

Manjit Singh Kohli Vs. Munni Devi

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Court : Delhi

Decided On : Jul-01-1996

Reported in : 1996IIIAD(Delhi)938; 1996(38)DRJ616

Judge : K. Ramamoorthy, J.

Acts : Urban Land and Ceilings Act, 1976; [Delhi Rent Control Act, 1958](#) - Sections 14(1) and 15(1); [Evidence Act, 1872](#) - Sections 93; [Specific Relief Act, 1963](#) - Sections 20

Appeal No. : Suit No. 516 of 1984

Appellant : Manjit Singh Kohli

Respondent : Munni Devi

Advocate for Def. : Mr. N.K. Khetarpal

Advocate for Pet/Ap. : M.S. Vohra,; T.V.S.N. Chari and; K.B. Soni, Advs

Judgement :

K. Ramamoorthy, J.

(1) This is a suit for specific performance seeking the enforcement of the agreement dated 24th of March 1981.

(2) On the 24th of March 1981 the plaintiff, Sh. Moti Ram, husband of first defendant now, and father of defendants 2 to 6 entered into this agreement for the sale of the property for Rs.1,50,000.00 the 2.1/2 storeyed building constructed on a leasehold plot of land measuring 100 sq. yds. situated in Lajpat Nagar, New Delhi..According to the plaintiff, he contacted Sh. Moti Ram through M/s. Dhingra Estate Agency. Sh. Moti Ram represented to the plaintiff that he was the sole and absolute owner of the property and he had put up the construction on a leasehold plot. Sh. Moti Ram also assured that there were no encumbrances. On these representations, the plaintiff agreed to purchase the property for a consideration of Rs. 1,50,000.00 . On the 24th of March 1981 the agreement was executed and on 25th of March 1981 it was registered in the office of Sub Registrar, New Delhi. In part performance of the said agreement, the plaintiff paid Sh. Moti Ram a sum of Rs. 50,000.00 as advance. Rs. 25,000.00 was paid in cash and the other Rs. 25,000.00 was paid by Pay Order No. 951255 dated 24.3.1981 drawn on Punjab & Sind Bank, New Delhi. For receiving the payment of Rs. 25,000.00 in cash, Sh. Moti Ram issued a receipt and Sh. Moti Ram put the plaintiff in possession of the entire ground floor and also the first and second floors, which are being occupied by tenants. The fact of delivery of possession of the premises is also mentioned in the agreement. Sh. Moti Ram handed over his original title deeds to the plaintiff. The plaintiff in turn deposited the same with the Punjab & Sind Bank G Block, Connaught Place, New Delhi for securing the loan from the bank. Plaintiff is in employment of Punjab & Sind Bank. The bank sanctioned the loan. Sh. Moti Ram promised to obtain necessary permission from the office of the Competent Authority under the Urban Land & Ceilings Act, 1976 and also from the office of the L & D.O New Delhi at his own costs. Sh. Moti Ram had also to obtain the Income Tax Clearance Certificate for transferring the property in favor of the plaintiff or his nominee. In or about 5.5.1981 Sh. Moti Ram applied Deputy Land & Development Officer New Delhi seeking permission to sell the property along with the leasehold rights. The plaintiff also gave an affidavit stating that he was purchasing the property from Sh. Moti Ram. Sh. Moti Ram had not been acting in accordance with the terms of the agreement and, therefore, the plaintiff issued a telegraphic notice in November 1981. On 30.1.1984 the plaintiff issued legal notice to first defendant. This was after the death of Sh. Moti Ram. The first defendant

did not care to give any reply. The plaintiff learnt that defendants 1 to 6 are the legal heirs of Sh. Moti Ram and they have applied to the office of L & D.O. on or about 23.3.1983 for substituting their names in place of late Sh. Moti Ram. The matter is still pending in the office of the L & D.O. Under the terms of the agreement dated 24.3.1981 Sh. Moti Ram had undertaken to pay the liability to pay all taxes and charges pertaining to the property. After the death of Sh. Moti Ram, defendants 1 to 6 failed and neglected to pay the arrears of house tax and the Municipal Corporation of Delhi had required a sum of Rs. 15,000.00 towards the arrears of house tax from Mr. S.P. Sharma (the 7th defendant). According to the plaintiff, after obtaining possession from Sh. Moti Ram the plaintiff let out the ground floor to Mr. S.P. Sharma, the 7th defendant, on a rent of Rs. 1,000.00 w.e.f. December 1981. The 7th defendant committed the default in payment of rents and, therefore, the plaintiff had instituted proceedings for eviction under Section 14(l)(a) of the [Delhi Rent Control Act, 1958](#). In the Rent Control petition, the 7th defendant had stated that late Sh. Moti Ram had executed a Will dated 3.10.1982 bequeathing the suit property in his favour. The plaintiff denied the case of the 7th defendant in the Rent Control petition. The learned Additional Rent Controller by order dated 19.4.1986 deferred passing of order under Section 15(1) of Delhi Rent Control Act. The plaintiff preferred Rca No. 660/86 before the Rent Control Tribunal, Delhi. In the objection petition in Rca No. 660/86, the 7th defendant came forward with a case that he had filed a Probate case on the 20th of January 1987 in this Court. According to the plaintiff, defendants 1 to 6 are trying to wriggle out of the transaction. The plaintiff has always been ready and willing to perform his part of the contract. On these allegations, the plaintiff has claimed the following relief :-

'(A)by granting a decree for specific performance of the agreement to sell dated 24.3.1981 executed between the plaintiff and late Shri Moti Ram son of Shri Babu Ram in respect of the suit property bearing Mpl. No. C-I/105, situate in Lajpat Nagar, New Delhi comprising of two and half storeyed construction on the leasehold plot measuring 100 sq. yards Along with all the leasehold rights in respect of the said plot in favor of the plaintiff against the payment of the balance consideration of Rs, 85,000.00 (Rupees eighty five thousand) only or any other amount which this Hon'ble Court may adjudicate or order this plaintiff to pay and

direct the defendants to execute and get registered the said sale deed after obtaining the requisite permission from the office of the L & D.O., Income-tax Authorities and the Competent Authorities etc. and in the alternative a sale deed may please be ordered to be executed through the process of the Hon'ble Court.'

The defendants 1 to 6, legal heirs of Sh. Moti Ram, did not appear after filing the written statement.

