



2025:DHC:3987



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:19.05.2025

+ **C.R.P. 90/2019 & CM APPL. 17773/2019**

CHANDER MOHAN KHANDELWAL Petitioner

versus

HEMANT WADHWA Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rajeev Kumar & Ms. Nimmi Sinha,
Adv.

For the Respondent : Mr. Subhash Sharma, Adv.

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed challenging the order dated 07.03.2019 (hereafter '**impugned order**'), passed by the learned Trial Court in CS No. 555/2017 (suit).

2. By the impugned order, the learned Trial Court dismissed the application filed by the petitioner under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('**CPC**').

3. The brief facts of the case are as follows:

a. The suit was filed by the respondent, *inter alia*, seeking cancellation of Sale Deed dated 13.01.2016 (hereafter '**the Sale**



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Deed'), which was registered on 28.01.2016, in respect of the suit property, that is, third floor of the property bearing no. C-126/B, Moti Nagar, New Delhi. By Sale Deed, the respondent had sold the suit property with roof rights to the petitioner for a sale consideration of ₹21,75,000/-.

b. It is the case of the respondent that his father was the owner of the entire property bearing no. C-126/B, Moti Nagar, New Delhi. It is claimed that due to being deserted by his other family members after losing some investments, the petitioner started living with his father on the ground floor of the property. In July, 2014, the respondent came into contact with the petitioner, who has a business of fabrics, when he had gone to the petitioner's shop. It is alleged that the petitioner lured the respondent to make certain investments in the share market. After a few days of conversation, the respondent invested ₹50,000/- on the basis of assurances of the petitioner that he will be able to recover his old losses by getting profitable returns. The respondent was allegedly lured by the petitioner to make regular investments. In November, 2014, after the death of the respondent's father, the respondent was induced to invest an amount of ₹3 lakhs in cash in the respondent's business on the assurance of good returns. Within two months, the petitioner informed the respondent that the amount had been lost due to ups and downs in the market. Thereafter, the respondent invested more amount, which also did not bear any profitable returns.



c. It is claimed that the respondent was assured that the petitioner will construct a third floor of the property for a nominal cost of ₹10 lakhs, whereafter, the ground floor could be sold at a higher price to make big investments. The petitioner also started the construction work with his own funds in the month of October, 2015. Due to coercion of the petitioner, the respondent sold the ground floor of the property for ₹23 lakhs and invested a sum of ₹10 lakhs with the petitioner to construct a third floor. It is alleged that the petitioner approached the respondent by saying that the amount had been lost in the market and asked the respondent to give him the third floor of the property as a collateral security to help recover the losses.

d. It is claimed that it was due to this, the respondent assented to registration of the subject property in the name of the petitioner, against which, a payment of ₹21,75,000/- was made to the respondent by way of different cheques to artificially give the garb to the transaction of a genuine sale. After the cheques were deposited, the whole money was withdrawn within two months to be invested with the petitioner. As the respondent had already lost a huge amount with the petitioner, he had no other alternative.

e. It is further claimed that there was a verbal agreement between the parties and the possession of the subject property was not handed over to the petitioner as per the Sale Deed, which makes it clear that the transaction between the parties was to treat the subject property as a collateral security and not the actual sale.



f. The petitioner sought rejection of the suit on the ground that the respondent had admittedly executed the Sale Deed and he had no cause of action to challenge the same. By the impugned order, the application was dismissed. The relevant portion of the impugned order is reproduced hereunder:

“The defendant has sought rejection of the plaint on the ground that the plaintiff has executed the registered sale deed dated 28.01.2016, in his favour, therefore, in view of registered sale deed, the plaintiff has no cause of action to challenge the same. It is settled law that for deciding the applications u/O 7 Rule 11 CPC, only the plaint and its averments are considered. Perusal of the plaint clearly shows the cause of action in favour of the plaintiff and against the defendant since as per the case of the plaintiff, he executed the sale deed dated 28.01.2016, in favour of the defendant as a collateral security for the investment made by him with the defendant, it is a matter of trial whether the sale deed executed by the plaintiff in favour of the defendant was executed as a collateral security or by way of said sale deed, the suit property was actually sold by him to the defendant. The plaintiff cannot be non-suited at this stage of the matter. The plaint clearly shows the cause of action, hence, the application u/O 7 Rule 11 CPC of the defendant is hereby dismissed.”

g. Aggrieved by the impugned order, the petitioner preferred the present petition.

