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

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Date of Judgment: 23.03.2023

+ **RFA 102/2022 and CM APPL. 1961/2023 & 1963/2023**

MAYA DEVI

..... Appellant

Through: Mr. Hemant Kishor & Mr.
Sables Chandra, Advocates.

versus

MANOJ KUMAR AND ORS

..... Respondents

Through: Mr. Inder Bir Singh,
Advocate.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J. (ORAL)

1. The present Regular First Appeal under Section 96 of Civil Procedure Code, 1908 ('CPC') arises out of the Judgment and Decree dated 30.07.2021 ('**Impugned Judgment**') passed by the Principal District & Sessions Judge, South East District, Saket Courts, Delhi ('Trial Court') in CS No. 202/2019, titled as '*Manoj Kumar & Ors. Vs Smt. Maya Devi.*'
2. Vide the Impugned Judgment, the learned Trial Court allowed the Suit for specific performance filed by the Respondents (Original Plaintiffs) and directed the Appellant (original Defendant) to execute a sale deed in favour of the Respondents with respect to ground floor shop with basement rights but

without terrace rights bearing private No. 2, internally admeasuring 7'-2" X 11'-0" (i.e. 7.3236 sq. Mtrs.), out of the property bearing MCD No. 15, Samman Bazar, Bhogal, New Delhi- 110014 along with structure standing therein and along with proportionate undivided, indivisible and impartible share of leasehold rights in the land underneath (**'Suit Property'**).

3. During the pendency of present Appeal, unfortunate demise of Appellant, Smt. Maya Devi took place on 29.03.2022. Pursuant to her demise, the Legal Heirs of Smt. Maya Devi were allowed to be substituted as Appellants vide Order dated 27.04.2022.
4. Before deciding the present Appeal on merits, it is pertinent to note here that on 25.03.2022, counsels for both the parties had submitted before this Court that they were trying to arrive at an amicable settlement whereby the Appellant would be granted about 6 months' time to vacate the Suit Property, subject to Appellant filing an undertaking to this effect before this Court. However, thereafter as stated above, the Appellant, Smt. Maya Devi expired on 29.03.2022. Then, on 20.07.2022, Ms. Goldy Goyal, learned counsel appearing for legal heirs of Appellant stated before this Court that she would be filing an undertaking to vacate the Suit Property on or before 30.09.2022. Ms. Goldy Goyal, learned counsel appearing for legal heirs of Appellant failed to file any such undertaking, but, at the time of hearing of present Appeal on 28.09.2022, she made a statement before this Court on instructions of legal heirs of Appellant that they will

vacate the Suit Property on or before 31.10.2022. On the basis of her statement, this Court disposed of the present Appeal.

5. Instead of complying with their statement made before this Court, the legal heirs of Appellant moved an Application bearing C.M. No. 1962/2023 for recalling of Order dated 28.09.2022, and an Application bearing C.M. NO. 1961/2023 for restoration of the present Appeal. It was stated that the former counsel, Ms. Goldy Goyal had made that statement before this Court without taking consent from them. It was further alleged that there was collusion between the earlier counsel Ms. Goldy Goyal, and the learned counsel appearing for Respondents. This Court, taking into account that allegations had been made against former counsel and even a complaint was filed against her before Bar Council of Delhi, recalled the Order dated 28.09.2022 vide its Order dated 21.03.2023 and accordingly, the present Appeal was also restored to its original position.
6. No notice has been issued to the Respondents neither on the present Appeal nor on any applications filed along with the Appeal. On 23.03.2023, the present Appeal was listed for hearing. With the consent of counsels appearing for both the parties, this Court heard the arguments on merits of the present Appeal.
7. The Trial Court Record is available with this Court. Learned counsel for the appellant states that the appeal may be heard today itself and no date for hearing of the appeal be fixed as

contemplated by sub-Rule 1 of Rule 11 of Order 41 of the Code of Civil Procedure.

