

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

Reserved on : 21.01.2016

Pronounced on: 03.03.2016

+ **RFA (OS) 58/2014, C.M. APPL.4544/2014 & 19598/2015**

MAHARISHI AYURVEDA PRODUCTS PVT. LTD.....Appellant

Through: Sh. Arun Mohan, Sr. Advocate and Sh. M.A. Niyazi, Ms. Anamika Ghai and Sh. Manish Kumar, Advocates.

Versus

SPARSH BUILDERS PRIVATE LTD. Respondent

Through: Sh. Arvind Kumar Nigam, Sr. Advocate with Sh. Sunil Agarwal and Sh. J. Tripathi, Advocates.

**CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA**

MR. JUSTICE S. RAVINDRA BHAT

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1. This appeal is directed against a judgment that decreed a suit for possession of property described as A-14, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi ("the suit property"); also for the recovery of ₹18,50,000/- per month w.e.f. 01.12.2008 till the recovery of possession, less the amount received by the plaintiff.

2. The respondent (hereafter "the plaintiff") filed a suit seeking decree of possession, recovery of damages and permanent injunction in relation to the suit property, which measures 4617.67 sq. yards. The suit averred that the said property was purchased from the defendant/appellant (hereafter "MAP") on payment of full sale consideration of ₹4 crores with transfer of symbolic possession and execution of alleged transfer documents; these included a registered agreement to sell (affixing stamp duty of ₹30 lakhs; marked Ex. P-2); registered power of attorney (Ex. P-3); receipt (Ex. P-4); registered Will of Anand Prakash Srivastava (Ex. P-5); Affidavits (Ex. P-6 & P-7); a registered Indemnity Bond (Ex. P-8), etc. on 30.12.2004. At that time (of sale), MAP expressed its willingness to take the suit property on rent for three years. MAP's request was accepted; a separate lease agreement (Ex. P-9) was, therefore, signed the same day, 30.12.2004 - w.e.f. 01.01.2005. The monthly rent agreed was ₹14,25,000/-. MAP deposited with the plaintiff a sum of ₹42,75,000/- as an interest free security deposit refundable within 30 days of the vacation of the suit property. A separate MOU (Ex. P-10) was also entered into on the same date, i.e. 30.12.2004 giving MAP an option to buy back the suit property for mutually agreed consideration. It is alleged further, that upon expiry of the 3 year lease period, MAP requested the plaintiff for extension of the lease by a period of 11 months to enable it to relocate to alternative premises. A fresh lease agreement dated 01.01.2008 for an enhanced lease rent of ₹18,50,000/- besides service tax and other taxes was executed. An MOU was also executed the same day granting MAP further option to buy back the suit property on mutually agreeable consideration. MAP was liable to pay electricity and water charges, municipal tax, levies and charges, ground rent etc. The lease was made not

extendable beyond 11 months. During this period MAP acknowledged ownership of the plaintiff of the suit property. This lease period expired, by efflux of time, on 30.11.2008. The plaintiff on 22.09.2008 (in reply to MAP's letter dated 25.08.2008) asked for vacation of the suit property; its handing over of physical possession by 30.11.2008. The plaintiff wrote similar letters on 18.10.2008, 18.11.2008 and 27.11.2008. MAP wrote a letter dated 25.11.2008 expressing its desire to purchase the property.

3. The plaintiff alleged that despite being approached for vacant possession, MAP did not hand over the premises. The plaintiff stated that the MOU dated 01.01.2008 gave an option to MAP to purchase the property but this is on a consideration to be mutually agreed upon by the owners and the occupants. As there had been no consensus on the consideration, MAP did not acquire any right to purchase the suit property. As MAP failed to vacate the suit property, the plaintiff sent a legal notice dated 12.12.2008 requiring it to do so within 15 days of the receipt of the notice or latest by 31.12.2008. The notice also clarified that MAP was liable to pay damages @ ₹50,000/- per day in addition to the rent of ₹18,50,000/- per month for period of stay beyond the expiry of the lease agreement. MAP, in its letter of 23.12.2008, stated that it was in possession of the suit property as an absolute owner and that it never intended to sell the suit property. It was stated that due to a loan of ₹4 crores received from the plaintiff and at its insistence, the said documents, namely, agreement to sell, power of attorney, will, etc. were executed. The loan- according to MAP was to carry an interest @ 3.5% per month and that is why, the rent had been fixed at ₹14,25,000/- in terms of the lease agreement dated 30.12.2004. The reply further stated that the payment

of ₹14,25,000/- per month was not rental but in fact interest paid towards the loan.

