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

\+ **FAO(OS) 111/2017**

SANJAY GAMBHIR ..... Appellant

Through: Ms. Pallavi Srivastava, Advocate.

versus

DEEPAK BHANDARI ..... Respondent

Through: Mr. M. A. Niyazi, Ms. Anamika Ghai Niyazi, Mr. Manish Kumar and Ms. Kirti Jaiswal, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **23.09.2019**

1. The Appellant/Plaintiff herein has challenged the order of the learned Single Judge passed on his application under Order XII Rule 6 CPC by which the said application was dismissed on 7th February, 2017. It is a short order and the same is reproduced hereunder:

> "**IA 25524/2015 (u/O. 12 R. 6 CPC moved by the plaintiff)**
>
> By this application, the plaintiff presses for a judgment on the basis of "admissions of the defendant" in the pleadings praying for the suit to be decreed. It may be noted at the outset that the main suit in which the application has been moved primarily prays for a decree of possession by grant of mandatory injunction directing the defendant to put the plaintiff in vacant peaceful possession of immovable property described as agricultural land admeasuring 1 bigha 4 biswas (1000 sq. yds.) comprised in Khasra No.13/10 min. North West Corner, situated in the Village Deoli, Tehsil Mehrauli, New Delhi, earlier known as F-200B, Sainik Farms, New Delhi - CS(OS)

2154/2014 page 1 of 4 110062, which is now known as W-5/34, Western Avenue, Sainik Farms, New Delhi-110 062 (suit property) in addition to direction for removal of effects and belongings of the defendant, return of the original title document and deeds of the suit property, which were handed over to the defendant and for permanent injunction against alienation, disposal of the suit property or creation of any third party interest thereon.

The pleadings in the main suit are complete. The plaintiff relies upon certain documents which were concededly executed by the parties on or about 11.11.2008, at least two of which are styled as "agreement to sell" of the suit property one representing the agreement by the plaintiff to sell the same to the defendant and the other representing agreement by the defendant to sell it back to the plaintiff. Copies of these documents were submitted with the plaint (vol. IV) by the plaintiff.

The plaintiff's case is that these documents were executed solely with the intention to secure a loan disbursed by the defendant to the plaintiff. The defendant contests, inter alia, by referring to certain other transactions in the nature of investments entered into by the parties. For present purposes, however, what is important to note is that when the parties were called upon to admit or deny the documents of each other, the defendant admitted the execution of the first above described agreement to sell but disputed the correctness of the copy of the second agreement to sell alleging the same to have been forged and fabricated including by way of interpolation. The CS(OS) 2154/2014 page 2 of 4 said document forms part of the record at pages 9 to 11 in Vol. IV of the paper book, the portion to which the defendant takes exception being at page 10. In order to substantiate the allegation of forgery or fabrication, the defendant has submitted a copy of same very document which is in his possession, it having been filed with the written statement now forming part of the record at page 130 of the first volume. Even a cursory look at the two documents reveals that the document relied upon by the plaintiff which the defendant alleges to be forged and fabricated contains excess by manual inclusion of a date "11-11-2014" after deletion of certain type written expressions by they being manually scored off, this in addition to a thumb impression with signatures of the plaintiff also appearing additionally on the margin.

The learned counsel for the plaintiff submitted that even if the version of the defendant's document were to be accepted as true and genuine, the suit deserves to be decreed on the basis of pleadings because on such basis the defendant cannot claim in law any remedy, including under the doctrine of part performance as contained in Section 53A of the Transfer of Property Act, particularly after the statutory amendments of 2001 read with Section 17(1A) of the Registration Act in as much as these documents were not registered as was requisite under the law.

Having given anxious thoughts to the submissions made, this court is of the opinion that the contention of the defendant about forgery or fabrication of the document relied upon by the plaintiff CS(OS) 2154/2014 page 3 of 4 cannot be brushed aside. It has to be borne in mind that what the plaintiff seeks is essentially a relief in equity. If the defendant can show that the plaintiff has come up with fabricated documents, the plea that he be denied relief in view of Section 41 of the Specific Relief Act will have to be considered at appropriate stage. Since issues of fact would arise for appropriate consideration of all the contentions of both sides, a case for decree under Order XII Rule 6 CPC has not been made out.

The application is, therefore, dismissed.

<u>CS(OS) 2154/2014</u>

Be renotified for framing of issues on 18.07.2017."

