

IN THE COURT OF SH. ABHITOSH PRATAP SINGH RATHORE  
DISTRICT JUDGE-05, SOUTH WEST DISTRICT,  
DWARKA COURTS, NEW DELHI.

CS DJ 936/2017  
CNR No. DLSW01-012092-2017

**Smt. Santosh Devi**  
W/o Sh. Rajiv Kumar Singh  
R/o House No.D-542, First Floor,  
Sector-1, Avantika Rohini  
New Delhi- 110085

Presently residing at:  
C/o Shri. Laxmi Sharma  
W/o Sh. Vijay Kumar Sharma  
R/o House No. RZ-D-1/63A, Second Floor,  
Gali No.5, Mahavir Enclave, Phase-I,  
New Delhi- 110045

...Plaintiff

VERSUS

**Sh. Ashok Kumar Verma (deceased)**  
Through his LRs  
R/o H.No. A-59, Gulmohar Park,  
South Delhi, New Delhi- 110049.

**Also At**  
G-14, South Extension-I, Market  
Ring Road, New Delhi- 110049

...Defendant

**Date of institution of the suit** : 12.10.2017  
**Final arguments concluded on** : 13.03.2026  
**Judgment pronounced on** : 30.03.2026

**SUIT FOR RECOVERY OF RS.10,00,000/-ALONGWITH FUTURE  
INTEREST @ 18% PER ANNUM**

1. The brief facts as stated in the plaint are that plaintiff is the lawful owner of the property bearing no. Khasra No.59/7, Situated in the abadi of Colony Known as Laxmi Nagar in Block-F-44B, Mangal Bazar, Admeasuring 50.16 Sq. Mtrs situated in the revenue area of Village Khajuri Khas, Illaqa Shahdara, Delhi- 110092. It is stated that defendant approached the plaintiff for the purchase of above said property on a consideration amount of Rs.31,40,000/-. Defendant paid the abovestated consideration amount by way of four cheques details of which are given below:

*a) Rs. 5,00,000/- vide Cheque No. 019540*

*b) Rs. 6,40,000/- vide Cheque No. 025994*

*c) Rs. 10,00,000/- vide Cheque No. 025995*

*d) Rs. 10,00,000/- vide Cheque No. 025996*

*All drawn on Oriental Bank of Commerce, South End Road, New Delhi – 110049.*

After receiving the consideration amount plaintiff executed sale deed dated 17.02.2016 in the favor of defendant. Upon presentation one cheque bearing no. 025996 dated 13.03.2016 for a sum of Rs.10,00,000/- got bounced due to the reason 'insufficient funds'. Subsequently, plaintiff issued a legal notice dated 17.07.2017 however, despite receipt of the notice defendant refused to make the payment.

2. It is stated in the plaint that cause of action first arose in favor of plaintiff and against the defendant on 13.03.2016 when the cheque in question was issued by the defendant in favor of plaintiff. Cause of action further arose on 22.04.2016 when the said cheque got dishonored upon encashment. Cause of action further arose on 17.07.2017, when plaintiff

issued a legal notice to defendant. Suit was filed on 12.10.2017. Summons were issued to defendant.

3. Written statement was filed by the defendant. In the written statement, it is stated that even though the possession of the property lies with the defendant, brother of the plaintiff had challenged the title of the property in question before the court of Ld ADJ, Karkardooma Court, Delhi. Plaintiff was very much aware that there is a possibility of a litigation with respect to the property with her brother yet she chose to proceed further and entered into a contract with the defendant in order to sell off the property to him without having a proper title of the same. It is also stated that plaintiff at the time of entering into an agreement with the defendant deliberately concealed the material fact and induced the defendant to deliver the consideration amount to her. Defendant states that despite having paid a sum of Rs.21,40,0000/-, he is in possession of the property which is not free from encumbrances and he is also being made to face litigation by way of the instant suit for recovery. In para no.9 of the WS, it is stated that defendant is not running away from his liability of paying the sum, plaintiff is entitled to, subject to condition, plaintiff gives the property to defendant free from all encumbrances. In para wise reply, defendant has denied all the paragraphs of the plaint.

