

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

+ **RFA No. 151/2005**

% **Reserved on: 23<sup>rd</sup> October, 2017**  
**Pronounced on: 30<sup>th</sup> October, 2017**

MANOJ GUPTA ..... Appellant

Through: Mr. Vipin K. Saini, Advocate  
with appellant in person.

versus

MUNNA LAL SADH ..... Respondent

Through: Mr. M.L.Sharma, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the trial court dated 15.9.2004, by which trial court has decreed the suit for specific performance filed by the respondent/plaintiff and has directed the appellant/defendant to execute the sale deed with respect to the suit property being the ground floor and the first floor of the property no. 254, part of Khasra No. 378, measuring 160 sq. yards, Masjid Moth, New Delhi.

2.(i) The facts of the case are that the respondent/plaintiff filed the subject suit for specific performance of the suit property pleading that appellant/defendant had on 18.8.2000 received the total sale consideration of Rs.15 lacs and had executed the following documents in favour of the respondent/plaintiff:-

- “a. Agreement to sell dt. 18.8.2000
- b. General Power of Attorney dt.18.8.2000 duly registered with SR-VII.
- c. Will dt. 18.8.2000 duly registered with SR-VII.
- d. Indemnity Bond dt. 18.8.2000.
- e. Affidavit dt. 18.8.2000.
- f. A receipt for Rs.15 lacs dt. 18.8.2000.
- g. Possession letter dt. 18.8.2000.”

(ii) It was also pleaded by the respondent/plaintiff that the appellant/defendant handed over to the respondent/plaintiff the following documents in order to prove his title and possession in the suit property:-

- “i. Will dt. 5<sup>th</sup> day of June 1995 duly executed by the testator Smt. Shanti Devi w/o Late Sh. Mithan Lal (the grandmother of the defendant).
- ii. A Demand Notice for the year 1983-84 issued by the Assessment and Collection Department, M.C.D. South Zone, Green Park, New Delhi in respect of the property tax of the property bearing no.254, village Masjid Moth, New Delhi (the suit property).
- iii. Sale Deed dt. 24<sup>th</sup> day of January 1985 in favour of Smt. Shanti Devi W/o Late Sh. Mithan Lal duly registered on 24.1.85 with Sub Registrar, Kashmiri Gate, Delhi.”

(iii) Respondent/plaintiff pleaded that though appellant/defendant executed the possession letter in favour of the respondent/plaintiff but

he stated that possession be retained with him not only because it was the mid-school session of the children of the appellant/defendant, but also that appellant/defendant had creditors and the appellant/defendant would not like to reveal that he had transferred rights in the suit property to the respondent/plaintiff after receiving the consideration and which aspect of transfer of rights to the respondent/plaintiff would become clear in case possession of the suit property was taken by the respondent/plaintiff. It is further pleaded by the respondent/plaintiff that since in spite of repeated requests the appellant/defendant failed to execute the sale deed of the suit property in favour of the respondent/plaintiff and also failed to hand over possession of the suit property to the respondent/plaintiff, hence the subject suit was filed.

3. Appellant/defendant contested the suit and filed his written statement alleging that the transaction in question was not a transaction of transfer of rights in the suit property by the appellant/defendant to the respondent/plaintiff but the relevant documents dated 18.8.2000 were executed in favour of the respondent/plaintiff only as a security for loan of Rs.15 lacs which the appellant/defendant was to take from the respondent/plaintiff for a

new project of construction which the appellant/defendant was engaged in. Appellant/defendant also pleaded that respondent/plaintiff took three blank cheques as security for the loan, but, the respondent/plaintiff not only did not give the loan but also did not give back the documents dated 18.8.2000 which were executed by the appellant/defendant in favour of the respondent/plaintiff. Hence dismissal of the suit was prayed for.

4. From the pleadings of the parties, the following issues were framed:-

- “1. Whether the documents GPA, Agreement to Sell, Will, Indemnity Bond, Affidavit, Receipt were got executed by the Plaintiff from the defendant as a security for loan as alleged in preliminary objection no.1 of the WS? OPD
2. Whether the amount of Rs.15 lacs was not received by defendant from the Plaintiff? OPD.
3. Whether the suit is barred u/s 6 of Specific Relief Act as alleged in preliminary objection no.7 in the WS? OPD.
4. Whether the plaintiff is entitled to the decree as prayed? OPP
5. Relief.”

