



2026:DHC:4421



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

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Reserved on: 12th January, 2026

Pronounced on: 18th May 2026

+ **RFA 733/2024, CM APPL. 61915/2024 (stay) & CM APPL. 61917/2024 (for additional documents)**

1. **RAJENDRA GUPTA**

S/o Late Shri Hansraj Gupta,
Greater Kailash-I,
New Delhi-110048

.....Appellant

Through: Mr. Sandeep P. Agarwal,
Senior Advocate with Mr.
Varun Shankar and Mr. Harsh
Rastogi, Advocates.

versus

1. **HEM MANOHAR**

R/o 16, Johnson Close, Winthrop, Perth, 6150 WA Australia
Through Special Power of Attorney Holder
Mr. Uma Shankar Seth
R/o A-2/1, Vasant Vihar,
New Delhi-11005

...Respondent No. 1

2. **VIVITA TAYAL**

R/o 51, Hersperia Avenue, City Beach, Perth WA 605
Australia,
Through Special Power of Attorney Holder
Mr. Uma Shankar Seth
R/o A-2/1, Vasant Vihar,
New Delhi-110057

....Respondent No. 2

Through: Mr. Arjun Singh Bawa, Mr.
Sahil Gupta, Ms. Apoorva
Pradhan and Mr. Siddhartha,
Advocates.

CORAM:



HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been preferred by the Appellant, challenging the Judgment and Order dated 28.09.2024, whereby the learned District **Judge-04, New Delhi, allowed the Application under Order VII Rule 11 CPC** and the Civil Suit filed by the Plaintiff/Appellant seeking *Specific Performance of an Oral Agreement to Sell, was rejected* as it failed to disclose a cause of action and was barred by limitation.
2. The Plaintiff/Appellant had filed a *Civil Suit bearing CS No. 466/2023 for Specific Performance of an Oral Agreement to Sell*, in respect of the property bearing House No. E-12/4, Vasant Vihar, New Delhi, admeasuring 829 sq. yards comprising a basement, ground floor, first floor and second floor (*hereinafter referred to as the 'Suit Property'*).
3. The Suit Property was originally acquired by Late Shri Manohar, *Husband of Defendant No.1* and Hem Manohar, Defendant No.1, by way of a Registered Lease Deed dated 08.08.1969, duly registered on 30.08.1969 before the concerned Sub-Registrar.
4. The Plaintiff/ Appellant's wife, Ms. Rachna Gupta, is the real sister of Defendant No. 1, Ms. Hem Manohar *herein*. Owing to this relationship, the families of the Plaintiff and the Defendants shared cordial relations from the very beginning.



5. The Defendant No.1 and her husband, Late Shri Manohar, permanently shifted to Australia and had no intention to come back to India. Thereafter, Late Shri Manohar and the Defendant No. 1 gave up their Indian citizenship sometime around the mid-1980s. Late Shri Manohar and the Defendant No. 1 intended to conclude their affairs with respect to the Suit Property, as it was inconvenient for them to manage the same after permanently relocating abroad. It was claimed by the Plaintiff, that it was the intention of Late Shri Manohar and the Defendant No. 1, to transfer the complete interest, rights and title in the Suit Property to the Plaintiff *herein*.

6. During the period between 1979 to 1987, the Suit Property was wrongly occupied by an unauthorised occupant, namely, M/s Gandhi Estate Agency. It is further the case of the Plaintiff that the Defendants were finding it difficult to manage the Suit Property, which was in possession of tenants protected under the provisions of the Delhi Rent Control Act, and the Defendants were allegedly not receiving adequate rent and were facing serious difficulties in managing the Suit Property.

7. In furtherance of the purported intention to transfer the Suit Property, Defendant No. 1 executed a *Registered General Power of Attorney (GPA) dated 17.01.1979*, in favour of the Plaintiff, thereby authorising him to deal with the Suit Property, manage, have it vacated, lease and take all necessary steps, in relation thereto.

8. The Plaintiff claimed that the said General Power of Attorney was granted for valuable consideration, inasmuch as the Plaintiff had agreed to contest the litigation in respect of the Suit Property and manage the same at his own costs and effort. Thus, the agency under the GPA dated 17.01.1979, was obtained for a valuable consideration.



9. The Plaintiff thereafter, assumed management of the Suit Property, dealing with various tenants and occupants. All the Court litigations were also looked after and diligently prosecuted by the Plaintiff, at his own cost and with his own effort.

10. The Plaintiff was successful in obtaining the physical possession from the tenants/occupants. The possession was received from M/s Gandhi Estates in the year 1987 after contesting the costly litigation and making a payment of Rs.1,50,000/- to M/s Gandhi Estates, as a one-time full and final Settlement. The Plaintiff asserted that this amount was paid by him, solely in reliance upon the promise made by Late Shri Manohar and Defendant No. 1, to eventually transfer the title of the Suit Property to him or his family members.

