

REPORTABLE

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

+ CS(OS) NO. 652 OF 1997

% Date of Decision : 22ND September, 2008.

SNEH LATA GULLIYA Plaintiff.
Through Mr. Ashok Bhasin, Sr. Advocate with
Mr. Saurabh Chauhan, Advocate along with
the plaintiff in person.

VERSUS

R.K. GUPTA & ORS. Defendants.
Through Mr. Vijay Gupta & Ms. Geeta Goel,
Advocates along with the defendant No. 1 in
person.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J:

1. The plaintiff, Ms. Sneh Lata Gulliya, seeks specific performance of purported agreement to sell dated 26th January, 1996 marked Exhibit PW1/1 in respect of flat No. S-2, constructed on plot No. AC-8 (New No. R-8), Nehru Enclave, Kalkaji, New Delhi (hereinafter referred to as the property, for short). The defendants Mr. R.K. Gupta, Ms. Sunita Gupta and M/s R.K. Gupta and Sons (HUF), dispute and deny the agreement to sell Exhibit PW1/1 and

have stated that their signatures on the said agreement are forged and fabricated.

2. By order dated 7th December, 2000, the following issues were framed:-

- (1) Whether the plaintiff proves that the agreement to sell dated 26.1.1996 is executed in favour of the plaintiff by the defendants and thereby agreed to sell the immoveable property bearing No. S-2, R-8, Nehru Enclave, Kalkaji, New Delhi for the amount of Rs.22 lakhs?
- (2) Whether the plaintiff proves that the defendants pursuant to the aforesaid agreement to sell received Rs.3 lakhs by way of earnest money from the plaintiff and passed receipt dated 26.1.1996?
- (3) Whether the plaintiff proves that he was and he is ready and willing to perform his part of the agreement?
- (4) To what relief, if any, the plaintiff is entitled to?
- (5) What orders and decree?

ISSUE NOS. 1 AND 2

3. Issue Nos. 1 and 2 are the core issues and being inter-connected, are being decided together.

4. The present case is of parties, who were once acquaintance if not friends but have now become foes. The plot in question on which the property exists, was purchased by the plaintiff vide sale

deed dated 30th September, 1986. Thereafter, she constructed nine flats on the property and “sold” the same to seven different parties while retaining rights in respect of two flats. “Sales” were made by executing general power of attorney, agreement to sell, etc.

5. There is evidence that the parties were known to each other and were on visiting terms before the defendants purchased the property from the plaintiff. Both parties were non residents. The defendants had visited and had stayed with the plaintiff, her husband and children in Texas, U.S.A. The defendants had made payments for purchase of the flat of Rs.8,25,000/- by cheques during the period 1989-1991. The plaintiff has not disputed payment of sale consideration by cheques and the fact that documents like agreement to sell, affidavit, power of attorney were executed in September, 1991. These documents have been marked as Exhibits PW-1/X-1 to X-5 (see in this regard cross-examination of plaintiff, PW-1 on 6th April, 2004, 2nd September, 2004 and 4th September, 2004 and cross-examination of Ms.Sunita Gupta, DW-2 on 13th November, 2007 by the counsel for the plaintiff, wherein it is admitted that the defendants had stayed in the house of the plaintiff in U.S.A. in 1986).

6. It is also admitted case of the parties that the defendants were/are in possession of the flat and had also resided in the said flat. It is the case of the plaintiff that the defendants vacated the flat and shifted out in end of December, 1996, while the case of the

defendants is that they shifted out in middle of 1994.

7. The relationship between the parties turned sour and they became bitter foes, is established and evidenced by the following facts:-

- (i) There were series of police complaints inter se parties 1994 onwards. The factum of police complaints stands proved in the testimony of the plaintiff, PW-1. Complaints made by the plaintiff and her husband have been marked Exhibits P1/X7 to P1/X14.
- (ii) The plaintiff had cancelled and revoked power of attorney in favour of the defendants in respect of the flat by telegram dated 5th August, 1994. (See paragraph 6 of the plaint).
- (iii) The plaintiff thereafter in August, 1994 had filed a civil suit for permanent injunction before Civil Judge, Delhi, inter alia, stating that the defendants cannot sell, dispose off or part with the possession or deal with the flat. The suit was contested by the defendants. The plaint has been placed on record and marked Exhibit P1/X6. The civil suit was dismissed in default on 10th November, 1998.