5. Since the appellant/defendant admitted the documents and the onus of proof was on him that the subject documents were executed for securing the loan and not that by the documents there was to be transfer of rights in the suit property to the respondent/plaintiff, the appellant/defendant was directed to first lead evidence.

Respondent/plaintiff did not lead evidence as he was confident that appellant/defendant had failed to discharge onus of proof on him that the documents in question dated 18.8.2000 were documents transferring rights in the suit property and were not loan documents. The relevant issues were issues nos. 1 and 2 as to whether the documents in question were for transfer of rights in the suit property or were only security for loan, and these issues were decided by the trial court vide its impugned judgment in favour of the respondent/plaintiff and against the appellant/defendant by observing as under:-

**“ISSUE NO.1 & 2:**

These two issues are inter-connected and are being disposed of together, as they required common appreciation of their evidence.

It is not disputed that the defendant executed the documents Agreement to Sell Ex.DW1/P-1, Receipt Ex.DW1/P-2, GPA Ex.DW1/P-3, Will Ex.DW1/P-4, Indemnity Bond Ex.DW1/P-5, Affidavit Ex.DW1/P-6. The signature on Ex.DW1/P-1 to DW1/P-6 are admitted by the defendant in the cross examination.

The defendant's case is that he executed these documents to secure an amount of Rs.15 lacs from the Plaintiff, is not worth believing, as the defendant seems to be a literate man and admittedly engaged in the work of building construction and can be presumed to have sufficient business acumen not to sign the documents without obtaining money. Further the GPA Ex.DW1/P-3 and Will Ex.DW1/P-4 are the registered documents and the Receipt Ex.DW1/P-2 is duly notarised, which facts show authenticity of these documents. Furthermore, DW1 in the cross examination has admitted that at the time of registration of some of these documents, he had gone to the office of Sub-Registrar for the purpose of registration. Therefore, it cannot be said that the defendant signed the documents Ex.DW1/P-1 to DW1/P-6 without obtaining Rs.15 lacs. Hence, the terms and conditions of the document Agreement to Sell Ex.DW1/P-1 are binding upon the parties and the defendant is not only liable to hand over the possession of the

disputed property to the Plaintiff, but also executed Sale Deed in favour of the Plaintiff with regard to the same as he has already given sale consideration of Rs.15 lacs as shown in ex.DW1/P-1.

Learned counsel for the defendant has relied upon the authority M/s Sanjay Cotton Co., Partnership Firm Akola Vs. M/s Om Prakash Shioparkash & another, AIR 1973 Bombay 40, which is entirely on different facts and is not applicable. Similarly the authority Ram Khilona & Others Vs. Sardar & Others, (2002) 6 S.C.C. 375 relied by counsel for the defendant is also not applicable as there is no credible evidence on record to show any alteration, was made in the sale agreement by the Plaintiff without consent of the defendant.

Similarly the authority M/s Mirahul Enterprises & others Vs Mrs. Vijaya Srivastava, 2002 VI AD (Delhi) 417 relied by counsel for the defendant does not have even remote bearing in the facts of the present case. So this authority is also inapplicable to the present case.

In view of the above, the defendant has not been able to prove that he executed document Ex.DW1/P-1 to DW1/P-6 as a security for loan or the amount of Rs.15 lacs was not received by the defendant. Therefore, both the issues are decided in favour of the plaintiff and against the defendant.”

(underlining added)

6.(i) I completely agree with the aforesaid conclusions of the trial court because it is seen that the appellant/defendant admitted to execution of the documents dated 18.8.2000 but led no credible evidence whatsoever that the documents were executed not for transfer of rights in the suit property but were only executed as security for a loan. There is not a single document on record showing that the documents dated 18.8.2000 were allegedly part of a loan transaction.

