

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

% **Date of decision: 11th January, 2019**

+ **CS(OS) 590/2016**

OM PRAKASH

..... Plaintiff

Through: Mr. Ravinder Kumar Yadav and Mr.
Vinayak Sharma, Advs.

Versus

IOCL OFFICERS WELFARE SOCIETY & ANR..... Defendants

Through: Mr. Shyamal Kumar and Mr.
Samdarshi Sanjay, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.5463/2017 (of defendants u/O VII R-11 CPC)

1. The counsel for the defendants/applicants states that with the filing of subsequent application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), this application has become infructuous.

2. The application is disposed of.

IA No.11174/2018 (of defendants u/O VII R-11 CPC)

3. The two defendants, namely (i) M/s IOCL Officers Welfare Society and (ii) Bijoy Kumar Sharma seek rejection of the amended plaint dated 16th July, 2018 in this suit for recovery of Rs.3,72,00,000/- with *pendente lite* and future interest at 12% per annum, on the ground of (i) the plaintiff having not approached this Court with clean hands and having suppressed material facts; (ii) the claim in the plaint being contrary to the registered Sale Deed between the parties and the claim thus being barred by Sections 91 and 92 of the Indian Evidence Act, 1872; (iii) the suit being barred by

the principles of estoppel; and, (iv) the suit having been filed with *mala fide* intention of extorting money from the defendants.

4. The counsel for the defendants/applicants and the counsel for the plaintiff have been heard.

5. The plaintiff has claimed recovery of Rs.3,72,00,000/- pleading, (i) that the plaintiff is the absolute owner and recorded *bhumidhar* in actual possession of 1/4th share *ad measuring* 15 bighas 11 biswas and 15 biswani (3.247 acres) out of total agricultural land measuring 62 bighas and 7 biswas comprised in Khasra No.25/17/2 (1-2), 18 (4-4), 19 (4-1), 21(4-11), 22(4-12), 23 (4-16), 24 (4-10), 30 (0-5), Khasra No.30, Killa No.1(4-16), 2/1 (2-6), 3/1 (2-8), 4 (4-16), 5/1 (3-4), 10 (4-16) and Khasra No.31, Killa No.6(4-16), 15(4-16), 16/1 (2-8) of Revenue Estate of Village Daulatpur, Tehsil – Kapashera, District-South West, New Delhi – 43; (ii) that the defendant no.2 Bijoy Kumar Sharma is the authorised signatory and Secretary of the defendant no.1 Society; (iii) that the plaintiff had agreed to sell the land aforesaid to the defendant no.1 Society for a total sale consideration of Rs.14,49,00,000/- and in pursuance to the said agreement executed a Sale Deed dated 29th August, 2013, registered on 30th August, 2013, in favour of the defendant no.1 Society; (iv) that the defendants have committed fraud upon the plaintiff; out of total sale consideration of Rs.14,49,00,000/-, only Rs.10,77,00,000/- has been paid to the plaintiff; (v) that a sum of Rs.78,00,000/- was paid in cash before the execution of the Sale Deed; (vi) a sum of Rs.50,00,000/- in cash was received before the execution of the Sale Deed; (vii) a sum of Rs.8,00,00,000/- was received vide cheque/DD dated 26th August, 2013 at the time of execution and registration of the Sale Deed; (viii) a sum of Rs.1,49,00,000/- was received

through cheque/DD dated 28th August, 2013, again at the time of execution and registration of the Sale Deed; (ix) the balance amount of Rs.3,72,00,000/- has not been paid; (x) that the defendants, on 29th August, 2013 when the Sale Deed was executed, had paid two cheques/DDs to the plaintiff besides the cash paid earlier and the plaintiff, after calculation discovered the total amount paid to be deficit by Rs.3,72,00,000/-; (xi) the plaintiff immediately pointed out the same to the defendants who told the plaintiff that the same was inadvertently left out due to a mistake in calculation and assured that “let the ‘sale deed’ be executed, this balance amount of Rs.3,72,00,000/- (Rupees Three Crore Seventy Two Lakhs only) will be paid in cash after mutation, but the defendants till today failed to make the payment of balance consideration”; (xii) “that the defendants undue advantage of the simplicity of the plaintiff with *mala fide* intention, ulterior motive committed fraud upon the plaintiff and has wrongly got mentioned in the sale deed that Rs.5,00,00,000/- (Rupees Five Crore Only) was paid in cash to the plaintiff at the time of execution and registration of sale deed”; (xiii) that the plaintiff, on several occasion demanded the balance sale consideration of Rs.3,72,00,000/- from the defendants but the defendant no.1 through defendant no.2 and others, on each and every occasion gave false assurance to the plaintiff that there is some problem in the accounts of the defendant no.1 and as soon as the problem is sorted out, they will make the payment of balance sale consideration; (xiv) that the plaintiff got served a legal notice dated 11th April, 2016 for payment of balance sale consideration but despite the said legal notice, the defendants neither gave any reply thereto nor paid the balance sale consideration; (xv) that the defendants “now on the basis of the said sale deed”, “have started

