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

% ***Reserved on:14th January, 2025.***

Pronounced on:03rdMarch, 2025.

+ CS(OS) 366/2022, IA 9667/2022 & IA 3712/2024

SANRAJ FARMS PRIVATE LIMITED .....Plaintiff

Through: Mr. Rajesh Yadav, Sr. Advocate with Ms. Ruchira V. Arora, Mr. Dhananjay Mehlawat, Advocates.

versus

SHRI RAM KISHAN & ANR. .....Defendants

Through: Mr. A.K. Sen and Mr. Deepak Bidhuri, Advs.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This suit was filed seeking decree of permanent injunction in favour of plaintiff and against defendants for restraint on the defendants, and all those acting for and on their behalf, from interfering in the peaceful and settled possession of plaintiff over the suit land measuring *03 bighas and 18 biswas comprised in Khasra No.959/2 situated at Village Rajokari, Tehsil Vasant Vihar, New Delhi* (‘***suit property***’). Summons were issued on 03rd June 2022.

2. In the application under Order XXXIX Rule 1 & 2 of Code of Civil Procedure 1908 (‘**CPC**’), the Court noted that the said suit property had been

purchased by sale deed dated 27th October 2006 from defendant No.1, the entire sale consideration amount had been received by defendant No.1 and the physical, vacant possession of the suit property was delivered to plaintiff. Plaintiff was in continued settled possession of the suit land since the date of sale. It was further noted, that *Tehsildar*, Vasant Vihar by order dated 10th June 2014 had passed an order for mutation in favour of plaintiff. Defendants filed an objection to the mutation before Deputy Commissioner (Revenue). The adjudication of the objections was still pending.

3. Plaintiff alleged that defendants attempted to illegally enter the suit property and ploughed the same with a tractor on the night of 11th August 2021 and subsequently thereafter, for more than eight months. A complaint was lodged by plaintiff on 30th May 2022. In these circumstances, the Court passed interim orders on 3rd June 2022, restraining defendants and all those acting for and on their behalf from interfering in any manner in the peaceful and settled possession of plaintiff over the suit land. The matter was thereafter, fixed for final disposal by order dated 24th September 2024, in view of the unequivocal admission of the sale deed dated 27th October 2006, by defendant No.1. Written submissions were filed and arguments were heard.

Submissions on behalf of the Plaintiff

4. Counsel for plaintiff drew attention to the registered sale deed dated 27th October 2006, duly executed by defendant No.1, and witnessed by defendant No.2 (*the son of defendant No.1*). The sale deed recorded that the

full consideration of Rs.14,75,000/- was paid by plaintiff by way of cheque to defendant No.1 and the physical, vacant possession of the suit property had been transferred. Plaintiff, therefore, remained in continuous possession and the sale deed was never challenged by defendant No.1, till the counter claim was filed in the suit on 08th February 2024.

5. Counsel for plaintiff asserted that mutation application was filed, notice was issued by the *Tehsildar* and an endorsement was made by defendant No.1 on the said notice, stating that he had sold the suit property and that the money of the sale of land had been received. The mutation order was passed by the Tehsildar on 10th June 2014 stating that no objection had come on record, therefore, the mutation was accepted.

6. The objections filed by defendant No.1 on 12th June 2014 recorded the admission of defendant No.1, that he had agreed and sold the suit property. The said objections are as under:

1. That the applicant is the owner and in possession of Agriculture land bearing Khata No. 363/347, Mustatil/ Khasra Nos. 511/2/1 (0-6), 840/2 (3-17), 959/2 (3-18), total land measuring 08 bigha 01 biswas, situated in the revenue estate of Village Rajokari, New Delhi (Copy of Khatoni attached).
2. That I had agreed and sold a piece of my land measuring 03 bigha 18 biswas, bearing Khasra No. 959/2 (3-18) to M/s. Sanraj Farms (P) Ltd. having its Office at 602, Chiranjiv Tower, 43, Nehru Place, New Delhi through Registered Sale Deed duly registered as Document No. 13514, Book No. 1, Vol. No. 3202 on pages 161 to 173 on dated 27/10/2006 (Copy of the same is also enclosed).
3. That as per our commitment to the firm at the time of execution of above mentioned Sale Deed, all the expenses, transfer duty, other misc. expenses for the transfer of the remaining land i.e. Mustatil/ Khasra Nos. 511/2/1 (0-6), 840/2 (3-17) in favour of my wife through Gift be paid/ born by the firm.
4. That the above said firm obtained 2 x N.O.Cs i.e. one for firm and another for my wife at that time, Whereas, the firm executed Sale Deed in respect of their portion, but Gift Deed could not executed till date.
5. That on 04/06/2014, Tehsildar (Vasant Vihar) had issued me a Notice No. 2682 dt. 04/06/2014, and called me on 10/06/2014 regarding mutation of Sale Deed. I reached there and put my signatures on the blank forms which were put on my front by Girdawar Mr. Ashok Kumar.
6. Sir, when I asked regarding not execution of Gift Deed in respect of remaining portion my land in favour of my wife. The firm totally refused and told me that all your remaining land shall vested in Gram Sabha.
7. Sir, I am in state of shocked, why my remaining land vested in Gram Sabha. Sir, all my land is in cultivatory and physically posses with me. You could visit the site personally.
8. It is revealed that this course of action regarding mutation of one piece of land in favour of firm is totally collusion of revenue authority and firm and the totally violation of Section 33 of Delhi Land Reform Act.

