under Order 7 Rule 11 CPC filed by defendant no.2 seeking rejection of plaint filed by the plaintiff. The plaintiff has filed the suit for specific performance and permanent injunction against the defendants.

2. The defendant no. 1 alleged that prior to the filing of the present suit, he has already sold the suit property to defendant no. 2 by way of registered sale deed dated 09.02.2007 duly registered with Sub-

Registrar-III as Registration No. 725 in Book No. I., Vol. No. 12, 219 on pages 105 to 112. In these circumstances, it is submitted that he cannot execute any alleged agreement to sell for which specific performance or permanent injunction with respect to the suit property is sought by the plaintiff. Only a suit for damages and not a suit for specific performance lie under these circumstances and therefore, the suit of the plaintiff qua the defendant no. 1 for specific performance and other reliefs relating to the suit property is not maintainable.

3. In the application filed by defendant No.2, it is submitted that the entire body of the plaint is silent qua defendant No.2 company and does not allege or raise any specific allegation or otherwise against the defendant No.2. It is submitted that the only fact admittedly mentioned in the plaint is regarding the purchase of the suit property by the defendant No.2 company. It is submitted that no cause of action is disclosed qua defendant No.2 in the plaint.

4. It is further submitted that the defendant No.2 company is a bonafide purchaser for consideration and has no privity with the plaintiff qua the suit property. The defendant No.2 company purchased the suit property by due process of law and by way of registered sale deed dated 9.2.2007 and the said transactions are clean, without any fraud or foul play. It is submitted that the contents of the plaint of the present suit does not contend any allegations either in law or in fact against the defendant No.2 company which would entitle the plaintiff to have any locus or basis to demand the relief of specific performance and permanent injunction qua the suit property from the defendant No.2

company. It is submitted that the suit is not maintainable as it is filed against the defendant No.2 company.

5. In the reply filed by the plaintiff, it is denied that the defendant no. 1 has sold the suit property to the defendant no. 2 by way of registered sale deed prior to the filing of present suit. The suit was filed on 6<sup>th</sup> February, 2007 and stay was granted on 7<sup>th</sup> February, 2007 before the execution of alleged sale deed by defendant no. 1 in favour of defendant No.2. It has been stated that the defendant no. 1 had agreed to purchase the suit property from its previous owner in his name on 7<sup>th</sup> December, 2005 and then had agreed to sell the said property to the plaintiff on 11<sup>th</sup> December, 2005. The initial dealing in respect of said property by previous owners, namely Smt. Bhramwati, Shri Kishan Lal and Shri Mohan Rajput was in the name of the defendant no. 1 only and not in the name of the defendant no. 2.

6. Thereafter, the defendant no. 1 had entered into agreement to sell from previous owners in the name of the defendant no. 2 and took GPA in her favour on 12.6.2006 and present sale deed has been executed by the defendant no. 1 in favour of the defendant No.2 on the basis of said GPA after stay order. The transaction after stay order is between defendant no. 1 and 2 who are husband and wife and where no consideration has been transferred on 9.2.2007 and the same is, therefore, a sham transaction.

7. It is stated that the above said joint owners entered into an agreement to sell the said property to Shri Shiv Kumar for Rs. 2,00,01,000/- on 16.07.2005 who also agreed to get the property

converted to freehold and get their name mutated and then by settlement agreed to sell the property to defendant no. 1.

8. The plaintiff avers that the defendant no. 1 represented to the plaintiff that he had agreed to purchase the said property from the previous owners by agreement and settlement and was competent to further sell the said property on behalf of previous owners and purchaser. He also represented that the property would be converted into freehold after mutation and that the previous owners would get vacant possession of said property from the tenant and then agreed by receipt dated 07.12.2005 to transfer the said property in favour of defendant no.1.

