

Ajit Singh Gill and ors Vs. Arvind Khosla and ors

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Court : Delhi

Decided On : Dec-04-2012

Judge : Manmohan Singh

Appellant : Ajit Singh Gill and ors

Respondent : Arvind Khosla and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on: November 22, 2012 Judgment delivered on: December 04, 2012 + RFA(OS) No.110/2011 AJIT SINGH GILL & ORS Represented by: Appellants Mr.S.M.Hashmi, Advocate versus ARVIND KHOSLA & ORS Represented by: Respondents Mr.P.K.Agarwal, Adv. for R-1. Mr.Gurvinder Singh, Adv. for R-2. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 has been filed by the appellants against the impugned judgment and decree dated July 25, 2011 passed by the learned Single Judge of this Court in CS(OS) No.234/1997.

2. The brief facts are that the Suit No.234/1997 was filed by Sh.Ajit Singh Gill, his wife and two sons seeking permanent injunction restraining defendant Nos.1, 3 & 4 from interfering with their possession of property No.324, Sant Nagar, East of Kailash, New Delhi, and taking its illegal possession from them. The plaint was

later on amended in order to seek possession of the first, second and third floors of the suit property from defendant Nos.1, 3 and 4. They also sought injunction, restraining them from interfering with their possession of the aforesaid property.

2.1 In the second suit No.2226/2001, the appellants had claimed a sum of `25 lac being the interest @ 12.5% per annum from 26 th January, 1997 to 25th September, 2001 on `35lac spent by them on purchase of the suit property and carrying out its renovation etc., `2lac towards legal and professional fee to protect their legal claim in respect of the property and `2.5lac towards travelling expenses for coming to Delhi from Mumbai on various dates. They also claimed `2.5lac towards damages for mental agony undergone by them, thereby making a total sum of `32lac.

2.2 The case of Ajit Singh Gill, appellant No.1 herein and plaintiff No.1 in the trial court was that he was carrying on the business under the name and style of Simran Creations and he took on rent the whole of suit property from respondent No.2 in January, 1996 at the rent of `12,000/- per month, which was jointly owned by respondent Nos.1 and 2. It was alleged in the plaint that since arrears of Corporation Tax amounting to `19.62 lac had accumulated in respect of the suit property and MCD had issued notice for its auction in order to recover its dues, the matter was discussed between respondent Nos.1 and 2 and respondent No.1 asked respondent No.2 to explore the possibility of sale of the aforesaid property. Appellant No.1, who was a family friend of the respondents, was offered to purchase the property at the market price. The respondent No.1 agreed to sell his share of the suit property to the appellants and asked respondent No.2 who was holding a Power of Attorney from him, to execute the sale deed on his behalf also. The respondent No.2 executed the sale deeds of the suit property in their favour. The share of respondent No.1 in the sale consideration amounting to `8,62,500/- was sent to him by post which was accepted by him.

2.3 On 24th January, 1997, appellant No.1 was informed that respondent No.1, along with defendant Nos.3 and 4 in the suit, had forcibly removed the staff of Simran Creations and locked the premises. On reaching Delhi on 29th January, 1997, the appellant No.1 visited the suit premises and found anti-social elements sitting inside the gate. The police was called by him and on seeing the police personnel, such anti-social elements ran away leaving one security man, who was taken to the police station. Respondent No.1 and Defendants 3 and 4 put locks in order to

obstruct his ingress and egress.

3. The respondent No.2 Smt. Kusum Anjali filed the written statement and supported the case of the appellant. She admitted that she along with respondent No.1, who is her brother, purchased the suit property from Sh.Amrik Singh Pasricha on 13th August, 1987 vide documents viz. agreement to sell, receipt, registered will and power of attorney. She further stated that between August, 1987 and September, 1993 several firms, in which she as well as respondent No.1 were involved, were operating from the suit property. Differences arose between the partners of those firms and the business operations being carried on in the suit property were stopped in September, 1993. A temporary agreement was arrived at in October, 1993 wherein it was agreed that she alone would utilize the premises and if she decided to sell out, the share of respondent No.1 in the sale proceeds would be given to him.