4. Replication was filed by the plaintiff wherein plaintiff has reiterated contents of the plaint and has denied the contents of the WS.

5. During the pendency of suit Defendant Sh. Ashok Verma passed away on 28.03.2021. An application seeking substitution of LRs of the deceased defendant was moved by the plaintiff. It was stated in the application that the

defendant is survived by his wife and son. The said application was allowed by this court vide its order dated 31.01.2023. The said order was never challenged hence it has attained finality. The name of the wife, as evident from the documents tendered on the behalf of the defendant, is Veena Verma, whereas the name of the son is Sagar Verma. Sagar Verma was also examined as DW-1. Veena Verma, in the documents annexed with the evidence affidavit of the defendant, is shown as a resident of the same premises as that of the defendant. The son is also shown as a resident of the same premises. However, no amended memo of parties was filed by the plaintiff, which is a procedural lapse, considering that there was no doubt regarding the identification of the LRs.

### ISSUES

6. From the pleadings of the parties, following issues were framed on 23.07.2019:-

**1. Whether the property in question is not free from all encumbrances as same is in litigation and therefore, the defendant is not liable to pay the balance sale consideration amount to the plaintiff? OPD**

**2. Whether the plaintiff is entitled to the recovery of the balance sale consideration amount of Rs.10 lakhs from the defendant? ?OPP**

**3. Whether the plaintiff is entitled to the decree of permanent injunction, as prayed for ?OPP**

**4. Whether the plaintiff is entitled to the decree of mandatory injunction, as prayed for ? OPP**

**5. Relief.**

### PLAINTIFF'S EVIDENCE

7. Plaintiff led its evidence and examined herself as PW-1. PW1 tendered her evidence by way of affidavit, which is Ex.PW1/A. She has relied upon the following documents:

- (1) Cheque bearing no. 025996 dated 13.03.2016 for a sum of Rs.10,00,000/- as Ex. PW-1/1.
- (2) Copy of bank statement showing the abovestated transaction as Ex. PW-1/2.
- (3) Legal notice dated 17.07.2017 as Ex. PW-1/3.
- (4) Postal receipt as Ex. PW-1/4.
- (5) Copy of speed post tracking report as Ex. PW-1/5.

PW-1 was cross examined on 26.08.2023. In her cross examination, she has stated that her father gifted her the property No. F-44B, Gali No.12, Laxmi Nagar, Delhi- 92. Property admeasures 170 sq yards, out of which 60 sq yards was gifted to her by her father. She further stated that she sold the property of 60 Sq yards to the defendant in the year around 2016 or 2017. She submitted that no other case is pending with respect to the said property. She submitted that a case was filed by her brother with respect to the total property of 170 sq. yards in Karkardooma Courts. She voluntarily submitted that her share of 60 sq yards was clear and she had placed the record of said case on record. However, court upon perusal of record court observed that there is not such record in judicial file. She further stated that she does not know who is in possession of the said property including her share also. In her cross examination, she stated that she presented the said cheque of Rs.10 lakhs with Dena Bank.

No other witness was examined on behalf of plaintiff.

PE was closed on 26.08.2023

### **DEFENDANT'S EVIDENCE**

8. Defendant's side in support of its case has examined deceased defendant's son/Sagar Verma as DW-1. He has tendered his evidence by way

of affidavit, which is Ex. DW1/A. He has relied upon (i) Certified copy of the settlement under Mediation Centre in case No. 2934/2016, Karkardooma Courts, Delhi as Ex. DW-1/1, (ii) Certified copy of plaint and WS filed in Case No.2934/2016 in Karkardooma Courts, Delhi as Ex. DW-1/2, (iii) Certified copy of orders in case No. 2934/2016 as Ex. DW-1/3, (iv) Copy of MoU filed in case no. 2934/2016 (de-exhibited and marked as Mark-A) and (v) Copy of death certificate of Late Ashok Kumar Verma as Ex. DW-1/5.

In his cross examination, LR of defendant stated that he is the only son of defendant Ashok Kumar Verma. He does not know the amount of sale consideration of the suit property purchased by his father. He admitted that his father has further sold the property.