11. It is stated that the parties had initially agreed to execute a formal Sale Agreement, after the Suit Property was duly vacated. However, in the year 1984, Late Shri Manohar informed the Plaintiff that he was in urgent need of funds, particularly around the time when Defendant No. 2, his daughter, was to be married.

12. *Accordingly, on 08.01.1984, Late Shri Manohar along with Defendant No. 1, allegedly entered into an Oral Agreement to Sell the Suit Property to the Plaintiff for a total consideration of Rs. 20,00,000/-.* The Plaintiff claims to have paid a sum of Rs. 4,00,000/- towards part consideration on the same date and the balance amount was agreed to be paid at the time of execution of final documents.

13. The Plaintiff claimed that after negotiations and in consideration of the extensive services rendered by him in managing the Suit Property, the



parties entered into a binding Oral Agreement to Sell on 08.01.1984, *inter alia*, on the following terms and conditions:—

- (i) *That the Defendant No. 1 and her husband, Shri Manohar agreed to transfer the entire Suit Property to the Plaintiff on as is where is basis.*
- (ii) *The total sale consideration after adjusting previous accounts, was settled at Rs.20,00,000/-.*
- (iii) *That an amount of Rs.4,00,000/- was paid on 08.01.1984 to the Defendant No.1 and her husband towards the part sale consideration.*
- (iv) *That the balance sale consideration of Rs.16,00,000/- was agreed to be paid by the Plaintiff to the Defendant No. 1 and her husband at the time of completion of the transaction and execution of documents of transfer.*
- (v) *That the Plaintiff would continue with the litigation and get the property vacated from the tenants/occupants that on getting physical possession from the tenants/occupants, the Plaintiff shall retain it with himself in furtherance of the contract for sale.*
- (vi) *That the Plaintiff shall be free to get the documents of title executed either in his own favour or in favour of his wife/nominee.*
- (vii) *That the Plaintiff shall be free to deal with the Suit Property in any manner whatsoever.*

14. This contract for sale was executed between the parties, in presence of *Mr. Sanjay Gupta s/o the Plaintiff*, at their residence.



15. Since Late Shri Manohar had permanently relocated out of India, it was particularly difficult for the Plaintiff, to get the Sale Deed registered for the Suit Property. However, owing to the close familial ties shared between the parties, and the fact that Late Shri Manohar and Defendant No. 1, never interfered with the possessory and beneficial rights of the Plaintiff, in regard to the Suit Property, the Plaintiff continued to remain endlessly patient.

16. The parties used to discuss the modes and final timelines for the completion of transfer of the title of the Suit Property, over the years. This can be clearly deduced from the subsequent Letters exchanged between the parties, wherein Late Shri Manohar clearly requested for the mutation of the Title Deeds, in favour of the Plaintiff or any of his family member.

17. The understanding between the parties in regard to the transfer of beneficiary rights in the Suit Property, can also be deduced from the fact that Late Shri Manohar never claimed any rent from the Plaintiff or his family members, for almost 40 years, till his demise in the year 2017. Furthermore, Late Shri Manohar at no point of time, interfered with the Plaintiff's peaceful and settled possession of the Suit Property.

18. Further, Late Shri Manohar was well aware of the fact that the Plaintiff had let out the Suit Property to his family concern, *M/s Sangeeta Leasings*, but at no point did Late Shri Manohar claim any rent or arrears from the Plaintiff or from the Company, as a tenant. The Plaintiff claims that he has been paying the municipal taxes in respect of the Suit Property, since 08.01.1984. moreover, he has carried out extensive construction, additions, and alterations in the Suit Property in his own independent right. *In 1997-1998, he constructed the basement and substantially renovated the ground floor, first floor and second floor of the Suit Property.*



19. He has also been letting out the Suit Property to several tenants, from time to time. The Plaintiff places reliance on the Letters dated 20.12.1987 and 20.06.1989, written by Late Shri Manohar from where an inference of the underlying oral agreement to transfer the Suit Property in favour of the Plaintiff, is clearly discernible. The Plaintiff himself wrote a Letter dated 21.03.1995 to Late Shri Manohar in regard to the Suit Property.

20. It is the case of the Plaintiff that in the year 1999-2000, Defendant No. 1 and her husband, with a view to formalize the transfer, sought legal advice in Australia from M/s Gibson & Gibson, *vide* communication dated 03.06.1999. The firm purportedly advised a multi-stage transfer mechanism: initially, Late Shri Manohar was to transfer his undivided share to his wife Defendant No.1, who would subsequently execute a Gift Deed in favour of the Plaintiff's wife, *being the biological sister of Defendant No. 1*. This plan was suggested because a Gift Deed between blood relation, would save the cost of taxes and stamp duty.