4. The premise was let out by respondent No.2 to appellant No.1 between January and June, 1996. She further alleged that since municipal taxes were not paid, more than `19 lac was being claimed by MCD towards arrears of taxes. In June, 1995, an auction notice was issued by MCD for auction of the suit property in order to recover the arrears of property tax. Since respondent No.1 was unable to contribute towards the payment of property tax, she was asked to explore all possible avenues including sale of the property. Therefore, on 15.6.1996, she sold the property to the appellants, to the knowledge of respondent No.1. The share of respondent No.1 was sent to him by pay orders along with a letter dated 17th June, 1996.

5. It is evident that the main contesting respondent is respondent No.1 who has alleged that the appellant No.1 and respondent No.2 were acting in collusion with each other so as to deprive him of his rights in the suit property. It was alleged that on purchase of the suit property from Sh.Amrik Singh Pasricha, respondents No.1 & 2 were using it for business activities of their business concerns viz. Humming Bird Pvt. Ltd., Ladybird Clothing and International Merchandising. It was also alleged that first, second and third floors of the suit property were always in occupation of respondent No.1, who had put his lock on the entrance of the

aforesaid floors and after closure of the business, it was mutually agreed that respondent No.2 would utilize the basement and ground floors for running the business of her firms whereas respondent No.1 would utilize the first, second and third floors. Respondent No.1 denied the alleged tenancy agreement in favour of appellant No.1 Sh.Ajit Singh Gill and claimed that the documents were manufactured solely with a view to show possession of the appellants in respect of the entire property. It is further alleged that on 24 th January, 1997 respondent No.1, while visiting the suit property, noticed change in the locks and put his own lock at the entrance door in addition to the replaced lock. He also lodged a report with the police expressing apprehension of his dispossession. It was also claimed that the alleged transaction of sale between the appellants and respondent No.2 was only a paper transaction and there has been transfer of funds between the appellants and respondent No.2. As regards the power of attorney which allegedly was executed by him in favour of respondent No.2, the case of respondent No.1 was that it was a forged and fabricated document. As regards the deposit of `8,62,500/in his account, respondent No.1 claimed that he came to know of the deposit only on 19th December, 1996 and on the very same date he reported the matter to the police informing about the aforesaid deposit. It was further alleged that respondent No.1 wrote to his bank seeking a clarification with respect to these deposits. His bank was informed by Union Bank of India that the drafts deposited in the account were issued by their Napean Sea Branch, Bombay. When bank of respondent No.1 enquired from Union Bank of India, Napean Sea Branch vide letter dated 26.12.1996, it was indicated to him that the drafts were purchased by one Mr. Ajit Singh Gill. Respondent No.1 had also filed a counter claim seeking a decree for declaration that the sale deed dated 15th June, 1996 executed by respondent No.2 on his behalf is collusive, fraudulent, illegal and void.

6. The following issues were framed in CS(OS) No.234/1997:1. Whether four sale deeds dated 15th June, 1996 relating to the suit property were validly executed by defendant No.2 in favour of the plaintiffs and defendant No.2 was duly authorized and competent to execute the same for and on behalf of defendant No.1? If not, its effect? OPP 2. Whether the amount of `8,62,500/- representing his share of sale consideration was deposited in the bank account of defendant No.1 without his knowledge? If not, its effect? OPD-1 3. Whether the suit property is properly

valued for the purpose of court fee and jurisdiction? OPP 4. Whether the plaintiffs are entitled to recover possession of first, second and third floors of the suit property in view of averments made in the plaint? OPP 5. Relief. Counter Claim 1. Whether the defendant No.1 is entitled to the relief of declaration as prayed for? If not, its effect? OPD-1 The following issues were framed in CS(OS) No.2226/2001:

1. Whether the plaintiff has no cause of action to maintain the present suit against the defendants? 2. Whether the present suit is liable to be stayed under Section 10 CPC in view of the pendency of the earlier suit bearing No.234/1997? 3. Whether the plaintiff is entitled to any damages from the defendants and, if so, to what extent? 4. Whether the plaintiff is entitled to any interest and, if so, at what rate, for what amount and for which period? 5. Relief.

