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

Date of Decision: 16th December, 2021

\+ **CS(OS) 26/2020 & I.A. Nos. 992/2020, 993/2020, 8908/2021**

MADHU KAPOOR & ANR. ..... Plaintiffs

Through: Mr. Harish Kohli, Mr. Jitesh Sharma, Mr. Vikash Kumar, Mr. Shaurya Chauhan, Mr. Rohit Singh and Mr. Kapil Garg, Advocates.

versus

NEELAM JAIN & ORS. ..... Defendants

Through: Mr. Ankit Jain, Mr. Abhay Pratap Singh and Ms. Mohina Anand, Advocates for D-1.
Mr. Asheesh Jain, Advocate with Mr. Adarsh Kumar Gupta and Mr. Keshav Mann, Advocates for D-2
Mr. Pradeep Bhardwaj, Advocate for D-3.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA HYBRID MODE]

SANJEEV NARULA, J. (Oral):

I.A. No. 7875/2021 *(u/Order VII Rule 11 r/w Section 151 of the Code of Civil Procedure, 1908 [hereinafter **"CPC"**] on behalf of Defendant No. 1 seeking rejection of plaint)* **in CS(OS) 26/2020**

1. The above captioned application filed by Defendant No. 1 under Order VII Rule 11 r/w Section 151 of CPC, supported by Defendant No. 2, seeks rejection of the plaint in the present suit, filed by the Plaintiffs

seeking, *inter-alia*, cancellation of the Sale Deed dated 30th August, 2017 executed by the Plaintiffs with respect to basement, ground floor and first floor of property *bearing* No. AE-90, Shalimar Bagh, New Delhi-110088 built up on land measuring 247.50 sq. meters [*hereinafter* ***"suit property"***].

BRIEF FACTS

2. Before adverting to the grounds urged by the Applicants, it would be apposite to briefly note the narrative as set out, in the plaint as follows: -

2.1 Plaintiffs propound that they are joint owners of the suit property. Defendants No. l and 2 had approached them through property dealers *viz.* Defendant No. 3 and Mr. Mukul Lamba along with Mr. Bhupinder Jain and Mr. Sanjay Jain, for purchase of the entire built-up suit property. After negotiations, Plaintiffs entered into an Agreement to Sell dated 26th June, 2017 [*hereinafter* ***"ATS 1"***] with Defendants No. 1 and 2 to sell the entire built-up property (basement to top with terrace and free-hold rights) situated at AE-90, Shalimar Bagh, New Delhi-110088 for a total sale consideration of Rs. 16,85,00,000/-. This Agreement includes the suit property, described above.

2.2 Defendants No. 1 and 2 approached the Plaintiffs through Defendant No. 3 and expressed their inability in making full and final payment of the sale consideration within the stipulated time period under ATS 1 and sought extension of time for making such payment. After assurances given by Defendant No. 3 and several requests made by Defendants No. 1 and 2, Plaintiffs agreed to execute a sale deed *qua* the suit property with the pre-condition that sale deed shall be deemed as a *'collateral security'* towards the full and final payment being made by the Defendants No. 1 and 2 to the Plaintiffs. Neither actual physical possession of any part of the suit property was agreed to be handed over to the Defendants No. 1 and 2 nor were they entitled to claim any benefits arising from any part of the said suit property, till the making the full and final balance payment *qua* the entire suit property (basement to top with terrace and free-hold rights), as per ATS 1.

2.3 An Agreement to Sell dated 29th August, 2017 [*hereinafter* ***"ATS 2"***] was entered into between the Plaintiffs and Defendants No. 1 and 2. The same was entered into for extension of time for payment of balance amount *qua* the total sale consideration due towards the entire property under ATS 1 and also to execute sale deed as *'collateral security'*. Under ATS 2, the Plaintiffs had reserved their right of receiving rent from Defendant No. 5 *viz.* Bank of India, that is a tenant of the Plaintiffs, till the maturity of ATS 1 and ATS 2.

2.4 Thereafter, a Sale Deed dated 30th August, 2017 was executed by the Plaintiffs with respect to basement, ground floor and first floor (suit property). The said Sale Deed is duly registered with the Sub Registrar VI A, Pitampura, Delhi [Registration No. 10654 in in Addl. Book No. 1, Volume No. 7076 on pages 116 to 129 in the office of Sub Registrar VI A, Pitampura, Delhi].