4. The plaintiff filed the suit seeking a decree of possession of the suit property, recovery of ₹42,78,450/- as arrears of damages for the use and occupation for the period from 01.12.2008 till the date of filing of the suit and rent at the rate of ₹18,50,000/- per month plus ₹50,000/- per day as damages in terms of Clause 16 of the lease agreement dated 01.01.2008 for the period thereafter. A decree of permanent injunction was also sought restraining the defendant/MAP from selling, alienating and transferring the said suit property.

5. MAP's written statement averred that the agreement to sell dated 30.12.2004 and other documents were sham transactions to camouflage the loan given by the plaintiff to it at a very high rate of interest. MAP alleged that the said plot was originally allotted to Sh. S. Agarwal in terms of the perpetual sub-lease deed dated 12.10.1973. He died leaving behind his legal heirs. The said legal heirs agreed to sell the leasehold rights in the land to MAP by an agreement to sell dated 19.10.1990 and possession of the suit property was handed over to it. The said legal heirs executed (a) General power of attorney (b) Indemnity Bond (c) Will and (d) Agreement to Sell with intention to transfer the leasehold rights after getting the land converted into freehold in MAP's favour. It was further alleged that MAP constructed over the plot the basement, ground, mezzanine and first floor. As, in 2004 MAP was in desperate need of finances and the plaintiff offered ₹4 crores as loan against the security of the suit property worth more than 3 times (approximately ₹12 crores) the loan amount at a very high interest rate, i.e.

3.5% per month and as a security also asked for execution of certain documents. MAP stated that it was agreed that certain documents would be executed and after repayment of the loan amount, the property would revert back to it. Consequently, the parties agreed to execute the following documents in favour of the plaintiff on 30.12.2004 i.e. (a) agreement to sell (b) MOU (c) Lease deed (d) Deed of Power of attorney and (e) Indemnity Bond. Under the MOU, (stated MAP) the rights in the property were to revert back to it and the effect of all documents was to be nullified.

6. MAP claimed that it was never interested in parting with ownership or possession and hence, lease deed dated 30.12.2004 was also executed for a period of three years. The rent was fixed at ₹14,25,000/- per month which was in fact not rent but interest on the loan amount. The amount spent for getting the Agreement to Sell executed of about ₹30 lakhs was also agreed to be reimbursed by MAP. It is stated that after the expiry of 3 years, it was in some difficulty in arranging the repayment of the entire sum and on discussion with the plaintiff, the lease agreement was extended for a further period of 11 months on the same terms. To cover the interest on the expenses incurred by the plaintiff in relation to the transaction and capitalizing the same, the alleged rent was increased from ₹14,25,000/- to ₹18,50,000/-. Hence, it is stated that the defendant is in lawful possession of the suit property and that is the reason, the defendant has not given possession of the property to the plaintiff. It is further averred that the agreement to sell does not create any right in favour of the plaintiff in the property and hence, on the basis of the documents executed, the plaintiff has not acquired any propriety rights in the suit property. It is further stated that the agreement to

sell was in contravention of the perpetual sub-lease which was executed on 12.10.1973 by the President of India and hence of no effect.

7. Nine issues, including the nature of relief to be given, were framed during the proceedings. The parties went to trial. Besides the documentary evidence relied on, the parties also led oral evidence. The plaintiff relied on the deposition of Mr. Shishir Aggarwal (PW-1); the defendant relied on the testimony of Mr. Anand Prakash Shrivastava (DW-1). On an overall consideration of the documentary and oral testimony, the learned Single Judge concluded that the plaintiff had succeeded in proving its case; he, therefore, decreed the suit for possession and directed payment of ₹ 18,50,000/- per month w.e.f. 01.12.2008 till the recovery of possession less amount received by the defendant/MAP.