7. After recording the evidence of the parties, both the suits filed by the appellants were dismissed except to the extent that the respondent No.1 was directed to pay to the appellants the amount earned by him as interest on sum of `8,62,500/- which was deposited in his account along with interest on that amount at the rate of 6% per annum from the date of receipt of interest received by him till the payment to the appellants. The amount deposited by the respondent No.1 in Court was also ordered to be released to the appellants along with interest accrued on that amount.

8. The learned Single Judge in paragraph 36 and 37 of the judgment held as under:

36. For the reasons given in the preceding, I hold as under: i. Defendant No.2 was not in exclusive possession of the suit property with the consent of defendant No.2 or under an arrangement with him and the same was in joint possession of the defendants No.1&2 in January, 1996; ii. No bona fide tenancy in respect of the suit property was created in favour of plaintiff No.1 and though it cannot be disputed that he came to occupy part of the suit property sometime prior to 24th January, 1997; iii. The tenancy, even if, created in favour of plaintiff No.1, is not binding on defendant No.1; iv. There was no bona fide transaction for sale of the share of defendant No.1 in the suit property and the sale deeds dated 15th June, 1996, executed by defendant No.2 in favour of the plaintiffs are collusive and fraudulent

documents which are not binding on defendant No.2 and do not affect his right, title and interest in the suit property. v. Defendant No.2 was not competent to execute the sale deed and get it registered on behalf of defendant No.1; vi. The amount of `8,62,500/- was deposited in the bank account of defendant No.1 without his knowledge; 37. Since the sale deed, executed by defendant No.2 on 15th June, 1996 is not binding on defendant No.1, he continues to be co-owner of the suit property along with the plaintiffs who have become owner only to the extent of share of defendant No.2 in it. During the pendency of the suit, a Division Bench of this Court had allowed use of first, second and third floor of the suit property to defendant No.1 and use of the basement and the ground floor to the plaintiffs, pursuant to the statements recorded on September 02, 2002 in FAO(OS) No.344 of 2001. Since the plaintiffs and defendant No.2 are co-owners of the suit property, 50% being owned by the plaintiffs and the remaining 50% by defendant No.1, there is no necessity for this Court to disturb the arrangement agreed between the plaintiffs and defendant No.1 before the Division Bench of this Court on 02nd September, 2002. It would be open to defendant No.1 as well as to the plaintiffs to seek partition of the suit property and in that event, it will be for the Court which deals with such a suit to pass appropriate order with respect to possession of the suit property. The issues are decided accordingly.

9. We have gone through the pleadings as well as the record. We feel that two main issues are involved in the matter. The same are: (i) whether the appellant No.1 was validly inducted as a tenant by the respondent Nos.1 & 2 in the month of January, 1996 and (ii) whether the sale deeds dated 15th June, 1996 relating to the suit property were validly executed by respondent No.2 in favour of appellants on her behalf and on behalf of respondent No.1. With regard to issue No.(i), the appellant No.1 in his affidavit by way of evidence has stated on oath the same case as set up in the plaint on issue Nos.1, 2 and 4 and issue No.1 in the counter claim and stated that the entire suit property was taken by him on rent from respondent No.2 in January, 1996 vide agreement dated January 3, 1996 Ex.P-95. It was stated in the affidavit that respondent No.1 agreed to sell his share to him and informed respondent No.2 that since he might not be available, the respondent No.2 should execute the sale deed on his behalf.

10. It is not the case of the respondent No.2 that the suit property was jointly let out by her and respondent No.1 to the appellant No.1 or she had let out the property to appellant No.1 with consent of respondent No.1. In her cross-examination, respondent No.2 admitted that respondent No.1 never authorized her to induct appellant No.1 as a tenant in the suit property. In the cross-examination on the question that on whose behalf she had inducted appellant No.1 as a tenant in the suit property, she stated that she inducted appellant No.1 as a tenant as she held Power of Attorney on behalf of Sh.Amrik Singh Pasricha to rent out the property, although in the subsequent part of the statement, she stated that she had apprised respondent No.1 sometime in the first week of January, 1996. Admittedly, no rent was paid by appellant No.1 to respondent No.1. The rent receipts filed by the appellant No.1 were executed only by respondent No.2. The respondent No.2 who had not pleaded that she inducted appellant No.1 as a tenant in exercise of authority given to her by respondent No.1 vide Power of Attorney dated November 18, 1987 (Ex. PW-1/X1). In fact, she stated that she acted pursuant to the Power of Attorney executed by the previous owner Sh.Amrik Singh Pasricha in her favour who sold the property to respondent Nos.1 and 2 on August 13, 1987. Therefore, respondent No.2 obviously could not have inducted the appellant No.1 as a tenant on the basis of power of attorney issued by Sh.Amrik Singh Pasricha as the property was sold way back in 1987. She did not deny that the respondent No.1 is the joint owner of the property. As per law, a joint property cannot be let out by one of coowners without permission of other co-owner. Otherwise, that would not be binding on the other co-owner.

