

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

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Date of decision: 11th March, 2014

+ RFA 184/2013 & CMs No.6157/2013(for stay) & 6158/2013 (for condonation of 99 days delay in filing the appeal)

AMARJEET KAUR

..... Appellant

Through: Mr. Ravi Gupta, Sr. Adv. with Mr. Mohit Gupta, Ms. Megha Gaur and Mr. Ajay Gulati, Advocates.

Versus

DELHI DEVELOPMENT AUTHORITY & ORS

..... Respondents

Through: Ms. Shobhana Takiar, Adv. for R-1.
Mr. Pallav Saxena and Mr. Abhishek Kumar, Advs for R-2.
Mr. Sumit Bansal and Ms. Richa Oberoi, Advs. for SCB.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The appeal impugns the judgment and decree dated 25th August, 2012 of the Court of the Additional District Judge (ADJ)-04, South District, Saket Court Complex, New Delhi of dismissal *in limine*, as barred by time, suit No. 354/2012 filed by the appellant/plaintiff, consequent to the rejection of plaint under Order 7 Rule 11(d) of the Civil Procedure Code, 1908 (CPC). The appeal is accompanied with an application for condonation of 99 days delay in filing thereof.

2. Notice only of the application for condonation of delay was issued to the respondents/defendants. Reply to the application has however been filed by the respondent/defendant No.2 Ms. Neelima Begeria. Though in response to the notice, the respondent/defendant No.3 Mr. B.S. Gill had appeared in person on 23rd August, 2013 and accepted notice also on behalf of respondent/defendant no.4 Mr. Mohanjeet Singh and respondent/defendant No.5 Ms. Gurjeet Kaur who are his brothers and sister respectively but subsequently none appeared for the respondents/defendants No. 3 to 5. On the statement of the counsel for the appellant/plaintiff that the copies of the entire Trial Court record had been placed on record, the Trial Court record was not requisitioned. During the hearing on the application for condonation of delay on 28th October, 2013, the appearing counsels were asked to, on the next date of hearing, come prepared with the merits of the appeal also. The senior counsel for the appellant/plaintiff and the counsel for the respondent/defendant No.1 Delhi Development Authority (DDA) and the counsel for the respondent/defendant No.2 Ms. Neelima Bageria have been heard.

3. The appellant/plaintiff, on 18th August, 2012 instituted the suit from which this appeal arises, pleading :

- (i) that Shri Ajit Singh husband of the appellant/plaintiff and the father of the respondents/defendants No. 3 to 5 was the owner of property No. C-4, Westend Colony, New Delhi vide Perpetual Sub-Lease dated 15th October, 1966 of the land thereunder in his favour;
- (ii) that the said Shri Ajit Singh vide Agreement to Sell dated 10th December, 1986 agreed to sell the said property to respondent/defendant No.2 Ms. Neelima Bageria for a consideration of Rs.45,00,000/-, out of which only Rs. 9,00,000/- was paid and the respondent /defendant No.2 defaulted in making payment of balance sale consideration up to the agreed time of 10th June, 1987;
- (iii) that upon the failure of the respondent/defendant No.2 to pay the balance sale consideration on or before the last date agreed therefor, she forfeited the amount of Rs.9,00,000/- already paid to the said Sh. Ajit Singh;
- (iv) that on request of the respondent/defendant No.2, Sh. Ajit Singh had also executed certain documents such as GPA,

SPA, another Agreement to Sell, Affidavit, Will, Receipts etc, separately from the Agreement to Sell dated 10th December, 1986;

- (v) that it was specifically mentioned in the Agreement to Sell dated 10th December, 1986 that the said documents i.e., GPA, SPA, another Agreement to Sell, Affidavit, Will, Receipts etc shall not confer any right to the respondent/defendant No.2 in the property and shall not be used by her for any purpose other than of obtaining a loan;
- (vi) that since the respondent /defendant No.2 failed to pay the balance sale consideration, the respondent/defendant No.2 was not left with any right in the property in any manner and the said Sh. Ajit Singh became entitled to deal with the tenant who was inducted into the property as per the terms and condition of the Agreement to Sell dated 10th December, 1986;

- (vii) that upon the demise of Sh. Ajit Singh, the appellant/plaintiff and the respondents/defendants No. 3 to 5 being his only legal heirs, became the joint owners of the said property;
- (viii) that the appellant/plaintiff on 17th August, 2009 applied to the respondent/defendant No.1 DDA to disclose the status of the said property, as the appellant/plaintiff was inclined to get the same converted into freehold;
- (ix) that the respondent/defendant No.1 DDA vide its reply dated 6th October, 2009 intimated that the said property had on 18th February, 1994 been got converted into freehold in the name of the respondent/defendant No.2 Ms. Neelima Bageria through General Power of Attorney in favour Sh. Saroj Kumar Bageria;
- (x) that the appellant/plaintiff and the respondents/defendants No. 3 to 5 learnt of the property having been converted into freehold in the name of the respondent/defendant No.2 for the first time upon receipt of reply dated 6th October, 2009 supra;

- (xi) that on further enquiry, it was revealed that the respondent/defendant No.2 had played a fraud and also cheated the appellant/plaintiff in the matter and got the property converted into freehold in collusion and conspiracy with the officials of the respondent/defendant No.1 DDA on the basis of documents which were meant for use of obtaining loan only and could not be used for any other purpose;
- (xii) that the respondent /defendant No.2 was not competent and authorized to get the property converted into freehold on the basis of the documents which were only meant for use of obtaining loan and could not be used for any other purpose as was agreed upon between the respondent/defendant No.2 and Sh. Ajit Singh;
- (xiii) moreover, the entire deal between the respondent/defendant No.2 and Mr. Ajit Singh stood revoked and cancelled on the failure of the respondent/defendant No.2 to pay the balance sale consideration within the time and which fact was within the knowledge of the respondent/defendant No.2;

