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

CS DJ 609487/2016
CNR Number: DLWT01-000073-2010
In the matter of:
1. Sanjay Goyal
S/o Sh. Nand Lal Goyal
R/o C-135, Naraina Vihar
New Delhi-110028
2. Gulshan Verma (Deceased)
S/o Late Sh. S.P.Verma
Through his legal heirs:-
(i) Smt. Rita Verma
W/o Late Sh. Gulshan Verma
R/o 25/25, West Patel Nagar,
New Delhi-110008
(ii) Smt. Simran Verma
D/o Late Sh. Gulshan Verma
R/o 25/25, West Patel Nagar,
New Delhi-110008
(iii) Sh. Bharat Verma
S/o Late Sh. Gulshan Verma
R/o 25/25, West Patel Nagar,
New Delhi-110008 ….. Plaintiffs

Versus

1. Smt. Usha Johri
W/o Late Sh. V.M. Johri
2. Dr. Yashi Johri
S/o Late Sh. V.M. Johri
Both R/o A-2/107, Third Floor,
Rear Side, Janakpuri,
New Delhi-110058
Second Address:

C-1/125, Top Floor,
Janakpuri, New Delhi-110058
3. Shri Jaspal Singh
S/o Late Sh. Nanak Singh
R/o 8/9, Second Floor,
West Patel Nagar,
New Delhi-110008
4. M/s Dev Kripa Developers Private Limited
Through its Director / AR
Mr. Mayur Jain
Registered Office:
GB-22, Shivaji Enclave,
New Delhi.
5. Shri Nirmal Singh Lamba
S/o Late Sh. Baldev Singh
R/o WZ-418, Gali no.22,
Shiv Nagar, New Delhi-110058
6. Shri S. Swaran Singh
S/o S. Surjit Singh
R/o A-308, IInd Floor,
Meera Bagh
New Delhi-110087
7. Shri Manjit Kaur
S/o Late Sh. Purshotam Dass
R/o C-4A/64A, Janakpuri,
New Delhi
8. Smt. Basant Kaur (Deceased)
W/o Sh. Jaswant Singh
Through her legal heirs:
(i) Sh. Jaswant Singh
S/o Late Sh. Ram Singh
R/o J-5/21, Upper Ground Floor,
Rajouri Garden, Delhi-110027.
(ii) Sh. Param Jeet Singh
S/o Sh. Jaswant Singh
R/o J-5/21, First Floor,
Rajouri Garden,

Delhi-110027
(iii) Sh. Daljeet Singh
S/o Sh. Jaswant Singh
R/o J-5/108, Ground Floor,
Rajouri Garden, Delhi-110027
(iv) Sh. Jaspal Singh
S/o Sh. Jaswant Singh
R/o J-5/21, Second Floor,
Rajouri Garden, Delhi-110027
(v) Smt. Surjeet Kaur
W/o Sh. Manjeet Singh
R/o B-1/190, Paschim Vihar,
New Delhi-110063
9. Smt. Jaspreet Kaur
W/o Sh. Ravinder Singh
R/o 13, N.W.A. Road,
Punjabi Bagh Extn.
New Delhi-110026
10. Smt. Rachna Gullah
W/o Sh. Rajesh Gullah
R/o 4, West Avenue
Punjabi Bagh,
New Delhi-110026
11. Bank of India
New Delhi Overseas Branch,
17, Vijya Building,
New Delhi-110001 ….. Defendants

Date of institution	**:**	**27.09.2010**
Date of reserved for judgment	**:**	**26.05.2026**
Date of judgment	**:**	**07.07.2026**

Suit for declaration, permanent injunction and mandatory injunction

JUDGMENT

Brief facts of the case

1. The plaintiffs have filed the present suit claiming that they, along with defendant no. 3, are the joint and absolute owners of the ground floor of property bearing no. C-1/125, Janakpuri, New Delhi, measuring approximately 419 square yards. They asserted that they purchased the property from defendant no. 1 through a registered sale deed dated 7 August 2009 for a consideration of Rs.36,00,000/-, pursuant to which vacant possession and the original title documents were handed over to them. According to the plaintiffs, defendant no. 1 had acquired valid title through allotment by the Delhi Development Authority, execution of a lease deed, and subsequent conversion of the property into freehold.

2. The plaintiffs further state that the ground floor was only partly constructed at the time of purchase and that defendant nos. 1 and 2 had orally undertaken to complete the remaining construction in accordance with the sanctioned building plan. However, despite commencing the work, the defendants allegedly delayed and abandoned the construction in June 2010. The plaintiffs claim that they remained in continuous possession of the property throughout.

3. It is further alleged that in September 2010, the plaintiffs learnt that defendant nos. 1 and 2 had fraudulently executed multiple sale deeds in respect of the same property in favour of defendant no. 4 and other subsequent purchasers. The plaintiffs contended that these transactions are forged, illegal, and void, particularly as the original title documents have remained in their possession. They also claimed to have lodged a police complaint after discovering the alleged fraud and alleged that the

defendants threatened to dispossess them forcibly.

4. On these averments, the plaintiffs asserted that they are the lawful owners in possession of the suit property under the registered sale deed dated 7 August 2009 and that the subsequent sale deeds have unlawfully clouded their title. They further claimed that defendant nos. 1 and 2 are bound to fulfill their oral undertaking to complete the unfinished construction. Accordingly, the plaintiffs seek a declaration of their joint ownership with defendant no. 3, cancellation of the subsequent sale deeds as null and void, permanent and mandatory injunctions to protect their possession and direction to completion of construction, along with costs of the suit.

Written Statement of defendant no.1

5. Defendant no. 1 contested the suit on the ground that it is not maintainable, alleging that the plaintiffs have suppressed material facts and have not approached the Court with clean hands. She denied having agreed to sell the suit property to the plaintiffs or defendant no. 3 or having delivered possession of the property to them. The defendant submitted that, following the death of her husband, she was in financial distress and had obtained a loan of Rs.36 lakhs from the plaintiffs through property dealers. According to her, the amount was only a loan and not the sale consideration for the property. She contended that the property was worth more than Rs.12 crores at the relevant time and asserted that the documents executed in favour of the plaintiffs were intended only as security for the loan and not to transfer ownership.

6. The defendant further alleged that the documents were obtained by

fraud, coercion, undue influence, and misrepresentation while she was in a vulnerable financial condition. She claimed that there was no valid agreement for sale and that she remained in possession of the property until September/October 2010, when she was allegedly dispossessed by certain property dealers. She relied upon the payment of property tax and electricity charges to support her claim of continued possession.

7. The defendant admitted her ownership of the property but denied handing over the original title documents to the plaintiffs. She also denied that the ground floor was incomplete or that there was any oral agreement to complete further construction, asserting that the building was already fully constructed and that the plaintiffs had fabricated these allegations. She further submitted that any delay or dispute was attributable to separate legal and financial disputes involving M/s Dev Kripa Developers Pvt. Ltd. and not to any contractual obligation towards the plaintiffs.

8. The defendant denied threatening the plaintiffs or attempting to dispossess them and instead alleged that she herself had been forcibly dispossessed by persons connected with M/s Dev Kripa Developers Pvt. Ltd. She maintained that the plaintiffs acquired no legal right, title, or interest in the property, reiterated that the transaction was merely a loan secured by documents, and expressed her willingness to repay the loan amount. The defendant also challenged the valuation of the suit, contended that the plaint was liable to be rejected under Order VII Rule 11 CPC for want of cause of action and insufficient Court fees, opposed all the reliefs claimed by the plaintiffs, and prayed for dismissal of the suit with costs.

<u>Written Statement by defendant no.2</u>

9. Defendant no. 2 has contested the suit by submitting that it is not maintainable as the plaintiffs have concealed material facts and have not approached the Court with clean hands. The defendant denied all the material allegations made in the plaint and asserted that the plaintiffs are not entitled to any of the reliefs claimed. The defendant submitted that neither she nor defendant no. 1 ever sold the suit property to the plaintiffs or defendant no. 3 or delivered possession thereof. According to the defendant, after the death of Dr. V.M. Johri, defendant no. 1 was in financial distress and had obtained a loan of Rs.36 lakhs from the plaintiffs through property dealers. It is contended that the amount was only a loan repayable after one year and not the sale consideration for the property, which was worth more than Rs.12 crores at the relevant time. The defendant further asserted that the documents executed in favour of the plaintiffs were intended only as security for the loan and not to transfer ownership, and that there was no consensus ad idem regarding any sale transaction.