7. Plaintiff's counsel submits that ***firstly***, in *para 6* of the written statement, there is an admission by defendants that the sale deed was executed, even though defendants state, that the expenses of transfer of the remaining land in favour of Smt. Bela Devi (*wife of defendant No.1*) towards stamp duty and registration would be borne by plaintiff; ***secondly***, that in the admission/denial, defendant No.1 has admitted the sale deed, at *S.No.1* of the said admission/denial on behalf of defendant No.1.

8. Plaintiff's counsel contends that defendants cannot state that possession was never handed over to plaintiff, since it is contrary to the terms of the sale deed and barred by Sections 91 and 92 of the Indian Evidence Act, 1872. Reliance is placed by plaintiff's counsel on the decisions in ***S. Saktivel v M. Venugopal Pillai & Ors.*** (2000) 7 SCC 104 and ***Sanjay Gupta v Cottage***

Industries Exposition Ltd. 2008 SCC OnLine Del 10, the relevant paragraphs are extracted as under:

i. ***S. Saktivel v M. Venugopal Pillai & Ors.*** (2000) 7 SCC 104

> "***4.*** *In first appeal filed by the plaintiff before the High Court the learned Single Judge of the High Court was of the view that in view of proviso (4) to Section 92 of the Evidence Act it is not open to the parties to let in oral evidence to modify, vary or subtract from the terms of the registered document. Consequently, the first appeal was allowed and the suit for partition was decreed. The letters patent appeal preferred by the appellant was dismissed by a Division Bench of the High Court. It is against the said judgment the appellant is in appeal before us.*
>
> ***5.*** *Learned counsel appearing for the appellant urged that the view taken by the High Court in decreeing the suit of the plaintiff was erroneous inasmuch as the settlees under Ext. A-1 got the suit property and by the subsequent oral arrangement, they agreed to work out their rights without varying or substituting the terms of Ext. A-1 and, therefore, the High Court was not right in not considering the oral arrangement as pleaded by the defendant-appellant. It is not disputed that disposition under Ext. A-1 in the present case is by way of grant and under the said disposition all the sons of Muthuswamy Pillai acquired rights. It is also not disputed that the settlement deed is a registered document and by virtue of alleged subsequent oral arrangement, the other sons of Muthuswamy Pillai were divested of the rights which they acquired under the settlement deed. Under such circumstances the question that arises for consideration is as to whether any parol evidence can be let in to substantiate subsequent oral arrangement rescinding or modifying the terms of the document which, under law, is required to be in writing or is a registered document,*

namely, Ext. A-1. Section 92 of the Evidence Act reads as thus:

"92. Exclusion of evidence of oral agreement.—When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

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Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents."

A perusal of the aforesaid provision shows that what Section 92 provides is that when the terms of any contract, grant or other disposition of property, or any matter required by law to be reduced in the form of a document, have been proved, no evidence of any oral agreement or statement is permissible for the purpose of contradicting, varying, adding or subtracting from the said written document. However this provision is subject to provisos (1) to (6) but we are not concerned with other provisos except proviso (4), which is relevant in the present case. The question then is whether the defendant-appellant can derive any benefit out of proviso (4) to Section 92 for setting up oral arrangement arrived at in the year 1941 which has the effect of modifying the written and registered disposition.

Proviso (4) to Section 92 contemplates three situations, whereby:

(i) The existence of any distinct subsequent oral agreement to rescind or modify any earlier contract, grant or disposition of property can be proved.

(ii) However, this is not permissible where the contract, grant or disposition of property is by law required to be in writing.

(iii) No parol evidence can be let in to substantiate any subsequent oral arrangement which has the effect of rescinding a contract or disposition of property which is registered according to the law in force for the time being as to the registration of documents.

