

IN THE COURT OF SHRI GIRISH KATHPALIA,  
DISTRICT & SESSIONS JUDGE (HQ)  
TIS HAZARI COURTS, DELHI.

Suit No. 4034/2017

Smt. MEENAKSHI  
D/o Shri JAI PRAKASH  
R/o 3474, ARYAPURA,  
GALI KARTAR SINGH, NEAR JAIN MANDIR  
SUBZI MANDI, DELHI 110007

.....PLAINTIFF

VERSUS

Mr. RAJENDER TANWAR  
S/o LATE Shri SHISH RAM  
R/o 74, BHARGAV LANE  
BAIRO MANDIR, TIS HAZARI,  
DELHI 110054

.....DEFENDANT

*Date of filing : 01.12.2017*

*First date before this court : 29.05.2019*

*Arguments concluded on : 27.02.2020*

*Date of Decision : 12.05.2020*

*Reason for delay in pronouncement of Judgment : Covid19 Lockdown*

*Appearance : Shri Kaushalender Singh, counsel for plaintiff  
Shri K.K. Singh, counsel for defendant*

JUDGMENT

1. Plaintiff has sought decree of specific performance against

the defendant for execution of sale deed pertaining to two room set on second floor and two room set on third floor with roof rights of property bearing no. 530-531, Mukeempura, Sabzi Mandi, Delhi (hereinafter referred to as “the suit property”) after receiving balance sale consideration of Rs. 24,00,000/-; and in the alternative, a decree of Rs. 20,00,000/- with interest at a rate of 24% per annum for the period from the date of payment to the defendant till its realization; a decree of possession of the suit property; a decree of permanent injunction restraining the defendant from creating third party interest in the suit property; and costs of the suit. Upon service of summons, defendant entered appearance through counsel and filed written statement, which followed replication from plaintiff. On the basis of issues framed by my learned predecessor, trial was conducted in which both parties stepped into the box as their respective solitary witness. Both sides opted to file written arguments.

2. Briefly stated, the factual matrix pleaded by plaintiff in her plaint was as follows.

2.1 Defendant, claiming himself to be absolute owner of a portion at second and third floor of property no. 530-531, Mukeempura, Sabzi Mandi, Delhi along with roof rights on the basis of a collaboration agreement dated 29.04.2016 executed between the defendant and the registered owner thereof, approached the plaintiff for sale of two rooms

set on second floor, two rooms set on third floor with roof rights of property bearing no. 530-531, Mukeempura, Sabzi Mandi, Delhi (the suit property). Plaintiff agreed to purchase the suit property on the assurances extended by the defendant.

2.2 Accordingly, parties to this suit executed agreement to sell dated 27.01.2017 for sale of the suit property for total consideration of Rs. 44,00,000/-. Towards earnest money, plaintiff paid to defendant a sum of Rs. 20,00,000/- out of which a sum of Rs. 14,00,000/- was paid in cash while the balance Rs. 6,00,000/- was paid by way of three cheques. The remaining sale consideration was agreed to be paid by the plaintiff to the defendant at the time of execution of the sale deed and handing over of possession of the suit property to the plaintiff.

2.3 Thereafter, defendant informed the plaintiff that he had misplaced the three cheques of part payment of earnest money and one cheque of Rs. 1,00,000/- issued by plaintiff got dishonoured (*as pleaded in the plaint*).

2.4 By the time the date for execution of sale transaction came to an end, plaintiff contacted the defendant to inquire about status of the suit property but he did not give her any satisfactory answer, so plaintiff visited the premises in question but found that the suit property was not ready to be handed over. When plaintiff contacted the defendant, he

agreed to extend the date of execution of sale deed.

2.5 On 06.07.2017, parties to this suit executed supplementary agreement to sell the suit property whereby the defendant agreed to hand over vacant possession of the suit property and to execute sale deed on or before 06.12.2017 on payment of the balance sale consideration.

2.6 But thereafter, despite repeated requests of plaintiff, the defendant did not hand over chain of title deeds and also did not adhere to the supplementary agreement to sell in order to complete the sale transaction.