(3) On 21.4.1988 the 7th defendant filed his written statement. It is stated in the written statement that the suit is barred by limitation. The 7th defendant had been impleaded as a party in 1987, after a period of about 6 years from the date of the execution of the agreement and, therefore, the suit is barred by time. There is no cause of action against the 7th defendant. The agreement is deemed to have been cancelled and withdrawn in view of the Will dated 3.10.1982 in favor of the 7th defendant. The Will is the subject matter of the Probate case No. 22/87. The 7th defendant denies the agreement. In paragraph 6 of the written statement, it is stated 'it is wrong to say that the said agreement was duly registered with the Sub Registrar at New Delhi on 25.3.1981 at page 1351 in Book No. I, Vol. No. 4446 at pages 78 to 80'. The 7th defendant has taken a very interesting plea, who is admittedly a stranger to the family claiming to be a legatee under the alleged Will dated 3.10.1982. The plea is as under :-

'In any case, the said agreement, if at all exists, it is a forged document and had never been signed by Shri Moti Ram. It appears that the plaintiff had obtained the signatures of the defendant by using coercion, putting pressures, exercising undue influence and there must have been a mistake of fact at the time of signing if there is any such signature on any such agreement. For the aforesaid reason, if any such agreement exists, the same is void and cannot be enforced.'

The 7th defendant denies even the rights of defendants 1 to 6 in the property. The 7th defendant accepts that a sum of Rs. 15,000.00 was recovered by the M.C.D. towards arrears as house tax. About the agreement between the 7th defendant and the plaintiff to lease out the ground floor to the 7th defendant, the 7th defendant would state 'The defendant No. 7 at that particular moment was not aware about the aforesaid facts and because of extreme pressure and force,

agreed to attorn to the plaintiff as the landlord. Under the circumstances the defendant No. 7 started paying rent to the plaintiff'. The other averments in the written statement need not be related here because they are only repetition of what has already been stated. On 21.5.1988 the plaintiff filed replication to the written statement of the 7th defendant. It is unnecessary to extract the averments because in general the case of the 7th defendant is denied and the case of the plaintiff is reiterated.

(4) On 22.10.1988 defendants 1, 4 and 5 filed their written statement. According to them, the suit is barred by time. Shri Moti Ram executed a Will on the 26th of September 1981 in favor of first defendant and Smt. Madhu Khandelwal and later on executed a Will dated 3.10.1982 superseding the earlier Will dated 26.9.1981 bequeathing the property in favor of Sh. S.P. Sharma, the 7th defendant. These defendants denied the agreement dated 24.3.1981 between the plaintiff and Shri Moti Ram. They denied also the payment of Rs. 50,000.00 to Shri Moti Ram. In paragraph 11 it is stated that Moti Ram never took any steps regarding obtaining permission for transfer of the property from the Competent Authorities. He did not make any application in this behalf to the knowledge of the answering defendants. These defendants also denied that Sh. Moti Ram made any application for permission to sell to L.& D.O. In paragraph 17 an interesting plea is taken. 'In reply to para 17 it is not denied that the defendants are the legal heirs of deceased Shri Moti Ram. However, it is submitted that in view of the registered will dated 3.10.1982 of late Shri Moti Ram, the property in suit has exclusively devolved on defendant No. 7. therefore, the other defendants have no right, title or interest in the said property'. In paragraph 19 these defendants would state 'the payment of Rs. 15,000.00 as house tax by respondent/defendant No. 7 is by virtue of his independent right which he is claiming on account of will dated 3.10.1982 in his favour'. It is the case of these defendants that to their knowledge the 7th defendant was never a tenant of the plaintiff. Again, in paragraph 22 these defendants state that 7th defendant is the owner of the property. They also denied that Moti Ram applied to L & D.O. on 8.5.1981 or on any other date for permission. They prayed for dismissal of the suit. On 1.12.1988 the plaintiff filed replication to the written statement filed by defendants 1, 4 and 5. The averments in the replication need not be recounted.

(5) Defendants 2 and 6 filed their written statement. The written statement was verified at Bombay on the 5th day of November 1988. There is no indication as to when it was filed in this Court. In the order dated 5.5.1989 the Joint Registrar had noted that the written statement of defendants 2 and 6 was also on record and that there was no seal of the Filing Counter on the written statement. The Joint Registrar noticed that the learned counsel appearing for defendants 2 and 6 gave the diary number as 13273 and according to the learned counsel for defendants 2 and 6 the written statement was filed on 18.11.1988. It is stated in the written statement that the suit is barred by time. The agreement is forged or obtained by fraud or inducement, influence and is executed on account of mistake of facts. The agreement is void, illegal and invalid. The agreement stands cancelled and withdrawn by virtue of a Will dated 26.9.1981 in favor of defendant No. 4 and later on executed a Will dated 3.10.1982 superseding the earlier Will dated 26.9.1981 bequeathing the property in favor of Sh. S.P. Sharma, defendant No. 7. The plaintiff being a stranger cannot challenge the validity of the Will. These defendants denied the agreement and other averments in the plaint. In paragraph 6 of the written statement, it is stated 'In fact, late Moti Ram made a Will dated 26.9.1981 in respect of the property in question in favor of defendant No. 4 Smt. Madhu Khandelwal. The said Will is a registered Will'. It is the case of these defendants that the registered Will was also superseded by the subsequent Will dated 3.10.1982 in favor of the 7th defendant Sh. S.P. Sharma. In paragraph 6 in the written statement on the merits, it is reiterated that if there is any such agreement the same must have been procured by misrepresentation, fraud, force or because of mistake of facts and the same is not binding on these defendants. In paragraph 19A these defendants also state that the 7th defendant became, owner by virtue of the Will dated 3.10.1982. On 4.8.1989 the plaintiff filed the replication to the written statement filed by defendants 2 and 6. The averments in the replication need not be repeated. On 29.2.1992 the plaint was amended because of the death of the third defendant Subhash Khandelwal.

(6) On 3.4.1992 the following issues were framed for trial :-

'ISSUES1. Whether the suit is barred by time? 2. Whether the suit for specific performance is maintainable? 3. Whether the suit is properly valued for purposes

of Court Fee and Jurisdiction? 4. Whether the suit is bad on account of misguide of parties? 5. Whether there exists a valid agreement to sell dated 24.3.1981 between the parties for sale of property No. C- 1/105, Lajpat Nagar, New Delhi? If so, what are the terms of the agreement? 6. Whether the plaintiff was ready and willing to perform his part of the agreement? 7. Whether the plaintiff is entitled to reimbursement of Rs. 15,000.00 , as stated in para No. 19 of the plaint? 8. To what relief, if any, the plaintiff is entitled to and on what terms?'

(7) The plaintiff filed Ex. P.1 the telegram dated 17.11..1981, Ex. P.2 is the agreement dated 24.3.1981 which was registered, Ex. P.3 is the receipt dated 24.3.1981 for Rs. 25,000.00 issued by Sh. Moti Ram. Ex. P.4 is the copy of the sale deed dated 21.11.1966 in favor of 4th defendant Ms Madhu Khandelwal, Ex. P.5 is copy of the legal notice dated 30.1.1984, Ex. P.6 A.D. Card. Ex. P.7 is the typed copy of the telegram, Ex. P.8 is the letter dated 10.6.1981. The Court has again marked Ex. P.8 the compromise dated 25.10.1981 between the plaintiff and Mr. Vijay Suri wherein 7th defendant signed as witness. Ex. P.9 is also second lime numbered. One Ex. P.9 is the copy of the written statement of the 7th defendant dated 17.10,1985 in eviction petition E-173/85 in the court of the Additional Rent Controller, Delhi and the other Ex. P.9 is the postal receipt No. 5989.

