



2025:DHC:10499-DB



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

***Reserved on: 13.11.2025***

***Date of Pronouncement: 27.11.2025***

+ RFA(OS)(COMM) 33/2025 and CM APPL. 64365/2025  
SHRI SURENDER BASOYA .....Appellant

Through: Mr. Abhay Kumar, Adv.

versus

SHRI SANJEEV JOON .....Respondent

Through: Mr. Naresh K. Daksh, Adv.

+ RFA(OS)(COMM) 14/2024, CM APPL. 34784/2024 and CM  
APPL. 30512/2025

SURENDER BASOYA & ANR. ....Appellants

Through: Mr. Abhay Kumar, Adv.

versus

SANJEEV JOON .....Respondent

Through: Mr. Naresh K. Daksh, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN**

**SHANKAR**

### **JUDGEMENT**

#### **ANIL KSHETARPAL, J.**

1. Through the present Appeals, the Appellants assail the correctness of common judgement dated 04.03.2024 [hereinafter referred to as 'Impugned Judgement'] passed by the learned Single Judge [hereinafter referred to as 'LSJ'], wherein two separate suits

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filed by the Respondent [Plaintiff before the learned Single Judge], were decreed.

2. Since, the parties to the disputes are common, as is the Impugned Judgement, this Court deems it appropriate to deliver a common judgement with bifurcation of both the Appeals wherever necessary, while referring to the parties in the same manner.

3. For sake of convenience, the parties before this Court shall be referred to in accordance with their status before the LSJ.

### **COMMON FACTUAL MATRIX:**

4. In order to comprehend the issues involved in the present case, it is imperative to cull out the relevant background facts, which are set forth hereinafter.

5. While filing the suits and the interim applications under Order VIII Rule 10 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] the Plaintiffs, in brief, asserted as under:

6.1 In the plot admeasuring 1600 Sq. Yds., there were three owners. One-half belonged to Ms. Anju Bansal, i.e., measuring 800 Sq. Yds. The Plaintiff claims that the aforesaid property belonged to him, as he had invested the amount. In the remaining 800 Sq. Yds., Mr. Ramesh Kumar was the owner of 1/4<sup>th</sup> share i.e. 400 Sq. Yds., whereas another person Mr. Akhil Jain was the owner of 400 Sq. Yds. [hereinafter collectively referred to as 'Suit Properties'].

6.2 Defendant No.1, i.e., Mr. Surinder Basoya purchased 300 Sq.

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Yds. plot *vide* Sale Deed dated 02.07.2013 from Ms. Anju Bansal on payment of Rs. 1,47,00,000/-. With respect to the remaining 500 sq. Yds. from the Suit Properties, available in the name of Ms. Anju Bansal, there was a Settlement Agreement executed between the Plaintiff and Ms. Anju Bansal dated 12.06.2015, which was acknowledged in a Court Decree dated 17.07.2015. Therein, it was held that the Plaintiff will be owner of 80%, whereas Ms. Anju Bansal shall be owner of 20%.

6.3 Mr. Ramesh Kumar, another co-sharer *vide* Sale Deed dated 27.10.2014 sold 400 Sq. Yds. in favour of Defendant No.1, a builder, for a sum of Rs. 1,90,00,000/-.

6.4 In the month of September 2016, the Defendant No.1 purchased an additional 270 sq. Yds. plot of the Suit Properties from the Plaintiff and Ms. Anju Bansal for a total sale consideration of Rs.1,58,00,000/-, out of which Rs.1,26,40,000/- was payable to the Plaintiff and remaining Rs.31,60,000/- was to be paid to Ms. Anju Bansal. The Sale Deed was duly registered on 15.10.2016 and the entire sale consideration was sought to be paid by the seven post-dated cheques of Rs.1,25,13,600/-, whereas Rs.1,26,400/- was deducted as TDS.