(ii) In fact, in my opinion, the case of the appellant/defendant has no legs to stand upon also because if the documents dated 18.8.2000

were not documents to transfer rights in the suit property then there was no need to, besides execution of the documents, get the general power of attorney dated 18.8.2000 and the Will of the same date registered before the Sub-Registrar. It is not disputed that these two documents were registered before the Sub-Registrar and once there is a general power of attorney executed which is for consideration then as per Section 202 of the Indian Contract Act, 1872 this general power of attorney would become irrevocable. Further, since the case of the appellant/defendant was that he was not given the loan of Rs.15 lacs in terms of the documents dated 18.8.2000 and respondent/plaintiff did not return these documents to the appellant/defendant then if this was true then the appellant/defendant should have issued a legal notice to the respondent/plaintiff for return of the documents stating therein that no amount of Rs.15 lacs is received by the appellant/defendant however, admittedly no notice or legal notice was issued by the appellant/defendant against the respondent/plaintiff for return of the documents dated 18.8.2000.

(iii) In my opinion, not only the appellant/defendant failed to prove that the documents in question were security for the loan transaction,

the appellant/defendant also failed to prove that he had given three cheques as security to the respondent/plaintiff. Though counsel for the appellant/defendant sought to argue that with respect to one cheque the son of the respondent/plaintiff, namely Sh. Vikas Kumar Sadh misused the cheque and got it dishonoured and for which a notice under Section 138 of the Negotiable Instruments Act, 1881 was issued by the said son Sh. Vikas Kumar Sadh Ex.DW2/1, it is however noted that in the examination-in-chief of Sh. Vikas Kumar Sadh as DW-2 he stated that he had business transactions with the appellant/defendant, and therefore, it cannot be held that the cheque which was dishonoured in favour of Sh. Vikas Kumar Sadh was one of the three cheques given as security by the appellant/defendant to the respondent/plaintiff. Curiously, Sh. Vikas Kumar Sadh was summoned as a witness by the appellant/defendant, and once that is so, the appellant/defendant took a risk of the statements made by his own witness DW-2 being used against him. In fact DW-2 in his cross-examination by the counsel for the respondent/plaintiff admitted that appellant/defendant had executed documents with respect to the suit property in favour of the respondent/plaintiff on 18.8.2000 after

receiving Rs.15 lacs from the respondent/plaintiff and that the notice Ex.DW2/1 has no concern with the subject case. In my opinion, therefore, not only the appellant/defendant could take no benefit of the deposition of DW-2, it is also otherwise established on record that there were business relations between the appellant/defendant and the son of the respondent/plaintiff namely Sh. Vikas Kumar Sadh, and for such relations the dishonoured cheque could have been issued by the appellant/defendant in favour of Sh. Vikas Kumar Sadh. I may note that the documents dated 18.8.2000 are admitted documents and have been duly proved and exhibited as Ex.DW1/P-1 to Ex.DW1/P-6.

7.(i) Learned counsel for the appellant/defendant then argued that the suit is barred under Section 6 of the Specific Relief Act, 1963 and which was issue no.3 before the trial court. This issue no.3 has been rightly decided against the appellant/defendant by the trial court by observing as under:-

**“ISSUE NO.3:**

This issue is based upon the objection of the defendant in the Written Statement that the suit is barred under Section 6 of Specific Relief Act. Section 6 of Specific Relief Act comes to the rescue of a person, who is dispossessed of immovable property, otherwise than in due course of law and the limitation period for recovery of possession by such dispossessed person is six months. The facts of the present case, in my view, do not attract Section 6 of Specific Relief Act and the reliance of the defendant on this provision of law is misplaced.

The issue is, therefore, decided in favour of the Plaintiff and against the defendant.”

(ii) In my opinion, besides the reasoning given by the trial court for deciding issue no.3 in favour of respondent/plaintiff it is also to be noted that the bar under Section 6 of the Specific Relief Act would not arise once possession is sought to be taken under an agreement to sell of which specific performance is sought. Section 6 of the Specific Relief Act applies against a person who takes illegal possession and it is not the case of the respondent/plaintiff that the appellant/defendant had taken illegal possession of the suit property inasmuch as the case of the respondent/plaintiff was that the appellant/defendant was in permissive possession after execution of the documents dated 18.8.2000 on account of the education session of appellant's/defendant's children being in mid-session and also that the appellant/defendant did not want to reveal the factum of transfer of rights in the suit property to his creditors. Accordingly, I hold that the issue no.3 was rightly decided by the trial court in favour of the respondent/plaintiff and against the appellant/defendant.

