

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 10.11.2010
Judgment Pronounced on: 23.11.2010

+ **CS(OS) No. 1386/2001**

MRS. INDIRA RAI

.....PLAINTIFF

- versus -

SHRI BIR SINGH

.....DEFENDANT

Advocates who appeared in this case:

For the Plaintiff	:	Ms Ritu Singh Mann, Adv.
For the Defendant	:	Mr Pardeep Gupta, Ms Laxmibai Leitanthem, Mr Suresh Bharti and Ms Mamta Pal, Advs.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J

1. This is a suit for recovery of Rs 13,50,000/-. It has been alleged in the plaint that in the year 1997, the defendant and his brother-in-law Joginder Singh approached the plaintiff and asked her whether she was interested in purchasing their land. They took her to village

Manger in Faridabad and showed agriculture land comprised in Khasra Nos. 198/12, 198/13, 198/14, 198/17, 198/18/1, 198/18/2, 198/19, 198/22/1, 198/22/2, 198/22/3, 198/23, 198/24 owned by the defendant as well as some land by Joginder Singh. The plaintiff agreed to buy the said land from the defendant and about one acre of land from Joginder Singh. An Agreement to Sell dated 30th September, 1997 was signed between the plaintiff and the defendant and the plaintiff paid a sum of Rs 13,50,000/- to the defendant, being the sale consideration for the land. The defendant agreed to hand over the vacant possession of the land to the plaintiff by 31st May, 1998. The sale deed was to be executed within a month of handing over the possession. Joginder Singh executed sale deed in favour of the plaintiff, in respect of the land sold by him to her. The defendant, however, failed to hand over the possession of the land, agreed to be sold by him to the plaintiff and to execute the necessary sale deed in her favour. The plaintiff, therefore, decided to rescind the agreement and asked the defendant to refund the sale consideration paid by him. Since the defendant has failed to refund the sale consideration, she has now sought the

sum of Rs 13,50,000/- from him alongwith interest at the rate of 18% from the date of the agreement up to the date of filing of the suit, making a total sum of Rs 25,75,129/-.

2. The defendant has contested the suit. He has taken preliminary objections that the suit is barred by limitation and Delhi Court has no territorial jurisdiction in the matter on merits. The defendant has denied having executed any agreement to sell in favour of the plaintiff and has claimed that the agreement, setup by the plaintiff, is a forged document. He has also denied having received any amount from the plaintiff and has also alleged that he is not the owner of the land, described in the agreement setup by the plaintiff.

3. In her replication, the plaintiff has not disputed the averment of the defendant that he is not the owner of the land subject matter of the agreement, pleaded by her.

4. The following issues were framed on the pleadings of the parties:-

- 1) “Whether the plaintiff is entitled to recover a sum of Rs 25,75,129/- from the defendant as claimed inclusive of inclusive of interest at the rate of 18% p.a. compounded quarterly? OPP
- 2) Whether this Court has no territorial and pecuniary jurisdiction? OPD

- 3) Whether the present suit is barred by limitation? OPD
- 4) Whether the agreement to sell dated 30th September, 1997 was a forged document? OPD”

Issue No.3

5. This suit is governed by Article 55 of Limitation Act, which provides that the period of limitation in a suit for compensation for the breach of any contract express or implied not herein specially provided for is three years from the date when the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or where the breach is continuing, when it ceases. A bare perusal of the Agreement to Sell, alleged to have been executed between the plaintiff and the defendant, shows that the possession was to be delivered to the plaintiff on or before May 13, 1998 and the sale deed was to be executed within one month of the delivery of possession. Thus, the agreement, alleged to have been executed between the parties, envisaged execution of sale deed latest by 30th June, 1998. The plaintiff had no cause of action to file the suit before 30th June, 1998. The suit, having been filed on 31st May, 2001, is well within the

prescribed of limitation. The issue is, therefore, decided against the defendant and in favour of the plaintiff.

Issue No.2

6. Section 20(c) of the Code of Civil Procedure provides that subject to the limitation, prescribed in Section 16 to 19 of the Act, the suit can be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part arises. The Agreement to Sell, setup by the plaintiff, purports to have been executed in Delhi. Hence, part of the cause of action, claimed by the plaintiff, arose in Delhi and consequently, the suit can be filed in Delhi Court. Since this is a suit for recovery of more than Rs 20 lakhs, the pecuniary jurisdiction to try the suit vests exclusive with this Court.

