IN THE COURT OF DISTRICT JUDGE-08 WEST, TIS HAZARI COURTS, DELHI
Presided by: Ms. Susheel Bala Dagar

CS DJ 611226/16
CNR Number: DLWT01-002503-2015
In the matter of:
Shri Harjeet Singh Kumar
S/o Late S. Mohinder Singh
R/o WZ-242A, Ist Floor, Gali No.4,
Virender Nagar, PO Janak Puri,
New Delhi-110058. ….. Plaintiff

Versus

S. Avtar Singh (deceased) through his LRs
a) Smt. Harpreet Kaur
W/o late S. Avtar Singh
b) Ms. Dilpreet Kaur
D/o late S. Avtar Singh
c) Shri Ramanpreet Singh
S/o late S. Avtar Singh
All R/o B-2/51 (Third Floor),
Janak Puri, New Delhi-110058 ….. Defendants

Date of institution	:	**17.11.2015**
Date of reserved for judgment	:	**04.07.2026**
Date of judgment	:	**30.07.2026**

Suit for recovery of Rs. 48,14,400/-

JUDGMENT

1. The plaintiff has instituted the present suit seeking recovery of Rs.48,14,400/- along with pendente lite and future interest against the legal representatives of Late Sh. Avtar Singh. The suit is founded upon an Agreement to Sell dated 23.11.2012, subsequent receipts acknowledging payment of Rs.35,40,000/- by the plaintiff, and a Cancellation Agreement

dated 22.03.2013 whereby the deceased defendant allegedly undertook to refund the entire advance amount received from the plaintiff. The plaintiff alleges that despite such undertaking, the amount was never refunded and consequently seeks recovery of the principal amount together with interest.

2. The defendants, being the legal representatives of the deceased defendant, resist the suit principally on the ground that after execution of the Cancellation Agreement, the deceased defendant refunded Rs.30,00,000/- to the plaintiff in five cash instalments of Rs.6,00,000/- each and that only Rs.5,40,000/- remained payable. The defendants also dispute allegations of fraud, challenge the territorial jurisdiction of the Court and contend that they have inherited no estate of the deceased so as to incur personal liability.

Plaintiff's Case

3. The plaintiff pleaded that the deceased defendant represented himself to be the owner of the built-up second floor of property bearing No. JZ-520, Shiv Nagar, New Delhi and induced the plaintiff to purchase the same for a total sale consideration of Rs.1,50,00,000/-. Acting upon such representation, the plaintiff entered into an Agreement to Sell dated 23.11.2012 and paid an earnest amount of Rs.10,00,000/-. Thereafter, further payments aggregating Rs.25,40,000/- were made, bringing the total payment to Rs.35,40,000/-. It was further agreed that the plaintiff's two immovable properties would be adjusted towards a value of Rs.90,00,000/- while the remaining consideration would be paid at the time of execution of the sale deed.

4. According to the plaintiff, instead of completing the transaction, the deceased defendant cancelled the Agreement to Sell on 22.03.2013 and executed a Cancellation Agreement acknowledging his liability to refund the entire advance amount of Rs.35,40,000/- on or before 10.04.2013. The plaintiff alleges that despite such acknowledgment, the amount was never refunded. It is further alleged that the plaintiff subsequently discovered that the defendant had already sold the property to another purchaser even before entering into the Agreement to Sell with the plaintiff, thereby establishing fraudulent concealment and misrepresentation.

5. Since no payment was received despite repeated demands and issuance of legal notice dated 02.11.2015, the plaintiff instituted the present suit claiming the principal amount of Rs.35,40,000/- together with interest calculated at 12% per annum amounting to Rs.12,74,400/-, thereby claiming a total recovery of Rs.48,14,400/- together with future interest and costs.

Defence of the Defendants

6. The defendants admit the execution of the Agreement to Sell, the receipts acknowledging receipt of Rs.35,40,000/- and the subsequent Cancellation Agreement. However, their principal defence is that after cancellation of the transaction, the deceased defendant refunded Rs.30,00,000/- to the plaintiff in five cash instalments in the presence of close relatives and that only Rs.5,40,000/- remained payable. According to the defendants, the plaintiff deliberately suppressed this repayment and falsely claimed the entire amount.

7. The defendants further pleaded that the plaintiff himself was unable to arrange the balance consideration owing to recession in the property market and that the transaction was cancelled at his own request. The allegations of fraud and prior sale of the property were specifically denied. It was also pleaded that the legal notice had been sent to an incorrect address and that the Court lacked territorial jurisdiction.

Replication

8. In replication, the plaintiff denied every allegation of repayment and asserted that not even a single rupee had ever been returned by the deceased defendant. The plaintiff further pointed out that the defendants had failed to produce any receipt or acknowledgment evidencing repayment. It was also pleaded that even according to the written statement, the defendants admitted liability to the extent of Rs.5,40,000/-. The plaintiff further asserted that all transaction documents including the Agreement to Sell, receipts and Cancellation Agreement mentioned the address of the deceased defendant as B-3/51, Janakpuri and, therefore, the plea regarding incorrect address was an afterthought.

Issues

9. On the basis of the pleadings, the learned predecessor framed the following issues on 09.05.2022:

Issue no. 1 Whether the defendant has returned amount for a sum of Rs. 30 Lacs to the plaintiff? OPD

Issue no. 2 Whether the plaintiff is entitled to a decree in the sum of Rs. 30 Lacs against the defendant? OPP

Issue no. 3 Whether the plaintiff is entitled for interest, if yes at what rate

and for which period? OPP

Issue no. 4 Relief

<u>Plaintiff Evidence:-</u>

10. In support of his case, the plaintiff examined himself as PW-1 and proved the Agreement to Sell dated 23.11.2012, receipts acknowledging payment of Rs.35,40,000/-, the Cancellation Agreement dated 22.03.2013, the photocopy of the sale deed shown by the defendant and the legal notice dated 02.11.2015. The plaintiff also examined PW-2, an official from the office of the Sub-Registrar, who proved certified copies of two registered sale deeds pertaining to the suit property.