(8) The 7th defendant marked Ex.DW2/I the Will dated 26.9.1981 executed by Sh. Moti Ram bequeathing property in favor of 4th defendant Ms. Madhu Khandelwal.

(9) Before I purvey the oral evidence, it is better to notice the documents exhibited in the case so that we can appreciate the oral evidence in its proper perspective.

(10) EX. P.2 is the agreement dated 24.3.1981 between the plaintiff and late Sh. Moti Ram. It was registered on 25.3.1981. Sh. Moti Ram had put his signatures in this document as Moti Ram Khandelwal. The description of the property is given. The consideration mentioned is Rs. 1,50,000.00 . Sh. Moti ram had acknowledged the receipt of Rs. 50,000.00 towards advance. The balance payable was Rs. 1 lakh. It is recorded that vacant possession of the entire ground floor and physical possession of the rented first and second floor had been given to the plaintiff on the date of the agreement. Sh. Moti Ram had agreed to take permission from the

concerned authorities and he should intimate to the plaintiff about the same by registered post and on the receipt of the intimation the sale deed shall be executed within 15 days in the name of the plaintiff or in the name of his nominee (ir nominees. It is also stated in the agreement that the transaction was finalised through Dhingra Estate Agency. On the same date, Sh. Moti Ram issues a receipt for the sum of Rs. 25,000.00 , received in cash, which is marked as E. P.3. In or about May 1981 Sh. Moti Ram had applied to the Land & Development Office for permission to sell the property. The plaintiff had given the affidavit to he filed by Sh. Moti Ram before the Land & Development Office and that affidavit filed by the plaintiff, which was verified at Delhi on 30.4.1991, is on record and the affidavit reads as follows :-

'A.I, Manjeet Singh Kohli son of Shri Avtar Singh Kohli, Resident of 5/33, East Punjabi Bagh, New Delhi, intending purchaser of properly No. c-I/105, Lajpatnagar, New Delhi, belonging to Shri Moti Ram Khandelwal, being required to give an affidavit to the President of India, through the Land and Development Officer, solemnly affirm/make oath and declare that I do not own any residential plot/house in Delhi/New Delhi/cantonment either in my own name or in the name of any other person. b. I, further declare that neither my wile nor any of my dependent children, nor any of my other dependents own any residential plot/house in Delhi/New Delhi/Cantt: either in his/her own name or in the name (s) of any other person. c. I, further declare that neither I in my own name or in the name of any other person nor my wife, dependent children or any other dependent either in his/her own name or in the name of any other person have/has entered into any agreement with any intended Lessee/lessees of the President of India with respect to any such residential plot/house in Delhi/New Delhi/cant with the object of ultimately acquiring the same either subject to no condition or subject to occurrence of any particular event or subject to any act or default of such intended Lessee/Lessees. d. That I further declare that Iam a person who has attained the age of majority according to the law to which I am subject. e. That I do not intend to acquire the premises on behalf of any one else that is to say that it is not intended to be a benami transaction and that such contention will never be made. f. That the contents of the above affidavit are true and that no portion is false and that the said affidavit conceals nothing relevant to the above matter. dated... sd/-

Deponent I, Manjeet Singh Kohli, the above named deponent do hereby verify that the contents of para A to E of the above affidavit are true to my personal knowledge and that the contents of para F of the same affidavit are believed by me to be true. Signed dated and verified at Delhi on this..... sd/- Deponent'

On 10.6.1981 the plaintiff wrote to Sh. Moti Ram in the following terms :-

'MANJITSINCIHKOHLI 10th June, 1981. Dear Moti Ramji, We had, on the 24th March, 1981, entered into an Agreement for sale by you of your 2.1/2 storeyed building No. C-I/105, Lajpat Nagar, New Delhi, to me. I have been informed by the Property Agent - Dhingra Estate Agency, M-51, (greater Kailash 1 market, New Delhi that you have not yet been able to secure the necessary permission from the L&DO; and that you are making all efforts to obtain the same as early as possible. 2. I request that the intimation of your getting clearance from the Income- Tax Department and permission to sell from the L&DO;, referred to on page 3 of the Agreement, should be sent to me at D-11/265, Vinay Marg, Chanakyapuri, New Delhi-110021 instead of 5/33 East Punjabi Bagh, New Delhi. Since I am presently stationed at Jamshedpur, I have made arrangements for immediately being' informed of your communication on its receipt. I also request that the Property Agent - Dhingra Estate Agency - may also be simultaneously informed as soon as the Income-Tax clearance and the permission from L&DO; are received. 3. Kindly acknowledge receipt of this letter.'

It appears that there were some disputes between the plaintiff and one Vijay Suri and there was a complaint to the police and there was a compromise between the plaintiff and Vijay Suri. That copy of the compromise is on record marked as Ex. P.8 second time. The compromise dated 25.10.1981 reads as follows :-

'In the complaint against me in illegal occupation of House No. C- 105 Lajpat Nagar with Police Station Lajpat Nagar by Sh, Manjit Singh Kohli, I hand over the physical possession of entire ground floor to Sh, Manjit Singh Kohli in the presence of Police Officer Investigating the case. I have come to know that Sh. Moti Ram has also cheated me by giving me wrong information and concealing the fact that he had agreed to sell the property to Sh. Manjit Singh Kohli vide agreement dt. 24th March 1981. I have thus restored the physical vacant

possession of the entire ground floor of the said property to the rightful owner. Sh. Manjit Singh Kohli has agreed to rent out the same premises to me at a monthly rent of Rs. 1000.00 p.m. immediately after the registered deed is executed between Sh. Motiram and Sh. Manjit Singh. The other terms and conditions for renting out will be decided keeping in view the market then. If I am able to pursue Sh. Moti Ram to repay Rs. 20,000.00 which I have given to him as a pledge and if he agrees to adjust this out of the balance payment due to him from Sh. Manjit Singh Kohli, Sh. Manjit Singh Kohli will help me in this recovery. In case Sh. Moti Ram refuses to this above adjustment, Sh. Manjit Singh Kohli will help me for legal proceedings which I may proceed against Sh. Moti Ram. I hereby agree to withdraw my Civil Suit in the Court of Senior Sub judge Delhi Filed on 24.10.81 against Sh. Moti Ram defendant No. 1 and others. Witness sd/- (VIJAY SURI) sd/- 11/1/6, Lajpat Nagar 1.(S.P. SHARMA) New Delhi-110014. D-79, Amar Colony Lajpat Nagar 2. sd/- (Manjit Singh) Director-Min. of Finance (Def) R/o D.11/265, Vinay Marg, New Delhi-21.'