interfering in the peaceful possession of the plaintiff and threatened to take forcible possession of the land in question; (xvi) that the defendants never intended to make payment of balance consideration of Rs.3,72,00,000/- with sole purpose of cheating, misappropriation and committing fraud upon the plaintiff; (xvii) that the Sale Deed dated 29th August, 2013 is without full consideration and is liable to be set aside; (xviii) that the plaintiff “also came to know that the defendant with same *modus operandi* have cheated other farmers also”; (xix) the *modus operandi* is that the entire sale consideration money is first transferred to some company and later on from the account of this company incomplete payment is made to the farmers; and, (xx) the plaintiff has also made complaint to Commissioner of Police and upon no action being taken thereon, filed complaint under Section 200 of the Cr.PC.

6. The suit was initially instituted on 27th August, 2016 and successively re-filed on 22nd September, 2016, 22nd October, 2016, 3rd November, 2016, 7th November, 2016, 22nd November, 2016 and came up first before this Court on 25th November, 2016, when also was without court fees and the plaintiff granted one week’s time to deposit the court fees. Ultimately the suit was ordered to be registered on 22nd December, 2016 and summons thereof ordered to be issued.

7. The suit, as originally filed was for (i) declaration of the Sale Deed as illegal, null, void and invalid; (ii) declaration that the plaintiff was still the owner of the property; and, (iii) permanent injunction restraining the defendants from taking possession of the land and/or from dealing with the land.

8. However vide order dated 7th September, 2017, the suit as filed, without appropriate court fees, was found to be not maintainable and the plaintiff given an opportunity to deposit the balance court fees.

9. The plaintiff thereafter filed an application for amendment which was allowed vide order dated 17th May, 2018 and the amended plaint, claim wherein is as aforesaid, taken on record. The counsel for the plaintiff states that the deficient court fees has been paid.

10. Though several grounds for rejection are pleaded, but the counsel for the defendants during the hearing emphasized only on Sections 91 and 92 of the Evidence Act and rightly so, inasmuch as at the stage of Order VII Rule 11 of the CPC, the defence of the defendants to the suit or rather anything other than the plaint and the documents filed therewith, cannot be seen. Thus, the application has to be decided merely by seeing whether the claim made in the plaint on its own averments is sustainable in law.

11. The counsel for the defendants in this context placed heavy reliance on ***Karan Madaan Vs. Nageshwar Pandey*** (209) 2014 DLT 241 though also handed over copies of ***Jai Bhagwan Vs. Rajesh*** 2008 Indlaw Del 419, ***Phoolwati Vs. Ram Dei*** (2008) 150 DLT 105, ***Mange Ram Vs. Union of India*** 2010 SCC OnLine 3322; and, ***Subhadara Vs. Surender Singh*** (2016) 157 DRJ 407.

12. Per contra, the counsel for the plaintiff has merely contended that on the basis of the pleas contained in the plaint, the plaintiff cannot be non suited summarily and has to be granted an opportunity to prove his case by adducing evidence. Reliance is placed on ***Kaliaperumal Vs. Rajagopal*** (2009) 4 SCC 193 and on judgment dated 24th April, 2012 of this Court in

RFA (OS) No.49/2008 titled ***Shakuntala Chawla Vs. Om Prakash Chawla.***

13. I have considered the rival contentions.

14. The registered Sale Deed dated 27th August, 2013 admittedly executed by the plaintiff in favour of the defendant no.1 and copy of which has been filed by the plaintiff himself before this Court shows the sale consideration therefor as Rs.14,49,00,000/- and contains *inter alia* the following clauses:

“NOW THIS SALE DEED WITNESSSTH AS UNDER:

That in pursuance of this Sale Deed and against the total consideration of Rs.14,49,00,000/- (Rupees Fourteen Crore Forty Nine Lac Only)

1. The VENDOR doth hereby sell, convey, assign and transfer their all rights, titles and interest in the aforesaid land (fully described above) together with all structures (pucca or otherwise), crops, trees, groves, tubewell, boundary, other movable attached thereto alongwith their all rights, title and interest including Bhumidari, cultivator rights, to the VENDEE, absolutely and forever.
2. That the Vendee have paid the aforesaid consideration of Rs.14,49,00,000/- (Rupees Fourteen Crore Forty Nine Lac Only) in the following manner:-

Sr. No.	Cheque/DD No.	Date	Amount	In words
1	100550	26/08/2013	8,00,00,000/-	(Eight Crore Only)
2	100558	28/08/2013	1,49,00,000/-	(One Crore and forty nine lac only)
3	By Cash		5,00,00,000/-	(Five Crore Only)

All payments were made by M/s River Park Eden (P) Ltd. through its account No.608620110000094 maintained with Bank of India, Branch – Palam Extension, Dwarka, New Delhi-110075 on behalf of M/s IOCL Officers Welfare Society full and final payment to the VENDORS and the legal receipt of the same is hereby admitted and

acknowledged by the VENDORS in full and final payment towards the sale price of their rights, titles and interest in the aforesaid land.

3. That the VENDOR hereby explicitly admits and declares that having received the aforesaid consideration in full and final payment, now nothing is left due to be paid by the VENDEE to the VENDOR on account of sale consideration against the purchase of the said land, as the aforesaid consideration represents the full and final consideration for the transaction.
4. That with the execution of this sale deed all the rights, titles, interest, claim or concern of the vendors have ceased and the Vendee have stepped into the shoes of the VENDOR forever. The VENDEE shall henceforth enjoy the rights of absolute ownership without any interference or objection from the VENDOR or anyone else.
5. That the Vendor has handed over the actual and peaceful physical vacant possession of the said land unto the VENDEE on spot.
6. That the Vendor has undertaken and assured the VENDEE that his right and title in the said land subsists and except the VENDOR none else including their legal heirs, representatives, etc. have any right, title, interest or claim whatsoever or howsoever in the said land and the Vendors have full, unfettered and, unrestricted right, power and absolute authority to sell, transfer, convey and assign the said land and they are fully competent to execute this Sale Deed and to sign all necessary documents in this regard.
15. That the VENDOR admits and confirms that after execution of this sale deed in favour of the VENDEE, the Vendor have been left with no right, title, claim or interest whatsoever in the said land and the Vendee have become the absolute owner thereof, for all intents and purposes and the VENDEE is fully competent and empowered to avail all benefits, rentals, deposits, accruals, enjoy the same as well as to transfer or alienate the same or any part thereof, by way of sale,

mortgage, gift, collaboration, lease or otherwise deal with the same in the manner, they like, subject to Revenue Authorities / Tehsil's rules and regulations without any disturbance, hindrance, approval, objection or demand from the VENDOR or anybody else claiming under or in trust for them.

17. That the VENDOR and all persons claiming under or through the VENDOR shall and will, as and when required by the VENDEE, agree to do all acts and execute all documents and to present themselves before the concerned authorities as be reasonably required by the VENDEE for more fully effectuating the sale being hereby made or for more fully owning and enjoying the said land or defending any action or proceeding concerning the same.
19. That the VENDEE can get the said land mutated / transferred in their own name in the records of concerned authorities, and as well as the meter connections, facilities etc. related to the said land, wherever if so required, on the basis of this Sale Deed or its certified true copies, and the VENDOR shall be deemed to have given their "No Objection" in this regard and the VENDEE may also get new connections installed at the said land in their own name at their own costs and expenses. The VENDEE shall also be entitled for all the security deposits etc. made by the VENDOR and may derive all benefits and accruals thereof.
20. That all the expenses of this sale deed viz. Stamp Duty, Registration Charges etc. have been borne and paid by the VENDEE."
15. The counsel for the defendants states and the counsel for the plaintiff has not controverted, that the land sold vide the sale deed aforesaid also stands mutated in the revenue records in the name of the defendants.