7. Relying upon the provisions, contained in Section 16 of CPC, it was contended by the learned counsel for the defendant that the suit could be instituted only in the Court at Faridabad since the immovable property, subject matter of the agreement, is situated in Faridabad. In support of his contention, the learned counsel for the defendant has referred to the decision of Supreme Court in **Harshad Chiman Lal Modi Vs. DLF Universal and Anr.:** 2005 SCC

791. In the case before the Supreme Court, there was an agreement for purchase of a residential plot situated in Gurgaon, Haryana. The agreement was unilaterally cancelled by the respondent on the ground that the appellant had not performed his obligation under the agreement. The appellant thereupon filed a civil suit in Delhi, claiming specific performance of the agreement alongwith possession of the property and a permanent injunction, restraining the defendants from allotting, selling, transferring or alienating the plot subject matter of the agreement to any person other than him. It was contended before the Court that since the property was situated in Gurgaon, Delhi Court had no jurisdiction to entertain the suit for specific performance of an agreement to purchase a plot situated outside Delhi. It was submitted that parties, by consent, cannot confer jurisdiction on the Court though they could agree as to jurisdiction of one Court where more than one Court have jurisdiction in the matter. Accepting the contention raised by the respondent, the Supreme Court, inter alia, observed as under:

“16. Section 16 thus recognizes a well-established principle that actions against res or property should be brought in the

forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment.

19. In the instant case, the proviso has no application. The relief sought by the plaintiff is for specific performance of agreement respecting immovable property by directing the defendant No. 1 to execute sale deed in favour of the plaintiff and to deliver possession to him.

21. A plain reading of Section 20 of the Code leaves no room for doubt that it is a residuary provision and covers those cases not falling within the limitations of Sections 15 to 19. The opening words of the section "Subject to the limitations aforesaid" are significant and make it abundantly clear that the section takes within its sweep all personal actions. A suit falling under Section 20 thus may be instituted in a court within whose jurisdiction the defendant resides, or carries on business, or personally works for gain or cause of action wholly or partly arises."

8. Section 16 of the Code of Civil Procedure reads as under:

16. Suits to be instituted where subject-matter situate.

Subject to the pecuniary or other limitations prescribed by any law, suits-

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

9. The suit before this Court is not a suit for specific performance of the contract in respect of an immovable property. This is not a suit for a possession of an immovable property. This is a not suit for an injunction in respect of an

immovable property. This is a suit for refund of the sale consideration, alleged to have been paid by the plaintiff to the defendant on the ground that due to non-performance of the agreement by the defendant, she had rescinded the transaction. This suit is not covered in any of the clauses of Section 16 of the Code of Civil Procedure. It was contended by the learned counsel for the defendant that the suit would be covered in clause (d). I, however, find no merit in this contention. The plaintiff is not seeking determination of any right to or interest in an immovable property. She is only claiming refund of the money, alleged to have been paid by her to the defendant. Hence, the limitation, prescribed in Section 16 of the Code of Civil Procedure does not apply and, in view of the provisions contained in Section 20(c) of the Code of Civil Procedure, this Court has jurisdiction to try the present suit. The issue is decided against the defendant and in favour of the plaintiff.

Issues No. 1 and 4

10. These issues are interconnected and can be conveniently decided together.

11. The plaintiff has examined herself as PW-1 and has produced five more witnesses. In her affidavit by way of

evidence, the plaintiff has stated that sometime in September 1997, she wanted to buy about 10-12 acres of land as an investment. The defendant Bir Singh, who is a Faridabad property dealer and whom she had known for some time, approached her along his brother-in-law Joginder Singh and they showed her about 9 acres of land in Village Manger, Faridabad. They claimed that the property belonged to Bir Singh. Joginder Singh also showed one acre of adjoining land, which was owned by him and expressed his willingness to sell that land to her. She agreed to purchase the land and agreed to pay Rs.13,50,000/- to Bir Singh. She also agreed to pay Rs 1,55,000/- to Joginder Singh for one acre of land. The agreement Ex. PW 1/1 was executed by Bir Singh in her favour. In order to assure her of his honest intention, he also handed over to her certain original documents relating to his other properties, which she was to keep as a security. She further stated that Bir Singh failed to handover possession to her despite her approaching him a number of times in this regard. She then sent a notice Ex.P-3 to him, which he duly received vide AD Card Ex.P-4. She then sent a letter Ex.P-5 to him asking him to refund the amount of

Rs13,50,000/-, which she had paid to him, along with interest thereon at the rate of 24% per annum.

