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

% *Pronounced on: 30th January, 2025*

+ **C.R.P.54/2019 & CM APPL.8703/2019**

1. **YASHPAL SACHDEVA**
S/o Shri Bhim Sain Sachdeva
R/o 13/172, Malviya Nagar,
New Delhi-110017.

2. **DINESH KUMAR ARORA**
S/o Late Shri Raj Pal
R/o N-24, 1st Floor, Malviya Nagar,
New Delhi-110017.

..... Petitioners

Through: Mr. Anil K. Khaware, Ms. Azma
Zaidi and Mr. Yogendra Kumar,
Advocates.

versus

SUNIL RELI
S/o Late Shri T.D. Reli
R/o 10/135, Malviya Nagar,
New Delhi-110017.

..... Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T
NEENA BANSAL KRISHNA, J.

1. A Civil Revision Petition under Section 115 of the Code of Civil



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Procedure, 1908 (*hereinafter referred to as “CPC”*) has been filed on behalf of the Revisionists (*who are Defendant No.1 & 2 in the Main Suit*) to assail the Order dated 17.01.2019 *vide* which the Application under *Order VII Rule 11 (a), (b) and (d) of CPC* filed by them respectively, have been dismissed.

2. ***Briefly stated***, the Plaintiff-Sunil Relli (*Respondent herein*) had filed a Suit for *Declaration of the Sale Deed dated October, 2011* executed by Defendant No.3-Shri Nand Gopal Gandham (*since deceased*) through his attorney, Defendant No.2-Shri Dinesh Arora (*Petitioner No.2 herein*) in favour of Defendant No.1-Shri Yashpal Sachdeva (*Petitioner No.1 herein*) in regard to Shop No.C-51, Malviya Nagar, New Delhi (*hereinafter referred to as “Suit Shop”*) as null and void. The other reliefs sought were *Decree of Possession, Prohibitory and Mandatory Injunction and a Money Decree*. However, all these other reliefs are predicated on the Sale Deed.

3. *The grounds on which rejection of Suit was sought were, firstly, ex-facie* the Plaintiff was required to pay the requisite Court Fee for which ample of opportunities had been given to him to make good the deficiency, despite which he had failed to do so. But the learned Trial Court while noting the deficiency in Court Fee, has further granted time for making good the Court Fee. It is asserted that there was no such occasion to give further time. Even then the Court Fee has not been paid by the Plaintiff/Respondent and the Suit is liable to be rejected on this ground itself.

4. *The second ground* that was agitated was that the Plaint did not disclose *any cause of action* and was in itself vexatious. The Sale Deed had been duly executed in favour Petitioner No.1-Yashpal Sachdeva for a sale



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consideration of Rs.2,00,000/- since he was already occupying the property as a tenant. However, the Plaintiff has tried to challenge the registered Sale Deed by making oral averments that the value of the shop was Rs.45 lakhs. The contention of the Plaintiff-Sunil Relli that since Yashpal Sachdeva did not have adequate money, he sought Rs.22.50 lakhs from him in lieu of the half share in the shop, are asserted to be preposterous and counter to the express terms of the Sale Deed. Such oral contentions contrary to the terms of the written document, are inadmissible under Section 91 and 92 of Indian Evidence Act, 1872.

5. The reliance has been placed on Keventer Agro Ltd. vs. Kalyan Vyapar Pvt. Ltd. & Anr., 2016 (154) DRJ 124, wherein it was observed that once the Agreement is proved in terms of Section 91 of the Act, no evidence can be adduced contrary to the written terms of the Agreement.

6. In T. Arivandandam vs. TV Satyapal & Anr., 1997 (4) SCC 467, wherein it was observed that it is no longer *res integra* that a duly registered Sale Deed cannot be questioned.

7. It is asserted that the entire case of the Plaintiff is based on the averments contrary to the contents of the Sale Deed and, therefore, is inadmissible in evidence. The cause of action for declaring the Sale Deed as *null and void*, does not exist.