8. The appellant/defendant, MAP urges that the learned Single Judge omitted to see that the Agreement to sell, Power of Attorney, receipt and other documents did not create any right or title to the property but were rather meant to secure the interests of the plaintiff, which had advanced ₹4 crores. MAP was at the time, experiencing difficulty - financially speaking, on account of the economic downturn due to the 9/11 terror attacks. This slowdown adversely impacted its commercial interests. Facing severe liquidity problems it was constrained to approach the plaintiff, which insisted in securing its interest, through the documents, such as Ex. P-2, P-3, P-4, P-5, P-8 etc.

9. Mr. Arun Mohan, learned senior counsel for MAP argued that the parties' relationship was that of a creditor and debtor, since 2003. He

submitted that a sum of ₹2 crores was advanced by the plaintiff in the year 2003 and of this amount ₹1 crore was returned. Reliance was placed on the receipt (Ex.P-4) to say that payments were made to the plaintiff in August, 2003 of ₹1 crore. It is urged that no documents, evidencing any sale transaction, etc were signed at that stage. This meant that the payment received was a loan. He further urged that the transaction was a sham and camouflage at the plaintiff's insistence before it advanced the loan of ₹4 crores. The agreed rate of interest was 3.5% per month which is why the lease agreement provided for a rent of ₹14,25,000/- per month.

10. Mr. Mohan highlights that in the cross-examination, PW1 agreed that the market value of the property was ₹134 crores for the land as the area was 4617 sq. yards. None would part with title to such asset for ₹4 crores. It is also argued that MAP had purchased the suit property namely the land in the year 1990 from Mrs. Shanti Devi and family for a sum of ₹1.15 crores. It constructed a building by spending ₹2.31 crores in 1993. Therefore, DW1 deposed that the cost of the land and building itself was ₹3.5 crores during 1990-1993 period. The property could not be valued at ₹4 crores after 13 years when in 2004, the alleged sale took place in favour of the plaintiff. He further contended that despite specific averment made, the plaintiff did not get the sale deed registered or get the mutation done in its name, or to change the electricity connection. Property tax too was paid by MAP and possession of the suit property continued to remain with it.

11. In the ordinary course of events, urged MAP, a *bona fide* purchaser would take physical possession of the property and speedily apply for change

of the records to reflect change in title. The plaintiff did not do this, as the transaction was a camouflage. It was alleged that PW1 clearly stated in his cross-examination on 25.02.2010 that before purchase of the suit property, he did not inspect the same minutely, but only very broadly. Normally physical examination of the property in minute detail would have preceded such an acquisition. The Plaintiff's conduct, stated the appellant, clearly demonstrates the documents relied upon by it were a sham. Reliance was also placed on the MOU dated 30.12.2004 and 01.01.2008, which specifically provided that MAP had the right to buy-back the suit property. This right was exercised when it wrote the letter, dated 25.08.2008 (Ex. P-13). Furthermore, the plaintiff had no title as no such right can flow on the basis of an agreement to sell. Reliance is placed on *Suraj Lamp and Industries Pvt. Ltd v State of Haryana* (2012) 1 SCC 656¹.

12. Mr. Mohan submitted that as the case set up by MAP was that the registered deed was not meant to be acted upon, rather that there was another transaction which was the one which parties intended to be bound by, i.e loan by the plaintiffs, which upon repayment, was to result in the re-conveyance of the suit property, the decision of the Privy Council in *Tyagaraja Mudaliyar v. Vedathanni*² was relevant, to say that Sections 91 and 92 of the Evidence Act did not preclude such plea. In *Tyagaraja Mudaliyar (supra)* it was observed, in the context of Sections 91 and 92 that "*even if there were no provisos to either section, the result in the present case would be the same, because there is nothing in either section to exclude oral evidence that there was no agreement between the parties and therefore*