10. The defendant further alleged that defendant no. 1 remained in possession of the property until September 2010 and was thereafter forcibly dispossessed by certain property dealers. It is also alleged that the documents relied upon by the plaintiffs were obtained through fraud, coercion, and undue influence by exploiting defendant no. 1's financial difficulties, and that the plaintiffs are now attempting to convert a loan transaction into a sale in order to unlawfully acquire a valuable property. On merits, the defendant denied that the plaintiffs or defendant no. 3

acquired any right, title, or interest in the suit property and reiterated that possession was never handed over to them. The defendant relied upon the payment of property tax and electricity charges up to September 2010 to support the claim that defendant no. 1 remained in possession and also denied handing over the original title documents to the plaintiffs.

11. The defendant further denied the plaintiffs' allegation that the ground floor was only partially constructed or that there was any oral agreement to complete further construction. It was asserted that the building was already fully constructed, no construction work remained pending, and that the plaintiffs had falsely attributed delays to the defendants. The defendant also stated that criminal proceedings involving M/s Dev Kripa Developers Pvt. Ltd. resulted in the arrest of defendant nos. 1 and 2, and that the plaintiffs took advantage of those circumstances by instituting the present suit. The defendant further contended that the plaintiffs' own pleadings show that they were never in possession of the property, as they admitted that unknown persons asserted competing claims over it. The defendant maintained that she is willing to repay the loan amount along with interest and costs, denied threatening or attempting to dispossess the plaintiffs, and instead alleged that persons associated with M/s Dev Kripa Developers Pvt. Ltd. were responsible for dispossessing defendant no. 1. Accordingly, the defendant opposed the reliefs of declaration, permanent injunction, and mandatory injunction, challenged the valuation of the suit and its maintainability under Order VII Rule 11 CPC, and prayed for dismissal of the suit with costs.

Written Statement by defendant no.4

12. Defendant no. 4 contested the suit by raising preliminary objections that it is false, frivolous, vexatious, mala fide, misconceived, and not maintainable. It was contended that the plaintiffs have suppressed material facts, have not approached the Court with clean hands, and are therefore not entitled to any equitable relief. The defendant submitted that the suit is not maintainable as the plaintiffs have not sought cancellation of the earlier registered sale deeds dated 08.04.2008 and 10.07.2008 executed in its favour. According to defendant no. 4, it became the absolute owner of the entire property bearing no. C-1/125, Janakpuri, New Delhi, after purchasing the property from defendant no. 1 through two registered sale deeds for a total consideration of Rs.1.64 crores. It was asserted that since these sale deeds were executed prior to the plaintiffs' alleged sale deed dated 07.08.2009, defendant no. 1 had already transferred all her rights in the property and had no authority to execute any subsequent sale deed in favour of the plaintiffs or any other person.

13. The defendant further contended that the plaint is liable to be rejected under Order VII Rule 11 CPC as it discloses no cause of action. It alleged that the plaintiffs, in collusion with defendant no. 1, fabricated the sale deed dated 07.08.2009 to defeat its lawful ownership rights and pointed out that defendant no. 1 has never disputed the validity of the earlier sale deeds executed in favour of defendant no. 4. The defendant also submitted that it had lodged a criminal complaint against defendant nos. 1 and 2, resulting in registration of FIR no. 242 of 2010, and stated that criminal proceedings are pending. It further alleged that the plaintiffs

and defendant no. 3 were aware of the earlier sale deeds and therefore have no legal entitlement to the property. The defendant also contended that the suit is barred by Sections 91 and 92 of the Indian Evidence Act.

14. On merits, defendant no. 4 denied that the plaintiffs or defendant no. 3 acquired any right, title, or interest in the suit property and asserted that the alleged sale deed dated 07.08.2009 is forged, fabricated, sham, and incapable of conferring any legal title. It admitted that defendant no. 1 had originally acquired the property from the Delhi Development Authority but denied that the original title documents were ever handed over to the plaintiffs. The defendant further denied the plaintiffs' allegations regarding incomplete construction, any oral undertaking to complete construction, or delivery of possession to the plaintiffs. It asserted that the entire building had already been constructed and that, having purchased the property in 2008, defendant no. 4 had remained in possession ever since. It also denied all allegations regarding stoppage of construction, rival ownership claims, threats of dispossession, or conspiracy involving defendant nos. 1 and 2.

15. Defendant no. 4 further alleged that the plaintiffs and defendant no. 3 acted in collusion with defendant nos. 1 and 2 to defeat its ownership rights. It also stated that it had instituted a civil suit before the Hon'ble High Court based on its registered sale deeds and reiterated that defendant no. 1 ceased to be the owner after execution of the 2008 sale deeds and was therefore incapable of making any subsequent valid transfer. The defendant further maintained that although any later sale deeds executed by defendant no. 1 in favour of defendant nos. 5 to 10 are

also void, its own sale deeds are genuine, valid, and legally enforceable. Finally, defendant no. 4 denied that the plaintiffs possess any legal right requiring protection or are entitled to the reliefs of declaration, permanent injunction, or mandatory injunction. It also challenged the valuation of the suit and the sufficiency of Court fees and prayed for dismissal of the suit with exemplary costs.

Written statement by defendant no.8

16. Defendant no. 8 contested the suit by raising preliminary objections that the suit, insofar as it concerns her, is frivolous, misconceived, and an abuse of the process of law. She contended that she has been unnecessarily impleaded only to harass her despite having no connection with the dispute relating to the ground floor of the suit property. According to her, the suit was originally filed only against defendant nos. 1 to 3, and her subsequent impleadment is without any legal basis.

17. The defendant submitted that she has no concern whatsoever with the ground floor of property bearing no. C-1/125, Janakpuri, New Delhi, as she is the bona fide purchaser and owner of the entire third floor, without roof rights, having purchased the same from defendant no. 1 through a registered sale deed dated 06.11.2009 for a consideration of Rs.17 lakhs. She submitted that vacant and physical possession of the third floor was delivered to her at the time of purchase and contended that, since the plaintiffs claim rights only in respect of the ground floor, no privity of contract or cause of action exists against her.

18. The defendant further contended that the suit suffers from

misjoinder of parties and is liable to be rejected under Order VII Rule 11 CPC, as all the allegations in the plaint relate to the acts of defendant nos. 1, 2, and 4 concerning the ground floor of the property. On merits, she submitted that the allegations in the plaint do not concern her and neither admitted nor denied them except to acknowledge that competing claims had been asserted over the property. Defendant no. 8 admitted that defendant no. 4 had instituted Civil Suit (Original Side) no. 2547 of 2010 but alleged that defendant nos. 1, 2, and 4 acted in collusion to deprive bona fide purchasers of their lawful rights. She asserted that she became aware of the alleged prior sale deeds in favour of defendant no. 4 only after receiving summons in the said suit and alleged that those sale deeds were forged, fabricated, and back-dated documents created in collusion with officials of the Sub-Registrar's office.

19. The defendant specifically denied any collusion or conspiracy on her part and maintained that she is a bona fide purchaser for valuable consideration and the lawful owner of the third floor by virtue of the registered Sale Deed dated 06.11.2009. While supporting the plaintiffs' allegation that the sale deeds relied upon by defendant no. 4 are forged and fabricated, she opposed the plaintiffs' challenge to the sale deed executed in her favour and contended that her independent title cannot be affected by disputes concerning defendant no. 4's claim. The defendant further denied any involvement in fraudulent transactions or repeated sale of the property, reiterated that she had purchased the third floor in good faith, and submitted that the remaining issues relating to title, possession, declaration, injunctions, valuation, jurisdiction, and cause of action

concern only the disputes between the plaintiffs and the other defendants. Accordingly, defendant no. 8 prayed for dismissal of the suit against her with exemplary costs.

