

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 06.10.2010
Judgment delivered on: 18.05.2011

RFA 46/2005

SMT. JANKI DEVI & OTHERS Appellants

Through: Mr.Sunil K.Mittal with Mr.Kshitij Mittal
and Mr.Abhishekh Sharma, Advocates.

Versus

SHRI HARISH CHANDER CHAWLA Respondent
Through: Mr.Vikas Nagpal, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.

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1. By this appeal filed under Section 96 of the Code of Civil Procedure, 1908 the appellants seek to challenge the judgment and decree dated 01.12.2004 passed by the learned Addl. District Judge, Delhi whereby the suit for specific performance of agreement to sell dated 03.09.1997 was decreed in favour of the respondent and against the appellants alongwith Rs.1,80,000/- for recovery and Rs.20,000/- towards damages from 1.10.2000 till realization along with interest @5% p.a.

2. Brief facts of the case as set out by the respondent in the plaint are that the appellants vide agreement to sell dated 3.9.97 had agreed to sell the first floor of the property bearing no. 11/16, Old Rajinder Nagar, New Delhi with proportionate land underneath to the respondent for a total consideration of Rs.3,10,000/-. Out of the said sale consideration amount, an amount of Rs 3,00,000 was paid by the respondent on 3.9.97, while the balance amount of Rs.10,000/- was paid vide receipt dated 4.9.97 and a number of documents to this effect were executed by the appellants in

favour of the respondent. That it was agreed to handover the actual, vacant and physical possession to the respondent by 31.3.99 failing which the appellants were liable to pay damages @Rs.10,000 p.m for a period of eighteen months and then @ Rs.20,000 p.m thereafter. On failure of the appellants to do so the respondent served a legal notice dated 20.9.2000 but no reply was received. Consequently the respondent filed a suit for specific performance and permanent injunction which vide judgment and decree dated 1.12.04 was decreed in favour of the respondent and against the appellants.

3. Feeling aggrieved with the same, the appellants have preferred the present appeal.

4. Mr. Sunil Mittal, learned counsel for the appellants submitted that the agreement to sell dated 3.9.1997, Ex. PW2/1 and the receipts dated 3.9.1997 and 4.9.1997; Ex.PW- 2/2 and Ex. PW- 2/3, are forged and fabricated documents. The contention of the counsel was that these

documents were fabricated by the respondent as he had got the signatures of the appellants on blank papers pretending that they were required for business needs. The counsel also submitted that the respondent had secured signatures of the appellants on blank papers and stamp papers on the pretext that they were required to be filed in the Bombay High Court where the firm of the appellants was fighting civil cases. The contention of the counsel was that these blank papers and stamp papers which were got signed by the respondent were used to fabricate the alleged documents, PW 2/1, PW2/2 and PW2/3.

5. Counsel for the appellants further submitted that the appellants and respondent had very close family relations and that the appellants had blind faith in the respondent. The counsel also submitted that it is even admitted by the respondent that the minor daughter of the respondent and father-in-law of the respondent were partners in the firm of the appellants i.e M/s D.P Textiles which was formed in September, 1997 and worked up to March, 1999 where after

it was dissolved and the respondent used to even look after the business of the said firm. The contention of the counsel was that the appellants have been cheated by the respondent who has taken advantage of their faith in him.

6. Counsel further argued that it is also an admitted case of the parties that the respondent has been a Chartered Accountant of the appellants and their firms and had filed their Income Tax Returns up to the Assessment Year 1996. It is also admitted by the respondent that one of the firms of the appellants i.e. M/s. Vikki Textiles had been filing the returns based upon the audited balance sheets and it was the respondent who audited those balance sheets. Counsel also submitted that the respondent has further admitted that the dealings of giving and taking of money between him and the appellants were always there. While not disputing his family relationship with the appellants, the respondent did not dispute that his wife even had gone to America with appellants in the year 1987, the counsel submitted.