¹ (2012) 1 SCC 656

² AIR 1936 PC 70

no contract." The *ratio* of this decision was applied in *Gangabai w/o Rambilas Gilda v Chhabubai*.³

13. Learned senior counsel for MAP also urged that when a contemporaneous set of documents are executed, the effect of all of them is to be discerned; if it throws light on a different picture instead of pointing to one kind of transaction, the real nature of the dealing between the parties is to be given effect to. In support of this submission, reliance is placed on the judgments reported as *Chattanatha Karayalar v Central Bank of India*⁴, *Indra Kaur v. Sheo Lal Kapoor*⁵ and *Thakur Raghunathji Maharaj v Ramesh Chandra*.⁶

14. Mr. Arvind Nigam, learned senior counsel for the plaintiff argued that the defendant/MAP had failed to establish that it was in desperate need of money; that it did not get paid for its exports from foreign buyers - as it had alleged, or that it suffered such losses or that its bank was demanding amounts, as claimed by it in the suit. The findings of the learned Single Judge have been relied on, that if it was a loss making company and was in desperate need of funds there was no reason why it did not produce its balance sheet. He highlighted that DW1 in fact tendered the balance sheet in the course of his cross-examination, (dated 01.03.2011) for the years 2006-07 to 2009-10, which were collectively marked as exhibit DW1/1. These clearly showed that MAP was a profit-making company.

³ AIR 1982 SC 20

⁴ (AIR 1965 SC 1856)

⁵ (1988 (2) SCC 488)

⁶ (2001 (5) SCC 18)

15. Mr. Nigam also relied on findings which stated that there was no reason why MAP should not have on its own placed on record the full communications received from Oriental Bank of Commerce which allegedly froze its accounts. The learned Single Judge, therefore, rightly concluded that the best evidence available with MAP to prove its financial desperation/need was withheld from the Court and that there was no evidence to show that the defendant was in a desperate financial condition. This, submitted the counsel, clearly belied the argument that its desperate financial situation drove MAP to enter into an agreement with onerous interest conditions, for which the transfer documents were ostensible, but not meant to be really so, or acted upon. Likewise, argued counsel, the defendant/MAP did not place on record any evidence to say what the property prices were in 2004 when the transfer took place: the oral testimony of parties were of no significance here. That the property might have increased in value, a decade later, did not mean that it was more than the consideration paid by the plaintiff.

16. Mr. Nigam also submitted that MAP's documents do not show that it had, after 2004 treated the said suit property as its asset. He relies on several documents of MAP to show that in fact the said suit property was never shown as its asset. Reliance is placed on Ex.DW1/F, which is also marked by the Court Commissioner on 17.02.2011 and re-marked as Ex. DW1/F-1. That is a list of creditors as on 30.07.2005- of MAP. The list runs into 13 pages but does not show the plaintiff as one of the secured creditors. Ex.DW1/B marked by the Court Commissioner on 18.01.2011, (a Memorandum and Articles of Association of MAP) was also relied on. It

places on record a Certificate of Registration of Orders of Court confirming amalgamation of the company, namely, Maharishi Ayurveda Corporation Private Limited and Maharishi Ayurveda Products Ltd. Schedule 2 of the said document listed the assets and properties of MAP; however, this list too did not mention the suit property. Lastly, argued counsel, the plaintiff used to pay property tax for the suit premises. Furthermore, counsel emphasized that the learned Single Judge had invoked the estoppel prescribed in Section 116 of the Evidence Act, which estopped the tenant of a premise from challenging the title of its landlord.

Analysis and Conclusions

17. The above discussion reveals that essentially two points arise for consideration: one, whether the series of documents dated 30.12.2004 (registered agreement to sell Ex. P-2), registered power of attorney (Ex. P-3), receipt (Ex. P-4) registered Will (Ex. P-5), Affidavits (Ex. P-6 & P-7) a registered Indemnity Bond (Ex. P-8) did not create title or any proprietary interest in favour of the plaintiff, as they were not agreed to be acted upon by the parties, the real nature of the understanding being that they were executed to secure a loan advanced by the plaintiff to MAP and secondly whether, the plaintiff was entitled to the relief of injunction and decree for possession. MAP relies on *Chattanatha Karayalar (supra)* *Indra Kaur (supra)* and *Raghunathji Maharaj (supra)* in support of its plea that when the same parties execute many documents, the CCourts can treat them as part of the same transaction, and give effect to that real transaction.