6.5 All cheques issued by Defendant No.1, on presentation, were dishonoured. As per the terms of Sale Deed, the express recitals in Clause 6 of the said deed states, in the event of dishonour of the cheques, the sale would automatically stand cancelled. Clause 6 of the Sale Deed reads as under:-



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The said Clause 6 read as under:

*“That the VENDOR hereby further covenants with the VENDEE that in case said Property or any portion of the Property hereby sold is lost to the VENDEE on account of any legal defect in the title and right of the VENDOR to transfer the same or the possession or quite enjoyment of the said Property by the VENDEE in any manner disturbed on account of litigation started by anyone claiming title thereof or on account of some act and omission of the VENDOR then the VENDOR shall be liable and responsible for all the losses, damages, costs and expenses sustained by the VENDEE. **Simultaneously, the VENDEE has also agreed and undertaken that since the payment of sale consideration is payable in future, the cheque issued in favour of the CONFIRMING PARTY shall be honoured/encashed on presentation and in the event of dishonour of any of cheques and/or non-payment of amount thereof within seven days of such dishonour, the Sale shall stand cancelled automatically and whatsoever money paid by the VENDEE shall stand forfeited and the CONFIRMING PARTY exclusively shall have absolute right either to take possession of Said Property and/or to seek recovery of entire sale consideration from the VENDEE as agreed herein and in such eventuality, the VENDEE shall be liable to pay the entire sale consideration together with interest @ 18% per annum from the date of present Sale Deed till realization / payment to the CONFIRMING PARTY and the VENDEE shall exclusively be responsible and liable for all such action, liabilities and obligations as may be undertaken by him on the basis of present Sale Deed. It is also agreed that in such eventuality, the VENDOR shall not have any right either in the Property or the amount receivable by the CONFIRMING PARTY and the VENDOR shall also be bound to execute the Sale Deed in favour of the CONFIRMING PARTY or his Nominees, as the case may be for the remaining amount.***

6.6 The Plaintiff issued a demand notice to the Defendant No.1 asking for the payment of sale consideration, resulting in an agreement dated 20.06.2017, whereby the Defendant No.1 acknowledged his liability towards the sale consideration mentioned in Sale Deed. Under this agreement, the Defendant No.1 issued four

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fresh cheques, amounting to Rs.1,26,40,000/- in favour of the Plaintiff and undertook that, in the event of default or dishonour of said cheques, the Defendant No.1 shall be liable to pay interest @ 18% per annum from the date of Sale Deed and the Plaintiff will additionally be entitled to seek cancellation of Sale Deed.

6.7 Apart from that, on 20.06.2017 itself, an unregistered Agreement to Sell [hereinafter referred to as 'ATS'] was also executed between the Defendant No.1 and the Plaintiff, *qua* the remaining 230 Sq. Yds. of the Suit Properties, for a sum of Rs.1,24,00,000/-, which forms the subject matter of CS (COMM) 720/2021. A post-dated cheque was issued by the Defendant No.1 in favour of the Plaintiff under this ATS. The aforesaid cheques issued by the Defendant No.1, were presented for encashment on 29.05.2018 and on 19.07.2018 respectively, but were also dishonoured.

6.8 In these circumstances, the Plaintiff issued demand notices to the Defendant No.1 and requested to pay requisite outstanding amounts and filed criminal complaints under Section 138 of the Negotiable Instruments Act, 1881 [hereinafter referred to as 'NI Act'] against the Defendant No.1.

6.9 It also transpires that the Defendant No.1 has transferred some part of the Suit Properties, in favour of his wife, i.e., the Defendant No.2 by way of two registered Gift Deeds dated 14.03.2019.

6.10 During the pendency of the aforesaid complaint case *qua* the seven post dated cheques issued by the Defendant No.1, a sum of Rs.15,00,000/- only was paid to the Plaintiff in the year 2020.

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6.11 Thus, the Plaintiff filed Civil Suit Nos. 719/2021 and 720/2021, claiming the following reliefs:-

*“1. CS(COMM) 719/202.1 has been filed by the plaintiff seeking the following reliefs:*

*(a) to pass a Decree of recovery of sum of Rs. 2,27,42,104/- (Rupees Two Crores Twenty Seven lacs Forty Two Thousand One Hundred Four) together with interest @ 1.8% per annum since 22.12.2021 till realization of entire amount in favour of the Plaintiff and against the Defendants, jointly and severally;*