<u>PW1/Harjit Singh Kumar</u>

11. PW1/Harjit Singh tendered his evidence by way of affidavit Ex. PW1/A and relied upon the following documents : agreement to sell and purchase dated 23.11.2012 Ex. PW1/1, receipt dated 23.11.2012 executed by defendant acknowledging the received amount of Rs. 10 lacs Ex. PW1/2, receipt dated 05.12.2012 for Rs. 7 Lacs Ex. PW1/3, receipt dated 13.02.2013 for Rs. 3 Lacs executed by the defendant Ex. PW1/4, cancellation of agreement to sell & purchase dated 22.03.2013 Ex. PW1/5, photocopy of sale deed dated 23.01.2012 Mark P1, true copy of notice dated 02.11.2015 with postal receipts and undelivered post envelope Ex. PW1/6.

12. During his cross-examination, PW-1 deposed that he is a graduate and stated that he did not recollect when his affidavit in evidence was prepared. He testified that he knew the defendant because they had previously resided in the same building, where the plaintiff occupied the

first floor and the defendant the ground floor, and that the defendant had represented himself as the owner of the suit property.

13. PW-1 confirmed that the Agreement to Sell dated 23.11.2012 was executed between the parties, that it was prepared by the defendant, that the total sale consideration was Rs.1.50 crore, and that the transaction was to be completed by 23.03.2013. He admitted that he had not placed any document on record to prove that he possessed the balance sale consideration before the stipulated date but maintained that such proof was unnecessary and that all payments actually made by him had already been supported by documentary evidence.

14. PW-1 categorically denied the defendants' case that he failed to arrange the balance sale consideration or that the Cancellation Agreement was executed because of his financial inability. He also denied that the defendant refunded Rs.30,00,000/- in five cash instalments of Rs.6,00,000/- each or that he sought cancellation of the transaction due to a recession in the property market or lack of funds. According to him, no amount whatsoever was ever refunded by the defendant, and therefore no receipt acknowledging repayment was ever issued.

15. PW-1 further denied that he demanded an additional sum of Rs.10,00,000/- from the defendant or that only Rs.5,40,000/- remained payable. He admitted that the cash payments made by him were not reflected in his Income Tax Returns. PW-1 stated that he did not recollect the exact address of the defendant at the time of institution of the suit but believed that the defendant was residing in Janakpuri with his family.

16. After being confronted with the Cancellation Agreement, PW-1

admitted that it provided for refund of the advance amount after the sale of the suit property. However, he asserted that he later discovered that the defendant had already sold the property to another person before entering into the agreement with him. He admitted that this fact was not pleaded in the plaint but explained that he acquired this knowledge only after filing the suit through information received from Gurjeet Singh.

17. PW-1 also admitted that he had cordial relations with the defendant during the relevant period but denied that this explained the absence of receipts for the alleged repayments, reiterating that no repayment had ever been made. He further denied that the agreement was cancelled at his request due to his inability to pay the balance sale consideration. PW-1 confirmed that he had issued the legal notice to the defendant and denied the suggestions that the defendant had repaid Rs.30,00,000/-, that the present suit was false, or that he was deposing falsely before the Court.

18. **PW2/Chaman Lal Record Keeper, Sub-Registrar II, Basaidarapur, District West** proved the (1) sale deed bearing registration no. 2075 book No.1. vol No. 19579, pages 78-84 registered on 27.01.2012 Ex. PW2/1 & (2) sale deed bearing registration no.11201 Book No.1, Vol. No. 19874, page no.55-61 registered on 28.04.2012.

19. During cross examination, PW2/Chaman Lal stated that he has no personal knowledge of the facts relating to the record produced before the Court, as he is merely a summoned witness. PW2 further stated that his testimony is based solely on the official records brought by him and not on his personal knowledge of the transactions or events in question.

After cross examination, the plaintiff evidence was closed.

<u>Defendant Evidence:-</u>

20. On behalf of the defendants, DW-1, the widow of the deceased defendant, DW-2 Tejbir Singh and DW-3 Surender Kumar Thakur entered the witness box in support of the plea that Rs.30,00,000/- had been repaid in cash after cancellation of the Agreement.

<u>DW1/Harpreet Kaur</u>

21. DW1/Harpreet Kaur tendered her evidence by way of affidavit Ex.DW-1/1 and relied upon the following documents : her aadhar card Ex.DW-1/A

During her cross-examination, DW-1 Harpreet Kaur, the widow and legal representative of the deceased defendant, deposed that her husband was engaged in the construction business and that they had been residing at Janakpuri for the last 16–17 years. She claimed that the property in which they resided belonged to her mother but admitted that she had not produced any documentary proof of ownership. DW-1 admitted the execution of the Agreement to Sell, the receipts, and the Cancellation Agreement by identifying the signatures of her deceased husband and her own signatures as an attesting witness. She further admitted that the agreed sale consideration was Rs.1.50 crore and that her husband had received Rs.35,40,000/- from the plaintiff towards part sale consideration.

22. DW-1 expressed ignorance regarding the address mentioned in the transaction documents, admitted that she had never read the contents of the Cancellation Agreement, and stated that she did not know from whom

or when her husband had purchased the suit property. She also admitted the photographs and signatures of her husband on the registered sale deeds but stated that she did not know whether the property had already been sold to Gurjeet Singh Chawla before the Agreement to Sell was executed with the plaintiff or whether the Cancellation Agreement was executed because of such prior sale. With regard to the alleged repayment of Rs.30,00,000/-, DW-1 admitted that she could not state the exact date, month, or year of the alleged repayments and possessed no receipt or documentary proof thereof. She further admitted that the written statement did not state that the repayments had been made in her presence or in the presence of Tejbir Singh.

