

In the matter of :

(1) Sh. Anil Soni,
Prop. M/s MGSS Properties,
C-116, Ramesh Nagar, Near Metro Station,
New Delhi-110015.

..... Plaintiff

VS.

(1) Sh. Rupesh Manda,
S/o Sh. Mohan Lal Manda,
R/o I-137, Kirti Nagar,
New Delhi- 110015.
(2) Sh. Rajender Kasana
S/o Late Sh. Lelay Singh,
R/o D-1/131-A, Sector-52,
Noida, U.P.

..... Defendants

Date of institution of the suit : 30.08.2012
Date of reserving order : 25.06.2020
Date of pronouncement : 29.06.2020

JUDGMENT

1. This is a suit for recovery of Rs.1,44,000/- alongwith

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pendente-lite and future interest @ 15 % Per annum.

2. Brief facts of the case as per the plaintiff are that he is doing business of property dealer under the name of M/S MGSS Properties. That the defendant No.1 was the owner of flat No.32C, Sector-99, Noida and approached the plaintiff to find out a suitable buyer for the same. That the plaintiff made sincere efforts and found defendant no.2 as prospective buyer. That due to the efforts of the plaintiff, the defendant no.1 and defendant no.2 entered into sale transaction and Agreement to Sell was executed dated 18/05/2012. That the sale consideration was settled at Rs.72 Lacs. That the defendant no.2 paid substantial amount to the defendant no.1 towards part payment and the remaining payment was to be within 40 days of completion of sale. That both the defendants agreed to pay the commission of 1% of the sale transaction to the plaintiff. That on receipt of remaining amount, the defendant no.1 delivered the possession to defendant no.2. That after completion of sale, the plaintiff demanded his brokerage from the defendant, who assured to pay the same in due course of time. That a legal notice dated 07/08/2012 was sent to the defendants but it was neither replied nor complied with.

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3. It is pertinent to mention here that the defendant no.1 was proceeded ex-parte on 22/09/2015 and defendant no.2 was also proceeded ex-parte on 01/09/2017. Ex-parte was passed on 05.02.2018 but thereafter, vide order dated 28.01.2019, the suit revived while allowing the application filed by defendant no.1.

4. In the W/S of defendant no.1, certain preliminary objections were taken like that plaintiff has not come with clean hands and barred by law.

5. In the replication filed by the plaintiff, plaintiff has denied the case of the defendants as stated in the W/S and re-iterated and re-affirmed his own case as stated in the plaint.

6. On the basis of the pleadings of the parties, following issues were settled on 04.02.2019 :-

1. ***Whether the plaintiff is entitled to decree of recovery of Rs.72,000/- each against defendant no.1 and 2 severally alongwith pendent-lite and future interest @ 18% P.A as prayed for ? OPP***

2. ***Relief.***

7. In support of his case plaintiff got examined himself as PW1, who during his examination-in-chief relied upon various documents i.e

PW1/1 to PW1/7. PE was closed on 15/03/2019.

8. In support of his case, the defendant no.1 got examined himself as DW-1. DE was closed on 10.04.2019.

Now, issue wise findings are as under :-

9. **ISSUE NO.1:-** *Whether the plaintiff is entitled to decree of recovery of Rs.72,000/- each against defendant no.1 and 2 severally alongwith pendent-lite and future interest @ 18% P.A as prayed for ? OPP*

In their examination-in-chief, both the plaintiff (PW1) and the defendant no.1 (DW1) re affirmed their own pleadings. In para no.3 of the W/S filled by defendant no.1 (reply on merits), it is clearly admitted that the defendant no.1 was the owner of the property no.32-C, Sector-99 Noida (U P). It is also admitted that the plaintiff was instructed by the defendant no.1 to find out a buyer for the same. In para no.4, it is pleaded by the plaintiff that he made sincere efforts and found the prospective buyer i.e defendant no.2. In the corresponding Para of W/S, the defendant no.1 has admitted the same but it is the plea taken by him that the defendant No.1, later on entered into the transaction with a third party. The defendant no.1 has simply denied the pleadings of the plaintiff



that the property was sold not to the defendant no.2 for a sum of Rs.72 lacs and an Agreement to Sell dated 18/05/2012 was executed. The defendant no 1 also simply denied the legal notice dated 07/08/2012 (In para 13 of the W/S, reply on merits), which indicates that this legal notice was either replied by the defendant no.1 or was duly complied with. The defendant no.1 was supposed to plead specifically whether it was duly replied or was complied with by him.

10. The defendant no 1, in his W/S has simply denied the pleadings of the plaintiff that an Agreement to Sell was entered into between defendant no.1 and defendant no.2 dated 18/05/2012. The plaintiff has disclosed the sale consideration of Rs.75 Lacs, in para 5 of plaint. It is pertinent to mention here that there is no specific denial nor any pleadings from the side of defendant that there was no such agreement in between the defendant no.1 and defendant no.2. The defendant no.1 has simply denied the sale consideration of Rs.72 Lacs but did not disclose whether it was more or less than Rs.72 Lacs as pleaded the plaintiff. In Para 5 of the W/S (Reply on merits), there is nothing pleaded by the defendant no.1 as to the genuineness or to the execution of the Agreement to Sell dated 18/05/2012 (Ex-PW1/I) for the



reasons best known to him.