FACTS GERMANE FOR THE ADJUDICATION OF THE PRESENT WRIT PETITION ARE AS FOLLOWS:

8. The Respondents jointly entered into an Agreement to Sell dated 19.02.2016 with Appellant with respect to Suit Property for a sale consideration of Rs. 38,00,000/-. It is the case of the Respondents that out of the total sale consideration, a sum of Rs.20,00,000/- was paid to the Appellant pursuant to the execution of Agreement to sell through 3 cheques of Rs.5,00,000/- each, one drawn by each Respondent and Rs.5,00,000/- in cash against receipt. As per Agreement to Sell dated 19.02.2016, sale deed had to be executed within a year of executing the Agreement to Sell, but since, the Appellant failed in doing the same, both the parties entered into two supplementary agreements dated February, 2017 and 05.02.2018 for extending the time of execution of sale deed. However, even after the execution of last Agreement to Sell dated 05.02.2018, the Appellant failed to execute the sale deed in favour of the Respondents, even when the Respondents were ready to make the remaining payment of sale consideration i.e. Rs. 18,00,000/-. Thereafter, it came into the knowledge of the Respondents that the Appellant was trying to sell the Suit Property to any other third person, so the Respondents instituted a suit bearing CS No. 2579/2018 seeking permanent injunction in November, 2018.

The said suit is still pending adjudication before the learned Civil Judge, South East District, Saket Court, New Delhi. Later on, the Respondents also filed a Suit bearing CS No. 202/2019, from which the present Appeal has arisen, seeking specific performance of Agreement to Sell.

9. The Appellant contested the said Suit and filed her Written Statement. It was the stand of the Appellant that she had taken a loan of Rs. 20,00,000/- (Rupees Twenty Lakhs) from the Respondents and in return as security, she had provided the Respondents with the documents of the Suit Property. She further stated that at the time of giving the loan amount, the Respondents also procured the signatures and thumb impressions of the Appellant and her son on some blank papers. It is further the claim of the Appellant that she had returned around Rs. 10-12 Lakhs to the Appellant and she had been paying the monthly payment of interest @ 2% per month to the Respondents till the time a Suit for permanent injunction, as mentioned above, was filed by the Respondents against the Appellant.
10. On the basis of pleadings of both the parties, the learned Trial Court framed the following issues for its consideration:

“i. Whether the defendant entered into an Agreement to Sell dated 19.02.2016 and supplementary agreements dated 19.02.2018 and 19.02.2019 with the plaintiffs in respect of sale of suit property i.e. Ground Floor Shop (with basement rights but without terrace rights) property bearing private no. 2 measuring 7-2" X 11'-0" (i.e. 7.3236 sq. mts) out of the property bearing MCD No. 15, Samman Bazar, Bhogal, New Delhi along with structure standing therein with fittings and fixtures for a total sale consideration of Rs.38,00,000/-? OPP

ii. Whether the plaintiffs made payment of Rs.20,00,000/- out of the total sale consideration of Rs.38,00,000/- in execution of Agreement to Sell dated 19.02.2016? OPP

iii. Whether the plaintiffs are willing and ready to perform their part of the contract by paying the balance consideration of Rs.18,00,000/-? OPP

iv. Whether the defendant is liable to execute the necessary sale deed/ conveyance documents in favour of the plaintiffs? OPP

v. Whether the plaintiffs are entitled to a decree for specific performance for execution of necessary sale deed/ conveyance documents in their favour in regard to the suit property by the defendant? OPP

vi. Relief.”