8. With the above background of facts, I proceed to examine the question of genuineness of the agreement to sell dated 26th January, 1996 Exhibit PW-1/1. The agreement to sell is a typed document in form of a receipt and reads as under:-

"RECEIPT

We, Mrs. Sunita Gupta, w/o Sh. R.K. Gupta, R/o Flat No. S-2, R-8, Nehru Enclave, New Delhi-110019 and R.K. Gupta, S/o Sh. R.M. Gupta, R/o Flat No. S-2, R-8, Nehru Enclave, New Delhi-110019 for self and as Karta of R.K. Gupta & Sons (HUF) have agreed to sell our Dining and front lawn situated at R-8, Nehru Enclave, New Delhi-110019 for a total consideration of Rs.22,00,000/- (Rupees twenty two lacs only) to Mrs. Sneh Lata Guliya from whom the said Flat was taken on G.P.A., out of which we have received Rs.3,00,000/- (Rupees three lacs only) in cash and have signed this receipt in token of having received the same, in the presence of witnesses, who have signed on the receipt.

We have also agreed to receive the balance consideration of Rs.19,00,000/- (Rupees Nineteen lacs only) within 8 months from today i.e. 26.1.96 and after the said payment is made, the possession of the said Flat No. S-2 shall be handed over to Mrs.Sneh Lata Guliya.

WITNESSES

EXECUTANTS

1. Sh. BRAHAM DUTT
FLAT : S-8,
R-8 NEHRU ENCLAVE,
NEW DELHI-19

(R.K. GUPTA)

2. SHri DEEPAK SAHANI
FLAT No. S-9
R-8, NEHRU ENCLAVE
NEW DELHI-19

(Mrs. Sunita Gupta)

R.K. GUPTA & SONS(HUF)
Karta"

9. A bare perusal of the above agreement discloses some striking features. Firstly, the agreement is in form of a typed receipt and not hand written, even the name of the witnesses are typed. Secondly, the alleged payment of Rs.3,00,000/- is in cash and not by

cheque. It is admitted case of the parties that payments of Rs.8,25,000/- by the defendants to the plaintiff for purchase of the property were by cheques. Nothing was paid in cash. Thirdly, the agreement is not signed by the plaintiff herself but is purportedly signed by the defendants. Lastly, the agreement/receipt Exhibit PW-1/1, as is clear from the language, is drafted by a legal person. This fact stands also proved and established in the cross-examination of the plaintiff, PW-1 on 25th September, 2004 in which she has stated as under:-

“Q. When it was communicated to you on 23.01.1996 that the defendants are ready to sell the property in suit to you, did you convey it to your lawyers to consult them for making a legally binding agreement?

A. I consulted my lawyers about making of the receipt and the Agreement was to be prepared at the time of making the complete payment.

Q. When was this receipt for Rs.3 lacs prepared?

A. It was prepared one day prior to signing of the receipt by my lawyer Mr. Jagdish Vatsa. Vol. He gave it time saying that if the deal goes through then you can get it signed.

Q. Can you tell where this receipt was prepared.

A. I have no idea where Mr. Vatsa got it prepared.

Q. You went to the office of Mr. Vatsa to collect the receipt as prepared by him. Is it correct.

A. No. He sent it to me through one of his employees.

Q. I am showing you the original receipt placed by you on the record of the present suit EX PW1/1. Please see and confirm if this is the receipt referred to by you in your previous

answer. LC (The exhibit mark has been made today even though it has been exhibited in the affidavit of the witness dated 25.11.2003)

A. Yes, it is correct.

Q. This receipt was sent to you by Shri Jagdish Vatsa through his employee only in its original form and not in any draft form or with any extra copies. Is it correct.

A. It is correct.

Q. When you told Shri Jagdish Vatsa, Advocate about the transaction in suit, were you accompanied by any other person or you went alone to him?

A. I did not go to him but I had a discussion with him on the telephone.

Q. To your knowledge nobody other than yourself had a discussion with your lawyer about the transaction relating to the property in suit or about any details, relating thereto. Is it correct.

A. It is correct. Nobody else discussed about this with my lawyer.

Q. When was the decision taken as to the persons who would be signing the receipt Ex. PW-1/1, as witnesses?

A. It was done a day prior to signing of the receipt. Vol. Mr. Brahm Dutt was involved in the transaction and he was also the President and Mr. Deepak Sahni was the Secretary of R-8, Residents Welfare Association, at that time.

Q. Did you tell Mr. Vatsa that Mr. Brahm Dutt and Mr. Deepak Sahni would be signing the receipt as witness?

A. Yes, it is correct. I made a suggestion to my lawyer that as they were the President and Secretary we should keep their names as witnesses and he agreed to the same."