Defendant has not examined any other witness.

**DE was closed on 05.01.2026.**

9. Arguments heard. Record perused.

10. My findings on the issues are as following:

**ISSUE NO.1&2:-**

**1. Whether the property in question is not free from all encumbrances as same is in litigation and therefore, the defendant is not liable to pay the balance sale consideration amount to the plaintiff? OPD**

**2. Whether the plaintiff is entitled to the recovery of the balance sale consideration amount of Rs.10 lakhs from the defendant? ?OPP**

11. The plaintiff has filed the present suit for recovery of ₹10 lakhs along with the relief of permanent and mandatory injunction and cancellation of the sale deed dated 17th February 2016.

12. The case of the plaintiff is that she is the lawful owner of the suit property and was looking for prospective buyers. The defendant agreed to purchase the property for a total sale consideration of ₹31,40,000. Out of the said amount, ₹5 lakhs was paid through cheque, ₹6,40,000 through another cheque, ₹10 lakhs through cheque no. 25995, and another cheque bearing no. 25996 dated 13th March 2016 for ₹10 lakhs was issued towards the remaining consideration.

13. It is stated that after receiving the consideration amount, the sale deed was executed in favour of the defendant. However, the cheque dated 13th March 2016 for ₹10 lakhs was dishonoured. Hence, the present suit has been filed for recovery of the said amount for which the cheque was issued.

14. The defendant has taken the defence that the property was not free from encumbrances, and therefore he had did not make the payment of the said cheque. Defendant has taken the defence that the plaintiff always knew that the property would invite some litigation, and yet she proceeded with the transfer of the property and execution of the sale deed. He has admitted that possession of the property lies with him. He has also admitted the issuance of the cheque and the execution of the sale deed. The issue has been framed as whether the property in question was not free from all encumbrances, as the same is under litigation. The meaning and import of the Word “encumbrance” has been discussed by the Hon’ble Supreme Court of India in ***Ai Champdany Industries Limited v. Official Liquidator And Another (2009) SCC (4) 486***. Hon’ble Supreme Court of India observed as following:-

*13. We may, however, notice some dictionary meanings of the said word as reliance thereupon has been placed by Mr Sibaji Sen. In Stroud's Judicial Dictionary of Words and Phrases, 5th*

*Edn., encumbrance is defined as: “being, ‘a claim, lien, or liability, attached to property’; and this definition is wide enough to cover the plaintiff’s claim, which was, as assignee for value of a reversionary interest, against a person coming in under a subsequent title”.*

In ***Supreme Court on Words and Phrases*** it is stated that “the word ‘encumbrance ’ means a burden or charge upon property or a claim or lien upon an estate or on the land”.

In ***Advanced Law Lexicon***, encumbrance is defined as:

*“An infringement of another’s right or intrusion on another’s property.”*

In ***Black’s Law Dictionary*** encumbrance is defined as:

*“Any right to, or interest in, land which may subsist in another to diminution of its value, but consistent with the passing of the fee....”*

***Encumbrance , therefore, must be capable of being found out either on inspection of the land or the office of the Registrar or a statutory authority. A charge, burden or any other thing which impairs the use of the land or depreciates in its value may be a mortgage or a deed of trust or a lien or an easement. Encumbrance , thus, must be a charge on the property. It must run with the property. If by reason of the statute no such burden on the title which diminishes the value of the land is created, it shall not constitute any encumbrance .***

15. Copy of the plaint of the suit filed by the brother of Plaintiff is on record as Ex-DW1/2. The Copy of the suit filed by the brother of the plaintiff

has been placed on record. The said suit was filed in July 2016, as evident from the date on the plaint. The suit was filed for declaration of the will dated 15th January 2015 as the last and final will of the deceased Ram Dayal Singh, for permanent injunction, and for cancellation of the wills dated 17th August 2007 and 14th October 2009, and the sale deed dated 23rd February 2016 executed by defendant No. 2 (the plaintiff herein) in the favour of the defendant No. 3 (the defendant herein).

