



2024:DHC:10179



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

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Pronounced on: 24th December, 2024

+

CS(OS) No.1279/2010

1. **Kailash Aggarwal**
S/o Late C.L. Aggarwal
2. **Vijay Aggarwal**
S/o Late C.L. Aggarwal

Both Resident of :
1533-G, Wazir Nagar,
Kotla Mubarakpur,
New Delhi.

Also at:
A-16, Niti Bagh, New Delhi.

..... Plaintiffs

Through: Mr. Sachin Chopra, Mr. Kamal
Bansal, Ms. Astha Gupta & Ms.
Monika Verma, Advocates.

versus

1. **Chandan Ramamurthi**
W/o Late Shri M.K. Ramamurthi
R/o A-16, Niti Bagh,
New Delhi-110049.
2. **Alamelu Ramamurthi**
D/o Late Shri M.K. Ramamurthi
R/o A-16, Niti Bagh,
New Delhi-110049.
3. **Shyamala Pappu**

Signature Not Verified

Digitally Signed By: NIKAS
ARORA

Signing Date: 16.01.2025
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R/o Flat No.11/A, 11th Floor,
Sagar Apartments, Tilak Marg,
New Delhi-110001.

4. **Vivek Ramapurthi**
S/o Late Shri M.K. Ramamurthi
Through his Attorney
M.R. Krishnamurthi
S/o Late Shri M.K. Ramamurthi,
R/o A-11, Sagar Apartments,
Tilak Marg, New Delhi.

5. **M.R. Krishnamurthi**
S/o Late Shri M.K. Ramaruthi
R/o A-11, Sagar Apartments,
Tilak Marg, New Delhi.

.....Defendants

Through: Mr. Rajiv Kumar Ghawana & Mr.
Neelaksh Sharma, Advocates for D-1.
Mr. Raman Kapur, Sr. Advocate with
Mr. Varun Kapur, Advocate for D-2.

AND

+ **CS(OS) No.1992/2013 & I.As. 21195/2013, 25631/2014,
25632/2014, 12764/2015, 10226/2018, 2229/2021, 2230/2021**

1. **Chandan Ramamurthi**
W/o Late Shri M.K. Ramamurthi
R/o A-16, Niti Bagh,
New Delhi-110049.
2. **Dr. Alamelu Ramamurthi**
D/o Late Shri M.K. Ramamurthi
R/o A-16, Niti Bagh,
New Delhi-110049.



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..... Plaintiffs

Through: Mr. Rajiv Kumar Ghawana & Mr. Neelaksh Sharma, Advocates for P-1.
Mr. Raman Kapur, Sr. Advocate with
Mr. Varun Kapur, Advocate for P-2.

versus

1. **Sh. M.R. Krishnamurthi**
R/o Flat No.11/A, 11th Floor,
Sagar Apartments, Tilak Marg,
New Delhi-110001.
2. **Shyamala Pappu (Dead) Through Lr. M.R. Krishnamurthi**
R/o Flat No.11/A, 11th Floor,
Sagar Apartments, Tilak Marg,
New Delhi-110001.
3. **Kailash Aggarwal**
S/o Late C.L. Aggarwal
1533-G, Wazir Nagar Kotla
Mubarakpur,
New Delhi-110003.
4. **Vijay Aggarwal**
S/o Late C.L. Aggarwal
1533-G, Wazir Nagar Kotla,
Mubarakpur,
New Delhi-110003.

.....Defendants

Through: Mr. Sachin Chopra, Mr. Kamal Bansal, Ms. Astha Gupta & Ms. Monika Verma, Advocates for D-3 & 4.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

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J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. *Suit No. CS(OS) 1279/2010: Suit for Specific Performance of Agreement to Sell dated 14.10.2009 and Permanent Injunction* in respect of premises bearing No. A-16, Niti Bagh, New Delhi (*hereinafter referred to as "Suit Property"*) has been filed by the Plaintiffs, Sh. Kailash Aggarwal and Vijay Aggarwal [Defendants in CS(OS) 1992/2013 and shall be henceforth referred as Plaintiffs for convenience].
2. *Suit No. CS(OS) No.1992/2013: has been filed by the Defendant Nos.1 & 2, Smt. Chandan Ramamurthi and Dr. Alamelu Ramamurthi [Plaintiff in CS (OS) 1992/2013 and for convenience shall henceforth be referred as Defendants] to seek Declaration* of the Settlement Deed dated 13.11.2009 as not binding on the Defendants and that the Receipts dated 11.11.2009, 12.11.2009 and 13.11.2009 executed by the Plaintiffs, are null and void.
3. *The factual background of the two cases is* that Sh. M.K. Ramamurthi, husband of Defendant No.1, Smt. Chandan Ramamurthi and father of Defendant No.2, Dr. Alamelu Ramamurthi, was the owner of the Suit Property. They have been residing in the property in question for the last 25 years.
4. During his lifetime, Sh. M.K. Ramamurthi filed a *Civil Suit No.1970/1986* in this Court for eviction against Shyamala Pappu [Defendant No.3 in CS (OS) 1279/2010 and Defendant No.2 in CS (OS) 1992/2013],



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who was in joint law practice with him and was occupying Ground Floor of the property in question.

5. The parties compromised the matter and a Compromise Decree dated 30.01.1987 was passed which permitted Shyamala Pappu to occupy the Ground Floor during the lifetime of Sh. M.K Ramamurthi, the acknowledged absolute owner of the property in question. Clause 7 of the Decree recorded that after the life time of Sh. M.K. Ramamurthi, the Ground Floor shall be occupied by his sons - Sh. Vivek Ramamurthi and Sh. M.R. Krishnamurthi, [Defendant No.5 in CS (OS) 1279/2010, Defendant No.1 in CS (OS) 1992/2013], who is the son of Dr. Shyamala Pappu. The First Floor and the entire Garage Block was agreed to be occupied by Defendant Nos.1 & 2 jointly, i.e. Sh. M.K. Ramamurthi's wife and daughter. Further provisions were made regarding occupation of different portions of the house by his legal heirs, which was agreed to be not changeable by any Testamentary or Non-Testamentary disposition.

6. Sh. M.K. Ramamurthi executed a registered Will dated 07.05.1990 incorporating the terms of the Decree dated 30.01.1987 and **bequeathed the property in question to his heirs i.e.** wife, Smt. Chandan Ramamurthi and the daughter, Alamelu Ramamurthi, and the sons Vivek Ramamurthi and M.R. Krishnamurthi, in the same terms.

7. The attesting witness to the Will were two *Advocates on Record* of the Supreme Court. The registered Will was deposited by him in safe custody of Sh. Dadchandji, the renowned Solicitor.

8. After the demise of Sh. M.K. Ramamurthi on 26.04.1993, Defendant No.1/Chandan Ramamurthi filed a *Probate Case No.26/1993* in this Court.



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The Defendant No.2 was 7 years old at the time of death of her father, Sh. M.K. Ramamurthi. Sh. M.R. Krishnamurthi and Smt. Shyamala Pappu [Defendant Nos.1 & 2 (in CS (OS) 1992/2013)] contested the Probate proceedings since they were not satisfied with the share given to them under the Will.

9. Sh. M.R. Krishnamurthi also filed *Probate Case No.36/1993* on the basis of another Will dated 30.12.1992. Also, a *Civil Suit No.731/1994* for *Declaration* was filed by Sh. M.R. Krishnamurthi.

10. Defendants Nos.1 & 2 have asserted that Smt. Shyamala Pappu never had **any right** in the property in question, in terms of Decree dated 30.01.1987. She was also not bequeathed any share in the property in the register Will dated 07.05.1990 of Late Sh. M.K. Ramamurthi.

11. The ***Civil Suit No.731/1994*** was filed by Shyamala Pappu and her son M.R. Krishnamurthi alleging that her son M.R. Krishnamurthi is the sole coparcener and no other legal heir of Late Sh. M.K. Ramamurthi was entitled to any right in the Suit Property. This Suit was dismissed *vide* judgment dated 03.07.2017.

12. Another Criminal Case under *Section 430 of the Indian Penal Code, 1860* was filed by Shyamala Pappu and Sh. M.R. Krishnamurthi against Defendant No.1, Smt. Chandan Ramamurthi.

13. According to Defendant Nos.1 & 2, because of the relentless and unabated fight between them and Shyamala Pappu and her son, and because Defendant No.1/Chandan Ramamurthi was in dire need of funds for higher education of her daughter i.e. Defendant No.2, they agreed to vacate the property in question, provided Shyamala Pappu and her son were willing to



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buy her share. Several offers were made by Shyamala Pappu, but she never had sufficient money to buy the share from Smt. Chandan Ramamurthi and thus, the Defendant No.1 refused to deal with Shyamala Pappu because of their past experiences.

14. According to Defendant No.1, Chandan Ramamurthi, she eventually agreed to sell her rights in the First Floor and the Garage Block of the property in question to the third party i.e. Plaintiffs Kailash Aggarwal and Vijay Aggarwal [*Defendant Nos.3 & 4 in CS (OS) 1992/2013 - Builders*] for Rs. 18 Crores and after negotiations and deduction of commission, the amount was settled at Rs.17.71 crores. Shyamala Pappu and M.R. Krishnamurthi separately negotiated with the Plaintiffs and agreed to sell their rights in the Ground Floor for Rs.8.50 crores. The Plaintiffs/builders entered into two separate Agreements in respect of the First Floor and the Ground Floor respectively with the Defendant Nos.1 & 2 and, Shyamala Pappu and M.R. Krishnamurthi.

15. It has been explained by the Defendant Nos.1 & 2 that the Plaintiffs had agreed to pay more for the share of the Defendant Nos.1 & 2, Smt. Chandan Ramamurthi and Dr. Alamelu Ramamurthi, as the area in their occupation was much larger. The Defendant Nos.1 & 2 were to be paid the entire amount after the sale and the transfer including mutation and freehold, by the Plaintiffs. However, the Plaintiffs paid only Rs.1 crores to Defendant Nos.1 & 2, i.e. Rs.60.50 lakhs to Defendant No.1 and Rs.39.50 lakhs to Defendant No.2. *Defendant No.2 bought a 500 sq. yds. agricultural plot with a dilapidated structure in Sainik Farms for a sum of Rs. 50 lakhs out of the money given by the Plaintiffs.* Thereafter, Defendant No.2 was sent for



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registration of Power of Attorney on the same day. Shyamala Pappu and M.R. Krishnamurthi, however, were paid the entire amount of Rs.8.50 crores in one instance.

16. In order to transfer the entire built-up property to the Plaintiffs, it was necessary to withdraw the pending litigation. Accordingly, for their convenience and for saving the Tax, a Settlement dated 13.09.2009 was drawn by the Plaintiffs for withdrawal of all the cases by Shyamala Pappu and M.R. Krishnamurthi, and for the transfer of their rights in the Ground Floor portion to the Builders through Defendant Nos.1 & 2. Accordingly, Shyamala Pappu and M.R. Krishnamurthi were required to execute Relinquishment Deeds in favour of Defendant No.2/ Dr. Alamelu Ramamurthi, who was then to transfer the rights in the Ground Floor portion to the Plaintiffs, after Mutation of the property in question.

17. Defendant Nos.1 & 2 have asserted that on 13.11.2009, Shyamala Pappu and M.R. Krishnamurthi colluded with the Plaintiffs, Sh. Kailash Aggarwal and Vijay Aggarwal, and Defendant Nos.1 & 2 were called to Ashoka Hotel, where the Sub-Registrar was also present. Defendant Nos.1 & 2 were made to sign the Settlement Deed dated 13.11.2009 in good faith without realizing that the Builders and Shyamala Pappu and M.R. Krishnamurthi, have colluded to perpetrate fraud by relinquishing their share in the Ground Floor in favour of Defendant No.2. Shyamala Pappu and M.R. Krishnamurthi presented the original Settlement Deed before the Sub-Registrar, but he refused to register the same by describing it as a *Family Settlement*.



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18. Sh. M.R. Krishnamurthi prepared a joint Application to withdraw the Criminal Cases which was signed by Defendant No.1. The CrI. M.C. No.1315/2010 and CrI. M.C. 1317/2010 were filed by Defendant No.1 and M.R. Krishnamurthi jointly and the Criminal cases were withdrawn. Defendant No.2 was not a party to the Criminal cases that were pending *inter se* Defendant No.1 and Smt. Shyamala Pappu and Sh. M.R. Krishnamurthi.

19. After the criminal cases were withdrawn, Shyamala Pappu and M.R. Krishnamurthi, in collusion with the Plaintiffs, started asserting that the Defendant Nos.1 & 2 have been paid out of the total agreed Sale consideration, an amount of Rs.8.50 crores through Shyamala Pappu and M.R. Krishnamurthi, which was vehemently opposed by the Plaintiffs as the said amounts had been paid only to Shyamala Pappu and M.R. Krishnamurthi, who had handed over all the documents executed by them along with the possession of the Ground Floor of the property in question. The Defendants No. 1&2 claimed that any payment made to Shyamala Pappu Group was not adjustable in the sale consideration of Rs. 17.71 Crores agreed to be paid to them by the Plaintiffs, as the transaction of Plaintiffs with Shyamala Pappu Group was absolutely independent with which they had no concern.

20. Shyamala Pappu and M.R. Krishnamurthi with malice and vengeance towards the Defendant Nos.1 & 2, colluded with the Plaintiffs and gave false Receipts dated 11.11.2009 (*Ex.PW-1/8*), 12.11.2009 (*Ex.PW-1/6,P-5*) and 13.11.2009 (*Ex.PW-1/7,P-6*), that they have received an amount of Rs.8.5 crores from the Defendant Nos.1 & 2. After creating these false Receipts, the Plaintiffs started pressurizing Defendant Nos.1 & 2 to hand over the First Floor and Garage Block of the Suit Property. They also started claiming that



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they have paid the substantial amount under the Agreement to Sell to the Defendants No.1&2 by including the amounts paid to Shyamala Pappu and M.R. Krishnamurthi, in terms of the Agreement.

21. The Defendants soon realized that they have been trapped by Shyamala Pappu and M.R. Krishnamurthi by including Clause 3 in the Settlement dated 13.11.2009 wherein it was recorded that the Plaintiffs had paid to Defendant No.3 and 5, Shyamala Pappu and M.R. Krishnamurthi the sum of *Rs.4.40 crores* by way of following five Pay Orders:

S. No.	Pay Order No.	Date	Amount (in Rs.)
1.	023331	15.10.2009	2,40,00,000/-
2.	123421	09.11.2009	1,15,00,000/-
3.	65128	09.11.2009	54,00,000/-
4	65127	09.11.2009	24,75,000/-
5	01632	09.11.2009	6,25,000/-
Total			4,40,00,000/-

22. The Defendant Nos.1 & 2 have claimed that neither this money was credited in their account nor was it paid to them by Shyamala Pappu and M.R. Krishnamurthi, and that the Settlement dated 13.11.2009 was mischievous, in order to perpetrate fraud on the Defendants.