10. Exhibit PW-1/1, the agreement, however, was never relied and filed before the civil court where the suit for permanent injunction filed by the plaintiff was pending. In the cross examination, the

plaintiff has admitted that the same advocate, who had drafted the agreement, was also appearing for the plaintiff and conducting the civil suit. The original file of the civil suit is available and was examined at the time of arguments. It is not understandable and defies logic why agreement to sell marked Exhibit PW-1/1 dated 26th January, 1996, was not filed and produced by the plaintiff before the civil court immediately after its execution or within reasonable time. The plaintiff, PW-1 in her cross-examination on 21st September, 2004 has admitted that she was constantly in touch with her advocate during the pendency of the suit in the civil court. Similarly, the plaintiff in her cross-examination on 28th September, 2004 has admitted that the alleged agreement to sell Exhibit PW-1/1 was not filed and brought to the notice of the civil court. While answering the question put to her that with execution of the agreement to sell Exhibit PW-1/1, the civil suit had become meaningless and there was no point in pursuing the said case, the plaintiff has stated that it was for both parties to inform the Court about the deal and agreement to repurchase. However, the said answer belies logic and does not answer and explain why the plaintiff did not file and rely upon the agreement to sell Exhibit PW-1/1 and why no application was filed by the plaintiff to place on record copy of the said agreement for repurchase. The agreement to sell Exhibit PW-1/1 is a document in favour of the plaintiff and had the effect of

bringing the said litigation to an end. Admittedly, agreement to sell Exhibit PW-1/1 was important document as per the plaintiff's own case. In this regard, I may refer to averments made by the plaintiff in her affidavit by way of evidence in chief in which she has stated as under:-

“7. That Shri R.K. Gupta and Ms. Sunita Gupta after contesting the suit for a considerable period started try to settle the matter with her.....”

11. Thus, as per the plaintiff's own case, the agreement to sell Exhb. PW-1/1 was connected with the civil suit.

12. In the plaint, it is alleged that agreement to sell Exhibit PW-1/1 was signed and executed on 26th January, 1996 by defendant No. 2, Ms. Sunita Gupta, who also received cash payment of Rs.3,00,000/- and thereafter the original receipt was taken away by Ms. Sunita Gupta, the defendant No. 2 to be signed by her husband Mr. R.K. Gupta, defendant no.1 and the same was returned back by defendant No. 2 to the plaintiff after 3/4 days. In paragraph 10 of the plaint, it is stated as under:-

“That consequent thereto, the plaintiff withdrew Rs.5,00,000/- (Rupees Five lacs only) in cash from her bank on 25.1.1996 and out of that amount paid Rs.3,00,000/- (Rupees three lacs only) in cash to the defendant No.2 in the presence of Shri Braham Dutt and Shri Deepak and the defendant No.2 after receiving Rs.3,00,000/- (Rupees three lacs only) in cash executed receipt/agreement which was also witnessed by Shri Braham Dutt and Shri Deepak Sahany. The said

amount had been accepted by the defendant No.2 as part of sale consideration of Rs.22,00,000/- (Rupees twenty two lacs) flat No.S-2, R-8, Nehru Enclave, Kalkaji, New Delhi comprising of 3 bed rooms, drawing cum-dining, kitchen and 3 bath rooms on the Ground Floor and a store and open lawn in front thereof. The flat in question is shown in red in the plan filed with the plaint. The defendant No.2 executed the receipt/agreement and thereafter took the same with her for having it signed by defendant No.1 and the same after being signed had been returned to the plaintiff by the defendant No.2 after $\frac{3}{4}$ days."

13. It is also the case of the plaintiff that the original agreement to sell Exhibit PW-1/1 was signed in the flat of the plaintiff in the plot in question. Absence of defendant No. 1 on the important occasion, keeping in mind inter se litigation between the parties including police complaints, is rather intriguing and supports the case of the defendants that the agreement to sell Exhibit PW-1/1 is a forged and fabricated document. It is now case of both parties that signatures of defendant No. 1 on the said agreement to sell Exhibit PW-1/1 are not genuine. Given the strained relationship between the parties till then, it is difficult to accept the version of the plaintiff that the original agreement to sell dated 26th January, 1996 Exhibit PW-1/1 was handed over and taken away by the defendant No. 2 to be signed by the defendant No. 1, her husband and returned back after $\frac{3}{4}$ days. The said averments made in the plaint were repeated by the plaintiff in her examination-in-chief as well as in her cross-examination. The

version of the plaintiff, if believed, would mean that in spite of all acrimony, litigation and police complaints, the plaintiff had paid a sum of Rs.3,00,000/- in cash and thereupon the defendant No. 2 had executed and signed the agreement to sell Exhibit PW-1/1 and was allowed to take away the same for being signed by defendant No. 1 and was returned after 3/4 days. The plaintiff in her cross-examination on 25th September, 2004 has stated as under:-

“Q. Neither you nor your husband have chosen to sign the receipt Ex.PW-1/1 by way of confirmation of your intention to buy the property in suit. Is it correct.