2.7 Therefore, plaintiff got issued legal notice dated 21.08.2017, calling upon the defendant to hand over vacant possession of the suit property and to execute sale deed after accepting the balance sale consideration.

2.8 Since plaintiff is ready and willing to perform her part of contract but defendant opted to ignore repeated requests and the legal notice of plaintiff, the present suit has been filed.

3. Defendant filed a detailed written statement denying the pleadings of plaintiff and set up his case as follows.

3.1 Defendant never entered into any agreement to sell with plaintiff. The cheques referred to in the plaint had been given by plaintiff to the defendant through his partner Sanjay Chugh towards investment in various building projects. The said Sanjay Chugh obtained signatures of the defendant on some blank papers as security and fabricated the agreements to sell.

3.2 Since defendant was never owner of the suit property, as also confirmed by the collaboration agreement annexed with the plaint, the suit for specific performance of agreement to sell is not even maintainable.

3.3 Plaintiff did not pay a single penny to the defendant, so she is not entitled to even money decree as sought by her. Plaintiff had given only one cheque of Rs. 3,00,000/- to the defendant and even that cheque got dishonoured for the reason that signatures of the drawer differed with the specimen signatures in the bank.

3.4 Defendant never received any legal notice as alleged by plaintiff. Hence, the suit is liable to be dismissed.

4. Plaintiff filed a detailed replication, denying the contents of the written statement and reaffirmed the plaint contents.

5. On the basis of pleadings my learned predecessor framed the following issues :

“(1) Whether the plaintiff is entitled to the specific performance of agreement dated 27.01.2017 and 06.07.2017? OPP

(2) If the above issue is decided in favour of the plaintiff, whether plaintiff is entitled to the constitutional (*sic*) relief of possession and permanent injunction? OPP

(3) Whether plaintiff is entitled to alternate relief, in case the specific relief is not possible then whether the plaintiff is entitled to the refund of Rs. 20,00,000/- alongwith interest, as prayed? OPP

(4) Whether the suit is properly valued for the purposes of court fees and jurisdiction ? OPP

(5) Whether the suit is without any cause of action and the alleged documents are forged and fabricated? OPD”

6. In support of their respective case, both parties stepped into the box as their solitary witness.

7. Plaintiff in her chief examination as PW1 deposed on oath the above mentioned contents of her pleadings and proved on record the agreements to sell dated 27.01.2017 and 06.07.2017 as Ex. PW1/1 and Ex. PW1/2 respectively, the legal notice dated 21.08.2017 and courier receipt as Ex. PW1/3 and Ex.PW1/4 respectively, and site plan of the suit

property as Ex. PW1/5. The copy of the collaboration agreement was exhibited as Ex. P1.

8. On the other hand, when defendant stepped into the box as DW1 but stated that the chief examination affidavit dated 23.07.2019 did not bear his signatures, the same was marked as Mark DX and DW1 was directed to be examined in chief in court orally. In the said chief examination, the defendant stated that he used to work with Sanjay ji, who had given him one cheque to get encashed but the same got bounced and for past 4-5 years, he had not been working with Sanjay ji and that the plaintiff was a partner of Sanjay ji.

9. After conclusion of trial, both sides opted to file written arguments which have been examined by me.

10. In the written arguments, learned counsel for plaintiff reiterated the above narrative and argued that execution of agreements dated 27.01.2017 and 06.07.2017 for sale of the suit property stands completely proved in so far as the defendant in cross examination alleged that whatever agreement was executed by him, the same was with Sanjay ji but he did not produce even a copy of that agreement whereas signatures of the defendant on the agreements to sell are identical to his admitted signatures on the collaboration agreement.

11. On the other hand, the learned counsel for defendant in written arguments submitted that cross examination of PW1 reveals that her case of having paid cash Rs. 14,00,000/- to the defendant is not believable at all. It was also argued on behalf of defendant that the collaboration agreement Ex. P1 shows that after completion of transaction, the entire first floor and second floor of the suit property without roof rights would be occupied by the defendant whereas the agreements to sell referred to the suit property as the second floor and third floor with roof rights, which shows that the agreements to sell are forged and fabricated documents.