2. In brief, the case of the Appellant/Plaintiff is that he had entered into an

agreement to sell (ATS) with the Defendant for agricultural land measuring about 1,000 square yards in village Deoli, Tehsil Mehrauli, New Delhi (Suit Property) on 11th November, 2008 for a sum of Rs. 1.50 crores. The ATS was executed (First ATS) along with other documents like General Power of Attorney (GPA), Special Power of Attorney (SPA), receipt, and possession letter. A GPA and a Will were executed and registered at Noida, Uttar Pradesh. Thereafter, ATS (Second ATS) was executed on the same date by which the Respondent/Defendant agreed to sell back the suit property for Rs.5.20 crores on or before 11th November, 2014. The contention of the Plaintiff is that it was, in fact, a loan transaction; that these documents were executed only as a security for the said loan transaction and that there was no intention to transfer any interest in the suit property to the Defendant. The possession of the suit property was handed over to the Defendant. In pursuance to the Second ATS, in October, 2011, the Plaintiff approached the Defendant to repay the amount of loan with interest, amounting to Rs.2.79 crores but that the Defendant did not accept the said payment. So, as a precautionary measure, the Plaintiff revoked the registered GPA on 17th November, 2011. Another transaction of the Plaintiff with the Defendant regarding a property in Gurgaon has also been mentioned, but it is not directly connected with the case at hand. Thereafter, it has been submitted that the Plaintiff is neither a lessee nor an occupier in part performance of a contract and that at best, he is only a licensee. So, a prayer was made to the Court to grant a decree of possession against the Defendant apart from a mandatory injunction directing the Defendant to hand over the possession of the property to the Plaintiff; return the original title documents and also to issue a permanent injunction restraining the Defendant from alienating, disposing of, or creating third-party rights in the property.

3. In the written statement, the first objection taken up by the Defendant is that the Plaintiff had relied upon a forged and fabricated document being Second ATS dated 11th November, 2008. It has been submitted that the original Second ATS had in clause 2 mentioned a period of 6 months for payment of the balance sale consideration of Rs. 5 crores by Plaintiff to Defendant but that the Plaintiff forged and fabricated the said document by deleting 'within 6 (six months)' by marking 'XXXXX' over it and interpolating the date as '11.11.2014', as well as a thumb impression on the right side of the said clause.

4. As per the Defendant, the Plaintiff has committed this forgery to circumvent the law of limitation, as the suit is hopelessly barred by limitation. Moreover, the Plaintiff ought to have sought a declaration regarding the validity of both the ATS'. A simple prayer for possession and mandatory injunction is not maintainable and no oral agreement/arrangement can be pleaded contrary to the terms of written documents. The suit is therefore liable to be rejected under Order VII Rule 6 CPC. Moreover, time was the essence of the Second ATS, i.e. 6 months and that period had expired long ago. The Defendant had set up a case regarding the Plaintiff launching certain building projects in different parts of the country and the Defendant advancing Rs.2.53 crores to the company of the Plaintiff. However, later on Defendant came to know that the Plaintiff was involved in certain fraudulent activities, so Defendant confronted the Plaintiff, who returned Rs.1.13 crores to the Defendant in October, 2006 and

promised to return the balance amount with 24% per annum interest. After about two years, a sum of Rs. 50 lacs was returned to the Defendant by the Plaintiff. The Plaintiff again approached the Defendant to lend some money but the Defendant was reluctant and he asked for his balance payment with interest. However, the Plaintiff offered the suit property to the Defendant for sale but the Defendant was not interested in entering into any kind of arrangement and he refused to buy the property. The Plaintiff offered to repurchase the property within 6 months for a value of Rs. 5.20 crores and the said amount would have taken care of other dues of the Defendant from the Plaintiff, apart from the loan of Rs. 1.50 crores sought by the Plaintiff. For that reason, two separate ATS' were executed. The Defendant paid the entire sale consideration of Rs.1.50 crores for the suit property to the Plaintiff, who handed over actual, vacant and peaceful possession of the suit property to the Defendant on 11th November, 2008 and further executed the requisite documents transferring his right, title and interest in the suit property to the Defendant. The Plaintiff even failed to hand over a cheque of Rs. 20 lacs as mentioned in the Second ATS and this cheque was never encashed. The Defendant was shocked to know that the registered GPA in relation to the suit property was revoked on 17th November, 2011 and the registered will was also revoked by the Plaintiff on 18th April, 2014 without serving a notice on Defendant.