23. It is further explained by Defendants Nos.1 & 2, that in addition to the aforesaid amount of *Rs.4.40 crores* in cheque, *Rs.4.10 crore* was taken in cash by Shyamala Pappu Group from the Plaintiffs for which false receipts dated 11.09.2009, 12.11.2009 and 13.11.2009 were given by the Plaintiff in the name of Defendant Nos.1 & 2, even though the money was directly taken by Shyamala Pappu and M.R. Krishnamurthi from the Plaintiffs while



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handing over the possession along with the documents of the Ground Floor to them.

24. While Shyamala Pappu and M.R. Krishnamurthi admitted that the money has been paid by the Plaintiffs, but claimed it to be on behalf of the Defendants No.1&2 despite the fact that there was no Agreement whatsoever between the Defendants No.1&2 and Shyamala Pappu. In fact, the Defendants No.1&2 had to pay to Shyamala Pappu Group for alleged rights of ownership in the Ground Floor portion of the property in question, which was required to be ultimately transferred to the Plaintiffs.

25. The Defendants Nos.1 & 2 have asserted that the Relinquishment Deed allegedly executed in the name of Defendant No.2 was on payment of money which not only invalid, but was executed to perpetrate fraud on them. They neither claimed nor were the owners of the Ground Floor nor purchased any ownership rights therein.

26. The alleged Settlement dated 13.11.2009 was presented to DDA for mutation of the property in question, but it was declined to be mutated in the name of Defendants as according to DDA, the alleged Settlement dated 13.11.2009 was not a Family Settlement, but a Sale Deed on payment of money. DDA further raised questions about the validity of the Relinquishment Deed as there was no blood relation between Defendant No.2, and Shyamala Pappu and M.R. Krishnamurthi. Question was also raised about the status of Shyamala Pappu as not being a legatee under the registered Will of Sh. M.K. Ramamurthi as she claimed to have purchased the share of the other legatee, Sh. Vivek Ramamurthi.



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27. The Defendant Nos.1 & 2, have claimed that since Shyamala Pappu and M.R. Krishnamurthi did not act upon the Settlement Deed dated 13.11.2009 and give money to them, the Settlement is redundant and serves no purpose. The withdrawal of criminal cases between the parties, was objected when the Plaintiffs started asserting that they have paid Shyamala Pappu and M.R. Krishnamurthi, Rs.8.50 crores for and on behalf of Defendants. Defendant No.1 did not withdraw the Probate Case, nor did Shyamala Pappu and M.R. Krishnamurthi, file the alleged original Settlement in the Probate proceedings No.26/1993 which have been consigned *sine die*.

28. ***In July, 2010, the Plaintiffs filed a Civil Suit No.1279/2010 for Specific Performance*** of Agreement to Sell dated 14.10.2009 against the Defendants Nos.1 & 2 only (Smt. Chandan Ramamurthi and Dr. Alamelu Ramamurthi), wherein they have falsely claimed to have made substantial payment of the sale consideration to Defendants under the Agreement by asserting that part Sale consideration of Rs.8.50 crores has been paid to them through Shyamala Pappu and M.R. Krishnamurthi.

29. It is asserted that the Suit has been filed on the basis of false Receipts and the Settlement Deed dated 13.11.2009, wherein a false statement of payment of Rs.4.40 crores to Defendant Nos.1 & 2, is incorporated. Further, the alleged Settlement dated 13.11.2009 is not acceptable to Defendants Nos.1 & 2 on account of the fraud perpetrated by the Plaintiffs on them. Moreover, the documents that were executed by Shyamala Pappu and M.R. Krishnamurthi are meaningless in law and have been rightly rejected by



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DDA. Hence, the suit has been filed by the Defendants for declaring the Settlement dated 13.11.2009 and the three Money Receipts, as null and void.

30. ***The Defendants Sh. M.R. Krishnamurthi and Shyamala Pappu in their Written Statement in CS (OS) 1992/2013 [Defendants No. 5 and 3 in CS (OS) 1279/2010]*** took the *preliminary objections* that the Declaration in regard to Memorandum of Family Settlement dated 13.11.2009 is sought by the Defendant Nos.1 & 2 by concealing material documents, and pleadings in the various Civil and the Criminal Litigations.

31. It is asserted that diametrically opposite stand has been taken by Defendants Nos.1 & 2 in their Suit which is in contradiction to the averments made in the various pleadings wherein the Memorandum of Family Settlement dated 13.11.2009 has either been relied or has been pressed on the basis of which the Orders have been made by the various Courts. No challenge to the Family Settlement has never been preferred by Defendants Nos.1 & 2 who are now estopped from seeking the Declaration after five years of its execution.

32. ***Shyamala Pappu and M.R. Krishnamurthi have further stated in their Written Statement*** that admittedly, Suit Property in question was jointly held by the parties wherein the Shyamala Pappu and M.R. Krishnamurthi were occupying the Ground Floor, while the Defendants Nos.1 & 2 were in possession of the First Floor of the property in question. Shyamala Pappu and M.R. Krishnamurthi had surrendered the Ground Floor portion in which they were in possession, to the Defendants No.1 & 2 under the Memorandum of Family Settlement dated 13.11.2009 and the accompanying Relinquishment Deeds. There is no document even remotely



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showing the induction of the Defendant Nos.1 & 2 in the Ground Floor and the induction of Plaintiffs - Sh. Kailash Aggarwal and Vijay Aggarwal, has never been assailed by the Defendants Nos.1 & 2.

33. **Further** objections have been taken that the Suit is *barred by limitation*. It is also asserted that *no cause of action is disclosed* against Shyamala Pappu and the Suit against her, merits rejection *in limine*.

34. **On merits**, it is admitted that the Probate cases filed by Defendants, and Shyamala Pappu and M.R. Krishnamurthi respectively, have been disposed of by the Order dated 25.05.2012. All the averments made in the two Suits, are denied.

35. **The Plaintiffs Sh. Kailash Aggarwal and Sh. Vijay Aggarwal, [in CS (OS) No.1279/2010 and Defendant Nos.3 & 4 in CS (OS) 1992/2013] - in their Plaint and Written Statement** respectively have taken the *preliminary objections* that Defendants Nos.1 & 2 have maliciously sought the Declaration in regard to the Memorandum of Settlement dated 13.11.2009 and the three Receipts issued by Shyamala Pappu and M.R. Krishnamurthi for the payment received from them through Defendant Nos.1 & 2 Smt. Chandan Krishnamurthi and Dr. Alamelu Ramamurthi. The Memorandum of Settlement has been duly acted upon by the parties and the Defendants No1&2 are estopped from challenging the same.

36. The *Civil Suit No. CS (OS) 1992/2013*, is claimed to be *barred by limitation* as the Defendants admit that they became aware of the contents of Memorandum of Settlement and the Receipts at the time of seeking quashing of the FIR No.124/1995 P.S. Defence Colony, FIR No.249/2006 P.S. Tilak Marg and FIR No.286/2005 P.S. Tilak Marg, which were quashed on the



basis of the Settlement *vide* Order dated 26.04.2010 by this Court. Moreover, the contents of the Memorandum of Settlement were also within the knowledge of the Defendants when the mutation of the property in question was sought in their favour, on the basis of the said documents. Further, the Defendants were also aware of the contents of Memorandum of Settlement and the Receipts when they were served with the summons of CS (OS) 1279/2010 in which they filed their respective Written Statements.

37. Furthermore, Defendant No.1 filed her Affidavit of Evidence in CS (OS) No.1279/2010, wherein she alleged that on 13.11.2009 the Sub-Registrar did not register the Memorandum of Settlement because of the alleged forgery. The Suit for Declaration is filed after three years of there execution about which they had the knowledge and thus, *the Suit is barred by limitation.*

38. *No cause of action* is claimed to have accrued in favour of the Defendants and against the Plaintiffs. Both, the Defendant No.1 who is an Advocate and Defendant No.2 who is a Doctor are educated, literate and well conversant with English language. Nowhere in their Complaint have they alleged that the Memorandum of Settlement does not bear their respective signatures. They also do not deny that this Memorandum of Settlement had been acted upon by the parties. The alleged grievance of the Defendants, is imaginary in order to create alleged cause of action. The two Probate Cases had been disposed of on the basis of this Settlement.

39. Dishonestly, the Defendant Nos.1 & 2 filed *Application I.A. 16848/20012 under Section 151 of the Code of Civil Procedure, 1908* to recall the Order dated 25.05.2012. Shyamala Pappu and M.R. Krishnamurthi



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on coming to know about this Application seeking revival of the Test Case No.26/1993, filed an I.A N0.25612/2014 under *Order I Rule 10 of the Code of Civil Procedure, 1908* to be impleaded as a party. This Application for revival got dismissed on 17.11.2016. Consequently, the Application filed for impleadment by Shyamala Pappu and M.R. Krishnamurthi, was also dismissed as infructuous.

40. The *Review Petition No.43/2017* filed by the Defendants against this Order of 17.11.2016, was also dismissed on 07.02.2017. Defendants Nos.1 & 2 then tried their luck by filing an *FAO (OS) No.83/2017*, but it also got dismissed on 23.08.2017.

41. It is claimed that the Defendants have been filing frivolous cases in order to avoid the legitimate claim of the Plaintiffs to seek Specific Performance of Agreement to Sell dated 14.10.2009 which has admittedly been executed by the Defendants Nos.1 & 2 in their favour for a total consideration of Rs.17.71 crores for sale of the entire property in question.

42. Plaintiffs have asserted that since 14.10.2009, the Defendant No.1 has been taking undue advantage of her status as an Advocate for her unjust enrichment by dragging the Plaintiffs into litigation.

43. It is claimed that the Defendants have been taking contradictory stands in different litigation. CS (OS) 1992/2013 seeking Declaration, even though they are barred by estoppel as they have already acted upon the Memorandum of Settlement dated 13.11.2009. Moreover, the Suit of the Defendants is barred under *Section 34 of the Specific Relief Act, 1963*.

44. The Plaintiffs have explained the entire sequence of the transaction leading to execution of Agreement to Sell. They have stated that in or around



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first week of September 2009, Mr. Sunil Ralli, a property dealer, had informed the Plaintiffs about the availability of property in question for sale and also informed that the property in question was in litigation wherein the Probate cases had been filed and that both the parties are willing to settle their disputes amicably in case a good buyer is interested in the sale of the entire property.

45. Consequently, they had a meeting in the second week of September, 2009, wherein it was affirmed that Defendant No.1/Smt. Chandan Ramamurthi, was the wife of Late Sh. M.K. Ramamurthi, who was the registered owner of the property in question and was in occupation of the First Floor along with the defined areas, while Shyamala Pappu along with her son Sh. M.R. Krishnamurthi, were in occupation of the entire Ground Floor of the property in question and was claiming herself to be the first wife of Sh. M.K. Ramamurthi. The various meetings were held between the parties to work out the modalities of sale/transfer of the property in question.

46. The Defendants Nos.1 & 2 and the '*Shyamala Pappu Group*' (comprising of Shyamala Pappu, M.R. Krishnamurthi and Vivek Ramamurthi) arrived at an *Oral Family Settlement* on the following terms:

- (i) *that the Shyamala Group would sell their right in the ground floor of the property in question to the Plaintiffs, who shall become the absolute owner of the suit property;*
- (ii) *that the Defendants (Smt. Chandan Ramamurthi and Dr. Alamelu) would then sell the entire Suit Property to the Plaintiffs (Sh. Kailash and Vijay Aggarwal);*



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(iii) *that the Shyamala Pappu Group would withdraw all their claims, rights and entitlements qua the property in question and execute appropriate documents such as Relinquishment Deeds, etc. in favour of the Defendants Nos.1 & 2 subject to receiving of Rs.8.50 crores.*

47. The Defendants Nos.1 & 2 thus, agreed to sell the entire property in question together with the superstructure for a total sale consideration of Rs.17.71 crores to the Plaintiffs. It was agreed that out of this sale consideration, the Defendants Nos.1 & 2 shall retain Rs.9.21 crores and the balance sale consideration of Rs.8.50 crores would be paid to the Shyamala Group for all their right, title, interest in the Ground Floor portion of the property in question. It was further agreed that Rs.8.50 crores would be firstly paid to Shyamala Pappu Group as part consideration at the time to execution of Agreement to Sell so as to give effect to the Oral Family Settlement which was to be reduced into writing, and remaining amount was to be paid to the Defendants Nos.1 & 2 at the time of registration of the transfer documents.

48. It was also agreed that *in lieu* of Rs.8.50 crores, Shyamala Pappu (*who had got the share of Vivek Ramamurthi by virtue of Relinquishment Deed dated 03.03.2003*) and Sh. M.R. Ramamurthi would execute Relinquishment Deeds in favour of Defendant No.2/Dr. Alamelu Ramamurthi, after which the Defendants Nos.1 & 2 would become the sole and exclusive owners of the entire Suit Property in question.

49. In order to facilitate the Oral Family Settlement between the Defendants and Shyamala Group, Agreement to Sell dated 14.10.2009 was



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executed between the Defendants and Plaintiffs. The copies of the documents were duly delivered to them while the originals were retained by the Defendants Nos.1 & 2 to be delivered at the time of execution of the Conveyance documents.

50. In terms of the negotiations and the Agreement, Rs. 9 crores were paid to Defendants Nos.1 & 2 on the same day by way of Receipt dated 14.10.2009 which was duly acknowledged and signed by Defendants Nos.1 & 2. The Defendants Nos.1 & 2 informed the Plaintiffs that instead of paying Shyamala Group their share of Rs.8.50 Crores from that money, they utilized Rs. 9 crores to purchase the residential property bearing No.183, Lane No.13B, Western Avenue, Sainik Farms, New Delhi, where they would shift after handing over the possession of the Suit Property to the Plaintiffs. They also informed that they were left with no money to pay to Shyamala Pappu Group, to get Oral Settlement reduced to writing.

51. The Plaintiffs were shocked and surprised by the demand of the Defendants Nos.1 & 2 to pay Rs.8.50 crores to Shyamala Pappu Group out of the balance sale consideration of Rs.8.71 crores to get the oral Settlement reduced to writing. They also assured that when this amount was paid to Shyamala Pappu Group, Defendant Nos.1 & 2 would expeditiously complete all the formalities for transfer of the unencumbered Suit Property in favour of the Plaintiff and would take the remaining sale consideration of Rs.21 lakhs at the time of execution of Sale Deed.

52. The Defendant Nos.1 & 2 also asked the Plaintiff to pay Rs.4.40 crores to Shyamala Pappu and M.R. Krishnamurthi by way of Pay Order and the remaining amount of Rs.4.10 crores in cash and assured to provide all the



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payment Receipts in original for the amounts so paid to Shyamala Pappu Group. The Plaintiffs realized that Defendant Nos.1 & 2 were not willing to honour their commitments.