In this the 7th defendant has signed as witness. This compromise shows that there was an agreement between the plaintiff and Sh. Moti Ram; that the plaintiff had agreed to rent the ground floor to Vijay Suri at Rs. 1,000.00 per month. That physical possession of the ground floor was given to the plaintiff. This shows that the 7th defendant is fully aware what happened on 25.10.1981. On 17.11.81 under Ex. P.1 the plaintiff had issued a telegram to Sh. Moti Ram in the following terms :- 'Refer our agreement 24th March 1981 Registered with Sub Registrar, Delhi on the 25th of March 1981 for sale to me of your two and half storey house C-1/J05 Lajpatnagar, New Delhi for one lakh fifty thousand rupees. Land rates since revised. Also necessary Affidavit signed by me already with you. Request get sale permission from L&DO; without delay and furnish same along with Income Tax Clearance to me at address D- 11/265, Vinay Marg, Chanakyapuri, New Delhi-110021. Confirm action within 7 days for expediting sale deed. There is also another telegram which is not dated, which is marked as Ex. P.7. The telegram reads as follows :-

'Refer our Agreement 24th March 1981 registered with Sub Registrar Delhi 25th March 1981 for sale to me of your two and half storey house C- 1/105, Lajpat

Nagar, New Delhi for one lakh fifty thousand rupees. Already reminded you telegraphically twice. No response from you. Confirm action at once. Failing which I will have to resort to legal action.'

(11) There appears to have been some arrangement between the plaintiff and the 7th defendant in and by which the 7th defendant became a tenant which is not disputed by the 7th defendant now. On 26.10.1982 Sh. Moti Ram died. It is the case of the plaintiff that he contacted the widow and the children of the late Shri Moti Ram and they did not respond. On 30.1.1984 the plaintiff issued notice through his counsel to Mrs. Moti Ram calling upon her to intimate to him the legal heirs of late Sh. Moti Ram and also execute a sale deed in favor of the plaintiff. Later on, the plaint was presented on the 21st of March .1984.

(12) It appears that disputes arose between the plaintiff and the 7th defendant. The plaintiff filed eviction petition E-173/85 on the file of the Additional Rent Controller, Delhi. On 7th day of October 1985 the 7th defendant filed his written statement in that eviction petition. In paragraph 2 of the written statement, he had stated 'that the owner of the premises was one Moti Ram and the petitioner in the year 1981 entered into a sale agreement with the above said Moti Ram'. In paragraph 3 he would state 'that Sh. Moti Ram returned the entire amount which was taken by him as the earnest money. The respondent was not aware of the fact that Sh. Moti Ram has already returned the entire money to the petitioner. He stated about how he came to have the Will in the following terms in paragraph 5 :-

'That the respondent was not aware of the fact that the above said Shri Moti Ram has left a Will in his favor and this he only came to know in the 1st week of July 1984 when the respondent visited the premises of the daughter of late Shri Moti Ram. The above said Will was handed over to the respondent by the daughter of the deceased Shri Moti Ram.'

In paragraph 18A, the 7th defendant slated 'The respondent of course, was a tenant of the petitioner but was serving the deceased like his affectionate and sincere son. During the last days of the deceased this was the respondent who was serving him but he never knew that the deceased will be pleased by him and will leave the present premises in his name, and this fact was only made known to

the respondent in 1st week of July 1985 when he visited the house of the above said lady, the legal heir of the deceased Shri Moti Ram. The respondent has unnecessarily paid rent from 3rd October 1982 to June 1984 to the petitioner while the respondent was himself the owner of the property as according to the Will dated 3rd October 1982 he had been made the owner of the premises while Shri Moti Ram expired on the 26th of October 1982.

(13) The 7th defendant has filed the Will dated 26.9.1981 marked as Ex.DW2/I. This Will is registered. This has now been given a go bye. It may be noticed that the Will is not signed by the testator. Interestingly, what is written is that the testator had put his right thumb impression. Defendants 1,2,4 to 6 had filed copies of affidavits of the first defendant and other defendants and also the copy of the Will dated 3.10.1982 on record but they are not marked. In the Will, alleged to have been executed by Sh.Moti Ram on 3.10.1982, I find the signatures and also the thumb impression but nothing is noted in the thumb impression whether it is R.T.I, or L.T.I. I am aware that I am not dealing with the validity or otherwise of the Will dated 3.10.1982. Because the 7th defendant is trying to defeat the rights of the plaintiff and a copy of the Will is placed on record. For a prima facie view I looked into the Will. Clause 3 of the Will reads as follows :-

'That this Will shall be irrevocable and I hereby declare not to make any other Will in respect of the aforesaid property in favor of any other person.'

Prima facie, this alone will suffice to say that it is not a Will at all and it cannot be looked into for any purpose

(14) P.W.I is Mr. M.S. Syal, Senior Superintendent, Central Telegraph Office. He has been examined to show that Ex. P.I is a copy of the telegram issued by the plaintiff. The evidence is very short and, therefore, it is extracted below :-

'The record of the telegrams is not preserved after three months, so the summoned record is not available. I identify the stamp of the telegraph office on Ex. P. 1. (Objected to regarding mode of proof). This was issued by our office. Again stated, that this stamp is not of our office but is of Post Office. Cross-examination by Mr. N.K. Khetarpal, counsel for defendant. As the stamp on this

Ex, P.1 is not of our office, so I cannot even identify the same.'

From this it is evident that Ex. P. I telegram was issued by the plaintiff. His statement that the stamp on the document is not that of his office is not relevant but he has admitted that it is the seal of the Post Office.

(15) P.W.2 Sh. Manmohan Singh is an Officer of the Punjab & Sind Bank. The plaintiff has examined him to prove the sanctioning of loan by the bank to the plaintiff for the purchase of the property. The fact that a cheque was issued by the plaintiff in favor of Sh. Mod Ram for Rs. 25,000.00 and the same was encased is not disputed. thereforee, the fact that the plaintiff was sanctioned a loan cannot be a matter of any dispute at the instance of the 7th defendant.

(16) Defendants 1 to 6 did not cross examine this witness.

(17) The learned counsel for the 7th defendant cross-examined Public Witness 2 and the attempt by the 7th defendant was that there could have been no creation of mortgage of the property of Sh. Moti Ram in favor of the bank. That is beside the point now. In the absence of Sh. Moti Ram and in the absence of defendants 1 to 6, the 7th defendant has absolutely no right to cross examine this witness.