5. In the reply on merits, it had been denied by the Defendant that the Plaintiff is the exclusive owner of the suit property. It has been submitted that the transaction between the Plaintiff and the Defendant was a simplicitor sale arrangement. It has been denied that the Defendant had

received an amount of Rs.20 lacs on execution of Second ATS and Rs.5.00 crores was to be paid by Plaintiff on or before 11th November, 2014. The Plaintiff was obliged to make the balance payment as per the Second ATS within 6 months. It has been mentioned that the suit property is an agricultural land located in Sainik Farms, which is an unauthorised colony and that therefore the registration has been put on hold. It is reiterated that Plaintiff has tampered and fabricated the Second ATS. It has been denied that there is a cause of action in favour of the Plaintiff and against the Defendant. Under these circumstances, it has been prayed that the suit of the Plaintiff be dismissed.

6. The Plaintiff filed a replication to the written statement filed by the Defendant reiterating the contents of the plaint and denying the contents of the written statement. On the basis of pleadings of the parties following issues were framed by learned Single Judge on 18th July, 2017:

> "1. Whether the second Agreement to sell dated 11.11.2008, relied upon by Plaintiff, is a forge one as alleged in preliminary objections No. 1 and 2? OPD
> 2. Whether the time was an essence of the second agreement dated 11.11.2008 executed between the parties? OPD
> 3. Whether the suit of the Plaintiff is not maintainable in lieu of the preliminary objection No. 3? OPD
> 4. Whether the transfer documents, as above, were executed by the Plaintiff as a security for loan? OPP
> 5. Whether the suit is barred by limitation? OPD
> 6. Whether the Plaintiff is entitle to a decree of possession as prayed? OPP
> 7. Whether the plaintiff is entitle to the decree of mandatory injunction per clause (b) of prayer? OPP
> 8. Whether the Plaintiff is entitle to decree of mandatory

> injunction as prayed in clause (d) of the prayer? OPP
> 9. Whether the Plaintiff is entitle to a decree of permanent injunction as prayed? OPP
> 10. Relief, if any."

7. In the meantime, the Plaintiff moved IA 25524/2015 under Order XII Rule 6 CPC praying for a judgment on the basis of admissions of the Defendant in the pleadings. In the said application, it is mentioned that in the written statement, the Defendant has claimed ownership on the basis of the First ATS dated 11th November, 2008, which is an unregistered document.

8. It has been further mentioned in the application that the whole claim of the Defendant is based on a purported transfer of ownership of suit property through documents like ATS, GPA, Receipt and Affidavit etc., but that the said documents are not capable of effectively conveying the title, which the Defendant claimed and there was no intention of transferring the title of the property and the entire transaction was only a security for the loan advanced. The Defendants have admitted that the Plaintiff was the owner of the property as the GPA and Will executed by the Plaintiff have been relied upon by the Defendant. Moreover, the Defendant cannot have any right on the basis of unregistered documents under Section 53-A of the Transfer of Property Act. So, it has been prayed that a judgment be passed on the basis of admissions made by the Defendant in his written statement.

9. A reply to this application was filed by Defendant in which it has been mentioned that none of the ingredients of provisions of Order XII Rule 6 CPC are attracted. The Defendant has raised various disputed questions of facts and law, which warrant framing of issues and sending the case for trial

and the suit of the Plaintiff is founded upon a forged and fabricated document purported to be the Second ATS dated 11th November, 2008 and this deliberate forgery and fabrication has been done for getting over the law of limitation as the suit otherwise is hopelessly time barred. Where a suit is liable to be dismissed, there is no ground to consider an application under Order XII Rule 6 CPC. After hearing both the parties, the impugned order quoted above has been passed by the learned Single Judge.

10. We have heard arguments from both the sides. Learned counsel for the Plaintiff has reiterated his submissions as have been made in the appeal as well as in application under Order XII Rule 6 CPC. He has also referred to the relevant paras of plaint and written statement. Learned counsel for Defendant has relied upon the reply to the application as well as to his written statement and documents. Apart from this, learned counsel for the Appellant/Plaintiff has relied upon a judgment of the Hon'ble Supreme Court in the matter of ***Suraj Lamp and Industries (P) ltd. thru. DIR v. State of Haryana and Ors, (2009) 7 SCC 363*** and a judgment of this Court in ***Chander Dutt Sharma v. Prem Chand and Ors, 2018 SCC OnLine Del 9903***, to bring home his argument that an unregistered agreement, GPA and other documents do not transfer the right, title and interest in the suit property and as such the Plaintiff continues to be the owner of the suit property and the Defendant is liable to hand over possession of the said suit property to the Plaintiff apart from handing over the title documents. On the other hand, learned counsel for the Defendant has relied upon the judgement of the Hon'ble Supreme Court in the matter of ***S.P. Chengalvaraya Naidu (dead) by LRS. v. Jagannath (dead) by LRS. And Others, (1994) 1 SCC 1***,

wherein it was held that non-disclosure of relevant and material documents with a view to obtain advantage amounts to fraud and fraud vitiates everything. Moreover, it was held that the person who comes to Court, must come with clean hands.