A. It is correct.

Q. The receipt Ex. PW-1/1 was according to you, signed in only one set which has been placed by you on the record of the present suit. Is it correct.

A. It is correct. Only one set has been prepared and signed and filed on the court record.

Q. Therefore, it is also correct that you did not give any acknowledgement under your signatures to Smt. Sunita Gupta regarding you having obtained the receipt Ex. PW-1/1 from her.

A. It is correct. I did not give any such acknowledgment to her.

Q. According to you after Sunita Gupta received an amount of Rs.3 lacs from you and she signed the receipt Ex. PW-1/1 and the witnesses also signed the same at points ‘C’ and ‘D’, please tell what happened thereafter?

A. I asked her that the receipt is not signed by your husband to which she said that as he was bed ridden and he cannot come, she will take her receipt with her, get it signed from him and will send it back after 2/3 days. It was given to her in good faith.

Q. You did not ask Sunita Gupta to give you a written confirmation that she is taking

away the receipt and would it to you after it has been signed by her husband.

A. The property dealing is done on good faith and every detail is not put in writing.

Q. Can you tell the exact date and time when the receipt Ex. PW-1/1 came back to you.

A. I do not remember the exact date and time. But it came back to me after 3/4 days.

Q. Who brought this receipt back to you.

A. Smt. Sunita Gupta herself brought back the receipt.

Q. Therefore, is it correct that between 26.01.1996 when according to you Smt. Sunita Gupta took away the receipt Ex. PW-1/1 with her and the date 3/4 days later, you were not in possession of any document or written confirmation to the effect that the defendants have agreed to sell the property in suit to you.

A. It is correct.

Q. As soon as the payment of Rs.3 lacs was made by you to Smt. Sunita Gupta and the receipt Ex. PW-1/1 was signed, you conveyed the information to your lawyer Shri Jagdish Vatsa, Advocate. Is it correct?

A. Yes, it is correct."

14. Given the past history of litigation and complaints to police, it is difficult to accept the version of the plaintiff that in good faith she had handed over the agreement to sell Exhibit PW-1/1 without retaining any proof or confirmation for having made payment of Rs.3,00,000/- in cash. It is not the case of the plaintiff that two copies of agreement Exhb.PW-1/1 were prepared. I may also note here that as per the version and case of the plaintiff, the defendants including defendant No. 2 had continued to reside and live in the flat in question till the end of 1996 (see cross-examination of the plaintiff, PW-1 on 4th

September, 2004, wherein she has stated that the defendants, were there in the property till the end of 1996). Thus as per the case of the plaintiff, the defendant no.1 was residing in the flat on the same plot, when the agreement to sell Exhb. PW-1/1 was executed.

15. It is not the case of the plaintiff that the relationship between the parties had improved and the differences were sorted out before execution of the agreement to sell Exhibit PW-1/1 on 26th January, 1996. On the other hand, it is the case of the plaintiff that negotiations between the defendants and the plaintiff were not direct and the parties never met or talked to each other before 26th January, 1996. In her cross-examination, PW1 has stated that one Mr. Brahm Dutt, who had also purchased a different flat on the said plot, had interacted on her behalf with the defendants and on or about 23rd January, 1996 terms of the agreement were finalized. In the cross-examination of the plaintiff on 23rd September, 2004, the plaintiff has stated as under:-

“Q. Is it correct that either R.K. Gupta, defendant No. 1 or Sunita Gupta, defendant No. 2 never personally approached you with an offer to sell the suit property to you.

A. We were not on talking terms with them at that time so they did not approach me directly.”

16. It is difficult to conceive and accept the contention of the plaintiff that they had developed complete faith in one day i.e. 26th January, 1996 and defendant no.2 was given the original agreement without

receipt, for signatures thereon by defendant No. 1 and the plaintiff did not deem it necessary to keep even a copy of the agreement signed by defendant No. 2 in her presence. Even if it is presumed that defendant No. 1 was not well or bed ridden, as a prudent and reasonable person the plaintiff would have taken precaution of visiting defendant No. 1 and getting the receipt signed in her presence. Admittedly, the plaintiff had access to legal advice in view of the pending litigation between the parties. Even the plea of the plaintiff that defendant No. 1 was unwell and confined to bed and, therefore, he was not personally present when the transaction took place on 26th January, 1996, is difficult to accept. Defendant No. 1 is no doubt suffering from Malignant Rheumatoid Arthritis but had appeared in the witness box and was cross-examined. He has also been regularly coming to Court. It cannot be said that defendant No. 1 is a crippled or a bed ridden person. Reliance placed by the counsel for the plaintiff on some letters written by the defendants to the telephone department being Exhibits DW-1/3, 1/5 and 1/6 have to be read and understood in the context in which the said letters were written, as the plaintiff wanted to shift the telephone from the flat in question to their new residence. The statements made in the said letters have to be read and understood in that context and the purpose for which these letters were written. Admission can be explained.