- (xiv) that the collusion and conspiracy between the respondent/defendant No.2 and the officials of the respondent/defendant No.1 DDA is also evident from the fact that the documents on the basis of which the respondent/defendant No.2 got the property converted into freehold were for a sum of Rs.9,50,000/- only whereas the transaction was for a sum of Rs.45,00,000/- which was the market value of the property at that time and the officials of the respondent/defendant No.1 DDA should have applied their mind to the said fact as to how the property could be sold for a consideration of Rs.9,50,000/- only;
- (xv) that as per the documents which were submitted by the respondent/defendant No.2 for conversion of the property to freehold, even the full amount had not been paid by the respondent/defendant No.,2 to Sh. Ajit Singh and the officials of the respondent/defendant No.1 DDA should have applied their mind to the said fact and ought not to have converted the property into freehold as the entire sale consideration

even as per the said documents having not been paid by the respondent/defendant No.2 to Sh. Ajit Singh;

- (xvi) that as per the terms and conditions of the Conveyance Deed of freehold rights executed by the respondent/defendant No.1 DDA in favour of the respondent/defendant No.2, the same could be revoked and cancelled at any time any fraud or cheating or misrepresentation was found;
- (xvii) that the appellant/plaintiff served the respondents /defendants No.1 & 2 with a legal notice dated 6th June, 2012 requiring the respondent/defendant No.1 DDA to cancel and revoke the Conveyance Deed of freehold rights in the property executed in favour of the respondent/defendant No.2, but no action had been taken;
- (xviii) that there was admittedly no sale deed from Sh. Ajit Singh in favour of the respondent/defendant No.2.

Accordingly, the reliefs of; i) declaration that the respondent/defendant No.2 never had any right or competence to get the property converted into freehold from the respondent/defendant No.1 DDA

on the basis of documents submitted by the respondent/defendant No.2 with the respondent/defendant No.1 DDA and conversion of the said property to freehold had been obtained playing fraud and misrepresentations and in collusion with the officials of respondent/defendant No.1 DDA; ii) cancellation/revocation of the Conveyance Deed dated 18th February, 1994 of freehold rights in the property; and, iii) permanent injunction restraining the respondent/defendant No.2 from encumbering the said property in any manner whatsoever, were claimed in the suit.

4. The appellant/plaintiff along with the plaint *inter alia* filed copies of ; i) Perpetual Sub-Lease Deed dated 15th October, 1966 of the land underneath the property; ii) Agreement to Sell dated 10th December, 1986 between Sh. Ait Singh and the respondent/defendant No.2; iii) another Agreement to Sell dated 10th December, 1986 between Sh. Ajit Singh and respondent/defendant No.2; iv) GPA dated 10th December 1986 executed by Sh. Ajit Singh with respect to the said property in favour of Sh. Saroj Kumar Bageria, husband of the respondent/defendant No.2.

5. The learned ADJ, vide the impugned judgment, dismissed the suit *in limine*, probably without even issuing notice thereof to respondents/defendants, finding/observing/holding:

- (a) that arguments had been heard as regards limitation;
- (b) that the Conveyance Deed of freehold rights in land underneath the property was executed on 18th February, 1994 pursuant to the documents dated 10th December, 1986 executed by Sh. Ajit Singh;
- (c) that the case of the appellant/plaintiff was that she was not aware of the conveyance Deed dated 18th February, 1994 till she received the letter dated 6th October, 2009 from the respondent/defendant No.1 DDA;
- (d) it is not the case of the appellant/plaintiff that she was not aware of the execution of the documents dated 10th December, 1986 by Sh. Ajit Singh in favour of respondent/defendant No.2 and her husband;
- (e) that Sh. Ajit Singh had admittedly executed two Agreements to Sell in favour of the respondent/defendant No.2 on 10th December, 1986, one showing the sale consideration as Rs. 45,00,000/- and the other showing the sale consideration as Rs. 9,50,000/-;

- (f) that the date of death of Sh. Ajit Singh had not been given but in case the amount of Rs.9,00,000/- paid by the respondent/defendant No.2 to Sh. Ajit Singh had been forfeited by him during his lifetime, the appellant/plaintiff and the respondents/defendants No. 3 to 5 being the widow and children of Sh. Ajit Singh ought to have taken some steps for transfer of the suit property in their name;
- (g) that instead, an application dated 17th August, 2009 under the Right to Information Act was filed to find out the status of the property to know whether the suit property was still in the name of Sh. Ajit Singh and to know in whose name the property had been made freehold and also to obtain copies of the documents on the basis of which the property had been made freehold;
- (h) that it was thus clear that the appellant/plaintiff was having information as regards the property having been converted into freehold;

- (i) that the limitation as per Entry 58 in the Schedule to the Limitation Act, 1963 is three years from the date when the right to sue accrues;
- (j) that the suit filed by the appellant/plaintiff was clearly barred by limitation.

Accordingly, the plaint was rejected under Order 7 Rule 11 (d) of the CPC.

6. The appellant/plaintiff in her application for condonation of 99 days delay in preferring the appeal has pleaded that she is a senior citizen and is suffering from various diseases and confined to bed and there is nobody in the family to take care of the appellant/plaintiff and it is her grandson Mr. Harman Singh who is also her attorney who is looking after her besides taking care of his own studies etc. it is further stated that though the certified copy of the impugned order of rejection of plaint was obtained in the second week of September but her grandson / attorney Mr. Harman Singh was no more interested in filing the appeal on her behalf and the appellant/plaintiff herself could not engage any lawyer and continued to request her grandson Sh. Harman Singh to file the appeal and to which he

ultimately agreed and all of which caused delay of 99 days in preferring the appeal.

7. The respondent / defendant No.2 in her reply to the aforesaid application has pleaded that the power of attorney purportedly executed by the appellant/plaintiff in favour of Sh. Harman Singh appears to be forged and fabricated as it does not bear the signature of the appellant/plaintiff but only her purported thumb impression and has contended that the application does not disclose any cause, least sufficient cause for condonation of delay.

8. I may notice that though no steps were taken by the appellant/plaintiff for issuance of the notice to the respondents / defendants No.3 to 5, but the respondent / defendant No.3 who is one other than the son of the appellant/plaintiff, appeared before this Court on his own on 23rd August, 2013 and also accepted notice as aforesaid on behalf of respondents / defendants No.4 and 5, though thereafter has stopped appearing. The address given in the memo of parties of the appellant/plaintiff as well as the respondents / defendants No.3 to 5 is one and the same. I may further notice that though the appellant/plaintiff in the plaint had stated that the respondent / defendant No.2 as well as the concerned officials of the respondent / defendant No.1 DDA who colluded with the respondent / defendant No.2 in

conversion of the property into freehold are also liable to be investigated and prosecuted and steps in that regard were being taken but no such steps are informed to have been taken.

