

Sanjeev Kumar Narang vs Kavita Arora And Anr on 29 April, 2020

Author: Navin Chawla

Bench: Navin Chawla

\$~1 (0S)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS (0S) 269/2019

SANJEEV KUMAR NARANG

..... Plaintiff

Through: Mr.Shiv Chopra, Adv.

versus

KAVITA ARORA AND ANR.

.....Defendants

Through:

Mr.Kanwal Chaudhary,

Adv. for Defendant no. 1

None for Defendant no. 2

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

%

29.04.2020

IA NO. 14371/2019

1. This application is heard by video conferencing.

2. This application has been filed by the Plaintiff praying an order restraining the Defendant no.1 from encashing the cheque number 092176 drawn on Central Bank of India dated 01.05.2020 for a sum of Rs. 1,00,00,000/- till the possession of 1200 square yards on the left hand side portion of plot number 56, Khasra number 324, khewat number 106 situated at Arjun Nagar, Kotla Mubarakpur, New Delhi 110049 (hereinafter referred to as the 'Suit Property') is handed over to the Plaintiff.

3. The learned counsel for the Plaintiff/applicant asserts that the applicant had paid a total consideration of Rs. 3.50 crores for purchasing the said property, including the Suit property, from the Defendant no. 1. According to the Plaintiff, after the execution of the Sale Deed dated 18.04.2019, a Memorandum of Understanding (MOU) of the same date was executed between the Plaintiff and the Defendant no. 1 wherein, if for a period of one year from the date of the sale, that is 18.04.2019 till 18.04.2020, no person raised any right, claim or interest over the said property apart from the Plaintiff then the Plaintiff would pay a further sum of Rs. 1 crore to the Defendant no.1 by way of the abovementioned post dated cheque.

4. The Plaintiff asserts that the Defendant no. 1 had to handover the peaceful and vacant possession of the entire property on the execution of the Sale Deed. It is further asserted that the Defendant no. 1 could not hand over the possession of the Suit property, which is in illegal and unlawful occupation of the Defendant no. 2. The Plaintiff had filed the present Suit for recovery of the possession of the Suit portion of the property alongwith the damages.

5. The learned counsel for the Plaintiff, placing reliance on Clauses 1 and 2 of the MOU dated 18.04.2019, submits that since the Defendant no. 2 has challenged the title of the Defendant no. 1 to the Suit property and the Defendant no. 1 has failed to hand over the physical possession of the Suit property to the Plaintiff, the Defendant no. 1 is not entitled to encash the abovementioned cheque.

6. On the other hand, the learned counsel for the Defendant no. 1 submits that the application is liable to be dismissed on the ground of concealment made in the Plaintiff. He submits that in the Plaintiff, there is no reference to the MOU in question and the entire Plaintiff is based only on the Sale Deed dated 18.04.2019, alleging therein that the Defendant no. 1 has failed to hand over the vacant and peaceful possession of the entire property to the Plaintiff. He submits that in the Plaintiff there is no averment made regarding any challenge to the title of the Defendant no. 1 to the said property. He submits that the MOU as also the two possession letters relied upon by the Plaintiff themselves show that only symbolic possession of the part of the property which is in possession of the Defendant no. 2 had to be given to the Plaintiff and was so handed over by the Defendant no. 1 and therefore, the claim of the Plaintiff that the Defendant no. 1 cannot encash the cheque for want of the possession of the entire property is incorrect.

7. I have considered the submissions made by the learned counsels for the parties. A bare reading of the Plaintiff shows that there is no averment with respect to the MOU in the entire Plaintiff. The Plaintiff conceals the factum of existence of such an MOU completely. In fact, it asserts that the sale consideration for the property was only Rs. 3.50 crores which had been paid in full by the Plaintiff to the Defendant no. 1. The MOU speaks otherwise.

8. Though, the learned counsel for the Plaintiff has urged that the Plaintiff has filed an application seeking amendment in the Plaintiff to bring the averments regarding the MOU on record, in my view, this cannot absolve the plaintiff of the consequence of such concealment in the Plaintiff. Such concealment disentitles the Plaintiff to seek any relief by virtue of the present application.

9. Even otherwise, prima facie, Clauses 1 and 2 of the MOU do not support the case of the Plaintiff. Clause 1 and 2 of the MOU are reproduced hereinunder:-

"1. And whereas the Second Party for the safety and security of title of the Sale Property have retained Rupees One Crore out of the total sale consideration amount which is Rupees Four Crore Fifty Lakhs only as Security, Which he shall pay to the first party after one year of the Sale Deed i.e on or before one year if during the said time period any Legal Heir claims any right title interest lien in the said property or found any irregularity in the title deed then the first party and second party (both) will deal and clear all the disputes, irregularity in the title deed, claim by any legal

heirs and after the settlement of the disputes the second party shall pay the above mentioned amount to the first party. (That the second party has issued post dated cheque amount of Rupees One crore only vide cheque no:092176 dated: 01/05/2020 Drawn on: Central Bank of India, Gulmohar Park. And Upon expiry of the said time period the first Party is fully empowered to present the cheque in his bank account against clearing for payment.

2. There is an occupant in the Said Property in Portion (15*80) Thus, the Symbolic and physical Possession of the property shall be handed over by the First Party to the second party at the time of Registry of sale deed."

10. A reading of the above clauses would clearly show that Clause 1 acts as a warranty of title of Defendant no. 1 to the said property against any claim of legal heirs of Defendant no. 1. It is not the case of the Plaintiff that any legal heir of Defendant no. 1 has challenged the title of Defendant no. 1 to the Suit property or her authority to enter into the transaction of sale of the said property to the Plaintiff.

11. The learned counsel for the Plaintiff submits that Clause 1 of the MOU also acts as a warranty of title against any challenge to the title of the Defendant no. 1 to the said property by any third party. He submits that in the written statement filed by the Defendant no. 2 there is a challenge made to the title of the Defendant no.1 to the said property.

12. This submission, however, does not persuade me in the present application. Admittedly, the Plaintiff is not based on any such challenge being made to the title of Defendant no. 1 to the said property. I have enquired from the learned counsel for the Plaintiff if after the filing of the written statement by the Defendant no. 2, whether the Plaintiff asserted that there is a challenge to the title of the Defendant no. 1 to enter into the Sale Deed or the MOU thereby vitiating the entire transaction of sale. The answer is in the negative. He has also fairly admitted that the Defendant no. 2 has not filed any document claiming its title to the Suit property. In my prima facie opinion, therefore, the warranty offered by the Defendant no.1 for a period of one year from the execution of the MOU, has not been violated in any manner.

13. As far as possession of the Suit property is concerned, the possession letter placed at page 35 of the documents clearly reflects delivery of symbolic possession of the half portion of the property which is in possession of the Defendant no. 2. Clause 2 of the MOU which is reproduced hereinabove, also speaks about the mode of delivery of the possession to the Plaintiff being both symbolic and physical. In any case, the encashment of the cheque is not made subject to the physical possession of the Suit property, which was admittedly in occupation of Defendant no. 2, being handed over to the Plaintiff. The encashment of the cheque by Defendant no. 1 was subjected only to the issue of title and the title having been transferred to the Plaintiff, the defendant no. 1 cannot be restrained from encashing the cheque.

14. In view of the above, the Plaintiff has been unable to make out a prima facie case in his favour. The application is accordingly dismissed. There shall be no order as to cost.

15. The order shall be uploaded on the website of the Delhi High Court and also be supplied to the counsels for the parties.

NAVIN CHAWLA, J APRIL 29, 2020/rv