16. The sale deed also contains the endorsement as under of the Sub-Registrar with whom the sale deed is registered:

“Execution admitted by the said Shri / Ms Shri Om Prakash

and Shri/Ms Ms IOCL Officers Welfare Society Through Its Auth Sign.
Shri Bijoy Kumar Sharma

who is / are identified by Shri/Smt/Km. Shri K.S. Krishna S/o W/o D/o
Shri K.V.S. Manian R/o Flat No.305 Krishna Kunj Appt. Sec-7 Plot
No.14 Dwarka New Delhi

and Shri /Smt./Km Shri Raghuvinder Singh S/o W/o D/o Shri Mahavir
Singh R/o C-280 VPO Chhawala Kurat Street Badhosra New Delhi
Witness No.II is known to me.

Contents of the documents explained to the parties who understand the
conditions and admit them as correct.

Certified that the left (or Right, as the case may be) hand thumb
impression of the executant has been affixed in my presence.

Vendor(s) Mortgagor(s) admit(s) prior receipt an entire consideration
Rs.144,900,000.00 Rupees Fourteen Crore Forty Nine Lakh Only.

The Balance of entire consideration of Rs._____ Rupees
_____ has been paid to the Vendor(s) Mortgagor(s) by Sh./Ms.
Ms IOCL Officers Welfare, S/o W/o R/o J-86/12 Top Floor Dilshaad
Colony, Delhi.”

17. Sections 91 and 92 of the Evidence Act which are invoked by the
defendants to oust the plaintiff summarily, are as under:

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. - When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property,

or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1. – When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2. – Wills [admitted to probate in [India]] may be proved by the probate.

Explanation 1.–This section applies equally to cases in which the contracts grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.–Where there are more originals than one, one original only need be proved.

Explanation 3. – The statement, in any document whatever, of a fact other than the facts referred to in this section, shall, not preclude the admission of oral evidence as to the same fact.

92. Exclusion of evidence of oral agreement. – When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement of statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for purpose of contradicting, varying, adding to, or subtracting from, its terms;

Provision (1). – Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 76[want or failure] of consideration, or mistake in fact or law.

Proviso (2). – The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). – The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). – The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). – Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved.

Provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

18. While Section 91 prohibits proof of the terms of a contract or any other disposition of property reduced to the form of a document other than by the document itself, Section 92 bars evidence of any oral agreement or statement between the parties to the contract for the purpose of contradicting, varying, adding or subtracting from its terms when it has been proved in accordance with Section 91. The provisos to Section 92 however contain exceptions to the said bar / prohibition.

19. Though the plaintiff in the sale deed has admitted and acknowledged receipt of entire agreed sale consideration and delivery of possession of land in lieu thereof, but the plaintiff now, by this suit, wants this Court to hold that though the plaintiff in the Sale Deed admitted and acknowledged receipt of entire sale consideration, but in fact has not received the same and the sale consideration received is deficit by Rs.3,72,00,000/-. Needless to state, proof of such pleaded case of the plaintiff would require the plaintiff to step in the witness box and to contradict, vary or subtract from the terms of the Sale Deed and which is barred by Section 92 of the Evidence Act. Without the plaintiff doing so, the plaintiff cannot succeed. Thus, when the plaintiff is barred from contradicting the terms of a registered Sale Deed, the plaintiff cannot be granted an opportunity to lead evidence which is barred by law, unless the case of the plaintiff falls in any

of the provisos to Section 92 of the Evidence Act and to which reference was invited by the counsel for the plaintiff also.

20. The case set up by the plaintiff in the plaint however is “that on 29.08.2013 date of execution and presentation of sale deed the defendants came up with only two cheques / DD as mentioned above apart from the cash paid before execution of sale deed, plaintiff after calculation discovered the total amount paid is deficit by Rs.3,72,00,000/- (Rupees Three Crore Seventy Two Lakhs Only) out of the total sale consideration agreed, plaintiff immediately pointed out the same to defendants who told him that the same was inadvertently left out due to mistake in calculation and assured that let the ‘sale deed’ be executed, this balance amount of Rs.3,72,00,000/- (Rupees Three Crore Seventy Two Lakhs Only) will be paid in cash after mutation, but the defendants till today failed to make the payment of balance consideration.”

21. The aforesaid indicates that the plaintiff, on the date of execution of the Sale Deed itself i.e. on 29th August, 2013, was aware that the consideration being paid by the defendants to the plaintiff was deficit by Rs.3,72,00,000/-.