12. Against the above backdrop, my issue wise findings are as under.

ISSUE No. 1

13. The collaboration agreement Ex. P1 is the document admitted by both sides and the same is a crucial document for the purposes of examining the enforceability of the agreements to sell. According to Ex. P1, the premises bearing no. 531, Mukeempura, Sabzi Mandi, Delhi were owned by three persons namely Smt. Pushpa Devi, Smt. Padma Wati and Shri Purshotam, who entered into the collaboration agreement with the defendant for the purposes of undertaking construction on the said premises. By way of the said collaboration agreement Ex. P1, it was agreed that after completion of construction,



the entire lower ground floor, the upper ground floor and the third floor with exclusive roof rights shall vest with the registered owners Smt. Pushpa Devi and others, whereas the entire first floor and second floor without roof rights shall vest with the defendant. Further, in the collaboration agreement Ex.P1, it was agreed that the defendant would be able to enter into any agreement to sell the first floor and the second floor without roof rights with any third party only after completion of construction. It would be important to note that the collaboration agreement Ex. P1 pertained only to the premises no. 531, Mukeempura, Subzi Mandi, Delhi. As regards premises no. 530, Mukeempura, Sabzi Mandi, Delhi, there is no title document or even any collaboration agreement in favour of the defendant.

14. But the agreements to sell, Ex. PW1/1 and Ex. PW1/2 pertain to the second floor and the third floor with roof rights of premises no. 530-531, Mukeempura, Sabzi Mandi, Delhi.

15. In other words, as regards premises no. 530, Mukeempura, Sabzi Mandi, Delhi there is not even a shred of documentary evidence reflecting that the same is owned by the defendant and as regards third floor with roof rights of premises no. 531, Mukeempura, Sabzi Mandi, Delhi also there is no documentary evidence to show that the same were owned by the defendant, and as regards second floor of the premises no. 531, Mukeempura, Sabzi Mandi, Delhi, the defendant was yet to acquire

title after completion of construction. Consequently, the defendant was not competent to execute any agreement to sell as regards the second floor and the third floor of premises no. 530-531, Mukeempura, Sabzi Mandi, Delhi. That being so, the agreements to sell Ex. PW1/1 and Ex. PW1/2 cannot be specifically enforced.

16. In view of above discussion, issue no. 1 is decided against plaintiff and it is accordingly held not proved that plaintiff is entitled to specific performance of agreements dated 27.01.2017 and 06.07.2017.

#### ISSUE No. 2

17. In view of above findings, issue no. 2 is decided against plaintiff and it is accordingly held that plaintiff is not entitled to the consequential relief of possession or permanent injunction.

#### ISSUE No. 4

18. Issue as regards valuation of the suit was framed on the basis of preliminary objection in the written statement but neither any evidence was led nor any arguments were advanced. Plaintiff assessed value of her suit at Rs. 44,00,000/- and paid court fees of Rs. 45,290/-. The issue no. 4 is decided in favour of plaintiff and it is accordingly held that the suit was properly valued for the purposes of court fees and jurisdiction.

ISSUES No. 3 & 5

19. In view of findings on issue no. 1 that the agreements to sell Ex. PW1/1 and Ex. PW1/2 are not specifically enforceable, what is to be examined is as to whether plaintiff is entitled to refund of Rs. 20,00,000/- with or without interest as sought by her. Answer to this question would depend upon the finding as to whether a sum of Rs. 20,00,000/- was received by the defendant from the plaintiff under the agreements to sell Ex. PW1/1 and Ex. PW1/2, which agreements according to the defendant are forged and fabricated documents. As mentioned above, according to plaintiff the earnest money of Rs. 20,00,000/- was paid by way of cash Rs. 14,00,000/- and by way of three cheques to the total tune of Rs. 6,00,000/-. Admittedly, except the agreements to sell Ex. PW1/1 and Ex. PW1/2 there is no other evidence of payment of cash Rs. 14,00,000/-. As also mentioned above, according to the defendant, he never received Rs. 20,00,000/- from plaintiff and his business partner Shri Sanjay Chugh had obtained his signatures on blank papers which were fabricated into agreements to sell.