8. In terms of *Section 31 of The Specific Relief Act, 1963*, the cancellation of a Sale Deed can only be sought on the premise that the same is void or voidable qua the Claimant. The Respondent is neither the owner nor is it his case that the execution of Sale Deed was without authority. That being so, the claim of the Respondent/Plaintiff-Sunil Relli does not fall



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within the scope of Section 31 of the Specific Relief Act, 1963 and the Sale Deed cannot be declared null and void. It is asserted that the execution of the Sale Deed is not disputed. The competence of the persons to so execute the Sale Deed is also not under challenge. It is a registered document executed in favour of Petitioner No.1-Yashpal Sachdeva by the Petitioner No.2-Dinesh Arora having due authority from Defendant No.3-Shri Nand Gopal Gandham. Therefore, the relief of Declaration is not tenable.

9. The Respondent/Plaintiff had further alleged in various paragraphs of his Complaint that there was an alleged fraud played upon him. However, the Respondent had filed a Complaint under Section 200 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) along with Application under Section 156(3) of Cr.P.C, but the learned M.M, Saket denied the registration of FIR. The Complaint under Section 200 of Cr.P.C was quashed by this Court in Crl. M.C. No.5191/2015 by observing that there was no fraud. The ground of challenge of alleged fraud, therefore, stands concluded and the Sale Deed is no longer subject to challenge as has been done by the Plaintiff in his Suit. It is, therefore, evident that the Complaint discloses no cause of action and the suit was liable to be rejected under Order VII Rule 11 of CPC. It is submitted that learned ADJ fell in error in dismissing the Application under Order VII Rule 11 of CPC.

10. The Respondent was duly served and appeared through Counsel, but subsequently stopped appearing and was proceeded *ex-parte*.

11. **Submissions heard and record perused.**

12. The Plaintiff, Shri Sunil Relli had filed a *Suit for Declaration, Possession and Injunction and in Alternative for Recovery of Money of Rs.*



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16 lakhs along with Interest. The basic averments in the Suit were that Defendant No.3-Shri Nand Gopal Gandham (*since deceased*) was the registered owner of the property bearing No.C-51, Malviya Nagar, admeasuring 294 sq. yards (*hereinafter referred to as "Suit Property"*). He wanted to get his property constructed, but it was in occupation of four tenants. He approached the Plaintiff who was in the business of Real Estate to arrange a Builder for reconstruction of the property and also to undertake the eviction of the tenants. The Plaintiff introduced Defendant No.2-Shri Dinesh Arora, Proprietor of M/s Techno Care to Defendant No.3 and he charged Rs. 20 lakhs service as well as commission charges, to which Defendant No.3 agreed. Further, Defendant No.2 agreed to pay a service/ commission charges of Rs.10 lakhs to the Plaintiff.

13. Thereafter, meetings were held between Defendant No.2 and 3 and the Plaintiff, wherein a written Agreement between Defendant No.2 and 3 was entered into in the month of December, 2007. The Defendant No.3 also executed a Power of Attorney in favour of Defendant No.2 in January, 2008 to settle with the tenants and to bring the litigation to an end. It took about 1½ years to arrive at amicable settlements with the tenants.

14. In the month of December, 2009 after the matter with the tenants was amicably settled, an Addendum/Supplementary Collaboration/Property Development Agreement was executed between Defendant No.3 and Defendant No.2 for carrying out the construction of the Suit Property. The Defendant No.3 paid Rs.10 lakhs, i.e. 50% of the Commission charge to the Plaintiff.

15. It was further asserted that Defendant No.1-Sh. Yashpal Sachdeva had



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acquired the tenancy rights in the Suit Property during the Settlement in the Court, but thereafter he started negotiating with Defendant No.3 to purchase the shop which was to be constructed in the property in question.

16. According to the Plaintiff, Defendant No.1 conveyed to him that since he had to pay a sale consideration of Rs.45 lakhs to Defendant No.3, he needed monetary help on which the Plaintiff proposed that he would pay 50% of the sale consideration i.e. Rs.22.50 lakhs, provided he agreed to sell half portion of the shop to the Plaintiff. To make good this payment, it was agreed that Defendant No.2 shall pay to Defendant No.1 a sum of Rs.10 lakhs which were due to the Plaintiff towards commission and the Plaintiff offered to pay Rs.7.50 lakhs immediately and the balance Rs.5 lakhs to be given by the Plaintiff to Defendant No.1 at the time of execution of the Sale Deed. Pursuant of this Oral Agreement between Plaintiff and Defendant No.1 and 2, he was informed by Defendant No.1 that he had received Rs.10 lakhs from Defendant No.2 and he made further demand of Rs.7.5 lakhs which he paid to Defendant No.1.

