



2026:DHC:6324



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 03rd August, 2026

Pronounced on: 05th August, 2026

CNR No. DLHC010347822026

+ RFA 769/2026, CM APPL. 50107/2026 & 50108/2026

AMARJEET KAUR

W/o Late Shri Satpal Singh

R/o House No. 265/19,

Tughlakabad, New Delhi

.....Appellant

Through: Mr. Aakash Kumar, Advocate.

versus

USHA GARG

W/o Shri Ramesh Kumar Garg

R/o House No. 1210/13,

Govind Puri, Kalkaji, New Delhi

.....Respondent

Through: Ms. Anita Sahani, Mr. Shivom Garg,
Mr. Vinay Goel, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CM APPL. 50109/2026 & 50110/2026

1. Exemption allowed, subject to all just exceptions.
2. The Applications stand disposed of.

RFA 769/2026:

3. ***Regular First Appeal*** under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed on behalf of the Appellant, Ms. Amarjeet Kaur ***against the Judgment and decree dated 25.08.2025***, whereby the Suit of the Plaintiff/Appellant for



Declaration, Damages, Possession and Permanent Injunction, has been decreed.

4. The Plaintiff had ***filed a Civil Suit bearing CS DJ 829/2018*** for Declaration of the **Sale Deed dated 02.06.2017** in respect of Property bearing **Municipal New No. RZ-265, Gali No. 19, (old No. B-31), Tughalkabad Ext., New Delhi-110019** (hereinafter referred to as '*the Suit Property*'), executed by the Defendant No. 1 in favour of the Defendant 2, as ***null and void*** and ***for Possession of the suit property***. Apart from seeking recovery of ₹3,00,000/- from Defendant No. 2 in respect of the Third Floor along with Terrace rights of the suit property, the Plaintiff also sought a *decree of Permanent Injunction* restraining the Defendants from creating any third-party rights in the suit property.

5. The Plaintiff stated that she was the owner of the ***First Floor, Second Floor and Third Floor with Terrace*** rights of the suit property, having purchased it for a sale consideration of Rs.28,50,000/- vide Sale Deed dated 12.09.2016, registered on 15.09.2016, from the Defendant No. 1, Ms. Amarjeet Kaur. The Defendant No. 1 had however, sold the ***Lower Ground Floor of the Property*** in question to the brother-in-law of the Plaintiff while the remaining portion was sold to the Plaintiff.

6. Since the Defendant had no place to live, she approached the Plaintiff to take the First Floor, Second Floor and Third Floor with Terrace on rent, for a *period of six months*. The suit property was accordingly rented out, vide registered **Lease Agreement dated 09.09.2016** (which was registered on 15.09.2016) for a period of six months for a sum of ***Rs.20,000/- per month***.

7. The tenancy commenced on **09.09.2016** and was to expire on **08.03.2017**. The Defendant No. 1 ***took possession of and began residing*** in



the suit property as a tenant. However, upon the expiry of the lease period, Defendant No. 1 failed to vacate the suit property and defaulted in the payment of rent from April 2017, onwards.

8. **On 07.07.2017, Defendant No. 2, Mr. Surender Singh**, arrived at the suit property accompanied by gundas and attempted to forcibly enter the premises, pursuant to which the Plaintiff made a PCR call and the police reached the spot. Subsequently, on 12.07.2017, Defendant No. 2 again attempted to forcibly enter the suit property, whereupon the police were called to the premises.

9. In the presence of the police, Defendant No. 2 claimed that he had purchased the Third Floor of the suit property along with terrace rights, from Defendant No. 1 by virtue of a registered Sale Deed dated 02.06.2017. The Plaintiff alleged that Defendant Nos. 1 and 2 had acted in collusion with each other, with the intention of unlawfully claiming the suit property by creating forged and fabricated documents.

10. The Plaintiff made a **Complaint to the Police on 13.07.2017** and also made a **Complaint under Section 156(3) Cr.PC**, for registration of FIR, which is pending adjudication.