11. The Appellant/Plaintiff was specifically asked regarding the nature of the claim preferred by him and learned counsel for the Appellant/Plaintiff has submitted that he rests his claim under Section 5 of the Specific Relief Act, 1963 which is quoted here under:

> "**5. Recovery of specific immovable property:** A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908)."

12. The limitation for a suit under Section 5 of the Specific Relief Act is provided in the Limitation Act in Article 64 of the Limitation Act, 1963. The same is reproduced hereunder:

Description of suit	***Period of limitation***	***Time from which period begins to run***
64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession

13. It is to be noticed that a period of 12 years is prescribed for limitation in the case where "***the Plaintiff while in possession of the property has been***

dispossessed". It is not the case of the Appellant/Plaintiff that he was forcibly dispossessed by the Defendant. The Plaintiff cannot rely on Article 65 of the Limitation Act, 1963 to claim that his suit is within limitation as the said Article is based upon a clear lawful title to the property. It is the admitted case of the Plaintiff that he also became owner of the property in question on the basis of unregistered documents. Hence, the only Article, if all the contentions of the Plaintiffs are accepted, applicable to the present scenario is Article 64 but an important limb of the said Article, i.e. "***dispossession by the Defendant*** " is neither pleaded nor shown by filing any document to the said effect.

14. Another aspect to be noticed here is that the Plaintiff has primarily tried to establish a case of a loan transaction. Admittedly, as per the Plaintiff, the said loan was advanced by the Defendant to the Plaintiff on 11th November, 2008. The document dated 11th November, 2008 relied upon by the Plaintiff as First ATS does not have any provision regarding repayment of the alleged loan and for the said purpose the Plaintiff relies on the Second ATS of the same date. As per the Defendant, the option to repurchase was to be exercised by the Plaintiff within 6 months as shown in the copy of the Second ATS filed by him on record. On the other hand, the copy of the Second ATS filed by the Plaintiff on record shows a specific date of '11.11.2014' after striking out the earlier period of '6 months' mentioned in Clause 2 of the Second ATS. If the version of the Defendant as well as the copy of the Second ATS filed by the Defendant is to be believed and keeping in view the submission of the Plaintiff that it was a financial transaction of loan and that these documents were executed only as a

security, then the 6 month period had expired on 11th May, 2009. Therefore, on this analogy, the suit of the Plaintiff is hopelessly barred by limitation. How the Plaintiff is trying to read 'unequivocal and unambiguous admissions' into the written statement of the Defendant, is beyond our comprehension.

15. The learned Single Judge has to arrive at a reasoned conclusion after allowing both the parties to lead evidence regarding the authenticity of the Second ATS and only after reaching the said conclusion on the basis of evidence, the learned Single Judge will be able to form a final opinion regarding limitation, as in the present case the limitation is a mixed question of law and facts and the question of limitation is to be decided before deciding the application under Order XII Rule 6 CPC, given that such question of limitation goes to the root of the suit. If the suit is barred by limitation, there is no occasion to allow the application under Order XII Rule 6 CPC.

16. There is another aspect to the defence raised by the Defendants. If the learned Single Judge comes to a conclusion after allowing both the parties to lead their respective evidence that some interpolation regarding the period was done in the second ATS and the period of '6 months' was changed to '11.11.2014', then the suit of the Plaintiff will be hit by Section 41 (i) of Specific Relief Act, 1963 and the Plaintiff would not be entitled to the relief prayed for. The Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu*** *(supra)* has observed as under:

> "5. The High Court, in our view, fell into patent error. The

short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

17. In view of the above, there is no merit in the appeal and the same is hereby dismissed. It is made clear that nothing stated above shall affect the final view of the learned Single Judge on the basis of the facts, circumstances and evidence led by the parties.

S. MURALIDHAR, J

TALWANT SINGH, J

SEPTEMBER 23, 2019

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