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

***Date of Decision: 18th February, 2022***

\+ **C.R.P. 7/2020 & CM APPL. 1959/2020**

MANOHAR LAL MUNIYAL ..... Petitioner
Through: Mr. Kailash Pandey & Mr. Ranjeet Singh, Advocates. (M:9811107711)

versus

SHYAM LATA ..... Respondent
Through: None.

6 AND

\+ **C.R.P. 8/2020**

SANJAY MUNIYAL & ANR ..... Petitioners
Through: Mr. Kailash Pandey & Mr. Ranjeet Singh, Advocates.

versus

SHYAM LATA ..... Respondent
Through: None.

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through video conferencing.

2. These two revision petitions arise out of the impugned order dated 18th October, 2019 in ***CS No.889/18 & 890/18*** titled ***Shyam Lata v. Sanjay Muniyal & Anr.***, by which the applications under Order VII Rule 11 CPC filed by the Petitioners/Defendants (*hereinafter "Defendants"*) were rejected by the Trial Court.

3. Notably, in these petitions, notice was issued on 20th January, 2020 when the proceedings before the Trial Court were stayed. Thereafter, the

Respondent-Plaintiff, Ms. Shyam Lata (*hereinafter "Plaintiff"*) has been served and on the said date the Plaintiff was duly represented before this Court, however, thereafter she stopped appearing. On the previous date, i.e., 3rd December, 2021, this Court had directed the Trial Court to serve the Plaintiff in the suits through the Trial Court. However, it is informed by the ld. counsel for the Defendants, that on 8th January, 2022, before the Trial Court also, the Plaintiff did not appear. Therefore, the Plaintiff has not appeared in these petitions despite repeated opportunities. This Court has proceeded to hear the matter today and the Defendants have made their submissions.

4. These suits were filed by the Plaintiff, Ms. Shyam Lata, seeking declaration of the sale deeds dated 29th August, 2013 as null and void and cancellation of the said sale deeds as also injunction in respect of the flats situated on the Upper Ground Floor rear side (in ***C.R.P. 7/2020***) and First Floor rear side (in ***C.R.P. 8/2020***), both in the property No. RZ - E - 53, out of Khasra No. 34/9, situated in the area of Village Dabri, Delhi state, colony known as West Sagar Pur, New Delhi - 110046, measuring 100 Sq. Yards (*hereinafter "suit properties"*).

5. The case of the Plaintiff in the suits is that the Plaintiff went to the Registrar's Office with the Defendants, for execution of an agreement to sell in respect of the suit properties. The Plaintiff claimed that she was an illiterate woman and the Defendants misused the personal relationship they had with the Plaintiff. The Defendant without paying the due consideration, got sale deeds executed between the Plaintiff and Defendants, as opposed to an agreement to sell which was the document that ought to have been executed.

6. Hence, the prayer which was sought in the suits was as under:

> *"a) Pass a Decree thereby declaring the sale deed dated 29.08.2013 as null and void and cancel the sale deed as void ab initio.*
>
> *b) Restrain the defendant from sale, alienating, letting or creating third party interest in the suit property.*
>
> *c) Any other further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

7. In the written statement filed before the Trial Court, the Defendants took two pleas. Firstly, that the sale deeds are registered sale deeds and no cancellation can be sought in this manner and secondly, the suits are barred by limitation. The Defendants further pleaded that the suits are false suits and the Plaintiff has followed a similar *modus operandi* in respect of four other flats which she has sold and she is in the habit of instituting such suits in respect of various other properties as well.

8. An application under Order VII Rule 11 CPC, for rejection of plaint, taking the said pleas was also filed by the Defendants.

9. Vide the impugned order dated 18th October, 2019, the Trial Court has held that the suits would not be liable to be dismissed in view of the following:

(i) It was specifically pleaded by the Plaintiff that on 3rd October, 2015, the Defendants visited the suit property claiming to be the owners which was objected to by the Plaintiff and police had to be involved. The Trial Court held that the Defendants had only vaguely dealt with this incident in their written statement.