4. The learned counsel for the petitioner submitted that the learned Trial Court failed to take into consideration the fact that the respondent himself categorically admitted the execution of the Sale Deed. He submitted that the learned Trial Court did not take into account that the Sale Deed is a registered document, and that the parties cannot be permitted to contradict the contents of the registered document.

5. He submitted that the respondent, in the pleadings, had admitted



the execution of the Sale Deed, and that in the Sale Deed itself it has been admitted that the entire agreed sale consideration had been received and the vacant possession of the suit property had been given. He further submitted that the learned Trial Court failed to appreciate that the respondent had not denied in the pleadings that he had received the entire sale consideration under the Sale Deed which had been endorsed by the Sub-Registrar.

6. He submitted that thereafter, the suit property had been given on rent to the respondent by way of an oral agreement and the present suit was filed by the respondent to only harass the petitioner. He submitted that the respondent did not pay the rent and the cheque issued by him for liability towards rent liability was dishonored, for which the petitioner had initiated proceedings under the Negotiable Instruments Act, 1881.

7. He submitted that the petitioner had availed a home loan from India Bulls Pvt. Ltd. by mortgaging the suit property and he has since repaid the entire loan amount.

8. He submitted that since the respondent had admitted the execution of the registered Sale Deed, he cannot be permitted to harass the petitioner on false grounds of fraud in view of Sections 91 and 92 of the Indian Evidence Act, 1872. He submitted that it is not the case of the respondent that he did not know the nature of the documents being executed or registered by him or that the respondent failed to understand the contents of the Sale Deed.

9. He further submitted that the Sale Deed had also been witnessed



by one independent witness, namely, Rajkumar. He submitted that except for the bald averment of fraud, the respondent has failed to point towards any material to corroborate the same. He submitted that merely alleging fraud or coercion in the pleadings is not sufficient, and it is upon the plaintiff to give the particulars of fraud in accordance with Order VI Rule 4 of the CPC.

10. He further submitted that the petitioner had also preferred a suit, bearing, no. 662/2018 for recovery of possession and arrears of rent against the respondent. He submitted that the petitioner had filed an application under Order XII Rule 6 of the CPC for passing a decree on admission in that suit, however, the learned Trial Court has disposed of the same by noting that the issues in both suits are substantially similar.

11. He relied upon the judgments in the cases of ***Karan Madaan v. Nageshwar Pandey : 2014 SCC OnLine Del 1277*** and ***Rohit Rajpal v. Ankita Suri : 2018 SCC OnLine Del 9244*** to endorse his submissions.

12. *Per contra*, the learned counsel for the respondent submitted that the learned Trial Court had rightly rejected the application filed by the petitioner under Order VII Rule 11 of the CPC.

13. He submitted that the respondent never sold the said property to the petitioner but had only given the same to the petitioner as a collateral security.

14. He submitted that the peaceful and vacant possession of the property was never given to the petitioner. He further submitted that



since no vacant and peaceful possession of suit property had ever been delivered to the petitioner, the provisions under Sections 91 and 92 of the Indian Evidence Act, 1872 are not attracted.

ANALYSIS

15. At the outset, it is relevant to note that the petitioner has challenged the impugned order by invoking the revisional jurisdiction of this Court. It is trite law that the scope of revision under Section 115 of the CPC is very limited and is to be exercised only if the subordinate Court appears to have exceeded its jurisdiction or to have failed to exercise its jurisdiction, or if the subordinate Court has exercised its jurisdiction illegally or with material irregularity.

16. This Court also considers it apposite to appreciate the law in relation to Order VII Rule 11 of the CPC. The said Rule provides for summary dismissal of a suit at the threshold, before the parties have led their evidence, if one of the grounds stipulated therein is made out. The purpose of the said provision is to stifle sham civil actions and quell bogus and meaningless suits at the outset when the said suits *ex facie* appears to be an abuse of the process of law, without further wasting judicial time.

