

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

% Decided on: 29th January, 2020

+ **CS (OS) 573/2017**

S. MOHINDER SINGH Plaintiff

Represented by: Mr.Naresh Khanna, Adv. for the
plaintiff with plaintiff in person

versus

INDER MOHAN SINGH & ORS Defendant

Represented by: Mr.Sanjeev Manchanda, Adv. for D2
and D3
Mr.Pawan Mathur, Adv. for DDA
Mr.Ajjay Aroraa, Adv. with Mr.Kapil
Dutta, Adv. for D5 and D6
Mr.Anuj Aggarwal, ASC, GNCTD
with Mr.Anshuman Kumar, Adv. for
D7

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

I.A. 2571/2018 (under Order VII Rule 11 CPC by defendant Nos. 2 and 3)

1. Legal heirs of defendant No.1 have already been proceeded ex parte.
2. By this application, the defendant Nos. 2 and 3 who are the main contesting defendants seek rejection of the plaint on the ground that from the documents of the plaintiff itself, it is evident that a false and frivolous suit has been filed belatedly after the plaintiff had entered into various agreements.

3. By the present suit, the plaintiff seeks the following reliefs:-

“a. Pass a decree for declaration in favour of the plaintiff and against the defendant No. 3, whereby the Agreement to Sell registered vide Registration No.9,099 in Book No.1, Volume No. 14,729 on Page 26 to 38 dated 15.03.2007 and a General Power of Attorney registered vide Registration No. 2,696 in Book No. 4, Volume No. 11,644 on page 23 to 26 dated 15.03.2007 before Sub-Registrar-II, Janakpuri, New Delhi and the notarized Special Power of Attorney, Receipt of payment, two affidavits of Inder Mohan Singh, Possession Letter and Will all dated 15.03.2007 executed by the defendant no. 1 in favour of the defendant No. 3 with regard to the suit property i.e. Plot No. 2 in Furniture Block, Kirti Nagar Warehousing Scheme, Kirti Nagar, New Delhi, be declared as null and void ab-initio.

b. Pass a decree for possession in favour of the plaintiff and against the defendant No. 3 or defendant No. 1 & 2, whereby the defendant No. 3 or defendant No. 1 & 2, their employees, attorneys, representatives or any other persons claiming through them be directed to handover the peaceful physical possession of the suit property bearing Plot No. 2 in Furniture Block, Kirti Nagar Warehousing Scheme, Kirti Nagar, New Delhi to the plaintiff, as shown in Red colour in the attached site plan, after getting demolition of the entire illegal and unauthorized structure constructed on the suit property.

c. Pass a decree for damages in favour of the plaintiff and against the defendant No. 3, whereby the defendant No. 3 or his attorneys, representatives, legal heirs or any other persons claiming through him be directed to pay a sum of ₹ 20,00,000/- (Rupees Twenty Lacs only) to the plaintiff towards illegal and unlawful demolition of the duly approved

two and half story building including basement constructed by the plaintiff in the suit property bearing Plot No. 2 in Furniture Block, Kirti Nagar Warehousing Scheme, Kirti Nagar, New Delhi.

d. Pass a decree for Permanent Injunction in favour of the plaintiff and against the defendant No. 1 to 3, whereby the defendant No. 3, his employees, attorneys, representatives or any other persons claiming through him be restrained to raise any illegal and unauthorized construction in the suit property bearing Plot No. 2 in Furniture Block, Kirti Nagar Warehousing Scheme, Kirti Nagar, New Delhi and further restrained the defendant No. 3, his employees, attorneys, representatives or any other persons claiming through him to use the said unauthorized structure raised by the defendant No. 3 on the suit property, in any manner and for any purpose.

e. Pass a decree for permanent injunction in favour of the plaintiff and against the defendant No. 1 to 3, whereby the defendant No. 3, his employees, attorneys, representatives or any other persons claiming through him be restrained to sell or transfer or mortgage or let out or to create any third party interest or to part with the possession of the suit property bearing Plot No. 2 in Furniture Block, Kirti Nagar Warehousing Scheme, Kirti Nagar, New Delhi.

f. Pass a decree for Mandatory injunction in favour of the plaintiff and against the defendant No. 3 or his servants, agents, attorney, representatives or the persons claiming through him, be directed to remove all the construction and/or to demolish the structure illegally and unauthorizedly constructed in the suit property bearing Plot No. 2 in Furniture Block, Kirti Nagar Warehousing Scheme, Kirti Nagar, New Delhi by the defendant No. 3 and in case, the

defendant No. 3 fails to get remove/demolish the said unauthorized structure from the suit property, then the defendant No. 4 or 5 and 6 be directed to remove/demolish the said unauthorized structure from the suit property.

g. Costs of the suit be awarded in favour of the plaintiff and against the defendants.

h. Any other or further order(s)/relief(s), which this Hon'ble Court may deem fit and proper considering the facts and circumstances of the case, may also be passed in favour of the plaintiff and against the defendants".