2.5 The said Sale Deed was executed as Plaintiffs were persuaded by Defendants No. 1 and 2 with '*sweet and smooth talks*' and on '*fraudulent assurances'*. It premised on an understanding between the parties that the same shall be deemed to be a *'collateral security'* until full and final payment and was executed on assurances given by Defendants No. 1, 2 and 3 that neither third-party interest(s) shall be created, nor would any rights be claimed till making the full and final payment to the Plaintiffs within the stipulated time i.e., 05th November, 2017, as agreed in ATS 2.

2.6 Plaintiffs issued a legal notice dated 25th October, 2017 to the Defendants No. 1, 2 and 3 thereby calling upon Defendants No. 1 and 2 to make the balance payment of Rs. 13,34,75,000/-, upon which the Plaintiffs shall execute a sale deed for the remaining portions *viz.* second floor and third floor of the property in question, in favour of the Defendants No. l and 2, as provided under ATS 1 and ATS 2.

2.7 In response thereto, Defendants No. 1 and 2 along with Defendant No. 3 *vide* reply dated 08th November, 2017 denied the averments made in the legal notice and reference was drawn to an alleged Agreement to Sell dated 30th August, 2017 [*hereinafter* ***"ATS 3"***]. This Agreement pertains to second floor and third floor of the property in question and is a forged and thus, null and void.

2.8 Defendants No. 1 and 2 in collusion with Defendant No. 3 have forged the Sale Deed dated 30th August, 2017 which was executed in favour of Defendants No. 1 and 2 by the Plaintiffs as the same does not contain the clause of *'collateral security'* as well as the clause which says that the possession of basement, ground floor and first floor shall be handed-over to Defendants No. l and 2 only after receiving the full and final payment as per ATS 1 and ATS 2, which were originally presented to the Plaintiffs before signing the Sale Deed. Thus, the Sale Deed dated 30th August, 2017 is forged one and fraudulently prepared by the Defendants No. 1 and 2 in connivance of Defendant No. 3 for their illegal and ulterior motives to blackmail the Plaintiffs and they were in collusion to grab the entire property.

2.9 Defendants No. 1 and 2, in connivance with Defendants No. 3 committed fraud, misrepresented and cheated the Plaintiffs and violated the terms of ATS 1 and ATS 2 and filed suits titled as – *(a)* ***Neelam Jain & Anr. v. Madhu Kapoor & Ors.*** in CS (OS) 311/2018 (seeking vacant physical possession *qua* half of the basement and first floor of property), and *(b)* ***Neelam Jain & Anr. v. Madhu Kapoor & Anr.*** in CS (OS) 258/2018 (seeking specific performance of ATS 3 in relation to second floor and third floor of the property).

2.10 Plaintiff's consent was obtained by Defendants No. 1, 2 and 3 by fraud, undue influence, illegally to defraud the Plaintiffs with common intention to cheat, extort and threaten the Plaintiffs to grab their entire property illegally. Plaintiffs have registered their complaints against Defendants No. 1, 2 and 3 before PS. Shalimar Bagh, Delhi Police on 29th September, 2018.

2.11 The suit is seeking the following reliefs: -

> *"(a) Pass a decree of cancellation of document thereby passing appropriate orders / directions directing the Sub-Registrar VI, New Delhi to cancel the Sale Deed dated 30.08.2017, vide Registration No. 10654 in Book No. 1 Vol. No. 7076 on Page 116 registered in respect of Basement, Ground Floor, & First Floor, of property bearing No.AE- 90, Shalimar Bagh, New Delhi-110088 which was registered in favour of defendants who had applied the fraud, misrepresentation and cheating & received the consent of plaintiffs on totally fraudulent manner, in the interest of justice and equity.*
>
> *(b) Pass a Decree of declaration thereby, declaring that the Sale Deed dated 30.08.2017, vide Registration No. 10654 in Book No. 1 Vol. No. 7076 on Page 116 registered in respect of Basement, Ground Floor, 85 First Floor, of property bearing No.AE-90, Shalimar Bagh, New Delhi-110088, along with forged agreement to sell dated 02.08.2017 as null & void, thereby defendants have no right, title and interest in the Basement, Ground Floor, & First Floor, of property bearing No.AE-90,*

Shalimar Bagh, New Delhi-110088, in the interest of justice and equity.