17. Considering that the power to terminate the action without even allowing the plaintiff to lead evidence and establish its case is a drastic one, the Court is required to limit itself to discerning whether the plaint *prima facie* discloses a cause of action by perusing the substance of the averments, without paying any heed to the pleas taken



in the written statement. While the Court is not precluded from intervening when the litigation is manifestly vexatious, at the same time, if a *prima facie* case is made out, it is not open to the Court to conduct an enquiry into the merit or trustworthiness of the allegations. The Hon'ble Apex Court in the case of ***Dahiben Vs. Arvinbhai Kalyanji Bhansai : (2020) 7 SCC 366*** has succinctly discussed the law in relation to Order VII Rule 11 of the CPC. The relevant portion of the same is reproduced hereunder:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315, this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court....

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

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23.9. *In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

23.11. *The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed...*

23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941].*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.*

23.14. *The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823.*

23.15. *The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds*



specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.”

(emphasis supplied)

18. It is essentially the case of the petitioner that the subject plaint is not maintainable as it is hit by Sections 91 and 92 of the Indian Evidence Act, 1872. It is argued that the respondent had willingly executed the Sale Deed and he cannot be allowed to take a ground contrary to the terms of the registered Sale Deed, especially considering that he admittedly received the sale consideration. It is further argued that the plaint does not disclose any cause of action and the same is bereft of any cogent particulars of the alleged fraud.

19. The short question before this Court is whether the cause of action asserted by the respondent in the plaint is tenable in law or whether the plaint ought to be rejected as it discloses no cogent cause of action. Before proceeding further, this Court considers it apposite to refer to the relevant portion of the plaint, which is as under:

*“16. That since an advance of Rs.10 Lacs had already been paid to the defendant by the plaintiff for the construction of the third floor of the suit property there was no other alternative with the plaintiff, but to approach him again and gain to complete the construction work for which he has already been paid, and **during this period again with hypnotized and clever talk and schemes the defendant that now the commodity market is in green, made the plaintiff to trust the defendant that if he gives in writing the third floor of the suit property as a collateral security to the defendant, which was under construction, the defendant will make sure that this time the whole amount invested by the plaintiff shall be recovered with profits.***

17. That the plaintiff had to get the documents of the third floor of the suit property registered in the name of the defendant, against which the defendant made the payment of Rs.21,75,000/-



to the plaintiff by way of different cheques to make artificially sure that the transaction is a genuine sale, which otherwise had never been the thought of the plaintiff.

18. That after cheques of the defendant had been deposited by the plaintiff in his bank account, the whole money was got withdrawn within two months to be invested with the defendant. Since the plaintiff had lost a huge amount in the investments through the defendant, there was no other alternative with him, but to trust him.

*19. That by the verbal agreement between the plaintiff and the defendant the possession of the third floor of the suit property was not handed over to the defendant by the plaintiff as per the Sale Deed, which makes it more clear that **the verbal agreement** between the parties was that of a collateral security and not of sale.”*

(emphasis supplied)

20. Essentially, the respondent has admitted to the execution of the Sale Deed but pleaded that the same was done pursuant to “clever talk” of the petitioner that the respondent will be able to recover all the investment amount. It is the case of the respondent that there was a verbal agreement between the parties that the transaction was one of transfer of property as a collateral security and not one of sale. It is also admitted that the sale consideration was received by the respondent, however, it is claimed that the same was withdrawn for the purpose of investment.

21. The learned Trial Court has dismissed the application filed by the petitioner by observing that perusal of the plaint shows cause of action in favour of the respondent since as per the case of the respondent, the Sale Deed was executed in favour of the petitioner as a collateral security for the investment made by him with the petitioner. It was noted that it is a matter of trial as to whether the Sale Deed was



executed as a collateral security or if the suit property was actually sold by way of the same.