23. DW-1 repeatedly admitted that she had no personal knowledge of several material facts stated in her affidavit and that her testimony was based mainly on what her deceased husband had told her. She also admitted that she had no knowledge regarding the plaintiff's properties, the chain of title documents, or how her husband could have entered into the Agreement to Sell if the property had already been sold. She further stated that although her husband maintained bank accounts and had faced criminal proceedings, she had no knowledge of the account balances or the details of those proceedings and claimed that he had been falsely implicated. DW-1 denied the suggestions that her husband had failed to repay Rs.30,00,000/- or that the entire amount of Rs.35,40,000/- with interest remained payable, and she denied that she was deposing falsely before the Court.

<u>**DW2/Tejbir Singh**</u>

24. DW2/Tejbir Singh tendered evidence by way of affidavit Ex.DW-2/B.

During his cross-examination, DW-2 Tejbir Singh deposed that he was the maternal uncle of DW-1 Harpreet Kaur and that the deceased Avtar Singh was his late brother's son-in-law. He stated that Avtar Singh was engaged in the construction business but could not remember the name of his business establishment or several other particulars relating to it. DW-2 admitted that he had only general knowledge of the property transaction between the plaintiff and the deceased and could not provide the exact particulars of the suit property or the agreed sale consideration. He further admitted that he had never read either the Agreement to Sell or the Cancellation Agreement and that his knowledge regarding those documents was based only on what he had been told by others.

25. DW-2 stated that he had financially assisted Avtar Singh by giving him Rs.5,00,000/- in cash and claimed that Avtar Singh had repaid Rs.30,00,000/- to the plaintiff in cash instalments. However, he admitted that he could not remember the exact date, month, or year of the alleged repayments, did not know who was present when the payments were allegedly made, and that his knowledge regarding the repayment was based solely on what Avtar Singh had told him. DW-2 further admitted that he had not withdrawn the amount of Rs.5,00,000/- from any bank account, had not recorded the transaction in any ledger or Income Tax Return, and had arranged the money in cash from persons known to him. He also admitted that he did not know the date on which Surender Kumar Thakur allegedly gave Rs.5,00,000/- to Avtar Singh or who was present at

that time.

26. DW-2 categorically admitted that there was no receipt, acknowledgment, or any documentary evidence to prove that the deceased defendant had repaid Rs.30,00,000/- to the plaintiff. He merely volunteered that Avtar Singh had informed him that the dispute with the plaintiff had been settled. DW-2 also admitted that he had no knowledge of the particulars of the criminal case against Avtar Singh and, although he asserted that the prior sale of the suit property had been made with the plaintiff's consent, he disclosed no basis for such knowledge. DW-2 denied the suggestions that no repayment had ever been made to the plaintiff or that he was deposing falsely at the instance of the legal representatives of the deceased defendant.

DW3/Surender Kumar Thakur

27. DW3/Surender Kumar Thakur tendered evidence by way of affidavit Ex.DW-3/B.

During his cross-examination, DW-3 Surender Kumar Thakur deposed that he had retired in 2017 after carrying on business at Mayapuri, Delhi, and that he knew the deceased Avtar Singh through family relations, as he treated Harpreet Kaur like his daughter. He stated that he met Avtar Singh only occasionally at family functions and had never met the plaintiff personally. DW-3 admitted that he had no knowledge of the particulars of the suit property, the Agreement to Sell, the Cancellation Agreement, the sale consideration, or the amount allegedly payable by the deceased to the plaintiff. He further stated that he could not recollect whether he had ever read the transaction documents and that the issue of repayment was discussed only during a family meeting.

28. With regard to the defendants' plea of repayment, DW-3 admitted that he could not state the exact date, month, or year when the alleged repayment of Rs.30,00,000/- was made. He stated that family members had financially assisted Avtar Singh and that he himself had contributed Rs.5,00,000/- in cash through Tejbir Singh. However, he admitted that the amount had not been withdrawn from any bank account and had not been disclosed in his Income Tax Returns. DW-3 admitted that he had never seen any receipt, acknowledgment, or other documentary evidence proving the alleged repayment of Rs.30,00,000/- to the plaintiff and that his knowledge regarding such repayment was derived solely from Tejbir Singh rather than from his own personal knowledge.

29. DW-3 also admitted that although he was aware of a criminal case against Avtar Singh, he did not know its particulars and had learnt about it only from family members. DW-3 denied the suggestions that no repayment had been made or that he was deposing falsely at the instance of the legal representatives of the deceased defendant. However, his evidence established that his testimony was based largely on information received from others and was unsupported by any documentary proof of the alleged repayment.

After cross examination, defendant evidence was closed.

<u>Final arguments</u>

30. I have heard Shri Rohit Chawla Ld. Counsel for plaintiff and Shri Pradeep Murria, Ld. Counsel for defendant and perused the record. Ld.

Counsel for defendant has filed written synopsis of his arguments.

Arguments on behalf of Ld. Counsel for plaintiff

31. It is argued that the plaintiff has established his case through cogent documentary and oral evidence, whereas the defendants have failed to prove their plea that Rs.30,00,000/- was repaid after execution of the Cancellation Agreement. The Agreement to Sell, the receipts acknowledging payment of Rs.35,40,000/-, and the Cancellation Agreement are admitted documents, and the defendants have also admitted that the deceased defendant received Rs.35,40,000/- from the plaintiff.

32. The Cancellation Agreement contains an unequivocal acknowledgment of the deceased defendant's liability to refund the advance amount, thereby creating an independent contractual obligation to repay the money. Consequently, the present proceedings are for recovery of money, and the plaintiff is not required to prove his readiness and willingness to perform the original Agreement to Sell.