Written Statement by defendant no.11

20. Defendant no. 11, the Bank, contested the suit by raising preliminary objections that the suit is not maintainable as the plaintiffs have suppressed material facts and have not approached the Court with clean hands. The Bank contended that the plaintiffs deliberately concealed the fact that the suit property had already been equitably mortgaged in its favour prior to the execution of the sale deed relied upon by the plaintiffs and, therefore, the suit deserves to be dismissed with costs. The Bank further submitted that the suit is legally defective as the plaintiffs have neither sought possession of the property nor cancellation of the registered sale deeds and other title documents under Section 31 of the Specific Relief Act, 1963. It was contended that the plaintiffs intentionally omitted these reliefs to avoid payment of proper Court fees and are consequently barred under Order II Rule 2 CPC. The Bank also asserted that the plaintiffs are not entitled to the equitable relief of injunction in view of Section 41(h) of the Specific Relief Act.

21. The Bank further contended that the present suit has been filed only to obstruct the recovery proceedings initiated under the SARFAESI Act, 2002. It asserted that defendant no. 1 had created an equitable mortgage over the suit property in its favour on 04.08.2009 by depositing the original title documents, prior to the execution of the plaintiffs' sale deed dated 07.08.2009. Consequently, any rights claimed by the plaintiffs

are subject to and subordinate to the Bank's prior mortgage rights.

22. The Bank submitted that it had sanctioned credit facilities of approximately Rs.8 crores to M/s Sarvottam Overseas Pvt. Ltd., for which defendant no. 1 stood as guarantor and mortgaged the suit property by depositing the original title documents. It further submitted that, at the time of creation of the mortgage, possession of the property remained with defendant nos. 1 and 4 and that its officials had inspected the property and found redevelopment work being carried out under sanctioned plans in the name of defendant no. 4. On this basis, the Bank disputed the plaintiffs' claim of ownership and possession.

23. The Bank further stated that it had lawfully initiated recovery proceedings under the SARFAESI Act and that defendant no. 4's challenge before the Debt Recovery Tribunal was dismissed for default, thereby reinforcing the legality of its recovery proceedings. It also alleged that the plaintiffs, defendant no. 1, defendant no. 4, and others had acted in collusion to defeat the Bank's recovery rights. On merits, the Bank denied that the plaintiffs are the owners of the suit property and reiterated that the equitable mortgage created on 04.08.2009 has priority over the plaintiffs' subsequent sale deed dated 07.08.2009. The Bank further denied that the original title documents were ever handed over to the plaintiffs, asserting that the original conveyance deed and title documents remain in its custody pursuant to the mortgage. It also denied the plaintiffs' allegations against the Bank and maintained that no cause of action exists against it.

24. The Bank challenged the valuation of the suit and the adequacy of

the Court fees, contending that the plaintiffs ought to have sought cancellation of the registered documents and are barred from doing so under Order II Rule 2 CPC. Accordingly, defendant no. 11 asserted that its prior equitable mortgage confers superior rights over the suit property, opposed all the reliefs sought by the plaintiffs, and prayed for dismissal of the suit with exemplary costs.

Proceedings against defendant no. 3, 5 to 10

25. Right of defendant no. 3, 5 to 7, 9 and 10 to file written statement was closed vide order dated 27.08.2013. Defendant no. 3, 5 to 10 were proceeded exparte vide order dated 13.12.2025.

Replication by the plaintiff to the WS of defendant no.1.

26. The plaintiffs, in their replication, denied all the allegations and preliminary objections raised by defendant no. 1 and reaffirmed the averments made in the plaint. They contended that the suit is maintainable, that they approached the Court with clean hands, and that all material facts had been duly disclosed. The plaintiffs asserted that they, along with defendant no. 3, lawfully purchased the ground floor of property no. C-1/125, Janakpuri, New Delhi, through a registered sale deed dated 07.08.2009 for a consideration of Rs. 36,00,000/-, and that vacant possession along with the original title documents was delivered to them at the time of execution of the sale deed. They categorically denied defendant no. 1's plea that the transaction was merely a loan or that the sale deed had been executed as security due to financial distress, coercion, or undue influence, maintaining that it was a genuine and voluntary transfer of ownership. The plaintiffs further denied that

SUSHEEL BALA DAGAR Digitally signed by SUSHEEL BALA DAGAR Date: 2026.07.07 17:35:09 +0530

defendant no. 1 continued to remain in possession after the sale and asserted that they had remained in continuous possession until rival ownership claims surfaced in September 2010, when they discovered that defendant Nos. 1 and 2 had allegedly executed multiple sale deeds in respect of the same property. They also denied allegations of fraud, coercion, and exploitation, contending that defendant no. 1 voluntarily executed the registered sale deed and handed over possession and the original title documents. The plaintiffs maintained that they are bona fide purchasers for valuable consideration and that defendant no. 1 unlawfully created multiple transfers after already conveying valid title to them. They further denied the objections regarding valuation, Court fees, and maintainability under Order VII Rule 11 CPC, asserting that the suit was properly valued, the requisite Court fees had been paid, and that a continuing cause of action existed. The plaintiffs also reiterated that the property was only partially constructed at the time of purchase, that defendant nos. 1 and 2 had orally agreed to complete the remaining construction but failed to do so, and that the criminal proceedings initiated by defendant no. 4 did not affect the validity of their title. They alleged that defendant no. 1 repeatedly sold the same property to different persons after transferring it to the plaintiffs and defendant no. 3, thereby causing financial loss and threatening their possession, and accordingly prayed that the suit be decreed in their favour with costs.

Replication by the plaintiff to the WS of defendant no.4

27. The plaintiffs, in their replication to the written statement of defendant no. 4, denied all the preliminary objections and allegations

raised by defendant no. 4 and reaffirmed the averments made in the plaint. They asserted that the suit is maintainable, that they have approached the Court with clean hands, and that defendant no. 4 has falsely claimed ownership of the suit property on the basis of forged and fabricated documents.

28. The plaintiffs reiterated that they, along with defendant no. 3, lawfully purchased the suit property through a registered sale deed dated 07.08.2009 for valuable consideration, obtained vacant and physical possession of the property, and received the original title documents at the time of the transaction. They denied the contention that the suit is not maintainable for want of cancellation of defendant no. 4's sale deeds, asserting that the plaint specifically seeks a declaration that the sale deeds dated 08.04.2008 and 10.07.2008 are null, void, illegal, and ineffective insofar as the suit property is concerned.

29. The plaintiffs further contended that the sale deeds relied upon by defendant no. 4 are forged, fabricated, and back-dated documents allegedly created in collusion with officials of the Sub-Registrar's office. They maintained that the plaint discloses a valid and continuing cause of action and is not liable to rejection under Order VII Rule 11 CPC. They also asserted that they were bona fide purchasers for valuable consideration without knowledge of any prior valid sale in favour of defendant no. 4 and denied the applicability of Sections 91 and 92 of the Indian Evidence Act, contending that those provisions cannot validate documents alleged to be forged.

30. The plaintiffs reaffirmed that they and defendant no. 3 are the

lawful joint owners in possession of the suit property by virtue of the registered sale deed dated 07.08.2009 and denied defendant no. 4's allegation that their sale deed is forged or invalid. They further asserted that defendant no. 1 fraudulently executed multiple sale deeds after already transferring valid title to them and denied the allegation that the original title documents had never been delivered to them.

31. The plaintiffs also reiterated that the suit property was only partially constructed at the time of purchase and that defendant nos. 1 and 2 had orally agreed to complete the remaining construction but failed to do so, thereby entitling the plaintiffs to seek mandatory injunction. They denied any collusion with defendant nos. 1 and 2 and instead alleged that defendant no. 4 had fabricated documents to unlawfully claim ownership of the property, while reserving their right to initiate appropriate criminal proceedings against defendant no. 4 for the alleged forgery.

32. The plaintiffs denied defendant no. 4's allegations that they were never in possession of the suit property or were liable for perjury, maintaining that they have remained in possession pursuant to the registered sale deed and continue to hold the original title documents. They contended that the cause of action arose on the execution of the sale deed dated 07.08.2009 and has continued due to repeated transfers of the property, threats to their possession, failure to complete construction, and discovery of the allegedly forged sale deeds. They also denied the objections regarding valuation and Court fees, maintained that the suit has been properly valued and requisite Court fees have been paid, and prayed that the suit be decreed in their favour by granting the reliefs of

declaration, permanent injunction, mandatory injunction, and costs.