22. While the learned Trial Court has rightly appreciated that the defence of a defendant is not required to be taken into account while deciding an application under Order VII Rule 11 of the CPC and only the plaint is to be considered, it is pertinent to note that no deference has been paid to the arguments raised by the petitioner in relation to the plaint being hit by Sections 91 and 92 of the Indian Evidence Act, 1872 as well as the argument that there was no fraud or coercion. Even though the said grounds have been agitated in the application filed under Order VII Rule 11 of the CPC, however, the impugned order is abysmally silent on this aspect.

23. Section 91 and 92 of the Indian Evidence Act, 1871 read as under:

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. — When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2.— Wills admitted to probate in India may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are



contained in more documents than one.

Explanation 2.— Where there are more originals than one, one original only need be proved.

Explanation 3.— The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

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:

Proviso (1). — Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2). —The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). —The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

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.

Proviso (5). — Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). — Any fact may be proved which shows in what manner the language of a document is related to existing facts.”

24. The law in relation to the aforementioned provisions is well



settled. Section 91 of the Indian Evidence Act, 1972 provides that once the terms of a contract, or of a grant, or of any disposition of property, have been reduced in the form of a document, no evidence except the document or secondary evidence of its contents is admissible to prove the terms thereof. In cases where the terms have been proved as per Section 91 of the Indian Evidence Act, 1872, Section 92 of the Indian Evidence Act, 1872 excludes evidence of any oral agreement or statement between the parties to the concerned instrument for the purpose of contradicting, varying, adding to, or subtracting from the same. There are six provisos to Section 92 of the Indian Evidence Act, 1872 which contain the exceptions to the same.

25. It is relevant to note the judgments referred by the petitioner. In the case of *Karan Madaan v. Nageshwar Pandey (supra)*, a Bench of this Court was dealing with a similar issue where the defendant had filed a counter claim averring that the intention of the parties was not to transfer the suit property and the registered sale deed had been executed to create a surety for repayment for loan, due to which, the possession was not handed over. It was also claimed that the registered Sale Deed was hit by fraud. The plaintiffs had filed an application under Order VII Rule 11 of the CPC raising a similar argument that the counter claim was hit by Sections 91 and 92 of the Indian Evidence Act, 1872. Allowing the said application and rejecting the counter claim after adverting to a catena of judgments, the Court found that mere mention of “fraud” in pleadings is insufficient. It was noted that it is not open to the defendant to claim that the deed was hit



by fraud after having executed the same. The intention of the parties should have been spelt out in the deed. It was further noted that a party cannot be permitted to plead contrary to the terms of the Sale Deed as once the same is reduced to writing, it cannot be open to the parties to re-write the terms. The relevant portion of the said judgment is reproduced hereunder:

“24. Therefore, the terms of the sale deed clearly show that the nature of the transaction that the said instrument records is an absolute conveyance of property i.e. the sale of the suit property. By no stretch of reasoning it can be described as a transaction of loan, coupled with a transaction to create a security for repayment of loan with interest and costs and subsequent retransfer of the suit property by the plaintiffs to the defendant.

25. The terms on which the suit property was conveyed by the defendant to the plaintiffs having been set out in the sale deed itself, in view of the bar contained in Section 91, it is not open to the defendant to claim that the conveyance was made only by way of security. The terms of the instrument of sale completely rule out the so-called understanding between the parties, that the suit property was to remain a security for the repayment of the so-called loan, and was to be re-conveyed to the defendant upon repayment of the so-called loan of Rs. 1.65 Crores with interest and other charges...

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31. The defence/case set up by learned counsel for the defendant in his arguments is of ‘fraud’, on the premise, that the plaintiffs are seeking to exploit the instrument of sale, contrary to the understanding of the parties that the sale deed was only to be used as a security for repayment of loan, interest and other charges. Pertinently, the written statement or the counter claim do not whisper about a “fraud”, though the defendant repeatedly states that the plaintiffs are greedy, have turned dishonest, and are of a criminal mind. A mere mention of “fraud” in a pleading is not sufficient. A party pleading fraud is obliged, under Order VI Rule 4 CPC, to give particulars of the pleaded fraud-with dates and items, in the pleading. The pleadings of the defendant, in the written statement/counter claim do not even make out a case of



fraud...