20. The transaction involving cash payment of Rs. 14,00,000/- must raise eyebrows, requiring the court to ascertain the source of funds. More so, where admittedly the only evidence of such cash payment is an agreement to sell, which according to the defendant is a fabricated document. In order to ascertain as to whether the agreements to sell Ex. PW1/1 and Ex. PW1/2 are genuinely executed documents, it would be

apposite to threadbare examine the entire evidence on record.

21. In her cross examination as PW1, plaintiff stated that she was engaged in sale purchase of immovable property and was assessed to Income Tax, but could not tell the amount of earnings reflected in her Income Tax Returns; that out of three cheques received from defendant, two cheques of Rs. 2,00,000/- each got honored but the third cheque of Rs. 1,00,000/- bounced; that the cash earnest money of Rs. 20,00,000/- was paid by her in form of currency notes of Rs. 2,000/- each; that the said cash earnest money of Rs. 20,00,000/- was paid by her on 06.07.2017 itself; that she had borrowed the said cash amount of Rs. 20,00,000/- from her 2-3 relatives, whose name she could not tell; that she had borrowed cash Rs. 4,00,000/- each from three of her relatives and the remaining Rs. 8,00,000/- in cash was lying at her residence; that she did not issue any loan receipt to any of those relatives from whom she borrowed Rs. 4,00,000/- each and she also did not know about occupation of her those relatives; that she had not declared in her Income Tax Returns or any of the account books that she had paid Rs. 20,00,000/- cash to the defendant; that she had also not disclosed in her Income Tax Returns or any of her account books that she was holding Rs. 8,00,000/- as cash in hand; and that she held bank accounts with the Punjab National Bank and the Axis Bank, total credit balance in the said accounts being Rs. 40,000/- to Rs. 45,000/- and in the month of December 2017 also she had roughly the same credit balance in her both

bank accounts.

22. On the other hand, in his cross examination as DW1, defendant reiterated that he never had any financial dealings with the plaintiff and never executed any agreement to sell with her; and that he did not receive any legal notice from plaintiff.

23. The agreements to sell Ex. PW1/1 and Ex. PW1/2 raise suspicion as regards genuineness of the same for following reasons. The stamp papers of both agreements to sell reflect the consideration price as zero, which raises suspicion about genuineness of the same. Contents of each of the agreement to sell are typed written in two different fonts and two different inks. The revenue stamp pasted in the receipt forming part of the agreement to sell Ex. PW1/1 appears to have been removed from some other document as a piece of previous paper remained glued to the stamp and was pasted on the receipt forming part of agreement to sell Ex. PW1/1. The receipt forming part of agreement to sell Ex. PW1/2 also was executed but without any revenue stamp. Further, according to plaintiff, by 06.07.2017, the entire earnest money of Rs. 20,00,000/- stood paid and the purpose of executing agreement to sell Ex. PW1/2 was only extension of time to complete the sale transaction; that being so, it remains unexplained as to why a fresh receipt forming part of Ex. PW1/2 was got signed from the defendant, that too without revenue stamp.

24. Agreements to sell Ex. PW1/1 and Ex. PW1/2 were signed by witnesses namely Shri Ashok Kumar and Shri Sanjay, but neither of them was brought to the witness box despite specific pleadings of defendant that both agreements were fabricated documents.