33. The defendants have failed to produce any documentary evidence, such as receipts, acknowledgments, bank records, account books, or income tax records, to substantiate their plea of repayment. The evidence of DW-1, DW-2, and DW-3 also fails to prove repayment, as each of them admitted lack of personal knowledge of the material facts, inability to recall the alleged repayments, and absence of any documentary proof, rendering their testimony largely hearsay. In contrast, the plaintiff consistently maintained that no amount had ever been repaid, and nothing material emerged in his cross-examination to discredit his version. The

objections raised by the defendants regarding the plaintiff's financial readiness, non-disclosure of cash payments in his Income Tax Returns, delay in filing the suit, and allegations concerning the prior sale of the property do not affect the admitted contractual obligation created by the Cancellation Agreement.

34. The evidence of PW-2 and the certified copies of the registered sale deeds further support the plaintiff's case. The defendants' plea that they inherited no estate does not absolve them of liability, as the extent of inherited estate is relevant only at the stage of execution. Moreover, the defendants have themselves admitted that at least Rs.5,40,000/- remained payable, thereby acknowledging a subsisting liability. The complete absence of documentary proof of repayment warrants an adverse inference against the defendants under Section 119 illustration (g) of the Bharatiya Sakshya Adhiniyam. The plaintiff has therefore proved the execution of the Agreement to Sell, payment of Rs.35,40,000/-, execution of the Cancellation Agreement, the defendant's acknowledged liability to refund the amount, and the defendants' failure to prove repayment. Accordingly, Issue No. 1 is liable to be decided against the defendants, and the plaintiff is entitled to a decree for recovery of Rs.48,14,400/- together with pendente lite and future interest under Section 34 CPC, costs of the suit, and all consequential reliefs, as his claim stands proved on the preponderance of probabilities.

Arguments by Ld. Counsel for defendant

35. The defendants, as the legal representatives of Late Sh. Avtar Singh, oppose the plaintiff's suit for recovery of Rs. 48,14,400/- with

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interest and contend that the plaintiff has failed to prove his claim. While admitting the execution of the Agreement to Sell, receipt of Rs. 35,40,000/- by the deceased, and execution of the Cancellation Agreement, they maintain that Rs. 30,00,000/- was repaid to the plaintiff in five cash instalments, leaving only Rs. 5,40,000/- unpaid. They also submit that they inherited no estate from the deceased and, therefore, cannot be held personally liable beyond the estate, if any, inherited by them.

36. The defendants argue that the burden of proof lies entirely upon the plaintiff, who must establish his claim through cogent and reliable evidence and cannot succeed merely by pointing out weaknesses in the defence. They contend that the plaintiff suppressed material facts by failing to prove his financial capacity to complete the transaction, by not reflecting the alleged cash payments in his Income Tax Returns, and by introducing the allegation regarding the prior sale of the property only during his evidence. The defendants further deny the allegations of fraud, asserting that the plaintiff has failed to produce any independent evidence to establish concealment or dishonest intention on the part of the deceased. They submit that the testimony of PW-1 was weakened during cross-examination because he failed to prove his readiness and willingness, relied solely upon his own testimony, and did not examine any independent witness or initiate immediate criminal proceedings.

37. The defendants contend that the evidence of DW-1, DW-2, and DW-3 supports their plea of repayment. They argue that the absence of documentary proof and the inability of the witnesses to remember exact

dates are natural in family cash transactions and do not render their testimony unreliable. They further submit that the cordial relationship between the parties, their practice of dealing in cash, and the delay in filing the suit make the alleged cash repayments plausible.

38. The defendants also contend that the plaintiff has failed to prove that the entire amount remained unpaid or to establish the nature and extent of any estate inherited by the legal representatives. They further argue that neither the Agreement to Sell nor the Cancellation Agreement provides for payment of interest and that interest under Section 34 CPC is discretionary, particularly where there is a bona fide dispute regarding repayment. The defendants submit that minor inconsistencies in the defence evidence are attributable to the passage of time and do not affect its credibility. According to them, the evidence must be appreciated as a whole, and the plaintiff has failed to establish his entitlement to recovery, interest, or the allegations of fraud and concealment. They therefore pray that the suit be dismissed with costs and that no decree be passed against them.

Court observation and findings

Principles Governing Burden of Proof

39. Before appreciating the evidence, it is necessary to notice the settled principles governing the burden of proof. Sections 104 to 106 BSA provide that the burden of proving a fact lies upon the party who asserts its existence. Where a defendant admits receipt of money but sets up repayment as a defence, repayment is a positive fact specially within the knowledge of the defendant and the burden to establish such

repayment lies squarely upon him.

40. In ***Anil Rishi v. Gurbaksh Singh, (2006) 5 SCC 558***, the Hon'ble Supreme Court held that the burden of proof initially rests upon the party who substantially asserts the affirmative of the issue. Once the plaintiff establishes a prima facie case, the onus shifts upon the defendant to prove the special defence pleaded by him. Similarly, in ***Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi, AIR 1960 SC 100***, the Supreme Court held that admissions constitute substantive evidence and, unless satisfactorily explained, are the best evidence against the party making them. Equally well settled is the principle that where documentary evidence is admitted and execution thereof is not disputed, the Court ordinarily attaches greater evidentiary value to contemporaneous written documents than to subsequent oral assertions unsupported by any documentary record.

41. Another well-established principle is embodied in Section 119 illustration (g) BSA. Where a party withholds the best available evidence, the Court is entitled to draw an adverse inference that the withheld evidence, if produced, would have gone against that party. Bearing these settled principles in mind, the Court now proceeds to appreciate the evidence led by the parties.

Issue wise findings

Issue no. 1 Whether the defendant has returned amount for a sum of Rs. 30 Lacs to the plaintiff? OPD

Appreciation of plaintiff evidence

42. The principal controversy requiring adjudication is whether the

defendants have successfully proved that the deceased defendant repaid Rs.30,00,000/- to the plaintiff after execution of the Cancellation Agreement dated 22.03.2013. The determination of this issue necessarily depends upon the appreciation of documentary evidence, admissions of the parties and the credibility of the oral testimony led by them.

