**IN THE COURT OF VIJAY KUMAR JHA,
ADDITIONAL DISTRICT JUDGE-02, KARKARDOOMA
COURTS(EAST), DELHI**

Civil Suit No.2517/2016

In the matter of:

Smt. Sudha Sarin
W/o Sh. Vijay Kumar Sarin
R/o House No. U-189,
First Foor, Upadhyay Block,
Shakarpur, Delhi – 110092.

…........Plaintiff

Versus

Sh. Asutosh Saini
S/o Sh. B.M. Saini
R/o House No.2408,
Kucha Chelan, Daryaganj,
Delhi- 110002.

…..........Defendant

Date of Institution	:	27.05.2015
Date of Arguments	:	22.11.2021
Date of Judgment	:	03.01.2022

SUIT FOR DECLARATION AND PERMANENT INJUNCTION.

JUDGMENT

1. By this judgment issues which have been framed therein vide order dated 27/10/2017 shall be decided. By Order dated 12/01/2017, the present suit has been consolidated with the suit bearing CS no. 593/16 titled as **Ashutosh Saini v. Sudha Sarin** and the said case has been treated as a lead case. The entire evidence has been recorded in the lead

case. In the lead case, the status of the plaintiff herein is that of the defendant, and the status of the defendant herein is that of the plaintiff. The facts stated in the pleading in the present case are almost identical with the facts as stated in the lead case. Vide separate judgment of the even date, lead case has been dismissed with costs and the entire judgment shall form part and parcel of the present judgment.

2. After the completion of the pleadings in the present case vide Order dated 27/10/2016 following issues were framed for trial: -
    1. Whether the plaintiff is entitled for the declaration, as prayed? OPP
    2. Whether the plaintiff is entitled for the decree of permanent injunction as prayed? OPP
    3. Whether the plaintiff is a tenant of the defendant? OPD
    4. Whether the plaintiff has no cause of action to file the present suit? OPD
    5. Whether the plaintiff is guilty for concealment and suppression of material facts? OPD
    6. Whether the suit of the plaintiff is barred by limitation? OPD
    7. Relief.
3. Arguments in the present suit has been heard in conjugation with the arguments on the lead case. Written submissions by the plaintiff as well as the defendant has been filed in the lead case.
4. The evidence has been led by both the parties in the connected suit. Issue wise opinion of the Court in the present case is here under.

Issue no. 1 Whether the plaintiff is entitled for the declaration, as prayed? OPP

5. In the present suit the plaintiff has sought the declaration that the registered GPA, notarised agreement to sell, affidavit, indemnity bond, receipt, etc. with respect to the suit property which has been got executed by the defendant by fraudulent means from the plaintiff on the

pretext of giving the same for collateral security be cancelled. In the lead case the said documents have been exhibited by the defendant herein as Ex. PW-1/2 to Ex. PW-1/6.

6. For the reasons stated in the lead case for deciding the issues no. 1 and 6 framed therein and the discussion thereon, the Court is of the opinion that the plaintiff is entitled for the declaration as prayed for. On the basis of the evidence which has been led in the lead case discussion thereon, this Court is of the opinion that the defendant did in fact got executed not only the documents exhibited as Ex. PW-1/2 to PW-1/6 by practising deception and by fraudulent means from the plaintiff but also rent deed Ex.PW-1/7. All the documents exhibited as Ex. PW-1/2 to PW-1/6 in the lead case are liable to cancelled. Issue under discussion is decided in favour of the plaintiff and against the defendant.

Issue no. 2 whether the plaintiff is entitled for the decree of permanent injunction as prayed? OPP

7. The plaintiff has prayed the relief of permanent injunction thereby restraining the defendant his agents, etc. from creating any 3rd party interest in the suit property. As by documents Ex. PW-1/2 to PW-1/6 the ownership in the suit property never passed in favour of the defendant and the defendant is without any right, title or interest in the suit property therefore the plaintiff is entitled for the relief as sought. Accordingly, the issue under discussion is decided in favour of the plaintiff and against the defendant.