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36. In the present case, the only reason pleaded by the defendant (whose evidence cannot go beyond the pleadings) is the oral understanding between the parties as already set out above. **However, the so-called oral understanding is completely contradicted by the terms of the registered instrument itself, and the defendant has not pleaded any other fact or circumstance to show that the parties did not intend to act upon the instrument of sale.**

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54. The non delivery of possession by the defendant to the plaintiffs does not by itself, or cumulatively with the other factors pointed out by the defendant, lead to the conclusion that the transaction between the parties was not a sale of the suit property, but was a mere loan transaction. So also the fact that the plaintiffs waited for about five months to claim possession of the suit property from the defendant has no bearing on the plaintiffs' title to the suit property, or their right to claim possession.

55. In **Sanjay Gupta v. Cottage Industries Exposition Ltd., 2008 (102) DRJ 304**, I had the occasion to deal with sections 91 and 92 of the Evidence Act. The parties had entered into a registered lease deed. **The plaintiff claimed that the lease was for residential purpose and that the defendant misused the leased premises for commercial purpose. The defendant claimed that the lease was for commercial purpose. This led to disputes between the parties.** The defendant stopped payment of rent on the ground that the plaintiff had obstructed the use of the leased premises for commercial and office purpose. To determine the purpose of letting, the relevant clauses of the lease were examined. Section 91 and 92 of the Evidence Act were pressed into service to deny the aforesaid defence set up by the defendant. The relevant extract from the said decision reads as follows:

“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”.

21.

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. Under Section 92(4) of the Evidence Act no parol evidence is admissible to substantiate such oral contract or disposition. Where a document for its validity or effectiveness is required by law to be given in writing, no modification or alteration or substitution of such written document is permissible by parol evidence and it is only by another written document that the terms of the earlier document can be altered, rescinded or substituted. The Supreme Court also held that parol evidence cannot be permitted to substantiate the subsequent oral agreement where the original agreement is contained in a registered document. This is not permitted by Section 92(4) of the Evidence Act. The terms of a registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise. If the oral arrangement is allowed to be substantiated by parol evidence it would mean re-writing of the registered document which is not permissible”.*

73. So far as the plaintiff's application under Order 7 Rule 11 is concerned, the logical consequence of the defence/case of the defendant/counter claimant being held as untenable in law, would be that the said counter claim would be liable to rejected under Order 7 Rule 11 CPC for want of cause of action. The cause of action pleaded by the defendant in the counter claim is the so-called oral agreement and understanding that the plaintiffs shall re-transfer the suit property to the defendant in terms and conditions pleaded by the defendant. The defendant is precluded from pleading such an agreement, arrangement or understanding. As already noticed above, no other cause of action or basis for the reliefs sought in the counter claim has been disclosed. ”



26. The aforesaid judgment was upheld by the Hon'ble Division Bench of this Court and the appeal was dismissed with cost in ***Nageshwar Pandey v. Karan Madaan* : 2016 SCC OnLine Del 816.**

27. In the present case, the Sale Deed unambiguously makes out a case of sale of the suit property. There is no whisper of the intention of the parties to treat the transaction as one of security instead. There is no term which makes any mention of the transaction being for the purpose of securing funds for investments either. The Sale Deed records that the petitioner is entitled to get the suit property mutated and transferred in his name, and also provides that the expenses of the stamp paper as well as the registration fee are to be borne by the petitioner. It is also mentioned in the Sale Deed that the entire sale consideration stands paid to the respondent by the petitioner by way of cheques. The acknowledgment of the receipt of the sale consideration is also noted therein. From the same, it is apparent that the nature of transaction is of sale of the suit property. Considering that the Sale Deed leaves no ambiguity in relation to the terms of the conveyance, it is not open to either of the parties to shy away from the terms prescribed in the registered Sale Deed. Thus, the respondent cannot claim that the conveyance was in the nature of only securing a collateral security. Any attempt to establish a cause of action by casting doubt over the character of the Sale Deed, after having admittedly executed the same, will be in teeth of Section 92 of the Indian Evidence Act, 1872.