12. PW-2 Mr Suresh Kumar Sharma is an attesting witness to the agreement setup by the plaintiff. He has stated that this agreement was signed by him as a second witness on 30th September 1997. Joginder Singh, according to him, was the first attesting witness to this document.

13. PW-3 has produced a certified copy of the order dated 20th December 2005 passed by this Court in CrI.M.C. 2232/2005. PW-4 Anusheel Vaid, is a lawyer, who was working with Sh. S.P. Ahluwalia, Advocate from 2001-03. He stated that on 6th December 2001, he had appeared in the Court on the request of the clerk of Sh. S.P. Ahluwalia, Advocate. PW-5 Joginder Singh is the brother-in-law of the defendant. After seeing the Sale Deed Ex.P-2, he stated that it bears his photographs at point 'A' and his signature at its various pages. He, however, denied his alleged signature on the agreement Ex.P-1. PW-6 Ravindra Nath Abhilashi is a handwriting expert, who compared the alleged signatures of Joginder Singh on the agreement Ex.P-1 with his signature on the Sale Deed ExP-2 and the alleged signature of the defendant Bir Singh on the agreement with his signature on

the other document, including written statement dated 6th September 2006, affidavit dated 24th March 2005, affidavit dated 7th September 2006 and registered Sale Deed dated 31st May 2005 and Deed of Conveyance dated 7th March 1997. After comparison, he opined that the alleged signatures of Joginder Singh tally with his signatures on the Sale Deed Ex.P-2 and the alleged signature of the defendant Bir Singh tally with his signatures on the documents, which he had taken for comparison.

14. The defendant came in the witness box as DW-1, but did not produce any other witness in support of his defence. In his affidavit, the defendant stated that the Agreement to Sell dated 30th September 1997 is a forged document and was never executed by him. He also stated that 9 acres of agricultural land mentioned in this agreement does not belong to him and he had no right in the aforesaid land at any point of time.

15. Admittedly, the amount subject matter of the agreement Ex.PW-1/1 does not belong to the defendant. Admittedly, this land did not belong to him even at the time when the agreement Ex.PW-1/1 is alleged to have been executed by him. In her cross-examination, the plaintiff has

admitted that she did not see any document of title in favour of the defendant with respect to the land subject matter of the agreement. No valid explanation has been given by the plaintiff for not bothering even to ask the defendant to show to her title deeds or some other document of this land in order to satisfy her that the land which she was agreeing to sell to her, was actually owned by him. The plaintiff does not claim to have verified the ownership of this land from revenue authorities. Ordinarily, no one will make advance payment against an agreement to sell on immovable property unless he/she has satisfied himself/herself that the land agreed to be sold to him/her was actually owned by the person executing the agreement in his/her favor. The purchaser will either take copies of the documents of ownership from the seller or would at least satisfy himself/herself about the ownership of the vendor either by looking into the documents of title in his favour or by verifying the title of the property from the concerned authorities such as revenue authorities/Sub-Registrar. Failure of the plaintiff to take copies of the documents of title from the defendant or to at least have a look at them or to verify the title of the property from the revenue

authorities before advancing payment to the defendant creates a serious doubt on the truthfulness of the case set up by her. It would be pertinent to note her that during arguments the plaintiff claimed to have made payment to the defendant in various instalments. It is surprising that she kept on making payments to the defendants, from time to time, without asking him to at least to show to her the documents of title in his favour and without herself making an inquiry to ascertain the title of the land subject matter of the agreement to which she was a party.