9. The plaintiff further avers that an agreement to sell was entered between him and defendant no. 1 on 11.12.2005 for the sale of said property for a sum of Rs. 2,55,00,000/-. The plaintiff paid Rs. 25,00,000/- on 11<sup>th</sup> December, 2005 to the defendant no. 1 as advance/earnest money. The balance amount of Rs. 2,30,00,000/- was to be paid before the Sub-Registrar at the time of execution and registration of sale deed after conversion of property from leasehold to freehold and the possession was to be handed over to the plaintiff on or before 10.03.2006.

10. As per the plaintiff, the defendant no. 1 failed to complete the formalities of freehold and mutation by 10.03.2006 and further failed to execute sale deed in favour of plaintiff by 10.03.2006.

11. Allegedly, the plaintiff on request of defendant no. 1 paid a further amount of Rs. 25,00,000/- in cash on 28.06.2006 against cash

receipt.

12. On 01.02.2007, the plaintiff got information to the effect that the defendant no. 1 had taken possession of said property and also got sale deed executed with regard to the property from previous owners. The plaintiff also came to know that the defendant no. 1 got the sale deed executed in favour of defendant no. 2 which is a Private Limited Company owned by defendant no. 1 and of which his wife is the Director. The plaintiff immediately approached defendant no.1 on 02.02.2007 and requested him to complete the sale transaction and give possession but allegedly, the defendant no. 1 demanded Rs. 1 crore more than the agreed amount as the market value of the suit property has gone upto Rs. 4 crores.

13. The plaintiff avers that on 03.02.2007 also, the plaintiff with his brother approached defendant no. 1 for completing the transaction but defendant no. 1 refused to even meet them. On the same date, the plaintiff came to know about the ill-designs of defendant no. 1 to sell the property to a third party. When confronted with the same, the defendant no. 1 demanded the increased payment. It is alleged that the intention of the defendant no. 1 has become bad, dishonest and mala fide. It is submitted that plaintiff has been cooperating with the defendant no. 1 for more than one year to complete the formalities of conversion and mutation.

14. Allegedly, the defendant no. 1 has also threatened to sell the said property to another party thereby creating apprehension and tension in the plaintiff's mind and is guilty of cheating and dishonesty.

15. It is submitted that the defendant No.1 has no right and title to sell the said property to any other person or to handover possession of said property to any third person other than to the plaintiff. The defendant No.1 wants to frustrate the said agreement to sell which is a prior document and part substantial payment has been made by the plaintiff to the defendant No.1 in performance of contract.

16. In para 14 of the plaint it is averred that the defendant No.2 company is fully owned company of the defendant No.1. The wife of the defendant No.1 is also the director of the company. Thus the defendant No.2 has been made party as the present sale deed is in favour of the defendant No.2 only in respect of the said property and is liable to sell the said property to the plaintiff only. The defendants are liable for the specific performance of agreement and to execute sale deed of the said property in favour of the plaintiff.

17. In reply to the application under Order VII Rule 11 CPC by the defendant No.2, the plaintiff has denied that the plaint of the plaintiff does not disclose any cause of action against the defendant No.2 company. It is also denied that the entire body of plaint is silent qua the defendant No.2 company or does not allege or raise any specific allegation or otherwise against the defendant No.2. In fact the plaintiff has clearly stated about the status of the defendant No.2 in para No.9 and 14 of the plaint. It is clearly stated that the defendant No.1 has entered into the agreement to sell/sale deed from previous owners in the name of the defendant No.2 which is owned by the defendant No.1 only who is one of the directors of the defendant No.2 and further stated that

the wife of the defendant No.1 is also one of the directors and as such the defendant No.1 is bound by the said agreement and the defendant No.2 is liable to execute the sale deed in favour of the plaintiff as the defendant No.2 is owned by the defendant no.1 only. The possession of the said property has also been with the defendant No.1 only. It is further submitted that admittedly, the defendant No.1 has taken General Power of Attorney from previous owners in his name and the agreement to sell is in the name of the defendant No.2 and after the stay order on 7.2.2007, the defendant No.1 has executed sale deed as GPA holder of previous owners in the name of the defendant No.2.