11. All the Respondents appeared as witnesses before the learned Trial Court and testified in support of their case. Respondent No.1, Mr. Manoj Kumar, examined himself as PW-2, Respondent No. 2, Mr. Vishal Goel appeared as PW-1 and Respondent No.3, Mr. Charanjeet Singh appeared as PW-3. PW-1 produced Agreement to Sell dated 19.02.2016 (Ex. PW1/2); the cash receipt dated 26.02.2016 (Ex. PW1/3); Agreement dated February, 2017 (Ex. PW1/4); Agreement dated 05.02.2018 (Ex. PW1/5); copy of legal notices dated 01.02.2017, 16.12.2017, 24.10.2018 and 28.01.2019 (Ex. PW1/6 to Ex. PW1/9); and copy of passbook of all Respondents (Mark A to C). Mr. Vinod Shankla appeared as PW-4 who was the attesting witness to the Agreement to Sell dated 19.02.2016 and also to the receipt.

12. On the other hand, the Appellant appeared as DW-1. Mr.Darshan appeared as DW-2, who is a neighbor of the

Appellant and testified to the fact that there was no Agreement to Sell between the Appellant and Respondents, rather, Appellant had taken a loan from the Respondents. Son of Appellant, Mr. Keshav appeared as DW-3, who corroborated the statement of Appellant and stated that money was taken on loan and his signatures and Appellant's signatures were taken on blank papers on which, later, Agreement to Sell was printed.

13. Pursuant to examining the evidence brought on record by the parties, the learned Trial Court decided all the issues against the Appellant. The learned Trial Court held that the Respondents had successfully proved the Agreement to Sell and supplementary agreements executed between the Appellant and the Respondents, whereas, the Appellant had failed to prove that the sum of money received by her was on account of loan. It was further held by learned Trial Court that the Respondents had proved that they had the remaining sale consideration ready with them and they were willing to fulfil their duty prescribed in Agreements to Sell. Finally, the learned Trial Court observed that the Respondents were entitled to the relief of specific performance and the Appellant was liable to execute a Sale Deed in Respondents' favour.
14. Being aggrieved by the Impugned Judgment and Decree, the Appellant has preferred the present Appeal.

ARGUMENTS ADVANCED ON BEHALF OF APPELLANT

15. Mr. Hemant Kishor, learned counsel for legal heirs of Appellant submitted that the Appellant had never executed the Agreements

to Sell dated 19.02.2016; February, 2017 and 05.02.2018 in favour of the Respondents. It was his submission that the Appellant and her family was in dire need of money, so she along with her son approached the Respondents for borrowing money on loan. The Appellant had taken Rs. 20,00,000/- on account of loan. However, the Respondents extended the loan amount only after taking the thumb impression and signatures of Appellant and her son on some blank papers. It is further submitted that the Appellant and her son had no other option so they acquiesced to the condition of the Respondents.

16. It is further the submission of Mr. Hemant Kishor, learned counsel for legal heirs of Appellant that Mr. Keshav (DW-3) had submitted in his statement that the Appellant and her son's signatures were taken on blank papers and later, agreement to sell and other documents were typed on those papers. It was further submitted that the learned counsel for Respondents had failed to give any suggestion with respect to this statement of DW-3, which indicated that they were admitting the statement made by DW-3. Learned counsel for Appellant further submitted that Mr. Vinod (PW-4), who was the only independent witness from the Respondent's side, also stated during his cross-examination that he could not tell whether the documents were made there and then or were already prepared. He did not read the documents.

17. Mr. Hemant Kishor, learned counsel for legal heirs of Appellant further argued that the Appellant had returned almost Rs. 17-18

Lakhs in cash to the Respondents till the filing of suit seeking permanent injunction.