11. The Plaintiff thus, gave a **Legal Notice dated 20.07.2017**, to the Defendant No. 1, which was duly served on 28.07.2017 thereby *terminating the tenancy* of the Defendant No. 1 and requested her to pay the arrears of rent, as well as user and occupation charges @ Rs.25,000/- per month and also *for vacating* the suit premises.

12. The Plaintiff thereafter, instituted the present Suit seeking a declaration that the Sale Deed dated 02.06.2017, executed by Defendant No. 1 in favour of Defendant No. 2, was null and void. The Plaintiff further



sought recovery of Possession, Damages, Arrears of Rent, and a Decree of Permanent Injunction for restraining the Defendants from creating any third-party rights or interests in the suit property.

13. The **Defendant Nos. 1 and 2 on service**, appeared and filed the Application under Order 8 Rule 1 CPC, for taking their Written Statement, on record. The Application of the Defendant No. 1 was **dismissed** vide Order dated 30.04.2022 and was proceeded *ex-parte*.

14. The Defendant No. 1 thereafter, moved an *Application under Order 9 Rule 7 CPC for setting aside the Order dated 30.04.2022 and the Application was decided vide Order dated 29.03.2023*, whereby she was permitted to join the proceedings at this stage, but the relief of taking the Written Statement of the Defendant No. 1 on record, was denied.

15. Both these Orders were upheld by the **High Court in CM (M) No. 1932/2023 vide Order dated 23.11.2023**. The Application of the Defendant No. 2 for filing his Written Statement, however was allowed and the Written Statement was taken on record.

16. **The Defendant No. 2** in his **Written Statement**, denied any knowledge about the transaction between the Plaintiff and the Defendant No. 1. He asserted that there was no cause of action against him as he was the *bona fide* purchaser for value in respect of Third Floor with terrace rights, having paid a total sale consideration of 9,50,000/-.

17. Defendant No. 2 claimed that the Sale Deed dated 02.06.2017 was duly registered in his favour, pursuant to which he became the owner of the Third Floor of the suit property and has been in possession **thereof since 02.06.2017, i.e., from the date of its purchase**. Accordingly, he asserted that the Suit filed against him, is liable to be dismissed.



18. In the Replication to the Written Statement of the Defendant No. 2, the Plaintiff asserted the assertions as made in the Plaint and *denied* the allegations made in the Written Statement.

19. The Issues were framed on the pleadings on 30.04.2022, which are as under:

- (i) *Whether plaintiff is entitled for decree of declaration as prayed for in prayer clause(i)? OPP.*
- (ii) *Whether plaintiff is entitled for decree of possession as prayed for in prayer clause(ii) and (iii)? OPP.*
- (iii) *Whether plaintiff is entitled for recovery as prayed for in prayer clause iv and v? OPP.*
- (iv) *Whether plaintiff is entitled for decree of permanent injunction as prayed for in prayer clause vii?*
- (v) *Whether defendant no.2 is a bonafide purchaser and thus owner of third floor with terrace right in subject property? OPP.*
- (vi) *Whether the suit has been filed by plaintiff against defendant no. 2 without any cause of action? OPP.*
- (vii) *Relief.*

20. The Plaintiff examined herself as PW-1 and proved the copy of the *Sale Deed dated 12.09.2016, Ex.PW-1/1*. She proved *the Lease Agreement dated 12.09.2016, Ex.PW-1/3 and other documents, namely, Legal Notice, Postal Receipts etc., the photographs, which are Ex.PW-1/4 to Ex.PW-1/19*.



21. **PW-2, Ahlmad of Ld. M.M. Saket**, exhibited the Order dated 17.07.2018 directing the registration of **FIR No. 257/2018, Ex.PW-2/1**. He also proved **the Complaint Case No. 10022/2017 as Ex.PW-2/A** and the **Police Complaint dated 13.07.2017 as Ex.PW-2/B**.

22. Since the Written Statement of the Defendant No. 1, was not taken on record, she did not lead any evidence in her defence.

23. The Defendant No. 2 examined himself as **DW-1** and proved the certified copy of **Sale Deed dated 02.06.2017 in his favour as Ex.DW-1/1**. He proved the other documents, which are **Ex.DW-1/2 to Ex.DW-1/7**.