8. Learned counsel for the appellant/defendant then argued various nano issues and which in my opinion would have no bearing

on the findings and conclusions arrived at by the trial court as also this Court that the documents dated 18.8.2000 were not loan documents, however, for completion of narration I note the aspects urged on behalf of the appellant/defendant and the reasons for rejecting the same as under:-

(i) Argument was sought to be raised by the appellant/defendant that the amount received of Rs.15 lacs written in receipt Ex.DW1/P2 is typed in a different typewriter than the other portions of the receipt Ex.DW1/P2, however, in my opinion, this argument is of no effect because the appellant/defendant does not deny execution of all the documents dated 18.8.2000 including the receipt Ex.DW1/P2. It is not the case of the appellant/defendant in the written statement that the documents dated 18.8.2000 were signed in blank and once that is so the contents of documents cannot be disputed and which talk of receipt of Rs.15 lacs by the appellant/defendant from the respondent/plaintiff. Also, as stated above, if the appellant/defendant had not received Rs.15 lacs, then, what prevented him from issuing a notice to this effect to the respondent/plaintiff including seeking return

of the documentation dated 18.8.2000 on account of non-receipt of the loan of Rs.15 lacs, and which the appellant/defendant never did.

(ii) Another argument urged on behalf of the appellant/defendant was that the agreement to sell Ex.DW1/P1 does not state the mode of payment of consideration, however, in my opinion, the appellant/defendant cannot take benefit of this argument once the appellant/defendant had executed the receipt Ex.DW1/P2 mentioning the factum of the appellant/defendant receiving Rs.15 lacs but also it is not the case of the appellant/defendant that the agreement to sell or the receipt dated 18.8.2000 were blank documents when executed. This argument of the appellant/defendant is therefore rejected.

(iii) Counsel for the appellant/defendant argued that the respondent/plaintiff has failed to prove and aver his readiness and willingness in terms of Section 16(c) of the Specific Relief Act and therefore the suit had to be dismissed. Once again this argument is misconceived because no doubt it is preferable to use the expression of a plaintiff in a suit for specific performance being ready and willing, however, it is equally settled law that existence of the said averment can otherwise be deduced from other facts as stated in the

plaint. In the present case, there is no issue to be decided of any readiness and willingness by the respondent/plaintiff because respondent/plaintiff had no further obligation to perform under the agreement to sell inasmuch as he had paid the entire consideration to the appellant/defendant. The only obligation which thereafter had to be performed was by the appellant/defendant of executing the sale deed and there was no obligation of the respondent/plaintiff left to be performed. Therefore in my opinion the fact that the respondent/plaintiff in the plaint mentioning about execution of the documents dated 18.8.2000 and receipt by the appellant/defendant of Rs.15 lacs has to be taken as sufficient compliance of provision of Section 16(c) of the Specific Relief Act in the facts of the present case and where no further obligation remained or was to be performed by the respondent/plaintiff and that it was only the appellant/defendant who had to perform the obligation of executing the sale deed and transfer the possession of the suit property to the respondent/plaintiff. This argument of the appellant/defendant is therefore rejected.

(iv) It was argued that the respondent/plaintiff in the plaint has mentioned that he received original title documents of the suit

property whereas the alleged title document is only a photocopy of the sale deed dated 24.1.1985, however, once again this argument is without any substance because the only title document to the suit property was the Will dated 5.6.1995 Ex.PW1/1 executed by the grandmother Smt. Shanti Devi in favour of her grandson/appellant/defendant, and original of which Will has been filed and proved as Ex.PW1/1. Therefore some minor contradictions in the pleadings and in the deposition will really not make much difference and which is all the more so because it is seen that the photocopy of the sale deed dated 24.1.1985 is not with respect to the suit property but some other property and therefore it is not the case of the respondent/plaintiff that he received the original title document dated 24.1.1985 which was pertaining to the suit property. This argument of the appellant/defendant is therefore rejected.

(v) An argument was also raised as to the difference of the amount of construction existing as per the site plan filed with the plaint by the respondent/plaintiff and construction actually existing at site, however, once again this argument has no substance because the construction existing at site when the suit was filed in the year 2003

and thereafter the status thereof during the pendency of the suit from 14.8.2003 would obviously be much different because the appellant/defendant continued in possession of the suit property after execution of the documents in favour of the respondent/plaintiff on 18.8.2000. In any case this argument has no bearing or effect with respect to the documents dated 18.8.2000 having been duly executed in favour of the respondent/plaintiff and the appellant/defendant having failed to prove that the documents were as security for the loan transaction only. This argument of the appellant/defendant is also therefore rejected.