53. The Plaintiffs apprehending that their Rs.9 crores would get stuck with Defendants Nos.1 & 2 leading to escalation of disputes to the Court which may take several years in resolution, succumbed to the demands of Defendant Nos.1 & 2 subject to *two conditions: firstly*, that the Defendants No.1 & 2 would deliver and hand over the actual physical possession of the entire property immediately on recording of Oral Family Settlement into writing and on execution of Relinquishment Deeds in favour of Defendant Nos.1 & 2; and *secondly*, that they would pay the payment of Rs.8.5 crores i.e. the amount for purchase of ground floor to Shyamala Pappu Group in the presence of the Defendant Nos.1 & 2. These conditions were accepted by Defendant Nos.1 & 2.

54. Accordingly, Plaintiffs arranged Rs.8.50 crores for payment to Shyamala Pappu and M.R. Krishnamurthi on behalf of Defendant Nos.1 & 2 which was acknowledged and paid *vide* Receipts dated 11.11.2009, 12.11.2009 and 13.11.2009, duly signed by Shyamala Pappu and M.R. Krishnamurthi, in favour of the Defendants. It was clearly understood that these payments had been made by the Plaintiffs on behalf of the Defendant Nos.1 & 2 towards part sale consideration in terms of Agreement to Sell dated 14.10.2009 as there was no privity of contract between the Defendants Nos. 1 and 2 and Shyamala Pappu Group. The entire payment was thus, duly received by Defendant Nos.1 & 2 and even partly appropriated to settle disputes with Shyamala Pappu Group which was imperative since in absence



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thereof, the Defendant Nos.1 & 2 were incapable of honouring the Agreement to Sell dated 14.10.2009. It is asserted that the total amount of Rs.17.50 crores out of total sale consideration of 17.71 crore was thus, paid to the Defendant Nos. 1 and 2.

55. The Oral Family Settlement was reduced to writing by Smt. Shyamala Pappu Group on 13.11.2009 after having received Rs.8.50 crores, which was duly signed by her as well as M.R. Krishnamurthi and Vivek Krishnamurthi through his attorney, M.R. Krishnamurthi at Ashoka Hotel, New Delhi in the presence of the Plaintiffs and others. As agreed, the Defendant Nos.1 & 2 admittedly handed over the possession letters for the Ground Floor and Garage Block of the property in question on 14.11.2009, to the Plaintiffs. The Defendant Nos.1 & 2 requested for ten days' time to vacate the First Floor portion as they had to shift to their new house at Sainik Farms, which was yet under renovation, to which they agreed since the Defendant Nos.1 and 2 were ladies.

56. *The Defendant Nos.1 & 2 thereafter took the steps to get the Mutation of the property done in their name, to be followed by getting the Suit Property converted from Leasehold to Freehold in their name. Thereafter, it was to be followed to get the execution of Conveyance Deed in favour of the Plaintiffs and consequent mutation of the suit property in their name.*

57. Defendant No.1 informed the Plaintiffs that she had already made appropriate Applications to DDA for mutation of the suit property in the name of the Plaintiffs by enclosing the Relinquishment Deeds and affidavits along with other requisite documents. The Plaintiffs approached Defendants



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Nos.1 & 2 for concluding the transaction, but having received almost the entire sale consideration, they started avoiding the Plaintiffs.

58. The Letter dated 09.04.2010 was written by the Plaintiffs to request the Defendant Nos.1 and 2 to execute the Sale Deed, but Defendant Nos.1 & 2 avoided to reply or to act in terms of the Agreement to Sell. The Plaintiffs again approached Defendant Nos.1 & 2 on the next day i.e. 10.04.2010, but they blatantly with *malafide* intention and to cheat and defraud the Plaintiffs, refused to execute the transfer documents and threatened them with dire consequences. The incident was reported *vide* Complaint dated 10.04.2010 to the Police Station Hauz Khas, New Delhi and was registered as DD No.9A.

59. On 15.04.2010, the Defendant No.1 called the Plaintiffs on the pretext of discussions in regard to the Suit Property and offered them some adulterated drink, on the consumption of which they became dizzy. Realizing the gravity of situation, the Plaintiffs immediately left the Suit Property and informed the Police about this incident by their Complaint dated 15.04.2010 recorded as DD No.25B.

60. The Defendant Nos.1 & 2 immediately changed their attitude and on the false pretext that the Suit Property has to be mutated to be converted into freehold, asked the Plaintiffs to make payment of balance sale consideration of Rs.21 lakhs for getting the Sale Deed executed. *Bonafidely*, believing the Defendant Nos.1 & 2, the Plaintiffs got the Pay Orders dated 21.04.2010, prepared for the balance sale consideration in favour of Defendant No.1/Chandan Ramamurthi. However, Defendant Nos.1 & 2 avoided the same on one pretext or the other and did not provide any Mutation Letter to the answering defendants.



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61. A Legal Notice dated 28.04.2010 was served upon the Defendant Nos.1 & 2 to perform their part of the Agreement to Sell and to execute registered Sale Deed; instead, the Defendant Nos.1 & 2 filed a bogus Criminal Complaint on 29.04.2010 against the Plaintiffs as a counterblast alleging trespass by the Plaintiffs, thereby establishing beyond doubt that they had no intention to perform the Agreement to Sell.

62. The Defendant Nos.1 & 2 also sent a Letter dated 21.05.2010 through their Counsel, in response to the Legal Notice dated 28.04.2010, fraudulently and *malafidely* denying the entire transaction as well as the Receipt of payment of more than 98% of the sale consideration, though they admitted the possession of the Plaintiffs in the Ground Floor of the Suit Property.

63. Consequently, *the Plaintiffs herein instituted CS (OS) No.1279/2010 seeking Specific Performance of the Agreement to Sell dated 14.10.2009.*

64. On merits, the Plaintiffs have denied all the averments in the light of the specific averments made on behalf of Shyamala Pappu and M.R. Krishnamurthi in Suit No. **1992/2013**.

65. ***The Issues in Suit No.1279/2010 were framed on 02.02.2016 as under:***

- (i) *Whether there exists an agreement to sell dated 14.10.2009, and if so whether Plaintiffs are entitled to specific performance of this agreement dated 14.10.2009? OPP*
- (ii) *Whether they are the Plaintiffs, or the Defendant nos.1 and 2, who are guilty of breach of contract? Onus put on parties.*
- (iii) *Whether the plaintiffs are entitled to the discretionary relief or specific performance? OPP*
- (iv) *Relief.*



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66. ***Issues in Second Suit No. 1992/2013, though not formally framed, but are now framed as under:***

- (i) *Whether the Settlement Deed dated 13.11.2009 is null and void?*
- (ii) *Whether the three Money Receipts dated 11.11.2009, 12.11.2009 and 13.11.2009 are null and void?*
- (iii) *Whether the Plaintiffs, Smt. Chandan Ramamurthi and her daughter, Dr. Alamelu Ramamurthi are entitled to decree of Declaration?*
- (iv) *Relief.*

67. ***The evidence was directed to be recorded in CS (OS) No.1279/2010 filed by the Plaintiffs i.e. Kailash Aggarwal and Vijay Aggarwal, vide Order dated 02.02.2016.***

68. ***PW-1, Kailash Aggarwal (Plaintiff No.1)*** tendered his affidavit of evidence as *PW-1/A* and has tendered *Ex. PW-1/1 to Ex. PW-1/35* in support of its case.

69. ***Shri Vijay Aggarwal (Plaintiff No.2)*** has tendered his affidavit of evidence as *Ex.PW-2/1*.

70. ***PW-2, Mr. Pradeep Aggarwal*** deposed that he had assisted the Plaintiffs in delivering Rs. 8 Crores in cash to the office of Mr. Vinod Rajoria.

71. ***PW-3, Mr. Jitender Goel, manager of Plaintiff No. 1/Sh. Kailash Aggarwal,*** deposed that he had assisted the Plaintiffs in delivering Rs. 8 Crores in cash to the office of Mr. Vinod Rajoria in terms of the Agreement to Sell dated 14.10.2009 and other incidents.



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72. **PW-4, Mr. Robin Bagga, Judicial Assistant, Delhi High Court** brought the summoned record of Probate Case No. 26/1993 and 36/1993. The Order dated 15.10.2009 is *Ex.PW4/1*, Order dated 03.02.2010 is *Ex.PW4/2*, Order dated 15.02.2010 is *Ex.PW4/3*, Order dated 25.02.2010 is *Ex.PW4/4*, Order dated 15.04.2010 is *Ex.PW4/5*.

73. **PW-5, Rajesh Kumar, Judicial Assistant, Delhi High Court** brought the summoned record of CrI. M.C. No. 1315/2010, CrI. M.C. No. 1317/2010 and CrI. M.C. No. 492/2010.

74. **PW-6, Ms. Sangeeta Verma, LDC, in record room Sessions, Patiala House Courts, New Delhi** brought the summoned record of Revision Petition No. 65/2013 and 140/2013 to prove the Order dated 25.07.2013.

75. **PW-7, ASI Om Prakash, Police Station Hauz Khas, New Delhi** brought a certificate, *Ex.PW7/1* to the effect that the summoned record has been destroyed.

76. **PW-8, Head Constable Satish Kumar, SEM, South District, Vasant Vihar, New Delhi** brought the summoned record in which there is a final Order dated 13.04.2011, passed by Special Executive Magistrate (SEM) South District, in the case of *State vs. Ms. Chandan Ramamurthi* whereby the proceedings were dropped, and the summoned record in which there is a final Order dated 13.4.2011 passed by SEM, South District, in the case of *State vs. Mr. Vijay Kumar Aggarwal and Smt. Usha Aggarwal* whereby the proceedings were dropped.

77. **PW-9, ASI Joy Sebastian, Police Station Tilak Marg, New Delhi,** brought the Certificate, *Ex. PW9/1* to the effect that the summoned record has been weeded out.



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78. **PW-10, Mr. BP Singh, Civil Engineer/Govt. approved valuer,** deposed that the value of the Sainik Farm Property (*Property bearing No.183, Lane No.13B, Western Avenue, Sainik Farms, New Delhi*) in the year 2009 was Rs.1 lakh per sq. yds., and the value of the Suit Property in the year 2009 was Rs. 2 lakh per sq. yds.

79. **PW-11, Mr. Mukesh Arora, Property Dealer** deposed about the market value of the Sainik Farm Property (500 sq. yds.) in 2009 is Rs.5.25 - Rs.5.50 Crore (in cash and cheque). He also deposed that the market value of the Suit Property in 2009 is Rs. 2.00 - Rs. 2.25 lac per sq. yds. (in cash and cheque) for 500 sq. yds.

80. **PW-12, Mr. M.R. Krishnamurthy,** deposed about the execution of Memorandum of Settlement 13.11.2009 and that the Parties to the Memorandum signed it in the presence of Sub-Registrar, South Delhi in Ashoka Hotel, New Delhi. He also proved the Decree dated 30.01.1987 *Ex. PW-12/X1, vide which* Civil Suits 472/1986 and 599/1986 filed by Dr. Shyamala Pappu, were dismissed. The Plaint in CS (OS)1970/1986, is *Ex.PW-12/X2*. The Judgment dated 03.07.2007 in CS (OS) 731/1994 is *Ex.PW-12/X3*.

81. **PW-13, Shri Jagdish Grover, Assistant Director, DDA, Vikas Sadan, New Delhi** brought Letters dated 15.3.2010 and 05.02.2010 *Ex.PW-13/X1 and Ex. PW-13/X2* written by Ms. Chandan Ramamurthi and Dr. Alamleu to DDA asking for mutation of the Suit Property. Photocopy of the pages of Memorandum of Settlement dated 13.11.2009, sent by Mr. S.B. Gupta at B-7/107, Safdarjung Encalve, New Delhi is *Ex.PW-13/X3*. Ms. Chandan Ramamurthi visited DDA on 10.12.2009 and the visitor record is *Ex.PW-*



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13/X4. Letter dated 18.11.2009 for mutation and conversion of the Suit Property is *Ex.PW-13/X5*. Letter dated 02.12.2009 to file certified copy of Relinquishment Deed registered on 03.03.2003 is *Ex.PW-13/X6*.

82. *The witnesses had been cross-examined in detail by the Plaintiffs/Defendant in Suit No.1279/2010.*

83. ***DW-1, Smt. Chandan Ramamurthi (Defendant No.1)*** tendered her affidavit of evidence as *DW-1/A* and has exhibited documents from *Ex. DW-1/1 to Ex. DW-1/12*.

84. ***DW-2, Shri Vijay Bhardwaj, Asstt. Ahlmed, JJ, from the Court of Ms. Pooja Talwar, Ld. CMM, Saket Courts, New Delhi*** brought the summoned record *Ex.DW-2/1* i.e. the status report in the case of *Shri Kailash Agarwal and Anr. vs. Ms. Chandan Ramamurthi and Ors.* (Case No. CC No. 32/12) submitted by Mr. Manmohan Singh, Inspector/ALBR Section, EOW, Crime Branch, New Delhi dated 19.07.2012. He also produced Order dated 15.09.2012 *Ex.DW-2/2*, passed by Mr. Mukesh Kumar, ACMM/SD/ Saket.

85. ***DW-3, Shri Raj Kumar Kundia, Judicial Assistant, from the Court of Mr. Gaurav Gupta, Ld. MM-04, Saket Courts, New Delhi*** brought the summoned record i.e. the file of CC No. 45/1/11 *Ms. Chandan Ramamurthi vs. State*, which contains a complaint dated 09.01.2011 *Ex.DW-3/X1* from Ms. Chandan Ramamurthi addressed to SHO, Police Station Hauz Khas, New Delhi along with six photographs. Order dated 24.07.2014 is *Ex.DW-3/X2*.

86. ***DW-4, Shri Ram Chander, Asstt., OS Branch, DDA, Vikas Sadan, New Delhi*** brought the summoned record pertaining to Office Copy of Letter dated 09.12.2009 and 08.01.2010 which are *Ex. DW1/7 Ex. DW1/8*



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respectively, from DDA to Ms. Chandan Ramamurthi and Ms. Alamelu Ramamurthi.

87. **DW-5, Shri Vaibhav Jain** deposed that he along with his father **Late Shri Vinod Jain**, was present in Ashoka Hotel on 13.11.2009.

88. **DW-6, Mr. Suresh Chander Rajput, Registration Clerk, office of Sub-Registrar, Noida** brought the summoned record of registration of GPA by Shri Rajesh Kumar Gupta on 14.10.2009 in favour of Dr. Alamelu Ramamurthi with respect to the Sainik Farm Property (*Property bearing No.183, Lane No.13B, Western Avenue, Sainik Farms, New Delhi*), which is *Ex.DW-6/1*.