<u>Replication by the plaintiff to the WS of defendant no.11</u>

33. The plaintiffs, in their replication to the written statement of defendant no. 11 (Bank of India), denied all the preliminary objections and allegations raised by the Bank and reaffirmed the averments made in the plaint. They asserted that the suit is maintainable, that they have approached the Court with clean hands, and that they lawfully purchased the ground floor of property no. C-1/125, Janakpuri, New Delhi, jointly with defendant no. 3 through a registered Sale Deed dated 07.08.2009 for a consideration of Rs. 36,00,000/-. They further contended that vacant possession of the property and the original title documents were handed over to them at the time of execution of the sale deed and that they have remained in continuous possession ever since.

34. The plaintiffs denied the Bank's contention that the suit property had been validly mortgaged before the execution of the sale deed. They asserted that since the original title documents had already been delivered to them, defendant no. 1 could not have subsequently created any valid equitable mortgage in favour of the Bank. They further alleged that the mortgage documents relied upon by the Bank are fabricated and denied any knowledge of the alleged loan transaction, guarantee, or mortgage in favour of the Bank.

35. The plaintiffs also denied the allegation that the suit had been instituted to obstruct the Bank's recovery proceedings under the SARFAESI Act or that they had acted in collusion with defendant nos. 1, 2, or 4. They maintained that they are bona fide purchasers for valuable

consideration and claimed that they themselves are victims of defendant no. 1, who allegedly executed multiple sale deeds in respect of the same property. They further contended that any subsequent mortgage or transaction created by defendant no. 1 after the execution of the registered sale deed dated 07.08.2009 is illegal, void, and unenforceable, as defendant no. 1 had already transferred all her rights in the suit property to the plaintiffs.

36. The plaintiffs reiterated that they are the lawful owners in possession of the suit property by virtue of the registered sale deed dated 07.08.2009 and denied that defendant no. 11 has any valid or enforceable mortgage interest in the property. They also denied the allegations that the suit is based on false facts, lacks a cause of action, or has been improperly valued, asserting that the suit has been correctly valued, requisite Court fees have been paid, and the reliefs claimed are legally maintainable. The plaintiffs denied all the allegations contained in the written statement of defendant no. 11, described the Bank's defence as frivolous and untenable, reaffirmed the contents of the plaint, and prayed that the suit be decreed in their favour along with costs and all consequential reliefs.

Issues :-

37. From the pleadings of the parties and material on record, following issues were framed by Ld. Predecessor vide order dated 24.09.2014:-

Issue no. 1 Whether the plaintiffs and defendant no.3 became absolute and joint owners of the suit property bearing no. C-1/125, Janakpuri, New Delhi, measuring 419 sq. yards (ground floor) after its purchase from defendant no.1 vide sale deed dated 07.08.2009? OPP

Issue no. 2 Whether the sale deeds dated 08.04.2008 and 10.07.2008, in respect of the suit property, in favour of defendant no.4, are null and void, illegal and having no force in law? OPP

Issue no. 3 Whether the sale deeds executed by defendant no.1 and 2, in favour of defendant no.5 to 10, are null and void, illegal and have no force in the eyes of law? OPP

Issue no. 4 Whether the suit filed by the plaintiffs is not maintainable in the present form, if so, its effect? OPD1

Issue no. 5 Whether the suit has not been properly valued for the purpose of Court fee? OPD1

Issue no. 6 Whether the suit against defendant no.8 is not maintainable and is bad for misjoinder of parties, if so, its effect? OPD8

Issue no. 7 Whether the present suit is barred by the provisions of Sections 91 and 92 of the Evidence Act? OPD4

Issue no. 8 Whether the sale deed dated 07.08.2009, executed by defendant no.1, in favour of plaintiffs and defendant no.3, is a forged document? OPD4

Issue no. 9 Whether a valid equitable mortgage of the suit property was created by defendant no.1 on 04.08.2009, in favour of defendant no.11, if so, its effect? OPD11

Issue no. 10 Whether the plaintiffs along with defendant no.3 are entitled to the declarations prayed for? OPP

Issue no. 11 Whether the plaintiffs along with defendant no.1 are entitled to relief of permanent and mandatory injunctions as prayed for? OPP

Issue no. 12 Relief

Plaintiff Evidence:-

PW1/Sanjay Goyal

38. PW1/Sanjay Goyal has tendered evidence by way of affidavit Ex. PW1/A and relied on following documents : letter dated 12.09.1972 issued by DDA in favour of defendant no. 1 handing over the possession of the plot no. C-1/125, Janakpuri, Delhi Ex.PW1/1, letter bearing no. F-21 (40)/72-LSB(R) issued by the DDA to defendant no. 1 Ex.PW1/2, occupancy certificate dated 25.10.1985 issued by the DDA Ex.PW1/3, copy of receipt of possession dated 07.11.1972 signed by defendant no. 1 Ex.PW1/4, receipt dated 10.03.1972 issued by DDA in favour of defendant no. 1 Ex.PW1/5, receipt dated 31.03.1972 issued by DDA in favour of defendant no. 1 Ex.PW1/6, receipt dated 30.05.1972 issued by DDA in favour of defendant no. 1 Ex.PW1/7, site plan issued by DDA in respect of the suit property Ex.PW1/8, conveyance deed dated 07.06.1993 in favour of defendant no. 1 Ex.PW1/9, sale deed dated 07.08.2009 executed by the defendant no. 1 in favour of plaintiff no. 1 as well as in favour of plaintiff no. 2 and defendant no. 3 qua the suit property Ex.PW1/10, site plan of the suit property Ex.PW1/11, photographs of the suit property taken on 20.09.2010 Ex.PW1/12, sale deed dated 08.04.2008 in favor of defendant no. 4 Mark-A, sale deed dated 10.07.2008 in favor of defendant no. 4 Mark-B.

39. During his cross-examination PW-1, Sanjay Goyal, deposed that he had been engaged in the business of construction and property dealing for about 25 years and was well acquainted with property transactions. He stated that although he knew late Gulshan Verma, he denied that Gulshan

Verma was engaged in money-lending or that he himself was involved in such business.

40. PW-1 further testified that, before purchasing the suit property, he and Gulshan Verma inspected it and found that only the finishing work remained incomplete. He admitted that despite his experience in property dealings, neither he nor Gulshan Verma verified the title or ownership records from the office of the Sub-Registrar and instead relied solely upon the representations made by the seller.

41. PW-1 also deposed that he had no acquaintance with defendant no. 4 or its associates before the execution of the sale deed dated 07.08.2009. He admitted that only symbolic or paper possession of the suit property was delivered to the purchasers and that actual physical possession was never handed over, although the sale deed did not record that possession had been withheld because of the unfinished construction. He denied the suggestion that the amount paid under the sale deed represented a loan or that it had been repaid, and further denied that the sale deed was liable to be cancelled after repayment. However, he admitted that neither he nor the co-purchaser ever obtained actual physical possession of the suit property.

42. PW-1 maintained that the transaction was a genuine sale and not a loan transaction, while admitting that he had relied entirely upon the seller's representations and had received only symbolic possession. During his cross-examination by the Ld. Counsel for defendant no. 4, PW-1 admitted that, on the date of execution of the sale deed dated 07.08.2009, the suit property was already substantially constructed,

comprising a basement, ground floor, first floor, second floor, third floor and terrace, with only finishing work remaining. He further admitted that, during the pendency of the suit, he examined the registered sale deeds dated 08.04.2008 and 10.07.2008 executed by defendant no. 1 in favour of defendant no. 4 and found them to be genuine registered documents. He acknowledged that these sale deeds had been executed prior to the sale deed dated 07.08.2009 and conveyed the entire suit property to defendant no. 4 for valuable consideration.

43. PW-1 also admitted that there was no written agreement or clause in the sale deed dated 07.08.2009 requiring defendant nos. 1 and 2 to complete any construction or renovation work, although he maintained that there was an oral understanding to complete the remaining work. He further stated that he was aware of the arrest of defendant nos. 1 and 2 but had no knowledge of the details of FIR no. 242/2010 or whether their arrest was connected with that case. He also expressed ignorance regarding the loan obtained from Standard Chartered Bank, the deposit of the original title documents with the bank, the redemption of the loan by defendant no. 4, and the custody of the original title documents.