7. Counsel further submitted that it was also admitted by the respondent that one of the attesting witnesses, namely, Sh. Vinod Khanna, Advocate has been a fast friend of the respondent. Counsel also submitted that Sh. Vinod Khanna was examined as PW 6 and it was admitted by him that he has been practicing in Tis Hazari Courts since 1979 and that he had no seat or chamber at the Parliament Street Court Compound where the agreement to sell and the receipt dated 3.9.97 were executed. The contention of the counsel was that why would the two witnesses, Sh. Vinod Khanna and Sh. Deepak Raj Dhingra, being advocates having their chambers at Tis Hazari Court would come and get the said documents executed at the Parliament Street Court compound.

8. Counsel for the appellants also submitted that the constructive possession of the property in question could not have been handed over by the appellants in favour of the respondent as the respondent was not in possession of any portion of the premises in question and, therefore, insertion of

such a clause in the agreement to sell clearly shows that the said agreement to sell is a forged and fabricated document. Counsel further submitted that it was highly improbable that the appellants would have agreed to pay a sum of Rs.10,000/- per month for 18 months and Rs.20,000/- per month thereafter in the event of their not handing over the possession of the property in question on or before 31.03.1999. The contention of counsel for the appellants was that the interest rate for retaining the possession would come to @ 3.3% p.m. and further @ 6.6% p.m and no prudent seller would agree to such an obnoxious clause in the agreement to sell. Counsel further submitted that the agreement to sell was typed on a Rs.10/- stamp paper which was alleged to have been purchased from the I.T.O, although the legal requirement of the stamp paper for the execution of agreement to sell at the relevant time was Rs.2/- only and this circumstance would create enough suspicion to disbelieve the authenticity of the agreement to sell.

9. Another suspicion, as per the counsel for the appellants, that can be gathered from the agreement to sell is that the same has been typed in a small font and that too in a compressed manner which would evidently show that the alleged signatures were taken in advance and then the agreement was later typed out. Counsel also submitted that the stamp paper, on which the alleged agreement to sell was prepared, bears the date of purchase as 18.07.1997, while the date of execution of the said agreement to sell is 03.09.1997. Counsel also submitted that the said stamp paper was purchased by the respondent from I.T.O, but the same was finally prepared, signed and notarized at the Parliament Street Court. Counsel also submitted that as per the case set up by the respondent in the plaint, the entire consideration amount stood paid by him on 04.09.1997, but still the respondent did not bother to ask for the possession of the said property under sale. The contention of counsel for the appellants was that it would be hard to believe that even after the payment of the total sale consideration amount, the

vendee will not bother to claim the physical possession of the purchased property for so long.

10. Counsel for the appellants also submitted that the documents of sale, on which reliance was placed by the respondent, were executed on different dates i.e. the first set on 03.09.1997; the second set on 04.09.1997 and the third on 12.09.1997, but no explanation has come forth from the side of the respondent as to why these documents were executed on different dates. Counsel also submitted that in the documents executed and registered on 12.09.1997, no reference has been made to the agreement to sell dated 3.9.97 and the money receipts dated 3.9.97 and 4.9.97. Counsel also submitted that the valuation of the property in question was much higher than the alleged price of sale consideration alleged to have been received and, therefore also, the documents of sale alleged to have been executed between the parties can be easily doubted.

11. Based on the above submissions, counsel for the appellants submitted that the judgment and decree passed by the learned trial court cannot sustain, as it has ignored the aforesaid vital aspects, both legal and factual and, therefore, the same is liable to be set aside.