6. *In sum and substance what proviso (4) to Section 92 provides is that where a contract or disposition, not required by law to be in writing, has been arrived at orally then subsequent oral agreement modifying or rescinding the said contract or disposition can be substantiated by parol evidence and such evidence is admissible. Thus if a party has entered into a contract which is not required to be reduced in writing but such a contract has been reduced in writing, or it is oral, in such situations it is always open to the parties to the contract to modify its terms and even substitute by a new oral contract and it can be substantiated by parol evidence. In such kind of cases the oral evidence can be let in to prove that the earlier contract or agreement has been modified or substituted by a new oral agreement. Where under law a contract or disposition is required to be in writing and the same has been reduced to writing, its terms cannot be modified or altered or substituted by oral contract or disposition. No parol evidence will be admissible to substantiate such an oral contract or disposition. A document for its validity or effectiveness is required by law to be in writing and, therefore, no*

modification or alteration or substitution of such written document is permissible by parol evidence and it is only by another written document the terms of earlier written document can be altered, rescinded or substituted. There is another reason why the defendant-appellant cannot be permitted to let in parol evidence to substantiate the subsequent oral arrangement. The reason being that the settlement deed is a registered document. The second part of proviso (4) to Section 92 does not permit leading of parol evidence for proving a subsequent oral agreement modifying or rescinding the registered instrument. The terms of registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise. If the oral arrangement as pleaded by the appellant, is allowed to be substantiated by parol evidence, it would mean rewriting of Ext. A-1 and, therefore, no parol evidence is permissible."

(emphasis added)

ii. ***Sanjay Gupta v Cottage Industries Exposition Ltd.*** 2008 SCC OnLine Del 10.

"***17.*** *Sections 91 and 92 of the Evidence Act debar a party to a written agreement from raising a construction contradictory to the terms of the document. Therefore, if on a reading of the registered lease deed the only interpretation that reasonably emerges is that the purpose of letting was only residential, the defence of the defendant that the premises was let for office purposes and that the defendant was not liable to pay the rent or maintenance charges since that purpose was obstructed by the plaintiff would have to fail.…*

…

> ***20.*** *The defence set up by the defendant that the plaintiff had agreed to get the user of the premises changed to commercial is in the teeth of Sections 91 and 92 of the Evidence Act since the defendant is seeking to contradict, vary, add to the terms of the registered lease deed. The Bombay High Court in Dinkarrai Lalit Kumar v. Sukhdayal Rambilas, AIR 1947 Bombay 293 held that the terms of a contract reduced to writing cannot be ascertained by allowing parole evidence as to what transpired antecedent to the contract or what the parties did subsequent to the contract. Once the contract between the parties is reduced to writing, the court can only look at the writing alone in order to construe what the terms of the contract were.*
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> …
>
> ***22.*** *In S. Saktivel (dead) by LRs v. M. Venugopal Pillai, (2000) 7 SCC 104 the Supreme Court held that where under the law a contract or disposition is required by law to be in writing, its terms cannot be modified, altered or substituted by an oral contract, or disposition…*"
>
> (emphasis added)

9. Even if the objections to the mutation are not finally assessed, mutation can never create or extinguish title or have any presumptive value on title as it is only related to land revenue. Reliance in this regard is placed on the decisions of ***Sawarni v Inder Kaur*** (1996) 6 SCC 223 and ***Suman Verma v Union of India & Ors***. (2004) 12 SCC 58, the relevant paragraphs are extracted as under:

i. ***Sawarni v Inder Kaur*** (1996) 6 SCC 223

> "*7. ...We have no hesitation to come to the conclusion that the said judgment of the Additional District Judge is wholly*

unsustainable in law. The crucial point being as to who was the second daughter of Gurbax Singh, namely Roori or Inder Kaur, and the trial Judge having come to the positive conclusion that it was Roori who was the second daughter of Gurbax Singh, the lower appellate court was not justified in not considering the material evidence as well as the reasons advanced by the trial Judge and merely coming to the conclusion that the evidence on the file does not prove Roori to be the daughter of Gurbax Singh. Further, the lower appellate court has not come to any positive finding that Inder Kaur was the daughter of Gurbax Singh. He has been swayed away by the so-called mutation in the revenue record in favour of Inder Kaur. Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment..."

(emphasis added)

ii. ***Suman Verma v Union of India & Ors***. (2004) 12 SCC 58

"***16.*** *...In our opinion, owning of agricultural property and getting the name entered in revenue record are two different and distinct things. Mutation entry does not confer right or title to the property. Though the law is very well settled, in our opinion, CAT was right in relying upon the decision of this Court in Sawarni v. Inder Kaur [(1996) 6 SCC 223: AIR 1996 SC 2823] wherein this Court held that mutation entry neither creates nor extinguishes title or ownership.*"

(emphasis added)

10. Counter claim of defendant No.1 has not been registered and no summons have been issued. In any event, it was submitted that it is barred by limitation under Article 59 of the Limitation Act,1963, since cancellation of the sale deed, even if sought, has to be done within three years.