18. It was the contention of Mr. Hemant Kishor that the actual market value of the Suit Property was Rs. 60 Lakhs at the time when allegedly the Agreement to Sell dated 19.02.2016 was executed. The said fact can be substantiated by the testimony of Mr. Darshan (DW-2), who had also stated that the market value of Suit Property at the time of agreement was more than Rs. 60 Lakhs. Thus, the learned Trial Court wrongly observed that the Appellant executed the alleged Agreements to Sell dated 19.02.2016; February, 2017 and 05.02.2018 in favour of the Respondents as why the Appellant would enter into an Agreement to Sell for a sale consideration so low than the market value.
19. It was further the averment of Mr. Hemant Kishor, learned counsel appearing for legal heirs of Appellant that the learned Trial Court failed to appreciate that the Respondents had not stated in their prayer clause that they were seeking specific performance of which agreement in particular. Thus, it was argued by learned counsel that the learned Trial Court could not have itself assumed that specific performance of Agreement to Sell dated 19.02.2016 was sought.
20. Mr. Hemant Kishor argued that the Respondents had failed to prove the Agreement dated 05.02.2018. He submitted that firstly, in the copy of the agreement which was filed in court, there was no signature of the second witness, i.e. Mr. Chandra

Prakash Goel, but, the original agreement which was shown to the Court during tendering of evidence had signatures of the second witness. Mr. Hemant Kishor submitted that this indicates that there was forgery of the signatures of second witness, i.e. Mr. Chandra Prakash Goel. Mr. Kishor further submitted that second witness to the Agreement dated 05.02.2018, i.e. Mr. Chandra Prakash Goel, was not called to the witness box by the Respondents and the first witness to the Agreement dated 05.02.2018 was son of Appellant, Mr. Keshav (DW-3), who had already denied the execution of said agreement. Thus, under these circumstances, the Respondents had failed to prove the Agreement dated 05.02.2018.

21. Lastly, it is the contention of learned counsel for legal heirs of Appellant that the learned Trial Court failed to appreciate that the Suit was barred by Order II Rule 2 of CPC since the Respondents failed to seek the relief of specific performance in the erstwhile suit seeking permanent injunction. It is his submission that the Suit was not maintainable on this ground alone.
22. With these submissions, learned counsel for the Appellant prayed for setting aside of the impugned Judgment.

ARGUMENTS ADVANCED ON BEHALF OF RESPONDENTS

23. Mr. Inder Bir Singh, learned counsel appearing for Respondents argued that the Appellant had herself admitted her signatures and her son's signatures and thumb impressions on the

Agreements to Sell dated 19.02.2016; February, 2017 and 05.02.2018. Further, they failed to prove their stand by placing any document on record that they had taken Rs. 20,00,000/- as loan amount from the Respondents. Thus, the learned Trial Court rightly observed that the Respondents were entitled to the relief of specific performance as they had successfully proved the Agreements and the fact that the Appellant had executed those agreements in favour of the Respondents.

24. It was further the argument of Mr. Inder Bir Singh that the objection of bar of Order II Rule 2 CPC was taken by the Appellant in an Application under Order VII Rule 11 of CPC filed by Appellant before learned Trial Court. The learned Trial Court had decided the said issue of bar of Order II Rule 2 CPC against the Appellant while deciding the said Application. It was argued that the said order dismissing the Application under Order VII Rule 11 CPC was not challenged by the Appellant and has not been even challenged before this Court under the present Appeal, hence, this issue cannot be now raised by the Appellant before this Court.

25. Learned counsel for Respondents stated that the conduct of the legal heirs of Appellant speaks in volume about their malicious intention of filing the present Appeal. The legal heirs of Appellant had made a statement before this Court through their counsel that they will vacate the Suit Property before 31.10.2022 but since they did not want to vacate the same, so they came up with a concocted story against their former counsel and sought

recalling of the said order. He stated that the main intention of preferring this present Appeal was that they just wanted to enjoy the possession of the Suit Property for as long as possible after receiving a huge amount of Rs. 20,00,000/- from the Respondents.

26. Mr. Inder Bir Singh concluded his short arguments by stating that the Appellant has not been able to point out any material irregularity committed by the learned Trial Court in the Impugned Judgement, so, under these circumstances, this Court cannot reverse the Impugned Judgment passed by learned Trial Court.
27. With these submissions, the learned Counsel for the Respondent had prayed for the dismissal of the present Appeal with heavy cost upon the legal heirs of Appellant keeping in mind their conduct.