12. Refuting the said submissions of counsel for the appellants, counsel for the respondent submitted that the respondent has successfully proved on record execution of all the sale documents, while the appellants miserably failed to impeach the credibility of all these documents. Counsel also submitted that the appellants have also failed to prove on record that any loan amount was advanced by the respondent to the appellants or any blank documents were signed by the appellants or that the appellants had signed blank documents on the misrepresentation of the respondent that such documents were required to be filed by the respondent in the legal cases of the respondent pending in the Bombay High Court. Counsel also submitted that the appellants have failed to prove or establish on record any kind of fraud played by the

respondent in getting the said documents executed from the appellants. Counsel also submitted that the appellant No.2 is not illiterate as was claimed by him, as it was proved on record by the respondent that the appellant no.2 had passed Secondary School Examination from Ramjas Secondary School with English as one of his subjects in which he had scored 45 marks out of 100. Counsel thus stated that the appellants had executed all the sale documents being fully conscious of the fact that they were selling the first floor of the property bearing No. 11/16, Old Rajinder Nagar, New Delhi in favour of the respondent. Counsel also submitted that the appellants had also executed the registered documents i.e. the irrevocable general power of attorney, two special power of attorneys and two Wills dated 12.9.97 and at the time of registration of these documents the appellants had duly appeared before the Office of the Sub-Registrar concerned and, therefore, the appellants cannot claim that they were ignorant about the sale transaction which was entered by them with open eyes.

13. Counsel for the respondent also submitted that so far the cancellation of the registered documents on 25.9.2000 was concerned, the same was a unilateral act on the part of the appellants and the said cancellation was made by the appellants after having received the legal notice from the respondent on 20.9.2000. Counsel also submitted that the said documents were cancelled by the appellants at the Office of the Sub-Registrar, Janakpuri, while the documents of which the cancellation was effected by the appellants, were registered at the Office of Sub-Registrar, Kashmere Gate, Delhi. The contention of counsel for the respondent was that the said cancellation of documents has no legal effect on the documents which were lawfully and validly registered by them in favour of the respondent at the Office of Sub-Registrar, Kashmere Gate. Counsel also submitted that the irrevocable general power of attorney executed by the appellants, which was duly registered by them, could not have been revoked by the appellants when such an attorney was executed to fulfill the obligations arising out of the agreement

to sell. Based on these submissions, counsel for the respondent submitted that no fault can be found in the impugned judgment and decree passed by the learned trial court, as it has carefully taken into consideration the entire material placed on record by both the parties and the same being a well reasoned judgment cannot be termed as illegal or perverse.

14. I have heard the learned counsel for the parties at considerable length and gone through the records.

15. A suit for specific performance, permanent injunction and recovery of damages was filed by the respondent against the present appellants impleaded as defendants No.1 & 2 and Smt.Rita Chawla, wife of the respondent as performa defendant No.3. The case set up by the respondent in the plaint was that the first floor of property bearing No.11/16, Old Rajinder Nagar, New Delhi with proportionate rights underneath the land was sold by the appellants in his favour vide agreement to sell dated 3.9.97

for a sale consideration amount of Rs.3,10,000/-. Two separate receipts were stated to have been executed by the appellants i.e. one for a sum of Rs.3 lacs dated 03.09.1997 and the other for a sum of Rs.10,000/- vide receipt dated 04.09.1997. An agreement to sell was alleged to have been executed on 03.09.1997, while one set of registered documents i.e. comprising of irrevocable general power of attorney, two special power of attorneys and two Wills were executed on 12.09.1997. It is not in dispute between the parties that the appellants were the co-owners of the said property holding leasehold rights. As per the case of the respondent, the appellants had agreed to sell the entire first floor of the said property with proportionate rights underneath the land in favour of the respondent for a total sale consideration of Rs.3,10,000/-. Out of the said amount of Rs.3,10,000/-, a sum of Rs.3 lacs was received by the appellants on various dates as per the details given in the receipt/acknowledgement dated 03.09.1997, while the balance amount of Rs.10,000/- was paid by the respondent to