(18) P.W.3 Mr. S.K. Sharma, a U.D.C. from S.ub Registrar Office, Asaf Ali Road, New Delhi was examined to prove Ex. P.2 to show that Ex. P.2 was registered. The witness had identified the endorsement of the Sub Registrar on the document. thereforee, the fact that Ex. P.2 was registered in the office of the Sub Registrar stands proved.

(19) P.W.4 Mr. Yograj, an Assistant from the Office of L.&D.O. was examined by the plaintiff to show that Sh, Moti Ram applied to the L.& D.O. for permission to sell the property. In the chief examination the witness state 'On 8th May 1981, Moti Ram had given one application seeking sale permission in favor of Manjit Singh, intending purchaser'. He would also state that the legal heirs of Sh. Moti Ram applied for being substituted in place of Sh. Moti Ram on 7.9.1983. They had filed their affidavits also. According to him, the mutation did not take place because Ms. Madhu Khandelwal had set up the case that she had a Will of Sh. Moti Ram in her

favour. The 7th defendant applied for being substituted as legatee on the basis of Will of Sh. Moti Ram and mutation had taken place in favor of the 7th defendant. In the cross-examination by the 7th defendant, the witness would state on the basis of the copy of the Will of Sh. Moti Ram property was mutated in favor of the 7th defendant. The witness stated in the cross-examination 'It is incorrect that Sh. Moti Ram had not applied for getting the sale permission in favor of Manjit Singh.

(20) P.W.5 is the plaintiff. He would state in his evidence about Ex. P.2 the agreement, Ex. P.3 receipt and also the affidavit given by him to Sh. Moti Ram which had been produced by Public Witnessed 4 Mr. Yog Raj, the Assistant from the office of L & D.O. The learned Judge who recorded the evidence has noted during the cross of the examination-in-chief of Public Witness 5 on the filing of the copy of the affidavit, the same shall be exhibited as Ex. P.4. The witness would speak about Ex. P.5, P.6, P.7, P.8 and P.9 about which I have already alluded to. About possession the plaintiff would state 'On the basis of the Agreement to Sell, I was given physical actual possession of the ground floor of the property and was given legal possession of the first floor and second floor of the property in question. I rented out a portion of the ground floor to Sh.S.P.Sharma at the rent of Rs.1,000.00 per mensem initially which was increased to Rs.1,500.00 per mensem. That tenant, S.P.Sharma was living in House No.D-79, Amar Colony, New Delhi when he took the portion of the ground floor on rent from me for the purpose of his residence. I was posted in Jamshedpur at that time. S.P.Sharma managed to get the first & second floor vacated without my knowledge and also sublet frequently the ground floor to different tenants after taking huge premium from them. S.P.Sharma is now defendant No.7 in this case.' He has stated that he has always been ready and willing to perform his part of the contract and he is ready and willing to perform his part of the contract.

(21) Defendants 1 to 6 did not cross examine and did not appear at all in the matter. The learned counsel for the 7th defendant cross examined the plaintiff. It was suggested to the witness that the telegram and the notices were not sent to all the legal heirs of the deceased Moti Ram. It is suggested to the witness that the 7th defendant had taken possession of the property in question from Sh. Moti Ram in January 1981. At this juncture, I would like to recall Ex. P.8 the compromise

between the plaintiff and Sh. Vijay Suri dated 25.10/1981 in which the 7th defendant had signed as witness. thereforee, the suggestion to the witness that the 7th defendant had taken possession from Sh. Moti Ram in January 1981 is absolutely unacceptable. It was suggested to this witness that Sh. Moti Ram never entered into agreement with the plaintiff for the sale of the property. An attempt was made by the learned counsel for the 7th defendant in the cross examination that the creation to mortgage in favor of Punjab & Sind Bank cannot be true but as I had noticed above,that was the matter purely between the plaintiffs employer bank and the plaintiff and Sh. Moti Ram. When Sh. Moti Ram had not objected to the course adopted, it is not for the 7th defendant now to take exception to the mode and then say the agreement now relied on by the plaintiff is not true. The fact that money was lent to the plaintiff by the bank is proved.

(22) While Public Witness 5 was being cross examined the 7th defendant sought recalling of P.W.4 for further cross examination. On 1..9.1994 Public Witness 4 was further examined. In the cross examination he would stale 'S.P. Sharma had paid to the office of L & D.O. a sum of Rs. 45,508.00 for getting the property mutated in his favour'. Learned counsel for the plaintiff put a question in re-examination, the answer is 'Mr. S.P. Sharma did not inform our office that any dispute was pending with regard to this property in this Court'.

(23) P.W.5 was further cross examined and it was sought to be elicited from this witness Public Witness 5 that the 7th defendant had come into the premises earlier to the agreement. for sale and was carrying on business under the name and style of S.P. Sharma & Associates. It may he noticed that this is not the plea in the written statement by the 7th defendant. While the affidavit of the plaintiff given to Sh. Moti Ram which had been filed by Sh. Moti in L & D.(.) office is on record, produced by Public Witness 4, it is suggested to him that plaintiff did not give any affidavit to Sh. Moti Ram for applying for sale permission from L & D.(.). It is also put to him whether the plaintiff was aware of the payment of Rs. 45,000.00 by the 7th defendant in getting the property mutated in his favour.

(24) P.W.6 is Mr. Virender Dhingru, who is the broker and who approached for the transaction between the plaintiff and Sh. MotiRam, which is mentioned in the

registered agreement Ex. P.2 itself. He had spoken about Ex. P.2 and that he had witnessed the same and the document was got registered. He would state that the executants signed the documents in his presence. In the cross-examination, on behalf of the 7th defendant it was sought to be established that Public Witness 6 would not have been present at the time of the execution of Ex. P.2. That was only a vain attempt.

(25) The 7th defendant examined D.W.L Record Keeper, House Tax Department, New Delhi Zone, MCD. In the chief examination he stated that he had brought the record and the property stands in the name of Mr. S.P. Sharma. He admitted in the cross examination that 'I do not know whether Mr. S.P. Sharma ever intimated that any dispute regarding title of the property is pending in this Court.'

(26) The 7th defendant after the examination of Public Witness 1 to Public Witness 6 and D.W.1, sought to file an amended written statement taking the plea that the agreement dated 24.3.1981 is a forged document. In any case, if there is any such agreement, the same is void, obtained by force, fraud or undue influence and in any case the same was cancelled and was never acted upon or intended to be acted upon and sought to introduce a new case. He filed IA.10006/94 seeking leave to file the amended written statement. That application was rejected by this Court by order dated 20.7.1995.