18. In *Chattanatha Karyalar (supra)* it was no doubt held by the Supreme Court that merely because two documents are consciously executed by

parties, it would not imply that they embody separate transactions, and that the Court would have to discern from the surrounding facts to hold whether they are part of the same transaction, or are indeed different. Indeed, the nomenclature and chronology of the documents can be ignored, in order to ascertain the real nature of the bargain between the parties. There are, however, other decisions (*G. Narayana Raju v. G. Chamaraju*⁷; *State Bank Of India & Another v. Mula Sahakari Sakhar Karkhana Ltd.*⁸) which indicate that there is no hard and fast rule that the entirety of a contract ought to be contained in one document; several documents or series of correspondence and letters can disclose the terms of a lawful and binding contract. In *Chattanatha Karyalar (supra)* the issue was the construction of a promissory note executed in favour of a Bank. The said promissory note was construed in the context of the letters and a hypothecation agreement executed by the borrower. Based on such interpretation it was held that the status of the Appellant therein with regard to the overdraft amount was that of a surety and not that of a co-applicant. In the said decision the Court stated:

"_The provisions of [Section 92](#) of the Evidence Act do not apply in the present case, because Defendant 3 is not attempting to furnish evidence of any oral agreement in derogation of the promissory note but relying on the existence of a collateral agreement in writing - Exs. A & G which form parts of the same transaction as the promissory note - Ex. B_"

19. This Court notices that *Ishwar Dass Jain (dead) thr LRs. v Sohan Lal (dead) by LRs*⁹ was relied on by the learned Single Judge. It is an authority to

⁷ AIR 1968 SC 1276

⁸ 2006 (6) SCC 293

⁹ AIR 2000 SC 426

say that when a case of a document being facade or sham is set up, the litigant claiming it has to produce some cogent evidence or material should be on the record. In *Gangabai (supra)*, [relied on by the appellant] there were circumstances to support the plaintiff's claim that the sale deed was not meant to convey property, but was a sham; the trial Court and the High Court permitted *parol* evidence and the Supreme Court affirmed the decree. *Tyagaraja Mudaliar (supra)* was a case where the plaintiff, a widow with separate maintenance rights in view of the factual partition between her late husband and his brother, agreed to execute a document signifying undivided status on the assurance that her pre-existing maintenance rights would be maintained. She, however, was forced to leave the joint family matrimonial home and as a result of the previous partition, took back the jewels, which fell to her share. Upon the death of her husband's brother, she sued his widows, for arrears of maintenance. The evidence overwhelmingly pointed out to a partition between her late husband in his life-time; the Courts, including the High Court upheld her contention and disregarded the document. The Privy Council affirmed the concurrent decree, holding that Section 92 did not operate to exclude evidence presented by the plaintiff.

20. Since the defendant has urged that the agreement to sell, power of attorney and other documents, dated 30.12.2004 were a sham and that they in reality embodied a mortgage or security transaction and that the property was meant to be re-conveyed to MAP, it would be noteworthy that this situation is governed by Section 58(c) of the Transfer of Property Act, 1882. The said provision enacts as follows:

"58. (c) Where the mortgagor ostensibly sells the mortgaged property-on condition that on default of payment of the mortgaged-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale."

