

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

% **Date of decision: 12th October, 2017.**

+ **C.R.P. 176/2017**

BHUPINDER JIT SINGH

..... Petitioner

Through: Mr. Sidharth Joshi, Mr. Yogesh Mittal
and Mr. Hasib-ur-Rehman, Advs.

Versus

SONU KUMAR

..... Respondent

Through: Mr. Paramjeet Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 1st April, 2017 in Civil Suit No.7970/2016 of the Court of Senior Civil Judge/Rent Controller, East District, Karkardooma Courts, Delhi] of dismissal of the application filed by the petitioner/plaintiff under Order XII Rule 6 of CPC for a decree for possession forthwith.
2. The petition was entertained for the detailed reasons given in order dated 9th August, 2017, vide which notice thereof was ordered to be issued to the respondent/defendant.
3. The counsels have been heard.
4. The petitioner/plaintiff instituted the suit from which this petition arises, pleading (i) that the petitioner/plaintiff is the absolute owner of property No.114, Sunder Park, Shastri Nagar, Village Khureji Khas, Shahdara, Delhi purchased by him through a registered sale deed dated 16th

July, 2013 from the respondent/defendant; (ii) that subsequently the respondent/defendant wanted to be inducted as a lessee in the said property and the petitioner/plaintiff acceded to the request and a registered lease deed dated 18th July, 2013 was executed between the parties whereunder the petitioner/plaintiff let out the said property to the respondent/defendant at a rent of Rs.10,000/- per month for a period of eleven months commencing from 11th July, 2013 and on other terms and conditions mentioned in the lease deed; (iii) that the respondent/defendant did not pay rent since January, 2014 and also did not vacate the property; (iv) that the lease of the respondent/defendant expired by efflux of time on 10th June, 2014 and possession of the respondent/defendant thereafter is unauthorised; (v) that the petitioner/plaintiff also got issued and served a legal notice dated 9th May, 2014 on the respondent/defendant; (vi) hence the suit for ejectment of the respondent/defendant from the property and for recovery of arrears of rent/*mesne* profits, future *mesne* profits and permanent injunction restraining the respondent/defendant from alienating, encumbering or parting with possession of the property.

5. The respondent/defendant contested the suit by filing a written statement *inter alia* pleading (a) that in the month of April, 2012, the respondent/defendant was in dire need of money and through a friend, was brought in contact with one Sunil Gora and on the said Sunil Gora asking for security for the loan, informed the said Sunil Gora that the respondent/defendant has undivided share in the property aforesaid along with his brothers, sisters and mother; (b) that in May, 2012, Sunil Gora made the respondent/defendant and his mother sign some documents and also took the respondent/defendant and his mother to the Office of Sub-Registrar,

Geeta Colony, Delhi where the signed documents were presented and photographs taken of the respondent/defendant and his mother; (c) Sunil Gora assured the respondent/defendant that he will take back the registered documents from the Office of Sub-Registrar for further processing of loan and when the loan is approved by the Bank, he would inform the respondent/defendant; (d) however the said Sunil Gora inspite of repeated contacts by the respondent/defendant neither arranged for the loan nor returned the documents; (e) that on the contrary, Sunil Gora also took six signed cheques from the respondent/defendant and again called the respondent/defendant to sign some documents on 12th July, 2013 at the Office of Sub-Registrar, Geeta Colony, Delhi where the respondent/defendant was again made to sign some papers and one Bhupinder Jit Singh introduced by Sunil Gora gave a cheque for Rs.8 lakhs to the respondent/defendant which was cleared on 15th July, 2013; (f) that for repayment, an instalment of Rs.30,000/- per month was agreed to be paid and which has been paid by the respondent/defendant to Sunil Gora in cash, from August, 2013 to September, 2014; (g) that thereby, out of the loan of Rs.8 lakhs, Rs.4,20,000/- has been repaid, with the balance loan remaining of Rs.5,80,000/-; (h) that on receipt of notice of institution of the suit, the respondent/defendant has realised that Bhupinder Jit Singh/plaintiff has got sale deed dated 12th July, 2013 executed from the respondent/defendant and also got the lease deed executed on the same day under the guise of loan agreement and has on the basis thereof filed the subject false suit; (i) that the property is still undivided and has never been sold by the respondent/defendant to the petitioner/plaintiff and the suit of the petitioner/plaintiff is false.