17. Mr. Brahm Dutt, who as per the plaintiff had negotiated the deal on behalf of the plaintiff with the defendants and is also one of the witnesses to the agreement to sell Exhibit PW-1/1 did not enter the witness box. Neither did the second witness to the agreement to sell Exhibit PW-1/1, Mr. Deepak Sahani. Affidavit by way of evidence of the plaintiff, PW1 is silent and does not give any reason why the two, Mr. Brahm Dutt and Mr. Deepak Sahani were not ready and willing to appear as witnesses before the Court. It is not stated in the affidavit that the plaintiff had made any request to the said witnesses but they had refused to appear. No reasons have been given and propounded. The plaintiff also did not summon the two witnesses to the agreement to sell Exhibit PW-1/1 relied upon by the plaintiff. Learned counsel for the plaintiff during the course of arguments submitted that the plaintiff has filed a criminal contempt petition against the plaintiff, Mr. Brahm Dutt and Mr. Deepak Sahani and, therefore, they had refused to appear as witnesses. He in this regard referred to cross-examination and questions put by him to defendant Nos. 1 and 2. This plea of the plaintiff is liable to be rejected as there is no such averment made by the plaintiff in her evidence and secondly the said witnesses were not summoned by the plaintiff through the process of Court. Thirdly, both Mr. Brahm Dutt and Mr. Deepak Sahani had nothing to lose by appearing before the Court as witnesses and support the case of the plaintiff and prove

execution of Exhibit PW-1/1. Both of them have replied to the criminal contempt petition and had, therefore, advantage of legal opinion and advice. A favourable result, i.e. a result in favour of the plaintiff would have also helped Mr. Brahm Dutt and Mr. Deepak Sahani. Both of them, it appears, wanted to avoid appearing in the Court and the plaintiff also did not want them to appear in the Court and make statement on oath and face cross-examination. Producing witnesses to a document is one of the methods to prove a disputed document. The plaintiff has not adopted the said method to prove the disputed document Exhibit PW-1/1.

18. The plaintiff to prove agreement to sell Exhibit PW1/1 has produced Mr. V.C. Mishra, a hand writing expert as PW-2. Mr. V.C. Mishra in his report Exhibit PW-2/A has opined that signatures of Mr. R.K. Gupta on the receipt Exhibit PW-1/1 are forged and fabricated but the disputed signatures of defendant No. 2, Ms. Sunita Gupta on the said agreement Exhibit PW1/1 are genuine. He has also opined that the specimen signatures given by Ms. Sunita Gupta in the Court for the purpose of examination reveal deliberate disguising efforts on her part.

19. During the pendency of the suit, by order dated 23rd February, 1999, the court had accepted application I.A. No. 921/1999 filed by the plaintiff for sending signatures on the disputed document Exhibit PW-1/1 to CFSL for the expert opinion. The defendants were also

directed to give specimen signatures in the Court on plain paper for the purpose of comparison. Report received from Mr. V.K. Khanna, Principal Scientific Officer-cum-Examiner, Government of India states that signatures of defendant No. 1, Mr. R.K. Gupta on the said agreement are forged and fabricated. On signatures of Ms. Sunita Gupta, no opinion was given by CFSL and it was stated that signatures on the document in question relate to the year 1996, whereas specimen signatures were of the year 1999 i.e. after a gap of three years and for thorough scientific examination, a common standard i.e. admitted signatures of Ms. Sunita Gupta made in the year 1996 were required and may be sent to C.F.S.L. Mr. V.C. Mishra, PW-2 in his cross-examination has admitted that his opinion Exhibit PW2/A is based upon the specimen signatures of Ms. Sunita Gupta and his comparison with the disputed signatures. He had not examined contemporaneous signatures of Ms. Sunita Gupta for the year 1996 or any other signatures of Ms. Sunita Gupta (see in this regard cross-examination of Mr. V.C. Mishra, PW-2 on 13th July, 2006). Reports of CFSL and Mr. V.C. Mishra PW2 on the question of genuine signatures of Ms. Sunita Gupta on disputed document/agreement, PW1/1, are different. While CFSL has not been able to confirm or deny the signatures of Ms. Sunita Gupta on the said document, Mr. V.C. Mishra, PW-2 has given his opinion in favour of the plaintiff. Both reports are based on comparison of same