21. The four-judge Bench of the Supreme Court in *Pandit Chunchun Jha v. Sheikh Ebadat Ali*¹⁰ is an authority on the interface between Section 58(c) of the Transfer of Property Act and Section 92 of the Evidence Act. The Court held as follows:

*"The question whether a given transaction is a mortgage by conditional sale or a sale outright with a condition of repurchase is a vexed one which invariably gives rise to trouble and litigation. There are numerous decisions on the point and much industry has been expended in some of the High Courts in collating and analysing them. We think that is a fruitless task because two documents are seldom expressed in identical terms and when it is necessary to consider the attendant circumstances the imponderable variables which that brings in its train make it impossible to compare one case with another. Each must be decided on its own facts. But certain broad principles remain. The first is that the intention of the parties is the determining factor: see *Balkishen Das v. Legge* (27 I.A. 58.). But there is nothing special about that in this class of cases and here, as in every other case where a document has to be construed the intention must be gathered, in the first place, from the document itself. If the words are express and clear., effect must be given to*

¹⁰ AIR 1954 SC 345

them and any extraneous enquiry into what was thought or intended is ruled out. the real question in such a case is not what the parties intended or meant but what is the legal effect of the words which they used. If, however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended. As Lord Cranworth said in A Aderson v. White (44 E.R. 924) : "The rule of law on this subject is one dictated by commonsense; that prima facie an absolute conveyance, containing nothing to show that the relation of debtor and creditor is to exist between the parties, does not cease to be an absolute conveyance and become a mortgage merely because the vendor stipulates that he shall have a right to repurchase..... In every such case the question is, what, upon a fair construction, is the meaning of the instruments? Their Lord-ships of the Privy Council applied this rule to India in Bhagwan Sahai v. Bhagwan Din (17 I.A. 98) and in Jhanda Singh v Wahid-ud-din (43 I.A. 284 at 293). The converse also holds good and if, on the face of it, an instrument clearly purports to be a mortgage it cannot be turned into a sale by reference to a host of extraneous and irrelevant considerations. Difficulty only arises in the border line cases where there is ambiguity. Unfortunately, they form the bulk of this kind of transaction. Because of the welter of confusion caused by a multitude of conflicting decisions the Legislature stepped in and amended Section 58(c) of the Transfer of Property Act. Unfortunately that brought in its train a further conflict of authority. But this much is now clear. If the sale and agreement to repurchase are embodied in separate documents, then the transaction cannot be a mortgage whether the documents are, contemporaneously executed or not. But the converse does not hold good, that is to say, the mere fact that there is only one document does not necessarily mean that it must be a mortgage and cannot be a sale. If the condition of repurchase is embodied in the document that effects or purports to effect the -sale, then it is a matter for construction which was meant. The Legislature has made a clear cut classification and excluded transactions embodied in more than one document from the category of mortgages, therefore it is reasonable to suppose that persons

who, after the amendment, choose not to use two documents, do not intend the transaction to be a sale, unless they displace that presumption by clear and express words; and if the conditions of Section 58(c) are fulfilled, then we are of opinion that the deed should be construed as a mortgage.

22. Another four judge Bench of the Supreme Court considered the same question in *P.L Bapuswamy v N. Pattay Gounder*¹¹ thus: (four judges)

"that there were several circumstances to indicate that the document was a transaction of mortgage by conditional sale and not a sale with a condition for retransfer. In the first place, the condition for repurchase was embodied in the same document. In the second place, the consideration for the transaction was Rs.4,000/- while the real value of the property was Rs.8,000/-. In the third place, the patta was not transferred to the 1st defendant after the execution of the document by Palani Moopan. The kist for the land was also continued to be paid by Palani Moopan and after his death, by his sons. Lastly, the consideration for reconveyance was Rs.4,000/-, the same amount as the consideration for the original transaction. The plaintiff was entitled to preliminary decree for redemption under O.34, R.7, Civil Procedure Code, for taking accounts and for declaration of the amounts due to the 1st defendant under the document."

Recently, in *Umabai & Anr v Nilkanth Dhondiba Chavan (dead) by LRs & Anr*¹² held that:

"19. It may be true that level of a document is not decisive. The true nature of transaction must be determined having regard to the intention of the parties as well as the circumstances attributing thereto as also the wordings used in the document in question.

