

Ashok Kumar vs. Asha and Anr.

**Civil Suit No. 7 of 2024
Order Reserved on: 10.09.2024**

25.10.2024 Present: Mr. Rajeev Sood, Advocate, for the applicant/plaintiff.

Mr. Sunil Kumar, Advocate, for the non-applicant/defendant.

OMP Nos. 52 and 53 of 2024

The applicant/plaintiff has filed the present suit for the recovery of ₹1,05,00,000/- along with cost and interest @ 18% per annum till its realization. It has been asserted that one Tek Chand told the applicant/plaintiff that his relative Rajinder Singh informed him that Narinder and Sanjay Gupta, residents of Uttrakhand and Haryana had visited him. They disclosed that Baba Malkiat Singh wanted to purchase 50 bighas of land in or around Kandaghat for the construction of Gurudwara and the hospital. The applicant/plaintiff told Tek Chand about the availability of many parcels of land, which were convenient for constructing Gurudwara and the Hospital. Tek Chand introduced the applicant/plaintiff to Rajinder Kumar. He visited the applicant/plaintiff in the 2nd week of January 2023. The applicant/plaintiff showed the land to him. He

selected the land measuring 50 Bighas owned by non-applicant/defendant No.1 and promised the applicant/plaintiff to show it to Baba Ji and purchase it after his approval. Subsequently, Narinder and Sanjay Gupta told the applicant/plaintiff that they had shown the land of non-applicant/defendant no. 1 to Baba Ji, who had approved it for the construction of Gurudwara and Hospital. They asked the applicant/plaintiff to purchase the land from non-applicant/defendant No.1 and sell it to Baba Ji. They asked the applicant/plaintiff to share the profits with them. The applicant/plaintiff agreed. Non-applicant/Defendant No.2 being the Power of Attorney of non-applicant/defendant No.1 agreed to sell the land for 64 Crores. An Agreement to Sell was executed with the applicant/plaintiff. Applicant/plaintiff paid 25% of the consideration amount to non-applicant/defendant No.2. D.D. Modgil and Sunil Tripathi signed the power of attorney as witnesses. The applicant/plaintiff had also handed over two cheques to non-applicant/defendant No.2. Subsequently, he came to know that Babaji was not purchasing any land. The land had no approach and the gate through which the passage to the land was shown belongs to Tara Devi Mandir. The

non-applicants/defendants No.1 and 2 assured to return the advanced amount of ₹1,00,00,000/- and the cheques but they failed to do so; hence, the suit was filed for the recovery of the amount.

2. The applicant/plaintiff also filed an application under Order 38 Rule 5 of CPC for calling the non-applicants/defendants to furnish security and in the alternative to attach their property. He also filed an application under Order 39 Rules 1 and 2 to restrain the non-applicants/defendants from selling, transferring and encumbering the land mentioned in the application.

3. No reply was filed to the applications despite having been granted sufficient opportunities.

4. I have heard Mr. Rajeev Sood, learned counsel for the applicant/plaintiff and Mr. Sunil Kumar, learned counsel for the non-applicants/defendants.

5. Mr. Rajeev Sood, learned counsel for the applicant/plaintiff submitted that the non-applicants/defendants had cheated the applicant/plaintiff in connivance with other persons. The applicant/plaintiff is entitled to recovery of the amount from the non-applicants/defendants No.1 and 2. Hence,

he prayed that the present applications be allowed, the property owned by non-applicant/defendant No.1 be attached during the pendency of the suit and the non-applicants/defendants be restrained from transferring the property.

6. Mr. Sunil Kumar, learned counsel for the non-applicant/defendants submitted that the plaintiff had agreed to purchase the land. The non-applicants/defendants are ready and willing to sell the land to the applicant/plaintiff at a price mentioned in the agreement. The only remedy for the applicant/plaintiff is to get the sale deed executed. He does not have any right to restrain the non-applicants/defendants or to seek the recovery of the amount. He prayed that the present applications be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. The suit has only been filed against the owner of the land and her Power of Attorney. The persons who are stated to have made the representation to the

applicant/plaintiff were not arrayed as parties. As per the applicant/plaintiff, non-applicant/defendant No.2 had agreed to sell the land to the applicant/plaintiff for ₹64,00,00,000/-. The applicant/plaintiff had also paid the advance amount of ₹1,00,00,000/-. Since the money was obtained by practising fraud, therefore, the non-applicants/defendants are liable to return the amount.

9. Section 17 of the Indian Contract Act defines the term 'fraud' and includes a false suggestion by a person, who does not believe it to be true, active concealment by a person knowing the truth, a promise made without any intention of performing it and any other act fitted to deceive or any such act or omission as the law specially declares to be fraudulent.

10. In the present case, as per the applicant/plaintiff, the representations were made by Narinder and Sanjay Gupta regarding the purchase of the land by Baba Ji. The applicant/plaintiff himself claimed that he had selected the land and shown it to them for their approval and the approval of Baba Ji. It was stated in Para 8 of the plaint that all the aforesaid persons including non-applicants/defendants No.1 and 2 cheated

the applicant/plaintiff. In the absence of other persons who had allegedly made the representation, it is difficult to see how the plea of fraud can be established at this stage.

11. As per the applicant/plaintiff, he had agreed with the non-applicants/defendants to purchase the land for ₹64,00,00,000/-. His remedy lies in enforcing the agreement and not in getting the money back. Thus, *prima facie*, the version of the applicant/plaintiff that he is entitled to get the money paid by him to non-applicant/defendant No.1 through his Power of Attorney is not acceptable.

12. It was submitted that the land did not have any access and the place from where the access was shown belonged to Mata Tara Devi Temple Trust. The applicant/plaintiff himself stated that he had told Narinder and Sanjay Gupta about the availability of the land and showed them various lands in or around Kandaghat. In these circumstances, it is difficult to see how it could amount to any fraud. The principle of *caveat emptor* will apply to the present case and the plaintiff should have verified the title, location and the suitability

of the land before paying money to non-applicant/defendant No.2.

13. The applicant/plaintiff is seeking the recovery of money and money can always be compensated in terms of money, therefore, the applicant/plaintiff will not suffer any irreparable loss or injury which cannot be compensated in terms of money.

14. *Prima facie*, the applicant/plaintiff is only entitled to the specific performance of the agreement, a relief which has not been sought by him. He has only an interest in the land to get the specific performance and no other interest. The non-applicants/defendants being the owners are entitled to use the land in any manner they deem it proper. Therefore, the balance of convenience also does not exist in favour of the applicant/plaintiff.

15. In view of the above, the applicant/plaintiff is not entitled to any interim relief at this stage. Hence, the present applications fail and the same are dismissed.

16. The observations made hereinbefore shall remain confined to the disposal of the applications and

will have no bearing, whatsoever, on the merits of the case.

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17. Let the matter be listed before the learned Additional Registrar (Judicial) for fixing the date for admission/denial of the documents.

(Rakesh Kainthla)
Judge

25th October, 2024
(saurav pathania)