21. Consequent to this legal advice, a document, i.e. a Gift Deed was subsequently executed in Australia on 22.02.2000, whereby the Suit Property was gifted to the Defendant No. 1 by Late Shri Manohar. He further executed a Power of Attorney dated 22.02.2000, in favour of the Plaintiff authorising him to get the Gift Deed registered before the Sub-Registrar and to do all other acts, in furtherance thereof.

22. The Plaintiff arranged all the requisite documentation for the conveyance of the title from Late Shri Manohar to the Defendant No. 1, and he also co-ordinated with the Government authorities. However, the DDA did not permit registration of said Gift Deed and Late Shri Manohar was unable to transfer his share in the Suit Property to the Defendant No. 1.



23. Thereafter, the parties continued to make attempts to transfer the Suit Property by way of Gift Deed, in order to minimise the tax payable on the aforesaid transfer. The intention of the parties to sell the Property to the Plaintiff, remained consistent and the same can also be inferred from Letter dated 21.03.2014, written by the Plaintiff to Late Shri Manohar.

24. However, unfortunately Shri Manohar expired on 06.04.2017 at Western Australia, leaving behind the Defendants as the only legal heirs. Ms. Rachna Gupta, wife of the Plaintiff, also died on 05.04.2023, at Delhi.

25. The Plaintiff claimed that after the demise of Mr. Manohar, Defendant No. 1 and the Defendant No. 2 filed a *Civil Suit being CS(OS) No. 600/2019, praying for possession, eviction, rendition of accounts and arrears of rent.* The Plaintiff on coming to know about the same, filed an Application being IA No. 2753/2021 thereby seeking impleadment.

26. It is the case of the Plaintiff that it was only in the Reply dated 06.09.2022 filed by the Defendants that the alleged oral Agreement to Sell, was denied for the first time. ***The Plaintiff thus, filed the present Suit for Specific Performance for execution of the Sale Deed in respect of the Suit Property in his favour.***

27. The **Defendants in their Written Statement** asserted that they are the *bona fide* legal owners of the Suit Property, which was originally sub-leased to Late Shri Manohar, and his wife/Defendant No. 1, through a perpetual Sub-Lease dated 08.08.1969, whereby they acquired 50% share each in the Suit Property.

28. Upon the demise of Shri Manohar on 06.04.2017, his share in the Suit Property devolved upon his two legal heirs, i.e. his wife, Defendant No. 1, Ms. Hem Manohar, and Defendant No. 2, Ms. Vivita Tayal, his daughter.



Consequently, the Suit property was mutated in the name of the Defendants in the records of the DDA *vide* Letter dated 06.08.2019 and Corrigendum Letter dated 19.11.2019.

29. The Suit Property was leased to one M/s Sangeeta Leasings, through a Lease Deed dated 11.09.1987, for a term of five years, wherein Ms. Rachna Gupta, wife of the Plaintiff, was a partner, with an option of renewal. The Lease was subsequently renewed on 22.04.1999, for a further term of 10 years. The tenancy came to an end by efflux of time on 21.04.2009, and the Lease Deed was not renewed. Thereafter, M/s Sangeeta Leasings (*Partnership firm*) became a month to month tenant at the Suit Property. However, another Lease Deed dated 01.10.2013 was executed in favour of M/s Sangeeta Leasings for a term of ten years, up to 30.09.2023.

30. Moreover, M/s Sangeeta Leasings failed to pay the monthly rent of Rs.3,000/- under the Lease Deed dated 22.04.1999, since its commencement. Ms. Rachna Gupta, wife of the Plaintiff and a partner of M/s Sangeeta Leasings, promised and assured the Defendant No. 1 and Late Shri Manohar that the outstanding rent would be paid, in due course.

31. Late Shri Manohar and Defendant No. 1 relied upon the representations and assurances of Ms. Rachna Gupta, *wife of the Plaintiff* owing to the close relationship between the parties.

32. In April-May, 2013, Ms. Rachna Gupta requested Late Shri Manohar to permit her to sub-lease the property to British Council Division of India and promised to repay all the outstanding dues under the Lease Deed dated 22.04.1999, which had now become a month-to-month tenancy. She further assured that a portion of the lease consideration received from the sub-tenant, would be paid to them for the period from 15.05.2013 to 14.05.2015.



33. Late Shri Manohar acceded to the request of Ms. Rachna Gupta and *vide* his Letter dated 15.05.2013 addressed to British Council Division of India, granted his *no-objection* for sub-letting of the property for a period of two years. The tenancy of the British Council came to an end on 14.05.2015.

34. The Defendants have asserted that they never received any rent or share of income from the suit property. It is further their case that Ms. Rachna Gupta failed to keep them informed about subsequent leasing arrangements with third parties.