89. *The detailed testimony of the witnesses shall be considered subsequently.*

Arguments on behalf of the Defendant No.1 and 2 (Plaintiffs in CS (OS) No.1992/2013) i.e. Chandan Ramamurthi and Dr. Alamelu:

90. Learned counsel on behalf of Defendant Nos.1 & 2 [*Plaintiffs herein in CS (OS) No.1992/2013*] i.e. Chandan Ramamurthi and Dr. Alamelu has submitted that the *Burden of Proof* is on the Plaintiffs [*Defendants in CS (OS) No.1992/2013 i.e. Sh. Kailash Aggarwal and Vijay Aggarwal*] to prove their case by adducing cogent evidence evidence and cannot rely upon the weaknesses or absence of defence on the part of the Defendants.

91. In the case of *Ashok Nanda vs. Mohinder Kumar Sharma* 250 (2018) DLT 142 (Delhi High Court), it was observed that to discharge their onus to be entitled to Specific performance of the Agreement to Sell, the Plaintiff has to prove its *readiness and willingness* independently, irrespective of the defence of the Defendants. Reliance has also been placed on *Ranganmal vs.*



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Kuppuswamy, 2011 (12) SCC 220; Ramchandra Sakharam vs. Damodar Trimbak, 2007 (6) SCC 737; Sayed Muhammed vs. Badagara Jumayath, 2004 (7) SCC 708.

92. There are five essential questions which have to be proved for adjudicating a suit of Specific Performance as has been explained in the case of Kamal Kumar vs. Premlata Joshi 2019 (3) SCC 704 SC, N.P. Thirugnannam vs. Dr. R. Jagan Mohan Rao 1995 (5) SCC 115 (SC). These are: a *valid and concluded Contract* between the parties; the *readiness and willingness* to perform their part of the Contract; that the *plaintiff has performed his part of the Contract* in conformity with the terms of the Contract; whether *equity is in favour of the Plaintiff* or whether it shall cause hardship to the defendant and if so, in what manner and to what extent the relief can be granted to the plaintiff; and whether the *plaintiff entitled to the alternate relief of refund of earnest money*, etc.

93. *It is argued* that the Plaintiff No. 1 has claimed in his affidavit of evidence that they had arranged for payment of Rs.8.50 crores from various sources, but aside from these bald assertions, there is no cogent evidence to demonstrate that the money was actually available in their hands to discharge their part of the Agreement. Mere statement of the Plaintiffs that they were having money, would not shift the onus on the Defendants. Reliance has been placed on Sher Mohammad vs. Mohan Magotra, 202 (2013) DLT 708 and Delhi High Court; Jitender Kumar vs. Vijender Kumar, 254 (2018) DLT 188 (Delhi High Court).

94. Even though 19 documents were relied upon by the Plaintiffs, none of these documents reflect the source of funds or the capacity of the Plaintiffs to



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perform their part of the Agreement or having the sale consideration of Rs.17.50 crores in their hands. No financial Statements, Balance sheets or Income Tax Report have been filed. Moreover, the argument that the Defendant did not call upon the Plaintiff to file any documents, is not legally untenable, for which reference has been made to M.K. Chhabra vs. Damanjit Kaur, 256 (2019) DLT 684 (Delhi High Court).

95. It is further argued that *readiness* under *Section 16(C) of Specific Relief Act, 1963* has been interpreted to mean financial capacity i.e. necessary funds or the property must be available to enable the plaintiff to pay the balance sale consideration. The financial capacity has to be strictly proved and self-serving statements, do not discharge the onus of proof of the existence of financial capacity. Reliance has been placed on Hotz Industries Pvt. Ltd. vs. Dr. Ravi Singh, 249 (2018) DLT 638.

96. ***Learned counsel for the Defendants Nos.1 & 2***, has referred to the cross-examination of PW-1, Kailash Aggarwal where he sought to explain the source of cash money by asserting that he had sold an agricultural property situated in Fatehpur Beri, Delhi, but was unable to give the date on which the cash was withdrawn from his Bank Account or explain the tranches in which he had received the money from the purchaser of the alleged property and whether it was before or after the date of Agreement dated 14.10.2009. He also admitted that the money was not deposited in the bank account as the cash money had to be paid. He claimed that the entire transaction was assessed by Income Tax Authorities, but was not able to produce any documents.



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97. Furthermore, mere explanation of source of income in the cross-examination by the Plaintiff, would not render it as proof as has been held in the case of Sher Mohd., (Supra) and Ritu Saxena vs. J.S. Grover, 251(2018) DLT 758 (Delhi High Court). There is not a single document produced to show the source of funds and the term *various different sources* as alleged by the plaintiff, has also not been explained.

98. It is further argued that PW1, Kailash Aggarwal had claimed that the Receipt of payment had been prepared, but was kept by the purchaser and that he may be able to trace the Receipt from his record. He was unable to remember the details of this alleged purchaser of his property. It was thus, argued that merely owning a property, is inconsequential. The Plaintiff has failed to disclose the Khasra number where the land is recorded or produced the title documents. Mere existence of an immovable property does not establish the financial capacity as has been held in the case of Jitender Kumar vs. Vijender Kumar, 254 (2018) DLT 188 (Delhi High Court). Filing of a cheque by the Plaintiff is not a proof of availability of the funds for which reference may be made to Farzana Ranjan vs. Preeti Arora, 251 (2018) DLT 709 (Delhi High Court). With no proof of alleged property, filing of a *Loan Sanction Letter* where the sanction of loan is subject to surrender of the property documents, can be of no support to the Plaintiff as has been held in the case of Ritu Saxena (supra). Mere existence of Companies or business, is insufficient to establish the *readiness* of the plaintiff as has been held in the case of Capt. Rajesh Sethi vs. Col. P.C. Sethi, in CS (OS) 436/2004 (Delhi High Court).



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99. It has been further argued on behalf of the Defendant Nos. 1/Smt. Chandan Ramamurthi, that the original Agreement to Sell dated 14.10.2009 contains interpolations in the amounts of payments. The Plaintiff/ Sh. Kailash Aggarwal had admittedly filed Receipt of Rs.3.50 crores and Rs.4.40 crores, Ex.PW1/6 and Ex.PW1/7 respectively. The interpolated Receipts indicate that they have been manufactured subsequently on paper with signatures, which is a ground to deny specific performance, in the light of the observations made in Sher Mohd., (*supra*).

100. Moreover, it is inequitable to grant a Decree of Specific Performance of a Contract entered into in the year 2009, after 15 years since while in the earlier times there was no drastic escalation in real estate, but with the passage of time and opening of economy and globalization, there has been a sharp escalation in the rates of properties. In the similar circumstances, in the case of Suresh Shah vs. Sarita Gupta, MANU/DE/0095/2024 (Delhi High court), the Specific Performance of the Agreement was held to be inequitable.

101. Moreover, since the Plaintiff failed to mitigate their losses by failing to make an effort to find a substitute property, they cannot be heard to say that the house they seek to acquire is unique, as has been held in the case of Ravindernath vs. Poddar Construction, 211 (2014) DLT 561 (Delhi High Court); Sudhir Kumar vs. Virender Kumar Goel, 248 (2018) DLT 533 (Delhi High Court), Semelhazo vs. Paramadevan, 1996 (2) SCR 415, Supreme Court, Canada and L.I vs. AU, 2006 BCSC 671 Supreme Court, British Columbia.



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102. Moreover, the Specific Relief (Amendment) Act, 2018 is prospective and cannot be made applicable to the transactions that have taken place prior to its coming into effect, as has been held by the Supreme court in Katta Sujatha Reddy vs. Siddamsetty Infra Projects Pvt. Ltd., 2023 (1) SCC 355.

103. Moreover, no specific performance can be granted when the Agreement to Sell was executed without the concurrence of the co-owners, as held by the Supreme Court in Pemmada Prabhakar vs. Youngmen's Association, 2015 (5) SCC 355.

104. In the end, it is argued that a document which releases the property to in favour of one co-owner to the exclusion of another, is in fact a Conveyance/Sale Deed and is required to be affixed with requisite stamp duty as has been held in the case of Tripta Kaushik vs. Sub-Registrar VI-A Delhi, MANU/DE/1090/2020 and followed in Neeraj Arya vs. Rakesh Arya & Ors., MANU/DE/8268/2023.

105. *It is thus, argued that the Suit for Specific Performance filed by the Plaintiffs, is liable to be dismissed.*

Arguments on behalf of Plaintiffs [Defendants in CS (OS) No. 1992/2013] i.e. Kailash Aggarwal and Vijay Aggarwal:

106. ***Learned counsel on behalf of Plaintiffs, Kailash Aggarwal and Vijay Aggarwal*** has argued that Agreement to Sell dated 14.10.2009 had been executed with the Defendant Nos.1 & 2, Smt. Chandan Ramamurthi and her daughter, Dr. Alamelu. Sh. M.R. Ramamurthi and Smt. Shyamala Pappu entered into a Settlement dated 13.11.2009 with Chandan Ramamurthi and her daughter, Dr. Alamelu. Consequently, Relinquishment Deeds were executed by Shyamala Pappu and M.K. Ramamurthi, in favour of Dr.



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Alamelu. Rs.17 crores had been paid partly in cash and partly through cheques. The entire sale consideration stands paid to Chandan Ramamurthi and her daughter i.e. the Plaintiffs.

107. The Agreement to Sell dated 14.10.2009 and subsequent Memorandum of Settlement dated 13.11.2009 constitute valid and binding documents which the Defendant Nos.1 & 2 cannot now seek to invalidate.

108. In order to establish that the transactions were fair, the Plaintiffs have relied upon the case of Martin Cashin vs. Peter J. Cashin, AIR 1938 PC 103, wherein it was held that where the person executing the deed is neither blind nor illiterate, where no fraudulent misrepresentation is made to him, where he has ample opportunity of reading the Deed and such knowledge of its purport, the plea of *non est factum* is not open to him; it is quite immaterial whether he reads the Deed or not.

109. Reliance has also been placed on Grasim Industries Ltd. vs. Agarwal Steel, (2010) 1 SCC 83 wherein it was held that when a person signs a document, there is a presumption unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted.

110. It is argued that the Defendant No.1 being an established Lawyer of the Supreme Court and the Defendant No.2 being a student of Medicine at that time, were educated professionals, who very well understood the import of the documents involving substantial monetary and property transactions, before they signed these documents.



111. In regard to seeking relief of Specific Performance, the Plaintiffs have relied on the case of Prakash Chandra vs. Angadlal, (1979) 4 SCC 393, wherein it laid out that the ordinary rule is that specific performance should be granted, when the conduct of the Appellant has not been such as to disentitle him to the relief of specific performance. Likewise, in the case of Nirmala Anand vs. Advent Corpn. (P) Ltd., (2002) 5 SCC 481, it was affirmed that in the cases of contract for sale of immovable property, the grant of relief of specific performance is a rule and the Defendant cannot take advantage of his own wrong and then plead that decree for specific performance would be an unfair advantage to the Plaintiff.

112. In the present case, the Plaintiffs have demonstrated that they have already paid Rs. 17.50 crores i.e. over 98%, out of the total consideration of Rs. 17.71 crores, which clearly entitles them to the relief of Specific Performance. It far exceeds the standard of proof as required by U.N. Krishnamurthy vs. A.M. Krishnamurthy, (2023) 11 SCC 775 and Romi Garg vs. Lalit Modi, MANU/DE/1045/2020.

113. Furthermore, the Plaintiffs' readiness to pay the remaining Rs. 21 lakhs is evidenced by their procurement of Pay Orders dated 21.04.2010 in favour of Defendant No.1, demonstrating their continued capability and willingness to complete the transaction. Thus, the efforts made by the Plaintiff clearly satisfy the requirement of proving "*availability of funds to make payment in terms of the contract in time*," as mandated by the Supreme Court.

114. To answer the contention of escalation of the price of the property since 14.10.2009 when the Agreement to Sell was executed, it is argued that



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almost entire consideration i.e. Rs. 17.50 crores out of Rs. 17.71 crores was received by Defendant Nos.1 & 2 despite which they have continued to be in possession of the part Suit property. There is no dereliction attributable to the plaintiffs; rather the Defendant Nos.1 & 2 having accepted almost entire Sale consideration despite which they have refused to honour their part of the Agreement to Sell and also continued to enjoy the property.

115. The Supreme Court in A.R. Madana Gopal vs. Ramnath Publications (P) Ltd., (2021) 11 SCC 200, has held that a Suit for Specific Performance cannot be dismissed merely on grounds of delay or laches. Any delay resulting from court processes, cannot be held against the Plaintiff. It was further observed that the intention of parties must be ascertained from the language of the Agreement when read as a whole and in the light of surrounding circumstances.

116. The settlement between the Defendant Nos.1 & 2 and the Shyamala Pappu Group aimed at resolving family disputes. Courts have consistently favoured upholding family arrangements instead of disturbing them on technical grounds. The fact that the Defendant Nos.1 & 2 have already acted upon the Memorandum of Settlement by accepting payments, allowing partial possession to be handed over to the Plaintiffs and even withdrawn pending litigations against the Shyamala Pappu Group, makes them bound by estoppel from challenging the validity of the Settlement now.

117. The Apex Court in the case of Kale vs. Dy. Director of Consolidation, (1976) 3 SCC 119, defined the essentials of a family settlement and its binding effect. The principles enumerated are that the *family settlement must be voluntary, free from fraud, coercion or undue influence and bona fide one*



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so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family. Further, family arrangement may be even oral in which case no registration is necessary; though registration would be necessary only if the terms of the family arrangement are reduced into writing. However, if the document contains the terms and recitals of a Family Arrangement of which a mere memorandum is prepared either for the purpose of the record or for information of the court or for making necessary mutation, then the Memorandum itself does not create or extinguish any rights in immovable properties and therefore, does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable.

118. Furthermore, in the case of Ram Charan Das vs. Girja Nandini Devi, 1965 SCC OnLine SC 17, it was held that the expression “recitals” means, according to the *Dictionary of English Law* by Jowitt: “statements in a Deed, Agreement or other formal instrument, introduced to explain or lead up to the operative part of the instrument”. Where the recitals are clear and the operative part is unambiguous, the recitals govern the construction. Normally a recital is evidence as against the parties to the instrument and those claiming under them, and in an action based on the instrument itself the recitals operate as an estoppel, though that would not be so in a collateral matter. Thus, it can clearly be deduced that the recitals in the Memorandum of Settlement dated 13.11.2009 operate as an estoppel against the Defendants.

119. The Defendant Nos.1 & 2’s conduct in avoiding execution of the sale deed despite receiving substantial consideration, making allegations of



forgery only after enjoying benefits of the settlement, and filing multiple frivolous cases, demonstrates their *mala fide* intent.