(ii) A compromise letter dated 3rd October, 2015, and signed by the Plaintiff before the SHO, Sagarpur Police Station, Delhi-110046, pursuant to the aforementioned incident, was filed by the Defendants with their written statement. The Trial Court has held that it would not comment on the said letter and has said that the letter only proves that the incident on 3rd October, 2015 took place and that possession was handed over of the suit properties by the Plaintiff to the Defendants then. This was filed by the Plaintiff before the Police, but has been denied by the Plaintiff. Therefore, the Trial Court accepted the Plaintiff's contention that the cause of action arose from this date of 3rd October, 2015.

10. Therefore, the Trial Court held that only the Plaintiff's averments could be looked into in an application under Order VII Rule 11 CPC, and in the above view of the facts, there was no ground to allow the applications. Hence the present revision petitions.

11. Today, ld. counsel for the Defendants assailing the impugned order, submits that the suits are barred by limitation. The registered sale deeds were executed on 29th August, 2013 and the suits were filed on 13th September, 2018. Therefore, the limitation period for filing the suits expired on 28th August, 2016 in view of Section 3 of the Limitation Act, 1963 (*hereinafter "Limitation Act"*) read with Articles 58 and 59 of the Schedule to the same.

12. Secondly, ld. counsel for the Defendants relies on the documents i.e., the letter dated 3rd October, 2015, before the SHO, Sagarpur, wherein the Plaintiff has clearly stated that she is handing over the possession of the suit properties to the Defendants.

13. In these two petitions, ld. counsel for the Defendants also relies upon the judgment of the Supreme Court in ***Dahiben v. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366*** to submit that the Plaintiff cannot casually state that a registered sale deed has been falsely executed and seek cancellation of the same, even if the complete sale consideration has not been paid.

14. Heard and perused the record. The present two suits relate to the suit properties as described above. At the outset, a perusal of the sale deeds shows that the sale deeds are registered with the Sub Registrar, Kapashera. The sale deeds dated 29th August, 2013, executed by the Plaintiff, Smt. Shyam Lata, in favour of the Defendants, clearly mention the suit properties. They also mention at paragraph 1, that the sale consideration of Rs.13,00,000/- each, has been received by the Plaintiff. In paragraph 3, the sale deeds mention that the ownership rights, title, interests and peaceful physical vacant possession has been delivered to the vendee for occupying the same.

15. Therefore, it is clear that these sale deeds being registered documents, are admissible as evidence under Sections 17 and 48 of the Registration Act, 1908 (*hereinafter "Registration Act")* read with the *proviso* to Section 68 of the Indian Evidence Act, 1872 (*hereinafter "Evidence Act"*) and cannot be lightly denied by the parties executing the same.

16. Therefore, it is clear that registered documents have sanctity in law and are admissible as evidence. This was also held by the Supreme Court in ***Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana (2012) 1 SCC 656***. Elaborating upon the importance of registered sale deeds, the Court held as under:

*"Advantages of Registration*
*10. In the earlier order dated 15.5.2009, the objects and benefits of registration were explained and we extract them for ready reference:*

> *"The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.*
>
> *Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs. 100 and upwards to or in immovable property.*
>
> *Section 49 of the said Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affected such property, unless it has been registered. Registration of a document gives notice to the world that such a document has been executed. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal*

> *with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified."*
> *Registration of documents makes the process of verification and certification of title easier and simpler. It reduces disputes and litigations to a large extent."*

17. In so far as the plea of limitation is concerned, the cause of action accrued to the Plaintiff on 29th August, 2013 and the period of limitation of three years as prescribed under Section 3 of the Limitation Act read with Articles 58 and 59 of the Schedule to the same had expired by the date of filing of the suit, i.e., 13th September, 2018. Moreover, the incident which appears to have been taken place on 3rd October, 2015 is not one which would create any fresh cause of action to the Plaintiff in as much as the possession was recorded in the sale deeds as having been handed over. The

relevant extract of the said letter dated 3rd October, 2015 given before the police authorities reads as under:

> *"मैं (श्यामलता गुप्ता) ने Plot No.-RZ E-53 मार्केट से back side के upper ground floor और XXX floor Sh. Sanjay Muniyal and Sh. Manohar Muniyal r/o 110 Shakti Vihar Ph-1, Majra Uttarakhand में रहते हैं। इन्को दोनो handover कर रही हूं व आज के बाद इस फ्लैट से मेरा कोई लेना देना नहीं है। XX Sanjay Muniyal और Manohar Muniyal XXX बेचे थे। वर्तमान में मेरी आयु 50 वर्ष है। XXX विरुद्ध प्रर्कण में कोई भी कानूनौ अमल में लाई जाए।"*