22. Else, the case of the plaintiff as aforesaid is, a) that the defendants took undue advantage of the simplicity of the plaintiff and inspite of repeated demands have not paid the balance sale consideration; and, b) that the possession of the land subject matter of Sale Deed was never delivered to the defendants as it was an oral understanding between the plaintiff and the defendants that the possession will be delivered after making payment of balance sale consideration of Rs.3,72,00,000/-. These pleas contradict the terms of the registered Sale Deed, of entire sale consideration having

been paid and possession of the land subject matter of the Sale Deed having been given.

23. Significantly, the plaintiff has not pleaded that (i) the Sub-Registrar, with whom the Sale Deed is registered, had not explained the contents of the documents to the plaintiff or has wrongly stated that the plaintiff had understood the conditions and admitted them to be the same; (ii) the plaintiff had not admitted the receipt of entire sale consideration under the Sale Deed, as endorsed by the Sub-Registrar on the Sale Deed as aforesaid; and, (iii) that the Sub-Registrar of documents was / is in collusion with the defendants or that the plaintiff had informed the Sub-Registrar that the entire sale consideration had not been received and possession had not been delivered but the Sub-Registrar, in collusion and conspiracy with the defendants, endorsed that the entire sale consideration had been received.

24. It is also not the case of the plaintiff that he did not know the nature of the document being executed and registered by him being a Sale Deed or that it contained a term that the entire sale consideration had been received and / or possession delivered. The plaintiff, rather has not pleaded any facts concerning execution of Sale Deed. It is also not the case of the plaintiff that he had not read and / or understood the contents of the Sale Deed or that the same were not explained to him.

25. It is also not the case of the plaintiff that he executed the Sale Deed under any coercion, duress or influence. It is merely claimed that the defendants have taken undue advantage of the simplicity of the plaintiff.

26. The Sale Deed is witnessed by (i) Raghvinder Singh, son of Mahavir Singh, resident of C-280, village Chawala, Kurat Street, Badhosra, South West, Delhi-110071; and, (ii) K.S. Krishnan, son of Sh. K.V.S. Manian,
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resident of 305, Krishna Kunj, Sector-7, Plot No.14, Dwarka, New Delhi-110075. There is no plea with respect to the said witnesses also. Ordinarily, when payment is made by cash at the time of execution of the document, as the Sale Deed in the present case records, the witnesses to the document would be in the knowledge of whether the payment was made or not made.

27. However, since the plaintiff has used the word 'fraud' in the plaint, it needs to be seen whether the pleas in the plaint constitute a plea of fraud. 'Fraud' is defined in Section 17 of the Indian Contract Act, 1872. A party to a contract, is defined in Section 17 of the Indian Contract Act to have committed a fraud, when that party, with the intent to deceive another party or to induce him to enter into the contract, suggests something which is not true and which act the other party would not do without believing the same to be true or a promise made without any intention of performing it or any other act fitted to deceive. The plaintiff in the present case admits having found out at the time of execution of the Sale Deed that the consideration being paid to him was short by Rs.3,72,00,000/-. The plaintiff was thus not under any deception in this respect. Still the plaintiff went ahead and executed and registered the Sale Deed which recorded that the entire sale consideration has been paid. The only explanation is, that the plaintiff did so on the assurance of the defendant that the balance sale consideration will be paid after mutation. What falls for consideration is, whether the plaintiff is to be permitted to prove such promise made by the defendants and which the defendants made without any intention of performing it.

28. As far back as in ***Bishundeo Narain Vs. Seogeni Rai*** AIR 1951 SC 280, it was held that if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties

pleading it must set forth full particulars and the case can only be decided on the particulars as laid; there can be no departure from them in evidence; general allegations are insufficient even to amount to an averment of fraud of which any Court ought to take notice however strong the language in which they are couched may be. To the same effect is ***Varanaseya Sanskrit Vishwavidyalaya Vs. Dr. Rajkishore Tripathi*** (1997) 1 SCC 279. Again, in ***Bijendra Nath Srivastava Vs. Mayank Srivastava*** (1994) 6 SCC 117, it was observed that the High Court, whose judgment was under consideration, had lost sight of the well recognized distinction between statement of material facts which is required under Order 6 Rule 2 CPC and particulars which are required to be stated under Order 6 Rule 4 CPC. It was held that omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad and it is not permissible to introduce by way of particulars, a plea of fraud or misconduct other than that raised in the pleadings. The Division Bench of this Court also, in ***Dipak Arora Vs. Vijay Bhushan Arora*** 2016 SCC OnLine Del 4401 (SLP Diary No.20828/2017 whereagainst was dismissed *in limine* on 28th August, 2017) held that mere statement that signatures on the MOU were obtained by fraud and misrepresentation did not suffice inasmuch as what was the fraud and what was the misrepresentation had not been pleaded. It was reiterated that unless the particulars of fraud and misrepresentation are disclosed, the plea of fraud has to be ignored. It was further noted that the bare plea of fraud was contradicted by also pleading that the other party had agreed to clear the loan of the bank and which plea was in contradiction of Clause 11 of the MOU which clearly recorded that it was the claimant who would clear the loan and redeem the mortgage.