4. Case of the plaintiff is that defendant No. 4 DDA had allotted and executed a perpetual lease deed in respect of Industrial Plot No. 2, admeasuring 400 square yards in Furniture Block, Kirti Nagar Warehousing Scheme, Kirti Nagar, New Delhi in favour of the plaintiff's proprietorship concern namely M/s. New Light Furniture Mart on 21st May, 1973. The plaintiff was in need of money to raise the construction on the suit property. After the plaintiff was granted permission to erect a building in the abovementioned suit premises, pursuant to the permission granted by defendant No. 4 i.e. DDA to mortgage the suit property in favour of Delhi Financial Corporation, the plaintiff was sanctioned loan of ₹ 1,50,000/- by the Delhi Financial Corporation. Thus, a mortgage deed was executed by the plaintiff in respect of the suit property in favour of the Delhi Financial Corporation against sanctioned loan of ₹ 1,50,000/- and additionally, Delhi Financial Corporation also disbursed a sum of ₹ 23,000/-. With these funds, plaintiff started construction on the suit property. However, since the plaintiff also suffered losses in his business, he was not able to meet the financial commitments with the Delhi Financial Corporation, therefore,

Delhi Financial Corporation not only stopped disbursement of the balance sanctioned loan but also recalled the loan of ₹ 23,000/- from the plaintiff.

5. Since the plaintiff was in huge losses, around the month of November 1979, Sardar Soudagar Singh and Sardar Kartar Singh, father of the defendant Nos. 1 and 2 respectively, approached the plaintiff with a proposal that they could financially help the plaintiff, provided the plaintiff allows them to use the suit property without any charges against the financial help, which proposal was accepted by the plaintiff. Against the financial help of ₹ 60000/-, Sardar Soudagar Singh and Sardar Kartar Singh along with the defendant Nos. 1 and 2 got executed and registered various documents from the plaintiff and continued using the suit property. In the year 2010, defendant No. 1 approached the plaintiff for recording of the evidence in a civil suit filed at Tis Hazari Courts against defendant No. 2 for possession of the suit property, wherein, the plaintiff on the request of the defendant No. 1 appeared as a witness. Defendant No. 1 took signatures of the plaintiff on the affidavit of evidence in Court premises without explaining the contents thereof. The plaintiff also tendered his evidence by way of affidavit and was cross examined. Later, in the end of July 2011, when the plaintiff visited his advocate to discuss some other matter and showed him the copy of said affidavit, plaintiff came to know about the contents of the affidavit, which were false and he filed an application in the suit being Suit No. 212/2004 for treating the said affidavit as null and void. The said application was dismissed by the learned ADJ-06 (Central), Tis Hazari Courts on 9th August, 2011. Subsequently, the suit filed by the defendant No. 1 was also dismissed as withdrawn.

6. In the year 2015, plaintiff visited the suit property for return of the amount but the suit property was found locked. Later, the plaintiff got to know that the property was got demolished and excavation work was going on. In this regard, plaintiff gave various complaints and thereafter, filed a suit for mandatory and permanent injunction before the learned Civil Judge on 6th May, 2017. In the said suit being Suit No. 45/2017, defendant No. 3 filed the agreement to sell, General Power of Attorney, Special Power of Attorney, receipt of payment, affidavits, possession letter and Will, all dated 15th March, 2007 executed by the defendant No. 1 in favour of the defendant No. 3 to sell the undivided and unspecified half portion of the suit property.

7. By this application, seeking rejection of the plaint, the defendant Nos. 2 and 3 state that by an agreement to sell and purchase deed dated 3rd December, 1979, the plaintiff entered into an agreement to sell with defendant Nos. 1 and 2 to purchase the suit property i.e. Plot No. 2 in Furniture Block, Kirti Nagar Warehousing Scheme, Kirti Nagar, New Delhi, wherein, he was running the firm. The said agreement to sell was also accompanied by the sale deed executed by the plaintiff in favour of late defendant No. 1 and defendant No. 2 for sale of the goodwill of M/s. New Light Furniture Mart, Plot No. 2, admeasuring 400 square yards in Furniture Block, Kirti Nagar Warehousing Scheme, Kirti Nagar, New Delhi. The receipt of ₹ 60000/- dated 3rd December, 1997 is also a registered document duly filed by the plaintiff and admitted by defendant Nos. 2 and 3. Further, the plaintiff appeared as a witness in suit number 212/2004 filed by the defendant No. 1 against defendant No. 2, wherein, he tendered his evidence by way of affidavit, which notes as under:-

“Evidence by way of Affidavit

Affidavit of Mahinder Singh son of Shri Puran Singh, R/o 301, Anand Parbat, Karol Bagh, New Delhi, aged about 75 years, do hereby solemnly affirm and declare as under:-