¹¹ AIR 1966 SC 902

¹² (2005) 6 SCC 243

21. *There exists a distinction between mortgage by conditional sale and a sale with a condition of repurchase. In a mortgage, the debt subsists and a right to redeem remains with the debtor; but a sale with a condition of repurchase is not a lending and borrowing arrangement. There does not exist any debt and no right to redeem is reserved thereby. An agreement to sell confers merely a personal right which can be enforced strictly according to the terms of the deed and at the time agreed upon. Proviso appended to Section 58(c), however, states that if the condition for retransfer is not embodied in the document which effects or purports to effect a sale, the transaction will not be regarded as a mortgage. (See Pandit Chunchun Jha v Sk. Ebadat Ali (1955) 1 SCR 174, Bhaskar Waman Joshi v Narayan Ramblidas Agarwal (1960) 2 SCR 117, K. Simrathmull v S. Nanjalingaiah Gowder 1962 Supp (3) SCR 476, Mushir Mohammed Khan v Sajeda Bano, (2000) 3 SCC 536 and Tamboli Ramanlal Moti v Chanchi Chimanlal Keshavlal, 1993 Supp (1) SCC 295."*

23. The above position may now be summarized as follows. One, when the law compels a document to be in writing, that and that alone will be determinative of what the parties intend. It is where the terms are ambiguous that extrinsic evidence is permitted. The exception to this rule is the one carved out in *Tyagaraja Mudaliyar (supra)* and subsequently affirmed in *Gangabai (supra)*, i.e where the document's professed identity is impeached as a sham or that it is a façade, the real intention of the parties being something else, oral evidence is not precluded. However, in every such exception, there was an evidence to support the claim that the document impeached was sham. The second principle is that where the transaction is said to be a mortgage by conditional sale, proviso to Section 58(c) enjoins that a sale deed would not be deemed a mortgage "*unless the condition is embodied in the document which effects or purports to effect the sale.*"

24. In the present case, there is overwhelming material on the record to establish that the documents executed on 30.12.2004 sought to convey proprietary interest to the plaintiff. These included a registered agreement to sell; receipt for ₹4 crores; Affidavits, Indemnity Bond, etc. A letter, symbolic of possession too, was signed; it was exhibited during the trial. The other series of documents also showed that the plaintiff agreed to lease out the property for agreed lease rent, to MAP; that arrangement was extended. MAP was undoubtedly given the option to seek purchase of the property; this was subject to a mutually agreeable consideration. That condition was not fulfilled. The materials on record also show that MAP raised the issue of ownership for the first time, *in the reply to the plaintiff's notice asking it to vacate the suit property*. That letter was written on 23.12.2008; a series of letters- including replies by MAP were exchanged between the parties before that. Furthermore, the defendant/appellant never claimed the suit property as its asset in its balance sheets, which were placed on the record during the trial. Also, it consistently paid tax-deducted amounts towards rent agreed by the parties, to the plaintiff. Most significantly, it never sought re-conveyance of the suit property in a manner known to law, through cancellation of the agreement to sell, or a separate suit. All this behavior and conduct was consistent with the plaintiff's interest in the property. This Court is of the opinion that the learned Single Judge's findings are sound and in accordance with law.

25. The learned Single Judge also held that Section 116 of the Evidence Act barred MAP's plea. That provision reads as follows:

“116. Estoppel of tenant; and of license of person in

possession: *No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when license was given."*

Here, the learned Single Judge relied on the decision reported as *Bansraj Lalitaprasad Mishra v Stanley Parker Jones*¹³ which observed as follows:

"15. The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppels has been incorporated by the legislature in the said section."

The inability of the defendant/MAP to prove straitened financial circumstances which led it to approach the plaintiff for a loan; the materials on record disclosing that it was a profit making company, contrary to its claim that it had to face hardship due to its banker's decision, all drove home the point that it entered into a voluntary transaction to part with its right, title and interest in the property; in fact, it did not actually own the property. Its title- if it can be so termed- was derived through similar documents, such as agreement to sell, deed of power of attorney etc. Lastly, it could not prove that the consideration paid by the plaintiff, i.e. ₹4 crores, was contemporaneously inadequate.

26. For the foregoing reasons, this Court finds no merit in the appeal.

¹³ AIR 2006 SC 3569

Amounts deposited in Court shall be adjusted towards satisfaction of the decree. The appeal is accordingly dismissed without any order as to costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

MARCH 03, 2016