35. It is further claimed that M/s Sangeeta Leasings was sub-letting the Suit Property at market rates much higher than the standard rent of ₹3,500 under the Delhi Rent Control Act, 1958.

36. The Defendants thereafter, issued a Legal Notice dated 17.07.2019 to M/s Sangeeta Leasings, seeking *Rendition of Accounts* in respect of the Suit Property. However, despite service of the Legal Notice, neither M/s Sangeeta Leasings nor Ms. Rachna Gupta, wife of the Plaintiff, responded. The Defendants contend that they have thereby, been dishonestly deprived of the lease consideration and rentals pertaining to the Suit Property.

37. Consequently, the Defendants instituted a Suit bearing CS(OS) 600/2019, for *Eviction, Rendition of Accounts, damages for loss of rent and Injunction* against Ms. Rachna Gupta, Mr. Sanjay Gupta, son of the Plaintiff (*partner of M/s Sangeeta Leasings*), M/s Sangeeta Leasings and several others, which is pending adjudication.

38. The Plaintiff had filed an Application being IA No. 2753/2021 under Order 1 Rule 10 CPC to be impleaded as a party in the said Suit, which is pending. The Defendants asserted that the present Suit has not been filed



bona fide and is malicious, frivolous and false. The averments made in the Suit, are not tenable or sustainable.

39. The Defendants assert that no Oral Agreement to Sell dated 08.01.1984 was ever executed between the parties and the terms stated therein, were never agreed. There is no document evidencing payment of Rs.4,00,000/-, towards part consideration. The essential ingredients of an Agreement to sell are absent and there was no concluded contract.

40. The alleged correspondence between the Plaintiff and Late Shri Manohar, reflect that the parties were exploring various modes of transferring/gifting the Suit Property, but there was no concluded Agreement.

41. The Suit is also stated to be *barred by limitation*, since the Oral Agreement to Sell is alleged to be dated 08.01.1984, whereas the present Suit was instituted in November 2023, nearly 40 years after the alleged agreement.

42. It is further contended that Defendant Nos. 1 and 2 and Late Shri Manohar had migrated to Perth, Australia in 1971, and that Defendant No. 2 acquired Australian citizenship on 08.08.1978. Defendant No. 1 and Late Shri Manohar were foreign residents at the time when the alleged oral Agreement to Sell dated 08.01.1984 is stated to have been entered into. It is contended that Section 15(5) of the Limitation Act, does not apply to foreign residents, who are not residing in India.

43. The presence of the Defendants in India, on the date when the Plaint is filed, is *sine qua non* for non-application of Section 15(5) Limitation Act. According to the Defendants, this implies that the Defendants ought to be present in India on the date of institution of the suit; otherwise, the question



of excluding time on account of their absence would not arise, and computation of limitation would not be feasible.

44. It was further contended that the Plaintiff was attempting to set up a case, which was contrary to the documents executed, which is impermissible under Section 91 and 92 of the Indian Evidence Act, 1872. The case of the Plaintiff was also stated to be inconsistent with the facts pleaded in his Application under Order 1 Rule 10 CPC, in CS(OS) 600/2019.

45. *On merits, all the contentions made in the Plaint, were denied.*

46. Thereafter, **an Application under Order VII Rule 11 CPC** was filed on behalf of the Defendants wherein the rejection of the Suit was sought on the ground that there was no concluded contract or Oral Agreement to Sell dated 08.01.1984, as alleged by the Plaintiff.

47. The case of the Plaintiff is also inconsistent with the facts pleaded in IA No. 2753/2021, filed under Order 1 Rule 10 CPC by the Plaintiff in CS(OS) No. 600/2019. It was, therefore, submitted that the Suit of the Plaintiff is liable to be rejected.

48. The **learned District Judge** considered the rival contentions of the parties and concluded that from the averments made in the Plaint itself, it was evident that the Plaint did not disclose any cause of action for Specific Performance of Oral Agreement to Sell dated 08.01.1984.

49. It was further noted that, in terms of Article 54 of the First schedule to the Limitation Act, the Suit for Specific Performance could have been filed within three years from the date fixed for performance or if no such date is fixed, then when the performance is refused.



50. Referring to the averments in the Complaint, it was held that although no specific date was mentioned for performance, the alleged agreement made performance contingent upon vacation of the tenants/occupants. Since, according to the Complaint, possession was obtained in 1987, the learned Trial Court held that the cause of action had arisen then. ***The present suit, having been filed on 05.12.2023, was therefore, held to be barred by limitation under Article 54 of the Limitation Act.***

51. The contention of the Plaintiff that limitation would commence only from 07.09.2022, when refusal was allegedly communicated by way of Reply dated 06.09.2022, was rejected in view of CS(OS) 600/2019 having been filed earlier against M/s Sangeeta Leasings, in which the wife and son of the Plaintiff were parties.