*Or in alternate of Prayer (a), the Prayer (b) and (c)*

*(b) to pass a Decree of Declaration thereby declaring that the Sale Deed dated 15.9.2016 executed by Plaintiff and in favour of Defendant No. 1 In respect of Plot of land measuring 270 sq. yards (225 sq. meters) out of Plots measuring 400 sq. yards (335 sq. meters) bearing Property No. 62 –A/1 and adjoining Plot measuring 400 sq. yards (335 sq. meters) of Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi -110065 is without consideration and is void ab initio and nullity and no title has transferred and passed in favour of Defendant No. 1 and also subsequent two Gift Deeds dated 14.3.2019 executed by Defendant No. 1 in favour of Defendant No. 2 and also ordering endorsement of cancellation on said Sale Deed and Gift Deeds by the concerned Sub-Registrar; and*

*(c) to pass a Decree of Possession in favour of the Plaintiff and against the Defendants thereby directing the Defendants jointly and severally, their associates, successors, assign, attorney, representative or any other person claiming on their behalf to restore back the possession of the Property i.e. Plot of land measuring 270 sq. yards (225 sq. meters) out of Plots measuring 400 sq. yards (335 sq. meters) bearing Property No. 62-A/1 and adjoining Plot measuring 400 sq. yards (335 sq. meters) of Khasra No. 136/1/2 (Min) a, Village Garhi Jharia Maria, New Delhi- 110065 to the Plaintiff;*

*(d) to pass a Decree of Permanent Injunction in favour of the Plaintiff and against the Defendants thereby restraining the Defendants, their family members, successor-in-interest, associates, assignee or any other person acting on his behalf from raising any construction, entering into any Agreement, transferring, alienating and/or parting with possession or creating third party interest in whatsoever manner in respect of Property i.e. Plot of land measuring 270 sq. yards (225 sq. meters) out of Plots measuring 400 sq. yards (335 sq. meters) bearing Property No. 62-A/1 and adjoining Plot measuring 400 sq. yards (335 sq. meters) of Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi-110065 or any portion thereof;*

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*(e) to award the costs of the present suit throughout in favour of the Plaintiff and against the Defendants;*

*(I) to pass any further or other order, relief or directions in favour of the Plaintiff and against the Defendant which this Hon'ble Court, may deem just, fit and proper in the interest of justice and equity."*

*2. CS(COMM) 720/2021 has been filed by the plaintiff seeking the following reliefs:*

*(a) to pass a Decree of recovery of sum of Rs. 2,07,70,000/- (Rupees Two Crores Seven Lacs Seventy Thousand; together with interest @ 15% per annum since 21.12.2021 till realization of entire amount in favour of the Plaintiff and against the Defendant.;*

*Or in alternate of Prayer (a), the Prayer (b) and (c)*

*(b) to pass a Decree of Declaration thereby declaring that the Agreement to Sell dated 20.6.2016 executed between Plaintiff and Defendant in respect of Plot of land measuring 230 sq. yards out of Plots measuring 400 sq. yards situated in Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi -110065 without consideration and is void ab initio and nullity and the Defendant has no title, right and interest of whatsoever nature in the said Plot of land; and*

*(c) to pass a Decree of Possession or direction in favour of the Plaintiff and against the Defendant thereby directing the Defendant, his associates, successors, assign, attorney, representative or any other person claiming on his behalf to restore back the possession of the Property i.e. Plot of land measuring 230 sq. yards out of Plots measuring 400 sq. yards situated in Khasra No. 136/1/2] (Min) at Village Garhi Jharia Maria, New Delhi-110065 or any portion thereof:*

*(e) to award the costs of the present suit throughout in favour of the Plaintiff and against the Defendant; and/or*

*(j) to pass any further or other order, relief or directions in favour of the Plaintiff and against the Defendant which this Hon 'ble Court may deem just, fit and property in the interest of justice and equity."*

6.12 The defence of the Defendant No.1 was struck off, as he failed to file written statement within a period of 120 days. Ultimately, both the suits filed by the Plaintiff were decreed. CS (COMM) 719/2021 was decreed in terms of prayers (b), (c) and (d), whereas



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CS(COMM)720/2021 was also decreed in terms of prayers (b), (c) and (d).