(27) On 23.2.1996 the 7th defendant was examined as D.W.2. A close reading of the evidence would show that he is uttering falsehood and he has no hesitation to speak to facts which never existed for the purpose of his case. On question No. 3 he says that Moti Ram was a retired person whereas Moti Ram was only selling pan and other sundry articles. He became tenant in February 1981 in respect of the premises. If this is right he would not give any Explanationn his being witness to Ex. P.8 dated 25.10.1981. Even in the chief examination he speaks about the plaintiff in the following terms :-

'0.7. When you were a tenant did you ever see the plaintiff coming to see Moti Ram? Ans. He was very well known to Moti Ram and once I saw him at my office. He had come to meet Moti Ram. 0.8. As to in what connection he came? Ans. Moti Ram told me that plaintiff was negotiating to purchase the property and the plaintiff

was requiring a loan from the bank because he did not have any money to purchase the property, 0.9. Did Moti Ram tell you which property the plaintiff was negotiating to purchase? Ans. C-1/105 Lajpat Nagar, New Delhi. Again said, I am not sure. 0.10. Then what happened? Ans. Moti Ram told me that the plaintiff wanted the documents of title of his property in order to get loan from Punjab & Sind Bank. Q.11. Do you know where the plaintiff was working at that time? Ans. The plaintiff was working in Punjab & Sind Bank. Q.12. Do you know that Moti Ram gave his document of title to the plaintiff or he gave any documents to you? Ans. In my presence Moti Ram gave to the plaintiff the sale deed of the previous owner in respect of property C-1/105, Lajpat Nagar, New Delhi.'

(28) It is really a matter of great interest that the 7th defendant should be able to identify the signatures of Sh. Moti Ram. We have to see the question No. 13, which reads as follows :-

'Q.13. In the course of your contacts with Moti Ram you at any time had occasion to see his signatures, will you be able to identify his signatures? Ans. The signatures appearing on Ex. P.2 written either as Moti Ram or Moti Ram Khandelwal are not his signatures, according to me.'

(29) A person who is stranger to Sh. Moti Ram claims that he is aware of his signatures and he could identify his signatures and in Ex. P.2 Moti Ram had not even signed,

(30) He would state that he was pressurised to become a tenant of the plaintiff. This fact cannot be true because the 7th defendant never questioned Ex. P.8 and never put any question to Public Witness 5, the plaintiff. According to the 7th defendant, plaintiff himself gave a copy of the agreement. therefore, the fact that he was aware of the agreement cannot at all be gainsaid. According to him, he entered into an agreement with the plaintiff out of pressure but this is quite contrary to paragraph 2 of the written statement in the eviction petition which I have already extracted. therefore, it is clear that the 7th defendant is not telling the truth. According to the 7th defendant that after he was pressurised in entering into agreement Sh. Moti Ram, who was in Bombay, came back in the month of February 1982 and when he was asked whether he apprised about all the incidents

he replied that he had informed Sh. Moti Ram. This must be false because there is nothing on record and the 7th defendant had not chosen to take any action against the plaintiff complaining about the pressure having been exercised on him by the plaintiff. He wants us to believe that he has become the owner by virtue of the Will. He candidly admits that he got the property transferred on the basis of the Will during the pendency of the suit. He did not even inform the authorities that there is dispute relating to the ownership. This shows the conduct of the 7th defendant. He is prepared to do anything for the purpose of achieving his object and he is ready to adopt any means. In the cross examination, he admits that he had paid an advance of Rs. 10,000.00 to the plaintiff and he also admits that under orders of the Court he is paying rent to the plaintiff. He also would state that he got the first and the second floor vacated in 1986. When asked whether he informed the plaintiff about the same, he admitted that he did not inform the plaintiff. He was asked whether he had any writing of Sh. Moti Ram, he would reply by stating that he has got so many documents written and signed by Sh. Moti Ram. In the chief examination itself, the 7th defendant would state 'Q. On comparison of the signatures of Moti Ram on Ex. P.2 and on DW2/1 can you say they are the signatures of the same person i.e. Moti Ram? Ans. No. They are not of the same person.' In Ex. P.2 Sh. Moti Ram has signed as Moti Ram Khandelwal. It is a registered document. As I had noticed earlier, Will Ex.DW2/1 dated 26.9.1981 is not signed by Sh. Moti Ram. therefore, the witness is trying to be very clever and has chosen to say that the signatures in Ex. P.2 and signatures of Sh. Moti Ram in Ex.DW2/1 are not of the same person. The inference is irresistible that the 7th defendant is not speaking the truth and he is trying to project which cannot at all be believed. He is guilty of even fraud. In the cross examination, he would deny his signatures in Ex. P.8, the compromise dated 25.10.1981. But as I had pointed out earlier no question is put to Public Witness 5, the plaintiff. This also shows that the 7th defendant is a man without any character. He would state that when he was forcibly evicted from the portion, whether he reported the matter to the police, the answer is that he reported the matter to the police but it was not recorded by the police because of the influence of the plaintiff. When he was asked whether he had a copy of the complaint, he said, no. therefore, he is trying to give false information to the Court and he is guilty of suggestio falsi. When asked whether

this time also he reported the matter to Sh. Moti Ram, the answer is that he told Sh. Moti Ram about the incident and he would add that Sh. Moti Ram denied any agreement with the plaintiff. The 7th defendant tries to be ingenious.

(31) He admitted in the cross examination that when he filed the affidavit on 8.2.1989 to the L & D.O. for mutation, when the probate case is pending in this court. He admitted he did not disclose this fact. On this ground alone, the 7th defendant cannot at all be trusted with reference to any facts spoken to by him. When he was asked whether he had stated in his written statement in the eviction petition that he had admitted entering into an agreement with the plaintiff, the answer is, no. It is relevant to extract question No. 70 below :-

'Q.70. Please see the written statement dated 7.10.85 in the suit No. E173/85 in the Court of Sh. D.K. Saini, Addl. Rent Controller. Is it the same? Ans. I do not remember. It is exhibited as P.9.'

He admits in the cross examination that Sh. Moti Ram was having a paan shop. therefore, the case of the 7th defendant that Sh. Moti Ram was a retired person can not at all be true. When a question was put to him, whether he wrote to the plaintiff that he had become owner of the property by virtue of the Will dated 3.10.1982. Without any hesitation, and without any qualms of conscience he would answer 'I wrote a letter. I do have a receipt of LJPC'. That is not his case in the written statement. That was not a suggestion to Public Witness 5 and no material has been produced by the 7th defendant. therefore, on a reading of the evidence of the 7th defendant and from his conduct, I have no hesitation in coming to the conclusion that his version cannot at all be believed and his evidence has to be wholly rejected.

(32) Mr. S.N. Kumar, learned senior counsel for the 7th defendant submitted that Ex. P.2 agreement contains only preamble clause and, therefore, it is not natural and, therefore, the plaintiff has not proved any agreement. I am afraid, such a contention cannot at all be accepted because Ex. P.2 is registered. What is to be seen is whether the terms of the bargain between the parties are there in the document or not. The form in which it is mentioned is of little moment and that cannot vitiate the agreement. The learned senior counsel also submitted that there

are discrepancies in Ex.P.2 and the identifying witness before the Sub Registrar has not been produced and the learned senior counsel submitted that on the whole the plaintiff has failed to establish the agreement and, therefore, the plaintiff is invoking the equitable jurisdiction and that he is not entitled to the relief of specific performance. The learned senior counsel also submitted that on a reading of the plaint, it would be seen that the plaintiff has not given correct facts. I don't see any substance in this argument.