- 1. That I was the owner of the property bearing No. Plot No. 2, Furniture Block, W.H.S., Kirti Nagar, New Delhi. The said property was sold by me to Shri Mahinder Singh son of Shri Kartar Singh and to Shri Inder Mohan Singh son of late Shri Saudagar Sing. I executed various documents such as Agreement to Sell, General Power of Attorney, Special Power of Attorney, Receipt and Will. I have seen the certified copy of the said documents, which are Ex.PW-1/1 to Ex.PW-1/4. The said documents bears my signature at POINT A TO E.*
- 2. That I received ₹60000/- towards the sale consideration. However, I have not sold the good will of my firm M/s. New Light Furniture Mart to Shri Mahinder Singh son of Shri Kartar Singh. I received only the consideration amount as mentioned in the receipt exhibited above.*
- 3. That my above statement are true and correct.*

*Sd/-
DEPONENT*

VERIFICATION:-

Verified at Delhi on this 12th Nov. 2010 day of October, 2010 that the contents of the para nos. 1 to 3 of the Evidence by way of Affidavit are true and correct to my knowledge and nothing material has been concealed and suppressed therefrom.

*Sd/-
DEPONENT”*

8. This evidence by way of affidavit was filed by the plaintiff on 12th November, 2010 and when he appeared in the witness box on 2nd April, 2011 as PW2, the plaintiff accepted having filed the affidavit in evidence and exhibited the same as Ex.PW2/A and admitted his signatures at Point 'A' thereon. Subsequently, the plaintiff filed an application under Section 151 CPC before the learned ADJ in Suit No. 212/2004, inter alia, stating that the plaintiff was an illiterate person and did not understand the English and that, in his affidavit Ex.PW2/A, it was wrongly mentioned that he has sold the property to Mahinder Singh, son of Shri Kartar Singh, whereas, plaintiff has never sold the said property. The plaintiff also sought treating the affidavit Ex.PW2/A as null and void. On the said application, the learned ADJ passed the following order on 9th August, 2011:-

*"INDER MOHAN SINGH VS. MAHENDER SINGH
09.08.2011*

*Present: Sh. Deepak Gupta Advocate for plaintiff.
Sh.Sanjay Diwan Advocate for defendant.
Applicant Mahender Singh in person*

Heard on an application filed by Sardar Mahender Singh.

It is submitted by Sh. Sanjay Diwan Advocate representing the applicant that the latter was examined as PW2. His affidavit was procured by the plaintiff by misrepresentation. The address of applicant in his affidavit has mentioned wrongly. As per said affidavit, the applicant had sole plot no. 2, Furniture Block, WHS, Kirti Nagar, New Delhi, to Sh. Mahender Singh S/o Sh. Kartar Singh but said fact is not true. The applicant never sold said suit property to anyone what to say Sh.Mahender Singh. The amount of sale consideration ₹ 60,000/- is written in pen all this shows falseness to affidavit. Ld. Counsel requests to declare said

affidavit as well as statement given by PW2 in the Court as null and void.

It is admitted by Applicant even that affidavit (Ext. PW2/A) bears his signature and he gave statement in court 02.04.2011, signatures on said statement are also admitted by the applicant.

The record on the file would reveal that the affidavit was filed on 12.10.2010 while statement of applicant was recorded on 02.01.2011. No such applicant was filed in between. No reason to resume that said affidavit was procured from the applicant, by mis-representation.

*Application is thus dismissed.
Defendant requests for a pass over.
To contact at 12 noon today.*

*Sd/-
ADJ-06/(Central)/Delhi
09.08.2011”*

9. This order dated 9th August, 2011 passed by the learned ADJ is admittedly not challenged by the plaintiff in any of the proceedings and thus, has become absolute. From the documents as noted above, it is clear that the plaintiff admitted in his affidavit that he had sold the suit property to Late defendant No. 1 and defendant No. 2 by entering into an agreement to sell and also sold the goodwill in the firm M/s. New Light Furniture Mart for a total consideration of ₹ 60,000/-. The cancellation of the documents which the plaintiff now seeks in the present suit i.e. Special Power of Attorney, Receipt of Payment, two affidavits of Inder Mohan Singh, possession letter and Will dated 15th March, 2007 executed by defendant No. 1 in favour of defendant No. 3 and also seeking physical possession of the suit property bearing Plot No. 2 in Furniture Block, Kirti Nagar Warehousing Scheme,

Kirti Nagar, New Delhi are all pursuant to documents executed by plaintiff in favour of late defendant No. 1 and defendant No. 2 dated 3rd December, 1979. The averments in the plaint by the plaintiff are not only contrary to the admission of the plaintiff in Suit No. 212/2004, which though, sought to be retracted, the retraction was turned down, the reliefs prayed in the suit are barred by limitation as the plaintiff is attributed knowledge of the documents executed by him on 3rd December, 1979 at least in July 2011, when he was informed of the contents of his affidavit based whereon he filed an application before the learned ADJ seeking treating his affidavit as null and void.

10. Considering the documents filed by the plaintiff and that based on the averments and the documents placed on record, there is no prospect of success in the suit, the application is disposed of, dismissing the suit with costs of ₹ 15,000/- to be imposed on the plaintiff.

I.A. 12020/2017 (under Order XXXIX Rule 1 and 2 CPC)

In view of the rejection of the plaint, application is dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

JANUARY 29, 2020

akb