9. During the hearing on 29th October, 2013, it was the contention of the counsel for the appellant/plaintiff that Sh. Ajit Singh, notwithstanding execution of the Agreement to Sell dated 10th December, 1986 (whereunder he had in part performance of the Agreement to Sell handed over constructive possession of the property to respondent/defendant No.2) had continued to exercise rights as owner of the property as the sale did not fructify owing to the respondent / defendant No.2 having not paid the balance sale consideration and after the demise on 11th November, 1992 of Sh. Ajit Singh, the appellant/plaintiff had continued to exercise rights as owner of the property. However, the counsel for the appellant/plaintiff was not able to tell as to what rights as owner were exercised by Sh. Ajit Singh and after his demise, by the appellant/plaintiff, from the year 1986 till the institution of the suit from which this appeal arises in August, 2012. The counsel was also unable to tell as to how the advance money received in the Agreement to Sell was shown in the income tax records and whether the Agreement to Sell for a consideration of Rs.45,00,000/- had seen the light of

the day at any earlier point of time and whether the appellant / plaintiff had paid property tax etc. with respect to the property or otherwise declared herself as the owner thereof. In this view of the matter, the counsel for the appellant / plaintiff was asked to produce the appellant / plaintiff in this Court on the next date. The counsel for the appellant / plaintiff however stated that the appellant / plaintiff was over 80 years of age and immobile and on enquiry as to who was instructing the advocate, the counsel for the appellant / plaintiff had been instructing him and sought time to produce him. However on the next day i.e. 30th October, 2013, it was stated that though Mr. Harman Singh grandson of the appellant / plaintiff had not appeared being out of station but the respondent / defendant No.3 son of the appellant / plaintiff who is supporting the appellant / plaintiff was present in the Court.

10. From the aforesaid, it is apparent that the respondents / defendants No.3 to 5 are supporting the appellant / plaintiff but are reluctant to themselves sign any pleadings and are using the appellant / plaintiff who is over 80 years of age as a front, perhaps for the reason of, in the vent of the case filed being found to be fraudulent and the pleadings therein perjurious, avoiding any action against themselves.

11. Be that as it may, the aforesaid falsifies the cause pleaded for delay in filing the appeal. It is not as if the appellant / plaintiff has nobody else to take care of her or is dependant only upon her grandson for filing the appeal. The appellant / plaintiff and her children i.e. the respondents / defendants No.3 to 5 are residing in the same house and the respondents / defendant No.3 is supporting the appellant / plaintiff in the present litigation. There is no explanation as to why the respondent / defendant No.3, even if reluctant to himself sign any pleadings, could not have on behalf of the appellant / plaintiff taken steps for filing of the appeal particularly when the same is filed from the same lawyers' chamber who had issued the legal notice preceding the suit on behalf of the appellant / plaintiff and who had filed and conducted the suit also.

12. Once it is found that a false reason has been given for condonation of delay, the same cannot be condoned as has been held in ***Pundlik Jalam Patil Vs. Executive Engineer, Jalgaon Medium Project*** (2008) 17 SCC 448.

13. There is thus no cause, lest sufficient cause for condonation of as many as 99 days delay in filing the appeal and application for condonation of delay and consequently, the appeal are liable to be dismissed on this

ground alone but having heard the counsels on the merits of the appeal also, it is deemed appropriate to adjudicate on the said aspect also.

14. The respondent / defendant No.3 who is the son of the appellant / plaintiff, when appeared as aforesaid before this Court on 30th October, 2013, on enquiry informed that no mutation had been applied for or got carried out after the demise on 11th November, 1992 of Sh. Ajit Singh on 11th November, 1992 to the name of the appellant / plaintiff and / or the appellant / plaintiff and the respondents / defendants No.3 to 5; that no house tax was paid by the appellant / plaintiff and / or the respondents / defendants No.3 to 5 with respect to the said property and none of them were declaring themselves as owner of the property in any income tax record; he could not answer whether Sh. Ajit Singh had continued to declare himself as owner of the property after 10th December, 1986; in response to a query as to what rights of ownership were exercised by Sh. Ajit Singh and / or the appellant / plaintiff after 10th December, 1986, it was stated that the appellant / plaintiff had got issued a notice dated 6th July, 2009 of termination of tenancy to the tenant and thereafter filed a suit for ejectment on 31st January, 2012 and in execution whereof possession of the property had been recovered on 9th October, 2012. The son of the appellant / plaintiff further stated that

thereafter possession of the property was taken by the Court Receiver appointed by the Recovery Officer of the Debt Recovery Tribunal (DRT). On yet further enquiry, son of the appellant / plaintiff further stated that the tenant in the property, since his induction in December, 1986, had paid rent earlier to Sh. Ajit Singh and thereafter to the appellant / plaintiff till January, 2008; on yet further enquiry, it was informed that the proceedings in the DRT were initiated by the State Bank of India (SBI) and were being pursued by Standard Chartered Bank (SCB) as assignee of the loan; on yet further enquiry, it was informed that the rent was paid by the tenant in cash and was not declared by the appellant / plaintiff and / or appellant / plaintiff and the respondents / defendants No.3 to 5 before any authorities.

15. The counsel for the respondent / defendant No.2 on 30th October, 2013 stated that the respondent / defendant No.2 had evicted the tenant in the property within one or two months of induction in December, 1986 and the respondent / defendant No.2 was in possession of the premises and the Court Receiver appointed by the Recovery Officer of the DRT had taken possession of the property on 13th December, 2005.

16. Being of the view that owing to the lis between the appellant / plaintiff and the respondent / defendant No.2, the banks / financial institutions which

had been led to advance monies on security of the property, should not suffer, it was on 30th October, 2013 enquired from the senior counsel for the appellant / plaintiff whether the appellant / plaintiff was willing to settle with the bank. On request, adjournment was granted.

17. On the next date i.e. 20th November, 2013, the senior counsel for the appellant / plaintiff stated that the appellant / plaintiff was ready and willing to settle with the SCB.