17. The Plaintiff further asserted that after having received Rs.17.5 lakhs, the Defendant No.1 and 2 started making flimsy excuses about non-approval of building plan by MCD for which reason the construction work was held up, but assured that no sooner the shop was constructed the Sale Deed of half portion of the Shop in the Suit Property shall be executed in favour of the Plaintiff. Thereafter, the Plaintiff moved an Application dated 03.11.2010 under the RTI Act before MCD and received a Reply dated 21.10.2011 from MCD in regard to non-approval of the plans.

18. On 20.10.2011, when the Plaintiff was paid the balance commission



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of Rs.10 lakhs, the Plaintiff disclosed to Defendant No.3 about his intention to purchase half share of the Suit Shop, but was shocked to be informed by Defendant No.3 that the Sale Deed was already executed in favour of Defendant No.1 by Defendant No.3 through his Attorney Defendant No.2. The Plaintiff thus, has claimed that Defendant No.1 and 2 had turned dishonest and instead of honouring their Oral Agreement, has transferred half share in the Suit Shop to the plaintiff and has committed a fraud by getting the Sale Deed executed only in the name of Defendant No.1. Thus, the plaintiff sought *Declaration of the Sale Deed as null and void* and also Mandatory and Permanent Injunction.

19. The first relief sought by the Plaintiff is the Declaration of the Sale Deed dated October, 2011 as null and void. Pertinently, the ground on which the annulment is sought is that there was a subsequent oral Agreement between Plaintiff, Defendant No.1 and 2 for execution of half share of the Suit Shop in favour of the Plaintiff. However, there are no cogent facts narrated to this effect.

20. From the averments made in the plaint as narrated above, what needs to be considered is whether the Plaint discloses any cause of action.

21. Allegedly, according to the Plaintiff, he was to pay half sale consideration i.e. Rs.22.50 lakhs out of which Rs.10 lakhs was to be paid on his behalf by Defendant No.2 to Defendant No.1. However, he himself has stated that on 20.10.2011, the Plaintiff was paid the balance commission of Rs.10 lakhs by Defendant No.3. This itself reflects that no Rs.10,00,000/- had been received by Defendant No.1 as asserted by the Plaintiff. Further, there is not an *iota* of evidence in this respect except the bald assertions. In



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fact, he has claimed that Rs.7.5 lakhs were collected by Defendant No.1 from his wife and aged mother from their house, but again it is not supported by any cogent evidence.

22. Pertinently, as has been rightly contended by the Defendants/Revisionists that in the Sale Deed executed in October, 2011 in favour of Defendant No.1 it has been specifically indicated that the sale consideration was Rs.2 lakhs on account of Defendant No.1 already been in occupation of the shop as a tenant. The averments made in the Plaint are contrary to the contents of the Sale Deed and are not admissible in terms of Section 91 and 92 of the Indian Evidence Act, 1872.

23. Furthermore, though the Plaintiff/Respondent had alleged fraud by the Petitioners, but as has been rightly observed that the Complaint under Section 200 of Cr.P.C filed on the allegation of fraud has already been quashed by this Court *vide* Order dated 08.08.2018. While the Plaintiff has claimed fraud, but has failed to disclose any facts from which any case of fraud can be made out.

24. In the light of a valid registered Sale Deed already executed in favour of Defendant No.1/Revisionist-Yashpal Sachdeva, no grounds, whatsoever have been disclosed by the Plaintiff for Declaration of the Sale Deed as null and void. The other reliefs of Possession and Injunction are consequential to the Declaration of the Sale Deed.

25. A meaningful and comprehensive reading of the Plaint does not disclose any cause of action. Consequently, the *impugned Order rejecting the Application under Order VII Rule 11 of CPC is hereby set aside and the Suit filed by the Respondent/Plaintiff is hereby rejected.*



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26. In the end, it may also be observed that the appropriate Court Fee has not been paid by the Plaintiff/Respondent-Sunil Relli despite innumerable opportunities and thus, the Suit is liable to be rejected on this ground as well.

27. The Revision Petition is accordingly allowed and the impugned Order dated 17.01.2019 *vide* which the Application under *Order VII Rule 11 (a), (b) and (d) of CPC* was dismissed is set aside and the Suit of the Plaintiff/Respondent is rejected under *Order VII Rule 11 of CPC*.

28. *The Petition is accordingly, disposed of along with the pending Application(s).*

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 30, 2025

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