24. **DW-2, Official from Police Station, Govind Puri**, proved the **DD Entry No. 68B being the Complaint filed by the Defendant No. 2 as Ex.DW-2/B**.

25. **DW-3, Official of BSES, Rajdhani Power Limited**, produced the record pertaining to **electricity connection in the name of the Defendant No. 2 as Ex.DW-3/A**.

26. **The learned District Judge**, on appreciation of the evidence, found that the **Sale Deed, Ex.PW-1/1 dated 12.09.2016**, was *duly executed* by the Defendant No. 1 in favour of the Plaintiff. It was further found that after the property was sold by Defendant No. 1, **she was inducted as a tenant vide Lease Deed, Ex.PW-1/3 for six months**, though she failed to vacate the property after the expiry of tenancy, after six months. *The defence of the Defendant No. 1 that the Sale Deed was void as the entire sale consideration had not been received by her, was rejected.*

27. In view of the Judgment of the Hon'ble Supreme Court of India in the Case of Vidyadhar vs. Manikrao&Anr., (1999) 3SCC 573, it was held that once the property had been sold by the defendant No. 1 to the plaintiff *vide*



Sale Deed, Ex.PW-1/1, she ceased to be the owner and could not have executed a Sale Deed, Ex.DW-1/1 dated 02.06.2017 in favour of the Defendant No. 2. Hence, it was declared that the Sale Deed, Ex.DW-1/1 in favour of the Defendant No. 2, was **null and void**. The Suit of the Plaintiff for Possession, was **decreed**.

28. Furthermore, *the arrears of rent @Rs.14,000/- per month from June, 2017 till the handing over of the Property by the Defendant No. 1, was decreed. Additionally, a rent @Rs.6,000/- per month from June, 2017 till handing over the possession of the Property, was decreed against the Defendant No. 2.*

29. On 12.05.2026, the Ld. Executing Court issued warrants of possession, against the **Appellant/Defendant No. 1, Ms. Amarjeet Kaur, who thereafter, preferred the present Appeal.**

30. The **grounds of challenge** are that there is a manifest error in the Judgment in invoking Section 54 of the Transfer of the Property Act, 1882 (*for short 'TPA Act'*), without first determining whether the Plaintiff had proved the factual case stated by her and payment of entire sale consideration of Rs.28,50,000/-, through five cheques as stated in the Plaint and incorporated in the registered Sale Deed.

31. The learned District Judge failed to consider whether these five cheques had been duly honoured and the amount credited in the account of the Appellant. It was asserted that though in the Sale Deed, it was claimed that the entire sale consideration was paid through five specific cheques, but oral evidence led in support thereof, *was not scrutinized which the nature of controversy demanded.*



32. In the cross-examination, the Plaintiff was specifically questioned about *issuance, presentation, encashment and proof of cheques*, relied upon by her for alleged payment of sale consideration. Her admissions in cross-examination, had direct bearing to the core issue involved in the Suit.

33. However, the learned Trial Court neither analysed the said testimony nor returned any finding on the evidentiary value, before concluding that the sale transaction stood duly established.

34. There were **material inconsistencies** in the pleadings of the Plaintiff, in the pleadings, documentary evidence and oral testimony of the Plaintiff. While the registered **Sale Deed dated 12.09.2016** recorded that the entire sale consideration stood paid by the five cheques, but they had the date 22.02.2016 i.e. nearly *seven months* prior to the execution and registration of the Sale Deed, while another cheque was dated 19.09.2016 i.e. subsequent to the execution and registration of the Sale Deed.

