

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision : August 31, 2012

+

RFA(OS) 75/2012

JINESH KUMAR JAIN ...Appellant
Represented by: Mr.Sandeep Sethi, Sr.Advocate
instructed by Mr.Rajesh Yadav,
Advocate.

versus

IRIS PAINTAL & ORS. ..Respondents
Represented by: Nemo.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J. (Oral)

CM No.15053/2012

Allowed, subject to just exceptions.

RFA(OS) No.75/2012

1. Record of the suit has been perused. Vide Ex.P-1 dated September 26, 1988, the respondents had agreed to sell agricultural land to the appellant in respect whereof an award had already been published on June

06, 1987 under the Land Acquisition Act 1894. Out of a total sale consideration of ₹48,50,000/- the appellant had paid only ₹4,50,000/-.

2. Declining specific performance and passing a decree in sum of ₹4,50,000/- together with interest @18% per annum from the date when the suit was filed till realization, CS(OS) No.1154/1989 filed by the appellant has been disposed of vide impugned judgment and decree dated July 10, 2012.

3. The first reason given by the learned Single Judge is that the agreement in question being barred by Section 3 of the Delhi Lands (Restriction of Transfer) Act 1972 was void, keeping in view Section 23 of the Indian Contract Act 1872 and for which view the decision of the Supreme Court reported as 2009 (15) SCC 705 Shanti Sports Club & Anr. v. UOI & Ors. as also a decision of a Division Bench of this Court dated May 19, 2005 in WP(C) No.3186/2000 Shri Raghubir v. UOI & Ors. have been noted by the learned Single Judge.

4. We note that on February 25, 1989, vide Ex.PW-1/4, the appellant had served a legal notice upon the respondents, in paras 5 and 6 whereof it was alleged against the respondents that they had suppressed from the appellant the fact that an award had been published with respect to the subject lands. Thereafter, in para 7 of the notice, it was asserted as under:-

“7. That apart from above, by virtue of Section 3 & 4 of the Delhi Lands (Restrictions on Transfer) Act, 1972, there is prohibition on transfer of such lands, which has been acquired by the Central Government under the provision of the Land Acquisition Act, 1894, by sale, mortgage, gift, lease or otherwise. Thus, you have also committed an offence u/s 3 & 4 of the said Act and you have made yourself liable to be prosecuted u/s 9 of the Delhi Lands (Restrictions on Transfer) Act 1972.”

5. It does not lie in the mouth of the appellant to now urge to the contrary.

6. That apart, the learned Single Judge has correctly noted that Section 3 of the Delhi Lands (Restrictions on Transfer) Act 1972 would apply where an award has been published in respect of the lands agreed to be sold and Section 4 of the Delhi Lands (Restrictions on Transfer) Act 1972 would apply if award has not been published but proceedings for the proposed acquisition has been commenced under the Land Acquisition Act 1894.

7. Eschewing a reference to the reasoning in the impugned decision on the subject of the respondents not even applying for the necessary sale permissions and as a result whether at all the appellant had to prove readiness and willingness to complete the transaction, for the reason we feel it would be useless for us to discuss said aspect of the matter keeping in view the fact that we agree with the reasoning of the learned Single Judge on the third factor for which specific performance has been denied.

8. The same is that it is not obligatory for a Court to decree specific performance of a contract for sale of immovable property merely because it would be legally permissible to do so.

9. It needs to be highlighted that for faults neither attributable to either party, the suit seeking specific performance of Ex.P-1, filed in the year 1989, could be decided only on July 10, 2012 i.e. after 23 years of the suit being filed.

10. The learned Single Judge has noted various decisions passed by the Supreme Court which recognize that where there has been a phenomenal increase in the price of land, the Court would be justified in not decreeing specific performance.

11. To the reasoning of the learned Single Judge we would only add that cases where the proposed buyer has substantially paid the sale

RFA(OS) 75/2012

consideration i.e. has paid a major chunk of the sale consideration would be a good factor to be kept in mind in deciding whether specific performance be refused and the seller be somewhat recompensed by requiring the buyer to pay at a higher price, and the logic of the reasoning would be that the seller has used the money elsewhere and has got the benefit of price rise being neutralized. But where under an agreement to sell what is parted with is a small percentage of the sale consideration, loosely called earnest money, if delay not attributable to the seller takes place in the suit being adjudicated, it would be good exercise of discretion not to grant specific performance, as in the instant case, but to recompense the buyer by directing refund of the earnest money-cum-part sale consideration with adequate interest thereon. Highlighting that in the instant case interest awarded is @18% per annum (simple) and that the period for which interest has to be paid is when the suit was filed i.e. the year 1989 till date of payment during which period the maximum rate at which scheduled banks were offering interest on fixed deposit was 12% per annum which successively fell to as low as 5.5% per annum and currently stands at 9% per annum, we are of the opinion that the discretion exercised by the learned Single Judge does not warrant any reversal in appeal inasmuch as the discretion has been exercised on sound and reasonable judicial principles which are capable of correction by a Court of Appeal and not in an arbitrary manner.

12. We may only add that sub-section (3) of Section 20 of the Specific Relief Act is in sync with our reasoning above with respect to the money parted with under an agreement to sell. The said sub-section requires the Court to exercise its discretion to decree specific performance in cases where the plaintiff has done substantial acts in consequence of the contract in question, which in the case of an agreement to sell land would mean paying substantial sale consideration to the seller under the agreement.

13. The appeal is accordingly dismissed in limine but without any order as to costs.

CM No.15052/2012

Since the appeal itself stands disposed of, instant application seeking stay of the impugned order till disposal of the appeal stands disposed of as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

AUGUST 31, 2012
dk