6. In the aforesaid state of pleadings, the petitioner/plaintiff filed the application aforesaid under Order XII Rule 6 of CPC for decree for possession of the property on admissions forthwith.

7. The learned Senior Civil Judge has dismissed the application reasoning that there are no admissions of the respondent/defendant and the respondent/defendant has disputed the landlord-tenant relationship and has rather claimed having been cheated. It is further reasoned that according to the respondent/defendant, he remains the owner of the property and though the respondent/defendant admits receipt of legal notice but a decree on admissions cannot be sought on the basis thereof.

8. On 9th August, 2017 when this petition came up first before this Court it was enquired from the counsel for the petitioner/plaintiff, whether there are any other proceedings filed by the respondent/defendant or by any of his siblings for setting aside of the sale deed and the lease deed and whether the respondent/defendant has filed any counter-claim in the suit. On the counsel for the petitioner/plaintiff answering in the negative, it was further observed that the respondent/defendant, without having initiated any proceedings for setting aside of the sale deed and the lease deed, the same being registered documents have to prevail and the petitioner/plaintiff appeared to be entitled to a decree for possession on admissions. Hence, notice of this petition was issued.

9. The counsel for the respondent/defendant though has not disputed that the respondent/defendant or any of his siblings have not taken any proceedings for setting aside of the sale deed or lease deed or for rescission of the same and have also not filed any counter-claim in the suit from which

this petition arises but contends that filing of such a suit by the respondent/defendant is still within limitation, inasmuch as the respondent/defendant learnt of the misrepresentation only in December, 2014.

10. Neither counsel is able to state the date on which the respondent/defendant was served with the summons of the suit. However, the counsel for the petitioner/plaintiff states that the suit was preceded by a legal notice and to which a reply was given and the respondent/defendant on receipt of legal notice also had knowledge of the claim of the petitioner/plaintiff. It is further the contention of the counsel for the petitioner/plaintiff that the case of the petitioner/plaintiff is squarely covered by ***Karan Madaan Vs. Nageshwar Pandey*** 209 (2014) DLT 241 and that even if the counter-claim were to be filed, the same would have been rejected in terms of the said judgment.

11. The passing of a decree for possession cannot be deferred, if the petitioner/plaintiff were to be found entitled thereto, for the reason of the respondent/defendant intending to file a suit for setting aside of the sale deed and the lease deed, even if such suit is still within limitation. The fact remains that notwithstanding the written statement in the suit having been filed in February, 2015, the respondent/defendant till now has not filed any such suit. Thus, as of now there is no step taken by the respondent/defendant for rescission of the registered documents aforesaid which establish the title of the petitioner/plaintiff to the property (though in a suit between landlord and tenant, such title is not necessary) and the relationship of landlord and tenant between the parties. The said registered documents have to prevail,

particularly when the execution and registration thereof is admitted. The plea, of the documents having been got executed by misrepresentation, cannot be a defence to a suit on the basis of the said documents unless the said documents are so declared by a competent Court of law.

12. Supreme Court, in ***Gorakh Nath Dube Vs. Hari Narain Singh*** (1973) 2 SCC 535, though in the context of jurisdiction of the Consolidation Officer under the U.P. Consolidation of Holdings Act, 1954, held that a distinction has to be made between cases where a document is wholly or partially invalid so that it can be disregarded by any Court or authority and a document which has to be actually set aside before it can cease to have legal effect. To demonstrate, it was stated, that an alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid—an adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land; but where there is a document the legal effect of which can only be taken away by setting it aside or by its cancellation, it must be held to be binding on the parties so long as it is not cancelled by a Court having the power to cancel it.