11. Defendant No.1, despite being an executant of the sale deed, has not sought its cancellation as required by Section 31 of the Specific Relief Act, 1963. Reliance in this regard, is placed on the following judgments:

i. ***Prem Singh v Birbal*** (2006) 5 SCC 353.

> "***13***. *Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions.*
> ***14.*** *A suit for cancellation of instrument is based on the provisions of Section 31 of the Specific Relief Act, which reads as under:*
>
> > *"31. When cancellation may be ordered.—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.*
> > *(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."*

15. *Section 31 of the Specific Relief Act, 1963 thus, refers to both void and voidable documents. It provides for a discretionary relief.*

16. *When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law, as it would be a nullity.*

17.*Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary article would be.*

18. *Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply to the case of such instruments. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid. (See Unni v. Kunchi Amma [ILR (1891) 14 Mad 26] and Sheo Shankar Gir v. Ram Shewak Chowdhri [ILR (1897) 24 Cal 77].)*

19. *It is not in dispute that by reason of Article 59 of the Limitation Act, the scope has been enlarged from the old Article 91 of the 1908 Act. By reason of Article 59, the provisions contained in Articles 91 and 114 of the 1908 Act had been combined.*

20. *If the plaintiff is in possession of a property, he may file a suit for declaration that the deed is not binding upon him but if he is not in possession thereof, even under a void transaction, the right by way of adverse possession may be claimed. Thus, it is not correct to contend that the provisions of the Limitation Act would have no application at all in the event the transaction is held to be void.*

…

27. *There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the*

presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption."

(emphasis added)

ii. ***Mohd. Noorul Hoda v Bibi Raifunnisa & Ors.*** (1996) 7 SCC 767.

"***6.*** *The question, therefore, is as to whether Article 59 or Article 113 of the Schedule to the Act is applicable to the facts in this case. Article 59 of the Schedule to the Limitation Act, 1908 had provided inter alia for suits to set aside decree obtained by fraud. There was no specific article to set aside a decree on any other ground. In such a case, the residuary Article 120 in Schedule III was attracted. The present Article 59 of the Schedule to the Act will govern any suit to set aside a decree either on fraud or any other ground. Therefore, Article 59 would be applicable to any suit to set aside a decree either on fraud or any other ground. It is true that Article 59 would be applicable if a person affected is a party to a decree or an instrument or a contract. There is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether Article 59 gets attracted? As stated earlier, Article 59 is a general provision. In a suit to set aside or cancel an instrument, a contract or a decree on the ground of fraud, Article 59 is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded.*

Section 31 of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in Section 31 of the Specific Relief Act is wide enough to encompass a person seeking derivative title from his seller. It would, therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first became known to him."

(emphasis added)

iii. ***Suresh Srivastava v Subodh Srivastava & Ors.*** 2012 SCC OnLine Del 4558.

"***9.*** *At this stage, I must before proceeding ahead deal with the contention raised on behalf of the defendant no. 1 that once issues have been framed, and there is a plea of misrepresentation, trial must necessarily take place, and the suit cannot be disposed of by applying the provisions of Order 12 Rule 6 CPC. In my opinion, this argument which is raised on behalf of the defendant no. 1 is wholly misconceived inasmuch as for disposing of the present application under Order 12 Rule 6 CPC, I am proceeding on the basis that there has been misrepresentation upon the defendant no. 1. The question is that even if there is a misrepresentation upon the defendant no. 1, yet, is the trial necessary? I must note that this plea of invalidity of the documents dated 27.9.1978 and 3.2.1994 has been raised for the first time after filing of the present suit and through*

the written statement of the defendant no. 1 in the year 2002. From 1994 till 2002, the family settlement deed dated 3.2.1994 has never been challenged or endeavoured to be set aside in any legal proceedings. Article 59 of the Limitation Act, 1963 is relevant at this stage to show that challenge to the documents dated 27.9.1978 and 3.2.1994 was clearly time barred as on the date of filing of the written statement by the defendant no. 1. I may note that judgment will also result in dismissal of the connected suit being CS(OS) 1013/2004 where the defendant no. 1 is the plaintiff in that suit for possession against the plaintiff and defendant no. 2 in this suit and who are the defendants in that suit.