(c) Pass a Decree of declaration thereby, declaring that the agreement to sell dated 26.06.2017 is null & void, thereby defendants have no right, title and interest in the entire built-up property bearing No.AE-90, Shalimar Bagh, New Delhi-110088, in the interest of justice and equity.

(d) Pass a Decree of declaration thereby, declaring that the amended agreement to sell dated 29.08.2017 is null & void, thereby defendants have no right, title and interest in the entire built-up property bearing No.AE-90, Shalimar Bagh, New Delhi-110088, in the interest of justice and equity.

(e) Pass a Decree of declaration thereby, declaring that the amended agreement to sell dated 30.08.2017 is null and void & forged one, thereby defendants have no right, title and interest in the entire built-up property bearing No.AE-90, Shalimar Bagh, New Delhi-110088, in the interest of justice and equity."

3. Before adverting to the contentions of the parties, it must first be noted that counsel for the Plaintiffs, during arguments stated that he wishes to give up prayer '(c)' and '(d)'. Accordingly, taking his statement on record, prayer '(c)' and '(d)' of the plaint stand deleted.

CONTENTIONS OF THE PARTIES

4. Mr. Ankit Jain, counsel for Defendant No. 1 and Mr. Asheesh Jain, counsel for Defendant No. 2 make following submissions: -

4.1 The plaint is liable to be rejected as admittedly, the factum of the registration of the Sale Deed in the office of the Sub Registrar is not denied by the Plaintiffs and in fact, a certified copy whereof has been placed on record. The said registered instrument provides that the total sale consideration of Rs. 2,85,00,000/- stands duly paid by Defendants No. 1 and 2 to the Plaintiffs.

4.2 The terms of the registered Sale Deed are clear and unambiguous. There is no mention in the said document of the payment having been made for any purpose other than towards sale consideration *qua* the portions of the suit property mentioned therein. It also does not mention that the Sale Deed has been executed as a *'collateral security'*. Thus, the case set up by the Plaintiffs is completely untenable and legally barred in light of the provisions of Section 91 and 92 of the Indian Evidence Act, 1872 [*hereinafter* ***"Evidence Act"***].

4.3 The registered Sale Deed was executed after the purported ATS 1 and ATS 2. Therefore, the Sale Deed would undeniably supersede the latter.

4.4 Further, no evidence contrary to the written terms of the agreement/ contract can be permitted to be brought on record. It is the document itself which has to be read to determine the nature of transaction/ deposition.

5. *Per Contra*, Mr. Harish Kohli, counsel for the Plaintiffs makes the following contentions: -

5.1 The application is misconceived, and the suit of the Plaintiffs should be put to trial. Defendants No. 1 and 2 have concealed ATS 1 purposely and in a fraudulent manner. On the strength of this document, Defendants No. 1 and 2 obtained loan through Defendant No. 5-Bank, and on perusal thereof, it will become clear that the total sale consideration *qua* the entire property (basement to top with terrace and free-hold rights) was Rs. 16,85,00,000/- out of which Defendants No. 1 and 2 paid Rs. 50,00,000/- on the same day i.e., on 26th June, 2017. The said document would demonstrate the actual transaction as well as the terms and conditions which ought to have been incorporated in the alleged Sale Deed. The Plaintiffs should, therefore, be afforded an opportunity to prove this document during trial and the manner in which the Defendants No. 1 and 2 in connivance with Defendant No. 3 have played fraud and cheated the Plaintiffs.

5.2 Plaintiffs have never executed the alleged Sale Deed containing the terms and conditions stated therein. Plaintiffs and Defendants No. 1 and 2 have also entered into ATS 2 whereby, it was specifically agreed that Plaintiffs can execute a sale deed in respect of the aforesaid portions of the suit property as *'collateral security'* towards the total amount to be paid by Defendants No. 1 and 2 to Plaintiffs. In these circumstances, Plaintiffs have preferred the present suit seeking cancellation of the purported Sale Deed which is in violation of the terms and conditions contained in ATS 1 and ATS 2 *viz.* parent document to the purported Sale Deed.