18. The counsel for the SCB also appeared on 20th November, 2013 and informed that the amount outstanding as on that date was approximately Rs.43,00,00,000/-.

19. The appeal was adjourned to enable the appellant / plaintiff to negotiate with the SCB.

20. However on the next date i.e. 11th December, 2013, it was reported that the meeting arranged for settlement remained a non-starter. The senior counsel for the appellant / plaintiff on that date stated that the appellant / plaintiff is not objecting to the SCB, in realization of its dues, selling the property but sale proceeds realized were likely to be more than dues of the SCB and the claim of the appellant / plaintiff to the said excess sale proceeds

would still remain and thus it was necessary for the appellant / plaintiff to press the appeal.

21. Arguments were accordingly heard on that date and on 16th December, 2013 including from the counsel for the SCB.

22. The counsel for the respondent / defendant No.2 has filed before this Court; i) copy of the orders dated 12th November, 2002 and 9th December, 2005 of the Recovery Officer of the DRT; ii) copy of the proceedings dated 13th December, 2005 of the Court Receiver appointed by the Recovery Officer of the DRT; iii) copy of the application dated 19th October, 2010 filed by the respondent / defendant No.2 herein before the Recovery Officer of the DRT for restoration of possession of the aforesaid property to the respondent / defendant No.2; and, iv) copy of the judgment dated 12th January, 2012 of the Court of the ADJ, Delhi in the suit filed by the appellant / plaintiff against the tenant M/s Ratan Exports & Industries Ltd.

23. I will first enumerate the factual position as appears from the documents on record.

24. The appellant / plaintiff as aforesaid admits having executed two Agreements of Sale of the property in favour of the respondent / defendant

No.2 on 10th December, 1986. The following are the material differences, for the present purposes, between the two Agreements:

- (i) while the sale consideration mentioned in one is Rs.45,00,000/-, out of which Rs.50,000/- in cash and Rs.8,00,000/- vide demand draft are shown to have been paid and the balance sale consideration of Rs.36,50,000/- was agreed to be paid within six months i.e. on or before 10th June, 1987, whereafter the documents of sale of property were agreed to be executed, the sale consideration in the other Agreement is Rs.9,50,000/- (not Rs.9,00,000/- as pleaded by appellant / plaintiff) out of which Rs.50,000/- in cash and Rs.8,00,000/- vide demand draft are shown to have been paid and the balance sale consideration of Rs.1,00,000/- was agreed to be paid at the time of sale after Sh. Ajit Singh had obtained all permissions for such sale and intimated the respondent / defendant No.2 of the same;
- (ii) while the Agreement to Sell with the sale consideration of Rs.45,00,000/- is between Sh. Ajit Singh and the respondent / defendant No.2 only; in the Agreement to Sell for the sale consideration of Rs.9,50,000/-, the appellant / plaintiff as well

as the respondents / defendants No.3 to 5 are also confirming parties and have confirmed that they do not have any right / claim / title or interest in the property being sold and have no objection to the sale thereof to the respondent / defendant No.2;

(iii) though both the Agreements to Sell bear the stamp of the Notary Public but of different Notaries;

(iv) that while the Agreement to Sell for consideration of Rs.45,00,000/- records that Mr. Ajit Singh on the request of the respondent / defendant No.2 purchaser had inducted M/s Ratan Exports & Industries Ltd. as a tenant in the property on a monthly rent of Rs.4,500/- and that the said tenant shall remain the tenant of the respondent / defendant No.2 purchaser till the time the respondent / defendant No.2 purchaser pays the balance consideration amount and all liabilities, for eviction of the tenant, recovery of rent etc. till then shall be of the respondent / defendant No.2 purchaser and if the respondent / defendant No.2 purchaser failed to pay the balance sale consideration within the agreed time of six months which was to be of the essence of the Contract and in default of payment,

the Agreement was to stand cancelled without any notice and the said tenant to be the tenant under Sh. Ajit Singh and the tenant would continue to remain tenant at the wish of Sh. Ajit Singh, the Agreement to Sell for sale consideration of Rs.9,50,000/- records that the property had already been let out to M/s Ratan Exports & Industries Ltd. which was in possession of the property and that the possession of the property was being handed over to the respondent / defendant No.2 purchase by asking the tenant to attorn to the respondent / defendant No.2 purchaser as landlord and that it will be the responsibility of the respondent / defendant No.2 purchaser to get the property vacated from the tenant;

- (v) while the Agreement to Sell for consideration of Rs.9,50,000/- was on as is where is basis, there was no such clause in the Agreement to Sell for sale consideration of Rs.45,00,000/-;
- (vi) while the Agreement to Sell for sale consideration of Rs.9,50,000/- provides for the liability of the outgoings with respect to the property being of Mr. Ajit Singh up to the date of Agreement to Sell and thereafter of the respondent / defendant

No.2 purchaser, there is no such clause in the Agreement to Sell for sale consideration of Rs.45,00,000/-;

(vii) while the Agreement to Sell for sale consideration of Rs.9,50,000/- contains the agreement of Sh. Ajit Singh to make an application for transfer of the property to the lessor of the land underneath the property and to the Diplomatic Enclave Extension Cooperative House Building Society Ltd. and under the Urban Land (Ceiling and Regulation) Act, 1976, if so required, there is no such provision in the Agreement to Sell for sale consideration of Rs.45,00,000/-;

(viii) while under the Agreement to Sell for sale consideration of Rs.45,00,000/- time for payment of balance sale consideration of Rs.36,50,000/- within six months was made the essence and the Agreement was made automatically terminable without any notice in default thereof, under the Agreement to Sell for sale consideration of Rs.9,50,000/- though at one place time for payment of balance sale consideration of Rs.1,00,000/- is mentioned as six months but else it makes the balance sale consideration payable at the time of execution of the Sale Deed

after Sh. Ajit Singh had obtained all the permissions and intimated the respondent / defendant No.2 purchaser thereof;

- (ix) while the Agreement to Sell for sale consideration of Rs.9,50,000/- provides for arbitration by a named advocate, there is no arbitration clause in the Agreement to Sell for sale consideration of Rs.45,00,000/-;
- (x) the Agreement to Sell for sale consideration of Rs.45,00,000/- contained the following Clause:

“3) That on the request of the IIInd Party the 1st Party has also executed certain documents such as another agreement to sell, G.P.A., S.P.A., Affidavit, Will & receipt etc. as brought by the IIInd Party since the IIInd Party want to apply for obtaining loan on the basis of the said documents. The Second Party has admitted that the said documents shall not confer any rights on the Property without payment of balance consideration amount and the Second Party shall not use the said documents for any other purposes except obtaining the loan. In the agreement to Sell, the wife, sons and daughters of the First Party have been

the consenting Party. Further the 1st Party has also handed over the said Property documents to the Second Party to facilitate her in obtaining the loan. In case of non-payment of balance consideration amount by the Second Party, the terms of the said agreement to Sell shall supersede the terms of said other agreement for Sale executed for consideration of Rs.9,50,000/- (Rs Nine Lacs and Fifty Thousand Only).”

and which naturally does not exist in the Agreement to Sell for sale consideration of Rs.9,50,000/-.

25. I may notice that the appellant / plaintiff though along with the plaint hand filed copy of the Agreement to Sell for Rs.9,50,000/- to which she is a confirming party and which bears her signatures but in the plaint has not denied executing the said Agreement to Sell or her signatures thereon.

26. In the registered General Power of Attorney admittedly executed by Sh. Ajit Singh in favour of the husband of the respondent / defendant No.2, all possible powers to deal with the property including to let out the property, sell the property, to apply to respondent / defendant No.1 DDA for

sale permission etc. were given. The respondent / defendant No.3, being the son of Sh. Ajit Singh, was a witness to the said Power of Attorney.

27. Though the stand of the appellant / plaintiff in the plaint as well as in the notice dated 6th June, 2012 issued preceding the institution of the suit from which this appeal arises has been that besides the Agreement to Sell for Rs.9,50,000/- and the GPA, copies of which have been filed, SPA, Affidavit, Will Receipt etc. were also executed but no copies thereof have been filed by the appellant / plaintiff before the Court.

28. Neither in the plaint in the suit from which this appeal arises nor in the notice issued prior to the institution of the suit, is it the case of the appellant / plaintiff that upon the default of the respondent / defendant No.2 to pay the balance sale consideration of Rs.36,50,000/-, any notice of cancellation of the Agreement to Sell or of forfeiture of the amount of Rs.8,50,000/- already paid was given and the appellant / plaintiff presumably relies upon the Clause in the Agreement to Sell for Rs.45,00,000/-, that upon non payment, the Agreement shall stand cancelled without any notice.

29. Though as per both the Agreements to Sell, at the time of execution thereof only a sum of Rs.8,50,000/- was paid but the appellant / plaintiff in

the plaint pleads payment of a total sum of Rs.9,00,000/- without pleading as to how the said balance amount of Rs.50,000/- was paid.

30. Vide order dated 12th November, 2002 of the Recovery Officer of the DRT, copy of which has been filed by the respondent / defendant No.2, attachment order of the said property referred to as 'mortgaged property' was issued and ordered to be served including by affixation and beat of drums and the Certificate Holder Bank directed to get the valuation of the property done.

31. Vide order dated 9th December, 2005 of the Recovery Officer of the DRT, copy of which has been filed by the counsel for the respondent / defendant No.2, the application of the Certificate Holder Bank for appointment of a Receiver for taking actual physical possession of the subject property referred to as 'mortgaged property' which was stated to be lying vacant was allowed and an advocate appointed as a Receiver to take physical possession of the property and put the property under his lock and key.

32. The spot proceedings dated 13th December, 2005 filed by the aforesaid Court Receiver before the Recovery Officer of the DRT and copy

of which has been filed by the counsel for the respondent / defendant No.2, shows that the said Court Receiver visited the subject property on 13th December, 2005 and found the property locked from inside and on enquiries learnt that the property was lying vacant since last 2/3 years and nobody was residing therein and further records that the said Court Receiver put his locks and sealed the property from outside gate without entering into the property and affixed possession notice on the gate. The said spot proceedings are accompanied with photographs in proof thereof.

33. The respondent / defendant No.2 in her application dated 19th October, 2010 for restoration of possession of the property, before the Recovery Officer, DRT-1, Delhi, copy of which has been filed by the counsel for the respondent / defendant No.2, stated that the respondent / defendant No.2 was unaware of the pendency of the proceedings prior thereto and admitted that the possession of the property was taken over by the Court Receiver and sought repossession of the property on various grounds which are not relevant for the present purpose. The said application was accompanied with numerous photographs of the property and a perusal whereof is indicative of the property indeed lying unused and unoccupied for considerable time.

34. The copy of the judgment in the suit filed by the appellant / plaintiff against the tenant M/s Ratan Exports & Industries Ltd. shows, a) that the said suit was instituted on 31st January, 2011; b) that it was the plea therein that the tenant M/s Ratan Exports & Industries Ltd. had not paid rent from 1st January, 2008 onwards; c) that the summons issued to the said tenant at the address of the said property as well as at the address of the registered office of M/s Ratan Exports & Industries Ltd. could not be served by ordinary process and service by publication in the newspaper 'The Statesman' was ordered and the tenant proceeded against *ex parte*; d) that the notices issued to the tenant of termination of tenancy prior to the institution of the said suit had been returned undelivered; and, e) ultimately an *ex parte* judgment for recovery of possession and arrears of rent / mesne profits was passed and in execution of which the appellant / plaintiff claims to have recovered possession on 9th October, 2012.

35. It is not the case of the appellant / plaintiff that the appellant / plaintiff has taken any steps for execution of the decree in the aforesaid suit insofar as for recovery of monies.

36. The position which emerges from the aforesaid documents is that Sh. Ajit Singh, predecessor of the appellant / plaintiff, at the time of the

Agreement to Sell dated 10th December, 1986, whether for consideration of Rs.9,50,000/- or for consideration of Rs.45,00,000/- had at the instance of the respondent / defendant No.2 purchaser also let out the property to M/s Ratan Exports & Industries Ltd. which admittedly were a nominee of the respondent / defendant No.2 purchaser and had in part performance of the Agreement to Sell also delivered possession of the property agreed to be sold to the respondent / defendant No.2 by handing over constructive possession of the property to the respondent / defendant No.2 purchaser and by authorizing the respondent / defendant No.2 purchaser to recover rent from the said tenant and to otherwise deal with the said tenant and to take possession of the property from the tenant.