16. It has been recorded in clause 1 of the agreement that the buyer had paid complete sale consideration of Rs 13,50,000/- to the seller which the seller was acknowledging. This acknowledgement in the Agreement to Sell implies that the entire sale consideration was paid to the defendant on 30th September, 1997 when the agreement was executed by him in favour of the plaintiff. In her affidavit by way of evidence, the plaintiff stated that on 30th September, 1997, she paid to the defendant in cash when he alongwith Beer Singh came to her house. In the legal notice sent by her to the defendant on 17th January, 2001 through her counsel, it has been specifically alleged that the

plaintiff had paid the complete sale consideration, amounting to Rs 13,50,000/- to the defendant at the time of signing of the agreement. Thus, the entire case set up in the plaint, documents and affidavit of the plaintiff is that the entire sale consideration, amounting to Rs 13,50,000/- was paid to the defendant in cash on 30th September, 1997. The plaintiff did not disclose to the Court the source from which she paid a large sum, amounting to Rs 13,50,000/- to the defendant in cash on 30th September, 1997. She does not claim that the aforesaid amount was lying in cash in her house and that she had withdrawn it from some bank account. She also does not claim to have borrowed this amount from any other person. When questioned about the source of payment, the plaintiff claimed that she did not remember the source from which this amount was made by her. When it was suggested to her that her bank balance in the year 1997 was less than Rs 5,00,000/-, she did not deny the suggestion and claimed that she did not remember her bank balance at that time. No pass book of any bank account has been produced by the plaintiff to prove that the amount alleged to have been paid by her to the defendant on 30th September, 1997 was withdrawn by her from some

bank. As noted earlier, the plaintiff does not claim that this amount was lying in cash with her. Even otherwise, no one would like to keep such a large amount in cash with him, unless it is required for a particular purpose. One would normally like to keep a large amount in a bank so as to earn some interest on it instead of keeping the money idle and thereby lose benefit of interest which he can earn by depositing it in a bank.

17. During the arguments, it was contended by the learned counsel for the plaintiff that the payment of Rs 13,50,000/- was made in instalment and not in one go. No such case, however, has been made out in the plaint, affidavit of the plaintiff or the notice sent by her to the defendant. As noted earlier, clause 1 of the agreement Ex. PW-1/1 contains an acknowledgement of payment of Rs 13,50,000/- on 30th September, 1997 itself. No part payment is noted in the agreement. No dates of the alleged part payments have been disclosed by the plaintiff either in the plaint or in her affidavit. She does not tell the Court either in the plaint or in her affidavit as to in how many parts, payment was made by her to the defendant, on which dates those payments were made and how much amount

was paid on which date. Even the source of the part payments claimed by the learned counsel for the plaintiff, has not been disclosed by the plaintiff either in her plaint or in her affidavit. In these circumstances, when the plaintiff has not been able to prove any source of the alleged cash payment, it is difficult to believe that she had made a cash payment of Rs 13,50,000/- to the defendant on 30th September, 1997, as claimed by her.

18. No payment even in part, either by a demand draft/pay order or by a cheque has been claimed by the plaintiff. Ordinarily, in a transaction for sale of an immovable property at least part payment is made by way of a demand draft/cheque/pay order so as to obtain an authentic documentary proof of the payment. No valid reason has been given by the plaintiff who is not illiterate person, she being an architect, for not making even part payment of the sale consideration by way of a cheque/draft/pay order. The only plea has been taken in this regard is that the defendant being a property dealer was a known to her. There is no evidence of the plaintiff having entered into any other transaction with/through the defendant. There is no evidence of any close friendship or

relationship between the parties. It is therefore difficult to accept that the plaintiff, while agreeing to purchase an immovable property and making payment of the entire sale consideration, would not insist upon at least on part payment by way of a demand draft/pay order/cheque. Normally, the seller does not make payment of the entire sale consideration in advance, particularly when even the possession of the property subject matter of the agreement is not given to him. The plaintiff, however, claims to have paid the entire sale consideration to the defendant, without even taking possession of the land subject matter of the agreement from him. There is no explanation from the plaintiff for adopting such an unusual course in her transaction with the defendant.

19. In these circumstances, the transaction, as set up by the plaintiff, appears to be highly doubtful and does not stand established.