5.3 Defendants No. 1 and 2 in collusion with Defendant No. 3 have also entered into a document purported to be ATS 3, which pertains to second floor and third floor of the property in question.

ANALYSIS

6. The Court has considered the submissions of the counsel for the parties.

Scope of Order VII Rule 11 of CPC - Precedents

7. There are now sufficient case laws on the subject matter. The cause of

action should be clearly shown in the plaint and parties cannot camouflage the same to overcome the bar under law. It is permissible for the court to unravel and unearth the true cause of action, by meaningful reading of the plaint and the perusing the accompanying documents, while dealing with an application under Order VII Rule 11 of CPC. The Supreme Court in ***I.T.C. v. Debts Recovery Appellate Tribunal***[1], held that clever drafting premised on an illusory cause of action is impermissible in law and a clear right to sue should be demonstrated in the plaint itself. A court, while dealing with applications under Order VII Rule 11 of CPC must see that the bar in law of the suit is not veiled by devious and/ or clever drafting of the plaint.[2] The Supreme Court has reiterated the afore-noted view in a recent judgment in ***K. Akbar Ali v. K. Umar Khan and Ors.***[3] further observing that provisions of Order VII Rule 11 of CPC are not exhaustive and the court has the inherent power to ensure that frivolous or vexatious litigations are not allowed to consume the time of the Court.[4]

8. Admittedly, the cause of action as narrated in the plaint centres around the challenge to a registered Sale Deed dated 30th August, 2017 executed between the Plaintiffs and Defendants No. 1 and 2. This Sale Deed unambiguously records the sale consideration of Rs. 2,85,00,000/- which stands paid by Defendants No. 1 and 2 to the Plaintiffs. Yet, the Plaintiffs seek cancellation thereof. Thus, the Court has to examine whether a real cause of action has been set out in the plaint or not. The averments made in

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[1] (1998) 2 SCC 70.
[2] See: ***T. Arivandandam v. T.V. Satypal***, 1977 (4) SCC 467.
[3] 2021 SCC Online SC 238.
[4] See: Azhar Hussain v. Rajiv Gandhi, 1986 (Supp.) SCC 315.

the plaint, as summarized in the preceding paragraphs, discern that entire premise of the plaint is based on a plea that there was an understanding between the parties which is not laid down/ reduced in the registered instrument *viz.* Sale Deed and thus, the said document is not determinative of the 'real intent' of the parties to the sale. In other words, entire case of the Plaintiffs is in contravention to the registered document. The Sale Deed contains stipulations specifically authorizing Defendants No. 1 and 2 to get the portions specified therein, mutated in their own names in the records of the respective municipal/ water/ electricity authorities as well as other departments. In fact, the Sale Deed places obligation on Defendants No. 1 and 2 to bear the expenditures incurred on account of use and repairs of electricity/ water/ gas, etc. and maintenance of the common portions of the entire suit property. The registered Sale Deed also records that there is no subsisting agreement for sale in respect of the suit property. The relevant recitals and clauses of the registered Sale Deed read as under: -

> *"(d) That there is **no legal impediment or bar whereby the VENDORS can be prevented from selling, transferring or alienating the aforesaid property in favour of the VENDEES**;*
>
> *(e) That there is **no subsisting agreement for sale in respect of the property which is under sale and the same has not been transferred in any manner whatsoever in favour of any other person or persons and the VENDORS have a good marketable title***
>
> *(f) That there is no notice of default or breach on the part of the VENDORS or their predecessors-in-interest under any provisions of law in respect of the aforesaid property;*
>
> *AND WHEREAS the VENDORS in their **sound and disposing mind, without undue influence, coercion or fraud and for legal requirements and necessities have agreed to sell and transfer the ENTIRE BASEMENT FLOOR, ENTIRE GROUND FLOOR & ENTIRE FIRST FLOOR WITHOUT ROOF RIGHTS OF THE ABOVE SAID BUILT-UP PROPERTY BEARING NO.90**, built on land area measuring 247.50 sq.mtrs., duly fitted with fitting & fixtures, water, electric & sewerage connections connected therein alongwith common rights in main gate,*

entrance, passage, staircase, lift etc., in Block-AE, situated in the layout plan of Shalimar Bagh Residential Scheme, Shalimar Bagh, Delhi, with proportionate free hold rights of the land underneath (hereinafter called the Property) ***UNTO the VENDEES for a total sale consideration of Rs.2,85,00,000/-*** *(Rupees Two Lakh Eighty Five Lakh only) and for which the VENDEES have also agreed to purchase the same at the above said sale consideration in equal share ratio.*