the appellants vide receipt dated 04.09.1997. So far the receipt dated 03.09.1997 is concerned, the same reflects receipt of Rs.50,000/- by the appellant No.2 on 03.09.1997, while the remaining payments were made in the past, the first being on 14.08.1995, alleged to have been received by the appellant No.1. The agreement to sell is also alleged to have been executed on 03.09.1997 i.e. the day when the first receipt to acknowledge the amount of Rs.3 lacs was executed by the appellants. After the execution of these documents, two separate Wills were executed by the appellants No.1 and 2, both of them being in favour of Divya Chawla, minor daughter of the respondent. Under these Wills, both the appellants have bequeathed their rights in favour of the said minor daughter of the respondent in respect of the first floor with its entire construction and terrace rights of the said property bearing No.11/16, Old Rajinder Nagar, New Delhi with proportionate rights underneath the said land. On the same date i.e 12.09.1997, three more documents are stated to have been executed by the appellants i.e. irrevocable general

power of attorney in favour of Ms.Rita Chawla, wife of the respondent and two special power of attorneys, executed by the appellants also in favour of Smt. Rita Chawla. Under these attorneys, Ms.Rita Chawla, who was impleaded as defendant No.3 in the suit, was given the authority to seek conversion of the said property from leasehold to freehold and also to sell off the said property and to execute all the sale documents in favour of the purchaser and to get the same registered with the Office of the Sub-Registrar concerned in favour of the said purchaser. Both the Will and the attorneys were registered in the office of Sub-Registrar, Kashmere Gate on the same date i.e. 12.9.97. It is further not in dispute between the parties that no steps were taken either by the appellants or by the said attorney to seek conversion of the said first floor of the property from leasehold to freehold and also the possession of the said property was not handed over by the appellants to the respondent on the agreed date i.e. on 31.03.1999. Legal notice dated 20.09.2000 was sent by the respondent to the appellants on the failure of the appellants to hand over the

possession of the said property to the respondent. Receiving no response from the appellants, the respondent had instituted the said suit for specific performance against the appellants and also claimed damages @ Rs.10,000/- per month effective from 01.04.1999 till 30.9.2000. The respondent also claimed a decree for permanent injunction seeking restraint order against the appellants not to transfer, alienate or sell the said property in favour of any third party except the respondent.

16. In the written statement filed by the appellants, they had denied any such sale transaction having taken place between the parties or that any amount was received by them towards the said sale transaction. A preliminary objection was raised by the appellants in the written statement that the suit filed by the respondent was a result of sheer fraud as the respondent fraudulently forged and fabricated the alleged agreement to sell dated 03.09.1997 and also the receipts so as to grab the said property in question. The appellants in their written statement also took a stand that the respondent

and the appellant no.2 became very intimate friends due to their close relations for the past 15 years and in fact the respondent started treating the appellant no.2 like his own son. The appellants also took a stand that the appellant no.2 is an illiterate person while on the other hand the respondent is a qualified Chartered Accountant. The stand taken by the appellants was that because of the close and trusted relations, the respondent had secured the signatures of the appellant no.2 on blank papers on the pretext that such papers were required to fulfill some business needs. The appellants also alleged that in the month of January, 1999, the respondent secured signatures of both the appellants on some blank papers including the stamp papers on the pretext that they were required to be filed in the Hon'ble High Court of Bombay, where the partnership firm of the appellant no.2 was fighting five civil cases and the respondent was doing pairvi on their behalf in the said cases at Bombay. The appellants also took a stand that in the month of September 1997, the appellant no.2 took a loan of Rs.2 lacs from the respondent

and the respondent got executed various documents from the appellants with a view to secure the said loan amount. The appellants also submitted that they had paid back the entire loan amount with interest @2% p.a. in January 2000, but the blank stamp papers and other papers on which signatures were procured by the respondent were later misused by him to prepare the alleged agreement to sell dated 03.09.1997 and the two receipts. So far the documents which were registered with the office of the Sub-Registrar are concerned, the defence raised by the appellants was that the same were cancelled by the appellants on 25.9.2000 after having learnt about the malafide intentions of the respondent and with regard to the service of the legal notice dated 20.9.2000, the appellants did not specifically deny the receipt of the said notice but, however, pleaded that the notices, if any served by the respondent were false and fabricated. Defendant no.3 filed a written statement, but she being wife of the respondent supported the case set up by the respondent in her written statement. In the replication filed by the

respondent, the respondent reiterated the case set up by him in the plaint. Based on the pleadings of the parties, the learned trial court framed the following issues:

"1. Whether the plaintiff has fraudulently forged and fabricated the agreement to sell dated 03.09.1997 along with the other documents as alleged in P.O. No.1? OPD

2. Whether the suit has not been properly valued and is not maintainable? OPD

3. Whether the suit is bad for mis-joinder and non-joinder of the necessary parties? OPD

4. Whether the defendants no.1 & 2 had executed an Agreement to Sell dated 03.9.1997 along with receipt dated 04.9.1997 in favour of the plaintiff ? OPP

5. Whether the plaintiff had paid a sum of Rs.3,10,000/- to the defendants no.1 & 2? OPPP.

6. Whether the plaintiff remained ready and willing and still ready to do the same? OPP.

7. Whether the plaintiff is entitled to a decree for a sum of Rs.1,80,000/- against the defendants no.1 & 2 as damages, if so, how much and for what period? OPP

7.(a) Whether the plaintiff is entitled to a decree of specific performance as prayed? OPP

8. Whether the plaintiff is entitled to a decree for permanent injunctions as prayed? OPP."

17. The respondent in support of his case examined PW-1 Sunder Singh, Clerk from Ramjas Senior Secondary School, Delhi to prove the fact that the appellant no.2 had passed the Secondary School examination in the year 1978

and English was one of his subjects in which he had scored 45 marks. The respondent himself entered the witness box as PW-2 and proved the agreement to sell, the receipts including the legal notice dated 20.9.2000. PW-3, Sh. B.N. Srivastava, a hand writing expert produced by the respondent proved his report in respect of the disputed signatures and thumb impressions of the appellants. PW-4, Shri Rahman was a witness from the office of the Sub-Registrar who proved the registration of the said registered documents. PW-5 Sh. Deepak Raj Dhingra proved the agreement to sell and receipts being an attesting witness to those documents. PW-6 Sh. Vinod Khanna, Advocate also proved the execution of the documents being an attesting witness. The appellants on the other hand produced DW-1 Sh. Bhagwan Dass, the appellant himself, DW-2 Shri Navtek Singh, Head Clerk from the Office of Collector of Stamps, DW-3, Sh.S.P.Singh, Document Examiner as witnesses to prove their case.

18. On all the issues, the learned trial court gave findings in favour of the respondent and against the

appellants. The learned trial court did not believe the version of the appellants that they had signed some blank papers which were later converted by the respondent to fabricate the agreement to sell and receipts etc. The learned trial court also found that no evidence was led by the appellants to show that any case was pending against their firm at the Bombay High Court and that the same was being pursued by the respondent. The learned trial court also found that the documents which were registered in the office of the Sub-Registrar i.e. General Power of Attorney and two Special Power of Attorneys and the two Wills dated 12.9.97 cannot be said to be forged and fabricated as the appellants themselves had admitted the fact that they had appeared before the Office of the Sub-Registrar to execute the same. So far the defence of the appellants that those documents were cancelled by them on 25.9.2000 is concerned, the learned trial court held that such a step was an afterthought on the part of the appellants and that the same was done by them after the filing of the said civil suit by the respondent. The

learned trial court also placed reliance on Section 202 of the Contract Act and the judgment of this Court in the case of ***Harbans Singh Vs. Shanti Devi, 13(1977) DLT 369*** to hold that once an irrevocable power of attorney has been executed by the vendor coupled with the execution of the agreement to sell then such a power of attorney cannot be cancelled or revoked on account of creation of interest or right in the property by the vendor. On Issue No. 5, the learned trial court found that the said receipts were duly executed by the appellants and they were fully aware of the contents of the same as nothing contrary could be established from the examination of the appellants.