18. It is averred that the defendant no.2 has not made any consideration amount on 9.2.2007 at the time of execution of sale deed and as such it is wrong to say that the sale deed on 9.2.2007 is for consideration.

19. The suit by the plaintiff was filed on 6.2.2007 before the execution of sale deed and information of the same by the plaintiff was given on 7.2.2007 itself by Registered AD vide postal receipt No.0823 and 0824 and also by courier vide receipt No.Z48613581 and Z48613582 of DTDC courier in compliance of Order 39 R 2A.

20. The agreement to purchase the said property from previous owners and settlement documents dated 7.12.2005 were not executed by the defendant No.2 but by the defendant No.1 in his individual name and it is only for his convenience and for malafide design that the defendant No.1 has got the agreement to sell and lateron sale deed executed in favour of the defendant No.2 which is owned by the

defendant No.1 only and as such the defendant No.2 is also bound by the said dealings. The initial dealing in respect of said property by previous owners, namely Smt. Bhramwati, Shri Kishan Lal and Shri Mohan Rajput was in the name of the defendant No.1 only and not in the name of the defendant No.2 and as such the defendant No.1 had agreed to sell the said property in favour of the plaintiff and just by taking sale deed in the name of the defendant No.2 which is owned by the defendant No.1 only cannot escape the liability of executing agreement to sell/sale deed with the plaintiff. The defendant No.2 is also bound by the said agreement to sell executed by the defendant No.1 and defendant No.1 and defendant No.2 both are liable to comply with said agreement to sell executed with the plaintiff as both the defendants are the same.

21. It is settled law that the provisions of Order 7 Rule 11 are procedural and they are designed and aimed at preventing vexatious and frivolous litigations. The power of rejecting the plaint has to be exercised by Courts sparingly and cautiously and the Court has jurisdiction, in a proper case, to reject the plaint. While rejecting a plaint, the Court has to confine itself only to the averments made in the plaint and is not supposed to look into the defence taken up by a defendant and the Court may not even examine or declare upon the correctness of the contents or otherwise, of the plaint. However, if after examination of the plaint and documents filed by the plaintiff, the Court finds that the suit is not maintainable, it must reject the plaint under the said provision.

22. The learned counsel for the plaintiff has relied upon the case of **Inspiration Clothes & U vs. Colby International Lim., 88(2000) DLT 769 (DB)**. Relevant para 10 of the judgment is as follows :

“10. ....The plea of the defendant that there is no cause of action does not amount to the plea that the plaint does not disclose any cause of action. A distinction must always be drawn between a plea that plaint does not disclose a cause of action and the plea that the plaintiff has no cause of action to sue. The grounds on which plaint can be rejected are enumerated in Clauses (a) to (d) of Rule 11 of Order 7, CPC. The first ground on which plaint can be rejected is that it does not disclose a cause of action. While considering the prayer to reject the plaint on ground (a) of Order 7 Rule 11, CPC that the plaint discloses no cause of action, which is essentially a demurrer, the defendant must be taken to admit for the sake of argument that the allegations of the plaintiff in the plaint are true in manner and form. The power of reject the plaint on this can be exercised only if the Court comes to the conclusion that even if all the allegations are taken to be proved, the plaintiff would not be entitled to any relief whatsoever. A distinction must always be drawn between a case where the plaint on the face of it discloses no cause of action and another in which after considering the entire material on the record the Court comes to the conclusion that there is no cause of action. In the first case the plaint can be rejected but in the latter case the plaint cannot be rejected. The suit has to be dismissed. Learned Single Judge adopted the second approach. This was not the stage where the Court was expected to enter into this controversy that whether there was a cause of action to the plaintiff against the defendant or not. No doubt that where the plaint is based on a document, the Court will be entitled to consider the said document also and ascertain if a cause of action is disclosed in the plaint, but validity of the document cannot be considered at this stage. To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and documents accompanying the plaint only and nothing else. The Court, however, cannot look at the defence or the defendant or the documents relied upon by the defendant. See *D. Ramchandran v. R.V. Janakiraman*

and Others, (1999) 3 SCC 267=II (1999) SLT 484 = II (1999) CLT 109 (SC). Learned Single Judge fell in error in placing reliance upon the material supplied by the defendant, which alone is sufficient to set aside the impugned order.....”