2. That the VENDORS hereby ***sells, transfers, conveys and assigns all rights, titles, interests with complete super structure together with complete electric and water facilities, all other fittings and fixtures alongwith all benefits, facilities, privileges, easements, appurtenances or advantages whatsoever belonging to or in any way appertaining in the above said property unto the VENDEES and the possession of the said property hereby conveyed has been delivered to the VENDEES at the spot who have become the absolute owner in possession of the same and shall enjoy all the rights, privileges, passages, appurtenances and possession etc. and absolute ownership in the said property without any hindrances, claims, demands by the VENDORS or their legal heirs etc***.

4. That the ***VENDORS hereby assure that the VENDEES that the above said property is absolutely free from all sorts of encumbrances, such as sale, mortgage, gift, lien, releases, notification, litigation, and attachment etc. and there is no legal defect in the title of the VENDORS, and in the event of the covenants, representations, undertakings, assurances etc.*** *made herein by the said VENDORS turning out to be incorrect or found contrary or the title of the VENDORS in the said property is found defective or if anyone else claims adverse right or interest in the said property, then the VENDORS shall be liable and responsible for all liabilities, risks, dues, losses, costs, expenses, claims arrears etc. on whatsoever account or of whatsoever nature including civil and/or criminal matters. In case the VENDEES suffers any types of losses, damages, costs etc. on these accounts, in that event the VENDORS shall be liable and responsible to make good and pay such losses, damages, costs, expenses, loss of profits etc. thus suffered/sustained by the VENDEES and keep the VENDEES freely, clearly and absolutely acquitted and exonerated and forever saved, defended, harmless and indemnified against the same and also compensate the VENDEES for the same.*

5. That the VENDORS shall pay all charges, house tax, arrears, water charges, electricity charges, penalties, etc. in respect of the above said above said Property upto the date of execution and registration of this Sale Deed in favour of the VENDEES, and ***thereafter all such charges and taxes in respect of the above said Property shall be paid and borne by the VENDEES to the Department/Authority concerned***.

8. That the VENDORS hereby agrees and assures the VENDEES to help and assist the VENDEES in getting the ***above said property mutated in all the records of M.C.D./Department/Authority concerned and shall be ready and willing to do and write any or all documents that may be required in this behalf from time to time*** *and also to present at place where the VENDORS are called by the Department/Authority concerned and to give such statement as required by the Department/authority concerned to mutate the said property in favour of the*

VENDEES and the VENDEES can get the above said property mutated in their favour on the basis of this Sale Deed even in the absence of the VENDORS.

9. That the VENDEES and/or occupants of the above said property can provide/install their Dish Antennas on the top of the building and can go on the top floor of the building to check and inspect the Dish Antennas and Water Tank and can get the water tank repaired at the reasonable hours, for which the VENDORS and/or any other occupant(s) of the Building shall not object in any manner.

12. That ***all the rights, privileges, appurtenances and easement attached with the above said property have also been conveyed and transferred with the said property by the VENDORS unto the VENDEES.***

15. That the VENDEES shall ***bear all the expenditure incurred on account of electricity, repairs and maintenance of the common portion of the entire property*** *i.e. entry gate, passage, stair case, lift, common toilet, borewell motor etc. proportionately along with other occupants.*

16. Any expenditure incurred on the repair and maintenance of main electricity line or water line, sewerage line, chokidar/security guard(s) charges shall be borne proportionately by all occupants of the entire property.