11. The other aspect of the matter is that it is an admitted case that the respondent Nos.1 and 2 were carrying on business in partnership under various business names and the disputes in the said firms arose between respondent Nos.1 and 2 in the year 1993 and the business operations which were being carried on in the suit property were stopped.

12. The case of the respondent No.2 is that in or around 1993, a temporary arrangement was arrived at between two groups. It was agreed that she alone would utilize the premises. On the other hand, the case of respondent No.1 was that as per a mutual agreement between him and respondent No.2, it was agreed

that he would occupy the basement and ground floor, whereas, respondent No.2 would occupy the first, second and third floors of the suit property which was jointly owned by them in equal shares. The property was let out to the appellant No.1 in January, 1996. There is no evidence on record to show that before letting out the property she has informed the respondent, as admittedly the relations between respondents No.1 & 2 were not cordial. Therefore, under those circumstances, it is not possible to believe that respondent No.1 would allow respondent No.2 to let out the suit property to appellant No.1 without being rent paid to him.

13. The learned Single Judge has given various other circumstances of a similar nature in para 17 of the impugned judgment as well as he relied upon the report of the Local Commissioner who carried out the inspection on May 18, 1997 which proves that in case the whole of the suit property was let out to M/s P&P Overseas or to the appellant No.1, the voluminous record of the joint firms of respondent Nos.1 and 2 would not have been lying there at the time of inspection by the Local Commissioner. The appellant No.1 in his cross-examination took the stand that the appellant No.1 did not have the authority to give the suit premises on rent as only respondent No.2 had the general power of attorney. But in fact, appellant No.1 admitted in his crossexamination that after August 13, 1987, Sh.Amrik Singh Pasricha did not have any right to give the premises on rent or to sell the same. If he had no right to give the premises on rent, the respondent No.2 could not have done it on the basis of power of attorney earlier issued by Sh.Amrik Singh Pasricha. The real fact of the matter is that the respondent No.1 was the other co-owner of the property. The respondent No.2 herself did not say that on the basis of authority or power of attorney she had inducted appellant No.1 in the suit property. Therefore, the stand of the appellant No.1 and respondent No.2 is incorrect on these issues.

14. It is not the case of the appellant No.1 that he was not aware that respondent No.1 is not the co-owner of the suit property. Therefore, the alleged tenancy in favour of appellant No.1 was obviously not created with the consent of respondent No.1. Thus, that is not binding on him.

15. The second issue (ii) involved in the present appeal for our consideration pertains to the sale of share of the respondent No.1 by respondent No.2 in favour of the appellants is a genuine and bonafide transaction or the sale deed executed by respondent No.2 was in connivance with the appellants with a view to deprive respondent No.1 of his share in the suit property.

16. Admittedly, the sale deeds Ex. PW-2/1 to PW-2/4 were executed by respondent No.2 and on behalf of respondent No.1 in her capacity as power of attorney in favour of the appellant. The respondent No.1 was not a party to the said execution of sale deeds in favour of the appellants.

17. The case of the appellants and respondent No.1 is that while executing the sale deed on behalf of respondent No.1, the respondent No.2 was acting in exercise of the authority given by respondent No.1 vide power of attorney dated November 18, 1987 Ex.PW-1/X-1 which is denied by the respondent No.1. Entire Ex.PW-1/X-1 reads as under: I, Arvind Khosla hereby through this Power of Attorney authorize my sister Kusum Anjali to conduct all real estate transaction on my behalf. Hence, she is authorized to buy and sell and sign papers on my behalf, should I not be present.