16. From the pleadings and documents following dates are clearly established:

1. **Sale Deed was executed on 17<sup>th</sup> February 2016\*<sup>1</sup>**
2. **Suit by the brother of the Plaintiff was filed on 8<sup>th</sup> July, 2016.**

17. It is evident that the suit was filed subsequently to the execution of the sale deed. On the date of execution of the sale deed, there was no pending litigation in respect of the property in question. The suit filed by the plaintiff's brother was instituted subsequently. Hence, on the date of execution of sale deed there was no encumbrance on the property. By virtue of the execution of the sale deed, title had already passed to the defendant. The defendant himself made no effort to seek cancellation of the sale deed. On the contrary, he continued to enjoy the benefits of the title so transferred. On the strength of this matured title, he participated as a party in the

---

1 In the present suit the date of sale deed is given as 17.02.2016 whereas in the suit no. 2934/2016 date of sale deed is given as 23.02.2016. However perusal the sale deed shows that both the dates are correct with respect to the sale deed. Sale deed has been executed on 17.02.2016 but the certificate (section 60) has been issued on 23.02.2016. Plaintiff in suit no. 2934/2016 has taken this date as the date of execution. Other details of the sale deed provided in the plaint removes all doubts. The sale deed bears identification number as **Registration No.840, in Book No.1 Vol No.720**. The same details are provided in the prayer clause of suit no. 2934/2016. It clearly shows that suit no. 2934/2016 was with respect to the same sale deed.

settlement arrived at in Civil Suit No. 2934 of 2016.

18. The said settlement was facilitated by the Delhi Mediation Centre, wherein it was agreed that the plaintiff (*brother of Plaintiff herein*) and defendant No. 3 (*defendant herein*) shall make joint efforts to sell the suit property within six months from the date of settlement. It was further agreed that, out of the total sale proceeds, a sum of ₹20,00,000/- shall be retained by defendant No. 3, and the remaining amount shall be shared equally between the plaintiff and defendant No. 3.

19. It is thus evident that defendant No. 3 (who is the defendant in the present case) derived benefit from the said sale deed and also received a share in the sale consideration of the property.

20. Besides, a mere possibility that a third party may institute a suit in respect of a property cannot be considered as an encumbrance. There was no subsisting charge on the property at the time of execution of the sale deed. The sale deed was duly executed, and the interest in the property stood properly transferred. And, this transferred interest subsequently formed the basis of a settlement which ultimately culminated in the sale of the property by the defendant herein. There is, therefore, no defect in the title of the defendant.

21. In the present case, from the pleadings and evidence of the parties, following factual propositions are evident:

- i. **A sale deed was executed by the plaintiff in favor of the defendant.**
- ii. **The amount was agreed to be paid in full.**
- iii. **The amount was to be paid in terms of four cheques that were issued and mentioned in the sale deed itself.**

- iv. **One of the cheques was dishonoured due to insufficiency of funds.**
- v. **The defendant's stand is that, as there were encumbrances on the property, he did not facilitate the payment of the remaining cheque.**
- vi. **The sale deed resulted in a complete transfer of property to him.**
- vii. **On the basis of the same title, he entered into a settlement and subsequently sold it off.**

22. This court is of the considered opinion that the defendant is liable to pay the amount of Rs. 10 lakhs to the plaintiff. The defendant has failed to show any encumbrances on the said property. There is no counterclaim or set-off to the same effect.

23. In view of the above, it is held that there was no encumbrance on the property and plaintiff is entitled to recover Rs.10,00,000/- from the defendant.

**Accordingly, Issue Nos. 1 and 2 are decided in favour of the plaintiff.**

#### **ISSUE NO.3 & 4**

**3. Whether the plaintiff is entitled to the decree of permanent injunction, as prayed for ?OPP**

**4. Whether the plaintiff is entitled to the decree of mandatory injunction, as prayed for ? OPP**

24. As far as the relief of permanent injunction and mandatory injunction is concerned, these reliefs are evidently premised on the relief of cancellation of the sale deed, which is a prayer in the plaint. However, the said relief can't be granted for two reasons. First of all, it has become infructuous, as the suit property has subsequently been sold off in pursuance of a settlement agreement that took place between the defendant herein and the brother of the

plaintiff. Secondly, even otherwise, it is a settled position of law that where, by virtue of sale deed, parties intended to transfer the property therein and property has been transferred by way of sale deed, cancellation of a sale deed cannot be sought on the ground of non-payment of the consideration amount.