18. That the ***security amount of Electricity & Water connection are included in the total sale consideration as set forth in this Deed hence, the VENDEES shall have the right to get the water & electricity connections with security amount transferred/changed in their names in the records of Department/ authority concerned on the basis of this Sale Deed and the VENDEES may apply and get more water and electricity connections in the above said property****."*

[Emphasis supplied]

9. The above-mentioned Sale Deed here is a concluded contract, it absolutely conveys the suit property mentioned therein and belies the cause of action set up in the plaint. Clause 2 and 12, among other clauses of the Sale Deed reproduced above explicitly records that the suit property has been sold, transferred, and conveyed completely. Where the law compels a document to be in writing, that alone will be determinative of the intention of the parties. Instruments/ contracts reduced in writing presume deliberation on the part of the contracting parties and are certainly to be

treated with careful consideration by the courts.[5] The oral understanding pleaded to explain the circumstances under which the Sale Deed was executed is thus, in utter variance and completely contradictory to terms recorded in the Sale Deed.

10. Plaintiffs have narrated the circumstances leading to the execution of the Sale Deed and have also used the expression of 'fraud', 'misrepresentation' and 'cheating'. This forms the basis for reliance on the exceptions to Section 91 and 92 of the Evidence Act to overcome the hurdle in law to maintain the suit. In the opinion of the Court, such pleas are untenable and barred under Section 91 and 92 of the Evidence Act in the face of the registered instrument of sale, admittedly executed by the Plaintiffs in favour of Defendants No. 1 and 2. The spirit and objective of Section 91 and 92 of the Evidence Act is to render the written contracts/ agreements and other dispositions as the sole repository of the terms and conditions contained therein.[6] The registered Sale Deed proves the terms embodied therein and thus, Section 92 of the Evidence Act comes into operation for the purpose of excluding evidence of any oral agreement(s)/ statement(s) intended to contradict, vary, amend, add, or subtract from its terms. Section 92 of the Evidence Act, *inter-alia*, stipulates that where the terms of an instrument or other disposition of property have been proved as per Section 91 of the Evidence Act and in case the execution and registration of the instrument of sale is not disputed, no evidence of any purported oral agreement(s)/ statement(s) shall be admitted, as between the parties to such

[5] See: ***V. Anantha Raju & Another v. T.M. Narasimhan & Others***, 2021 SCC OnLine 969.
[6] See: ***Karan Madaan and Others v. Nageshwar Pandey***, (2014) SCC OnLine Del 1277.

instrument, for the purpose of varying, contradicting, adding to, or subtracting from its terms. In ***V. Anantha Raju and Another v. T.M. Narasimhan and Others***[7], the Apex Court, *inter-alia*, held as under: -

> *"It has been held that it would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory. It has been held that when parties deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory."*

11. Plaintiffs have relied upon the judgment of the Supreme Court in ***Gangabai v. Chhabubai***[8] to contend that it is permissible for a party to a deed to argue that the deed was never intended to be acted upon and was a sham instrument, and it would thus, be necessary to lead oral evidence to establish that the document executed was never intended to operate/ act as a binding agreement and instead, some other document(s) would be binding between the parties. No doubt Section 92 of the Evidence Act provides certain exceptions, which permit oral evidence, however, Plaintiffs' case does not fall under any of the exceptions carved out for oral evidence. The execution of the Sale Deed is admitted in the plaint. The intention of the parties is to be gathered from the aforesaid recitals of the Sale Deed, the conduct of the parties, and the evidence on record. Under Clause 1 of the Sale Deed, Plaintiffs accepted the payment, as mentioned therein as full consideration, and conveyed all rights in favour of Defendants No. 1 and 2. The details of the cheques, the amounts mentioned, etc. are clearly disclosed. The receipt of some of the cheques are also admitted in paragraph

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[7] 2021 SCC OnLine 969.
[8] (1982) 1 SCC 4.

Nos. 3, 10 and 18 of the plaint. The amount mentioned in the Sale Deed is stated to be the 'entire sale consideration'. There is no clause shown to the Court which makes payment of any amount, over-and-above the said amount, a condition precedent for transfer of title. All these facts clearly demonstrate that the intention of the Plaintiffs was clearly to convey all the rights, title and interest in the portions of the suit property which were the subject matter of the registered Sale Deed dated 30th August, 2017 in favour of Defendants No. 1 and 2. It is inconceivable that if the Plaintiffs did not receive the entire alleged sale amount, they would execute the said Sale Deed.