18. There are no other contents in the power of attorney Ex.PW-1/X-1. It is unregistered and undated document. The same was attested by the notary public on November 18, 1987. The detail of suit property is not mentioned. It is admitted case of the parties that on the basis of said power of attorney Ex.PW-1/X-1, the said authority was not used when the suit property was let out by respondent No.2 to appellant No.1 between January-June, 1996.

19. DW-1 Arvind Khosla in his testimony has stated that he was always keeping all the original documents dated 13.08.1987, as well as the original registered sale deed, dated 12.01.1965 as well as original documents of Sh.Amrik Singh Pasricha who had acquired title over the suit property from his predecessor owner in my custody and possession. He stated that the said erstwhile owner, Shri Amrik Singh Pasricha, had also admittedly executed yet another power of attorney, dated 13.08.1987, in favour of his wife, Smt. Vrinda Khosla, the original of which is marked DX and filed on record by him. It is also stated by him in his statement that

some serious disputes arose in September 1993 between him, his wife (Smt.Vrinda Khosla), Sh.Vinay Aghi, his wife (Smt. Pinki Aghi) on the one side and Smt. Kusum Anjali, her husband (Mr.V.K.Dhir) on the other side, which resulted into disruption and, in fact, stoppage of all business activities being carried on by them and the members of their family and close friends. With the intervention of members of their family and friends, it was mutually decided/agreed by and between him and his sister, Smt. Kusum Anjali, in the beginning of 1994 itself, soon after disputes as aforesaid arose, that the basement and ground floor portions of the suit property would be occupied and utilized by the said respondent No.2. It was also deposed by him that the appellant No.1 was well-known to his sister, Smt. Kusum Anjali and her husband, Mr.V.K.Dhir for more than 30 years preceding the filing of the main suit. He even claimed that respondent No.2 had been working as a consultant for his sole proprietorship business of M/s Simran Creations. DW-1 deposed that taking advantage of their old friendship and business relationship as aforesaid, respondent No.2, his sister, hatched a conspiracy in collusion with the appellant No.1 and they planned to create false evidence of his ouster from the suit property and forged, fabricated & manufactured a power of attorney, dated 16.11.1987, purported to have been executed by him in her favour. Neither ever he signed/executed any power of attorney dated 16.11.1987, nor otherwise discussed with or authorized Smt. Kusum Anjali or anybody else to sale/transfer the suit property on his behalf. In June, 1995 an auction notice for the auction of the suit property for recovery of arrears of property tax, he and respondent No.2 had a meeting and discussed the matter, when she agreed to pursue with MCD authorities the matter for an amicable resolution of the issue of liability of property tax and have the amount of property tax finalized. He had agreed to contribute his half share of the property tax upon its finalization by MCD and Smt. Kusum Anjali had agreed to follow up the matter of finalization of property tax liability and communicate to me the final outcome. It was also stated by him that no such power of attorney dated 16.11.1987 was ever propounded or relied upon by her even when she falsely claimed to have executed an (a) agreement dated 01.07.1995 in favour of Mr. Pankaj Mallik, Proprietor of M/s. P & P Overseas or (b) agreement dated 03.01.1996 in favour of Shri Ajit Singh Gill as apparently either (i) no such power

of attorney, dated 16.11.1987, was by then forged. When he visited the suit property on 24.01.1997, he found to his dismay that the common lock on the main entrance had been replaced with another lock. Therefore, he put another lock on the main entrance of the suit property and submitted an application dated 24.01.1997 on the same day to the Chowki In-charge, Police Post Garhi, East of Kailash, P.S. Lajpat Nagar, New Delhi, a receipted copy whereof is proved as Ex. D1W1/4. It is stated by him that respondent No.2 and appellant No.1 have devised the excuse of payment of property tax of the suit property to MCD as a camouflage to the clandestine and collusive unilateral sale of the suit property by Smt. Kusum Anjali in favour of the appellants without his knowledge. We agree with the finding of the learned Single Judge that from bare perusal of the said document, it is evident that the respondent No.2 could have purchased and sold real estate and signed papers on behalf of respondent No.1 only in his presence. In case respondent No.1 was available for selling his property and/or executing the documents pertaining to the transaction entered into by him, the respondent No.2 could not have acted on his behalf. It is not the case of either the appellants or respondent No.2 nor have they have led any evidence that the respondent No.1 was not available when the appellants entered into the transaction of sale of the suit property. In the cross- examination, the respondent No.2 admitted that without permission of the respondent No.1, she could not have sold the suit property on her own.

