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

% **Date of decision: 28th November, 2019.**

\+ **CS(OS) 619/2019**

MANJEET KAUR & ANR. ..... **Plaintiffs**
Through: Mr. Prateek Chaudhary, Adv.

Versus

DEVENDER DAGAR & ANR. ..... **Defendants**
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.16686/2019 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed of.

CS(OS) 619/2019 & IA No.16685/2019 (u/O XXXIX R-1&2 CPC)

3. The two plaintiffs have instituted this suit for the reliefs of, (i) declaration as null and void and cancelation of the registered Gift Deed, dated 6th February, 2014 executed by plaintiff no.1 Manjeet Kaur in favour of defendant no.2 Rashmi Dagar, of freehold built up property bearing no.48, ad-measuring 209 sq. mtrs. in Block-B, Pocket 10 of Sector 13 Dwarka Residential Scheme; (ii) recovery of possession of the property subject matter of the Gift Deed; and, (iii) permanent injunction restraining the two defendants from dealing with the property subject matter of the Gift Deed and / or from making any additions, alterations or changes therein.

4. It is the case of the plaintiffs in the plaint, that (i) the plaintiff no.2 Narender Dagar and defendant no.1 Devender Dagar are brothers; (ii) the plaintiff no.1 and wife of defendant no.1 are sisters; (iii) the defendant no.2 is the daughter of defendant no.1; (iv) the plaintiff no.2 and defendant no.1 worked together as partners from 1991 till 2010, though essentially the business was conducted by them in their own names and not in the name of the firm; (v) there was a high degree of trust between the plaintiff no.2 and the defendant no.1; (vi) in January, 2014, the defendant no.1 approached the plaintiff no.2, stating that the defendant no.1 desired that the property subject matter of the Gift Deed be gifted to the defendant no.2 on the occasion of marriage of defendant No.2 and asked the plaintiffs for the said gift to be made and in return offered a property of equivalent value of the choosing of the plaintiffs, at a later date, in lieu of the property gifted; (vii) in view of the high degree of trust, the plaintiff no.2 did not check the contents of the Gift Deed and asked the plaintiff no.1 to execute the Gift Deed and the plaintiff no.1 also mechanically executed the Gift Deed; (viii) it was because of the said trust that the defendant no.1 was able to defraud the plaintiffs by failing to include in the recitals to the Gift Deed about the exchange of property; (ix) it has now become clear that the defendants deliberately enacted a charade, solely for defrauding the plaintiffs by having the Gift Deed executed; (x) the defendant no.1 never intended to fulfil the agreement of giving a property to the plaintiffs in lieu of the gifted property; (xi) that owing to the said trust, the plaintiffs, on 19th June, 2013 and 8th January, 2014 loaned monies to the defendant no.1 and his wife and which have also not been repaid and a suit for recovery of Rs.1,90,83,000/- along with interest is being filed against the defendant no.1 and his wife,

contemporaneously with the present suit; (xii) on 13th June, 2018, a final show down took place between defendant no.1 and the plaintiff no.2, about the inordinate delay on the part of the defendant no.1 to pay back the borrowed amount and to transfer in favour of plaintiffs, property of equivalent value of the property gifted; (xiii) it was then that the defendant no.1 displayed his true colours by refusing to honour his agreement; (xiv) paragraph 12 of the plaint is as under:

> "12. The impugned Gift Deed was gotten executed by the Defendant No.1 by making an Oral Agreement of exchanging equal value property against the Suit Property with Plaintiff No.2. However, it is now self-evident that the Defendant no.1 right from the inception had no intention to keep the said promise and for this reason he deliberately did not include any recital to this effect in the body of the impugned Gift Deed. The Plaintiff never checked the contents of the said Gift Deed owing to blind trust Plaintiff No.2 had in Defendant No.1, while the Plaintiff No.1 blindly did what the Plaintiff No.2 asked of her in executing the impugned Gift Deed.";

(xv) the Gift Deed, being an instrument executed by fraud, to usurp the property of the plaintiffs, needs to be set aside and declared as null and void and struck off from the Register of the Sub-Registrar; (xvi) such was the trust between the parties, that the plaintiff no.1, while executing the Gift Deed, did not check whether the same contained a recital pertaining to exchange as was agreed by the defendant no.1; otherwise there was no reason for the plaintiff no.1 to execute the Gift Deed when the defendant no.1 and his wife already owed monies to the plaintiffs; (xvii) in March, 2018, the plaintiffs identified Plot No.3, Sector 11, Dwarka in lieu of the gifted property and informed so to the defendant no.1, but the defendant no.1 refused; (xviii) the cause of action paragraph 16 of the plaint is as under:

"16. The cause of action for the present suit arose for the first time in the month of March 2018 when the Plaint No.2 for the first time gave an ultimatum to the Defendant No.1 that he must honour his agreement and transfer all the right(s) /title(s)/interest(s) into an immoveable property of equivalent value. The Plaintiff No.2 identified such a property as one bearing no. Plot No.3, Sector 11, Dwarka, Delhi to the Plaintiff No.1 in lieu of execution of Gift Deed in favour of Defendant No.2. It arose again on 13.06.2018 when the Defendant No.1 finally refused to honour his agreement, and then again when subsequently the Plaintiffs for the first time came into knowledge that the Defendant No.1 had deliberately and with Mala fide intent failed to insert a recital into the said Gift Deed dated 06.02.2014 about the intended exchange of equal value property. Later identified by Plaintiff No.2 as property bearing no. Plot No.3, Sector 11, Dwarka, Delhi with the Suit Property. The cause of action arose when the lack of said recital was confirmed when the Plaintiff subsequently sourced a certified copy of the said Gift Deed. And it continually arises since that day.

It is herein stated that all the annexures annexed with the Plaint are all true typed and true copies of the original documents";

(xix) the valuation paragraph 17 of the plaint is as under:

"17. In lieu of the relief(s) sought under para nos.(A), (B) and (C) of the prayer para, which are those of declaration along with consequential relief, the present suit is valued at Rs.3,20,00,000/- (Rupees Three Crores Twenty Lakhs Only) as it pertains to one subject – matter the Suit Property i.e. property no.48 situation in block B pocket 10 sector 13 of Dwarka Residential Scheme at Dwarka, Delhi measuring about 209 sq mtrs as showcased in site plan annexed with the Plaint.

While for the relief of Permanent Injunction sought under para no.(D), it is valued at fixed valuation of Rs.130/- (Rupees One Hundred and Thirty Only) whereof a court fee(s) of Rs.13/- (Rupees Thirteen Only) is affixed.

Thus, cumulatively court fee(s) of Rs.3,22,513/- (Rupees Three Lakhs Twenty Two Thousand Five Hundred and Thirteen Only) is affixed on the Plaint, while for the purpose of court fee(s) and jurisdiction the present suit is valued at Rs.Rs.3,20,00,130/- (Rupees Three Crores Twenty Lakhs One Hundred and Thirty Only)."

5. A perusal of the Gift Deed shows the valuation of the property subject matter of gift, as Rs.2,27,49,100/-. The plaintiffs have however, without regard to the said fact, valued the reliefs in the plaint at Rs.3,20,00,000/-.

6. It has been held in ***Suhrid Singh Vs. Randhir Singh*** (2010) 12 SCC 112, ***Anuradha Gupta Vs. Veena Devi*** 2017 SCC OnLine Del 9646, ***Kartar Singh Vs. Delite Techno Build Pvt. Ltd.*** 2019 SCC OnLine Del 10730, ***Manoj Kumar Gupta Vs. Sheela Devi*** 2014 SCC OnLine Del 4474 and ***Tarsem Singh Vs. Vinod Kumar*** 2011 SCC OnLine P&H 8146 (DB) that where the relief sought is by the executant of the document, it should be of cancellation and *ad valorem* Court fees be paid thereon.

7. It is not at the *ipse dixit* of the plaintiffs that the relief of cancellation of an instrument can be valued. Valuation has to be as per law.

8. However, that is not the end of the defects in the suit.

9. I have enquired from the counsel for the plaintiffs, how the suit instituted on 2nd November, 2019 and re-filed on 13th, 16th, 19th and 21st November, 2019, for cancellation of Gift Deed admittedly executed by plaintiffs on 6th February, 2014, is within time.

10. The counsel for the plaintiffs has given two answers. Firstly, it is stated that the plaintiffs have claimed the relief of possession, limitation

whereof is 12 years. Secondly, it is stated that the plaintiffs have pleaded that the fraud came to light only on 13th June, 2018.

11. It has been held in ***Raj Kumar Garg Vs. S.M. Ezaz*** MANU/DE/3860/2012 (DB) and ***Ruma Kaur Vs. Joginder Singh Raina*** 2014 SCC OnLine Del 1449 that where the plaintiff would not be entitled to the relief of recovery of possession without seeking the relief of declaration as null and void of a document or cancellation of a document admittedly executed by plaintiffs, merely because the limitation for the relief of possession is more, would not make the suit within time if the suit is filed after the expiry of limitation for the relief sought of declaration/cancellation, inasmuch as the relief of possession in such cases is dependent on the declaration/cancellation.

12. As far as the plea/contention of the fraud coming to light on 13th June, 2018 is concerned, it may be recorded that as per the pleadings of the plaintiffs, 13th June, 2018 was the date of final show down, when the plaintiffs claim to have complained to the defendant no.2 about the inordinate delay on part of the defendant no.1 in pay back of the borrowed amount and in having a property transferred in favour of the plaintiffs in lieu of the gifted property. The Limitation Act, 1963 under Part III of Schedule thereof dealing with the suits relating to declaration, under Article 58 provides for limitation of three years for a suit for obtaining any other declaration, commencing from when the right to sue first accrues, and under Part IV dealing with suits relating to decrees and instruments, under Article 59 provides for a limitation of three years for a suit to cancel or set aside the instrument, commencing from the date when the facts entitling the plaintiffs

to have the instrument or decree cancelled become known to the plaintiffs. Supreme Court, in ***Prem Singh Vs. Birbal*** (2006) 5 SCC 353 has held that in a suit filed for cancellation of a transaction and when the plaintiff asserts coercion, under influence, misappropriation or fraud, Article 59 would be attracted.