13. Supreme Court, in ***Smt. Bismillah Vs. Janeshwar Prasad*** (1990) 1 SCC 207, while affirming the view taken in ***Gorakh Nath Dube*** supra further held that the common law defence of non est factum to actions on specialties in its origin was available where an illiterate person to whom the contents of a deed had been wrongly read, executed it under a mistake as to its nature and contents; he could say that it was not his deed at all. It was further observed (i) that in its modern application, the doctrine has been

extended to cases other than those of illiteracy and to other contracts in writing; (ii) that earlier judgments were found to have drawn a distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof—the defence of non est factum is available only if the mistake was as to the very nature and character of the transaction; (iii) that though a contract or other transaction induced or tainted by fraud is not void, but voidable at the option of the party defrauded and unless it is declared void, the transaction is valid but the legal position would be different, if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character; however, subsequently in *Saunders Vs. Anglia Building Society* (1970) 3 All ER 961 the House of Lords held that the plea of non est factum could not be available to anyone who signed without taking the trouble to find out at least the general effect of the document—nor could it be available to a person whose mistake was really a mistake as to the legal effect of a document; there must be a radical or fundamental difference between what he signed and what he thought he was signing; (iv) that a distinction based on the character of the document and the contents of the document was considered unsatisfactory inasmuch as the ‘character’ of the document may itself depend upon the contents of the document; (v) that the difficulty was held to be resolvable on a case to case basis; (vi) reliance was placed on Chitty on Contracts, 25th Edition, para 343 authoring that the defence of non est factum is not to be allowed lightly where a person of full age and capacity had signed a written document embodying contractual terms; only in exceptional circumstances, the plea is available when the person signing the document

had made a fundamental mistake as to the character or effect of the document.

14. Applying the aforesaid law to the facts of the present case, what is found is, (a) that the respondent/defendant does not controvert execution and registration of the sale deed as well as lease deed; (b) his defence however is of the transaction being a loan transaction and not a transaction of sale and lease as appears from the documents, and of the sale and lease documents having been got executed and registered from him by misrepresentation. Per Section 19 of the Contract Act, 1872, when consent to an agreement is caused by fraud or misrepresentation, the contract is voidable at the option of the party whose consent was so caused. The defence of the respondent/defendant to the suit is of no avail till the sale and lease documents are not declared null and void. The same cannot be declared so in the suit of the petitioner/plaintiff. It is not the argument also of counsel for respondent/defendant; he also admits that a suit therefor has to be filed. The petitioner/plaintiff cannot be declined the relief to which he is entitled on the basis of documents aforesaid. The facts of the present case do not entitle the respondent/defendant to have the petitioner/plaintiff non-suited by acceptance of the defence of the respondent/defendant of fraud as to the very nature and character of the sale and lease documents.

15. Section 31 of the Specific Relief Act, 1963 provides that any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable and empowers the court to adjudge so and to order the document to be delivered

up and cancelled. The Legislature having provided a remedy for the situation which the respondent/defendant claims to be in, even otherwise, the respondent/defendant is not entitled to defend the claim of the petitioner/plaintiff and to non-suit the petitioner/plaintiff, without having invoked the said remedy. If the respondent/defendant has not invoked the suit remedy, the petitioner/plaintiff is entitled to enforce his rights under the documents which the respondent/defendant claims to have been executed by him under misrepresentation and the respondent/defendant cannot be heard to defend the claim of the petitioner/plaintiff on the pleas on which appropriate action in law has not been taken.

16. I have recently in judgment dated 3rd August, 2017 in C.R.P. No.69/2017 titled ***Harswaroop Sharma Vs. Gian Prakash Sharma*** referred to ***Anandappa Vs. Totappa*** AIR 1915 Bombay 132 holding that, whether a plaintiff must sue for cancellation of a document depends upon whether the onus of proving circumstances establishing its invalidity lies upon him or whether it lies upon the defendant to prove circumstances establishing its validity. Applying the said principle also, it is for the respondent/defendant to prove misrepresentation claimed to have been practised on him and it was/is incumbent upon the respondent/defendant to sue therefor and having not sued therefor, is liable to suffer the consequences flowing from the registered documents.