(vi) Learned counsel for the appellant/defendant then sought to take me through certain contradictions in cross-examination of the respondent/plaintiff conducted over different dates, however, I find none of the answers given by the respondent/plaintiff will in any manner benefit the appellant/defendant to say that the respondent/plaintiff ever admitted that the documents dated 18.8.2000 were for the alleged loan transaction and not for transfer of the suit property in favour of the respondent/plaintiff.

9. To complete the narration, I must note that in the affidavit by way of evidence dated 15.7.2015 filed by the appellant/defendant some totally new facts of the appellant/defendant entering into various transactions with various other persons were stated including the construction business, and which were *inter alia* paras 12 to 18 and 30 to 34 of this affidavit by way of evidence, but, not only such averments being wholly beyond pleadings could not be looked at, and that it is also further required to be noted that the documents as mentioned in this affidavit by way of evidence were sought to be got proved on record through the affidavit by way of evidence much after the framing of issues and after completion of evidence by the respondent/plaintiff and therefore the said documents were not taken on record by the trial court by the order dated 1.8.2015. This order dated 1.8.2015 of the trial court was carried on in challenge to this Court by the appellant/defendant in C.M.(M) No.1178/2016 but this C.M.(M) No.1178/2016 was dismissed by a learned Single Judge of this Court vide his order dated 8.12.2016 and which order reads as under:-

“1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 01.08.2015 by which

his application under Order 7 Rule 14 CPC for filing additional documents was dismissed.

2. The respondent has filed the suit for specific performance of an alleged agreement to sell dated 18.08.2000. The case of the respondent is that he has entered into an agreement to sell with the petitioner and has paid the entire consideration of Rs.15 lacs for the suit property bearing No. 254, Masjid Moth, Delhi. Petitioner also executed General Power of Attorney, Will, Indemnity Bond, etc.

3. The petitioner in his defence has taken the plea that the transaction was not an agreement to sell but a loan and on the instructions of the respondent these documents were executed.

4. The suit was decreed. The petitioner has filed an RFA. The appellate court permitted the parties to lead additional evidence before the trial court and remanded the matter back to the trial court for leading additional evidence. The said RFA is still pending.

5. Now at this stage, the petitioner has sought to bring on record voluminous documents. It is the stand of the petitioner that some of the documents were initially executed and registered by the petitioner for the purpose of getting a loan from the respondent but the respondent did not accept the documents. Further the petitioner also submits that various loans have been taken from various other private financiers and the nature of the documents executed with such financiers is what he seeks to bring on record.

6. The trial court by the impugned order noted that the case is time bound as per the directions of the High court. The documents executed by the petitioner are mostly in favour of third parties or executed in favour of the petitioner by the third parties. The makers of these documents were stated to have no connection with the suit and hence, the trial court held that the documents are not relevant for decision of the issue involved in the present petition.

7. In my opinion, as the matter is now fixed for additional evidence, the introduction of these documents by the petitioner at this belated stage would normally be not permissible. These documents are also not stated by him or referred to by him in his written statement. There is no such averment made about a loan taken from the other private financiers who would execute these kind of documents stated in the written statement. At this belated stage, after passing of a decree and when the appellate court permitted to lead additional evidence, there are no grounds made out to permit the petitioner to start filing additional documents.

8. The present petition is without merit and is dismissed.

9. All pending applications also stand dismissed.”

10. Therefore I have not permitted counsel for the appellant/defendant to argue the aforesaid aspects in aforesaid affidavit by way of evidence, especially paras 12 to 18 and 30 to 34 thereof once the averments are not supported by any documents as such prayer was rejected in terms of the aforesaid order dated 8.12.2016 by this Court in C.M. (M) No.1178/2016.

11. In view of the above discussion, I do not find any merit in the appeal. Dismissed. Parties are left to bear their own costs.

**OCTOBER 30, 2017**  
ib/Ne

**VALMIKI J. MEHTA, J**