(33) The fact that plaintiff had paid Rs. 50,000.00 as advance to Sh. Moti Ram cannot be disputed and defendants 1 to 6 had not chosen to contest the claim of the plaintiff. The learned senior counsel also submitted that the plaintiff has not proved the telegram and there are serious discrepancies in his case relating to the place from which the plaintiff issued the telegram. I am not able to see any substance in the argument of the learned senior counsel. The question is whether there was an agreement between the plaintiff and Sh. Moti Ram. The only persons who could contest the claim of the plaintiff are defendants 1 to 6. Defendants 1 to 6 while supporting the 7th defendant had not chosen to come into the witness box to face the cross examination. It is not known under what circumstances defendants 1 to 6 had given up the claim of the 4th defendant under the registered Will dated 26.9.1981 which itself does not appear to me to be a document executed by Sh. Moti Ram and that has not been proved at all. therefore, on the strength of Ex.DW2/1 the Will dated 26.9.1991 the defendants 1 to 6 had not staked their claim. They had accepted that there was a Will by Sh. Moti Ram on 3.10.1982 in favor of the 7th defendant. The 7th defendant had propounded the Will and probate case is pending in this Court. therefore, without proving that Will, the 7th defendant cannot be heard to contend that he has become the owner of the property and, therefore, he can't come forward with a case placing himself in the position of Sh. Moti Ram and say that the plaintiff did not enter into any agreement with Sh. Moti Ram. The 7th defendant is clearly an interloper. He has tried to take advantage of the gullibility of the widow and the daughters of Moti Ram. Their vulnerable position has been taken full advantage of by the 7th defendant who has come forward with a false case in all material particulars. As I had noticed earlier, he would even go to the extent of saying that Sh. Moti Ram had signed in Ex. DW2/1, the Will dated 26.9.1981.

(34) The argument by Mr. S.N. Kumar, learned senior counsel for the 7th defendant that the suit is on a document allegedly executed by a dead person and had he be alive he could have challenged the false suit of the plaintiff. I am not able to appreciate this argument. Sh. Moti Ram was alive till 26.10.1982 and he had applied to the L & D.O. for permission in May 1981 itself. Sh. Moti Ram did not challenge the claim of the plaintiff at any time. thereforee, the 7th defendant cannot take advantage of the death of Sh. Moti Ram. In the written submissions it is mentioned that agreement dated 24.3.1981 is forged. I am not surprised at the argument on behalf of the 7th defendant, and that cannot be entertained at all. It is mentioned in the written submissions that the plaintiff had created a document including the letters written to the L & D.O. It i.s slated in the written submissions on behalf of 7th defendant that the plaintiff to protect himself from any action by the bank against himself he had come forward with the story that on 24.3.1981 Sh. Moti Ram accompanied him to the bank, deposited the documents, which in fact, is no document of title at all. As I had pointed earlier, whether mortgage was created by Sh. Moti Ram in favor of the bank, whether it was proper for the bank to accept security from Sh. Moti Ram on behalf of the plaintiff are all matters which cannot at all be questioned by the 7th defendant. Sh. Moti Ram was a consenting party and ultimately the plaintiff was to purchase the property by virtue of a registered agreement for sale. thereforee, what happened on 24.3.1981 the 7th defendant cannot weave out a theory in his attempt to non suit the plaintiff when his entire case is founded on falsehood. thereforee, considering the entire matter, I have no hesitation in coming to the conclusion that the plaintiff is entitled to the relief of specific performance.

(35) The learned senior counsel for the 7th defendant Mr. S.N. Kumar relied upon the judgment of the Supreme Court Keshavlal Lullubhai Patel and others vs Lalbhai Trikumlal Mills Ltd., : [1959]1SCR213 and also the judgment of the Calcutta High Court reported in M/s. Teamco Private Ltd. vs T.M.S. Mani, : AIR1967 Cal168 . I don't find anything useful in those eases which would support the case of the 7th defendant. The learned senior counsel also contended that the agreement is vague and relied upon Section 93 of the [Evidence Act, 1872](#). I find little substance in this argument.

(36) The learned counsel for the plaintiff Mr. M.S. Vohra relied upon the following cases for the purpose of showing that the plaintiff is entitled to the specific performance :-

1. Prakash Chandra vs Angad Lal and others, : AIR 1979 SC1241 . Ramesh Chandra Chandhiok and another vs Chuni Lal Sabharwal (dead) by his Legal Representatives and others, : [1971]2SCR573 . Ram Buran Prasad vs Ram Mohit Hazra and others, : [1967]1SCR293 . Gobind Ram vs Gian Chand, : 47(1992)DLT88 . Atma Devi vs Harbhajan Singh. : 48(1992)DLT603 . S.V. Sankaralinga Nadar vs P.T.S. Ratnaswami Nadar and others., : AIR1952 Mad389 . Hamsammal vs P. V. Thakar, : AIR1982 Mad108 . Nanak Builders vs Vinod Kumar, 1991 R.L.R. 87.

The principles are well settled and I do not want to deal with the cases individually.

(37) As laid down by the Supreme Court, once the plaintiff has proved the agreement the specific relief cannot be denied and the Court has to exercise judicial discretion in considering the question of the grant of specific performance. Section 20 of the [Specific Relief Act, 1963](#), which reads as under :-

'S-20. Discretion as to decreeing specific performance.-

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance- (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; (c) where the defendant entered into the contract under

circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance. Explanationn 1.- Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). Explanationn 2.- The question whether the performance of a contract would involve hardship on the. defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff, subsequent to the contract, be determined with reference to the. circumstances existing at the time of the contract.

(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial act or suffered losses in consequence of a contract capable of specific performance.

(4) The Court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.'

In the light of the settled principles the plaintiff cannot be denied the relief of specific performance. Defendants 1 to 6, though had not appeared, I have a lurking feeling that they have been overreached and won over by the 7th defendant because that is a matter of easy inference from the evidence of the 7th defendant. Defendants 1 to 6 had fallen a prey to the machinations of the 7th defendant and they have been deprived of their legitimate right to contest the action and get their money from the plaintiff. The money payable by the plaintiff is Rs.1,00,000.00 . In the light of my finding on the conduct of the 7th defendant, I feel that defendants 1 to 6 should not be deprived of their money payable by the plaintiff. The balance payable by the plaintiff is Rs. 1,00,000.00 . I pondered over the matter whether defendants 1 to 6 should be tied down only to Rs.1,00,000.00 and should be satisfied with the same when the value of the property had increased. I felt that the plaintiff now taking the property should pay more than what is payable by him in the agreement in the interests of justice. Innocent defendants 1 to 6 who thought that the 7th defendant was acting for their benefit.