120. With respect to *burden of proof*, the Plaintiffs have placed reliance on *Suraibhan Kailash Chand vs. Hari Shanker Vashsist*, 1975 SCC OnLine Del 149, wherein the Delhi High Court observed distinction between the *legal burden* and the *evidentiary burden*; while the former does not shift, the latter which is “*a continuous process of shifting of onus of proof*” does. The expressions “burden of proof” and “onus of proof” (how the legal burden and evidentiary burden are more accurately described) are employed separately so that much of the confusion that often results by using them interchangeably, can be avoided.

121. The Apex Court in the case of *Suraibhan Kailash Chand vs. Hari Shanker Vashsist*, 1975 SCC OnLine Del 149 observed that the initial legal burden rests with the Plaintiffs to prove the existence and validity of the Agreement to Sell and subsequent transactions.

122. The Plaintiffs have successfully discharged this initial onus through documentary evidence of payments made (Rs. 17.50 crores out of Rs. 17.71 crores), possession letters for the Ground Floor and Garage Block dated 14.11.2009, and the Memorandum of Settlement dated 13.11.2009. Now, the evidentiary burden got shifted to the Defendant Nos.1 & 2 to prove their allegations of invalidity/fraud. The Defendant Nos.1 & 2's failure to deny their signatures on these documents, coupled with their prior reliance on the same documents for their benefit, clearly demonstrates their inability to meet this shifted evidentiary burden.



123. It is thus, argued that the Suit for Specific Performance be decreed in favour of the Plaintiffs.

124. *The entire record and the evidence adduced therein along with oral and written Arguments on behalf of both the Parties, have been considered.*

The issue-wise findings are as under:-

ISSUE NOS. 1 AND 2:

“Whether there exists an agreement to sell dated 14.10.2009, and if so whether plaintiffs are entitled to specific performance of this agreement dated 14.10.2009? OPP”

“Whether they are the plaintiffs, or the defendant nos.1 and 2, who are guilty of breach of contract? Onus put on parties”

125. **The material questions which are required to be established for grant of the relief of Specific Performance, as explained in the case of Kamal Kumar vs. Premlata Joshi and Ors., (2019) 3 SCC 704 are:**

- (i) *Firstly, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property;*
- (ii) *Secondly, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract;*



(iii) *Thirdly*, whether the plaintiff has, in fact, *performed his part of the contract* in conformity with the terms of the contract;

(iv) *Fourthly*, whether it will be equitable to grant the relief of specific performance to the plaintiff; and

(v) *Lastly*, whether the *plaintiff is entitled for grant of any other alternative relief*, namely, refund of earnest money, etc. and, if so, on what grounds.”

The first element for determination is whether there is a validly executed Agreement To Sell (ATS) between the parties.

126. The admitted facts are that Suit Property was acquired by Late Sh. M.K. Ramamurthi, Senior Advocate *vide* Perpetual Sub Lease Deed dated 21.09.1972, Ex. P-1 which was executed in his favour on behalf of the President of India, by Supreme Court Bar Cooperative House Building Society Ltd.

127. Sh. M.K. Ramamurthi filed a *Civil Suit No.1970/1986 in this Court*, certified copy of which is Ex.PW-12/X2, for eviction of Smt. Shyamala Pappu, wife of Wing Commander Pappu, who was living in the ground floor of the Suit Property. The Settlement Decree dated 30.01.1987, ExPW12/X1 was passed in accordance with the Terms of Settlement Ex. C-1, annexed thereto.

128. As per the Terms of Settlement, Ex.C-1, Smt. Shamala Pappu was entitled to the peaceful possession of the ground floor of the Suit Property during the lifetime of Sh. M.K. Ramamurthi. After his demise, the ground



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floor portion was to be jointly occupied by his two sons, Vivek Ramamurthi and M.R. Krishnamurthi, while the First Floor along with the entire Garage Block was given in occupation of Smt. Chandan Ramamurthi and their daughter, Alamelu Ramamurthi.

129. Late Sh. M.K. Ramamurthi, during his lifetime, also executed a *Registered Will dated 07.05.1990*, Ex.P-2 essentially in terms of Consent Decree and bequeathed the First Floor with Garage Block and construction rights of second floor and the third floor or any other floor as may be permissible by DDA Bylaws, to his wife, Smt. Chandan Ramamurthi, daughter, Dr. Alamelu Ramamurthi, while ground Floor was bequeathed to the two sons, Sh. Vivek Ramamurthi and Sh. M.R. Krishnamurthi.

130. The disputes between the Defendant Nos.1 & 2 and Shyamala Pappu Group (*comprising of Shyamala Pappu, M.R. Krishnamurthi and Vivek Ramamurthi*) admittedly escalated after the demise of Sh. M.K. Ramamurthi, from whom all the parties are deriving their title. Defendant No.1, Smt. Chandan Ramamurthi filed a *Probate Case No.26/1993* in which Dr. Shyamala Pappu and her son, Sh. M.R. Krishnamurthi filed their objections. Sh. M.R. Krishnamurthi also filed another Probate Petition No.36/1993 on the basis of later Will dated 30.12.1992, which was alleged to be forged by the them. Various other criminal and civil litigations got initiated between the parties.

Relinquishment Deed dated 03.03.2003:

131. In the interim, Vivek Ramamurthi (*son of Late Sh. M.K. Ramamurthi*), resident of USA, who was the half shareholder of Ground Floor, made an exit from the property by executing a Relinquishment Deed dated



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03.03.2003, Ex.PW-1/4 (D1) in favour of his mother, Dr. Shyamala Pappu. On the same day i.e. 03.03.2003, he also executed a GPA, Ex.PW-1/5 (D2) in favour of his brother, Sh. M.R. Krishnamurthi, who was the co-owner of the Ground Floor. Therefore, Dr. Shyamala Pappu and Sh. M.R. Krishnamurthi became the joint owners of the Ground Floor.

132. The Defendant Nos.1 & 2 have questioned the Relinquishment Deed dated 03.03.2003, Ex.PW-1/4 (D1) in favour of Dr. Shyamala Pappu on the ground that there was no blood relationship between Shyamala Pappu and Vivek Ramamurthi and no relinquishment could have been so executed. However, the Relinquishment Deed itself describes Shyamala Pappu as the mother of Vivek Ramamurthi. Moreover, there has never been any challenge to the Deed, nor any evidence led to prove that there was no relationship of mother-son between the two. *Therefore, this argument is not tenable.*

133. As observed in the case of Kale (supra), in order to be recognized as a Memorandum, *parties to the Family Arrangement must have some antecedent title, claim or interest*, even a possible claim in the property which is acknowledged by the parties to the settlement. *Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and such family arrangement shall be valid.* Even if *bona fide* disputes, present or possible, which may not involve legal claims are settled by a *bona fide* family arrangement which is fair and equitable, *the family arrangement is final and binding on the parties to the settlement.*



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134. In Kale (supra) the Apex Court further noted that the courts have consistently leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the courts find that the family arrangement is sought to be unsettled on a formal defect like the rule of estoppel, and claims to revoke the Family Arrangement under which he has himself enjoyed some material benefits, the Court has held that a family arrangement being binding on the parties to the arrangement, operates as an estoppel so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same.

135. Mr. Vivek Ramamurthi, has never questioned this Relinquishment Deed Ex.PW-1/4 (D1) executed by him in favour of his mother Dr. Shyamala Pappu, and the same has been duly acted upon and cannot be now challenged by Defendant No.1 & 2, on specious grounds and this objection has no merit. Pertinently, all the Documents in this entire deal of Sale of Property have been jointly signed by both Dr. Shyamala Pappu and Sh. M.R. Krishnamurthi, in whose favour Mr. Vivek Krishnamurthi, the co-owner had admittedly executed a GPA. Even if for the sake of arguments, there was any defect in the Relinquishment Deed executed in favour of Dr. Shyamala Pappu, Sh. M.R. Krishnamurthi signed all the documents for himself and also had authority to sign for Mr. Vivek Krishnamurthi, on the basis of GPA.

136. Another contention raised was that infact, it was a sale of property since Dr. Shyamala Pappu had paid Rs. 25 Lacs as a consideration for execution of the Relinquishment Deed. However, again there is no evidence of any money being paid to Vivek Ramamurthi, except a bald assertion by Defendant No.1.



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137. The Defendant Nos.1 & 2 have not been able to discredit the Relinquishment Deed executed in favour of Smt. Shyamala Pappu, making her owner of half ground floor of the suit property.

Agreement to Sell dated 14.10.2009:

138. *The Plaintiffs entered into Agreement to Sell dated 14.10.2009, with Defendant Nos.1 & 2, which has become the bone of contention in the present Suits.*

139. ***To prove their case, PW-1, Sh. Kailash Aggarwal in his Affidavit of Evidence*** has explained that sometime in the first week of September 2009, one Mr. Sunil Ralli, a property dealer informed the Plaintiff about a good deal for the Suit Property and also that it was in litigation between Defendants Nos.1 & 2 and the two sons and Shyamala Pappu who were claiming ownership rights on the basis of Wills of Late Sh. M.K. Ramamurthi. Mr. Sunil Ralli also informed that he has spoken to both the Parties who had shown their keenness to settle their disputes amicably, if some buyer was interested to buy the property. In the second week of September, 2009, Mr. Sunil Ralli introduced the Plaintiffs to Defendant Nos.1 & 2 i.e. Smt. Chandan Ramamurthi and Dr. Alamelu Ramamurthi, who both were owners of the first floor of the Suit Property and lived therein. During their meeting, while confirming that the title and ownership of the Suit Property originally with Sh. M.K. Ramamurthi, the Defendants also informed that there were disputes *inter se* between the legal heirs as Dr. Shyamala Pappu who was claiming herself to be the earlier wife of Late Sh. M.K. Ramamurthi, along with her son, Sh. M.R. Krishnamurthi, was in occupation of the entire ground floor of the Suit Property. The Plaintiff



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further deposed that they were informed about the multiple civil and criminal litigations between the family members and about the two Probate Cases.

140. *These facts are admitted by Defendant No.1, Smt. Chandan Ramamurthi in her Affidavit of Evidence, Ex.DW-1/A*, who also deposed that the Plaintiffs along with the broker, Sunny and Mr. Raju Kumra sometime in September, 2009 had met them at their residence and offered to pay Rs.3 lakhs per sq. yard. They informed the Defendant Nos.1 & 2 that they also had a talk with Shyamala Pappu regarding rights of other two legal heirs, and assured Defendant Nos.1 & 2 that they have already persuaded her to sell the ground floor on behalf of other two legal heirs namely, Sh. Vivek Ramamurthi and Sh. M.R. Krishnamurthi. It was also informed that Sh. Vivek Ramamurthi, who was resident of USA, had executed a Power of Attorney in favour of Mr. M.R. Krishnamurthi.

141. Further, it is deposed by Defendant No.1 that an Agreement dated September, 2009, Ex.DW-1/4 was brought by Sh. Kailash Aggarwal to be executed by all the Parties/Legal Heirs. Initially, the Plaintiffs intended to get one Agreement signed by all the Parties, but since both the set of owners were not on talking terms, the Plaintiffs agreed to get separate Agreements executed by Sh. Vivek Ramamurthi and Sh. M.R. Krishnamurthi and by Smt. Chandan Ramamurthi and her daughter. Consequently, another Draft Agreement dated 01.10.2009, Ex.DW-1/5 pertaining only to Defendant Nos.1 & 2 in respect of the Suit Property, was prepared by Property Dealer, Raju Kumra on the Stamp Paper.

142. The Plaintiffs had been admittedly, negotiating separately with Shyamala Pappu and her sons, independently for the ground floor.



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143. **PW-1, Kailash Aggarwal** has further deposed that the Plaintiffs had various meetings separately with Shyamala Pappu and with the Defendant Nos.1 & 2 and terms of the Sale were negotiated, according to which *while agreeing to sell the Suit Property to the Plaintiffs, the Defendants and the Shyamala Pappu Group arrived at an Oral Settlement.* Shyamala Pappu and M.R. Krishnamurthi agreed to sell the ground floor for Rs.8.50 crores. It was agreed that on receipt of Rs.8.5 crores, Shyamala Pappu (*who had become part owner of the ground floor (by virtue of the Relinquishment Deed executed in her favour by Sh. Vivek Ramamurthi),* and Mr. M.R. Krishnamurthi shall execute Relinquishment Deed of their share, in favour of Defendant No.2, Dr. Alamelu Ramamurthi who would thus, become the sole and exclusive owners of the Suit Property which would facilitate the execution of one Agreement to Sell to be followed by the Sale Deed. *Defendant No.1 &2 would then sell the entire Suit Property to the Plaintiffs for a total sale consideration of Rs.17,71,00,000/- and balance Rs.9.21 crores were agreed to be paid to the Defendant Nos.1 & 2 at the time of registration of requisite transfer documents.*

144. It was confirmed that parties would withdraw all their claims, rights, entitlements etc. *qua* the Suit Property and execute appropriate documents like Relinquishment Deed. *It was further agreed that only one Agreement to Sell in favour of the Plaintiffs, shall be executed in order to honour the Oral Family Settlement.*

145. The entire process of sale of the Suit Property was a structured attempt to resolve pending litigations between Defendant No1&2 and Dr. Shyamala Pappu Group, which admittedly have now been withdrawn



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pursuant to Memorandum of Family Settlement dated 13.11.2009.

146. **Defendant No.1, Smt. Chandan Ramamurthi** has *admitted all these facts in her Affidavit of Evidence*, has admitted all the afore said facts about the initial proposal of two separate Agreements for the two Floor, but thereafter it was agreed that there would be one Agreement to Sell executed on relinquishment of the shares of the Shyamala Pappu Group in favour of the Defendant Nos.1 & 2. Further, the sale consideration was negotiated and settled at Rs.17.71 crores to be paid to them.

147. *These facts find further corroboration in the testimony of Defendant No.1, Smt. Chandan Ramamurthi* who also deposed that Plaintiffs on coming to know that Mr. Vinod Jain, brother of Defendant No.1 was living in Sainik Farms contacted Mr. Vinod Rajoria, the Property Dealer in Sainik Farm who had business dealings with the Plaintiffs. Defendant Nos.1 also sought assistance of her brother, Mr. Vinod Jain, and Mr. Vinod Rajoria in the entire process of concluding the deal. During the negotiations at the Office of Mr. Rajoria, Mr. Vinod Jain and Mr. Rajoria made it clear to the Plaintiffs that the entire process of mutation and conversion into Freehold, shall be undertaken by them at their cost and Defendant Nos.1 & 2 would be available only to sign the requisite papers. She also admits that Agreement dated 14.10.2009, Ex. PW-1/6 drafted by Raju Kumra, was brought by the Plaintiffs.