28. Insofar as the allegations of fraud are concerned, apart from making vague assertions in the plaint in some paragraphs regarding the prior dealings between the parties, the only relevant paragraphs in relation to alleged fraudulent intention of the petitioner in reference to the Sale Deed are paragraphs 14 and 22. A bare perusal of the plaint makes it clear that no particulars are pleaded so as to make out a case for fraud. No attending circumstances have been pleaded either which would render the Sale Deed voidable. As provided under Order VI Rule 4 of the CPC, as also noted in the aforesaid case, in cases a party pleading fraud, particulars are required to be stated in the pleading. The present plaint is found to be wanting in regard to any details.

29. In the aforesaid judgment, the Court dealt with the explanations to Section 91 of the Indian Evidence Act, 1871 as well as the provisos to Section 92 of the Indian Evidence Act, 1871. The observations in this regard are relevant as the respondent has built a case on similar lines as the defendant therein. The relevant portion is as under:

*“26. Explanations 1 and 2 of Section 91 have no relevance for the present case. Explanation 3 only states that the statement of a fact in a document, “**other** than the facts referred to in this Section” may be proved by leading oral evidence. The “fact referred to in this Section” are the “terms of a contract, or a grant, or of any other disposition of property” which have been reduced to the form of the document. For instance, if the age or address, or paternity of a party is recorded in an instrument, it shall be open to the parties to lead evidence to establish that the same is not correctly recorded, or that the same is, in fact, different from what the instrument records. **However, this explanation cannot be invoked to disprove the “terms of a contract, or of a grant, or of any other disposition of property”.***

27. Section 92 of the Evidence Act, inter alia, provides that where the terms of a grant or other disposition of property have been



proved according to Section 91-and in this case the execution and registration of the instrument of sale is not disputed by the defendant, no evidence of any oral agreement, or statement shall be admitted, as between the parties to such instrument, for the purpose of contracting, varying, adding to or subtracting from its terms.

28. ***By setting up the defence as noticed hereinabove, the defendant is seeking to do precisely this. The defendant is setting up a defence/case which clearly contradicts and varies the terms of the duly executed and registered instrument of sale. The defendant is seeking to urge that the amount of Rs. 1.65 Crores received by him was by way of loan, and not by way of consideration for the sale of the suit property to the plaintiffs. This is completely contradictory to, and at variance with the above extracted recitals and clauses of the sale deed.***

29. **The defendant is also seeking to urge that the transaction between the parties was the loan transaction, which is completely at variance with and contradicted by the sale deed which, absolutely and forever, conveys the suit property to the plaintiffs.** The defendant is seeking to foist an obligation on the plaintiffs to reconvey the suit property to him upon the repayment of the so-called loan with interest and other charges-an obligation not borne out by the instrument of sale and contrary to the express covenant that “The vendees shall hereinafter hold, use, enjoy as they like and to sell, mortgage, lien, let-out or make additions/alterations/re-construct with all construction for construction of further floors in the same as their own property without any hindrance, claim or demand whatsoever from the Vendor”. **Thus, the defendant is seeking to contradict and add to terms of the registered sale deed.**

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30... In any event, the fraud, intimidation, illegality, etc referred to in **proviso 1 to Section 92** relates to the execution of the instrument/document. **It is not the defendant's case that when he executed the sale deed, he did not know that it is a sale deed that he was executing. It is not the defendant's case that he is unlettered or illiterate or that he did not read, or could not read the instrument in question. He does not claim that the sale deed was executed in an intoxicated or unsound state, or under duress or coercion exercised by the plaintiffs, or anyone else. The defendant knew the fact that he was executing an instrument of sale. When he has executed the sale deed in question, it is not**



open to the defendant to claim that the instrument of sale is hit by fraud, because, according to the defendant, the intention or understanding of the parties was to create a security in favour of the plaintiffs for the alleged loan granted to the defendant. The spirit and purpose of enacting Section 91 and 92 of the Indian Evidence Act, 1872 is to render the written contract, grant or other disposition the sole repository of the terms contained therein. If the intention of the parties was, as is claimed by the defendant, then that intention/objective/purpose should have been so spelled out in the instrument. Unfortunately for the defendant, that is not the case.