set of signatures. The CFSL under the Central Bureau of Investigation, Lodhi Road, New Delhi is an independent laboratory and was not engaged by the plaintiff or the defendants. Author of the opinion given by the CFSL, Mr. V.K. Khanna, M.Sc (Chemistry) and Principal Scientific Officer and documents was not called for cross-examination by the plaintiff. On the other hand, Mr. V.C. Mishra, PW-2 was engaged and his services were paid for by the plaintiff. It is, therefore, necessary for this Court to carefully examine the report given by Mr. V.C. Mishra and his evidence. The Supreme Court in the case of ***The State (Delhi Administration) versus Pali Ram***, reported in (1979) 2 SCC 158 has held that signatures of a person can be proved by three modes:-

- (i) Comparison of disputed/proved writing by an expert.
- (ii) By witness, who is familiar with the hand writing of the person.
- (iii) Comparison by the Court.

20. A court, however, normally as a matter of prudence and caution, hesitates to give findings purely on the basis of comparison. For this purpose, court can rely upon opinion of an expert to reach a conclusion. An expert, however, is not the final arbiter and his opinion is not final. Opinion may be accepted or rejected. Role of the expert is to point out similarity or dissimilarity between the writings/signature and thereafter the Court has right to evaluate

evidence, including opinion given by the expert and also compare the signatures or disputed writing. Final decision on the question always depends upon the entire evidence produced by the parties. The Supreme Court in ***Pali Ram*** case (supra) quoted with approval observations made by it in an earlier decision in ***Fakharuddin versus State of Madhya Pradesh***, reported in AIR 1967 SC 1326, which are as under:-

“Both under Sections 45 and 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case, the court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become a handwriting expert but to verify the premises of the expert in one case and to appraise the value of the opinion in the other case. The comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in a large measure in the disputed writing. In this way, the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert’s opinion is given, the court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the court must play the role of an expert but to say that the court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.”

21. Apart from the other evidence and material mentioned above, I am not inclined to rely upon the opinion given by Mr. V.C. Mishra, PW-2 for variety of reasons. On being questioned that the specimen signatures show natural variation and not deliberate disguise, PW-2, Mr. V.C. Mishra on 6th May, 2006 has stated as under:-

“Q. Mr. Misra, I put it to you that in the specimen signatures the features that you have mentioned as attempt at disguise are, in fact, nothing but natural variations which you have deliberately chosen to call as “disguise”.

A. The connecting strokes between “su” and “g” and “u” show disguising efforts but rest of the part of the signatures mostly show natural variations.”

22. An identical statement is also made in his report Exhibit PW.2/A. On further cross-examination on 25th May, 2006, Mr. V.C. Mishra, PW-2 admitted that there were also some pictorial differences in the connecting strokes 'u' and 'n' in the word 'Sunita' but these Mr. V.C.Mishra has stated were because of attempted disguise. Similar, is the answer in respect of finishing stroke of letter 'a' in the disputed signatures and the alphabets 't', 's', 'u' and the connecting stroke of 'n' as well as the individual connections of the alphabets 't' and 'a' in the word Sunita. Relevant portion of cross examination dated 25th May, 2006 of PW-2 Mr.V.C. Mishra is as under:-

“Q. Is it your observation that the joining in the

connecting strokes between 'u' and 'n' of Sunita in the disputed signatures as well as in the specimen signatures is similar.

A. Yes, it is similar, but in few specimen this is slightly pictorially different because of attempted disguise.

Q. Please see the characters 'g' and 'u' of Gupta in D-1. Do you agree that the commencement and finish of 'g' are blunt and there is a distinct pen left between 'g' and 'u'.

A. The commencement and finish of the character 'g' are not blunt and letter 'g' and 'u' have a pen lift which may be a pen jump also.

x x x x x x

Q. Please also see the terminal stroke of 'u' and its connecting stroke of 'n'. Do you agree that in D-1 and D-2 a sharp bifurcating angular movement is seen at both junctures, while in the specimens only a curved movement is observed.

A. It is because of disguising efforts in the specimen signatures.

Q. Please see finishing stroke of 't' at all four places in D-1 and D-2. Do you agree that it is horizontal when 'a' is being made in its continuation, while in the specimens it first goes downward and then upward to form 'a'. Is it not so?