19. Before carrying on the discussion further, it would be apt to reproduce Section 10 of the Specific Relief Act, 1963, which generally deals with the cases which must be specially enforced:

"10. Cases in which specific performance of contract enforceable.- Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced-

(a) when there exists no standard for ascertaining the actual damage caused by the non- performance of the act agreed to be done; or

(b) when the act agreed to be done is such that compensation in money for its non- performance would not afford adequate relief.

Explanation.- Unless and until the contrary is proved, the court shall presume-

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:-

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff."

To claim a decree for specific performance, the plaintiff approaching the Court has to first establish that there was a concluding contract between the parties for the sale of the subject property. The second requirement is that that the plaintiff has already performed his part of the contract in terms of the agreement; and thirdly, that he is always ready and willing to fulfill the remaining part of his obligation. In the present case, the appellants have vehemently disputed the

execution of the agreement to sell and receipts dated 3.9.97 and 4.9.97 respectively. The defence raised by them was that the respondent with whom they were having close and trusted relations had obtained their signatures on some blank papers and stamp papers on two occasions i.e at the time of advancement of loan and second at the time when certain papers were to be filed in the five cases concerning their partnership firms at the Bombay High Court. It is a settled legal position that in civil cases the facts are not to be proved beyond reasonable doubt but the conclusions are drawn based on preponderance of probabilities. The appellants herein, miserably failed to prove their defence before the learned trial court as they could not establish the fact that a loan of Rs.2 lacs was taken by them from the respondent in September 1997 or the same was returned by them in January 2000. The appellants also failed to prove on record that the respondent being a chartered accountant was pursuing their five cases in the Bombay High Court and significantly no details of such cases was given by the appellants either in the

written statement or in the evidence. The appellants also failed to disclose the name of the advocate who was conducting the said five cases. It is not the case of the appellants that the respondent himself was conducting those cases and rightly so, as the respondent is a chartered accountant and not an advocate under The Advocates Act, 1961. The appellant no.2 in his cross-examination clearly stated that he had signed the agreement to sell Ex. PW-2/1 at point D and C and the signatures of his mother i.e. appellant no.1 were appended at point A and B. Similarly on Ex. PW-2/2 the appellant no.2 confirmed his signatures and that of his mother. On Ex. PW2/3 as well the appellant no.2 admitted his signatures but with regard to his mother's signatures he failed to take any stand and on Ex. PW2/4 also he admitted his signatures and that of his mother. The appellant no.2 also admitted the fact that he had signed and affixed his thumb impression on Ex. PW2/4, in the presence of the Sub-Registrar. He also admitted his own photographs and the photographs of his mother on the said registered documents.

Similarly, on Ex. PW2/5 and Ex. PW2/6, he admitted his own signatures and the signatures of his mother. He also admitted that the said documents were registered with the office of the Sub-Registrar, Kashmere Gate. Similar stand was taken by the appellants so far the documents proved on record as Ex. PW2/7 and PW2/8 are concerned. The appellant no.2 even admitted the signatures of his mother on A.D. Card, Ex. PW2/12 and also the address mentioned on the said A.D. Card. The appellant no.2 no doubt has denied the signatures of the two advocates who had signed the registered documents as the attesting witnesses and somewhere he denied the thumb impressions of his mother and her signatures as well, but if the facts are seen in totality, the appellants miserably failed to give any justification or reasons for the execution of the said documents by them before the Office of the Sub-Registrar. Before the Office of the Sub-Registrar one has to personally appear and has to affix his photographs and has to produce the residential proof and identity proof and besides that the executant has to affix

his/her own thumb impression on the reverse of the registered documents as well as on the relevant records of the Office of the Sub-Registrar. No explanation worth its salt came forth from the side of the appellants to establish as to what compelled them to execute such documents and then to present themselves for the registration of the same. The said documents are not ordinary documents as by the general power of attorney the authority to sell and alienate the said first floor of the property in question was given by the appellants in favour of the wife of the respondent Mrs. Ritu Chawla and through the said two registered Wills the said first floor of the property under sale was bequeathed by them in favour of the minor daughter of the respondent namely Divya Chawla.