12. Further, Plaintiffs have not relied on any documents or evidence to prove their case, except for relying upon two documents *viz.* ATS 1 and ATS 2. The said purported documents are only *'agreement to sell'*, which have been entered into prior to the execution of the registered Sale Deed. The transaction between the parties, considering the value of the immovable property, could only be by way of a registered instrument under the provisions of the Transfer of Property Act, 1882 [*hereinafter* ***"Transfer of Property Act"***] which supersedes any prior understanding between the parties, as recorded therein. The intention of the parties has to thus, be gathered from the final document of sale i.e., the Sale Deed which is admitted by the Plaintiffs to be registered in the office of the concerned Sub-Registrar.

13. In the present case, the Plaintiffs argue that the said registered instrument was executed only as a *'collateral security'* against the payment

of the consideration *qua* the remaining portion of the property and Defendants No. 1 and 2 have committed fraud, misrepresented, and cheated by seeking to exploit the instrument of sale, contrary to the understanding between the parties *viz.* the Sale Deed that was only to be in nature of a *'collateral security'*. It is well-settled in law that a mere mention of "fraud" or "misrepresentation" in a pleading is insufficient. There are bald assertions to give a semblance of cause of action. A party pleading "fraud" is obliged, under Order VI Rule 4 of CPC, to provide particulars of the pleaded "fraud" – accompanied with dates and items, in its pleadings. The plaint does not make out a case of "fraud". In any event, the fraud, intimidation, illegality, etc. referred to in first proviso to Section 92 of Evidence Act relates to the execution of the instrument/ document. It is not the Plaintiffs' case that on execution of the registered instrument/ Sale Deed, they were unaware that it is a *'sale deed'* that they were executing. It is also not their case that they are illiterate; or that they had not read; or could not read the instrument in question. It is also not claimed that the Sale Deed was executed in an intoxicated and/or unsound state; or under duress or coercion exercised by the Defendants and/ or anyone else. In fact, the Sale Deed makes a specific statement to the contrary. Plaintiffs knew the fact that they were executing an instrument of sale. At this juncture, when Plaintiffs executed the Sale Deed in question, it is not open for them to claim that the instrument of sale is hit by "fraud", "misrepresentation" or "cheating", because, according to them – the intention or understanding between the parties was to create a *'collateral security'*. The Plaintiffs are seeking to foist an obligation on Defendants No. 1 and 2 that is contrary the terms of the registered instrument *viz.* Sale Deed. If the intention of the parties was, as is claimed by the Plaintiffs, then that intention should have been expressed in the instrument itself. However, that is not the case. Thus, the entire cause of action pleaded is in the teeth of Section 91 and 92 of the Evidence Act.

14. The plaint also entirely lacks preciseness/ specificity which renders the pleadings vague. There is also no material or document to support any circumstance pointing to the Sale Deed that is purported to be in nature of a *'collateral security'*. Even otherwise in case the parties wanted to execute a document in nature of a *'collateral security'*, it would be a more cost effective and easier course for them to execute an instrument in the nature of a mortgage, etc. instead of executing a sale deed vesting absolute rights in favour of Defendants No. 1 and 2 and also incurring higher stamp duty and other charges thereon. It is thus, a classic case where the Plaintiffs have by way of clever drafting, attempted to create an illusory cause of action.

15. Further, the Plaintiffs issued a legal notice dated 25th October, 2017 to Defendants No. 1, 2 and 3, relevant portion is extracted below: -

> *"**13.** That as per your request and assurance of Mr. Subash Lamba, **my clients have extended the time for making of full & final payment of balance amount till/ on or before 05.11.2017 and had also executed the sale-deed in respect of Basement, Ground & First Floor of the above said property** without handover the actual physical possession to you both the addresses with your promises and assurances that you both the addresses shall not create any third party interest nor claim any rights arising out of the said property **till making of full & final payment to my clients.***
>
> *xx ... xx ... xx*
>
> ***17.** That it is submitted that the **sale of property in question is not complete until and unless the consideration against the same as agreed and promised are paid in toto and hence the ownership of the property shall not change by mere execution of the sale deed.** Further, intention of the parties were also that the sale would be complete only upon full and final payment as agreed and promised by you noticee and Mr. Subash Lamba and this intention between the parties are also very clear*

from the fact that the possession of the property has not been handed over by my clients to you noitcee and also that portion of property i.e. second and third floor have not been put on sale deed.