44. PW-1 admitted that, after execution of the registered Sale Deeds dated 08.04.2008 and 10.07.2008, defendant no. 1 ceased to be the owner of the suit property and had no right or authority to execute the subsequent sale deed dated 07.08.2009 in favour of the plaintiffs. He further admitted that defendant nos. 1 and 2 had cheated the plaintiffs by executing the subsequent sale deed despite having already transferred the property. However, he denied that defendant no. 4 became the absolute

owner of the property, denied that the sale deed dated 07.08.2009 was void or a nullity, and denied that the present suit had been instituted to harass the defendants. In substance, PW-1 admitted the genuineness and prior execution of the 2008 sale deeds in favour of defendant no. 4 and acknowledged that defendant no. 1 lacked authority to execute the subsequent sale deed, while maintaining that the plaintiffs had acted bona fide in purchasing the property.

45. During his cross-examination by the Ld. Counsel for defendant no. 11, PW-1 admitted the execution of the sale deed dated 07.08.2009 in his favour but categorically denied that defendant no. 1 had created any equitable mortgage over the suit property in favour of defendant no. 11 Bank on 04.08.2009. He also denied having prepared or procured any forged or fabricated title documents in collusion with defendant nos. 1 to 4 to defeat the Bank's rights or recovery proceedings. PW-1 further denied concealing any material facts regarding the credit facilities allegedly granted by defendant no. 11 Bank to M/s Sarvottam Overseas Pvt. Ltd. or the alleged guarantee executed by defendant no. 1. He also denied that the present suit was collusive or filed in conspiracy with any of the defendants and maintained that he was deposing truthfully before the Court. Thus, PW-1 reaffirmed that the sale deed dated 07.08.2009 was genuine, denied the existence of any valid mortgage in favour of defendant no. 11 Bank.

PW2/Manish Madan

46. PW2/Manish Madan has tendered evidence by way affidavit Ex. PW2/A and relied upon the document already Ex.PW1/10.

During his cross-examination, PW-2, Manish Madan, deposed that he had no role in the negotiations or discussions between the plaintiffs and defendant nos. 1 and 3 concerning the sale of the suit property and that his involvement was confined to attending the registration of the sale deed dated 07.08.2009. He stated that he had not participated in the transaction prior to its registration and had no personal knowledge of the earlier dealings between the parties.

47. PW-2 further stated that he was unaware whether defendant no. 1 had already sold the suit property to defendant no. 4 before 07.08.2009, whether defendant no. 1 had ceased to have any right, title, or interest in the property, or whether she lacked the authority to execute the sale deed in favour of the plaintiffs. He clarified that his knowledge was limited solely to the registration of the sale deed and that he had no personal knowledge regarding the prior negotiations, the alleged earlier sale in favour of defendant no. 4, or the legal validity of defendant no. 1's authority to execute the Sale Deed dated 07.08.2009.

48. **PW3/Balwant Singh JSA from DDA, Vikas Sadan, Delhi** proved the record with regard to the property no. C-1/125, Pankha Road, Janakpuri, New Delhi, according to which the said property was allotted in favour of Smt. Usha Johri Ex. PW3/1.

49. **PW4/Krishna Chandra Khosla Assistant Manager, State Bank of India (earlier known as State Bank of Patiala)** proved the statement of bank account of Sanjay Goyal / plaintiff in respect of bank account no. 65011775199 with regard to the period 01.07.2009 to 31.08.2009 showing presentation of the cheques no. 932348 of Rs. 10 lakhs and

cheque no. 932351 of Rs. 6 lakhs Ex. PW4/1. PW4/Krishna Chandra Khosla did not have any personal knowledge of the facts and circumstances of the present case.

50. **PW5/Manish Dubey Branch Manager in Indian Bank, West Patel Nagar Branch** has proved the summoned records that is the statement of the Account pertaining to Cheque no. 198880 dated 07.08.2009 issued by Shri Jaspal Singh (A/c no. 763281685) Ex. PW-5/1.

51. **PW6/Rahul Record keeper office of the Sub-Registrar Basai Darapur, District West, Delhi** proved volume register bearing no. 16976 wherein the sale deed dated 07.08.2009 registered vide registration no. 12995, additional book no. 1 on pages 188 to 195 is found to be pasted as already exhibited Ex. PW1/10.

52. PW6 Rahul stated not to have personal knowledge of Ex. PW-1/10. He further admitted that the office of the Sub-Registrar has a mechanism through which the execution of previous sale deeds relating to a property can be checked and verified upon payment of the prescribed fee, and that such verification is available to any person seeking to confirm the title records.

After cross examination, the plaintiff evidence was closed.

<u>Defendant Evidence:-</u>

53. **DW1/Arun Kumar DEO, Office of Sub-Registrar II, Basai Darapur, New Delhi** proved the sale deed bearing registration no. 7844, book no. I, Vol no. 15880 pages 1 to 28 dated 08.04.2008 executed by Usha Johri in favour of M/s Dev Kripa Developers P. Ltd through MD. Smt. Madhu Doshi for property no. C-1/125, Janakpuri, New Delhi, Ex

DW1/1. He further proved the certified copy of sale deed bearing registration no. 17209 in Book no.1 Vol. no. 16248 on pages 119 to 134 registered on 21.07.2008 with Sub Registrar II Janakpuri, New Delhi Ex. DW1/2.

During cross examination, DW1/Arun Kumar stated that he has no personal knowledge of the record produced by him in Court and also has no knowledge regarding the registration process.

DW2/Yashi Johri

54. DW2/Yashi Johri has tendered evidence by way of affidavit Ex. DW2/A.

During his cross-examination, DW-2, Dr. Yashi Johri, deposed that he has been practising as a General Physician since 1997 and is presently employed at Maharaja Agrasen Multispeciality Hospital, Narela. He admitted that he had remained on bed rest following an accident and had also remained in judicial custody in Tihar Jail for about one and a half years in connection with an FIR lodged by defendant no. 4 relating to the suit property. He further stated that both he and defendant no. 1 are presently on bail in the said criminal case pending before the Dwarka Courts.

55. DW-2 testified that defendant no. 1 was the original owner of the suit property under a conveyance deed dated 07.06.1993 and stated that although construction had progressed up to the third floor, finishing work remained incomplete at the time of execution of the sale deed dated 07.08.2009. He maintained that neither he nor defendant no. 1 ever delivered physical possession of the suit property to anyone and asserted

that they continued residing there until October 2010, when they were allegedly forcibly removed and handed over to the police.

56. DW-2 further deposed that he came into contact with the plaintiffs through Manish Madan when he and defendant no. 1 required financial assistance to repay loans allegedly taken from defendant no. 4. He admitted that he informed the plaintiffs about the earlier transactions concerning the suit property, facilitated meetings between the parties, participated in the execution of the sale deed dated 07.08.2009, and acknowledged that defendant no. 1 received a total sale consideration of Rs. 36 lakhs through cheques and cash. However, he maintained that the transaction was in substance a loan arrangement and not an absolute sale, disputed the legal effect of the sale deed, and denied that it conferred absolute ownership upon the plaintiffs. He also categorically asserted that neither defendant no. 4 nor defendant nos. 5 to 10 had any ownership rights in the suit property.

57. During his cross-examination by the Ld. Counsel for defendant no. 4, which was permitted by the Court as DW-2 had made allegations against defendant no. 4 in his examination-in-chief, DW-2 admitted that defendant no. 1 had executed two registered sale deeds dated 08.04.2008 and 10.07.2008 in favour of defendant no. 4 in respect of the entire suit property and that he had signed both sale deeds as an attesting witness. He further admitted that the sale deed dated 07.08.2009 executed in favour of the plaintiffs was subsequent to the 2008 sale deeds and that the plaintiffs were aware of the earlier transactions before execution of the later sale deed.

58. However, DW-2 denied that defendant no. 1 ceased to be the owner of the property after executing the 2008 sale deeds or that she lacked the authority to execute the subsequent sale deed dated 07.08.2009. He maintained that the transactions with defendant no. 4 were merely loan transactions and not genuine sales, asserted that possession of the property always remained with defendant no. 1 and her family, and stated that the plaintiffs had visited the property before execution of the sale deed while the defendants were still residing there and construction was continuing.