37. Though the appellant / plaintiff claims that on failure of the respondent / defendant No.2 to pay the balance sale consideration under the Agreement to Sell for Rs.45,00,000/- on or before six months from 10th December, 1986 as stipulated therein i.e. by 10th June, 1987, the Agreement to Sell as per the terms thereof stood automatically cancelled, the appellant / plaintiff has not pleaded or otherwise in response to the queries of this Court been able to show any rights which the appellant / plaintiff may have

thereafter exercised as owner of the property. The appellant / plaintiff in the plaint merely stated:

“4. That since defendant No.2 failed to pay the balance consideration amount of sale and the earnest money stood forfeited by Shri Ajit Singh therefore defendant No.2 was not left any right in the property in any manner. Shri Ajit Singh became entitled to deal with the tenant who was inducted in the property as per the terms and conditions of agreement to sell dated 10th December, 1986 (Tenth December One Thousand Nine Hundred Eighty Six).”

and shied away from even stating that Sh. Ajit Singh or appellant / plaintiff did indeed after 10th June, 1987 dealt with the tenant. The appellant / plaintiff in the plaint did not even plead having instituted the suit for recovery of possession from the tenant or having obtained a decree in the said suit, though the appellant / plaintiff subsequently admitted to have in pursuance of the ex parte judgment and decree against the tenant recovered possession of the property on 9th October, 2012 and the possession of the property having been subsequently taken over by the Court Receiver appointed by the Recovery Officer of the DRT.

38. The stand of the appellant / plaintiff, of having recovered possession of the property in execution against the tenant and the possession having been subsequently taken by Receiver from the appellant /plaintiff, is falsified from the copies of the proceedings of the Recovery Officer of the DRT which unequivocally show that the Court Receiver appointed by the Recovery Officer of the DRT had taken possession of the property on 13th December, 2005. There was thus no possibility of the appellant / plaintiff, in execution of the ex parte judgment and decree against the tenant M/s Ratan Exports & Industries Ltd., having taken possession of the property and there is nothing to show that the possession of the property was taken from the appellant / plaintiff after 9th October, 2012 as is claimed.

39. In any case, the appellant / plaintiff, from the plaint also concealed the factum of the possession of the property being with the Court Receiver appointed by the Recovery Officer of the DRT.

40. Once it is found that the appellant / plaintiff has approached the Court with a false stand, it is the settled principle in law that a party guilty of suppression of material facts (*Hanamantha Ranoji Vs. Sri Mahadev Channabasappa* (2000) 6 SCC 120), a party who approaches the Court with a pair of dirty hands (*Mohammedia Coop. Building Society Ltd. Vs.*

Lakshmi S. Coop. Building Society Ltd. (2008) 7 SCC 310) is not entitled to a relief which is discretionary and equitable. Reference may also be made to the celebrated case of ***S.P. Chengalvaraya Naidu Vs. Jagannath*** AIR 1994 SC 853 laying down that a person whose case is based on falsehood has no right to approach the Court and can be thrown out summarily; non-production and even non-mentioning of material document was held to be tantamounting to playing a fraud on the Court. The primary relief of declaration claimed by the appellant / plaintiff and on which the other reliefs of cancellation / revocation of Conveyance Deed and of permanent injunction are based, as per Section 34 of the Specific Relief Act, 1963 is in the discretion of the Court. The appellant / plaintiff is not entitled to the said discretionary relief of declaration and the suit from which this appeal arises is liable to be dismissed on this ground also.

41. Though the appellant / plaintiff claims that upon the failure of the respondent / defendant No.2 to pay the balance sale consideration by 10th June, 1987, Sh. Ajit Singh and thereafter the appellant / plaintiff started recovering rent from the tenant M/s Ratan Exports & Industries Ltd. but the appellant / plaintiff in spite of asking of this Court has been unable to show any document in this regard. It is also highly unlikely that the said M/s

Ratan Exports & Industries Ltd. which admittedly was inducted into the property as a tenant at the instance of the respondent / defendant No.2 would on the mere oral asking of the appellant / plaintiff (it is not the case of the appellant / plaintiff that after 10th June, 1987 any notice or letter was sent to the said tenant) would start paying the rent to the appellant / plaintiff.

42. The senior counsel for the appellant / plaintiff has argued that the respondent / defendant No.1 DDA, on the basis of the Agreement to Sell of Rs.9,50,000/- and the GPA, SPA, Will, Affidavit, etc. could not have converted the property into freehold in favour of the respondent / defendant No.2 as even under the Agreement to Sell for Rs.9,50,000/-, the entire sale consideration had not been paid and there was a balance of Rs.1,00,000/- of sale consideration, which had admittedly not been paid.

43. However no freehold policy also had been filed by the appellant / plaintiff before the Court.

44. The senior counsel for the appellant / plaintiff on the next date of hearing handed over a copy of the Scheme of Conversion from Leasehold into Freehold applicable with effect from 1st April, 2000 but could not show any clause therein also, making freehold conversion conditional upon

payment of entire sale consideration. He however drew attention to Clause 1(9) and 9 thereof providing that in case of any legal dispute relating to title of property, conversion shall not be allowed and Clause 1(13) providing that conversion shall be allowed in cases where the lessee/ sub-lessee / allottee has parted with possession of the property, after verifying the factum of possession; Clause 7 listing the documents required to be furnished and Clause 8 laying down the Guidelines for filing the application, to contend that the purport of all those was that the entire sale consideration should have been paid.

45. It was enquired from the senior counsel for the appellant / plaintiff as to what was the policy applicable as on 18th February, 1994 when the property was converted into freehold. No answer was forthcoming.

46. I have however obtained copy of the Scheme of Conversion from Leasehold system into freehold issued by the DDA in April, 1992 and which appears to have been applicable at the relevant time and do not find any condition therein also of the entire sale consideration having been paid.

47. The argument of the senior counsel for the appellant / plaintiff was that the condition for payment of the entire sale consideration is implicit in

the conversion into freehold being allowed in the name of the agreement purchaser inasmuch as without the purchaser paying the entire sale consideration, the seller cannot be divested of his title to the property.