148. Accordingly, it is not disputed that pursuant of the Oral Family Settlement Agreement, the Plaintiffs entered into an Agreement to Sell dated 14.10.2009, Ex. PW-1/6 (X1) for the entire suit property, which was signed by the Plaintiffs and Defendants Nos.1 & 2 and *witnessed by Mr. Vinod*



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Rajoria and Mr. Vinod Jain. It recorded all the terms and conditions of the Agreement between the Parties, as mentioned above.

149. The relevant terms of the *Agreement to Sell* dated **14.10.2009 Ex. PW1/6 (PX1)** are as under:-

“

AGREEMENT TO SELL

This Agreement to Sell is made and executed at New Delhi on this 14th day of October 2009 between;-

- 1) Mrs. Chandan Ramamurthi, wife of Late Shri M.K. Ramamurthi;
- 2) Dr. Alamelu Ramamurthi, daughter of Late Shri M.K. Ramamurthi;

Both residents of A-16, Neeti Bagh, Delhi, (herein after jointly called the “**FIRST PARTY**”)

AND

KAILASH AGGARWAL & VIJAY AGGARWAL s/o Late Sh. CHAJJU LAL AGGARWAL r/o 1533-G, Wazir Nagar, New Delhi-110003 hereinafter called “**SECOND PARTY**”

...

And Whereas certain disputes and differences arose between the parties, which resulted in filing of the Suit/s bearing No. 26/93 for the Probate of Will dated 07.05.1990, by the FIRST PARTY herein and Mr. M.R. Krishnamurthi herein also filed the probate proceedings regarding the Will dated 30.12.1992, however during the pendency of these suits with the intervention of family and friends **the parties herein have amicable and peacefully resolved and has agreed to withdraw the said Will dated 30.12.1992, and has settled all the disputes and differences vide an oral settlement dated _____, which was put into black & white, vide Memorandum of Understanding dated __.10.2009, whereby and whereunder Mr. Vivek Ramamurthi and M.R. Krishnamurthy have agreed to surrender, release, relinquish and give up all their rights, title, interest, claim or concern of any nature whatsoever and have**



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also agreed to withdraw all the cases, dispute, litigation without any claim in respect of entire built up property bearing No. A-16, Neeti Bagh, New Delhi, in favor of Mrs. Chandan Ramamurthi and Dr. Alamelu Ramamurthi (the FIRST PARTY herein).

And Whereas the **FIRST PARTY** for their bonafide needs and requirements have **agreed to sell, convey, transfer and assign to the SECOND PARTY all their (FIRST PARTY'S) rights, title, interests and entitlements in the said property i.e. Entire Built Up property** bearing No. A-16, situated at Neeti Bagh, New Delhi, including the Garage Block, along with the sub-leasehold/ownership rights in the said plot of land measuring 893.33 square yards, (including right to transfer and convey title in respect of the Entire Ground Floor of the said property), and the SECOND PARTY has agreed to purchase the same, with all legal rights of ownership, possession, easements and appurtenances, with all fittings, fixtures, connections, structure standing thereon, with all rights in common passage, entrance, staircase, **for a total consideration of Rs. 17,71,00,000/- (Rupees Seventeen Crores Seventy One Lacs Only).**

**NOW THIS AGREEMENT TO SELL WITNESSETH AS
UNDER:**

.....

THAT in consideration of the sum of Rs. 17,71,00,000/- (Rupees Seventeen Crores Seventy One Lacs Only) **out of which a sum of Rs. 9,00,00,000/- (Rupees Nine Crores Only) as advance money and part payment has been received by the FIRST PARTY from the SECOND PARTY, in the following manner:-**

(handwritten details of pay orders)

In favour of Smt. Chandan Ramamurthi:

Pay order No. 651960 on 1/10/09 for Rs. 30,50,000/-

Drawn upon Corporation Bank - Pay order No. 652450 on 13/10/09 for Rs. 28,50,000/-



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*Drawn upon Kotak Mahindra Bank Pay order No. 015897
on 1/10/09 for Rs. 1,50,000/-*

In favour of Dr. Alamelu Ramamurthi:

Pay order No. 023271 on 1/10/09 for Rs. 25,00,000/-

*Both drawn on UBOI Pay order No. 241552 on 14/10/09 for Rs.
14,50,000/-*

1,00,00,000

CASH Rs. 8,00,00,000/- (Eight Crores only)

the receipt of which the FIRST PARTY hereby admit and acknowledge and **the remaining balance sum of Rs. 8,71,00,000/- (Rupees Eight Crore Seventy One Lacs. Only) will be paid by the SECOND PARTY to the FIRST PARTY, at the time of the registration of the necessary transfer documents**, the FIRST PARTY do hereby agree to grant, convey, sell, transfer and assign all their rights, titles and interests in the said property (fully described above) along with the sub-leasehold/ownership rights in the land underneath, with all fittings, fixtures, connections, structure standing thereon, free from all encumbrances, TO HAVE AND TO HOLD THE SAME unto the SECOND PARTY, absolutely and forever.

THAT the actual physical vacant possession of the said property will be delivered by the FIRST PARTY to the SECOND PARTY, at the time of the registration of the necessary transfer documents, after receiving the full consideration.

.....

THAT within 15 (fifteen) days from the date hereof and upon the receipt of the said intimation of the said compulsory requirements, the FIRST PARTY (on receiving the balance sale consideration), will execute and get the necessary transfer documents of the said property registered, in favour of the SECOND PARTY or his/her nominee/s.

..... ”



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150. Pertinently, the payment of Rs.8 Crores, (one crore having been paid earlier as reflected above) as mentioned in this ATS, was admittedly received by Defendant Nos.1 & 2 from the Plaintiffs *vide* Receipt Ex.PW1/7 (PX2) dated 14.10.2009 as mentioned in Agreement to Sell Ex.PW1/6 (PX1), in the office of Mr. Vinod Rajoria. The Receipt and the ATS were signed by the Plaintiffs and the Defendants Nos.1 & 2 and also by Mr. Vinod Jain, Mr. Vinod Rajoria, as Attesting Witnesses.

151. It is relevant to observe that as per her own testimony, she had sought the assistance of her brother, Mr. Vinod Jain, who had negotiated on her behalf with the Plaintiffs in regard to the sale transactions and also was a witness to the ATS dated 14.10.2009. The Defendants Nos.1 & 2 have thus, admitted ATS dated 14.10.2009 and that they duly acted upon it, without even a murmur.

152. The Defendant No.1 has tried to wriggle out of the Agreement to Sell, Ex.PW1/6 (PX1) by claiming that her signatures had been procured on the documents, without she being aware of the contents; there being many blanks in the documents. However, in her cross-examination, she has admitted that all the insertions made in the documents, had her initials.

153. The Defendant No.1 is an Advocate of Supreme Court of India and is well versed in all the legal nuances. Her legal knowledge is apparent as she herself has deposed in the testimony that when Dr. Shyamala Pappu took the Relinquishment Deed in her name from Mr. Vivek Ramamurthi, she had raised an objection since they were not related to each other through blood. Her own diligence and knowledge of law, is well reflected from her depositions, in her Affidavit of evidence. Her assertions that the documents



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had been manipulated and her signatures had been obtained by misrepresentation that there was no genuine sale transaction, is clearly not tenable.

154. It has been held in the case of Martin Cashin vs. Peter J. Cashin, AIR 1938 PC 103 that where the person executing the deed is neither blind nor illiterate, where no fraudulent misrepresentation is made to him, where he has ample opportunity of reading the Deed and such knowledge of its purport, the plea of *non est factum* is not open to him; it is quite immaterial whether he reads the Deed or not.

155. Similar observations were made in the case of Mathu vs. Cherchi, 1989 SCC OnLine Kar 342, wherein it was held that law presumes, *prima facie*, in favour of deeds being duly executed. Burden of proving vitiating factors is on the person who alleges them. A vague or general plea may not be sufficient. The rule is evolved to narrow the issue and protect the party charged with improper conduct from being taken by surprise. (Ladli Prasad Jaiswal vs. The Karnal Distillery Co. Ltd., AIR 1963 SC 1279)

156. In the case of Grasim Industries Ltd. vs. Agarwal Steel, (2010) 1 SCC 83 wherein it was held that when a person signs a document, there is a presumption unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted.

157. It is therefore, established from the testimony of the parties that they entered into the Agreement to Sell Ex.PW1/6 (PX1) dated 14.10.2009, pursuant to the oral Family Arrangement between the parties. *The contents*



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of the ATS also brings forth that the Agreement to Sell dated 14.10.2009 was in respect of the entire Suit Property which included the Ground Floor and the First Floor and the total consideration for the entire property agreed was for the sum of Rs.17,71,00,000/-. Furthermore, out of this total sale consideration, Rs.9 crores were received by Defendant Nos.1 & 2 vide Receipt Ex.PW1/7 (PX2) on 14.10.2009.

158. ***PW-1, Mr. Kailash Aggarwal in his Affidavit further deposed*** that the amount of Rs.9 Crores that was paid by the Plaintiffs to the Defendant Nos.1 & 2, instead of being given to the Shamala Pappu Group as the Sale consideration for the Ground Floor, was utilised by Defendant Nos.1 & 2 for the purchase of Residential Property bearing No. 183, Lane No. W-13B, Western Avenue, Sainik Farms, New Delhi where they intended to shift after handing over the possession of the Suit Property to the Plaintiffs, a fact admitted by Defendant No.1, which again corroborates the testimony of the Plaintiff in regard to payment of Rs.9 crores to Defendant Nos.1 & 2. The purchase of property in Sainik Farm by the Defendant Nos.1 & 2 is not in dispute.

159. The Plaintiffs have further explained that Defendants Nos.1 & 2 failed to pay the agreed Sale consideration of Rs.8.50 Crores to Shyamala Pappu group out of Rs.9 crores paid to them; instead they demanded that the Plaintiffs should pay Rs.8.50 Crores out of the balance sale consideration of Rs.8.71 Crores to Shyamala Pappu Group, in terms of the commitment under the Oral Settlement.

160. Left with no option and to ensure that the entire deal is not disrupted, the Plaintiffs paid Rs.4.10 Crores in cash and Rs.4.40 Crores by cheque to



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Smt. Shyamala Pappu and Sh. M.R. Krishnamurthi. Out of this cash amount, Rs.1.05 crore was paid on 11.11.2009 *vide* Receipt Ex. PW-1/8 and Rs. 3.05 crores on 12.11.2009 *vide* Receipt Ex.PW-1/6. The payment of amount of Rs.4.10 Crores through these Receipts was made by the Plaintiffs in the presence of PW-3-Sh. Jitender Goel, Manager of the Plaintiffs which were duly signed by Smt. Shyamala Pappu and Sh. M.R. Krishnamurthi. Though both the Receipts were not signed by Defendant Nos.1 & 2 or other Witnesses, the Receipts clearly mentioned that the Money was paid by them, in terms of the Memorandum of Settlement.

161. The Defendant Nos.1 & 2 have set up a defence that the two Receipts do not bear their signatures and while Rs. 4.50 crores and Rs.4.10 Crores, may have been paid by the Plaintiffs to Shyamala Pappu Group, but it cannot be adjusted towards the Sale consideration payable to them.

162. This argument is totally unsustainable, in the light of express terms of the Agreement to Sell dated 14.10.2009 Ex.PW1/6 (PX1) the two Receipts dated 11.11.2009 Ex. PW-1/8 for Rs.1.05 crore and 12.11.2009 Ex.PW-1/6 for Rs. 3.05 crores and the admissions of the Defendant Nos.1 & 2 in their Evidence, as discussed above.

163. From these documents and the admissions, it is evident that while Plaintiffs were making the part payments of sale consideration, negotiations were simultaneously ongoing there being internal differences between the co-owners, to complete the deal smoothly. Another Meeting was admittedly held amongst the parties in Ashoka Hotel on 13.11.2009, resulting in signing of Memorandum of family Settlement on that day, which also reinforces this arrangement between the parties.



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Memorandum of Family Settlement dated 13.11.2009:

164. Admittedly, on 13.11.2009, a meeting was organized by the Plaintiffs at Ashoka Hotel, New Delhi wherein the Plaintiffs Mr. Kailash Aggarwal and Mr. Pradeep Aggarwal, Mr. Sunil Ralli, the Defendant Nos.1 & 2, Mr. Vinod Rajoria and Mr. Vinod Jain were present. Dr. Shyamala Pappu and Sh. M.R. Krishnamurthi were also present. The Meeting is admitted by Defendant No.1.

165. The Defendant No.1 in her cross-examination has clarified that she went to Ashoka Hotel as the Plaintiffs had insisted that the Property would be transferred as one transaction through the Defendants, while the other legal heirs namely Vivek Ramamurthi (*through Shyamala Pappu in whose favour he had relinquished his share*) and M.R. Krishnamurthi respectively, would execute Relinquishment Deeds in favour of Defendant No.2. The Sub-Registrar was also called by Plaintiffs to Ashoka Hotel, to get those Relinquishment Deeds and the Memorandum of Settlement Deed dated 13.11.2009, registered.

166. Admittedly, the parties recorded the terms of Settlement in ***Memorandum of Settlement dated 13.11.2009, Ex.PW-1/9*** which was signed by the Defendants Nos.1 & 2 and also by Smt. Shamala Pappu and Mr. M.R. Krishnamurthi for himself as well as attorney of Sh. Vivek Krishnamurthi. It was witnessed by Mr. Vinod Kumar Rajora and Mr. Vinod Jain.

167. ***The requisite Terms of Memorandum of Settlement dated 13.11.2009, Ex.PW-1/9 (P-7) are as under:***

MEMORANDUM OF SETTLEMENT



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The memorandum of family settlement is made on this 13th day of November, 2009 between;

“ Mrs. Chandan Ramamurthi W/o Late Sh. M.K. Ramamurthi R/o A-16 Neeti Bagh, New Delhi (hereinafter referred to as the First Party). Dr. Alamelu Ramamurthi D/o late Sh. M.K. Ramamurthi R/o A-16, Neeti Bagh, New Delhi, (hereinafter referred to as the second party.). Vivek Ramamurthi S/o Late Sh. M.K. Ramamurthi R/o 34233. Trampini common Fremont California USA. Through his General Attorney Mr. M.R. Krishnamurthi alias R. Krishnaamurthi S/o Late Sh. M.K. Ramamurthi (hereinafter referred to as third party.). Sh. M.R. Krishnamurthi S/o Late Sh. M.K. Ramamurthi R/o A16, Neeti Bagh, New Delhi. (hereinafter referred to as the fourth party.) and Smt. Shyamla Pappu D/o Late Sh. P.N. Murthi R/o A-16, Neeti Bagh, New Delhi (hereinafter referred-to as the fifth party.).

...