7. After perusing the submissions made by the parties and the documents on record, the LSJ decreed the suits in favour of the Plaintiff in terms of prayers (b), (c) and (d). The LSJ granted a decree of cancellation of the Sale Deed, possession of the Suit Properties and held that subsequent transfers made vide gift deed in favour of Defendant No.2 is valid and legal. Lastly, a decree of permanent injunction was also passed.

### **CONTENTIONS OF THE APPELLANTS/ DEFENDANTS**

8. Learned Counsel representing the Defendant No.1 submits that he has also filed supplementary grounds of Appeal, which have been taken on record. While controverting the findings of the LSJ, the Defendant No.1 has made the following submissions:

8.1 The findings of the LSJ to the effect that the suit filed was a commercial suit within the ambit of Section 2(1)(c) of the Commercial Courts Act, 2015 [hereinafter referred to as 'CCA'], has also been challenged on the pretext that a simple Sale Deed executed for transfer of land for residential purpose cannot be construed as a commercial dispute. Neither the Sale Deed/the agreement is an infrastructure agreement nor the Sale Deed is in respect of premises used for commercial purposes, and as such, the Court ought not have adjudged the suit in terms of the CCA.

8.2 It is contended that LSJ has erred in according a relief of



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cancellation of entire Sale Deed in favour of Ms. Anju Bansal, keeping in view the pleadings of the Plaintiff and the documents on record, where the vendor i.e. Ms. Anju Bansal, also the co-owner of 20% shareholding has neither sought cancellation nor instituted any proceedings for the same. The said relief to a party who has neither approached the Court nor agitated for such right, is totally illegal and beyond jurisdiction.

8.3 LSJ further failed to appreciate that even otherwise, cancellation of the sale deed at the behest of alleged 80% shareholder is bad in law as partial cancellation cannot be effected.

8.4 Further, the Defendant No. 1 asserted that LSJ overlooked the settled principle that non-payment of sale consideration does not entitle either the vendor or even the confirming party to seek the relief of cancellation. At best, merely a relief of recovery could have been allowed.

8.5 It is further contended that the Court failed to appreciate that a suit seeking cancellation of Sale Deed filed after more than 3 years from the date of cause of action is liable to be dismissed, being barred by limitation. It is asserted by the Defendant No.1 that the cheque stood dishonoured in January 2017 and the challenge to the Sale Deed is made in the year December 2021. The suit, being beyond the prescribed limitation period of three years, no decree without a full-fledged trial should have been passed in favour of the Plaintiff.

8.6 In addition to the aforestated submissions, the Defendant No.1 asserts that LSJ erred in placing reliance upon an affidavit claimed to

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have been filed by Ms. Anju Bansal in favour of the Plaintiff. The filing of such an affidavit, without any direction of the Court and in a case where the Defendant No.1 had no defence on record, was totally illegal. Reliance on the affidavit of a stranger to litigation and granting relief based on the same, is an exercise without jurisdiction.

8.7 The subsequent agreement dated 20.06.2017, in absence of registration, has no legal consequence and therefore granting the relief in terms of the said agreement is illegal.

8.8 Moreover, LSJ further erred in applying section 92 of the Indian Evidence Act, 1872 [hereinafter referred to 'IEA']/Section 95 of the Bharatiya Sakshya Adhiniyam [hereinafter referred to as 'BSA'] for rejecting the payment of Rs.1.3 crores in respect of the sale of suit property while failing to appreciate that payment of Rs. 1.3 crores was not based on oral agreement but were duly reflected in the accounts supported by the written receipt. Hence, exclusion of this evidence is contrary to law.

8.9 Lastly, the Defendant No.1 submits that the LSJ erred in granting the alternative relief while the main relief has neither been abandoned nor given up by the Plaintiff. Granting of alternative relief without adjudication of the primary relief is impermissible in law.

### **CONTENTIONS OF THE RESPONDENT/PLAINTIFF**

9. *Per contra*, the learned counsel for the Plaintiff has made the following submissions:

9.1 At the outset, the Plaintiff contends that the present Appeals

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have been filed without annexing the certified copy of the Judgement/Decree, despite the specific directions dated 31.5.2024, requiring the Defendant No.1 to file the same. In absence of the certified copy, the Appeal is incomplete and invalidly presented, thus not maintainable and deserves dismissal.