20. The sale deeds were executed and registered in Bombay though the suit property was situated in Delhi. There is no evidence on record to show that the respondent No.1 was not available to execute the sale deeds or any communication available on record to show that the respondent No.2 had asked the respondent No.1 to accompany her to Bombay to execute the sale deeds in favour of the appellant though appellant No.1 stated in crossexamination that he asked the respondent Nos.1 and 2 to come to Bombay for registration of the sale deed but respondent No.1 told him that since he had executed the power of attorney in favour of respondent No.2 and since Amrik Singh Pasricha had also executed a power of attorney in her favour, therefore, there is no need for him to come to Bombay for that purpose. In the cross-examination of respondent No.1 however, no suggestion was given either by the appellant or the respondent No.2

in this regard. We agree with the findings of the learned Single Judge that the appellants and the respondent No.2 had failed to prove that the respondent No.1 was not available for negotiating with the appellants for sale of his share in the suit property nor have they been able to prove that he was not available for execution of the sale deed. Therefore, the respondent No.2 was not competent to execute the sale deed on his behalf and in the normal course of human conduct if the property is jointly owned by two persons, the purchaser would have negotiated with both of them and not only with one of them.

21. We have also to draw other inference that it is the admitted case that the original documents pertaining to the suit property, except one power of attorney, were in possession of respondent No.1 and were never given by him to the appellants. The presumption is that no buyer would purchase the immovable property without taking the previous document of title from the seller. There is no explanation by the appellants as to why the appellants did not obtain the original documents of the suit property from the respondent No.1 before registration of the sale deed in their favour. There is also no evidence on record that the appellants had ever written letter to the respondent No.1 asking him to deliver the original title documents to them despite that the previous owner Amrik Singh Pasricha did not execute the sale deed in favour of the respondent Nos.1 and 2, hence it was necessary for the appellants to take previous documents of title from the respondent No.1 as well as the documents of title which were in possession of respondent No.1 without which they would have not have entered into the transaction for purchase of the property, coupled with the fact that relations between the sellers i.e. respondent Nos.1 and 2 were not cordial. Similarly, it is not the case of the respondent No.2 that she had informed the respondent No.1 that she was selling the property to the appellants for total sale consideration of ₹17,25,000/- on their behalf including his share.

22. The case of the appellants and the respondent No.2 is that the share of respondent No.1 in the sale consideration was paid to respondent No.1 by way of four pay orders/bank drafts which were delivered to respondent No.2, who sent them to respondent No.1 by registered post, whereas the share of respondent No.2 in the sale proceeds was given to her by way of cheques. In support of their

contention, the respondent No.2 had filed a copy of letter which was allegedly written by her to respondent No.1 on June 17, 1996. Pay orders were allegedly enclosed along with the said letter. The postal receipt filed by her does not bear the complete address of respondent No.1, only the name Arvind Khosla and Noida having been written on the receipt. No witness from the post office was examined by the appellant or the respondent No.2 who could prove for transmission of the letter to the respondent No.1.

23. The respondent No.1 on the other hand has stated on oath that he never received either this letter or the pay orders. His case is that a perusal of statement of account in which these pay orders were deposited would show that the pay orders were deposited in his account on August 30, 1996 which was after more than two months of the date of transaction. In case he received the said pay orders by post why he would keep the said bank drafts with him for more than two months as he would have got interest on the said amount.

24. Another circumstance referred to by the learned Single Judge in para 29 of the judgment for which we totally agree that the respondent No.1 was not aware of deposit of these pay orders as the respondent No.1 deposited cash of `3000/- in that account on October 10, 1996. In case, he himself deposited the pay orders of `8,62,500/- on August 30, 1996, there would not have any occasion for him to deposit `3000/- in cash in the same account on October 10, 1996 to retain some reasonable balance in his account.