20. Now, the pivotal question that arises is that had there been no sale transaction between the parties, then where was the need to execute and register the said documents. The fact of registration of GPA, SPAs and two Wills even belie the theory of the appellants vis-à-vis the

agreement to sell dated 03.09.1997 and the said two receipts dated 3.9.97 and 4.9.97 and on the contrary the said registered documents give strength to the execution of the agreement to sell and both the receipts. Merely because of the fact that both the parties had very close and intimate relations for the past several years and they have been attending each others family functions or even that the name of the respondent was mentioned in the invitation card of the marriage of the appellant no.2, that by itself is not enough to assume that a sale transaction could not have taken place due to intimacy in the relationship between the parties. The onus to disprove the said documents i.e. agreement to sell, receipts and the registered documents was very heavy upon the appellants and they manifestly failed to discharge the same after the onus was successfully discharged by the respondent in proving the execution of the said documents.

21. No doubt, certain anomalies can be seen in the conduct of the respondent and in the covenants and the process undertaken in the execution of the agreement to sell

and the receipts, but by taking a holistic view of the facts involved, it is difficult to accept the defence raised by the appellants in their written statement. The execution of the agreement to sell on a ten rupees stamp paper, the font of the type being small, the matter of agreement to sell compressed and squeezed to fit in just two pages, the possession of the first floor remained throughout with the appellants and no question of handing over of the constructive possession to the respondents, improbability of the insertion of a demand in the agreement to sell making the appellants liable to pay a sum of Rs.10,000/- for 18 months and thereafter Rs.20,000/- p.m. are the few instances on which a lot of emphasis was laid by the counsel for the appellants. No satisfactory explanation came forth from the side of the appellants on questioning by this court and even in the entire written statement, the appellants have offered no explanation as under what circumstances they had agreed to appear before the Office of the Registrar so as to get General Power of Attorney, two Special Power of Attorneys and the

two Wills registered. With regard to the registered documents the only stand taken by the appellants in the written statement is that they cancelled all the documents on 25.9.2000 as soon as they came to know about the malafides of the respondent. But these instances in any case cannot disprove the execution of the said documents including the registered documents. The appellants have also not given any explanation as to why they choose not to send a reply to the legal notice dated 20.9.2000 which was duly received by them. The receipt of the legal notice can be safely presumed from the fact that the appellants in their written statement did not dispute the receipt of the same. The appellants have also not disputed the correctness of the address on the A.D. cards and the signatures on the A.D. Cards. By producing a witness from Ramjas Secondary School, the respondent also proved on record that the appellant no.2 was not an illiterate person so as not to know the implication of the documents which he along with his mother had executed. During the course of arguments, counsel for the appellants made an

attempt to draw a distinction between an illiterate and an educated person but by no stretch of imagination one can fathom to accept that a person who knows the English language up to secondary level and is running various businesses and had been filing income tax returns would sign various blank papers, even stamp papers, and also execute various documents which were later registered in the office of the Sub-Registrar and who even went to the extent of appearing before the Office of the Sub-Registrar along with his mother but will not know the consequences of his such acts. Hence, the appellant no.2 cannot be said to be as illiterate as sought to be projected by the counsel for the appellants. The cancellation of the said documents on 25.9.2000, that too after the receipt of the legal notice dated 20.9.2000, during the pendency of the case cannot have the effect of invalidating the said registered documents. Thus to my mind the explanation given by the appellants is lame and is a clear indication of the fact that the appellants find

themselves helpless in impeaching the authenticity and genuineness of the said registered documents.