25. Another significant aspect is the question as to whether the cash amount allegedly paid by the plaintiff to the defendant was Rs. 14,00,000/- (*as claimed in the plaint and chief affidavit of PW1*) or Rs. 20,00,000/- (*as claimed by PW1 in her cross examination and in the agreement to sell Ex. PW1/2*). According to the agreement to sell Ex. PW1/1, the earnest money was paid by way of cash Rs. 14,00,000/-, one cheque of Rs. 1,00,000/-, one cheque of Rs. 3,00,000/- and one cheque of Rs. 2,00,000/-. According to agreement to sell Ex. PW1/2, the entire earnest money was "cash bayana Rs. 20,00,000/-". Although the agreement to sell Ex. PW1/2 also mentions that three cheques got misplaced by the defendant, it further mentions that one cheque for Rs. 1,00,000/- got bounced, so according to Ex. PW1/2, the cheques were four in number. It also remains unrevealed as to when the cash amount above Rs. 14,00,000/- was paid in order to aver in Ex. PW1/2 that the earnest money was cash Rs. 20,00,000/-. Even placement of signatures of defendant in the agreements to sell and the receipts forming part thereof appear to be unnatural. Most importantly, according to plaintiff in her cross examination, the earnest money of cash Rs. 20,00,000/- was

given by her to the defendant on 06.07.2017 itself and that being so, it looks highly suspicious that parties would have earlier executed Ex. PW1/1, the agreement to sell dated 27.01.2017 claiming payment of cash earnest money of Rs. 14,00,000/-. These indicators examined in the light of oral evidence lend strong credence to the claim of the defendant that the agreements to sell were fabricated on blank papers that had been got signed from him by Shri Sanjay Chugh.

26. As regards the amount of cash allegedly paid by plaintiff to the defendant, it is neither the pleaded case of plaintiff nor stated by her in her chief examination that she paid cash Rs. 20,00,000/- to the defendant, but in her cross examination throughout the cash amount referred to was Rs. 20,00,000/-. As regards the exact amount of cash allegedly paid, in her pleadings and chief affidavit plaintiff stated that the cash paid was Rs. 14,00,000/-; in her cross examination as PW1 she stated that the cash paid was Rs. 20,00,000/-.

27. Even irrespective of the exactness of the cash amount, the overall case set up by plaintiff fails to convince. As mentioned above, according to plaintiff in her cross examination, the said amount of Rs. 20,00,000/- paid by her to the defendant was borrowed by her in the form of Rs. 4,00,000/- each from her three relatives and Rs. 8,00,000/- lying at her home. It looks highly unbelievable that a person holding total credit balance of hardly Rs. 40,000/- in her two bank accounts

would be keeping a cash amount of Rs. 8,00,000/- at her residence and would be able to borrow Rs. 12,00,000/- from relatives, that too without any loan receipt. Not just this, plaintiff was not even able to disclose name or even occupation of any of those relatives, who allegedly lent her Rs. 4,00,000/- each.

28. Admittedly, the alleged cash transaction, be it of Rs. 20,00,000/- or of Rs. 14,00,000/-, which is not a petty amount by any means, was not reflected by plaintiff or even the defendant in their Income Tax Returns or any of their accounts. It was clearly a black money transaction, if at all it is assumed that money transaction did take place between the parties. It is to deal with the mammoth repercussions of black money transactions on the overall economy of the country that the Government of India had to carry out extensive exercise of demonetization in November-December 2016. Going by the case set up by the plaintiff, the undeclared cash transaction was done by her in the month of January 2017. Irrespective of suspicions against truthfulness of plaintiff's version as described above, no court can sanctify black money transactions. For, decreeing such money suits would have drastic consequence of back door conversion of black money into white money.

29. In view of above discussion, issues no. 3 and 5 are decided against plaintiff and it is accordingly held that the agreements to sell Ex. PW1/1 and Ex. PW1/2 being fabricated documents, plaintiff is not

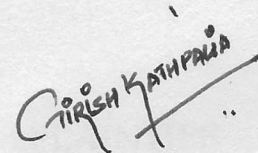


entitled to even the alternate relief of refund of Rs. 20,00,000/-.

RELIEF

30. In view of above findings, the suit is dismissed. Decree sheet be accordingly drawn and file be consigned to records, leaving the parties bear their own costs.

Announced in the open court on  
this 12<sup>th</sup> day of May, 2020 (through VC)



(GIRISH KATHPALIA)  
District & Sessions Judge (HQ)  
Tis Hazari Courts  
Delhi 12.05.2020 (a)