52. It was concluded that the Plaintiff had notice of the said suit at least prior to 29.10.2020 and that the present suit was therefore, barred by limitation. In view of this finding, the contention regarding inconsistency with documents and the bar under Sections 91 and 92 of the Indian Evidence Act, was not considered. **The plaint was accordingly, rejected under Order VII Rule 11 CPC.**

53. **Aggrieved** by the said Rejection of the Suit, the Plaintiff/Appellant has filed **the present Appeal**, wherein the **grounds of challenge** are that there are specific averments in the Complaint regarding the alleged Oral Agreement to Sell dated 08.01.1984, and that there were no averments in the Complaint to suggest that the parties were not going forward with the Agreement, as has been observed by the learned Trial Court.

54. It is contended that the learned Trial Court, without considering the Complaint as a whole and by merely referring to the facts relating to the



proposed conveyance through Gift Deed, has erroneously held that the parties had decided not to go ahead with the alleged oral Agreement to Sell.

55. It is further contended that it has not been appreciated that the proposed conveyance through Gift Deed, was merely one of the options being explored by the parties, in furtherance of Oral Agreement to Sell and to minimise cost and tax implications.

56. The learned Trial Court has erroneously held the Suit to be barred by limitation on the assumption that the Plaintiff would have knowledge of CS(OS) No. 600/2019 filed against his wife and son. It has not been considered that it was only when the Respondents, in their Reply dated 06.09.2022 in CS(OS) No.600/2019, denied the Oral Agreement to Sell dated 08.01.1984, that the Defendants refused to honour the same. It is submitted that prior to the said date, there was no refusal on the part of the Respondents.

57. The learned Trial Court has wrongly imputed knowledge of the Suit filed by the Defendants to the Plaintiff on the ground that his wife and son were the parties thereto and that the Plaintiff would necessarily have known about the Suit through them. Such an assumption, is not tenable in law. While deciding the Application under Order VII Rule 11 CPC, the Court can only look at the averments in the Plaint and not draw its own inferences.

58. The question of *limitation is a mixed question of fact and law*. Order VII Rule 11 CPC ought to be exercised only if, on a reading of the entire Plaint, it is found that the Suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue. Furthermore, it has not been appreciated that the Appellant has been in continuous and peaceful



possession of the Suit Property for the last 40 years and that no objection of any kind had been taken by Late Shri Manohar during his lifetime.

59. In fact, the Letters exchanged between Late Shri Manohar and the Appellant, as well as the conduct of the parties, clearly reflect that the parties were exploring various means and methods of securing the Appellant and his family the ownership of the Suit Property. It is submitted that throughout, the Appellant and Late Shri Manohar remained in communication regarding the Suit Property.

60. Article 54 of the Schedule to Limitation Act, 1963, applies from the date when the Plaintiff has notice that performance, has been refused. In the present case, Late Shri Manohar and the Respondents, never refused to perform their part of the contract; rather they kept making sincere efforts to fructify the transfer of the Suit Property.

61. Even after the demise of Late Shri Manohar on 06.04.2017, no notice of refusal to perform the Contract was ever given to the Appellant by the Respondents, till the filing of reply to the Application under Order 1 Rule 10 CPC.

62. Reliance is placed on Salim D. Agboatwala vs. Shamalji Oddhavji Thakkar, (2021) 177 SCC 100.

63. The learned Trial Court has also failed to appreciate that the Supreme Court of India in *Suo Moto* Writ Petition (Civil) No. 3/2020, had directed the extension of Limitation in all proceedings w.e.f.15.03.2020 till 28.02.2022. A prayer is, therefore, made that the Impugned Judgment be set-aside and the Suit be restored for trial.

64. *Written Synopsis have been filed on behalf of the Appellant, as well as the Respondents, wherein similar contentions have been raised.*



Submissions heard and the record perused.

65. The Appellant/Plaintiff had filed a Suit for Specific performance of an Oral agreement to sell, which has been rejected under Order VII Rule 11 CPC. Essentially, the following questions arise for consideration in the present appeal:

- (i) Whether the parties entered into the Oral Agreement to Sell dated 08.01.1984?
- (ii) Whether the suit is barred by limitation?

66. It is well settled that while considering an Application under Order VII Rule 11 CPC, the Court is required to examine the averments made in the Plaint and the documents relied upon by the Plaintiff. For this purpose, the averments in the Plaint are assumed to be correct. At the same time, the Court is not required to proceed merely on the form of the pleadings; rather it is the substance of the matter and a meaningful reading of the Plaint that is determinative.

67. Equally, when from the averments contained in the Plaint itself, it does not disclose a cause of action, or appears to be barred by law, the Court would be justified in rejecting the plaint at the threshold. Clever drafting cannot be permitted to create an illusion of a cause of action where none exists in law.