A. It is correct in some specimen signatures. Both in D-1 and D-2 and SPS3 and SPS 5 this is horizontal.

Q. At page 3 of your report on individual characteristics you have mentioned that the letter 'a' after 't' of Sunita is having an inside loop in both the disputed and the specimen signatures. Please see these loops with reference to their size and axis, I put it to you that in D-1 and D-2 these loops are more compressed and slanted then in the specimen.

A. In specimen they are inconsistent due to disguise."

23. A bare perusal of the report given by Mr. V.C. Mishra, Exhibit PW-2/A and his observations as far as signatures of Ms. Sunita Gupta are concerned, reveals that he has relied upon the connecting stroke between alphabets 's' and 'u' in the word Sunita, which was there in

some of her specimen signatures but not in others. This as per report of Mr. V.C. Mishra, PW-2, proved disguising effort. The report does not mention any other disguising effort but the phrase 'disguising effort' has been repeatedly used by Mr. V.C. Mishra, PW-2 in his cross-examination as a ready answer to explain each and every difference. Cross-examination of Mr. V.C. Mishra, PW-2 reveals that there were dissimilarities and differences between the specimen signatures and disputed signatures. These dissimilarities, however, between the two have been countered by PW-2 by stating that while giving specimen signatures, the defendant No. 2 had adopted disguising efforts. The differences in the disputed signature and the specimen signatures of Ms.Sunita Gupta are clearly visible to a naked eye when one examines and looks at the enlarged photographs filed with the report of Mr. V.C. Mishra, Exhibit PW-2/A. The defendants in the cross-examination of Mr. V.C. Mishra, PW-2 have taken pains to put to him these discrepancies with regard to line, quality , speed, skill as well as individual alphabets.

24. Mr. V.C. Mishra, PW-2 in his cross-examination has tried to improve upon his report by stating that the specimen signatures of Ms. Sunita Gupta were result of 'practiced disguising efforts'. The word "practiced" is not mentioned by him in his report. Disguising efforts appears to be his universal answer to the dissimilarities and differences between the specimen signatures and the disputed

signatures.

25. It is difficult to accept report Exhibit PW2/A of Mr. V.C. Mishra that existence of connecting stroke between strokes 's' and 'u' in specimen signature SPS-2 alone shows disguising effort, when admittedly the said stroke does not exist in the other specimen signatures viz. SPS-1, SPS-3, SPS-4, SPS-5, SPS-6, SPS-7 and SPS-8. The report PW-2/A itself states "fortunately" some specimen signatures of Ms. Sunita Gupta are written with separate 's'. Thus, the report contradicts itself. The report relies upon the cross bar on 't' and connection between alphabets 't' and 'a' and states they being similar, documents stand proved as genuine. Letter/alphabet 'a' and some other similarity have been pointed out under the heading individual characteristic in the report PW-2/A. Mr.V.C.Mishra, PW-2 was confronted and cross-examined on each of his observations made in the report and when the differences were highlighted, these were answered with the usual plea as quoted above that these differences are result of 'disguising efforts'. I may also note that PW-2 has admitted in his cross-examination that there were some discrepancies in his report. The relevant portion of the cross-examination reads as under:-

"Q. Kindly read line 10 at page 2 of your opinion, the words "and with expanded loops of "I" like (S)". Please tell if there is any loop formation like "I" in the letter S.

A. In fact, the letter appearing as "I" at

line 10, page 2 of my opinion is in fact letter S but there is a typographical error.

Q. Please look at the second last line at page 3 of your opinion. Please indicate if any small 's' appears in the specimen signatures of Mrs. Sunita Gupta.

A. This small 's' be taken as the capital "S" in the word Sunita. It has been wrongly typed as small s in my opinion Ex. PW-2/A."

26. Mr. V.C. Mishra, PW-2 had initially feigned ignorance about report given by CFSL. It was stated by him that he was not aware of the said report and had no knowledge. On his further cross-examination he admitted that the disputed document PW-1/1 had rubber stamp and endorsement made by CFSL, CBI, New Delhi and at the time when he had examined the said document and taken photographs, the endorsement and rubber stamp was already there. An handwriting expert, who has carefully and diligently examined the disputed document Exhibit PW-1/1 would have noticed the said rubber stamp and not ignored the same. He would have also naturally asked his client about the report given by CFSL. It is, therefore, difficult to accept the contention of the plaintiff that Mr. V.C. Mishra, PW-2 was not aware and had no knowledge about the CFSL report. The two reports are contradictory. CFSL has refused to give any firm opinion either way on the signatures of Ms. Sunita Gupta without examining her contemporaneous signatures, whereas Mr. V.C. Mishra has opined in favour of the plaintiff, his client by categorically stating that the defendant No. 2 had executed the

disputed document Exhibit PW-1/1. It is admitted by Mr. V.C. Mishra, PW-2 in his cross-examination dated 16th February, 2006 that he had examined only the disputed signatures and the specimen signatures of Ms. Sunita Gupta and he did not feel necessary to examine signatures of Ms. Sunita Gupta on vakalatnama, written statement or any other paper. He has also stated that he did not ask for contemporaneous signatures of Ms. Sunita Gupta executed by her during 1996 as he did not feel any necessity.