59. DW-2 further deposed that although he had not produced documentary evidence of the alleged loan transaction in the present suit, he had filed bank statements, an MOU, electricity bills and house tax receipts in the criminal proceedings arising out of FIR no. 242/2010. He admitted that both he and defendant no. 1 had been arrested and remained in judicial custody in connection with the said FIR. He also claimed that approximately Rs. 1.64 crores had been repaid to defendant no. 4 towards the alleged loan but admitted that neither he nor defendant no. 1 had instituted any suit seeking cancellation of the 2008 sale deeds or lodged any complaint against defendant no. 4 after the alleged repayment.

60. DW-2 also admitted that no written permission had been obtained from defendant no. 4 before executing the sale deed dated 07.08.2009 in favour of the plaintiffs. However, he denied that defendant no. 4 was unaware of the subsequent transaction or that he and defendant no. 1 had cheated defendant no. 4. He further denied that possession of the property had been handed over to defendant no. 4 at the time of execution of the

2008 sale deeds. He additionally stated that an earlier loan of about Rs. 68 lakhs from Standard Chartered Bank, secured against the suit property, had been repaid from the amount received from defendant no. 4, after which the original title documents were released by the bank and handed over to defendant no. 4. Throughout his testimony, DW-2 maintained that the 2008 sale deeds were only loan arrangements, that possession of the suit property always remained with defendant no. 1 and her family, and that defendant no. 1 continued to have the authority to execute the sale deed dated 07.08.2009 in favour of the plaintiffs.

61. During his cross-examination by the Ld. Counsel for defendant no. 11, which was also permitted by the Court as DW-2 had made allegations against defendant no. 11, DW-2 stated that he could identify the signatures of his mother, Defendant no. 1 Smt. Usha Johri, and acknowledged his awareness of M/s Sarvottam Overseas Pvt. Ltd. He, however, categorically denied that his mother had executed any guarantee in connection with any loan transaction. He deposed that a financer, Virender Singh, had introduced him to M/s Sarvottam Overseas Pvt. Ltd. for arranging funds against the suit property and that he had earlier been introduced to Virender Singh through Mr. Swaran Singh. DW-2 refused to identify his mother's signatures on the Deed of Guarantee dated 04.08.2009 produced by defendant no. 11 Bank and denied that the suit property had been mortgaged to defendant no. 11 Bank on 04.08.2009 by M/s Sarvottam Overseas Pvt. Ltd. with defendant no. 1 acting as guarantor. He also denied that he and defendant no. 1 had executed the sale deed in favour of the plaintiffs to defeat or avoid the Bank's claim or

liability and rejected the allegation that he was suppressing material facts. He consistently maintained that no guarantee had been executed by defendant no. 1, no valid mortgage existed in favour of defendant no. 11 Bank, the sale deed dated 07.08.2009 was not intended to defeat the Bank's rights, and that he was deposing truthfully before the Court.

DW3/Mayur Jain

62. DW3/Mayur Jain tendered evidence by way of affidavit Ex DW3/A and relied upon the following documents : extracts of the board resolution dated 17.01.2011 Ex DW3/1, sale deed dated 08.04.2008 Ex DW3/2 and sale deed dated 10.07.2008 Ex DW3/3.

63. During his cross-examination, DW-3, Mayur Jain, deposed that he is a Director of defendant no. 4, Dev Kripa Developers Pvt. Ltd. He stated that defendant nos. 1 and 2 approached defendant no. 4 through a property dealer in 2008 to sell the suit property due to financial difficulties. According to him, Defendant no. 4 purchased the property through registered sale deeds dated 08.04.2008 and 10.07.2008 after due verification, and the property was already substantially constructed with only renovation work remaining.

64. DW-3 further deposed that although defendant no. 4 did not immediately undertake renovation work, repair work to address seepage was carried out between 2010 and 2012 after obtaining constructive possession of the property. He clarified that while constructive possession was referred to in a Memorandum of Understanding, defendant no. 4's ownership claim was based on the registered sale deeds and not on the Memorandum of Understanding.

65. He stated that he had no prior acquaintance with the plaintiffs and became aware of the sale deed dated 07.08.2009 executed in their favour only after the institution of the present suit. He admitted that defendant no. 4 had not filed any civil suit challenging the sale deed dated 07.08.2009 or any criminal complaint against the plaintiffs, though an FIR against defendant nos. 1 and 2 was pending before the Dwarka Courts. He also stated that he had no personal grievance against the plaintiffs.

66. DW-3 denied the allegation that the sale deeds dated 08.04.2008 and 10.07.2008 were forged or fabricated. He admitted that defendant no. 4 was not in actual physical possession of the suit property and was not carrying on any business from it but maintained that the company remained in constructive possession by virtue of the registered sale deeds. He denied the suggestion that defendant no. 4 had no constructive possession and affirmed that his testimony was truthful.

67. During his cross-examination on behalf of defendant nos. 1 and 2, DW-3 stated that he was a Director of defendant no. 4 at the relevant time and that the negotiations for the sale of the property took place in the presence of himself, the property dealer Mr. Babbar, and defendant nos. 1 and 2. He denied that his parents or brother participated in the negotiations and stated that he did not remember whether his father was the Managing Director of the company in 2008. He categorically denied the suggestion that the transactions between defendant no. 4 and defendant no. 1 and 2 were loan transactions rather than genuine sales.

68. DW-3 further deposed that M/s D.R. International was a separate

private limited company and stated that he did not remember its directors in 2008 or whether he or his family members were associated with it. He denied receiving Rs. 1.64 crores from defendant nos. 1 and 2 after execution of the sale deeds and stated that certain payments were made directly to Standard Chartered Bank to redeem the mortgage, after which the original title documents were obtained before execution of the sale deeds.

69. He also denied having any knowledge of alleged transfers of funds by defendant nos. 1 and 2 to the accounts of M/s D.R. International, Mr. Rohit Jain, or Dev Kripa Developers Pvt. Ltd., and denied knowledge of any letter addressed to the Investigating Officer acknowledging receipt of such amounts. He further denied that there was any agreement for payment of Rs. 3 crores towards construction of a nursing home or any obligation upon defendant no. 1 to repay such amount with interest. He also denied the suggestion that defendant no. 4 had never taken possession of the suit property.

70. DW-3 denied all allegations that defendant nos. 1 and 2 or their family members had been kidnapped or abducted, denied that defendant no. 4 had lodged a false FIR or acted in conspiracy with others, denied that defendant no. 4 had received the entire sale consideration together with interest after execution of the sale deeds, and maintained that the allegations of fraud and conspiracy were false and that he had deposed truthfully before the Court.

71. **DW4/HC Vikas** brought the summoned record i.e copy of FIR no. 242/2010 U/s 420/34 IPC PS Janakpuri Ex. DW4/1. During cross

examination, DW4/HC Vikas stated that he has no personal knowledge regarding the record produced by him in Court.

Final arguments

72. I have heard Shri Rishabh Jain Ld. Counsel for plaintiff, Shri Rahat Bansal, Ld. Counsel for defendant no.1 and 2, Shri Vineet Mehta and Shri Jogesh Gupta, Ld. Counsel for defendant no.4 and Shri Jaspreet Singh, Ld. Counsel for defendant no.11 and perused the record.

73. At the stage of final arguments, Ld. Counsel for defendant no. 11 placed on record the certified copy of the recovery certificate for Rs. 10,03,63,279.49/- in the recovery proceedings initiated against M/s Sarvottam Overseas Pvt. Ltd. before the DRT New Delhi wherein defendant no. 1 has also been arrayed as a party being the guarantor.

74. It is argued by Ld. Counsel for plaintiff that the plaintiff is the owner of the ground floor. Defendant no. 1 has sold the same property multiple times. PW4 is the witness from Bank of India who prove the payments made towards consideration. Defendant no. 1 Usha Johri did not step in the witness box. Defendant no. 2 alleged that the sale deed was loan agreement. Defendant no. 4 is not in possession and there is a cloud on their title.

75. Ld. Counsel for defendant no. 1 and 2 has argued that sale deed was executed only as loan transaction as stated by late Shri Gulshan Verma and he was supposed to cancel the sale deed but did not do it. This property was already removed from collateral purposes. Defendant no. 11 Bank of India did not produce the said written statement filed by the person who took loan before the DRT.

