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

\+ RSA 93/2016

Date of Decision: 01.04.2016

MUKESH KUMAR ..... Appellant
Through: Mr. Sumit Kalra, Adv.

versus

CHANDER PAL SINGH ..... Respondent
Through

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

CM Appln.11878/2016

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

CM Appln.11877/2016

1. For the reasons stated in the application, the delay of 15 days in filing the appeal is condoned.

2. The application stands disposed of.

RSA 93/2016

1. Mukesh Kumar, the appellant, has challenged the judgment dated 06.11.2015 passed by the learned Additional District Judge, Shahdara District, Kakardooma Courts Delhi in RCA No.18/2015 whereby the judgment and decree of the Trial Court dated 27.01.2015 in C.S No.147/2012 decreeing the suit for recovery of Rs.1,30,000/-

with interest at the rate of 9% per annum from the date of filing of the suit till the date of decree and future interest at the rate of 7% per annum from the date of decree till its realization as well as costs, has been upheld and affirmed.

2. Chander Pal Singh, respondent/plaintiff, on coming to know that the appellant/defendant wanted to sell his property measuring 25 sq. yds., agreed to purchase the same for a consideration amount of Rs.5,10,000/-. Ikrarnama (Agreement to Sell) was executed on 28.11.2011 in presence of witnesses. As earnest money, an amount of Rs.1,30,000/- was paid by the respondent/plaintiff on 28.11.2011. The Ikrarnama, referred to above, further indicated that the remaining consideration amount of Rs.3,80,000/- would be paid at the time of execution of the sale documents which, according to the agreement, had to be done on 28.03.2012. A day prior to the aforesaid date i.e. on 27.03.2012, the respondent/plaintiff communicated to the appellant about his having arranged money for getting the sale deed executed. The respondent/plaintiff went to the Office of the Sub-Registrar-IV, Seelampur on 28.03.2012 with the consideration amount but the appellant/defendant never showed up. Sometimes later, the appellant/defendant refused to either execute the sale documents or return the earnest money which was accepted by him.

3. Hence, Civil Suit No.147/2012 was preferred for recovery of double the amount of the earnest money i.e. Rs.2,60,000/- along with interest at the rate of 18% per annum.

4. The aforesaid suit was contested by the appellant/defendant on the grounds of:- (i) the competence/or the lack of it, of the

respondent/plaintiff in preferring the suit; (ii) appellant/defendant not being the owner of the suit property; (iii) no such Ikrarnama ever having been executed; (iv) the respondent/plaintiff not approaching the court with clean hands and suppressing a material fact of his being an organizer of the society run under the name and style of Kumkum Society at C-1/272, Gali No.18, Shukra Bazar, Harsh Vihar, Delhi and that his signature on a blank stamp paper and plain paper which was obtained for the purposes of making him a member of Kumkum Society had been misused by the respondent/plaintiff.

5. The Trial Court, on the basis of pleadings of the parties, by order dated 10.04.2013 framed the following issues:

(i) Whether the present suit of plaintiff is without cause of action? (OPD)

(ii) Whether the plaintiff has no locus standi to file the present case as the defendant is not the owner of the property in dispute as alleged? (OPD)

(iii) Whether no such agreement/Ikrarnama dated 28.11.2011 was ever executed between the parties? (OPD)

(iv) Whether plaintiff is entitled to the decree for recovery of amount as prayed? (OPP)

(v) Whether plaintiff is entitled for decree of interest, at what rate and for what period? (OPP)

(vi) Relief.

6. At the trial, the respondent/plaintiff examined himself as PW1 and deposed that he knew the appellant/defendant from before. The appellant/defendant had approached him for the purchase of his property but he had not brought his documents. Thus, without seeing the title of the property, Ikrarnama was executed on 28.11.2011 at the

house of Manohar Lal (PW2) in presence of some persons. The Ikrarnama was later registered at the Registrar Office. The Ikrarnama was signed by Manohar Lal. After the Ikrarnama was executed, an amount of Rs.1,30,000/- was paid, the money having been arranged at his own instance and through one of his friends, Sudesh Kumar.