I. Whether there was an Oral Agreement to Sell dated 08.01.1984 between the Parties:

68. The Plaintiff/Appellant Rajendra Gupta was co-brother of Late Shri Manohar as their wives, Smt. Rachna Gupta and Smt. Hem Manohar are real sisters. It is not in dispute that Late Shri Manohar Lal and Smt. Hem Manohar were the owners of the Suit property, *vide* Lease Deed dated



08.08.1969. Sometime in September 1978, Late Shri Manohar emigrated to Perth, Australia after his retirement from service, with no intention of returning to India. Thereafter, sometime in the mid-1980s, Shri Manohar and his wife Smt. Hem Manohar gave up their Indian citizenship.

69. According to the Appellant, Shri Manohar was in urgent need of funds in 1984, particularly as his daughter was to get married. Accordingly, **on 08.01.1984**, Shri Manohar, along with his wife, Hem Manohar, **allegedly entered into an oral Agreement to Sell** in respect of the Suit Property for a total sale consideration of Rs.20,00,000/-. The Plaintiff asserted that he paid a sum of Rs.4,00,000/- towards part consideration on the same date, and the balance amount was agreed to be paid at the time of execution of the final document.

70. Significantly, the Plaint does not disclose any Receipt, acknowledgment, writing, account entry, correspondence or any record whatsoever, evidencing the payment of the amount of Rs. 4,00,000/-. There is no documentary proof of such payment. A bald assertion that the amount was paid in cash, is not sufficient. There is no cogent details furnished in the Plaint to show that an amount of Rs.4,00,000 had been paid to Shri Manohar, as part performance of the alleged oral Agreement to Sell.

71. If indeed, there had been a binding oral Agreement to Sell since 08.01.1984, at least some contemporaneous or subsequent writing acknowledging the Agreement to Sell, particularly when the parties are stated to have exchanged letters regularly over several years, would have existed. In the absence of any documentary evidence, it becomes imperative to consider the surrounding circumstances and the conduct of the parties, to



ascertain if there was indeed, an Oral Agreement to Sell, as claimed by the Appellant.

72. The entire case of the Appellant hinges on the GPA dated 17.01.1979, given to the Appellant for management of the tenant infested property. At the relevant time in 1978, the Suit Property was in occupation of a tenant, M/s Gandhi Estate Agency. Owing to difficulties in managing the property, particularly as the tenants were protected under the Delhi Rent Control Act and were not paying adequate rent, Shri Manohar executed a General Power of Attorney dated 17.01.1979, in favour of the Plaintiff and authorised him to manage the Suit Property, collect rent, initiate steps for eviction, lease the property and take all necessary actions in relation thereto.

73. It is the case of the Plaintiff/Appellant himself that he acted conscientiously in getting M/s Gandhi Estate Agency, the tenant, evicted from the Suit property. After the property was vacated by the tenants in 1987, the Appellant, on behalf of Manohar Lal, rented the property to M/s Sangeeta Leasings, a partnership Firm of Rachna Gupta and Sanjay Gupta, his wife and son respectively, as it emerges from the Letter dated 20.12.1987 referred to by the Appellant in the Plaint. This letter reflects that Late Shri Manohar, acknowledged the renting of the property by the Plaintiff.

74. The tenancy created in the name of Sangeeta Leasings, a partnership firm of his wife and son, continued, and in no document or correspondence was it ever stated that Sangeeta Leasings or the wife of the Plaintiff may occupy the Suit Property, in the capacity of an owner. ***All documents clearly state and reflect that they were tenants of late Manohar Lal, in the Suit Property.***



75. Likewise, the Plaintiff's own letter dated 21.03.1995 merely refers to plans for demolition/rebuilding and seeks signatures in that regard. It too, does not refer to the alleged oral Agreement to Sell.

76. It is further the case of the Plaintiff himself that Late Shri Manohar issued a Letter dated 15.05.2013, granting a no-objection to the tenant, i.e., M/s Sangeeta Leasings, to sub-lease the Suit property to British Council, Division of India. *Had there been any Agreement to Sell, as claimed by the Plaintiff, there was no reason for Sangeeta Leasings, the tenant, to seek a no-objection from Late Shri Manohar, to sub-let the property on 15.05.2013, to British Council, Division of India.*

77. While the Appellant had claimed that the GPA was executed in furtherance of *an intention to transfer the property to him*, the same is not borne out from the GPA or the subsequent dealings as discussed above; it affirmatively reflects that Appellant was only a GPA Holder of late Manohar Lal, which only authorized the Appellant to act for and on behalf of Shri Manohar and did not mention anything about any intention to transfer the property to the Appellant, in future.

78. Another aspects that merits consideration is that the Plaintiff, asserted that there was an oral understanding that the sale documents would be *executed as and when the tenants were evicted from the property*. The Plaintiff himself has asserted that, with great efforts and perseverance, the tenants were evicted and the subsequent tenant, Sangeeta Leasings, was inducted in the year 1987.