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76. Ld. Counsel for defendant no. 4 submits that the sale deed Ex. DW1/1 and DW1/2 are prior in time to the one the plaintiff is coming up with. It is argued that the sale deed dated 07.08.2009 is nullity. The sale deeds relied by the defendant no. 4 dated 08.04.2008 and 10.07.2008 are prior to the sale deeds of the plaintiff. The PW1 during cross-examination admitted that the sale deed dated 08.04.2008 and 10.07.2008 are genuine.

77. Ld. Counsel for defendant no. 11 has argued that the property is mortgaged with Bank of India by defendant no. 1. It cannot be sold by anyone during the mortgage. The loan was granted on 04.08.2009 and the sale deed relied by the plaintiff is dated 07.08.2009.

Court observation and findings

Appreciation of Evidence and Issue-wise Findings

78. Before adverting to the individual issues, it is necessary to notice that the present suit is not a simple suit for declaration. The dispute concerns competing claims arising out of several registered sale deeds executed by the same vendor, an alleged equitable mortgage created prior to the plaintiffs' sale deed, rival claims regarding possession, and allegations of fraud levelled by almost every contesting party against the others. Thus, the entire controversy has to be examined primarily on the basis of documentary evidence rather than merely on oral assertions.

79. The Supreme Court has repeatedly held that where title to immovable property is founded upon registered conveyances, such documents carry a presumption of validity unless set aside in accordance with law, and allegations of fraud must be specifically pleaded and strictly proved. The burden to establish fraud lies heavily upon the party

alleging it. Similarly, under Section 54 of the Transfer of Property Act, ownership in immovable property of value exceeding Rs. 100/- passes only through a registered instrument. The Court shall therefore examine whether the plaintiffs have discharged the burden cast upon them.

Issue no.1 Whether the plaintiffs and defendant no.3 became absolute and joint owners of the suit property bearing no. C-1/125, Janakpuri, New Delhi measuring 419 sq. yards (Ground Floor) after its purchase from defendant no.1 vide sale deed dated 07.08.2009? OPP

80. The burden of proving this issue lay entirely upon the plaintiffs. The plaintiffs rely principally upon the registered Sale Deed dated 07.08.2009 Ex. PW1/10, executed by defendant no.1 in favour of plaintiff no.1, plaintiff no.2 and defendant no.3. The execution and registration of Ex. PW1/10 stands proved through PW-6 Rahul from the office of the Sub-Registrar, who produced the original registration records and categorically deposed that Ex. PW1/10 corresponds with the official record maintained in the office of the Sub-Registrar.

81. Thus, there is no dispute regarding the factum of registration of the sale deed dated 07.08.2009. However, registration of a sale deed is not, by itself, sufficient to establish valid title if the vendor had already divested herself of ownership prior to the execution of that sale deed. This principle flows from the maxim *nemo dat quod non habet*, namely that no person can transfer a better title than what he himself possesses. The entire controversy therefore depends upon whether defendant no.1 continued to possess transferable title on 07.08.2009.

82. The plaintiffs have attempted to establish title by proving the

original allotment documents issued by DDA through PW3. Ex.PW1/1 to Ex.PW1/9 and Ex.PW3/1 collectively establish that defendant no.1 originally acquired title from DDA and became the owner of the property. To that extent there is no dispute. However, the crucial question is whether she continued to remain owner till August 2009. On this aspect, the evidence assumes importance. DW1, an official from the office of the Sub-Registrar, produced the original records relating to two registered sale deeds dated 08.04.2008 and 10.07.2008. These documents have been proved as Ex.DW1/1 and Ex.DW1/2. Both documents are prior in time to the plaintiffs' sale deed. Significantly, these documents were never challenged as fabricated during the evidence.

Rather, PW1 himself made admissions which substantially weaken the plaintiffs' case.

83. During his cross-examination by defendant no.4, PW1 admitted that the sale deeds dated 08.04.2008 and 10.07.2008 had been verified from the office of the Sub-Registrar. They were genuine registered documents. They had been executed prior to Ex.PW1/10. Those sale deeds conveyed the entire property. After execution of those sale deeds defendant no.1 ceased to be owner. Defendant no.1 had no authority thereafter to execute Ex.PW1/10. These admissions are not minor discrepancies. They constitute clear admissions on facts directly affecting the plaintiffs' title. Admissions made during cross-examination constitute substantive evidence and unless satisfactorily explained, bind the maker.

84. No explanation has been offered by PW1 for these admissions. On the contrary, he merely asserted that despite these admissions, the

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plaintiffs should still succeed. Such an assertion cannot override his categorical admissions. PW1 further admitted another fact of considerable significance. Although the plaint specifically pleads that vacant and physical possession had been delivered on 07.08.2009, PW1 admitted during cross-examination that only paper possession was delivered and actual physical possession was never handed over. This admission completely contradicts the plaint. The sale deed itself recites delivery of possession. If actual possession was withheld, nothing prevented the parties from incorporating such condition in the registered instrument. No such recital exists. Instead, PW1 admitted that despite being an experienced property dealer with nearly twenty-five years' experience, he neither verified previous title documents from the office of the Sub-Registrar nor insisted upon actual possession before paying substantial consideration.

85. This conduct appears highly improbable for a prudent purchaser experienced in real estate transactions. The omission to verify previous encumbrances becomes even more significant because PW6 specifically stated that the office of the Sub-Registrar had an established mechanism enabling any purchaser to verify earlier registered conveyances on payment of the prescribed fee. The plaintiffs admittedly never availed of this facility. The plaintiffs have also relied upon bank witnesses PW4 and PW5 to prove payment of sale consideration. Those witnesses merely establish encashment of certain cheques. Payment of consideration, however, does not automatically validate title if the vendor herself lacked authority to transfer the property. Thus, these witnesses do not advance

the plaintiffs' case regarding ownership.

86. The evidence of PW2 is equally of limited assistance. PW2 admitted that he had no role in negotiations and was merely present at the registration office. He expressly stated that he had no knowledge whether defendant no.1 had already sold the property to defendant no.4. His testimony therefore proves only execution of the document and not the subsistence of title. The Court also finds considerable significance in the testimony of DW2. Although DW2 attempted to portray both the 2008 and 2009 transactions as loan arrangements, he nevertheless admitted that the two registered sale deeds of 2008 had indeed been executed. He himself was an attesting witness thereto. The plaintiffs were informed about those earlier transactions before execution of Ex.PW1/10. This admission materially supports the defence of defendant no.4 that the plaintiffs were not completely unaware of the earlier transactions.

87. Even though DW2 sought to explain those sale deeds as security for a loan, neither defendant no.1 nor DW2 ever instituted any suit seeking cancellation of the 2008 registered sale deeds. No declaration has ever been obtained that those documents were sham transactions. Until avoided by a competent Court, registered conveyances remain operative. The Supreme Court has consistently held that a registered conveyance cannot be ignored merely by alleging that it was intended as security unless such plea is proved by cogent evidence. No such evidence has been produced.

88. Another circumstance weakening the plaintiffs' case is that they failed to prove continuous possession. The plaint repeatedly asserts

continuous possession. However, PW1 admitted absence of physical possession. DW3 admitted defendant no.4 also never obtained physical possession. DW2 maintained that defendant no.1 continued residing there till October 2010. Thus, none of the parties has established uninterrupted physical possession in the manner pleaded. The plaintiffs therefore failed to prove an the important factual foundations of their claim.

89. Although Ex.PW1/10 is undoubtedly a genuine registered document, the plaintiffs were also required to establish that defendant no.1 possessed transferable title on the date of its execution. On the evidence available, they have failed to discharge that burden. The prior registered sale deeds Ex.DW1/1 and Ex.DW1/2 remained valid and subsisting. PW1 himself admitted both their genuineness and their prior execution. He further admitted that defendant no.1 had no authority thereafter to execute Ex.PW1/10. These admissions strike at the very root of the plaintiffs' case.

90. Accordingly, the plaintiffs have failed to establish that they and defendant no.3 became absolute and joint owners merely by virtue of the sale deed dated 07.08.2009. Issue no.1 is decided against the plaintiffs and in favour of the contesting defendants.