13. Here, the claim of the plaintiffs is that the fraud was practised by the defendant no.1 taking advantage of the trust between the parties and in not incorporating in the Gift Deed, a clause/recital relating to exchange as verbally agreed.

14. A perusal of the copy of the Gift Deed filed by the plaintiffs (plaintiffs have not pleaded that no copy of this Gift Deed was available with them or how the copy filed with the suit came into possession of the plaintiffs and when; thus the plaintiffs are deemed to be in possession of the copy, if not original, since the date of execution) discloses the same to have been executed "without any force or compulsion from others due to her natural love and affection being her niece". The claim of the plaintiffs today, of the gift being on account of verbal agreement aforesaid of defendant no.1 on the occasion of the marriage of the defendant No.2, is inconsistent with the term of the registered document and no plea to the said effect can be entertained by virtue of the bar of Sections 91 and 92 of the Indian Evidence Act, 1872. Reference in this regard can be made to dicta of this Court in ***Karan Madaan Vs. Nageshwar Pandey*** 2014 SCC OnLine Del 1277 affirmed by the Division Bench of this Court in ***Nageshwar Pandey Vs. Karan Madaan*** 2016 SCC OnLine Del 816 (DB) and followed by undersigned in ***Om Prakash Vs. IOCL Officers Welfare Society*** 2019 SCC

OnLine Del 6719, ***Ved Prakash Gupta & Sons Vs. Prem Lata*** 2019 SCC OnLine Del 6957, ***Mahender Kehar Vs. Skyland Builders Pvt. Ltd.*** 2019 SCC OnLine Del 7940 and, ***Tara Sikand Atwal Vs. Viraj Sikand*** 2019 SCC OnLine Del 8185 , holding that suits containing pleas of oral agreement in contradiction to the registered document are not to be entertained. For the same reason, the plea of the plaintiffs, of discovery of fraud on 13th June, 2018 and computing limitation therefrom is not available to the plaintiffs. Even otherwise, the words used in Article 59 with respect to the date of commencement of limitation are "when the facts entitling the plaintiff to have the instrument ...cancelled....first become known to him". There is no explanation that when the Gift Deed or copy thereof was in power and custody of the plaintiffs, what prevented the plaintiffs from perusing the same or reading the contents thereof, if not read at the time of execution. Section 17 of the Limitation Act provides for commencement of the period of limitation, when the suit is based on fraud of the defendant, to commence from when the plaintiff has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it. In ***Life Insurance Corporation of India Vs. Raghunath Prasad Almal*** 44 (1991) DLT 521, a Division Bench of this Court held that the plaintiff is not permitted to mechanically plead any date of discovery of the mistake as it deems fit in the circumstances of the case. It was further held that it is open to the opposite party to contend that the plaintiff could have discovered the mistake had he been reasonably diligent. In ***Dilboo Vs. Dhanraji*** (2000) 7 SCC 702, the Supreme Court held that when a document is registered, the date of registration becomes the date of deemed knowledge and in cases where a fact could be discovered by due diligence, then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge. In ***Raj Kumar Rawala Vs. Manabendra Banerjee*** AIR 2004 Cal 294, it was held that it depends upon the finding of the Court as to whether the allegations in the petitions of fraud could have been discovered earlier in time with reasonable diligence, and the onus lies on the petitioner to establish that it could not be.

15. As far as the plea of the plaintiffs, of fraud, is concerned, the same is negated by the plea of the plaintiffs of the Gift Deed having been executed on the basis of an oral agreement of exchange of property of equal value. Once, it is so, the remedy of the plaintiffs, if at all such an agreement was enforceable, was to seek specific performance thereof and no case of fraud is made out. If failure to perform obligation under the agreement was to become fraud, there would be no suits for specific performance, and in all such cases suits on the basis of fraud would be filed and which is not the law. Reference can be made to ***Tara Sikand Atwal*** supra.

16. The present suit, as per the contents of the plaint, is thus deadwood and does not deserve admission.

17. The counsel for the plaintiffs, who had been interrupting in between the dictation, now states that the fraud became apparent only when the intention of the defendant no.1 became clear on 13th June, 2018.

18. As aforesaid, the plaintiffs claim to have executed the Gift Deed on the basis of an agreement and their remedy, if any permissible in law, is of specific performance and not of negating the act done in performance of any part of the obligation under the agreement.

19. The suit is dismissed.

20. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 28, 2019
'gsr'..
(corrected & released on 18th December, 2019)