In this regard, it would be relevant to quote the recitals of the sale deed:

*IN THIS SALE DEED WITNESSETH AS UNDER:—*

*1. In consideration of Rs. 31,40,000/- (Rupees Thirty One Lacs and Forty Thousand only), which has been received already in advance by the Vendor from the Vendee as per detail under:—*

*a) Rs. 5,00,000/- vide Cheque No. 019540 dt. 04.02.2016*

*b) Rs. 6,40,000/- vide Cheque No. 025994 dt. 17.02.2016*

*c) Rs. 10,00,000/- vide Cheque No. 025995 dt. 17.02.2016*

*d) Rs. 10,00,000/- vide Cheque No. 025996 dt. 17.02.2016*

.....

*3. That the Vendee is now absolute owner of the said Property under sale and he will be at full liberty to use, enjoy and utilise the said property under sale and also have right, power absolute authority and be fully competent to sell or dispose off the same to anyone in any manner as he may like. That the Vendor, her heirs, successors, survivors and assigns shall have no claim, title and interest in the said Property in any case.*

It is evident that parties, by way of the present sale deed, intended to transfer the property. The value for which the said cheque was issued and

subsequently dishonoured, has been factored in while calculating the price paid by the vendee. If there was no provision for consideration in the sale deed, the sale deed would have been void or voidable. However, where there is a sale consideration for the sale deed, but only a part of the consideration has not been realised, no decree for cancellation can be passed on this basis. The only remedy available to the plaintiff is to seek recovery.

25. Hon'ble Supreme Court of India in ***Dahiben vs. Arvindbhai Kalyanji Bhanusali (2020 AIR SC 3310)*** while referring to its previous judgment in ***Vidyadhar v. Manikrao & Anr (1999) 3 SCC 573*** observed as following:-

*In Vidyadhar v. Manikrao & Anr this Court held that the words “price paid or promised or part paid and part promised” indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a “sale”, the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.*

*In view of the law laid down by this Court, even if the*

*averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed”*

26. Therefore, it is evident that the sale deed was executed by the plaintiff in favour of the defendant, and both the parties intended to transfer the property therein. The only dispute was with respect to the payment of a part of the sale consideration, as the cheque issued for ₹10 lakh was dishonoured. In such a situation, the only remedy available to the plaintiff herein was to seek recovery of the said amount. The property stood duly transferred. Plaintiff has no right whatsoever to seek cancellation or any sort of injunction with respect to the said property.

**Hence, issue No.3 and 4 are decided against the plaintiff.**

### **RELIEF**

27. In view of the findings of issue no.1,2,3 and 4 plaintiff is held entitled to recover Rs,10,00,000/- from the defendant. Considering that this amount was to be paid as consideration for the sale of immovable property, which is subject to high appreciation within a short duration and also the fact that defendant, despite being a beneficiary of the sale deed and subsequently enjoying the fruits thereof, did not pay the part of the sale consideration, this Court deems it fit to award interest at 18% per annum as pre-suit interest, interest *pendente lite*, and also future interest.

Accordingly, Suit is decreed in favour of the plaintiff for a sum of Rs.10,00,000/- along with the pre-suit interest @ 18% per annum from

21.04.2016 (date of cheque dishonour) to 12.10.2017, interest pendete lite @ 18% per annum from the date of filing of suit till the date of decree and future interest @ 18% per annum from the date of decree till the satisfaction of the decree.

**The cost of the suit is also awarded to the plaintiff.**

**Decree sheet be prepared accordingly, on filing of amended memo of parties as well on filing of deficient court fees, if any.**

**File be consigned to the Record Room thereafter.**

**Typed to the dictation directly,  
corrected and pronounced in the  
open Court on 30.03.2026.**

**(Abhitosh Pratap Singh Rathore)  
District Judge-05, South West District  
Dwarka Courts, New Delhi**