10. *As per the aforesaid Article 59, if a person seeks cancellation of a document, he must file a suit within three years of having knowledge of the document which is sought to be cancelled. I have already stated above that the defendant no. 1 is very much aware of the execution of the documents dated 27.9.1978 and 3.2.1994 from above very dates inasmuch as the documents are admittedly signed by the defendant no. 1, copies of such documents are with him and the only stand is of alleged misrepresentation. Besides the fact that CS(OS) 1013/2004 is being decided by this judgment and in which suit the defendant no. 1 is the plaintiff, in law in a partition suit, every person is both a plaintiff and a defendant. A person is a plaintiff to the extent of the share which comes to him and is a defendant to the extent of the remaining shares of the others. The defendant no. 1 cannot by means of the written statement or the suit CS(OS) 1013/2004 seek cancellation of the documents of the year 1994 in the year 2002. Such a challenge in the year 2002 is clearly barred by time as per the Article 59 of the Limitation Act, 1963.*

11. *The Hon'ble Supreme Court in the case of Prem Singh v. Birbal, (2006) 5 SCC 353, has dealt with the provisions of Section 31 of the Specific Relief Act, 1963 and Article 59 of the Limitation Act, 1963. Section 31 of the*

Specific Relief Act, 1963 provides the entitlement to seek cancellation of the documents. The Supreme Court in the case of Prem Singh (supra) has held that there are two types of documents; one is a void document and the second is a voidable document. So far as the void documents are concerned, for such documents there need not be filed any suit for cancellation under Section 31 of the Specific Relief Act, 1963, however so far as the voidable documents are concerned such documents have to be got cancelled as per Section 31 of the Specific Relief Act, 1963. Since the plea of the defendant No. 1 is that the documents in question to which he is a party were got signed on misrepresentation, the documents are therefore only voidable and not void, the defendant no. 1 was therefore bound to seek cancellation of such documents within three years as per Article 59 of the Limitation Act, 1963 so that no rights could flow from these documents. Having not so done the agreement dated 27.9.1978 and the family settlement dated 3.2.1994 achieve finality, subject to issues of registration and stamping."

(emphasis added)

iv. ***Suhrid Singh v Randhir Singh & Ors.*** (2010) 12 SCC 112.

"***7.*** *Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is*

not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act."

(emphasis added)

Submissions on behalf of Defendants

12. The principal submission of the defendants' counsel was that the transfer itself was violative of Section 33 of The Delhi Land Reforms Act, 1954 ('**DLRA**'), since defendant No.1 was recorded *Bhumidar* of the agricultural land. Defendant No.1 got into an arrangement to transfer the remaining land in Khasra No.840/2 (3-17) in favour of the wife of defendant No.1, at the cost and expenses of the plaintiff, along with the transfer of the land Khasra No.959/2 (3-18) in favour of plaintiff. Defendant No.1 admits that the sale deed was executed, however, the remaining land also had to be transferred. Later, he came to know that the remaining land was not transferred or registered by plaintiff and, therefore, he felt cheated. According to him, plaintiff started avoiding defendant No.1 and consequently, the possession of the land continued to remain with defendant No.1. Defendant

No.1 is in the cultivatory possession of the land and his possession has been recorded in the land revenue record i.e. Khasra Girdawari (*Form P-4*).

13. Defendants' counsel, therefore, contends that transaction by the sale deed was a void transfer, in view of Sections 33 and 42 of the DLRA. Plaintiff's application for mutation due to the objection, could not be sanctioned and a revision petition under Section 72 of the DLRA was preferred before the Financial Commissioner being No.74/2018, which was dismissed by order dated 18th August 2022.The Financial Commissioner directed the SDM/RA to take a final view with regard to the transaction of sale, in terms of Sections 33 and 42 of the DLRA, after providing opportunity to both parties. The Financial Commissioner's order has been challenged by plaintiff, by way of a writ petition challenging the jurisdiction of the revenue authority after notification under Section 507(a) of The Delhi Municipal Corporation Act, 1957. Defendants rely upon the decision in ***Subnam Gupta v Union of India & Ors.*** 2024 SCC OnLine Del 2759 of the Division Bench of this Court dated 15th April 2024, in that the Financial Commissioner's order could have legal significance.

14. It was contended that plaintiff by filing the suit for injunction simpliciter under strength of a void sale deed, cannot be granted the relief and a counter claim has already been filed, which as per defendant No.1, ought to be numbered, registered and summons be issued.