9.2 It is contended that the Defendant No.1 undisputedly issued the post-dated cheques towards consideration of the Sale Deed. Clause 6 of the Sale Deed expressly stipulates the consequences of dishonour of cheques and non-payment of sale consideration including the nullity of Sale Deed. The cheques having admittedly been dishonoured and despite demand and opportunity given by the court, Defendant No.1 failed to pay the sale consideration as per Sale Deed. Thus, such wilful default has rendered the Sale Deed a nullity and void and hence, the suits have rightly been decreed.

9.3 In consonance with the aforestated submissions, it is contended that, once no title was passed to Defendant No.1, the Gift Deeds dated 14.03.2019 executed by him in favour of Defendant No.2 are fraudulent, *void ab initio* and have rightly been cancelled.

9.4 Moreover, the Plaintiff asserts that once it has been admitted and came on record that Defendant No.1 has not paid the sale consideration amount as per Sale Deed, no issue was required to be framed under Order XV Rule 1 of the CPC and thus there was no embargo in passing the Judgement/Decree by the Court, particularly when the entire case is based on undisputed documentary evidence.

9.5 With respect to Section 92 of the IEA/Section 95 of the BSA, it

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is urged that since the foundation of the suit is the sale deed itself, containing clear recitals regarding post-dated cheques and consequences of default; no oral evidence contradicting the document is admissible. In absence of any document contrary to the admitted documents, Defendant No.1's oral plea cannot be looked into.

9.6 The Plaintiff herein contends that since the fresh cheques issued in *lieu* of earlier dishonoured cheques were dishonoured on 20.07.2018 and period from 15.3.2020 till 28.02.2022 is excluded as per order of the Supreme Court due to Covid-19, the suit is well within limitation.

9.7 Further, as far as CS (COMM) 720/2021 is concerned, it is submitted that cheques issued under the ATS have been dishonoured, rendering the ATS void for want of consideration. It is pertinent to note herein that the Plaintiff has always been ready to execute the Sale Deed pertaining to Suit Properties at the Defendant No.1's convenience. But the Defendant No.1 has failed to evince any readiness and willingness in this regard.

9.8 It is evident that Defendant No.1 is unwilling to tender the consideration as stipulated within the ATS yet continues to enjoy possession of the aforementioned property without any lawful authority. This untenable situation has effectively impeded the Plaintiff's ability to engage in any alternative transactions involving the property.

9.9 Finally, the Plaintiff submits that no issue was required to be framed and the LSJ was empowered under Order XIII-A of the CPC

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to pass a summary judgement, once it is found that there was no real prospect of Defendant No.1 succeeding in the defence.

### **ANALYSIS AND FINDINGS**

10. This court has heard learned counsel for the parties at length and with their able assistance, perused the paper book along with the record of the Civil Suits.

11. With respect to the contention as to when a suit is to be considered as a “commercial suit”, the law is very clear on this point. A suit qualifies as a ‘commercial suit’ if it falls within the definition of “commercial dispute” under Section 2(1)(c) of the CCA and if the pecuniary value of the suit satisfies the threshold prescribed for Commercial Courts.

12. Pertinent to this objection of the Defendant No.1, that the suit is not a commercial suit, this Court finds no merit in the contention, as the materials on record indicate that the Plaintiff invested his hard-earned money for commercial gain in the Suit Properties and the Defendant No.1 is also engaged in the business of construction, development and sale and purchase of immovable properties. Additionally, the suit also satisfies the pecuniary requirement of a Commercial Suit provided by the statutes. This Court has considered the submission, that the Defendant No.1 purchased the property for construction of flats for giving it on rent and sale. Additionally, as per Section 2 (1)(c) of the CCA, the statute, while defining ‘commercial dispute’ under Clause VII (i) of the said Act include agreements relating to immovable property, used exclusively in trade and

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commerce. In this case, the immovable property, purchased or proposed to purchase through Sale Deed and an Agreement to Sell, is exclusively for the purpose of trade and commerce because the Defendant No.1 is a builder, who has constructed flats. Hence, both the suits were correctly entertained as commercial suits and the submissions of the learned counsel representing the Defendant No.1 lacks merit, and is found to be without substance.