48. The argument, though attractive is misconceived. Freehold conversion directly in the name of the agreement purchaser has been made conditional upon execution of a Power of Attorney empowering the agreement purchaser or his/her nominee to exercise all rights in the property and delivery of possession of the property to the agreement purchaser. Ordinarily, no prudent seller would execute such a Power of Attorney or deliver possession of the property to the agreement purchaser without receiving the entire sale consideration, though there is no bar in law thereto.

49. In the absence of there being any provision in the Freehold Policy of the DDA to the effect that the DDA is entitled to convert the leasehold rights into freehold in the name directly of an agreement purchaser from the recorded lessee, only after recording satisfaction of the entire purchase price having been paid, I am unable to find any flaw in the action of the DDA of converting the leasehold rights in the land underneath the property into freehold in the name of the respondent / defendant no.2. The only conditions for such a conversion, as per the Policy, were of the recorded lessee having

executed a Power of Attorney empowering the agreement purchaser or his / her nominee to exercise all rights in the property and of the recorded lessee having delivered possession of the property to the agreement purchaser and both of which conditions were satisfied in the present case.

50. The counsel for the respondent / defendant No.1 DDA had drawn attention to Conveyance Deed dated 18th February, 1994 of freehold rights in favour of the respondent / defendant No.2 to show that the same records that the possession of the property had been delivered to the respondent / defendant No.2 purchaser and the respondent / defendant No.2 purchaser was in possession of the property. She has further invited attention to the letter dated 4th December, 2009 written by the respondent / defendant No.1 DDA to the appellant / plaintiff calling upon the appellant / plaintiff to *inter alia* show proof of 'present' physical position of the property and contends that the appellant / plaintiff had failed to show the same and hence the respondent / defendant No.1 DDA or its officials cannot be blamed or said to be colluding with the respondent / defendant No.2. She has further contended that the General Power of Attorney executed by Sh. Ajit Singh in favour of the husband of the respondent / defendant No.2 also empowered him to obtain conversion of the property into freehold.

51. I had in this regard also invited attention of the senior counsel for the appellant / plaintiff to Section 55(4)(b) of the Transfer of Property Act, 1882 which provides that where the ownership of the property has passed to the buyer before payment of the whole of the purchase money, the seller is entitled to a charge upon the property in the hands of the buyer for the amount of the purchase money which has remained unpaid and for interest on such amount from the date when the possession has been delivered and had enquired from him whether not, if the seller so delivers possession in part performance and also executes a Power of Attorney, his right would be only to recover the balance price and not to revoke the Agreement to Sell.

52. The senior counsel for the appellant / plaintiff on the next date of hearing, on the aforesaid aspect drew attention to ***Janak Dulari Devi vs. Kapildeo Rai*** (2011) 6 SCC 555 to contend that the same is a matter of intention of parties and which could be determined only after trial. Reliance in this regard was also placed on ***Iswar Das Vs. Muralidhar Rai*** AIR 1992 Orissa 170 and after close of hearing copy of judgment in ***Kaliaperumal Vs. Rajagopal*** (2009) 4 SCC 193 (paras No.16 and 18) was also handed over. The senior counsel for the appellant / plaintiff further contended that in the entirety of the facts and circumstances, no intention of Sh. Ajit Singh to

transfer title of the property on the date of the execution of the Agreement to Sell can be deciphered and contended that all the said questions cannot be decided without trial and merely because the appellant / plaintiff may at this stage appear to have a bad case, is no ground for rejection of the plaint under Order 7 Rule 11 of the CPC.

53. Though undoubtedly, the rights and liabilities of the buyer and seller defined in Section 55 supra are in the absence of a contract to the contrary and the judgments cited by the senior counsel for the appellant / plaintiff lay down that notwithstanding the execution and registration of transfer documents, the parties can be held to have not intended to transfer the title in the property but on a reading of the documents executed by the predecessor-in-interest of the appellant / plaintiff and to which the appellant / plaintiff and the respondents / defendants no. 3 to 5 are confirming parties and which are the sole repository of such a intention, do not show the predecessor of the appellant / plaintiff and the respondents / defendants no. 3 to 5 to have intended to the contrary. Not only was no such restriction placed in the agreement for Rs.9,50,000/- but besides the same, the Power of Attorney in favour of the husband of the respondent / defendant no.2 empowering him to exercise all rights as owner of the property was also executed without

placing any restrictions on a such right. There is thus nothing in the said documents to show the intention of the predecessor-in-interest of the appellant / plaintiff and the respondents / defendants no.3 to 5 not to transfer title to the property. Even if cognizance were to be taken of the Agreement to Sell for Rs.45,00,000/- and the clause therein as set out hereinabove, under the said agreement also, possession of the property was delivered in part performance thereof and there is no plea of any steps having been taken for the same having been reverted. I am therefore of the view that the appellant / plaintiff has failed to, from the documents show any intention contrary to what is provided in Section 55(iv)(b) supra.

54. The senior counsel for the appellant / plaintiff has also argued that limitation is a mixed question of law and fact and which cannot be decided at the stage of Order 7 Rule 11 CPC. The senior counsel for the appellant / plaintiff also referred to the judgment of the Division Bench of this Court in ***Indian City Properties Ltd. Vs. Vimla Singh*** 198 (2013) DLT 432 laying down the parameters for rejection of plaint under Order 7 Rule 11 of the CPC.

55. The senior counsel for the appellant / plaintiff lastly urged that even if reliefs claimed in the plaint of declaration are to be held to be time barred, the same would not apply to the relief claimed of permanent injunction.