<u>Rejoinder on behalf of Plaintiff</u>

15. The application under Order XXXIX Rule 1 & 2 of CPC was filed by the defendants after the counter claim.

16. Plaintiff's counsel stated that as per Section 33 of the DLRA, there were restrictions on transfer by *Bhumidar* and in any event if there was a transfer made in contravention of Section 33 of the DLRA, the same would be liable for ejectment and the land would, as per Section 72 of the DLRA, go to the *Gaon Sabha*. As per Section 67 of the DLRA, there would be extinction in the interest of *Bhumidar*.

17. Therefore, it was stated that in any event, even if assuming that there was any restriction under the DLRA, the said land would at best go back to the *Gaon Sabha* and the *Bhumidar* i.e. defendant No.1 would have no rights of possession. Since this was a suit for injunction simpliciter, at this in any event, defendant No.1 cannot interfere in the possession of the property by plaintiff, while being conveyed the said property by a registered sale deed.

Analysis

18. It may be useful to refer to the relevant provisions of the DLRA, which were adverted to by parties i.e. Sections 33, 42, 67 & 72, which for ease of reference, are extracted as under:

Section 33 of the DLRA

> "*33. Restrictions on the transfers by a Bhumidhar –*
> *(1) No Bhumidhar shall have the right to transfer by sale or gift or otherwise any land to any person, other than a religious or charitable institution or any person in charge of any such Bhoodan movement, as the Chief Commissioner may, by notification in the Official Gazette, specify, where*

as a result of the transfer, the transferor shall be left with less than eight standard acres in the Union Territory of Delhi:

Provided that the Chief Commissioner may exempt from the operation of this section, the transfer of any land made before the 1st day of December, 1958, if the land covered by such transfer does not exceed one acre in area and is used or intended to be used for purposes other than those mentioned in clause (13) of section 3.

(2) Nothing contained in sub section (1) shall preclude the transfer of land by a Bhumidhar who holds less than eight standard acres of land, if such transfer is of the entire land held by him;

Provided that such Bhumidhar may transfer a part of such land to any religious or charitable institution or other person referred to in sub section (1).

Explanation - For the purposes of this section, a religious or charitable institution shall mean an institution established for a religious purpose or a charitable purpose, as the case may be."

(emphasis added)

Section 42 of the DLRA

"*42. Transfer in contravention section 33–*

(1)Where a transfer of any holding or part thereof has been made in contravention of the provisions of this chapter by a Bhumidhar or Asami the transferee and every person who may have obtained possession of such holding or part shall, notwithstanding anything in any law, be liable to ejectment from such holding or part on the suit of the Gaon Sabha, or the landholder as the may be which shall thereupon become vacant land; but nothing in this section shall prejudice the right of the transferor to realize the whole or portion of the price remaining unpaid, or the right of any other person other than the transferee to proceed against such holding or land in enforcement of any claim thereto.

(2) To every suit for ejectment under this section the transferor shall be made a party.
(3) Notwithstanding anything contained in sub section (1), the Revenue Assistant also may on receiving information or on his own motion, take action to eject the transferee and every person who have may obtained possession aforesaid, after following such procedure as may be prescribed."

(emphasis added)

Section 67 of the DLR A

"*67. Extinction of the interest of Bhumidhar—*
The interest of Bhumidhar in his holding or any part thereof shall be extinguished--
(a) when he dies intestate leaving no heir entitled to inherit in accordance with the provisions of this Act,
(b) when the land comprised in the holding has been acquired under any law for the time being in force relating to the acquisition of land,
(bb) when a declaration in respect of such holding or part is made under clause (a) of sub-section (6), of section 65A,
(c) when he has been ejected in accordance with the provisions of this Act, or
(d) when he has been deprived of possession and his right to recover possession is barred by limitation,
(dd) where his lease is terminated under clause (ii) or clause (iii) of sub-section (4), or clause (b) of sub-section (6). of section 65A."

(emphasis added)

Section 72 of the DLRA

"*72. Gaon Sabha to take over land after extinction of interest therein—*
The Gaon Sabha shall be entitled to take possession of land comprised in holding or part thereof if –

> *(a) the land was held by Bhumidhar and his interest in such land is extinguished under clause (a) or clause (c) of section 67, or*
> *(b) the land, being falling in any of the clauses mentioned in sub-clause (iii) of clause (a) of section 6, was held by an Asami and the Asami has been ejected or his interest therein has otherwise extinguished under the provisions of this Act.*"
>
> (emphasis added)

19. At the outset, it is highlighted, that by this suit plaintiff seeks merely a decree of permanent injunction in favour of plaintiff and against the defendants from interfering in the peaceful and settled possession of the plaintiff over the suit property. Considering that the sale deed dated 27th October 2006 had been admitted by defendant no.1, the matter had been fixed for final disposal by order dated 24th September 2024 basis defendant no.1's unequivocal admission of the sale deed executed by defendant no.1 in favour of plaintiff.