43. The plaintiff examined himself as PW-1 and tendered his affidavit Ex. PW-1/A reiterating the averments contained in the plaint. PW-1 proved the Agreement to Sell dated 23.11.2012 as Ex. PW-1/1, the receipt acknowledging payment of Rs.10,00,000/- as Ex. PW-1/2, receipt dated 05.12.2012 acknowledging payment of Rs.7,00,000/- as Ex. PW-1/3, receipt dated 13.02.2013 acknowledging payment of Rs.3,00,000/- as Ex. PW-1/4, the Cancellation Agreement dated 22.03.2013 as Ex. PW-1/5, photocopy of the sale deed shown by the defendant as Mark P-1 and the legal notice dated 02.11.2015 along with postal receipts as Ex. PW-1/6.

44. The execution of these documents assumes considerable significance because the defendants have never disputed either the signatures of the deceased defendant or the execution of these documents. Rather, DW-1 has categorically admitted during her cross-examination that the signatures appearing upon every page of the Agreement to Sell, the receipts and the Cancellation Agreement are those of her deceased husband and that she herself signed the documents as an attesting witness. These admissions dispense with formal proof of execution and constitute substantive evidence against the defendants.

45. The Agreement to Sell Ex. PW-1/1 records the agreed sale consideration of Rs.1,50,00,000/-. It further records payment of earnest

money and contemplates adjustment of two immovable properties belonging to the plaintiff. More importantly, the receipts Ex. PW-1/2 to Ex. PW-1/4 acknowledge receipt by the deceased defendant of various amounts aggregating Rs.35,40,000/-. These receipts were executed contemporaneously with the transaction and bear the admitted signatures of the deceased defendant. They constitute primary documentary evidence regarding receipt of the money.

46. By the Cancellation Agreement Ex. PW-1/5 executed on 22.03.2013. By this document, the parties mutually agreed to cancel the Agreement to Sell. Simultaneously, the deceased defendant acknowledged his obligation to refund the advance amount received from the plaintiff. Thus, the contractual relationship between the parties stood altered. The dispute thereafter ceased to be one relating to transfer of immovable property and became a contractual obligation to refund money.

47. Once the original agreement stood cancelled by mutual consent and the defendant acknowledged his obligation to refund the amount received, the plaintiff was no longer required to prove readiness and willingness to perform the original contract. The present suit is not one for specific performance but one founded upon an admitted contractual liability to refund money. Consequently, the repeated argument advanced by the defendants regarding absence of proof of financial capacity or readiness to pay the balance sale consideration becomes wholly irrelevant for adjudicating the present recovery suit.

48. During cross-examination, PW-1 admitted that he had not produced

documentary evidence regarding his financial capacity to pay the remaining sale consideration. However, such admission does not advance the defence in any manner. Readiness and willingness are relevant considerations in a suit for specific performance under the Specific Relief Act but lose all significance once the parties themselves terminate the contract and substitute it with an independent obligation of repayment.

49. Ld. Counsel for the defendants also attempted to impeach the credibility of PW-1 by eliciting that certain cash payments had not been reflected in his Income Tax Returns. This circumstance also does not materially affect the plaintiff's entitlement. The receipts executed by the deceased defendant acknowledging receipt of the money remain admitted documents. Tax compliance is an independent obligation between an assessee and the revenue authorities and cannot extinguish or dilute contractual liability arising under admitted documents.

50. Another criticism levelled by the defendants is that PW-1 introduced during his cross-examination the allegation that the deceased defendant had already sold the property prior to entering into the Agreement to Sell. PW-1 admitted that this fact had not been pleaded earlier and voluntarily explained that he acquired such knowledge subsequently. Even if this part of his testimony is ignored entirely, the plaintiff's suit remains unaffected. The present recovery claim is founded principally upon the admitted Cancellation Agreement and the acknowledged liability to refund Rs.35,40,000/-. Therefore, the allegation regarding prior sale of the property is not the foundation of the decree sought by the plaintiff.

51. The Court also finds that throughout his cross-examination, PW-1 remained firm regarding the most material aspect of the controversy, namely that no part of the amount was ever refunded by the deceased defendant. He categorically denied every suggestion that Rs.30,00,000/- had been repaid in five cash instalments. He further denied that the transaction was cancelled because of recession in the property market or inability to arrange the balance consideration. Nothing substantial could be elicited during his cross-examination which would render his testimony unreliable.

52. It is settled law that mere suggestions put in cross-examination do not constitute evidence. In ***Bharat Singh v. Bhagirathi, AIR 1966 SC 405***, the Hon'ble Supreme Court observed that suggestions made by Counsel during cross-examination are not evidence unless accepted by the witness. Since PW-1 denied every material suggestion regarding repayment, such suggestions have no evidentiary value.

53. The plaintiff also examined PW-2, an official from the office of the Sub-Registrar, who proved certified copies of two registered sale deeds relating to the suit property. The testimony of PW-2 is entirely formal in nature. He merely produced official records maintained in the ordinary course of business. His cross-examination does not in any manner impeach the authenticity of those documents.

54. The certified sale deeds assume importance because they lend corroboration to the plaintiff's case that the property had been dealt with through registered instruments. Although the plaintiff's recovery suit does not ultimately depend upon establishing fraud, these documents

nevertheless demonstrate that the plaintiff did not fabricate documentary evidence and had summoned official records from the public office.

55. The defendants have argued that the plaintiff failed to produce independent witnesses to prove non-payment. This submission is devoid of merit. A negative fact, namely that no repayment was made, ordinarily cannot be proved by independent evidence. On the contrary, the positive assertion of repayment was specifically pleaded by the defendants. Therefore, the burden of establishing such repayment rested exclusively upon them. The plaintiff cannot be expected to prove a negative beyond producing the admitted contractual documents and denying repayment.

56. The documentary evidence adduced by the plaintiff possesses a degree of reliability far superior to subsequent oral assertions. The Agreement to Sell, receipts and Cancellation Agreement were all executed contemporaneously and their execution stands admitted. The Hon'ble Supreme Court has consistently held that contemporaneous documentary evidence carries greater evidentiary value than oral testimony recorded several years later. In ***Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi, AIR 1960 SC 100***, it was held that admissions embodied in documents constitute the best evidence against the party making them.