56. Per contra, the counsel for the respondent / defendant No.2 invited attention to *Dr. Kamal Gupta Vs. Smt. Uma Gupta* AIR 2006 Delhi 182, *Life Insurance Corporation of India Vs. Raghunath Prasad Almal* 44 (1991) DLT 521 and to *Punjab & Sind Bank Vs. Himachal Lithographers* MANU/HP/0064/2002 to contend that where a plaint is manifestly vexatious and meritless in the sense of not disclosing a right to sue, the Trial Court should exercise its powers under Order 7 Rule 11 of the CPC and bogus litigation should not be permitted to go on and that by virtue of Section 17 of the Limitation Act, 1963 every person is presumed to know his legal rights and that a plaintiff cannot be permitted to plead date of discovery as beginning of limitation period and that Order VI Rule 4 requires the pleadings of misrepresentation, fraud, breach of trust, undue influence etc. to be specific. Referring to Article 58 of the Schedule to the Limitation Act, he has contended that the limitation provided is of three years from the date when the right to sue first accrues and has contended that the right to sue in the aforesaid facts would first accrue to the appellant / plaintiff on the date of

execution of the Conveyance Deed of freehold rights on 18th February, 1994 and in any case on 11th November, 1992 when Sh. Ajit Singh predecessor of the appellant / plaintiff died and when the appellant / plaintiff if diligent ought to have got mutation of the property in her name and whereupon she would have come to know of the execution of the deed of freehold conversion in the name of the respondent / defendant No.2.

57. The senior counsel for the appellant / plaintiff in rejoinder has invited attention to ***Ram Prakash Gupta Vs. Rajiv Kumar Gupta*** (2007) 10 SCC 59 where the Supreme Court had set aside the order of rejection of the plaint observing that few lines or passages should not be read in isolation and pleadings have to be read as a whole to ascertain its true import and that the knowledge mentioned in the plaint could not be termed as inadequate or incomplete as had been done by the High Court. He has further contended that the judgments cited by the counsel for the respondent / defendant No.2 are all post trial.

58. I have considered the rival contentions aforesaid on the aspect of limitation and whether the same require any trial.

59. Part III of the First Division of the Schedule to the Limitation Act deals with suits relating to declarations. As aforesaid, the primary relief claimed in the suit from which this appeal arises is of declaration and the reliefs of cancellations of Sale Deed and permanent injunctions are consequential thereto. Article 56 under Part III provides limitation for suits for declaration of forgery of an instrument; Article 57 provides limitation for a suit for declaration that an alleged adoption is invalid or never in fact took place and Article 58 provides for limitation for the suits to obtain any other declaration. It is not the case of the appellant / plaintiff that the defendants have forged any document. The applicable article therefore is Article 58 and limitation thereunder is of three years commencing from the date when the right to sue “first” accrues.

60. The Supreme Court in *Khatri Hotels Private Limited Vs. Union of India (UOI)* (2011) 9 SCC 126 has held that while enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act; the word 'first' has been used between the words 'sue' and 'accrues'. This was held to mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues; successive violation of the

right will not give rise to fresh cause of action and it was observed that suit was liable to be dismissed if it was beyond the period of limitation, counted from the day when the right to sue first accrued. Applying the said principles, it was held that since the plaintiff, from the pleadings of DDA in an earlier suit knew of the rights claimed by the plaintiff having stood violated, even if the plaintiff did not know of the Notifications by which his right to property was taken away, knowledge of violation of right was enough and cause of action had accrued and mere knowledge of entries would not confer a fresh cause of action.

61. The appellant / plaintiff in the present case claims to have learnt of the execution of the conveyance of freehold rights in the land underneath the property in the name of the respondent / defendant no.2 for the first time from the reply dated 6th October, 2009 of the respondent / defendant no.1 DDA to the RTI query made by the appellant / plaintiff on 17th August, 2009. On the said basis, the suit for declaration filed on 18th August, 2012 i.e. prior to expiry of three years on 5th October, 2012 from the date of the reply of the DDA, is claimed to be within time.

62. However what has emerged, as recorded above, is that possession of the property was taken over by the Recovery Officer of the DRT on 13th

December, 2005. The appellant / plaintiff though in the plaint filed on 18th August, 2012 had not pleaded the possession of the property to be with the Recovery Officer of the DRT but has before this Court claimed that the possession of the property was with the tenant M/s. Ratan Exports & Industries Ltd. against whom the appellant / plaintiff took a decree of possession and in execution whereof recovered possession from the tenant on 9th October, 2012 and that the possession by the Recovery Officer of the DRT was taken thereafter from the plaintiff and which stand of the appellant / plaintiff has been found to be false as aforesaid. In fact the appellant / plaintiff before this Court has not even taken a stand that the proceedings of the Recovery Officer of the DRT are not correct.

63. Even if the case of the appellant / plaintiff of the Agreement to Sell by the predecessor-in-interest of the appellant / plaintiff and the respondents / defendants no.3 to 5 in favour of the respondent / defendant no.2 having stood cancelled and the said predecessor having continued to exercise rights as owner of the property were to be believed, the appellant / plaintiff at least upon being divested possession of the property by the Recovery Officer of the DRT on 13th December, 2005 would have come to know of the

Conveyance Deed executed by the respondent / defendant no.1 DDA in favour of the respondent / defendant no.2 .

64. I have in *MMTC Ltd. Vs. Raj Rani Gulati* MANU/DE/4871/2013 held that if a person ought to have been put to enquiry and does not take any steps and allows a state of affairs casting doubt on his / her title to the property to continue to exist, he / she cannot by unilaterally deciding when to make enquiries, govern the date of commencement of limitation. Reliance in this regard was placed on *Sh. Satya Parkash Gupta Vs. Sh. Vikas Gupta* MANU/DE/2042/2010 upheld in RFA(OS) No.23/2010 with the same title, laying down that the plea of the plaintiff of not knowing the exact documents is of no avail and that rules of limitation are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly and those who sleep upon their claims should not be assisted by the Courts.

65. The aforesaid reasoning being based on uncontroverted documents, I fail to see the need to put the parties to trial. Reliance placed by the counsel for the respondent / defendant no.2 on the judgments mentioned hereinabove is apposite.

66. The appeal fails, though for reasons different from the ones given in the impugned judgment and is dismissed.

67. I am also of the opinion that the suit as well as this appeal are vexatious and an abuse of the process of the Court. Accordingly exemplary costs are awarded against the appellant / plaintiff and in favour of the respondent / defendant no.1 and respondent / defendant no.2 in the sums of Rs.25,000/- each, payable within four weeks. Though this is a fit case for also initiating proceedings against the appellant / plaintiff for abuse of process of the Court but I am refraining from doing so in the hope that good sense would prevail on the appellant / plaintiff and the respondents / defendants no.3 to 5.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MARCH 11, 2014

gsr/pp