13. As regards CS (COMM) 719/2021, upon perusal of the Sale Deed, it is evident that Defendant No.1 had issued seven post-dated cheques amounting to Rs.1,25,13,600/- in favour of the Plaintiff towards the sale consideration. All the said cheques were dishonoured upon presentation. Thereafter, the parties executed an agreement dated 20.06.2017 whereby Defendant No.1 acknowledged his liability and issued four fresh cheques for Rs.1,26,40,000/-. These cheques were also dishonoured. A demand notice dated 03.08.2018 was thereafter issued by the Plaintiff. It is further the case of the Plaintiff that only an amount of Rs.15 lakh has been paid by the Defendant No.1 to the Plaintiff in the year 2020 through bank transfer, during the pendency of the criminal proceedings.

14. At the outset, there are two key issues attached in relation to the Cancellation of Sale Deed, *firstly* whether a sale deed can be cancelled on account of deficit payment of sale consideration; *Secondly*, whether partial cancellation of a sale deed is permissible.

15. Pertinent to the first contention, it is manifestly clear that as per the contract arrived between Plaintiff and Defendant No.1 in the Sale



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Deed, it was clearly agreed and mentioned that in the event of non-payment of sale consideration or the dishonour of cheques, the Plaintiff has the right to get the Sale Deed cancelled.

16. Section 31 of the Specific Relief Act, 1963 empowers a person to seek cancellation of a written instrument which is void or voidable and which, if left outstanding, may cause them serious injury. In the present case, the consideration under the sale deed stood unpaid on account of dishonour of cheques, rendering the sale incomplete and void.

17. Moreover, as per Clause 6 of the Sale Deed dated 15.06.2016, the title under the Sale Deed would pass on to the Defendant no.1 only on encashment of all the cheques, which stood dishonoured. Hence, title did not pass in favour of the Plaintiff as stipulated in Clause 6, and consequently the Sale Deed stood cancelled. Thus, the contract is in consonance with the governing statutory provisions and hence, the Plaintiff is entitled to decree of cancellation of the Sale Deed.

18. Furthermore, the Defendant No.1 claims that the partial cancellation of sale deed ought not to be done, as Ms. Anju Bansal is a co-owner of the suit properties and without impleading her as a party to the suit and without giving her the rights to claim her share, rights and title, the sale deed cannot be cancelled. This Court observes that once the sale itself is *void ab initio* due to non-payment of consideration, no right, title or interest ever passed to any subsequent transferee, consequently the sale deed and agreement to sell do not vest any right *qua* the suit property in the Defendant No.1. Thus, Ms.



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Anju Bansal is not required to file a separate suit. Therefore, the maxim '*ubi jus ibi remedium*' has no application in the absence of any vested right. Consequently, this is not a case of partial cancellation.

19. Furthermore, with respect to the subsequent transfers made, *vide* two gift deeds, by the Defendant No.1 in favour of Defendant No.2, his wife, are invalid and illegal, as Defendant No.1 had no transferable title, so the Plaintiff is not bound by it.

20. In terms of Section 55 of the Transfer of Property Act, 1882 the transfer of ownership on execution of the Sale Deed is as per the term provided in the Sale Deed. As is evident, Clause 6 of the Sale Deed dated 15.09.2016 specifically stipulates that in the event of dishonour of the cheques, the Sale Deed will become void and stand automatically cancelled. On 11.10.2022, the Defendant No. 1, who was present in the Court, admitted that only part of the sale consideration has been paid by him in respect of the Suit Property. Therein, the Defendant No. 1 was directed to place before the court, a calculation of the balance sale consideration payable according to the Defendant No.1. The Defendant No.1 did not comply with the said directions *stricto sensu* but only filed statement of payment made by the Defendant to the Plaintiff for the sum of Rs. 15,00,000/-.