57. The admissions made by DW-1 during cross-examination substantially fortify the plaintiff's case. She admitted that:

(i) the Agreement to Sell bears the signatures of her deceased husband;

(ii) the receipts acknowledging Rs.35,40,000/- bear his signatures;

(iii) she herself signed as an attesting witness;

(iv) approximately Rs.35,40,000/- had in fact been received by the deceased defendant from the plaintiff.

58. These admissions leave no room for dispute regarding receipt of the money by the deceased defendant. Thus, from the plaintiff evidence, the following facts stood firmly established:

(a) execution of the Agreement to Sell;

(b) payment of Rs.35,40,000/- by the plaintiff;

(c) execution of receipts acknowledging such payments;

(d) execution of the Cancellation Agreement;

(e) acknowledgment by the deceased defendant of his obligation to refund the advance amount.

59. Consequently, the initial burden cast upon the plaintiff stood fully discharged. In terms of Sections 104 to 106 BSA, the evidentiary burden thereafter shifted upon the defendants to establish their special plea that Rs.30,00,000/- had subsequently been repaid. Whether the defendants have succeeded in discharging that burden shall now be examined while appreciating the defence evidence.

Appreciation of defence evidence

60. Since the plaintiff has successfully proved the execution of the Agreement to Sell, the receipts acknowledging payment of Rs.35,40,000/- and the Cancellation Agreement, the burden shifted upon the defendants to establish the special defence pleaded by them, namely, that the deceased defendant had repaid Rs.30,00,000/- in five cash instalments after cancellation of the Agreement. The defendants have examined DW-1 Harpreet Kaur, widow of the deceased defendant, DW-2 Tejbir

Singh and DW-3 Surender Kumar Thakur in support of the said plea. The evidence of each witness shall now be appreciated.

Appreciation of testimony of DW-1

61. DW-1 is admittedly the widow and legal representative of Late Sh. Avtar Singh. She was not the executant of the Agreement to Sell but signed the Agreement, receipts and Cancellation Agreement as an attesting witness. Consequently, while she is competent to identify the signatures of her deceased husband and prove admitted documents, her testimony regarding subsequent repayment must be examined with greater caution because such repayment is alleged to have taken place between the plaintiff and the deceased defendant.

62. The cross-examination of DW-1 reveals that instead of supporting the defence, it substantially strengthens the plaintiff's case. DW-1 categorically admitted that:

(i) every page of the Agreement to Sell bears the signatures of her husband;

(ii) she herself signed the Agreement as an attesting witness;

(iii) the receipts Ex.PW1/2 to Ex.PW1/4 bear the signatures of the deceased defendant;

(iv) approximately Rs.35,40,000/- had been received by the deceased defendant from the plaintiff;

(v) the plaintiff's two immovable properties were agreed to be adjusted against the sale consideration.

63. These admissions conclusively establish the receipt of Rs.35,40,000/- by the deceased defendant. Therefore, the defence cannot

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dispute the plaintiff's payment under the transaction. Coming to the plea of repayment, DW-1 admitted during cross-examination that she could not state the exact date, month or even the year when the alleged repayment of Rs.30,00,000/- was made. She further admitted that she possessed no receipt, no acknowledgment, no writing, no diary, no account book and no documentary evidence whatsoever showing repayment. She merely volunteered that such receipts "might" have been with her deceased husband. Such an answer is entirely speculative and does not constitute legal proof.

64. DW-1 further admitted that the written statement nowhere pleaded that repayment had been made in her presence or in the presence of Tejbir Singh. This omission assumes considerable importance because a plea introduced for the first time during evidence, without foundation in the pleadings, cannot ordinarily be accepted. Pleadings constitute the foundation of every civil trial, and evidence beyond pleadings deserves little weight.

65. DW-1 further admitted that she had never read the Cancellation Agreement and could not even say whether it required the deceased defendant to refund the amount by 10.04.2013. This admission shows that she possessed no personal knowledge regarding the contractual obligations undertaken by the deceased defendant.

66. Equally significant is her admission regarding the registered sale deeds. When shown Ex.PW2/1 and Ex.PW2/2, she admitted the photographs and signatures of her husband on both registered sale deeds and further admitted that she knew the purchaser Gurjeet Singh Chawla.

However, she expressed complete ignorance regarding how the deceased defendant could execute the Agreement to Sell with the plaintiff if the property had already been sold earlier. The inability of DW-1 to answer these material questions substantially erodes the credibility of the defence. Her evidence demonstrates that she possessed little personal knowledge regarding the transaction and was merely deposing on the basis of information allegedly supplied by her deceased husband.

67. DW-1 admitted having no personal knowledge regarding several paragraphs of her own affidavit and stated that she was deposing on the basis of what her husband had narrated to her. Hearsay evidence cannot establish the factum of repayment.

Appreciation of testimony of DW-2

68. DW-2 Tejbir Singh is the maternal uncle of DW-1. During cross-examination, DW-2 admitted that he had never read the Agreement to Sell, had never read the Cancellation Agreement, did not know the exact sale consideration and was unable to state even the approximate amount allegedly paid by the plaintiff under the Agreement. These admissions themselves demonstrate that he had no personal knowledge regarding the original transaction. Regarding repayment of Rs.30,00,000/-, DW-2 admitted that he did not remember the exact date, month, year and he did not know who was present when repayment allegedly took place. His knowledge was only what the deceased defendant had allegedly told him. No receipt or acknowledgment existed regarding repayment.

69. Thus, DW-2 admittedly did not witness any repayment. His testimony regarding repayment is founded exclusively upon statements

allegedly made by the deceased defendant outside Court. Such statements are purely hearsay and are inadmissible to prove repayment. The Court also finds the story of arranging cash wholly improbable. DW-2 claimed to have contributed Rs.5,00,000/- in cash but admitted that the amount had neither been withdrawn from any bank account nor reflected in his Income Tax Returns or business records. No document whatsoever has been produced to establish availability of such funds.