De- fendants 1 to 6 have to execute the sale deed in favor of the plaintiff. If defendants 1 to 6 had been properly advised they would not have succumbed to the machiavellian scheme of the 7th defendant.

(38) There is no machinery provided in the [Specific Relief Act, 1963](#) to meet the situation that has arisen in this case. The Court under the circumstances can act equitably to do justice between the parties. I don't think any judicial valour is needed to do justice between the parties on the facts and circumstances of this case. The main consideration that weighed with me is that possession has been given on the date of the agreement itself and the plaintiff had paid only Rs.50,000.00 . There is one interesting case decided by the House of Lords in Sudbrook Trading Estate LTD. Vs Eggleton and Others 1983 (1) A.C. 445 where the House of Lord devised a tertium quid and fixed value of the property when there was no machinery under the agreement to fix the valuation. The House of Lords had taken into account the social change in society.

(39) This Court was, in Gobind Ram vs Gian Chand, : 47(1992)DLT88 , invited to give a decision in a similar situation and had to increase-t-he sale consideration on account of escalation of prices. The Division Bench had noted that the plaintiff himself offered to pay Rs. 1,00,000.00 while the consideration was Rs. 16,000.00 in the agreement. Here, the plaintiff did not come forward with any offer but having regard to the increase in the market rates in the property and in the interests of justice, I feel that the plaintiff should be directed to deposit a sum of Rs. 4,50,000.00 including Rs.1,00,000.00 , payable by him under the agreement so that each of the legal heirs of Moti Ram may get Rs. 75,000.00 . I fix the total consideration at Rs. 5,00,000.00 (Rupees five lakhs).

(40) Now I proceed to answer the issues in view of the findings rendered by me. I shall also consider the reimbursement claimed by the plaintiff.

(41) On issue No. 1 on the question of limitation, I fail to see how it could be said that the suit is barred by time. The agreement Ex. P.2 was on 24.3.1981. It was registered on 25.3.1981. The agreement vendee late Sh. Moti Ram was to obtain permission from the concerned authorities and then inform the plaintiff by registered post and on the plaintiff's being informed within 15 days there from, the

sale deed shall be executed. Sh. Moti Ram never refused to perform his part of the agreement. The plaint was presented on 21.3.1984. thereforee, the suit is in time. The issue is answered in favor of the plaintiff and against the defendants.

(42) On issue No. 2, on the facts of the case, the suit for specific performance is certainly maintainable. The issue is answered in favor of the plaintiff and against the defendants.

(43) On issue No. 3, no argument was advanced and I hold the suit is properly valued. The issue is answered in favor of the plaintiff and against the defendants.

(44) On issue No. 4, no argument was advanced that the suit was bad on account of misguide of parties. This issue is also answered in favor of the plaintiff and against the defendants.

(45) On issue No. 5 about the existence of valid agreement to sell, I have no hesitation in finding that there exists a valid agreement to sell. The issue is answered in favor of the plaintiff and against the defendants.

(46) On issue No. 6 whether the plaintiff was ready and willing to perform his part of the agreement, the facts are very clear. The plaintiff has always been ready and willing to perform his part of the contract and he is. entitled to the relief of specific performance.

(47) On issue No. 7 whether the plaintiff is entitled to reimbursement of Rs. 15,000.00 as stated in paragraph 19 of the plaint, the point is whether the plaintiff should be asked to deduct Rs. 15,000.00 from the sale consideration. This is with reference to the payment of Rs. 15,000.00 to MCD. In paragraph 19 of the plaint, it is stated that the Mcd has recovered a sum of Rs. 15,000.00 approximately towards arrears of house tax from Mr. S.P. Sharma, the 7th defendant and the said tenant had adjusted the sum of Rs. 15,000.00 out of the rent of the ground floor portion due to the plaintiff. thereforee, according to the plaintiff he is entitled to adjust the sum of Rs. 15,000.00 in the sum payable in respect of the sale consideration. As the plaintiff is getting the relief of specific performance, he cannot saddle defendants 1 to 6 with the sum of Rs. 15,000.00 and the plaintiff

should bear the sum of Rs. 15,000.00 . In this behalf, if he has got any grievance against the tenant, it is open to him to work out his remedies against the tenant in appropriate proceedings. thereforee, on issue No. 71 find that the plaintiff is not entitled to the reimbursement of Rs. 15,000.00 .

(48) There shall be a declaration that the plaintiff had been put in possession of the property in part performance of the agreement by Sh. Moti Ram in accordance with the terms of the agreement. The plaintiff shall be entitled to proceed with the Rent Control proceedings against the 7th defendant.

(49) I am granting the relief of specific performance to the plaintiff and the question would arise whether the 7th defendant also should be asked to execute a sale deed along with defendants 1 to 6. In view of my finding that the 7th defendant has come forward with a false case and he cannot project himself an owner of the property there need be no direction for the execution of the sale deed by him. However, if the 7th defendant succeeds in the Probate case filed by him as a legatee under the alleged Will he is bound by the act of Sh. Moti Ram in executing the agreement for sale in favor of the plaintiff and, thereforee, to obviate any technical objection the 7th defendant also should be made to join in the execution of the sale deed. The plaintiff shall deposit a sum of Rs. 4,50,000.00 in this Court within four months from today. The L & D.O. and M.C.D. authorities and all public authorities shall render all assistance to the plaintiff by granting permission for the sale of the property. On the deposit of Rs. 4,50,000.00 the amount shall be paid over to defendants 1, 2, L/Rs. of defendant No. 3 and defendants 4 to 6. It is made clear that L/Rs of the 3rd defendant together shall be entitled to a sum of Rs.75,000.00 out of Rs. 4,50,000.00 .

(50) Accordingly, there shall be a decree

'(1)directing the plaintiff to deposit a sum of Rs, 4,50,000.00 within four months from today; (2) directing the defendants 1 to 7 to execute the sale deed in favor of the plaintiff with reference to property C- 1/105, Lajpat Nagar, New Delhi and in the event of the failure on the part of the defendants in executing the sale deed, an officer of this Court shall execute the sale deed in accordance with law on the plaintiff depositing Rs. 4,50,000.00 ; (3) directing a payment of Rs. 4,50,000.00 to

defendants 1 and 2, L/Rs of defendant No. 3, and defendants 4 to 6 in equal shares i.e. Rs. 75,000.00 each; (4) directing the 7th defendant to pay costs of the suit to the plaintiff. (5) directing defendant No. 7 to pay a sum of Rs.15,000.00 to the Delhi Legal Aid & Advice Committee, Chamber No. 4, Delhi High Court, New Delhi within one month from today.'

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