18. It is not in dispute that the Defendants are currently in possession of the suit properties. The Plaintiff has stated clearly in the letter above, on which the signature is not in dispute, that she would have nothing to do with the suit properties after the said date. The Plaintiff's case is that she gave possession when the incident took place in 2015. However, the sale deeds clearly state the contrary. The sale deeds being registered, this Court is of the opinion that the Plaintiff's stand is not liable to be accepted. Under such circumstances, relying upon the incident of 3rd October, 2015, the application under Order VII Rule 11 CPC could not have been dismissed.

19. In so far as the contention of the Plaintiff is concerned that the sale deeds may be cancelled since sale consideration has not been paid, Section 55(4)(b) of the Transfer of Property Act, 1882 (*hereinafter "TPA"*) is relevant and reads as under:

> *"55. Rights and liabilities of buyer and seller.—In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of*

> *them as are applicable to the property sold:—*
> *XXX*
> *(4) The seller is entitled—*
> *(a) to the rents and profits of the property till the ownership thereof passes to the buyer;*
> *(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, <u>or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered</u>."*

20. Therefore, even if the complete sale consideration is not paid, the seller is only entitled to a charge on the property to the extent of the said amount, but the sale does not become invalid. This was confirmed by the Supreme Court in ***Vidyadhar v. Manikrao & Anr., (1999) 3 SCC 573***.

21. This is the settled position of law, as is also clear from a reading of the judgment in ***Dahiben (supra),*** where the facts were very similar and the Supreme Court upheld the sanctity of a registered sale deed, even on non-receipt of sale consideration. The Supreme Court also held that the filing the suit after 5 years of execution of the sale deeds would lead to the suit being barred by limitation. The relevant extract of the said judgment is as below:

> *"In Vidyadhar v. Manikrao & Anr.14 this Court held that the words "price paid or promised or part paid and part promised" indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the*

*transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.*

*<u>In view of the law laid down by this Court, 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 not be a ground for cancellation of the Sale Deed.</u>*

*<u>The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed.</u>*

*We find that the suit filed by the Plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order VII Rule 11 (a).*

*XXX*

*15.8 The delay of over 5 and ½ years after the alleged cause of action arose in 2009, shows that the suit was clearly barred by limitation as per Article 59 of the Limitation Act, 1963. The suit was instituted on 15.12.2014, even though the alleged cause of action arose in 2009, when the last cheque was delivered to the Plaintiffs.*

*The Plaintiffs have failed to discharge the onus of proof that the suit was filed within the period of limitation. The plaint is therefore, liable to be rejected under Order VII Rule 11 (d) of CPC."*

22. In view of the well-settled position of law elaborated above, the

registered sale deeds have recognition and cannot be set aside in the manner as has been sought by the Plaintiff. The sale deeds are binding between the parties and cancellation of the sale deeds would not be liable to be granted even on the grounds stated in the plaint, i.e., non receipt of the consideration. In any event, the incident on 3rd October, 2015 did not constitute any fresh cause of action, as the same has been completely misrepresented in the plaint. Clearly, the Plaintiff was aware that the sale deeds were executed on 29th August, 2013. The suits were filed only on 13th September 2018. Therefore, the suits would anyway clearly not be maintainable in law, having been filed beyond the period of limitation.

23. The Plaintiff having not entered appearance in these matters, to counter the submissions made on behalf of the Defendants, as also the delay in filing the suits and the settled legal position that the registered sale deeds cannot be cancelled in the manner as is being sought by the Plaintiff, the suits would not be maintainable under the provisions of Order VII Rule 11 CPC.

24. For these reasons, the suits are liable to be rejected under Order VII Rule 11 CPC.

25. The petitions are allowed in above terms and are disposed of, along with all pending applications.

**PRATHIBA M. SINGH**
**JUDGE**

**FEBRUARY 18, 2022**/*Aman/ms*
*(corrected & printed on 21st February, 2022)*