29. That brings me to the provisos to Section 92 of the Evidence Act.

30. Proviso (1) applies to a fact which if proved, will invalidate any document and which would entitle any person to any decree or order relating thereto. The plaintiff though had initially filed this suit for declaration of the Sale Deed as null and void, amended the plaint and the plaint as amended, does not claim any relief of invalidating the Sale Deed or any decree or order relating to the Sale Deed. The promise by the defendants, pleaded by the plaintiff, of paying the balance sale consideration after mutation, being in contradiction of the registered Sale Deed, cannot fall in proviso (1) to Section 92 of the Evidence Act. Provisos (2) and (3) to Section 92 of the Evidence Act also do not apply inasmuch as the Sale Deed is not silent with respect to the payment of the sale consideration and it is not the plea of the plaintiff that payment of balance sale consideration was a condition precedent to the obligation of the plaintiff under the Sale Deed to convey the property to the defendants. The plaintiff could have very well got recorded in the Sale Deed, that the balance sale consideration was still to be paid by the defendants to the plaintiff.

31. Similarly, provisos (4) to (6) to Section 92 of the Evidence Act are not found applicable. Neither is the oral agreement subsequent to the Sale Deed nor the Sale Deed as aforesaid is silent about the payment of the balance sale consideration.

32. Merit is thus found in the contention of the counsel for the defendants, that Section 92 of the Evidence Act bars the plaintiff from proving non payment of sale consideration of Rs.3,72,00,000/- and which will be in contradiction of the registered Sale Deed.

33. Once the plaintiff is barred from proving so, the question of the plaintiff being entitled to a decree for recovery of balance sale consideration does not arise.

34. This Court in *Karan Madaan* supra also was concerned with an application under Order VII Rule 11 of the CPC for rejection of a counter-claim in a suit for recovery of possession of immovable property, registered sale deed with respect where to had been executed by the defendant in favour of the plaintiff and which sale deed recorded possession having been delivered. It was the defence of the defendant that possession had not been delivered and the intention was not to transfer the property to the plaintiff by way of sale deed. It was held, that (i) a mere mention of fraud in a pleading is not sufficient; (ii) a party pleading fraud is obliged, under Order VI Rule 4 of CPC, to give particulars of the pleaded fraud, with dates and items in the pleadings; (iii) the defendant having admitted knowledge that he was executing the sale deed, it was not open to the defendant to claim that the instrument of sale was hit by fraud because according to the defendant the intention of the parties was to create a security in favour of the plaintiffs for the loan granted to the defendant; (iv) the spirit and purpose of enacting Sections 91 and 92 of the Evidence Act is to render the written contract, grant or other disposition the sole repository of the terms contained therein; (v) if the intention of the parties was, as was claimed by the defendant, then that intention, objective and purpose should have been so spelled out in the instrument; (vi) to permit a party to plead contrary to the terms of the Sale Deed, to which he is a party, would be to put premium on dishonesty; (vii) the terms of a contract reduced to writing cannot be ascertained by allowing parole evidence as to what transpired antecedent to

the contract or what the parties did subsequent to the contract; once the contract between the parties is reduced to writing, the court can only look at the writing alone in order to construe what the terms of the contract are; (viii) the terms of a registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise; (ix) if the oral agreement is allowed to be substantiated by parole evidence, it would mean re-writing of the registered document which is not permissible; (x) once there is an admission of execution of Sale Deed, the defence which is barred by Sections 91 and 92 of the Evidence Act has to be ignored. Resultantly, the counterclaim was rejected. I find that the appeal preferred against this judgment was also dismissed vide ***Nageshwar Pandey Vs. Karan Madaan*** 2016 SCC OnLine Del 816.