21. Moreover, with regard to CS (COMM) 720/2021, only an unregistered ATS dated 20.06.2017 was executed by the Plaintiff in favour of the Defendant No.1 on receipt of cheques of Rs.1,24,00,000/-. The consideration therein was payable through post-dated cheque dated 10.03.2018, which was dishonoured on

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presentation. A Legal notice was issued and a criminal complaint under Section 138 of NI Act was initiated. However, the defence of the Defendant No.1 that the suit property of the ATS had already been sold to third parties is unsubstantiated, and he has neither sought cancellation nor specific performance of the ATS. The Defendant No.1 has taken over possession of the Suit Properties pursuant to execution of the ATS but has not paid any amount due under the ATS to the Plaintiff.

22. The cheque given by the Defendant No.1 under the ATS has been dishonoured. The Defendant No.1 who is in the possession of the Suit-Properties pursuant to the ATS, is not willing to pay the amount due under the ATS to the Plaintiff. Hence, the Defendant does not get any right under the aforesaid agreement dated 20.06.2017.

23. Learned counsel representing the Defendant No.1 has submitted that plot measuring 230 Sq. Yds. as referred to in the agreement dated 20.06.2017, does not exist. He submits that the Defendant should be granted one more opportunity to file written statement and the suit should not have been decreed in this manner, particularly, when he has paid Rs. 15,00,000/-, out of the cheques of Rs.1,25,13,600/- handed over pursuant to Sale Deed dated 16.09.2016.

24. The Defendant No.1 has not produced any material to prove that plot measuring 230 sq. yards does not exist. As already noticed that Ms. Anju Bansal was owner of 800 Sq. Yds. After sale of 300 Sq. Yds. *vide* Sale Deed dated 22.07.2013 in favour of the Defendant No.1, she was left with 500 Sq. Yds., out of which, as per the Decree



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dated 17.07.2015, 400 Sq. Yds. belong to Plaintiff, whereas 100 Sq. Yds. belong to Ms. Anju Bansal. The Defendant No.1 purchased 270 Sq. Yards *vide* Sale Deed dated 15.06.2016 from Plaintiff and Ms. Anju Bansal, whereas the remaining 230 Sq. Yards, he agreed to purchase *vide* Agreement to Sell dated 20.06.2017, hence, the Defendant No.1 cannot claim that 230 Sq. Yds. does not exist.

25. In addition to the foregoing circumstances, this Court observes that the defence of the Defendant No.1 is in derogation of the explicit recitals of the registered sale deed. Thus, in terms of Section 92 of the IEA/Section 95 of the BSA, such plea cannot be entertained.

26. The rules regarding the preference of documentary evidence over oral testimony are rooted in the principle of “best evidence”, which mandates that written content must be substantiated by written proof. Therefore, as it is well-settled that the sale deed is required to be registered, i.e., a document required by law to be reduced to the form of a document, no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting, varying, adding or subtracting from its terms.

27. Lastly, in relation to the contention, that the suit is barred by limitation, this Court is of the opinion that though the sale deed was registered in the year 2016, but due to non-payment of the consideration amount, a fresh agreement in consonance with the Sale Deed was entered into on 20.06.2017, wherein it was agreed to pay Rs.1,26,40,000/-. Further, it was agreed that, in the event of default in payment or dishonour of cheque, the Defendant No.1 shall be liable to



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pay interest @ 18% per annum from the date of Sale Deed and even the Plaintiff will have right to seek cancellation of Sale Deed. In lieu of this agreement, the Defendant No.1 issued four cheques against the sale consideration, but on presentation, the said cheques dated 10.03.2018 were dishonoured. Following this, a part payment was made in the year 2020 of amount Rs.15 lakhs. Thereafter, the Supreme Court extended the limitation period during the spread of COVID-19. Thus, the suits were well within the period of limitation.

28. Therefore, in the light of the above findings, it becomes manifestly clear that the Defendant No.1 is escaping from his legal liability and he only wants to reap the benefits of the fruit without even paying consideration of it.

### **CONCLUSION**

29. In light of the foregoing discussion, this Court finds no illegality, perversity or incorrect approach adopted or the conclusions arrived at by LSJ in the Impugned Judgment.

30. Hence, having found no merit, the present Appeals along with pending application(s), stand dismissed.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**NOVEMBER 27, 2025**

*s.godara/ra/sp*