20. The learned counsel for the plaintiff has contended that a number of documents, pertaining to other properties of the defendant, were deposited by the defendant, with the plaintiff, in order to ensure her of his genuineness. During his cross-examination, the defendant expressed ignorance

about these documents and denied having deposited them with the plaintiff. No documentary proof has been produced by the plaintiff to prove that these documents were deposited with her by the defendant. Moreover, it is not understood while the plaintiff would keep with her documents, relating to other properties of the defendant or his family members while not bothering to insist upon retaining the documents of title of the land subject matter of the agreement dated 30th September, 1997 or even having a look at those documents. There is no explanation as to why the plaintiff chose to retain the documents, relating to properties belonging to the defendant and/or his relatives while not bothering even to have a look at the documents, pertaining to the land which she was agreeing to purchase from him. The deposit of these documents with the plaintiff may indicate some financial transaction such as grant of a loan by the plaintiff to the defendant, but, does not make out a case for agreement to sell the land which did not even belong to the defendant. It is quite possible that the plaintiff extended some loan to the defendant and these documents were deposited with her as a security for repayment of that loan. But, the case set up before the

Court is not for recovery of a loan. The case set up before this Court is that the defendant had agreed to sell some agriculture land at Faridabad to the plaintiff and an amount of Rs 13,50,000/- was paid by the plaintiff to her towards sale consideration for that land. Had she set up a case of advancement of loan of Rs 13,50,000/- to the defendant and the documents of title of the family members of the defendant to their immovable properties being deposited with her towards security for repayment of that loan, the defendant would have been called upon to meet that case; and not a case for sale of an immovable property. It is not for the Court to make out a case which the plaintiff herself has not set up. If the plaintiff, for some reason or the other, decides not to come clean and disclose true facts relating to the transaction to the Court, it is not permissible for the Court to speculate as to the nature of her transaction with the defendant and grant relief to her on the basis of assumed facts. It would be pertinent to note here that in the plaint, there is no reference to this document. There is no allegation in the plaint that at the time of executing the agreement to sell in her favour, the defendant had kept some title deeds of the properties, belonging to him/his

family members as a security for performance of the agreement. This is yet another indication that these titles deeds and other documents which the plaintiff has filed only on 16th August, 2010, were not deposited with the plaintiff to ensure performance of the agreement Ex.PW-1/1. The indication one gets in such cases is that the plaintiff has not come clean and has not disclosed the true nature of her transaction with the defendant.

21. The agreement Ex.PW-1/1 purports to have been executed on 30th September, 1997. Under the agreement, the possession was handed over to the buyer on or before 31st May, 1998 and the sale deed was to be executed within one month of handing over the possession. In the ordinary course of human conduct, if possession is not delivered by the last date stipulated in this regard, despite advance receipt of the entire sale consideration, the purchaser would not sit silent and would soon after the last date stipulated for handing over the possession and execution of the sale deed, give a notice to the seller, requiring him to hand over the possession of the property subject matter of the agreement and also executing sale deed in favour of the purchaser. If the seller does not comply with the notice, the

purchaser would normally not sit idle, particularly when he has already paid entire sale consideration and would like to come to the Court at the earliest opportunity. However, in this case, even the first notice to the defendant is alleged to have been given on 17th January, 2001, i.e., after more than two years of the last date, stipulated for handing over the possession to the plaintiff and executing the sale deed in her favour. Again, there is no explanation from the plaintiff as to why she kept silent for such a long period and did not bother even to send a notice to the defendant, requiring him to deliver possession to her and execute the sale deed in her favour.

22. It was contended by the learned counsel for the plaintiff that no handwriting expert has been produced by the defendant to rebut the opinion of PW-6 Ravindra Nath Abhilashi, the handwriting expert produced by the plaintiff to prove that the signature on the agreement Ex.PW-1/1 are of the defendant and it is also signed by his brother-in-law Joginder as a witness. She has also placed reliance upon the decision of Supreme Court in **Ramesh Chandra Agrawal Vs. Regency Hospitals Ltd. & Ors.** JT 2009 (12) SC 377. In the case before the Supreme Court, the appellant

had filed a complaint before National Consumer Disputes Redressal Commission, alleging medical negligence on the part of the respondent 1 to 3 and claiming a sum of Rs 22 lakhs from them as compensation. The Commission requested Shri A.K. Singh, a Neurologist, to offer his opinion on the surgery done in the case. It was also directed that all the records of the surgery will be submitted by the complainant to the Commission for forwarding it to Dr A.K. Singh. When the matter was examined by Dr. A.K. Singh, he found that vital documents such as original X-ray, films, details of findings and surgery, details of operative findings and details of subsequent neurological assessment had not been provided to him. The appellant then filed an application before the Commission pointing out that the office of the Commission had by mistake forgotten to forward the original documents to Dr. A.K. Singh, as a result of which, he was deprived of the opportunity of perusing the documents before giving his opinion in the matter. The Commission, in the course of its judgment, noted that the appellant had failed to supply material to Dr A.K. Singh which could have enabled him to give a more complete report. It was also noted that no evidence of any

expert was led by the appellant nor had the parties filed any literature on the subject. The order of the Commission was set aside by the Supreme Court with a direction to send the records of the treatment of the appellant to Dr. A.K. Singh for expert opinion. During the course of judgments, Supreme Court, referring to Section 45 of the Evidence Act, inter alia, observed that an expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case.