70. The alleged repayment is stated to be of Rs.30,00,000/- which is large amount. In ordinary human conduct, such payment would invariably be accompanied by some acknowledgment, receipt or contemporaneous writing. The complete absence of every conceivable document renders the defence inherently improbable.

Appreciation of testimony of DW-3

71. DW-3 Surender Kumar Thakur is another close family associate examined to support the plea of repayment. During cross-examination, DW-3 admitted that he never knew the plaintiff personally, did not know the details of the property transaction, did not know the sale consideration, had never read the Agreement to Sell and had never read the Cancellation Agreement.

72. Regarding repayment, DW-3 admitted that he could not state the date, month or year when the alleged payment was made. He categorically admitted that he had never seen any receipt or acknowledgment and that his entire knowledge regarding repayment was derived from Tejbir Singh. Thus, his testimony is not based upon personal knowledge but upon information received from another witness. Hearsay

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evidence cannot establish a disputed fact in a civil trial. The Court, therefore, finds no legal basis to rely upon the testimony of DW-3 for proving repayment.

Failure to prove repayment

73. The entire defence rests upon the assertion that Rs.30,00,000/- was repaid in cash after execution of the Cancellation Agreement. Surprisingly, despite pleading repayment of such a substantial amount no receipt has been produced; no acknowledgment has been produced; no diary has been produced; no ledger has been produced; no bank withdrawal has been proved; no income-tax record has been produced; no independent witness present at the alleged payment has been examined.

74. Every defence witness admits the absence of documentary proof. The evidence of DW-2 and DW-3 is admittedly hearsay. DW-1 herself possesses no personal knowledge of repayment. The Hon'ble Supreme Court in ***Vidhyadhar v. Manikrao, (1999) 3 SCC 573***, held that where a party fails to produce the best evidence within its possession, the Court is entitled to draw an adverse inference under Section 119 illustration (g) BSA.

75. Applying the above principle, the Court is of the opinion that had repayment actually been made, the deceased defendant would ordinarily have obtained a receipt from the plaintiff acknowledging receipt of Rs.30,00,000/-. The deliberate failure to produce even a single contemporaneous document justifies drawing an adverse inference against the defendants.

76. Ld. Counsel for the defendants argued that cash transactions

between neighbours often take place without documentation. The submission cannot be accepted. Human conduct may explain the absence of documentation for a small payment. However, repayment of Rs.30,00,000/- in five separate instalments without obtaining even one acknowledgment is wholly inconsistent with ordinary prudence and commercial practice.

77. The defence further argued that minor discrepancies regarding dates should be ignored because twelve years have elapsed. The Court agrees that minor inconsistencies due to passage of time are natural. However, inability of every defence witness to state even the year of repayment, coupled with complete absence of documentary proof, cannot be described as a mere lapse of memory. These deficiencies strike at the root of the defence itself. Thus, the defendants have miserably failed to prove repayment of Rs.30,00,000/-.

78. In view of the above discussions, the defendants have failed to discharge the burden cast upon them under Sections 104 to 106 BSA. The plea that the deceased defendant repaid Rs.30,00,000/- to the plaintiff remains wholly unproved. Issue No.1 is, accordingly, decided against the defendants and in favour of the plaintiff.

79. Once Issue No.1 is decided against the defendants, it necessarily follows that the admitted amount of Rs.35,40,000/- continued to remain payable under the Cancellation Agreement. Consequently, the plaintiff has successfully established his entitlement to recovery of the principal amount.

Issue no. 2 Whether the plaintiff is entitled to a decree in the sum of Rs.

30 Lacs against the defendant? OPP

80. Having held under Issue No.1 that the defendants have failed to prove repayment of Rs.30,00,000/-, the next question is whether the plaintiff has established his entitlement to recovery of the suit amount and interest. The plaintiff has produced the Agreement to Sell Ex. PW-1/1, receipts Ex. PW-1/2 to Ex. PW-1/4 and the Cancellation Agreement Ex. PW-1/5. The execution of each of these documents stands admitted by DW-1. There is, therefore, no dispute that the deceased defendant received a sum of Rs.35,40,000/- from the plaintiff. Similarly, there is no dispute that the Agreement to Sell stood cancelled by mutual consent on 22.03.2013. The only defence set up by the defendants was repayment of Rs.30,00,000/-, which has already been rejected while deciding Issue No.1. Consequently, the contractual liability acknowledged under the Cancellation Agreement continues to subsist.

81. It is a settled principle of civil jurisprudence that admissions constitute the best evidence against the party making them. In ***Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi, AIR 1960 SC 100***, the Hon'ble Supreme Court held that an admission is substantive evidence and, unless satisfactorily explained, is decisive of the matter admitted. In the present case, the defendants have admitted not only the execution of the documents but also the receipt of Rs.35,40,000/- by the deceased defendant. These admissions leave no room for controversy regarding the liability of the deceased defendant to account for the said amount.

82. Ld. Counsel for the defendants argued that the plaintiff has failed

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to establish fraud and dishonest intention on the part of the deceased defendant. The Court finds that such submission does not affect the maintainability of the present recovery suit. The plaintiff seeks enforcement of an admitted contractual obligation arising under the Cancellation Agreement. Even if the allegations of fraud are left entirely out of consideration, the defendants remain liable because the obligation to refund the advance amount arises directly from the written agreement executed between the parties. Therefore, the Court does not consider it necessary to return any finding upon the allegations of fraud, since the plaintiff's entitlement stands independently established on the basis of admitted contractual documents.