17. As far as the reasoning given by the learned Senior Civil Judge, of there being no admissions in the written statement of the respondent/defendant is concerned, the learned Senior Civil Judge has held so, notwithstanding the plethora of case law to the effect that the test of

admissions is on a meaningful reading of the pleadings and if on such reading of the pleadings, it is found that the pretence made of a defence is not a defence in law and also in ignorance of Order XV Rule 1 of CPC which provides that if the parties are not found at issue, on any proposition of law or fact, the Court has to pronounce the judgment forthwith.

18. I have in *Ashoka Estate Pvt. Ltd. Vs. Dewan Chand Builders Pvt. Ltd.* 159 (2009) DLT 233, reiterated in judgment dated 14th September, 2017 in C.R.P. No.190/2015 titled *Vireet Investments Pvt. Ltd. Vs. Vikramjit Singh Puri*, held (i) that the plaintiff, if otherwise found entitled to a decree on admission, cannot be deprived thereof by astute drafting of the written statement and/or by taking pleas therein which have no legs to stand upon; (ii) the Court is to read the pleadings of the parties meaningfully; (iii) issues are to be framed on 'material' and not on all propositions of law and fact; (iv) a plea, which on the face of it is found by the court to be untenable, does not require the framing of any issue. In *Adarsh Kumar Puniyani Vs. Lajwanti Piplani* 2015 SCC OnLine Del 14022 it was held that material propositions of law or fact would mean such issues which are relevant and necessarily arise for deciding the controversy involved; if a plea is not valid and tenable in law or is not relevant or necessary for deciding the controversy involved, the Court would not be bound and justified in framing issue on such unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable Court time. Reliance was *inter alia* placed on *Abbot India Ltd. Vs. Rajinder Mohindra* (2014) 208 DLT 201 holding that once it is found that there was no defence, merely because a bogey thereof is raised at the stage of framing of issues or

upon the respondents/plaintiffs filing an application under Order XII Rule 6 of the CPC, would not call for framing of an issue.

19. Issues are to be framed only on material propositions of law or fact requiring trial and not on all propositions of fact or law which may be contained in the pleadings and which are not material i.e. on the outcome whereof the outcome of the suit does not depend. The Court is not obliged to, on finding pleas to have been raised in the written statement, mechanically frame issues thereon. If issues were to be framed in such manner, the same would be in disregard of the word 'material' in Order XIV Rule 1 of the CPC. The enquiry thus to be made at the time of framing of issues is, whether the pleas raised in the written statement, purportedly in defence to the claim in the plaint, have any material bearing to the outcome of the suit and if it is found that irrespective of the findings thereon, the plaintiff would be entitled to the relief, the parties are not to be put to trial in the suit.

20. As far as the reliance by the counsel for the petitioner/plaintiff on ***Karan Madaan*** supra is concerned, I may notice that appeal preferred thereagainst was dismissed vide ***Nageshwar Pandey Vs. Karan Madaan*** 2016 SCC OnLine Del 816. The said judgment though useful for the present purpose on the aspect of Order XII Rule 6 of CPC, otherwise turns on the application of Sections 91&92 of the Indian Evidence Act, 1872.

21. The petition thus succeeds; the impugned order dated 1st April, 2017 is set aside and resultantly the application of the petitioner/plaintiff under Order XII Rule 6 of CPC is allowed and a decree for possession in favour of the petitioner/plaintiff and against the respondent/defendant of property

No.114, Sunder Park, Shastri Nagar, Village Khureji Khas, Shahdara, Delhi is passed and ordered to be prepared by the Suit Court.

22. The parties are at variance, as to whether issues have been framed in the suit or not and though the counsel for the petitioner/plaintiff states that issues have been framed but has no copy of the order to the said effect.

23. If any issue arises and/or is framed with respect to the other claim/s of the petitioner/plaintiff in the suit, the suit to proceed for trial therefor only.

24. The petition is disposed of.

No costs.

Dasti.

OCTOBER 12, 2017

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RAJIV SAHAI ENDLAW, J.