35. In ***Jai Bhagwan*** supra also, the suit seeking cancellation of registered sale deeds executed in favour of the defendant on the plea, that the entire sale consideration was not received and the sale deed was got executed for more land than intended to be conveyed taking advantage of the illiteracy of the plaintiff therein, the suit was summarily dismissed finding that, (i) at the time of the registration of the Sale Deed, the Sub-Registrar issued a certificate that the contents of the documents were explained to both the parties who understood the conditions and admitted execution of the sale deed; the Sub-Registrar had also recorded his satisfaction that the entire consideration had been paid; (ii) when in respect of a transaction a written document is executed, any kind of oral evidence contrary to the document is not admissible; (iii) the allegations of fraud made by a party must specify giving role of each person and all those involved in the fraud must be made a party; (iv) bare allegation that plaintiff had not received the full

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consideration or that the plaintiff signed the documents without reading the contents thereof is not a ground for cancellation of the sale deed; (v) if the plaintiff chooses not to read the documents, he does so at its own peril; (vi) to say that the plaintiff was a poor villager was also absolutely wrong; a person who is selling his land for lacs of rupees and is receiving lacs of rupees in cash, cannot be a poor villager; in Delhi, villagers are not simpletons or fools enough to not take help of educated persons in understanding the documents being executed by them; (vii) the plaintiff having given his photographs to the Registrar as well as his driving licence in proof of his identity, it could not be believed that the plaintiff executed the Sale Deed ignorantly, without receiving full consideration and only on an oral assurance of payment of balance sale consideration later on.

36. To the same effect is *Phoolwati* supra, where the plea of the plaintiff for seeking declaration of the Sale Deed as null and void because the intention was to create a mortgage, was held to be barred.

37. The other judgments cited by the counsel for the defendants / applicants are however not found applicable.

38. As far as *Kaliaperumal* supra relied upon by the counsel for the plaintiff is concerned, the same only lays down that though registration is *prima facie* proof of intention to transfer property, it is not a proof of operative transfer and if recitals in the Sale Deed are insufficient or ambiguous, subject to the provisions of Section 92 of the Evidence Act, evidence can be permitted to be led. The dicta of the Supreme Court in *Kaliaperumal* supra would not apply because the terms of the Sale Deed in the present case are not ambiguous but unambiguous. The Sale Deed, in

unequivocal and unambiguous terms records, that the entire sale consideration had been paid.

39. Mention may also be made of:

(a) ***Keshao Balasa Saoji Vs. Shashikar Jankiram Saoji*** 1982 SCC OnLine Bom 197 holding that where a document recited payment of Rs.7,000/-, it is not open to the executant thereof, having admitted the execution, to contend that there was a partial failure of consideration – that is prohibited by Section 92 of the Evidence Act.

(b) ***Bhandari Construction Co. Vs. Narayan Gopal Upadhye*** (2007) 3 SCC 163 laying down that when the terms of transaction are reduced to writing, it is impossible to lead evidence to contradict its terms.

(c) ***Tamil Nadu Electricity Board Vs. N. Raju Reddiar*** (1996) 4 SCC 551 holding that where there is a written agreement, the parties are bound by terms and conditions thereof and it is not open to any of the parties to seek to prove the terms of the contract with reference to some oral or other documentary evidence, to find out the intention of the parties. It was further held that where the written instrument appears to contain the whole terms of the contract, then parties to the contract are not entitled to lead any oral evidence to ascertain the terms of the contract; it is only when the written contract does not contain the whole of the agreement between the parties and there is any ambiguity, that oral evidence is permissible to prove the other conditions which also must not be inconsistent with the written contract.

(d) *Sunrise Construction Vs. Veena Wahi* 2009 (III) DRJ 710 discussing the scope of the provisos to Section 92 in a similar factual situation as before this Court.

40. Reference may also be made to Section 114(e) of the Evidence Act raising a presumption in favour of a document which has been duly registered. The recitals of the Sale Deed in the present case clearly stipulate that the entire sale consideration had been received by the plaintiff in the presence of the Sub-Registrar and the Sub-Registrar has also endorsed so on the document. The bar of Section 92 thus squarely applies. The present suit is also squarely covered by *Karan Madaan* and *Jai Bhagwan* supra and following the same, the plaint in the present suit is also rejected.

I refrain from imposing costs.

JANUARY 11, 2019

‘bs/pp/gsr’

(corrected & released on 25th January, 2019)

RAJIV SAHAI ENDLAW, J.