Issue no. 3 Whether the plaintiff is a tenant of the defendant? OPD

8. In the lead case it was the case of the defendant that the defendant was the owner of the property having purchased the same from the plaintiff in November 2005 on the basis of documents exhibited as Ex. PW-1/2

to PW-1/6. The plaintiff became the tenant in the suit property in November 2005. The rate of rent of the suit property was ₹ 5500/- per month. Initially the tenancy between the plaintiff and the defendant was oral which in the year 2012 was reduced into the writing. However, the plaintiff lost the said agreement which was executed in the year 2012 along with other chains of documents on 01/08/2013 with respect to which NCR; Ex. PW-5/1 (colly) was registered. The rent deed dated 15/01/2013 has been exhibited as PW-1/7.

9. In the lead case, the Court has discounted the entire story of the defendant with respect to the execution of the documents pertaining to the suit property by the plaintiff in favour of the defendant. The status of the plaintiff is not that of the tenant with respect to the suit property and the defendant is not the landlord.

10. It may also be noted in the lead case other than the self-serving statement of the defendant that after the purchase of the suit property from the plaintiff by the defendant in September 2005 the plaintiff handed over the possession of the suit property to the defendant and the plaintiff came as the tenant in November 2005 and there is no evidence of any kind on the basis of which it could be said that the case of the plaintiff with respect to taking the possession and the defendant coming the suit property as tenant has been proved even on the balance of probability. The issue under discussion is decided in favour of the plaintiff and against the defendant.

Issue no. 5 whether the plaintiff is guilty for concealment and suppression of material facts? OPD

11. In the written submissions filed on behalf of the defendant in the lead case it has been argued that, "*The defendant took a false plea in her*

case that the defendant liked the plaintiff as her son and the plaintiff was to get married with the daughter of the defendant and wished to some financial help and due to which, a collateral security was required for the plaintiff for taking a loan from ICICI Bank and the defendant on this pretext, visited the Sub-Registrar for making a collateral security for the plaintiff but nothing has been proved bv Ms Sudha Sarin as alleged in her cross suit. Although whole case of the defendant is based on false story and the same is liable to be dismissed. But in para No. 3, 4 at page 8, the defendant made a false story about knowledge of the relationship of the plaintiff and her daughter Ms Shilpi Sarin. In Para no. 7, the defendant also took a false plea about the collateral security for loan purposes from ICICI Bank. In Para no. 12, the defendant also took a false plea about a threat call from mobile No. 9350596304 to her landline No. 011-2201 1955 but the same has not been proved". (The defendant be read as the plaintiff).

12. It is true that with respect to certain averments with respect to the relation of the defendant with the plaintiff or their respective family members, visiting terms, etc. have not been proved by the plaintiff in the deposition but those facts cannot be said to be the material facts. So even if assuming that the plaintiff lied about those things that does not *ipso facto* non suit the plaintiff as the maxim *falsus in uno falsus in omnibus* is not applicable with its full vigour i.e., it has not to be assumed that if any witness/party to the suit is lying on one aspect is lying on every fact.
13. With respect to the story of the plaintiff regarding taking collateral security from ICICI bank and enough has been discussed in the lead case. On the basis of evidence which has been led in the lead case and

the discussion thereon, the Court is of opinion that the plaintiff as such is not guilty of concealment and suppression of material facts though there is an embellishment and exaggeration with respect to certain facts regarding the relationship of the defendant with the daughter of the plaintiff, Ms Shilpi which has not been proved that those facts are not material as far as the present case of the lead case is concerned. Accordingly, the issue under discussion cannot be decided in favour of the defendant and hence same is decided in favour of the plaintiff against the defendant.

Issue no. 6 Whether the suit of the plaintiff is barred by limitation? OPD

14. The document for which cancellation has been sought was executed on 28th and 29/09/2005; Ex. PW-1/2 to PW-1/6. As per Article 56 of Limitation Act the limitation period for declaration/cancellation is three years from the time when the issue of registration becomes known to the plaintiff.