27. I also find that Mr. V.C. Mishra, PW-2 has admitted that he did not take photograph of two signatures. He took photograph of only eight specimen signatures and left out two specimen signatures and the reason given by him in his cross-examination is as under:-

“Q. Kindly see the original report dated 26.03.199 of CFSL bearing no. 99/D-118/1518 on the Court file. I put it to you that you went through this report and while agreeing with this report regarding the disputed signatures of Shri R.K. Gupta on the disputed document being forged, you deliberately deviated from the report regarding the signatures of Smt. Sunita Gupta and you opined that there are efforts at disguising on her part in her signatures.

A. I had not seen the report before today, therefore any question of my agreeing or disagreeing to this report does not arise. However, having seen the last paragraph of this report today I find that even CFSL has asked for contemporaneous signatures of Smt. Sunita Gupta. Therefore, no detailed opinion regarding her signatures has been submitted by CFSL.

There are ten specimen signatures each of R.K. Gupta and Sunita Gupta out of which I

have taken photographs of 8 signatures of Sunita Gupta and have not taken photographs of the remaining two signatures because these eight signatures sufficiently proved comparison task and disguising efforts. I did not take photographs of the specimen signatures appearing at serial no. 3 and 8. Since signatures at no. 3 and 8 were not indicating that much disguising effort, I preferred, the other eight signatures for the purposes of truthful demonstration.”

28. In view of the above, I am not inclined to accept the report Exhibit PW-2/A and rely upon it for the purpose of giving a finding that Exhibit PW-1/1 is a genuine document signed by Ms. Sunita Gupta and executed by her.

29. Learned counsel for the plaintiff also submitted that the defendants are not reliable witnesses as they had concealed from this Court, power of attorney dated 5th November, 1996 marked ‘DX’ executed by the defendants in favour of one Mr. N.K. Nagpal. Power of Attorney marked Exhibit ‘DX’ is a photocopy. It was also contended that the defendant No. 2, Ms. Sunita Gupta did not give contemporaneous signatures of 1996 though these were available with her. These two facts even if correct do not make any difference and help the plaintiff to establish her claim. There is overwhelming evidence and material against the plaintiff. It was always open to the plaintiff to ask her hand writing expert to examine signatures of the defendant No. 2 on vakalatnama, written statement or even on cheques executed by the defendant No. 2 in 1991. The plaintiff

could have also asked banks in which the defendant No. 2 had an account to produce cheques for the purpose of comparison. Mr. V.C. Mishra, PW-2, on the other hand, has stated that there was no need for other or contemporaneous signatures of defendant No. 2. He did not require other admitted signatures of defendant no.2. As far as execution of power of attorney in favour of Mr. N.K. Nagpal is concerned, the same is extraneous and not relevant for the purpose of this case. Mr. N.K. Nagpal was not produced in the Court by the plaintiff. Original power of attorney was also not placed on record. This is not relevant evidence to prove genuineness of Exhibit PW1/1. Issue Nos. 1 and 2 are accordingly decided against the plaintiff and in favour of the defendants.

ISSUE No. 3

30. In the plaint it is stated that as per the original agreement the balance sale consideration of Rs. 19 lacs was to be paid within eight months with effect from 26th January, 1996. As per the plaintiff, this time was subsequently extended for another period of two months to enable the defendants to find alternative accommodation at their request. The plaintiff has not filed on record copy of her passbook and has not stated that she had requisite money with her to make payment or had made necessary arrangements for the payment of the same, but it appears that the plaintiff is a person of reasonable resources and may have been able to arrange for the payment. It is,

therefore, held that it was possible for the plaintiff to arrange for payment of Rs.19 lacs and was ready and willing. However, it has been held that the agreement to sell dated 26th January, 1996, Exhibit PW-1/1 is a forged and fabricated document. The issue is accordingly decided.

ISSUE NOS. 4 AND 5

31. In view of the findings given on Issue Nos. 1 and 2, it is held that the plaintiff is not entitled to any relief and the suit is liable to be dismissed. The defendants will be entitled to costs.

**(SANJIV KHANNA)
JUDGE**

**SEPTEMBER 22, 2008
VKR/P**