83. It was next argued that the plaintiff failed to prove his financial capacity to pay the balance sale consideration under the Agreement to Sell. This submission is equally without merit. Once the parties mutually cancelled the original Agreement to Sell and entered into the Cancellation Agreement, the original obligations under the Agreement to Sell stood superseded. Thereafter, the only surviving obligation was repayment of the advance amount received by the deceased defendant. Thus, the plaintiff was under no legal obligation to establish readiness and willingness to perform a contract which had already been mutually terminated.

84. The defendants also sought to rely upon the alleged omission of the plaintiff to disclose certain cash payments in his Income Tax Returns. This circumstance, even if assumed to be correct, cannot extinguish contractual liability. The rights flowing from a written contract cannot be

defeated merely because one party may have committed a tax irregularity. Such issues fall within the domain of the taxation authorities and have no bearing upon adjudication of civil liability arising under admitted documents.

85. The Court further finds that the defendants have taken inconsistent and mutually destructive pleas. On one hand, they contend that substantial repayment had already been made. On the other hand, they simultaneously plead that only Rs.5,40,000/- remained payable. Such plea itself amounts to an admission that the deceased defendant continued to remain indebted to the plaintiff. The defendants have thus admitted subsisting liability even according to their own version.

Liability of Legal Representatives

86. Another submission advanced on behalf of the defendants is that they are merely legal representatives of the deceased defendant and cannot be held personally liable for his contractual obligations. There can be no quarrel with the settled proposition that legal representatives are liable only to the extent of the estate inherited from the deceased. Sections 50 and 52 CPC embody this principle.

87. However, the said proposition does not assist the defendants in resisting the decree itself. The liability sought to be enforced is not the personal liability of the legal representatives but the liability of the estate of the deceased represented by them. A decree against legal representatives is executable only to the extent of the estate inherited by them. The question regarding the extent of inherited estate ordinarily arises at the stage of execution and does not defeat the plaintiff's

substantive right to obtain a decree against the estate of the deceased.

88. In ***Custodian o1 Branches of BANCO National Ultramarino v. Nalini Bai Naique, (1989) 2 SCC 275***, the Hon'ble Supreme Court reiterated that legal representatives represent the estate of the deceased and are liable only to the extent of the property inherited by them. Therefore, while the decree deserves to be passed, it shall naturally remain executable only against the estate inherited by the legal representatives from Late Sh. Avtar Singh.

89. The defendants have argued that they inherited no estate from the deceased. However, except making a bald assertion, no satisfactory evidence has been produced to establish complete absence of inheritance. Even otherwise, such plea primarily concerns execution proceedings. The Court cannot refuse a decree merely because the legal representatives dispute the extent of inheritance.

90. The plaintiff has proved payment of Rs.35,40,000/- under admitted documentary evidence. The defendants have failed to prove repayment. The contractual obligation contained in the Cancellation Agreement remains unfulfilled. Thus, the plaintiff has successfully established his entitlement to recover the principal amount of Rs.35,40,000/- from the estate of the deceased defendant represented by the defendants.

91. However, the plaintiff has claimed a decree for Rs.48,14,400/-, comprising principal together with pre-suit interest calculated at 12% per annum for three years. Since interest forms the subject matter of Issue No.3, the entitlement to the enhanced amount shall be considered separately. Issue No.2 is accordingly decided in favour of the plaintiff.

Issue no. 3 Whether the plaintiff is entitled for interest, if yes at what rate and for which period? OPP

92. The plaintiff has claimed pre-suit interest at the rate of 12% per annum, pendente lite interest and future interest. It is true that neither the Agreement to Sell nor the Cancellation Agreement contains any express clause providing for payment of interest. Nevertheless, Section 34 CPC confers discretion upon the Court to award reasonable interest in money decrees having regard to the facts and circumstances of each case.

93. The Supreme Court in ***Central Bank of India v. Ravindra, (2002) 1 SCC 367***, held that award of interest under Section 34 CPC is essentially discretionary but such discretion must be exercised judiciously, reasonably and in accordance with settled principles. Similarly, in ***South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648***, it was observed that interest is awarded to compensate a person who has been wrongfully deprived of the use of money legitimately belonging to him.

94. In the present case, the plaintiff has remained deprived of the amount admittedly received by the deceased defendant since April 2013. The defendants failed to establish repayment despite claiming that substantial amounts had been returned. The withholding of the plaintiff's money for more than a decade without lawful justification clearly entitles the plaintiff to reasonable interest.

95. However, keeping in view the absence of any contractual stipulation regarding interest and the nature of the transaction, the Court is of the opinion that the ends of justice would be adequately served by awarding simple interest at the rate of 9% per annum on the principal

amount of Rs.35,40,000/- from the date of institution of the suit till realization. The claim for pre-suit interest amounting to Rs.12,74,400/- is not supported by any contractual or statutory provision and is, therefore, not liable to be granted as claimed. Consequently, while the plaintiff is held entitled to recover the principal sum of Rs.35,40,000/-, pendente lite and future interest shall be governed by Section 34 CPC at the aforesaid rate. Issue No.3 is decided accordingly.

Relief

96. In view of the findings returned on the above issues, the suit deserves to succeed partly. Accordingly, the suit is decreed in favour of the plaintiff and against the defendants, being the legal representatives of Late Sh. Avtar Singh, to the extent of the estate inherited by them, for a sum of Rs.35,40,000/- (Rupees Thirty-Five Lakhs Forty Thousand only).

97. The plaintiff shall further be entitled to pendente lite and future simple interest at the rate of 9% per annum on the aforesaid principal amount from the date of institution of the suit until the date of actual realization. The plaintiff shall also be entitled to the costs of the suit.

98. It is clarified that the decree shall be executable only against the estate inherited by the defendants from Late Sh. Avtar Singh and not against their personal assets, if any. Decree sheet be drawn accordingly.

File be consigned to Record Room.

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Date: 2026.07.30 16:55:37 +0530

Announced in open Court
on 30th Day of July 2026

(Susheel Bala Dagar)
District Judge-08, West
Tis Hazari Courts, Delhi.

(This judgment contains 35 pages.)