15. In the lead case, it has been discussed in the light of Section 67 of Evidence Act, the fact that after the alleged execution of documents Ex. PW-1/2 to PW-1/6 the water and electricity connection were not transferred in the name of the defendant after the purchase of the suit property, and getting the same transferred after the first motion for mutual divorce was moved between the defendant and Ms Shilpi, that the defendant did not mention about the ownership of the suit property, the relationship of landlord and tenant between the plaintiff and the defendant in the divorce proceeding between the defendant and the daughter of the plaintiff, Ms Shilpi and the other aspects which have been discussed by the Court in the lead case it cannot be said that in the

facts and circumstances of the case the limitation period started on 28th and 29/09/2005 to seek the cancellation of the said documents but the limitation period started when the defendant served the notice dated 13/01/2015, Ex.PW-1/19 on the plaintiff. The present suit filed in April 2015 is well within the limitation period. The issue under discussion is decided in favour of the plaintiff and against the defendant.

16. In the written submissions filed by the defendant, it has been argued in the light of the judgment of the Hon'ble Supreme Court in **Suhrid Singh Vs. Randhir Singh : AIR 2010 S.C. 2807** that the plaintiff did not value the suit property for the purpose of Court fee. Pursuant to order dated 21/12/2021 the plaintiff has filed the deficient Court fee, therefore nothing turns on this argument.

17. The counsel for the defendant in the light of judgment of the Hon'ble Delhi High Court in **Subhash Chander Ahuja Vs. Ashok Ahuja : 2004 VII AD (Delhi) 241** has argued that after having executed and got a document registered before the Sub-Registrar the executant cannot challenge or alleged that a fraud was played upon the executant.

18. The perusal of the said judgment reveals that the said judgment was passed on interim application under Order 39 Rule 1 and 2 CPC.

19. It is the final judgment of the Superior Courts which has the precedential value and is binding upon this Court not any interim Order or judgment passed by the Superior Courts.

20. Further, it cannot be the rule of law that once a document has been signed and executed under no circumstances such documents can be challenged on any grounds whatsoever. There could be many situations and factual scenarios in which even if a document which has been signed/having put thumb impression and registered could be declared as

void and cancelled.

21. If the Court accepts the arguments of the counsel for the defendant Section 31 of Specific Relief Act would become otiose, the bare reading of which shows that even registered document can be cancelled.

22. In the judgment of the Hon'ble Delhi High Court relied upon by the defendant, the allegation of commission of fraud was not with respect to the execution of the documents but with respect to the registration which is not the factual scenario in the two cases before the Court. The counsel for the defendant has wrongly relied upon the judgment in **Subhash Chander Ahuja** (supra).

Relief

23. In the light of discussion herein above and in the lead case the present suit filed by the plaintiff is liable to be decreed as all the issues as framed vide Order dated 27/10/2016 have been decided in favour of the plaintiff and against the defendant. Accordingly, the suit of the plaintiff is decreed with costs in favour of the plaintiff and against the defendant and the plaintiff shall be entitled to the following reliefs: -

1. A decree for a declaration that the registered GPA, notarised agreement to sell, affidavit, indemnity bond, receipt, etc. with respect to the suit property exhibited as Ex. PW-1/2 to Ex. PW-1/6 are void and are hereby cancelled.
2. A decree for permanent injunction thereby restraining the defendant his agent, etc. from creating any 3rd party interest in the suit property.
3. Under Section 35 of CPC the litigation expenses of the plaintiff is hereby quantified at ₹40,000/- to be paid by the defendant to the

plaintiff.

Decree sheet be prepared in terms of the judgment. File be consigned to record room.

The suit is decreed with costs.

VIJAY KUMAR JHA

Digitally signed by VIJAY KUMAR JHA
Date: 2022.01.04 14:51:19 +0530

Announced from residence through Webex on 3rd January, 2022.

(VIJAY KUMAR JHA)
Addl. District Judge-02(East)
Karkardooma Courts, Delhi.