22. In the case of ***Ajit Narian Vs. Shri Arti Singh & Ors. 1999 (Delhi) 932*** this Court has held that that the documents such as agreement to sell, general power of attorney and special power of attorney and will etc. are the routine documents executed when sale of immovable property takes place in Delhi. It was held that:

"14. The stand in the suit in this Court is clearly contradicted by the plea in the suit before the Civil Judge, Furthermore the plaintiff is a businessman upon his own showing and thus his plea that he signed documents of such importance blindly is far fetched. The plaintiff has thus failed to make out a prima facie case for continuance of the interim injunction granted on 13th July, 1998. There is no Explanationn in the pleadings or arguments as to why the plaintiff who for his loan of Rs. 1,50,000/- did not execute any documents was persuaded not only to sign the documents where loan was given by the defendant but also to have them registered. At least the factum of registration should have alerted the plaintiff. Furthermore the documents executed i.e. (a) Power of Attorney, (b) Agreement to sell, (c) Will (d) The power of attorneies to deal with local authorities such as NDMC etc., clearly leads to the prima facie conclusion that the plaintiff had gone through a transaction of sale. These documents are the routine documents executed when a sale of immovable property takes place in Delhi and the execution and further registration of the documents thus prima facie indicates that what was intended was a sale of the property and not the loan as alleged by the plaintiff."

Hence in the present case also, the registration of the two SPAs and GPA etc. prima facie indicates that what was intended was a sale of the property and not the loan as alleged by the appellants. It is also a settled legal position that for proving a fraud on the other party, specific allegations without any vagueness have to be levelled which are to be proved with sufficient and cogent evidence as per the mandate of order VI rule 4 of the Code of Civil Procedure, 1908 which states that:

"Order VI

Rule 4. Particulars to be given where necessary

In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

23. It would also be useful to refer here to the observation of the Apex Court in the case of ***Bishundeo Narain vs.***

Seogeni Rai and Jagernath AIR1951SC280 where it was held that:

"28. It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion."

Hence, as already stated above, the appellants not only failed to plead enough facts in the written statement with regard to their allegation of fraud and fabrication but also equally failed to prove any fraud and fabrication on the part of the respondent in getting the said documents executed.

24. It is a settled legal position that once a contract to transfer of immovable property is proved on record then the normal rule is to grant specific performance and not granting the same can be only under exceptional circumstances. To grant specific performance, no doubt, is an equitable discretionary relief and the court need not grant order for

specific performance merely because it is lawful to grant the same but such a discretion however has to be exercised by the courts based on metes and bounds of judicial principles and not in an arbitrary or unreasonable manner. Some of the circumstances have been duly mentioned in Section 20 (2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion, the same being that if under the terms of the contract the plaintiff gets unfair advantage over the defendant the court may not exercise its discretion in favour of the petitioner or where the defendant would be put to undue hardship which he did not foresee at the time of execution of the agreement and where it is inequitable to grant specific relief in the given facts. I do not find that any such circumstances exist in the present case, more over the discretion exercised by the trial court, which always has the advantage of watching the demeanor of the witnesses during the course of recording of the evidence, should not be lightly interfered unless the exercise of such discretion by the trial court seem to be not

based on the correct appreciation of the material on record and on a sound reasoning. Reverting back to the facts of the present case, this court does not find that the learned trial court has exercised its discretion in an arbitrary or unreasonable manner as the appellants could not succeed in offering any explanation for the execution of the sale documents and more importantly the documents registered by them by presenting themselves before the Office of the Sub-Registrar.

25. So far the damages awarded by the learned trial court @ Rs.20,000 per month from 1.10.2000 till the date of handing over the possession of the suit property are concerned, the same are set aside as no such relief was claimed by the respondents and even otherwise such claim of damages at such exorbitant rate is without any basis and manifestly unconscionable. Thus the relief of Rs.1,80,000 for recovery alongwith interest @5% p.a from the date of filing of the suit till realization granted by the learned trial court is accordingly upheld.

26. Therefore, in the light of the above discussion, there is no merit in the present appeal and the same is hereby dismissed, leaving the parties to bear their own costs.

May 18, 2011
dc/mg

KAILASH GAMBHIR, J