LEGAL ANALYSIS

28. This Court had heard the arguments advanced by learned counsels for both the parties and perused the Judgments relied upon by the parties and relevant documents placed on record.
29. Since the Impugned Judgment and Decree assailed in the present Appeal arises from a suit seeking specific performance of agreement to sell, so it is necessary for this Court to examine evidence with respect to two issues.
30. Firstly, this Court needs to examine as to whether there was an Agreement to Sell dated 19.02.2016 executed between the parties or not. In this regard, Respondent No. 2, Mr. Vishal Goel

(PW-1) filed and proved the Agreement to Sell dated 19.02.2016 as Ex. PW-1/2. He also proved the supplementary agreements dated February, 2017 and 05.02.2018 as Ex. PW-1/4 and Ex. PW-1/5 respectively. The Respondents had paid part sale consideration amounting to Rs. 20 Lakhs to the Appellant. Out of these Rs. 20 Lakhs, Rs. 15 lakhs were given by 3 cheques of Rs. 5 Lakhs each, whereas Rs. 5 Lakhs were given in cash against a Receipt, which has also been proved by Respondent No. 2 (PW-1) as Ex. PW-1/3. The Respondents also produced the attesting witness to the Agreement to Sell dated 19.02.2016 as PW-4 before this Court, who in turn testified that the Appellant and her son had signed and put her thumb impression on the documents before him. Whereas, the Appellant had herself admitted the receipt of Rs. 20 Lakhs in her Written Statement, though, it was her case that this amount was taken as loan from the Respondents. It was also stated in her Written Statement that the Respondents took advantage of her being illiterate as they mislead her into putting her thumb impression on Agreement to Sell while stating that it was loan agreement. Anyhow, in her cross-examination, she admitted her thumb impression on Agreement to Sell dated 19.02.2016 and on the receipt. DW-3, son of Appellant (legal heir of Appellant) also admitted execution of Agreement to Sell dated 19.02.2016, Receipt and supplementary Agreements dated February, 2017 and 05.02.2018 during his cross-examination. Therefore, in opinion of this Court, learned Trial Court has rightly observed

that the Respondents had proved the Agreement to Sell dated 19.02.2016.

31. The issue which has to be considered is that whether the Respondents are entitled to the relief of specific performance. For this, except from proving the Agreement to Sell dated 19.02.2016, the Respondents had an additional duty under Section 16(c) of the Specific Relief Act, 1963, which was to prove that they were ready and willing to perform the essential terms of the Agreement to Sell which were to be performed by them. In the present case, the onus was upon the Respondents to prove that they had the financial capacity to pay the remaining sale consideration i.e. Rs. 18 Lakhs to the Appellant, which was their part of the Agreement to Sell dated 19.02.2016. In this regard, the Respondents had produced the photocopies of their bank accounts' passbooks before learned Trial Court which reflected a balance of Rs. 18 Lakhs. Thus, the Respondents had discharged their onus of proving their readiness as required by Section 16(c) of the Specific Relief Act, 1963. Learned Trial Court committed no error when it observed that the Respondents were ready and willing to execute their part of the Agreement to Sell dated 19.02.2016. Under these circumstances, learned Trial Court rightly decreed the suit in favour of the Respondents and against the Appellant vide the Impugned Judgment and Decree.
32. It is the contention of the legal heirs of Appellant that Appellant had taken Rs. 20 Lakhs as loan from the Respondents and the Appellant's thumb impressions were taken on blank papers.