79. However, there is no mention in any document executed, either prior or subsequent thereto, reflecting any endeavour whatsoever for execution of the Sale Deed. The conduct of the parties, spanning through the 1990s and



even thereafter, is wholly inconsistent and does not reflect that any steps were ever taken for the execution of the Sale Deed, in terms of the alleged oral Agreement to Sell. **The conduct of the parties, and the vagueness of the plea in the Plaint, completely fails to establish this plea of oral Agreement to Sell.**

80. The Plaintiff has sought to explain this by saying that the gift route was being explored only as a tax efficient mechanism, while the underlying understanding to sell remained constant. Significantly, the Appellant has relied on the letter dated 20.06.1989, which states that Late Shri Manohar would like to transfer ownership of the house to the Plaintiff or to a member of his family.

81. The letter dated 20.06.1989, even if taken at face value, does not acknowledge a prior concluded oral sale agreement of 08.01.1984 with settled consideration and part-payment already made. *It is consistent only with an intention or desire to transfer ownership in some manner*, and that possible modes of effecting such transfer were under consideration.

82. Further, to work out the modalities of transfer of property to the plaintiff, a Law Firm based in Australia was consulted, which gave a legal opinion in its letter dated 03.06.1999. This Letter reads as under:

“3 June 1999

Mr and Mrs S Manohar

16 Johnson Close

WINTHROP WA 6150

Dear Shri and Hem

CONVEYANCE TO RACHNA GUPTA

Further to your recent attendance at our office we have prepared and enclose an Indemnity Bond for re-typing on the appropriate stationary and signing by Rachna Gupta.



We presume that the conveyance will proceed on the basis of the Deed of Gift which has already been signed by yourselves. We confirm that to minimise taxation the conveyance must be between Hem and her sister on the basis that conveyances between blood relations do not attract the same rate of taxation.

To effect that, Shri has agreed to transfer his interest III the Plot to Hem prior to Hem transferring the whole of the Plot to her sister.

It is a condition of the conveyances that the consent of the President of India and the Delhi Development Authority be obtained. That condition has been granted subject to you both entering into Indemnity Bonds and also undertaking not to make application to acquire property from Delhi Development Authority in the future.

The propose of the enclosed Indemnity Bond is to seek the undertaking of Rachna Gupta to keep you both indemnified in relation to any liability which you may incur as a result of granting the Indemnity Bonds and also as a result of the conveyance from Shri to Hem and the conveyance. from Hem to her sister.

*Yours faithfully
Gibson &Gibson”*

83. This opinion suggested that the Suit Property could be transferred by way of a Gift Deed by Shri Manohar to his wife, who, being the real sister of Rachna Gupta, could thereafter, gift the property to her. A Deed of Gift dated 22.02.2000 was also signed by Sh. Manohar in the name of his wife and was forwarded to the Plaintiff for getting it registered in Delhi. However, it could not be executed as a technical objection was raised by the DDA.

84. This further establishes that Shri Manohar *intended to gift the property* and had even taken legal opinion to effect the transfer through a Gift Deed, but unfortunately, on account of technical impediments, the Gift Deed could never be executed.

85. The subsequent letter dated 21.03.2014 written by the Plaintiff to Late Shri Manohar again suggested that the property may be converted to



freehold and that a power of attorney may be executed so that the property may be gifted to Rachna Gupta. This again, is wholly inconsistent with the case that a concluded oral Agreement to Sell dated 08.01.1984 remained subsisting and enforceable.

86. These subsequent correspondences proceeded on an entirely different footing, namely that the transfer of the Suit Property may entail substantial costs; accordingly, the parties began exploring alternative modes for transferring the Suit Property to the Plaintiff. The very fact that the parties started exploring more convenient means of transferring the property, itself shows that there was no alleged oral Agreement to Sell of 1984. In the alternative, the alleged oral Agreement to Sell, even if accepted, though not proved, stood abandoned when the parties started exploring the possibility of transferring the property by way of gift instead of executing a Sale Deed in favour of the Plaintiff.

87. It is also pertinent to observe that Smt. Hem Manohar, Defendant No.1, was the 50% co-owner of the Suit property, but there is not a single averment or document to reflect that she, at any point of time, had agreed to transfer her share in the property, to her sister.

88. Another argument raised on behalf of the Plaintiff/Appellant was that he had been managing the Suit Property since 1987, and had incurred expenditure on payment to occupants and eviction of tenants, reconstruction of the building, and payment of municipal taxes, for which Shri Manohar had never contributed a penny. It is contended that this again, reflects that he was exercising rights in the Suit Property in the capacity of an owner.