NOW THIS MEMORANDUM WITNESSTH and to the parties hereto acknowledge, affirm, confirm, record and declare:-

1. It is acknowledged, admitted, confirmed and declared that **the First and second parties are exclusively and absolutely entitled to the ownership of the property no. A-16, Neeti Bagh, New Delhi. Accordingly property A-16, Neeti Bagh, New Delhi** will be mutated in the names of the First Party and the Second Party.
2. The *Fourth and Fifth parties undertake to relinquish their share in the property in favor of Second party.* The Third Party is residing in U.S.A. as such has executed a Registered General Power of Attorney dated 03.03.2003 in favor of Fourth Party. The Fifth Party undertake to relinquish her share to second party which has been acquired by virtue of registered relinquishment deed dated 03.03.2003 executed by the third party in favor of Fifth Party. And the Fourth party undertakes to relinquish his entire share in the property in favor of the second



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party. **The fourth and fifth parties undertake to hand over vacant, peaceful, and physical possession of their entire share in the said property to the second party on execution of the present settlement.**

3. The first and second party has paid to fourth and fifth parties a sum of Rs. 4,40,00,000 (Rs. Four Crore Forty Lakhs) by Bankers cheque in joint name as detailed below:

Pay Order No.	Date	Amount
023331	15.10.2009	2,40,00,000.00/-
123421	09.11.2009	1,15,00,000.00/-
65128	09.11.2009	54,00,000.00/-
65127	09.11.2009	24,75,000.00/-
01632	09.11.2009	6,25,000.00/-

...

6. The Third party through his general attorney Sh. M. R. Krishnamurthy alias R. Krishnamoorthi, Fourth party and the fifth party do hereby irrevocably agree and undertake that neither of them has any right or claim any right or entitlement or interest of any kind in relation to the Property A-16, Neeti Bagh, New Delhi ...

...

9. ... The fourth and fifth party undertake to present themselves before the Sub-Registrar (South), Mehrauli for registration of relinquishments deeds in favor of the second party and the decree passed in Probate case no. 26/93 in terms of this settlement.

10. ...The fourth and fifth parties have no objection if the property no. A-16, Neeti Bagh, New Delhi is mutated in the name of First & Second Parties. The Fourth and Fifth parties agree and undertake to co-operate with the First and second parties to get the property mutated in the name of First and



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Second Parties. For the said purpose they undertake to execute any letter, affidavit or deed in order to enable the said mutation.”

... ”

168. The agreed Terms were duly acted upon as Shyamala Pappu as well as the other co-owner, Sh. M.R. Krishnamurthi, who on the same day, executed the respective Relinquishment Deeds dated in favour of Defendant No.2, Dr. Alamelu, which were registered by the Sub- Registrar on 16.11.2009.

169. The Rs.4.40 crores (balance of Rs.8.5 Crores) was also paid to Dr. Shyamala Pappu and Sh. M.R. Krishnamurthi on the same day, *vide* Receipt dated 13.11.2009, Ex.PW-1/7 which was duly signed by Shyamala Pappu and Sh. M.R. Krishnamurthi and witnessed by Mr. Vinod Kumar Rajoria and Vinod Jain, the two persons who were representing the interests of Defendant Nos.1 & 2.

170. Smt. Chandan Ramamurthi, unsuccessfully tried to disown the contents of Memorandum of Settlement, by deposing that the Plaintiff gave some cheques to her broker, Mr. Ashwini, though she was not aware about how much money was settled between the Plaintiffs and Dr. Shyamala Pappu and Sh. M.R. Krishnamurthi for Ground Floor except that the drafts had been paid in Ashoka Hotel on 13.11.2009 as had been mentioned in the Settlement Deed.

171. However, her admissions in her testimony, presence and signatures of her brother Mr. Vinod Jain throughout and the documents duly signed by the Defendant Nos.1 & 2, unambiguously, establish the case of the Plaintiffs. Defendant Nos.1 & 2 became the absolute owners of the entire Suit Property,



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so as to be able to implement the Agreement to Sell dated 14.10.2009 and execute the Sale Deed for the entire Suit Property.

172. Moreover, pursuant to this Memorandum of Settlement and execution of Relinquishment Deeds in their favour, the Defendants Nos.1 & 2 gave the possession of the Ground Floor to the Plaintiffs *vide* Possession Letter dated 14.11.2009, Ex. PW-1/15 and of the Garage Block *vide* Possession Letter dated 14.11.2009, Ex. PW-1/16, which bears the signatures of both the parties i.e. Chandan Ramamurthi, Alamelu Ramamurthi, Kailash Aggarwal and Vijay Aggarwal along with the two witnesses i.e. Vinod Rajoria and Sunil Ralli (*in Ex. PW-1/15*) and Witnesses Vinod Rajoria and Vinod Jain (*in Ex. PW-1/16*).

173. Not only this, admittedly the parties in terms of Memorandum of Settlement dated 13.11.2009, withdrew the various pending litigations namely the two Test Case No. 26/1993 and 36/1993 and the FIR Nos. 124/1995, 286/2005, 249/2006 and RFA(OS) 51/2008, and various Criminal Litigation were all withdrawn by the respective parties. It is evident that the terms of Memorandum of Settlement, were duly acted upon by the parties thereby reflecting the authenticity of the Memorandum of Settlement.

174. It is fully proved that the sale transaction was plain and simple whereby the entire property was agreed to be sold for Rs.17.71 Crores. The ground floor was owned by Shyamala Pappu and their family and therefore, they received 8.50 Crores while the first floor was owned by the Defendant Nos.1 & 2 and they received Rs.9 Crores. While the Defendant Nos.1 & 2 has admitted the execution of the Relinquishment Deeds in their favour, but has wrongly asserted that Rs.8.50 Crores paid to Shyamala Pappu had no concern with them and they were independently entitled to the entire amount



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of Rs.17.71 Crores. Shyamala Pappu and M.R. Krishnamurthi, were entitled to receive their share of sale consideration of the ground floor property, for which they executed the Relinquishment Deeds in favour of Defendant No. 2 with an understanding that they would get Rs.8.50 crores for their share in the Ground Floor, out of the Sale Consideration of Rs.17.71 Crores for the entire property. This amount so paid by the Plaintiffs to Shyamala Pappu Group was towards the Sale consideration of the ground floor pursuant to Oral Family Settlement, the terms of which got crystallized in Memorandum of Settlement dated 13.11. 2009, and cannot be questioned by the Defendant Nos.1 & 2. It is erroneous contention in the teeth of Memorandum of Agreement, Ex. PW1/9 (P7) and their own admissions made in the cross-examination.

175. *The Defendant No.1 in her Affidavit of Evidence*, has essentially admitted all the facts. Her first defence is that there was no agreement between the parties for executing one Agreement to Sell for the entire property. According to her, she had agreed to sell only her portion i.e. first floor and the garage block for the Sale Consideration of Rs. 17.71 crores.

176. However, as already discussed in detail, the Plaintiffs for the reasons best known to them, were keen to have one Agreement to Sell for the entire property. Since the Defendant Nos.1 & 2 were not on talking terms with the Shyamala Pappu Group, the Plaintiffs took on themselves to talk to them separately and to bring a common settlement. The Defendant Nos.1 & 2 have admitted the Meeting at Ashoka Hotel on 13.11.2009 where they entered into the Memorandum of Settlement, which fully corroborates the consensus to have one Agreement to Sell, Ex.PW1/6 (PX1) for the entire Suit property,



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which indeed got executed between Plaintiffs and Defendant Nos.1 & 2, on 14.10.2009.

177. This is further corroborated from the execution of Relinquishment Deeds in regard to Ground Floor property by the Shyamala Pappu Group in favour of the Defendant No.2. Consequently, the Shyamala Pappu Group was entitled to receive Rs. 8.50 cores from the Defendants, as is also stated in the Memorandum of Settlement, Ex. PW1/9.

Validity of Relinquishment Deeds dated 13.11.2009 in favour of Defendant No.2

178. Learned counsel on behalf of the Defendants, had vehemently contented that the Relinquishment Deeds executed by Shyamala Pappu and Mr. M.R. Krishnamurthi, were in the nature of a sale as it was for a consideration and *per se* these documents do not transfer any right, title, interest and cannot be acted upon.

179. *Admittedly*, the Relinquishment Deed dated 13.11.2009, Ex. PW1/10 (X9) executed by Shyamala Pappu and Relinquishment Deed dated 13.11.2009 Ex. PW1/11 executed by M.R. Krishnamurthi in favour of Defendant No.2, is admittedly for a consideration. Moreover, to be a valid Relinquishment Deed, it had to be in favour of all the heirs. Since it was in favour of one Legal Heir i.e. Defendant No.2. and not jointly in favour of other co-owner Defendant No.1, it is in the nature of Sale Deed.

180. The Apex Court in the case of Kuppuswami Chettiar vs. A.S.P.A. Arumugam Chettiar and Another AIR 1967 SC 1395 made a reference to the case of Hutchi Gowder vs. Bheema Gowder (1959) 2 MLJ 324 and S.P. Chinnathambiar vs. V.R.P. Chinnathambiar (1953) 2 MLJ 387 to observe



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that where the renunciation is in favour of a person who already has a title to the estate, the effect is only the enlargement of such right. Renunciation does not vest in a person a title where it did not exist. *While on the other hand, if by virtue of the Instrument, a right/title is conferred on another person who has no pre-existing right in the suit property, then it is a document of transfer of ownership and not a Release Deed irrespective of the word that may be used.*

181. Similarly, in the case of Raghvendra Jeet Singh vs. Board of Revenue and Ors. 2015 SCC OnLine All 5678, the Court considered the distinction between a “Gift Deed” and “Release Deed”. It was observed that where by a document, a person voluntarily renounces the coparcenary rights of succession to impartible estate even if for consideration, it is a release. There can be no release by one person in favour of another if such other person is not already entitled to share in the property. Thus, by *release*, there is no transfer of interest or title to another person, who has no pre-existing right to such property. A release can, therefore, be made in favour of a person who has a pre-existing right and interest in the property. It would make no difference even where the release is without consideration.

182. In the case of Board of Revenue vs. Murugesu, AIR 1955 Mad. 641, it was held that where the release is not in favour of all the co-owners, it cannot be termed as a Relinquishment Deed. It was explained that where release is made by one co-owner in favour of another to the exclusion of all other co-owners having right and interest in the property, *the Deed would not be a Deed of Release but a Conveyance Deed.*

183. In the case of Kothuri Venkata Subba Rao vs. District Registrar of



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Assurances Gudur, AIR 1986 AP 42, it was held that in order to classify as a “Release”, the executant of the instrument having common or joint interest along with others, should relinquish his interest which would automatically result in the enlargement of the interest and others. *But where he executes the documents in respect of his share in favour of a particular co-owner, it cannot be treated as a release and must come within the definition of conveyance.*

184. It was also explained in Raghavendra (supra) that in order to distinguish between a Release Deed and a Gift Deed/Sale Deed, the decisive factor is the actual character of the transaction and precise nature of the rights created by the Instrument. It was further explained that by a Release Deed, the share of one co-owner is a release in favour of all other co-owners leading to enlargement of the right of all other co-owners, but there is no transfer of title since the other co-owners already have a title in the subject property.

185. The Coordinate Bench of this Court in Tripta Kaushik (supra) followed in Neeraj Arya (supra) has referred to all the aforementioned judgments to conclude that a document which releases its share in respect of one co-owner to the exclusion of other is, in fact, a Conveyance/Gift Deed and is required to be affixed with the requisite Stamp Duty.

186. Furthermore, the Full Bench of the Madras High Court in Chief Controlling Revenue Authority, Referring Officer vs. Rustorn Nusserwanji Patel, 1967 SCC OnLine Mad 46 held that the nomenclature given to the instrument is not decisive nor is the language which the parties may choose to employ in framing the document. The particular nature of the rights



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created by the instrument and the actual nature of the transaction are what matter.

187. In the present case, the release was made by Dr. Shyamala Pappu and Mr. M.R. Ramamurti in favour of Defendant No.2 to the exclusion of Defendant No.1 and that too when both the defendants had no share in the First Floor. Furthermore, as already discussed in detail, it was infact a Sale of their Share in the ground Floor to the Plaintiffs, though through Defendant Nos.1 & 2. The two Relinquishment Deeds Dated 13.11.2009 are therefore, in the nature of Sale Deeds.

188. *Thus, the two Relinquishment Deeds Ex. PW1/10 and Ex. PW1/11, which are in the nature of Sale Deeds are impounded and directed to be sent to the Collector of Stamp, to assess the proper stamp duty payable on this Relinquishment Deed within two month, which shall be paid by the Plaintiffs within 15 days thereafter.*

Title in Suit Property of the Defendant Nos.1 & 2 in executing the ATS on 14.10.2009:

189. *The next pertinent question which needs consideration is that on the date of entering into Agreement to Sell on 14.10.2009, the Defendant Nos.1 & 2 were not the owners of Ground Floor and could not have entered into the Agreement to Sell in respect of the Ground Floor.*

190. Herein, the ***Doctrine of Feeding the Grant by Estoppel recognised by Section 43 of the Transfer of Property Act, 1882 (hereinafter referred as “TPA”), becomes relevant.*** The legal principle is primarily related to transfer of property in cases where the transferor does not have title to the property at the time of transfer, but acquires it subsequently.



“Section 43. Transfer by unauthorised person who subsequently acquires interest in property transferred.—

Where a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.”

191. In the case of Jumma Masjid vs. Kodimaniandra Deviah, 1962 SCC OnLine SC 157, the Apex Court safeguarded the rights of good faith purchasers by observing that the Section clearly applies whenever a person transfers property to which he has no title on a representation that he has a present and transferable interest therein, and acting on that representation, the transferee takes a transfer for consideration. When these conditions are satisfied, Section 43 Transfer of Property Act provides that if the transferor subsequently acquires the property, the transferee becomes entitled to it, if the transfer has not meantime been thrown up or cancelled and is subsisting.

192. In the case of Renu Devi vs. Mahendra Singh and Ors., (2003) 10 SCC 200 it was clarified that the rule is that if a man, who has no title whatever to the property, grants it by a conveyance which in form carries the legal estate, and he subsequently acquires an interest sufficient to satisfy the grant, the estate instantly passes. The doctrine may not apply if the Deed of Transfer itself was invalid or if the third party has acquired title bona fide, for consideration and without notice.

193. Thus, in terms of Section 43 of TPA, though the Defendant Nos.1 & 2 were not having the title to the ground floor at the time of entering into the



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ATS dated 14.10.2009, but in terms of the oral Settlement and subsequent Memorandum of Settlement Dated 13.11.2009, the Defendant Nos.1 & 2 have acquired absolute ownership in the Ground Floor as well and the Plaintiffs/ transferee are entitled to Specific Performance of ATS dated 14.10.2009 on the equitable doctrine enshrined in Section 43 TPA.

194. *To sum up*, the property in question was owned by Late Sh. M.K. Ramamurthi. There were civil litigations undertaken in respect of his property between two branches in which the parties arrived at a Settlement whereby it was agreed that the ground floor shall be in the ownership of Sh. Vivek Ramamurthi and Sh. M.R. Krishnamurthi while the first floor will come in the ownership of the Defendant Nos.1 & 2. This Settlement Decree was even registered. The ownership of Shyamala Pappu Group and of the Defendants in respect of the ground floor and the first floor respectively, thus stands clearly established.