However, the Appellant did not produce any evidence in support of her averment that she had taken Rs. 20 Lakhs as loan, neither she had been able to prove that she had returned the loan amount to the Respondents. Therefore, her contention that she had put her thumb impressions on blank papers was rightly rejected by the learned Trial Court as it seems to be nothing but a false and concocted story. Anyhow, the Appellant and her son, both admitted during their cross-examination that Appellant had executed the Agreement to Sell dated 19.02.2016 and supplementary agreements dated February, 2017 and 05.02.2018. It is the opinion of this Court that the rest of the contentions raised by the Appellant need no consideration when the Appellant and her son (DW-3) themselves admitted the Agreement to Sell and supplementary agreements. Further, basic requirements necessary to be proved for relief of specific performance have also been already proved by Respondents. Nevertheless, the rest of the contentions raised by the Appellant during the hearing of the present Appeal were based on technical and procedural grounds which cannot fail the case of the Respondents.

33. It is further the contention of the learned counsel for the Respondent that the present suit is barred by Order II Rule 2 CPC since the Respondents failed to seek the relief of specific performance in the erstwhile suit seeking permanent injunction. In this regard, this Court noticed that the learned Trial Court, vide order dated 07.08.2019, decided this issue against the

Appellant. The relevant portions of the said order dated 07.08.2019, reads, inter alia. As follows:

“The earlier suit that was filed was in regard to permanent injunction filed by the plaintiff to restrain the defendants from dispossession. The present suit is for specific performance of an Agreement to Sell. The suit may be between the same parties and it may be involving the same property but the cause of action as well as the relief that has been claimed is absolutely different. Moreover, it has been submitted by the learned counsel for plaintiff that the right to file a suit for specific performance had not accrued at the time when injunction suit was filed. The present application is frivolous and is hereby dismissed.”

34.This Court is in agreement with the reasons as expressed by the learned Trial Court. The present suit is filed by the Respondent for the specific performance whereas the earlier one was for permanent injunction. The cause of action and relief sought in both the suits are different. Hence the learned Trial Court has rightly concluded in the order dated 07.08.2019 that the present suit is not barred by Order 2 Rule II CPC.

35.It is also pertinent to note here the conduct of legal heirs of the Appellant. As stated hereinbefore, the legal heirs of Appellant had moved an Application for recalling of Order dated 28.09.2022 and for restoring of present Appeal on the ground that learned counsel appearing for legal heirs of Appellant, Ms. Goldy Goyal had made the statement without taking consent from them after demise of Appellant. Legal heirs of Appellant also filed a complaint against this conduct of their former counsel before the Bar Council of Delhi. A perusal of order sheets in present Appeal shows that Ms. Goldy Goyal was representing

legal heirs of Appellant and she had sought adjournment from this Court on several hearings after impleadment of legal heirs of Appellant in present Appeal on account of furnishing undertaking on behalf of legal heirs with respect to vacating the Suit Property. Thus, the ground raised by legal heirs of Appellant that she did not have consent of legal heirs of Appellant was frivolous. However, anyhow, this Court granted an opportunity to legal heirs of Appellant to contest the present Appeal on merits, but this Court condemns the act of filing a vexatious complaint against the former counsel before the Bar Council of Delhi for their own mala fide reasons. This Court takes notice of the fact that despite making statement before this Court that they would vacate the Suit Property on or before 31.10.2022, but they did not. This conduct of legal heirs of Appellant is reflective of their mala fide intention of usurping the amount of Rs. 20 Lakhs already paid to them by Respondents and not to hand over the possession of Suit Property. This also indicates that they were neither intending to hand over the possession of Suit Property nor willing to execute a sale deed in favour of the Respondents with respect to Suit Property.

36. As discussed hereinabove in detail, the Appellant has not been able to show any material irregularity in the Impugned Judgment and Decree passed by the learned Trial Court. Further, as stated above, in opinion of this Court, the learned Trial Court has rightly allowed the suit for specific performance of the

Respondents and rightly directed the Appellant to execute a sale deed in favour of Respondents with respect to Suit Property.

37. Appeal is accordingly dismissed. No order as to costs. All pending applications stand disposed of.

GAURANG KANTH, J.

MARCH 23, 2023

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