89. This argument is self-defeating, inasmuch as while the Plaintiff was spending money on the management, eviction of tenants and reconstruction,



he was equally reaping the benefits and income generated by letting out the Suit Property, which had not been forwarded to Shri Manohar. In fact, the manner of management itself reflects that he always remained a GPA holder and never acquired any ownership in the Suit Property.

90. It may be a difficult case for the Plaintiff, but unfortunately the good intentions of Late Shri Manohar, never got translated into any documents of transfer or ownership in favour of the Plaintiff, during his lifetime. Mere discussions, family arrangements, proposals, exploratory communications, or efforts to find a tax-efficient route to transfer property, do not by themselves constitute a concluded contract for sale.

91. No matter how genuine or *bona fide* such intention may have been, *it cannot, by itself be interpreted as an admission of a concluded Oral Agreement to Sell, as alleged by the Appellant. In fact, it is antithesis to his claim of an oral Agreement to sell of 1984.*

92. The learned District Judge, therefore, on appreciation of the averments in the pleadings, rightly concluded that there was, in fact, no oral Agreement to Sell dated 08.01.1984, specific performance of which could be sought by the Plaintiff/Appellant.

Whether the Suit for Specific Performance is barred by Limitation:

93. The other aspect that requires consideration is: *whether the Suit of the Plaintiff/Appellant is barred by limitation.*

94. The Appellant's own case is that under the alleged oral agreement of 1984, he was to continue the litigation to get the property vacated from the tenants/occupants, and, upon recovery of possession, the Agreement to Sell



would be executed. The Plaint further states that possession was obtained from M/s Gandhi Estates, in the year 1987.

95. Therefore, even according to the Plaint, the cause of action to seek specific performance arose in 1987; the Suit having been filed on 05.12.2023, is hopelessly barred by limitation.

96. The contention of the Appellant is that the Defendant conveyed his refusal to execute the Agreement to Sell only in the year 2022 and, therefore, the Suit instituted on 05.12.2023 was within the prescribed period of limitation. In this regard, it would be pertinent to refer *Article 54 of the Schedule to Limitation Act, 1963* which provides that limitation for the Suit for Specific Performance is within three years from the date fixed for performance or if no such date is fixed, then when the performance is refused.

97. Applying the aforesaid principles to the facts of the present case, even according to the Plaint, possession from the tenant/occupant had already been recovered in the year 1987, whereafter the alleged Agreement to Sell was required to be performed. However, no steps whatsoever were taken for seeking enforcement of the alleged Agreement for almost 36 years and the present Suit came to be instituted only on 05.12.2023. Such prolonged and unexplained inaction clearly demonstrates that the alleged Agreement was never sought to be enforced within a period that could be characterised as reasonable. The Plaintiff/Appellant cannot be permitted to contend that obligations allegedly arising from an oral Agreement of 1984 continued to remain alive and enforceable till the year 2023.

98. The Plaintiff in another desperate endeavour to defend the limitation, asserted that the cause of action arose only when the Defendants refused to



execute the Agreement to Sell later, on 06.09.2022, is absolutely fallacious, because from the averments in the Plaint itself, it emerges that the alleged Agreement to Sell stood abandoned, when the parties started exploring an altogether different mode of transfer, through a Gift Deed.

99. The Appellant's reliance upon the order of the Supreme Court *in Suo Motu Writ Petition (Civil) No. 3/2020* extending limitation, also does not assist the Appellant as the cause of action had arisen way back in 1987.

100. The learned District Judge has, therefore, rightly held that the Suit is patently barred by limitation.

101. It is further pertinent to note that the Appellant seeks enforcement of an alleged oral Agreement to Sell dated 08.01.1984, while the present Suit has been instituted only in the year 2023, after an extraordinary and unexplained lapse of nearly four decades. The Supreme Court in R. Kandasamy v. T.R.K. Sarawathy, 2024 INSC 884 relying upon Saradamani Kandappan v. S. Rajalakshmi (2011) 12 SCC 18, has held that even where time is not expressly made the essence of the contract, the contract is nevertheless required to be performed within a reasonable period, having regard to the terms of the contract, the nature of the property, and the surrounding circumstances. The Apex Court further observed that Courts, while exercising discretion in granting the equitable relief of specific performance, cannot ignore prolonged inaction and the steep escalation in the value of urban immovable properties.

102. In the facts of the present case, the Suit for Specific Performance filed by the Plaintiff/Appellant is also liable to be rejected on the principles of equity. In view of the aforesaid Judgment, even in equity, the Plaintiff cannot claim relief of Specific Performance of Agreement to Sell.



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Conclusion:

103. In view of the foregoing discussion, it is held that the Suit of the Plaintiff/Appellant has been *rightly rejected under Order VII Rule 11 CPC as disclosing no cause of action and being barred by limitation. There is no merit in the present Appeal, which is hereby dismissed.*

104. The pending Applications, if any, are also disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 18, 2026/RS/VA