I, in the light of facts mentioned above, call upon to make the balance payment of Rs. 13,34,75,000/- upon which ***my clients shall be executing sale deed of remaining part of the property i.e. second and third floor in favour of you noticee no. 1 & 2 as per the conditions of agreement to sell dated 26-06-2017 read with agreement dated 29-08-2017*** *failing which my client shall be constrained to take appropriate legal action (under civil and /or criminal proceedings) against you noticee no. 1 & 2 and noticee no. 3 Sh. Subash Lamba which shall be at your risk, cost and responsibilities."*

[Emphasis supplied]

16. The aforesaid extracts brings to fore the real intention or cause of action of the Plaintiffs. A plain reading of the legal notice manifests that the Plaintiffs have admitted the execution of the Sale Deed in favour of Defendants No. 1 and 2. Plaintiffs grievance is regarding non-payment of the alleged agreed consideration. According to the Plaintiffs – the ownership of the above-mentioned portions of the suit property has not changed hands by mere execution of the Sale Deed. Firstly, this is contrary to law. The Sale Deed, as discussed above, is absolute, not conditional, and consequently, the suit property stands conveyed to Defendants No. 1 & 2. Secondly, even if it is assumed that the entire sale price has not been paid, yet the Sale Deed will not be invalidated. Actual payment of entire sale price at time of execution of the Sale Deed not an essential condition for completion of sale. Plaintiffs remedy in such a case would lie not for seeking the cancellation of the Sale Deed, but to sue for the balance price under Section 55(4)(b) of the Transfer of Property Act. The vendor cannot avoid the sale and seek reconveyance of title of the portions of the suit property sold under the Sale Deed. Therefore, the Plaintiffs may have other remedies in law for recovery of the balance consideration but certainly not for one sought in the plaint. Thus, even if the

averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could still not be a ground for cancellation of the Sale Deed.[9]

17. In prayer '(e)' the Plaintiffs seeks a declaration pertaining to ATS 3 to be declared as – *"null and void & forged"*. In respect of the said prayer, the plaints lacks foundational pleadings. There is only a faint reference to ATS 3 in paragraph Nos. 30 and 36 of the plaint, without any averments as to how the said Agreement is a forged document. Regardless, Defendants No. 1 and 2 have filed a separate suit *viz.* CS(OS) 258/2018 seeking specific performance *qua* ATS 3, much before the filing of the present suit and the said suit is pending disposal before this Court. The entire case as set out by the Plaintiffs is in fact a defence or at the highest, a counter-claim to the said suit. The issue relating to execution of ATS 3 is entirely and substantially an issue in the prior suit filed by Defendants No. 1 and 2. Therefore, there is no ground for continuation of the instant suit *qua* the said relief. In the event, the Defendants herein do not succeed in the above-mentioned suit, the consequence would obviously be that ATS 3 would not been given effect to, in terms of Plaintiff's prayer '(e)'. Accordingly, it is clarified that the issue raised by way of prayer '(e)' will be considered as an issue in CS(OS) 258/2018 as the defence/ counter-claim of the Plaintiff, who are Defendants therein.

Conclusion

18. In view of the foregoing, this Court is unpersuaded by the Plaintiffs'

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[9] ***Dahiben v. Arvindbhai Kalyanji Bhanusali***, (2020) 7 SCC 366.

arguments mentioned above including the contention that the trial should proceed in the instant matter. Thus, on a meaningful reading of the plaint, the Court finds the suit to be vexatious, meritless, and does not disclose a clear right to sue and it a complete abuse of process of court that should be nipped in the bud. The plaint is liable to be rejected under Order VII Rule 11 of CPC.

19. In view of the foregoing, the application stands allowed in the above terms and accordingly, the plaint is rejected under Order VII Rule 11 of CPC and the pending applications are dismissed.

SANJEEV NARULA, J

DECEMBER 16, 2021
as/nd

[corrected and released on - 15th January, 2022]