35. Furthermore, the Plaintiff had *admitted* in her cross-examination, that the Appellant had approached her for sale of the suit property only in September, 2016. **These circumstances and the evidence of the Plaintiff herself, required careful judicial examination, which has not been appreciated correctly.**

36. The Bank Statements of the Appellant, clearly reflected receipt of only Rs.10,00,000/-, through cheque No. 616134 and Rs.2,50,000/-, through Cheque No. 132562, but it did not reflect the payment of remaining three cheques constituting the balance sale consideration of Rs.16,00,000/-. **This material documentary evidence, has not been examined by the learned Trial Court.**



37. The Plaintiff neither produced the *original Bank Statement nor summoned the record from the concerned Bank official*, to prove the encashment and credit of the five cheques, as was pleaded by her. The very foundation of the Plaintiff's title rested upon the proof of payment, through the banking instruments, but **the best evidence has not been produced before the learned Trial Court, despite which the Suit has been decreed.**

38. The invocation of Section 54 of TPA that payment of consideration may be paid, promised or part-paid and part-promised, without first determining whether the Plaintiff established the factual case as actually pleaded in the plaint, was incorrect. **The impugned Judgment and the decree were, therefore, divorced from the factual foundation pleaded by the Plaintiff.**

39. The learned Trial Court committed an error in observing that even if the plea of non-payment of balance consideration of the Appellant, was assumed to be correct, it would have no bearing in the present Suit, in the absence of counter-claim or a separate Suit for Recovery of the balance consideration. This approach completely disregarded that the Plaintiff had founded her claim of title on the specific assertion that the entire sale consideration had been duly paid and proved. The observation of the learned Trial Court that the alleged balance amount **could have been sought** through separate recovery proceedings was, therefore, unwarranted.

40. The reliance on Vidyadhar vs. Manikrao & Anr.(Supra) in regard to payment of sale consideration, **was misplaced and not legally tenable.** It merely lays down that non-payment of consideration does not in itself invalidate the Sale Deed, but it does not dispense with the obligation of the



Court to determine whether the factual foundation pleaded by the Plaintiff, has been established or not.

41. No material issue arising directly from the pleadings of the parties in regard to the proof of payment of the entire sale consideration of Rs.28,50,000/-, had been framed, despite the plea having been taken by the Appellant.

42. No proper trial or judicial determination has taken place of the basic foundational fact, which was the very basis of the case of the Respondent.

43. It is further asserted that the **Damages, Mesne Profits @ Rs.14,000/-** per month, from June, 2017 and for handing over of the vacant and peaceful possession, has been **wrongly granted**, without even determining the substantive entitlement of the Plaintiff.

44. **The Execution Petition No. 288/2025** has been filed against the Judgment and decree dated 25.08.2025 whereby the learned Executing Court has already issued Warrants of Possession against the Appellant, *vide* Order dated 12.05.2026. **It is, therefore, submitted that the impugned Judgment, be set-aside.**

Submissions Heard and Record Perused.

45. It is an admitted case that a **Sale Deed dated 12.09.2016, Ex.PW-1/1**, was executed by the Appellant/Defendant No. 1, in favour of the Plaintiff. It was further deposed by the Plaintiff that on sale of the suit property, the Plaintiff executed a registered **Lease Deed dated 12.09.2016** in favour of Defendant No. 1 on the same day, for a period of **six months at a monthly rent @Rs.20,000/-** per month. The Plaintiff had further deposed that even after expiry of six months as stipulated in the Lease Agreement, the Defendant failed to vacate the Property.



46. *A Legal Notice dated 20.07.2017, Ex. PW 1/14*, has been duly served upon the Defendants despite which, she failed to vacate the premises. She further deposed that despite having sold the Property to her, the Defendant No. 1, further sold the Third Floor with terrace to the Defendant No. 2 *vide Sale Deed dated 12.09.2016, Ex. PW 1/1*, which was null and void.

47. The Defendant No 1 *firstly*, failed to file her Written Statement in time and her Application under Order 8 Rule 1 CPC, for filing the Written Statement, was dismissed by the learned Court. This Order has been upheld in CM (M) No. 1932/2023 *vide* Order dated 23.11.2023. Therefore, her Written Statement has not been taken on record and there is no defence *per se* of Defendant No. 1, available on record.

48. The Plaintiff had deposed that despite having sold the Property to her *vide Sale Deed dated 12.09.2016, Ex. PW-1/1*, the Defendant No. 1 sold the Third Floor with terrace rights to the Defendant No. 2 *vide* the registered *Sale Deed dated 02.06.2017, Ex DWI/1*.