23. He also relied upon the case of **Kapildeo Prasad & Anr. Vs. Ramanand Prasad & Ors.; AIR 2007 Patna 1**. Relevant paras 7 and 8 are as follows :

“7. Now coming to the first ground raised in support of the application that by concealing material particulars, the plaintiffs have committed fraud which disentitles them to any relief and, accordingly, the plaint should be rejected. I am afraid, the principle has been argued beyond its obvious application. The principle that “fraud vitiates all” cannot be extended to rejection of a plaint. Fraud is a question of fact to be established in course of trial. What is stated in the written statement is merely the defence of the defendant which has to be proved in accordance with law and received in evidence. It is then that those facts can be taken note of and acted upon. Moreover, a reference to the judgment of the Apex Court in the case of S.P. Chengalvaraya Naidu (AIR 1994 SC 853) (supra) as referred to by Shri S.S. Dwivedi, and those line of cases would show that in all those cases, some benefit had accrued to the party by practicing fraud. The Courts using the said principle cancelled the benefit accrued. In the present case, it cannot be said that any benefit has yet accrued to the plaintiffs even if it be assumed that the plaintiffs intended to commit a fraud. The principle is unexceptionable but has no application to the facts of the present case. I am aware of the principle of suppression very suggestion falsi but that principle also apples when the end result has to be considered in a trial or in a proceeding. Here, the Court is requested to use the said principle to throw out the plaint at the very threshold. In my opinion, those principles cannot be applied at this stage of the proceeding.

8. .... This principle had been laid down way back by the Privy Council in the celebrated decision of Nazir Ahmad’s case and followed repeatedly by courts in India. Here, in the present case, CPC is a complete Code in itself. It provides for initiation of resolution of civil disputes and all procedures ending to its resolution by a judicial

pronounce. Once proceedings are initiated thereunder. Shri Sideshwari Prasad Singh, learned senior counsel for the plaintiffs has rightly taken aid of case of Saleem Bhai and others (AIR 2003 SC 759)(supra) wherein the Apex Court, while dealing with an application under Order 7 Rule 11 of CPC has clearly held in paragraph 9 that while deciding to accept or to reject the plaint what can be seen is only the averments made in the plaint. This has been the consistent view of all the Courts. The defence cannot be looked into. Reference can be made to AIR 1996 Delhi 14, AIR 1996 Orissa 163 and AIR 1983 Rajasthan 1 wherein it has consistently held that the first point when a decision has to be taken in terms of Order 7 Rule 11 of CPC is when the plaint is presented in the court for being registered as a suit. At that point of time, there is no defendant present. It is only the plaint that has to be looked in. Applying the above principle, it is clear that the plaint thus discloses a cause of action, the averments do not disclose that the suit is barred by any law.....”

24. It is clear in the instant case that the plaintiff had entered into the agreement to sell with defendant No.1 on 11.12.2005. This fact is not denied by the defendants. From the perusal of documents and averments made in the plaint, it is apparent that defendant No.1 sold the property to defendant No.2 who is his wife. It cannot be said that the plaint does not disclose cause of action. Without going into the merits of the case, I am, of the opinion that the dispute regarding the specific performance of agreement to sell can be looked into only at the stage of trial. I find no ground to reject the plaint, both the applications are hereby dismissed with cost of Rs.10,000/- (Rupees Ten Thousand).

**MANMOHAN SINGH, J.**

**FEBRUARY 24, 2009**

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