This judgment, in my view, is of no help to the plaintiff. She has not come forward with a request to the Court to send the agreement Ex.PW-1/1 to CFSL/FSL for comparison of the alleged signature of the defendant on this document with his admitted signatures on the pleadings/affidavits, etc. and give opinion as to whether the

dispute signature tallies with his admitted signatures or not. She has chosen to engage a private handwriting expert. It is well-known that such private handwriting experts are produced in the Court only if they agree to support the case set up by the party which engages them. Hence, not much reliance can be placed on the opinion given by a private handwriting expert. It would be useful here to refer to the decision of Supreme Court in **Gulzar Ali Vs. State of H.P.** (1998) 2 SCC 192, where the accused had produced a handwriting expert to show that the opinion of the Government examiner of questioned documents was faulty. The High Court had observed that there was an inter alia tendency on the part of an expert witness to support the view of the person who called him and, therefore, it preferred the opinion of the Government examiner PW-20 M.L. Sharma. It was held by the Supreme Court that the aforesaid observation of the High Court could not be downstaged for many so called experts had been shown to be remunerated witnesses making themselves available on hire to pledge their oath in favour of the party paying them. Relying upon the aforesaid decision of the Supreme Court, this Court in **Deepa Arora vs. Saurabh Arora & Anr.** FAO

No.3/05 decided on 10th December, 2007 declined to rely upon the testimony of the handwriting expert produced by the Objector before the Court holding that not much importance could be attached to the testimony and report of the handwriting expert. In fact, way back in 1933, Lahore High Court in **Diwan Singh vs. Emperor** AIR 1933 Lah 561 quoted with approval the following passage:

“It must be borne in mind that an expert witness, however, impartially he may wish to be, is likely to be unconsciously prejudiced in favour of the side which calls him. The mere fact of opposition on the part of the other side is apt to create a spirit of partisanship and rivalry, so that an expert witness is unconsciously impelled to support the view taken by his own side. Besides, it must be remembered that an expert is often called by one side simply and solely because it has been ascertained that he holds views favourable to its interests.”

Taylor in his work on the “Law of Evidence” 12

Edition, Volume-I observed as under:

“Perhaps the testimony which least deserves credit with a jury is that of skilled witnesses. These witnesses are usually required to speak, not to facts, but to opinions; and when this is the case, it is often quite surprising to see with what facility, and to what an extent, their views can be made to correspond when the wishes or the interests of the parties who call them. They do not,

indeed, willfully misrepresent what they think, but their judgments become so warped by regarding the subject in one point of view, that, even when conscientiously disposed, they are incapable of forming an independent opinion. Being zealous partisans, their belief becomes synonymous with faith as defined by the apostles, and it too often is; but 'the substance of things hoped for, the evidence of things not seen'."

23. Taking into consideration all the facts and circumstance of the case, including the inherent improbability of the case set up by the plaintiff, the Court cannot place much reliance upon the opinion of PW-6 Ravindra Nath Abhilashi. In any case, the opinion of this handwriting expert, considering the facts and circumstances of the case, is not sufficient to establish the case, as set up by the plaintiff. The issues, therefore, are decided against the plaintiff and in favour of the defendant.

24. **Conclusion**

For the reasons given in the preceding paragraphs, I hold that the plaintiff has failed to prove that the defendant had agreed to sell some agriculture land in Faridabad to her and that she had paid a sum of Rs 13,50,000/- to him towards sale consideration for that amount. Since the plaintiff has failed to prove the case set

up by her, the suit is hereby dismissed without any order as to costs.

Decree sheet be prepared accordingly.

(V.K. JAIN)
JUDGE

NOVEMBER 23, 2010
BG