20. The unequivocal admission in relation to the execution of the sale deed are contained in ***firstly***, *para 6* of the written statement; and ***secondly***, the admission in the admission/denial of documents. The only caveat the defendants have in respect of the sale deed is that there was an agreement that part land would be sold to plaintiff and part land would be transacted by defendant No.1 in favour of his wife, for which expenses would be paid by plaintiff. Thus, there cannot be any issue that the sale deed indeed was executed by defendant No.1 and witnessed by defendant No.2.

Sale Deed

21. A perusal of the sale deed itself bears out that defendant No.1/vendor had delivered physical vacant possession of the said land to the plaintiff/vendee at the time of the execution of the sale deed (*Clause 2 of the sale deed*). *Clause 3 of the sale deed* provided that defendant No.1/vendor had been left with no right, title and interest, claim of concern of any nature with respect to the said land and plaintiff as a vendee had become the owner with the right to transfer the same by way of sale, gift, mortgage, lease or otherwise and enjoyed the same in the manner they like.

22. In fact, in *Clause 4 of the sale deed*, an indemnity was given by defendant No.1/vendor in favour of plaintiff/vendee, in the event that there was any legal defect in the ownership and title of defendant No.1 as the vendor or in the event that any part of the land was taken out of possession of the vendee/plaintiff. As per *Clause 5 of the sale deed*, defendant No.1/vendor had undertaken to fully cooperate in getting the land mutated in favour of the plaintiff/vendee. As per *Clause 9 of the sale deed*, the vendor/defendant No.1 had handed over all original titles, documents and papers in respect of the said land to the plaintiff and the vendee/plaintiff had paid the stamp duty, transfer duty and registration fee in respect of the sale deed.

23. The plaintiff is right in adverting to Sections 91 & 92 of the Indian Evidence Act 1872 and in placing reliance on the decisions in ***S. Saktivel*** (*supra*) and ***Sanjay Gupta*** (*supra*) (*relevant extracts in para 8 above*). It is well settled that if a document is required to be in writing or a registered

document, then no evidence of any oral agreement or statement is permissible for contradicting, varying, adding or subtracting from the written document. The terms of a written document (*and in this case registered*) cannot be modified, altered, substituted by an oral contract of disposition. Therefore, all aspects of the sale deed encapsulated in writing in the registered document shall be considered as binding between plaintiff and defendant No.1 and necessarily the transfer of possession on the date of the execution of the sale deed would be recognized in favour of plaintiff. Merely on this account, the said suit can be disposed of.

24. However, the Court must examine the legal objections which have been asserted by defendant No.1.

Mutation

25. The first issue is relating to the controversy of the mutation of the property. As per the defendant, the mutation of the property is in question, considering the proceedings before the *Tehsildar*, SDM and then the Financial Commissioner. The brief history of these proceedings is as under.

26. Post the execution of the sale deed, plaintiff applied for mutation. The *Tehsildar vide* order dated 25th November 2013 referred the matter to the SDM on the ground that as per the *Patwari's* report there was violation of Section 33 of the DLRA. The SDM/RA *vide* order dated 10th December 2013 observed that provisions of Section 33 of the DLRA were not attracted as the remaining land was uneconomic. The mutation was, therefore, sanctioned by the *Tehsildar vide* order dated 10th June 2014.Defendant No.1 filed objections

dated 12th June 2014 against grant of mutation. *Tehsildar* by order dated 19th August 2014 forwarded the matter once again to the SDM/RA, who in turn passed order dated 07th February 2018 stating there was a violation of Section 33 of the DLRA as per the original report of the *Halqa Patwari*. Agreed by the same, the revision petition was filed before the Financial Commissioner under Section 72 of DLRA.

27. The Financial Commissioner took a *prima facie* view that the SDM/RA had not given finding in the present case and not passed a speaking order and, therefore, dismissed the revision petition observing that the SDM/RA would first take a final view by a reasoned and speaking order within a period of six months. This order of the Financial Commissioner dated 18th August 2022 stated that "*till the time such orders are passed, the mutation already effected vide order dated 10th June 2014 shall not be disturbed to create any third-party interest*". These proceedings are still pending before the SDM/RA and the mutation in favour of plaintiff has not been disturbed.

28. Plaintiff's case was that the *Tehsildar* could not have reviewed his order, having no powers to do so and could not have forwarded a second reference under Section 23 of DLRA. Since the mutation order was not updated in the revenue records in view of the objections by defendant No.1, the land continued to be recorded in the name of defendant No.1 in the Khasra Girdawaris, which was contrary to the sale deed. In any event, the DLRA ceased to apply in the said Village Rajokari from 18th June 2013 by virtue of the notification dated 18th June 2013 issued by Ministry of Urban Development (Delhi Division).