49. The testimony of the Plaintiff, proves the execution of the Sale Deed in her favour, clearly establishes that once the Property was sold by the Defendant No. 1 to the Defendant No. 2, she could not have further sold the Third Floor with terrace rights to the Defendant No. 2.

50. The *learned District Judge*, therefore, rightly declared the second Sale Deed dated 02.06.2017 in favour of the Defendant No.2 **as null and void. Pertinently, the Defendant No. 2 has not challenged the findings of the Judgment and has in fact, handed over the possession to the Plaintiff.**

51. The **only ground** which has been vehemently and repeatedly agitated by the Defendant No. 1, was that the Sale Deed mentioned the entire sale consideration as Rs.28,50,000/-, which was stated to have been paid,



through five cheques as detailed in the Sale Deed itself. It is asserted that the two cheques of Rs.10,00,000/- and Rs.9,50,000/- dated 22.02.2016 and 19.09.2016 respectively, alone were credited in the account of the Defendant No. 1, while the Plaintiff failed to make payment against the three cheques.

52. It is asserted that there was no date mentioned against these three cheques and there is no evidence led by the Plaintiff, to prove the payment of Rs.15,00,000/-, through these three cheques. It is also asserted that the Plaintiff in her cross-examination, was unable to give the details of payment, through these three cheques.

53. Furthermore, the Statement of Account filed by the Defendant No. 1, reflects that there was no payment made *vide* the three cheques as mentioned in the Sale Deed. It has been rightly pointed out by the learned counsel for the Respondent, who had appeared on advance Notice, ***that the Written Statement of the Defendant No. 1/Appellant, was not taken on record and her Statements of Account was filed along with the Written Statement but the same was not taken on record.***

54. There is no evidence whatsoever led by the Defendant No. 1 in regard to the non-payment of the part sale consideration. In this context, a reference may be made to Section 54 of the TPA Act, which defines sale as transfer of ownership in exchange of price paid or promised or part paid and part promised. It nowhere mandates that it is only after the payment of entire sale consideration, that the sale would be effected.

55. This was considered by the Supreme Court of India in the Case of Vidyadhar vs. Manikrao & Anr.(Supra), wherein it was held that the ***definition of the sale under Section 54 itself indicates that in order to constitute a sale, there must be a transfer of ownership from one person to***



another. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The price constitutes an essential ingredient of the transaction but the words “*price paid or promised or part-paid and part-promised*” itself indicate that actual payment of whole of the price at the time of the execution of sale deed, is not a *sine qua non* to the completion of the sale. Even if the whole of the price is not paid but the document is executed and registered, the sale would be complete.

56. The *real test is the intention of the parties*. If the parties intend to transfer the ownership of the property and it is intended that the price would be paid either in present or in future, ***it would constitute sale***. The intention may be gathered from the recital in the sale deed, conduct of the parties or the evidence on record.

57. Therefore, it had been rightly held by the learned District Judge that firstly, **there is no evidence or the defence of the Appellant on record, to show that there was part-payment of sale consideration**. Even if it is accepted that there was part payment of sale consideration, the Defendant No. 1 had her own options, to proceed in accordance with law, but that in itself cannot be sufficient to declare the Sale Deed dated 12.09.2016, Ex.PW-1/1 in favour of the Plaintiff, **as null and void**.

58. The Appellant has not been able to establish any right, title of ownership in the suit property after having sold it to the Plaintiff. It has been established on the same date, a **Lease Deed dated 12.09.2016, Ex.PW-1/1** was executed for a period of six months @ Rs.20,000/-.

59. The learned District Judge has rightly apportioned the rent payable by the Defendant Nos. 1 and 2 to **Rs.14,000/- and Rs.6,000/- respectively, w.e.f. June 2017 till the handing over of the Possession**, considering that



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since July, 2017, the Third Floor and the Terrace, was in possession of the Defendant No. 2.

60. There is no infirmity in the impugned Judgment and decree dated 25.08.2025 and the **Appeal is hereby, dismissed. Pending Applications are also disposed of.**

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 05, 2026/RS