195. It is also proved that because of the bitter animosity in their relationship, the parties wanted to exit from the Suit Property. The Plaintiffs approached them for purchase of the entire property. The mechanism devised was that the ground floor owners shall relinquish their share in the ground floor in favour of the Defendants and thereafter, one Agreement to Sell, which was executed shall be honoured by the Defendant Nos.1 & 2, on payment of the entire sale consideration of Rs.17.71 Crores. Out of Rs.17.71 Crores, Rs.8.50 Crores were determined to be for the ground floor, which was payable to the Shyamala Pappu Group. The Defendants expressed their difficulty to pay this amount to the Shyamala Pappu Group. Consequently, the Plaintiffs paid Rs.8.50 Crores for and on behalf of the Defendant Nos. 1



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& 2 *vide* Receipts dated 11.11.2009, 12.11.2009 and 13.11.2009, Ex.PW-1/6 to Ex.PW-1/8, in terms of the registered Memorandum of Settlement, Ex. PW1/7 (P7) for and on behalf of the Defendants. The balance amount of Rs.9 Crores was admittedly already paid to the Defendant Nos.1 & 2, thus leaving of balance of Rs.21,00,000/-. The Plaintiffs have also admitted having received Rs.9 Crores.

196. It is, therefore, held that the Agreement to Sell dated 14.10.2009, Ex. PW-1/6 was duly executed between the Plaintiffs and the Defendant Nos.1 & 2 and that the sale consideration of Rs.17.50 Crores already stands paid leaving a balance of Rs.21,00,000/-. *The first requirement of seeking Specific performance of Agreement to sell, of the existence of a valid and concluded agreement between the parties, is satisfied.*

Readiness and Willingness of the plaintiffs and whether they have performed their part of the Agreement:

The second and third requirements are the “readiness” and “willingness” to honour the Agreement to Sell dated 14.10.2009 and whether the Plaintiff has performed his part of the contract in conformity with the terms of ATS, which may now be considered.

197. **Section 16 of the Specific Relief Act, 1963** stipulates the circumstances when a relief for specific performance shall not be granted by a court. The relevant part of the provision of it reads as under:

“16. Personal bars to relief specific performance of a contract cannot be enforced in favour of a person.—

(a)

(b)



(c) [who fails to prove] that he has performed or **has always been ready and willing to perform the essential terms of the contract which are to be performed by him**, other than terms the performance of which has been prevented or waived by the defendant.

Explanation— For the purpose of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.”

198. The aforesaid discussion establishes that out of total sale consideration of Rs.17.71 Crores, a balance amount of only Rs.21,00,000/-, remained to be paid out of the total sale consideration of Rs. 17.71 Crores. The Plaintiffs have stated that they have always been willing to pay the balance amount and had even got the Draft Pay Orders made as mentioned in the Legal Notice dated 28.04.2010, Ex.PW-1/32.

199. *PW-1 in his affidavit of evidence further deposed* that the Defendant Nos. 1 and 2 informed them that pursuant to the Agreement to Sell, they had already made an appropriate Application, to DDA for Mutation of the Suit Property in their name enclosing therewith the aforesaid Relinquishment Deeds, Affidavits and other requisite documents. The Plaintiffs approached the Defendant Nos. 1 and 2, and held several discussions for the mode of concluding the transaction at the earliest but after having received the entire sale consideration, the Defendants started avoiding the Plaintiffs.

200. Eventually, the property was mutated in the name of the Defendants



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and property was made freehold. Thereafter, the Plaintiffs offered to pay the balance sale consideration of Rs.21,00,000/- and got prepared the Drafts and Pay Order No. 0214122 dated 21.04.2010 for Rs.10,50,000/- in favour of Dr. Alamelu Ramamurthi (Defendant No.2) and Pay Order No. 024123 dated 21.04.2010 for Rs.10,50,000/- in favour of Smt. Chandan Ramamurthi (Defendant No.1) both drawn on Union Bank of India, South Extension, New Delhi and even told the Defendants that the Sale Deed would be drafted once the Defendants handed over the copy of the Mutation Letter, but they failed to do so.

201. The Plaintiff became suspicious of the conduct of the Defendants and made enquiries in the Office of DDA from where he came to know that the Defendant Nos.1 & 2 were not pursuing their Application and that in fact, the Mutation had not been effected in the name till then. In order to seek an explanation from the Defendants for such fraudulent and deceitful acts, the Plaintiffs attempted to contact them but they maliciously and wilfully avoided the Plaintiffs.

202. The Plaintiffs were thus, compelled to send the legal Notice dated 28.04.2010, Ex.PW-1/32 to the Defendants. A Reply dated 21.05.2010, Ex.P-4 was given by the Defendants wherein though they admitted the possession of the Plaintiffs over portion of the Suit Property, but fraudulently denied the entire transaction as well as the Receipts under which they had received the money.

203. Plaintiff agreed to get the property mutated and converted into freehold by their own efforts. They also engaged one advocate Mr. Deepak for doing the mutation. Defendant No.1, Chandan Ramamurthi accompanied



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Plaintiff No.1, Kailash Aggarwal and their broker Sunny to DDA on several occasions for the purposes of mutation.

204. *The explanation of Defendant No.1, Ms. Chandan Ramamurthi in her Affidavit of evidence*, is that she sent the copy of the Registered Will dated 07.05.1990 that was executed by Sh. M.K. Ramamurthi, to DDA. The Plaintiffs filed the Relinquishment Deed dated 13.11.2009 and the Settlement Deed dated 13.11.2009 with the DDA. Letter of Deputy Director (CS) DDA dated 09.12.2009, Ex.DW-1/7 was received by Defendant No.1 inquiring about the status of Dr. Shyamala Pappu and refused to mutate the property in their names on the basis of relinquishment made by Dr. Shyamala Pappu, in the absence of Relinquishment Deed from Mr. Vivek Ramamurthi. According to DDA, the Settlement dated 13.11.2009 amounted to a Sale Deed, on which requisite stamp duty was required to be paid.

205. The letter dated 09.12.2009 was in response to an Application made by Chandan Ramamurthi dated 18.11.2009, wherein DDA had sought clarification regarding the status of Shyamala Pappu in the Suit Property.

206. DDA again sent a Letter dated 08.01.2010, Ex.DW-1/8 seeking further clarifications from Defendant No.1 regarding Mutation of the Suit property in names of the other legal heirs i.e. children of Sh. M.K. Ramamurthi.

207. The Plaintiffs have clearly demonstrated their readiness and willingness to perform the contract by paying almost the entire sale consideration i.e. Rs. 17.50 crores out of the total amount of Rs. 17.71. They paid Rs. 9 crores to the Defendant Nos.1 & 2 for the first floor, and additionally paid Rs. 8.50 crores on behalf of the Defendants to the Shyamala Pappu and M.R. Krishnamurthi for the ground floor.



208. The Plaintiffs had offered to pay the said balance amount and got the drafts and pay order No. 0214122 dated 21.04.2010 for Rs.10,50,000/- in favour of Dr. Alamelu Ramamurthi (Defendant No.2) and pay order No. 024123 dated 21.04.2010 for Rs.10,50,000/- in favour of Smt. Chandan Ramamurthi (Defendant No.1) prepared, both drawn on Union Bank of India, South Extension, New Delhi.

209. The Plaintiffs have duly established their *readiness and willingness* to pay the balance amount of Rs. 21 lakhs and *have performed their part of the contract as per the ATS dated 14.10.2009*.

210. *Therefore, the second and third requirements are fulfilled accordingly.*

211. ***The Issue Nos. 1 and 2 are decided in favour of the Plaintiffs i.e. Sh. Kailash and Vijay Aggarwal.***

ISSUE NO. 3

“Whether the plaintiffs are entitled to the discretionary relief or specific performance? OPP”

212. ***The next pertinent question is: Whether it is equitable to grant equitable relief of Specific performance of Agreement to Sell Dated 14.10.2009, to the Plaintiffs.***

213. Supreme Court in the case of Kamal Kumar (supra), observed that it is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief.

214. Much has been contended that the value of the property at that time in 2009 was around Rs.45,00,000/- and also around Rs.65,00,000/-, but she herself stated that the different brokers were quoting different rates.



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215. Pertinently the Plaintiffs had examined ***PW-10, Sh. B.P. Singh, Property valuer*** who has deposed that in the year 2009, the value of the Suit Property was approximately Rs.2 lakhs per sq. yard. There is no significant cross examination of the witness to suggest that the value of the suit property in the year 2009 was otherwise the present market value i.e. in the year 2017. When he gave the statement, the value of the property was stated to be approximately Rs.4.25 lakhs but that is in the year 2017. **As per his testimony the value of the Suit Property at the time of entering into Agreement to Sell would be approximately about Rs.16 crores.**

216. Similar is the testimony of ***PW-11, Mr. Mukesh Kumar, Property Dealer*** who has also deposed to same effect again reinforcing that the prevailing market value of the Suit Property was about Rs.2 lakhs per sq. yard.

217. Pertinently, aside from asserting that the value of the Suit property was around Rs.6/7 lakhs per sq. yard (*as per the Affidavit of Evidence of Defendant No.1*) and around Rs.45-60 Crores (*as per the testimony of Defendant No.1*), neither any cogent evidence has been led by the Defendants Nos.1 & 2 nor have they been able to refute the testimony of PW-10 or PW-11, on this aspect of valuation of Suit Property.

218. It is pertinent to observe that there were *inter se* disputes between the Defendants and Shyamala Pappu Group, who both were related to Late Sh. M.K. Ramamurthi; Smt. Chandan Ramamurthi, being the wife while Shyamala Pappu was claiming herself to be the first wife. There was bitter venomous animosity, which had resulted in multiple litigations *inter se* the parties, which were confined not only to civil litigations but also to multiple



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criminal cases and both the parties were looking for a way out. In fact, the Defendant No.1 has stated that because of the disputes, she at one point of time was even willing to sell the property to Shyamala Pappu, but it did not materialize since she was unable to pay the agreed Sale consideration.

219. It is a known fact that the valuation of the disputed property is bound to be impacted; it cannot be ignored that both parties were keen to get out of this disputed situation. The entire transaction is proved to have been executed consciously and with full knowledge. The Defendant No.1 being an accomplished Supreme Court lawyer, executed the documents and cannot now shy away from them on the pretext that the sale consideration was not in accordance with the prevailing market rate. The Defendants cannot wriggle out of the transaction on specious ground of insufficient sale consideration, which infact has also not been established.

220. The Defendant Nos.1 & 2 have already received a substantial sum of Rs. 9 crores for the first floor and garage block, which they used to purchase an alternate property in Sainik Farms, and a balance of only Rs.21 Lacs remain to be paid to them.

221. The Defendants have already benefited significantly from the sale consideration, having received almost entire agreed amount. The Defendants' own actions - including receiving funds, executing documents, and participating in the settlement process - duly supported by valid documents, demonstrate their initial willingness to complete the transaction. Their subsequent attempts to renege on the Agreement to Sell came only after receiving a substantial amount.

222. The Plaintiffs have gone above and beyond by paying Rs. 8.50 crores



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on behalf of the Defendant Nos.1 & 2 to Shyamala Pappu and M.R. Krishnamurthi. They are also willing to pay the balance sale consideration and have taken possession of the ground floor.

223. Thus, the Plaintiffs have acted through *bona fide* and have performed their part of the Agreement. They have been diligently pursuing their rights, having filed the present Suit promptly on 24.06.2010 after the Defendant Nos.1 & 2's refusal to execute the Sale Deed. There is no misrepresentation or misconduct which would disqualify the exercise of discretion of Specific Performance in favour of the Plaintiffs.

224. The *bonafide* of the Plaintiffs is also evident from their deposition that after due execution of entire transaction and practically payment of entire money, they conceded to the request of Defendant Nos.1 & 2 who sought some time to shift to their Sainik Farm property, though they have thereafter not shifted and continued to stay on the First Floor of the Suit property.

225. Significantly, the Defendant Nos.1 & 2 despite having received all the benefit under the Agreement to Sell and practically the entire sale consideration, have continued to be in the possession of the First Floor for all these years and have failed to honour their part of the Agreement to Sell and hand over the Possession. The Defendant Nos.1 & 2 however, have filed the Civil Suit, to avoid the deal.

226. Conversely, the Plaintiffs have acted bonafide and earnestly performed their part of the Agreement to Sell and given Rs. 17.5 Crores out of the total Sale consideration of Rs.17.71 Crores, despite which they but have not able to get the fruits of the Agreement to Sell.



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227. It is, therefore, held that the equity lies in favour of Plaintiffs and they are entitled to discretionally relief of Specific Performance in respect of the Agreement to Sell dated 14.10.2009.

228. *The Issue No. 3 is decided in favour of the Plaintiffs i.e. Sh. Kailash and Vijay Aggarwal.*

RELIEF:

CS (OS) No. 1992 of 2013:

229. *The Suit filed by Smt. Chandan Ramamurthi to seek Declaration of the Settlement Deed dated 13.11.2009* as not binding on the Defendants (Plaintiffs herein) and that the Receipts dated 11.11.2009, 12.11.2009 and 13.11.2009 executed by the Plaintiffs as *null and void*, is **hereby dismissed.**

CS (OS) No. 1279 of 2010:

230. *The Suit for Specific Performance filed by the Plaintiffs seeking Specific Performance of Agreement to Sell dated 14.10.2009*, Ex.PW1/6 (PX1) in respect of entire Suit Property bearing No. A-16, Niti Bagh, New Delhi, is **hereby decreed.**

231. The Plaintiffs are directed to tender the balance amount of Rs.21,00,000/- along with the interest @ 9% p.a. from the date of Agreement to Sell till the date of deposit, within 45 days. In case the Defendant Nos.1 & 2 refuse to accept the amount, it shall be deposited with the Registrar General, Delhi High Court. Defendant Nos.1 & 2 are directed to execute the Sale Deed in favour of the Plaintiffs, pursuant to the Agreement to Sell dated 14.10.2009, on payment of Rs.21,00,000/- within two months from the date of the Judgment. In case, the Defendants do not come forth, Plaintiffs may



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seek the execution of Sale Deed in their favour through appropriate legal process/Execution.

232. *The two Relinquishment Deeds Ex. PW1/10 and Ex. PW1/11, are impounded and directed to be sent to the Collector of Stamp, to assess the proper stamp duty payable on this Relinquishment Deed within two month, which shall be paid by the Plaintiffs within 15 days thereafter.*

233. The parties are directed to bear their own cost.

234. Decree Sheet be prepared accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

**DECEMBER 24, 2024
va/rk/RS**