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38. The court also dealt with the issue whether a party can give oral evidence concerning the intention of the parties at the time of the execution of a document, which is not reflected in such a document. In this context, Roop Kumar (*supra*) was relied upon. **The court rejected the defence set up by the defendant which was contrary to the terms of the registered instruments.** In the light of the above discussion, I reject the reliance placed by the defendant on the 1st proviso to Section 92 of the Evidence Act.

39. **Proviso 2 to Section 92** permits the proof of execution of a separate oral agreement “**as to any matter on which the document is silent**”, and **which is not inconsistent** with its terms. The defence/case of the defendant—that there was a separate oral agreement of loan with security; of payment of interest in cash without receipt; of reconveyance of the suit property by the plaintiffs to the defendant—on the terms narrated by the defendant, cannot be set up, since the said case/defence relates to matters on which the document is not silent. **Rather, it is “speaking”, and such defence is inconsistent with the terms of the instrument of sale.** The instrument of sale contradicts each of the claims of the defendant. I have already dealt with the terms of the instrument of sale in paras 22 to 25 above.

40. **Proviso 3 to Section 92** permits the proof of existence of a separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property. **Pertinently, the defendant has not set up a defence/case that any obligation under the sale deed was dependent upon fulfillment of any condition precedent.** The defendant is seeking to set up a defence/case that post the execution of the instrument of sale, the plaintiff was obliged to reconvey the suit property to the defendant. Such a defence is not tenable by resort to proviso 3 to Section 92. As noticed above, the



terms of the instrument of sale convey the suit property to the plaintiffs in presenti, absolutely and forever. Therefore, there is no question of the defendant setting up an oral agreement as a “condition precedent” for performance of any obligation.

*41. **Proviso 4 to Section 92** permits the establishment of the existence of any “**distinct, subsequent oral agreement to rescind or modify**” the contract, grant or disposition of property, except in cases in which such contract, grant or disposition of property is required, by law, to be in writing, or has been registered as per the law for the time being as to registration of documents.*

*42. In the present case, the disposition of the suit property was required by law to be in writing and by a registered instrument, and it has been so executed in writing and registered. Proviso 4, therefore, cannot be invoked by the defendant, in any case. Moreover, the defendant is not claiming a “subsequent” oral agreement. He is claiming an oral agreement/understanding which, according to him, existed at the time of execution of the sale deed. Consequently, Proviso 4 has no application to the defence/case set up by the defendant. **Provisos 5 & 6 have no application to the facts of the present case, as the defendant does not plead any custom, or any issue with regard to the language used.**”*

(emphasis supplied)

30. Although, no arguments have been raised on behalf of the respondent regarding non-applicability of the mandate of Sections 91 and 92 of the Indian Evidence Act, 1872 by virtue of the circumstances of the case following under one of the exceptions, however, this Court deems it apposite to satisfy itself in this regard. As noted by the Court, while Explanation 3 of Section 91 of the Indian Evidence Act, 1872 provides for limited admissibility of oral evidence, however, the same cannot be invoked to *disprove* the terms of a contract.

31. As far as the provisos to Section 92 of the Indian Evidence Act, 1872 are concerned, provisos 5 and 6 will not be applicable to the



facts of the present case.

32. Insofar as the first proviso is concerned, the same provides that any fact, such as fraud, may be proved which would invalidate any document or would entitle any person to a decree. The fraud in the said provision relates to execution of the instrument and the said exception will not be available to the respondent as it is not his case that he did not understand the nature of the documents being executed. It is apparent that the respondent executed the Sale Deed while being fully cognizant of the nature of the Deed and the respondent cannot claim fraud on part of the petitioner after executing the instrument. Any intention of the parties to the contrary ought to have been captured in the Sale Deed itself. In the absence of the same, nothing turns on the oral agreement between the parties.