29. The Court has perused the orders of the Financial Commissioner staying the order dated 07th February 2018 of the SDM/RA and reverting the matter back to the said authority, noting that the mutation initially granted will not be disturbed. This position exists as of today.

30. Even if the proceedings of mutation ultimately are unfavourable to the plaintiff and it is found that there was a violation of Section 33 of the DLRA, plaintiff's contention that Section 67(c) of DLRA would apply, where the interest of the *Bhumidar* stands extinguished when he has been ejected in accordance with the provisions of the Act and, therefore, under Section 72 of the DLRA, the *Gaon Sabha* would takeover the land may have some merit. Be that as it may, the mere pendency of the review of the mutation granted, cannot take away from the factum of possession in favour of plaintiff.

Title

31. The other issue raised by defendant No.1 is that the cloud on mutation would not confirm the title in favour of plaintiff. In this regard, plaintiff's reliance on decisions in ***Sawarni*** (*supra*) and ***Suman Verma*** (*supra*) (*extracted in paragraph 9 above*) are appropriate where it is squarely stated that mutation of a property in a revenue record does not create or extinguish title nor has it any presumptive value on title; it only enables the person in whose favour it is granted, to pay the land revenue.

32. Even otherwise, there would be valid and critical presumption in favour of a registered document. Considering that the sale deed was registered, applying the principles highlighted in ***Prem Singh v Birbal*** (*supra*) (*extracted*

in paragraph 11 above), confirming a presumption that the registered document is validly executed, the Court in any event would lean towards plaintiff and consider defendant No.1's contention in this regard, untenable.

33. The defendant No.1 raises the prospect of its counterclaim in which summons have not yet been issued. The counterclaim is for cancellation of the sale deed executed in 2006. *Ex facie*, this counterclaim would be barred under limitation as per Article 59 of the Limitation Act, 1963 which prescribes its time period of three years from the date of the knowledge of the alleged fraud [*reference may be made to the decisions in* ***Prem Singh*** *(supra),* ***Mohd. Noorul Hoda*** *(supra) and* ***Suresh Srivastava*** *(supra) extracted in paragraph11 above*].

34. As per ***Suhrid Singh*** (*supra*), the executant of a deed who wants it to be annulled, has to seek cancellation of a deed. The executant of the deed, if seeks cancellation, has to pay *ad valorem* Court Fees on the consideration stated in the sale deed. Notwithstanding, the issue of limitation stares squarely in the face of defendant No.1. Admittedly, defendant No.1 was the executant of the sale deed and, therefore, had knowledge in 2006 but also the proceedings of mutation had been objected to by defendant No.1 in June 2014, which triggered a second reference by the *Tehsildar* in August 2014.

35. The discovery of the fraud, if any, propelling an annulment of the deed would naturally commence in 2014 itself and would be strictly barred by limitation. The counterclaim had been moved in February 2024, therefore, the

counterclaim itself is clearly barred by limitation and, therefore, there would be no purpose to advert to the counterclaim.

36. It is underscored that in this suit, plaintiff could not seek a declaration as to title but is simplicitor trying to protect his possession of the suit property which is sought to be encroached upon by defendant No.1. Once the possession having fructified in the hands of the plaintiff, there is no impediment in disposing the suit and granting the decree as sought for.

37. With regard to principles applicable for assessing suits for prohibitory injunction, the Court finds the Supreme Court's articulation in ***Anathula Sudhakar v P. Buchi Reddy*** (2008) 4 SCC 594 greatly instructive; relevant paragraph of which is extracted as under:

> *"**21**. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:*
> *(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.*
> *(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant*

sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

(emphasis added)

38. Therefore, a decree of permanent injunction is granted in favour of plaintiff and against defendants for restraint on the defendants, and all those

acting for and on their behalf, from interfering in the peaceful and settled possession of plaintiff over the suit property *measuring 03 bighas and 18 biswas comprised in Khasra No.959/2 situated at Village Rajokari, Tehsil Vasant Vihar, New Delhi* or from creating any interference, obstruction or hindrance in the attempt by the plaintiff to barb wire fence property or construct a boundary wall around the periphery of the suit property.

39. Accordingly, suit is, therefore, disposed of in the above terms. The counterclaim filed by defendant No.1 (*summons had not been issued*), is rejected as being barred by limitation.

40. Pending applications (if any) are disposed of.

41. Decree sheet be drawn up. Registry is directed accordingly.

42. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

MARCH 03, 2025/MK/*na*