7. The respondent/plaintiff during trial admitted the fact of his running the society under the name and style of Kumkum Society of which the appellant/defendant was a member. However, the claim of the appellant/defendant that his signatures were obtained on some blank papers and stamp papers for procuring the membership of the Housing Society was vehemently denied.

8. Manohar Lal (PW2) also does not claim to have seen the title documents of the suit property but had seen the electricity bill which stood in the name of the appellant/defendant. The fact of the agreement to Sell having been executed on 28.11.2011 was affirmed. The Ikrarnama was signed by the respondent/plaintiff (PW1), the appellant/defendant and him. The earnest money of Rs.1,30,000/- was stated to have been paid in cash and the currency notes were of the denominations of Rs.1000 and Rs.500.

9. The appellant/defendant, during his cross-examination, though admitted of knowing the respondent/plaintiff for the last three years but denied the fact of execution of the Ikrarnama or of having accepted the earnest money of Rs.1,30,000/- towards the purchase price of the property.

10. The Trial Court accepted the contentions of the respondent/plaintiff. Since the plea of there being no cause of action;

the respondent/plaintiff not having any locus of filing of the suit; no Ikrarnama having been executed on 28.11.2011, etc. were raised by the appellant/defendant, the onus was on him to prove the aforesaid facts. Section 101 of the Indian Evidence Act declares that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which is asserted by him, he only is required to prove the existence of such facts. In other words, the onus is on the person who asserts a particular fact to prove its existence. The further test of the onus of the burden of proof in a suit or in any proceeding is whether the suit would fail if no evidence at all were given on either side. Thus with the existence of the Ikrarnama, it was upon the appellant/defendant to have proved its non-existence or existence. The Trial Court was of the view that mere denial of the suggestions which were put to the appellant/defendant was not enough. No documentary evidence was put forth on behalf of the appellant/defendant and thus all the assertions made by him in the written statement, affidavit and oral deposition before the court were only bald assertions. The appellant/defendant, in the estimation of the Trial Court, could not even rebut the claim of the respondent/plaintiff that the stamp papers were purchased from the stamp vendor. Thus, the Trial Court held that the respondent/plaintiff had the reason, cause and competence to prefer the suit and acknowledged the existence of the Ikrarnama dated 28.11.2011, on the basis of which the suit for recovery of earnest money was predicated.

11. The original Ikrarnama dated 28.11.2011 (Ex.PW1/A), receipt book (Ex.PW1/B), legal notice dated 09.04.2012 (Ex.PW1/C) and

postal receipts and A.D. cards (Ex.PW1/D to Ex.PW1/F) were relied upon by the Trial Court to hold that the respondent/plaintiff was entitled to a decree of recovery of the amount which had been paid by the respondent/plaintiff to the appellant/defendant.

12. Though the claim of the respondent/plaintiff was for recovery of double the amount of the money which was paid to the appellant/defendant along with 18% interest, but the Trial Court, considering that to be unwarranted, decreed the suit for recovery of Rs.1,30,000/- along with interest at the rate of 9% per annum from the date of filing of the suit till the date of decree and interest at the rate of 6% per annum from the date of decree till its realization as well as the costs.

13. The first Appellate Court rightly held that Ikrarnama, (Ex.PW1/A) was only an agreement between the parties and thus its registration was not required and the same could be used as a piece of evidence in the Trial. The First Appellate Court, therefore, concurred with the findings returned by the Trial Court.

14. The present second appeal is premised on the ground that both the courts below fell in error in relegating the onus on the appellant/defendant to show as to whether Ikrarnama existed even when the claim of recovery was only based upon the aforesaid unregistered agreement. The additional ground raised by the appellant/defendant is that a suit for recovery simplicitor is not maintainable in the absence of proof of the entire transaction.

15. The answers to the above posers are as hereunder:

In view of the provisions of Sections 101 to 104 of the Indian Evidence Act, the burden of proving the non-existence of the Ikrarnama is only on the appellant/defendant as he asserts the aforesaid fact and if no evidence is given by either of the parties, Ikrarnama (PW1/A) would be deemed to exist.

16. Thus no substantial question of law is involved in the present second appeal and therefore the same is dismissed but without costs.

ASHUTOSH KUMAR, J

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