11. So, after the bare perusal of the pleadings of the parties, picture is clear that being the owner of the Flat No.32-C, Sector-99, Noida, the defendant no.1 approached the plaintiff to find out a suitable buyer. Admittedly, the plaintiff became successful in finding out the prospective buyer i.e defendant no.2. As per plaintiff, the defendant no.1 and defendant no.2 entered an Agreement to Sell dated 18/05/2012 and also agreed to pay commission @ 1% of the sale amount from each of the parties. It is the stand of the defendant no.1 that he later on entered the transaction with a third person. The pleadings of the defendants are silent as to through whom the transaction with 3rd person was done or that there was no role of plaintiff in the dealings in question. The defendant no.1 even did not care to disclose the name of the 3rd party as pleaded in Para 4 of his W/S (reply on merits) for the reasons best known to him.

12. Now, the onus has shifted upon the defendants to prove that there was no role of the plaintiff in the sale of the flat by defendant no.1.

date the sale got concluded nor with whom the transaction was arrived at.

13. During his cross-examination dated 10/04/2019 (Page 1), it is deposed by the defendant no.1 (DW1) that he never made any agreement with the defendant no.2 regarding the property in question. It was also deposed by him that he do not remember, if any, cheque was honored given by the defendant no.2, while the attention of defendant No.1 (DW1) was drawn towards point X on the copy of Agreement to Sell (Ex-PW1/I), he deposed that the same looks like his signature. At page No.2, it was deposed by him that he do not remember whether he received any such notice dated 07/08/2012. It was also deposed by the Defendant No 1 (DW-1) that he sold the property in question at a consideration of approximately Rs.45 Lacs to Rajinder Kaur and Karanjeet Singh. It was also deposed by him that the property was sold through his known person namely Sharma Ji. It becomes pertinent to mention here that there is no mentioning of this Sharma Ji in the written statement of the defendant no. 1.

14. At page no.2 of his cross-examination, It was also deposed by Defendant No.1 (DW-1) that on the back side of Page No.203 (Ex.



DW1/A), his signatures were at point X and beneath it was that of his mother. The document Ex. DW1/A is Transfer-cum-Sale-Deed of the property in question by the Defendant No.1 and his mother on the one side in the favor of Karanjeet Singh & Rajinder Kaur for consideration of Rs.50 Lakhs.

15 At page No.3, it was also deposed by him that he can not say that the stamp paper of Rs 100/- dated 18/06/2012 was purchased by him or not. It was also volunteered by him that his documents may have been misused but nothing was pleaded by him in the written statement nor anything brought on record by the Defendant No.1 to suggest that any action was initiated by the Defendant No.1 to stop the misuse of his documents nor it was so pleaded by him.

16. It is interesting to note down that two cheque's mentioned in the agreement to sell (Ex-PW1/I) are duly mentioned in the Sale Deed (at page No.17 of Ex. DW1/A). Hence, the Agreement to Sell (Ex-PW1/I) is also confirmed from the side defendants which is suffice to suggest that an agreement was entered into between the parties and also confirms that the sale consideration was Rs.72 Lakhs.

17 It may be an issue of investigation whether any black money



was involved in the transaction vide Sale Deed Ex-DW1/A which is based upon Agreement to Sell (Ex-PW1/I). The Defendant No.1 (DW-1) did not deny his signature at point X on the Agreement to Sell (Ex-PW1/I) nor has denied its execution specifically nor has put any question mark on the genuineness of the same. The defendants have failed to get the defendant no.2 examined in this case. The defendants have further failed to get any of the purchaser of the property in question (who became owner as per Ex-PW1/A) for ascertaining the role of the plaintiff in the said sale and also to confirm the exact amount of sale consideration. The defendants have failed to discharge the burden which was upon them. As per clause 10 of the said Agreement to Sell (Ex-PW1/I), the plaintiff was to get commission @1% from each side. This is a fit case to rely upon the secondary evidence because the original always remains with the parties to an Agreement.

Accordingly, this issue is decided in favour of the plaintiff and against the defendants.

18. RELIEF.

In view of the findings on the above issue, the suit of the plaintiff is decreed and a decree for a sum of Rs.1,44,000/- is passed in



favour of the plaintiff and against the defendants. Further, plaintiff is also entitled to interest @ 18% per annum from the date of the filing of the suit till realization.

No order as to cost. Decree-sheet be prepared.

File to be consigned to record room, after necessary compliance.

PRONOUNCED ON
29th of June 2020.



(RAJINDER KUMAR)
SCJ/RC(WEST)/DELHI