25. It is pertinent to mention that Ex.D-1W1/2 is the letter written by the respondent No.1 to State Bank of India, Ring Road, Lajpat Nagar, informing that on December 18, 1996 he had sent his accountant to the bank to confirm the credit of draft of `1,36,350/-and his accountant informed him that besides the said amount there was another heavy credit in his account. He further mentioned in the said letter that on enquiry from the bank, he was surprised to learn that on August 30, 1996, four cheques of Union Bank of India, drawn on Napean Sea Road Branch, Mumbai for a sum of `8,62,500/had been credited to his account. He also mentioned in the said letter that these drafts/cheques were not deposited by him or under his instructions and there was some apparent mistake/error which the

bank should rectify. He also lodged a complaint in this regard with SHO, Police Station Lajpat Nagar on the same day, informing the said happening. The said document Ex.D-W1/2 shows that writing of the letter to the bank is yet another proof that the sale transaction deposit of the pay orders were not in his knowledge at the appropriate time.

26. On the other hand, the respondent No.2 who received her share by way of four cheques at the time of sale deed on June 15, 1996 in her crossexamination she has admitted that she deposited the first cheque in her account on July 23, 1996 and the remaining three cheques were negotiated by her on September 25, 1996. In cross-examination, she stated that the cheques were withheld by her at the instance of appellant No.1. There is one withdrawal entry of `4,00,000/- dated October 4, 1996 and one withdrawal entry of `2,00,000/- dated October 5, 1996 in the account of respondent No.2. In cross-examination, she admitted that these payments were made by her to the appellant No.1. The case of the respondent No.2 was that she had been receiving money from the appellants for payment of property tax and it was that amount which was repaid by her. The details of such transactions between respondent No.1 and the appellant are discussed in paragraph 32 of the impugned judgment and we agree with the finding of the learned Single Judge that why these amounts were repaid to the appellant if they were made for payment to MCD and if the statement of MCD was to be paid directly by the appellant there could be no occasion for them to transfer `20,00,000/- to the respondent No.2 in the first instance and if the payment to MCD was to be made by respondent No.2, there would have been no occasion for her to refund the amount which she received from the appellant. Another important aspect of the matter is that dues of MCD were settled for `7,67,188/- an amount far below the amount of `20,00,000/- alleged to have been received by the respondent No.2 from the appellant and returned to them at the later stage. We have gone through the contents of power of attorney Ex.PW-1/X-1 on the basis of which sale deeds were executed and registered in favour of the appellants also on behalf of the respondent No.1. Ex. PW-1/X-1 does not contain the details of the suit property. It is an undated and unregistered document of the year. There was a condition in Ex.PW-1/X-1 that the same could have been used on behalf of respondent No.1 should he not be present. The appellants and respondent No.2

failed to prove in evidence that at the time of execution and registration of sale deeds by the respondent No.2, the respondent No.1 was not available. Further, had the Ex.PW-1/X-1 power of attorney was with the respondent No.2 which was notarized in 1987, it could have also been used for the purpose of letting out the suit property to appellant No.1 in 1996 because at that time respondent No.2 relied upon the power of attorney Ex.DW-2/D1 given by erstwhile owner Amrik Singh Pasricha in favour of respondent No.2 prior to selling of suit property, which was the document, could not have been relied upon at the time of inducting the appellant No.1 as a tenant. Therefore, we are of the considered view that Ex.PW-1/X-1 is not a reliable evidence does not support the case of appellants and respondent No.2.

27. In view of the above referred facts and circumstances, we agree with the finding of the learned Single Judge that the entire transaction i.e. registration of the sale deeds was done in suspicious circumstances which gives an impression that the transaction between the appellants and respondent No.2 being fraudulent as far as respondent No.1 is concerned. Another suspicion is that why the sale deed was registered in Mumbai when the respondent No.1 was available in Delhi on a particular date instead of getting it registered in Delhi in normal course.

28. There is no merit in the appeal. The same is dismissed with no orders as to costs. (MANMOHAN SINGH) JUDGE (PRADEEP NANDRAJOG) JUDGE
DECEMBER 04 2012/jk

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