33. Since the case of the respondent is fulcrumed on the averment that the arrangement between the parties was to create a collateral security and not for sale of the suit property, which is inconsistent with the terms of the registered Sale Deed, Proviso 2 to Section 92 of the Indian Evidence Act, 1872 is also not applicable as the same only provides for proof of an oral agreement which is *not inconsistent* with the terms of contract.

34. There is no condition precedent to the obligations under the Sale Deed as per the averments made in the plaint, whereby, the third proviso is also not applicable to the facts of the present case.

35. Lastly, Proviso 4 which provides for existence of any distinct subsequent oral agreement to rescind or modify any contract, grant or



disposition of property, is also not applicable to the facts of the present case as the plaintiff has not made any averments in this regard. The alleged oral arrangement is not *subsequent* to the execution of the Sale Deed.

36. It is argued on behalf of the respondent that the intention of the parties is evident from the fact that the vacant possession of the suit property was never handed over to the petitioner. Considering the totality of the facts of the case, this Court finds no merit in the said argument, especially considering that the Sale Deed in question records that the actual physical vacant possession of the suit property had been delivered to the petitioner on the spot. The relevant portion of the Sale Deed, as relied upon in the plaint, is as under:

“2. That the actual physical vacant possession of the said property has been delivered to the vendee, on the spot.”

37. It is relevant to note that in the case of ***Karan Madaan v. Nageshwar Pandey*** (*supra*) as well, the possession had not been handed over, despite which, the Court found no reason to doubt the intention behind the Sale Deed and allowed the application under Order VII Rule 11 of the CPC.

38. Although it is stated in the plaint that the arrangement between the parties was verbal in nature, the respondent has relied upon a collateral agreement dated 27.01.2016 which records that the petitioner will provide an interest free credit facility to the respondent for making investments and for this purpose, the suit property will be put as collateral in name of the petitioner. It also records that the suit



property will never be sold and the amounts will be paid back by the respondent in full or parts or in installments. It is also recorded that the respondent will stay in the suit property with full possession. The said agreement is not registered.

39. Evidently, the assertions made by the respondent in relation to the transaction being for collateral security rather than sale are in contravention of the terms of the registered Sale Deed, as per which the suit property was sold to the petitioner. As discussed above, the respondent is precluded from establishing the said plea in view of Sections 91 and 92 of the Indian Evidence Act, 1872, especially in absence of particulars of fraud, in which case, there is no question of the respondent being entitled to a decree in his favour. Thus, the suit is untenable in law and not maintainable.

40. This view of the Court finds support in a number of judgments. In the case of ***Rohit Rajpal v. Ankita Suri*** (*supra*) [mentioned in para 11], another Bench of this Court upheld the order of the learned Trial Court whereby the suit was dismissed as being non-maintainable. In the said case, it was contested by the plaintiffs that the registered Sale Deed was in fact a mortgage deed. The Court rejected the contention and held as under:

*“28. In the present suit, the same issue is sought to be re-agitated again by Sh. Rohit Rajpal and Sh. Rahul Rajpal. The two documents, namely, the sale deed and the lease deed being registered there is a presumption of validity that applies to them as held in the Supreme Court judgement **Prem Singh v. Birbal**, (2006) 5 SCC 353*

“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 a person who leads evidence to rebut the presumption...”

29. Any evidence to the contrary as to the effect and purport of these two documents is not admissible in law. To contend that the sale deed was in fact a mortgage deed is completely implausible especially when the document speaks for itself. The sale deed records categorically that it was drafted by Sh. Rohit Rajpal who admitted in court as being a documents draftsman. The stand of the Plaintiffs that it was in fact a mortgage deed is thus liable to be rejected. It has been repeatedly rejected on two occasions by the Trial Court and on two occasions by Ld. Single Judge as part of the execution proceedings. The same is binding on the Plaintiffs and is not liable to be re-agitated.”

(emphasis supplied)

41. In view of the aforesaid discussion, the impugned order is set aside. Consequently, the plaint of the respondent is rejected under Order VII Rule 11 of the CPC.

42. The present petition is allowed. Pending application also stands disposed of.

AMIT MAHAJAN, J

MAY 19, 2025