Issue no. 2 Whether the sale deeds dated 08.04.2008 and 10.07.2008, in respect of the suit property, in favour of defendant no.4, are null and void, illegal and having no force in law? OPP

91. The onus to prove this issue rested upon the plaintiffs. The plaintiffs seek a declaration that the two registered sale deeds dated 08.04.2008 and 10.07.2008 executed by defendant no.1 in favour of

defendant no.4 are forged, fabricated, illegal and liable to be declared null and void. Since the relief sought is one of declaration against registered conveyances, the burden upon the plaintiffs is a heavy one. A registered instrument carries a presumption of due execution and validity until the contrary is established by cogent and convincing evidence. Mere allegations of fraud or fabrication are insufficient unless supported by reliable evidence. The law is equally well settled that fraud must not only be specifically pleaded but must also be strictly proved. Reference may be made to ***Prem Singh v. Birbal, (2006) 5 SCC 353; Ranganayakamma v. K.S. Prakash, (2008) 15 SCC 673; and Vimal Chand Ghevarchand Jain v. Ramakant Eknath Jadoo, (2009) 5 SCC 713***.

92. The principal foundation of the plaintiffs' challenge is that defendant no.1 had delivered the original title documents to the plaintiffs at the time of execution of the sale deed dated 07.08.2009 and, therefore, the earlier sale deeds relied upon by defendant no.4 must necessarily be forged or fabricated. However, except for the oral assertions of PW-1, no independent evidence has been produced to establish fabrication of the sale deeds dated 08.04.2008 and 10.07.2008. No handwriting expert, no forensic examination, no challenge to the signatures of defendant no.1, nor any evidence from the office of the Sub-Registrar has been led to show that those documents were fraudulently registered or fabricated.

93. On the contrary, defendant no.4 summoned the original registration record through DW-1 Arun Kumar from the office of the Sub-Registrar. DW-1 proved the certified copies of the sale deeds dated 08.04.2008 and 10.07.2008 as Ex. DW1/1 and Ex. DW1/2. Though DW-1 admitted that

he had no personal knowledge of the transaction, he proved the official records maintained in the office of the Sub-Registrar. His testimony establishes that both sale deeds are part of the official registration records and stand duly registered. Nothing substantial could be elicited in his cross-examination to cast any doubt upon the authenticity of those official records.

94. The most significant evidence against the plaintiffs, however, comes from their own witness. During his cross-examination by Ld. Counsel for defendant no.4, PW-1 admitted that during the pendency of the suit he himself verified the sale deeds dated 08.04.2008 and 10.07.2008 from the office of the Sub-Registrar. He further admitted that those sale deeds were genuine registered documents executed prior to the sale deed dated 07.08.2009. PW-1 also admitted that those sale deeds purported to convey the entire property and that, upon their execution, defendant no.1 ceased to be the owner of the property and had no authority to execute the subsequent sale deed dated 07.08.2009. These admissions are categorical, unequivocal and go to the root of the plaintiffs' challenge.

95. It is settled law that an admission is substantive evidence and, unless satisfactorily explained, binds the party making it. In the present case, PW-1 never attempted to explain why, after verifying the sale deeds from the office of the Sub-Registrar and admitting their genuineness, the plaintiffs continued to assert in the plaint that they were forged and fabricated. Such inconsistent stands substantially erode the credibility of the plaintiffs' case.

96. DW-2 admitted that defendant no.1 had executed the sale deeds dated 08.04.2008 and 10.07.2008 and that he himself was an attesting witness thereto. Although he attempted to explain that the transactions were, in reality, loan transactions and not outright sales, he admitted that neither he nor defendant no.1 ever instituted any suit for cancellation of those sale deeds, nor sought any declaration that they were sham transactions. He further admitted that no written permission was obtained from defendant no.4 before execution of the subsequent sale deed dated 07.08.2009 in favour of the plaintiffs. These admissions materially weaken the plea taken by defendants no.1 and 2 that the earlier sale deeds were merely security documents.

97. The Court is conscious that defendants no.1 and 2 have consistently pleaded that the transactions of 2008 were intended only as security for a loan and not as absolute sales. However, such a plea cannot prevail against the express recitals of duly registered sale deeds unless the same are set aside in appropriate proceedings. Neither defendant no.1 nor defendant no.2 sought cancellation of the sale deeds dated 08.04.2008 and 10.07.2008. They have also failed to produce any contemporaneous written agreement, memorandum or document evidencing that the transactions were intended merely as security. A bald plea that a registered sale deed was in fact a loan transaction cannot, by itself, invalidate a registered conveyance.

98. The plaintiffs have further alleged that defendant no.4 acted in collusion with officials of the office of the Sub-Registrar. Such allegations are serious in nature and require strict proof. No official from

the office of the Sub-Registrar was confronted with any material suggesting manipulation of the records. No complaint against any official has been proved. No expert evidence regarding interpolation, fabrication or forgery has been produced. Mere suspicion or conjecture cannot substitute legal proof.

99. The reliance placed by the plaintiffs upon the fact that defendant no.4 did not obtain physical possession of the property is equally of no avail. Even if defendant no.4 was not in actual physical possession, such circumstance by itself does not invalidate the registered sale deeds. Delivery of possession is a matter distinct from the validity of the conveyance. Similarly, the fact that DW-3 admitted only "constructive possession" does not render the sale deeds void.

100. The plaintiffs have also relied upon the fact that criminal proceedings were initiated by defendant no.4 against defendants no.1 and 2. However, the pendency of criminal proceedings neither establishes nor disproves the validity of the sale deeds in question. The criminal case is independent and cannot govern the civil adjudication regarding title.

101. A cumulative appreciation of the entire evidence leads to the conclusion that the plaintiffs have failed to establish any legal ground for declaring the sale deeds dated 08.04.2008 and 10.07.2008 as null and void. On the contrary, the evidence on record, including the admissions of PW-1, supports the existence and prior execution of those sale deeds. In the absence of proof of fraud, coercion, impersonation, want of execution or any other legally recognised ground for avoidance, the Court cannot declare duly registered conveyances to be void merely because a

subsequent purchaser asserts a competing title. Accordingly, the plaintiffs have failed to discharge the burden cast upon them. Issue no. 2 is decided against the plaintiffs and in favour of defendant no.4.

Issue no. 3 Whether the sale deeds executed by defendant nos. 1 and 2 in favour of defendant nos. 5 to 10 are null and void, illegal and have no force in the eyes of law? OPP

102. The burden of proving this issue was upon the plaintiffs. The plaintiffs have sought a declaration that the subsequent sale deeds allegedly executed by defendant nos. 1 and 2 in favour of defendant nos. 5 to 10 are null and void. Their challenge is founded on the plea that after execution of the sale deed dated 07.08.2009 in favour of the plaintiffs and defendant no.3, defendant no.1 had already divested herself of all rights in the ground floor and, therefore, was incompetent to execute any further conveyance in favour of subsequent purchasers.

103. At the outset, it is pertinent to note that defendants no.5 to 10 (except defendant no. 8) did not file any written statement despite sufficient opportunities. Their right to file written statement was closed vide order dated 27.08.2013 and they were proceeded ex parte vide order dated 13.12.2015. However, the mere fact that a defendant has been proceeded ex parte does not absolve the plaintiffs from proving their own case. It is well settled that even in ex parte proceedings, the Court must satisfy itself that the plaintiff has established a legal entitlement to the relief claimed. A decree cannot follow merely because the defendant has failed to contest the proceedings.

104. The plaintiffs have not placed on record the original sale deeds

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allegedly executed in favour of defendants no.5 to 10. Apart from general pleadings alleging repeated sale of different portions of the property, no certified copies of those conveyances have been exhibited through any witness from the office of the Sub-Registrar. No official record proving the execution, contents or nature of those sale deeds has been produced. In the absence of the primary documents sought to be declared void, the Court cannot undertake an adjudication regarding their validity.

105. The evidence of PW-1 is equally deficient on this aspect. Although PW-1 deposed that defendant no.1 had executed multiple sale deeds in favour of different persons, he admittedly had no personal knowledge of the execution of each such conveyance. His testimony is primarily based upon information gathered after disputes arose in September 2010. Such evidence is insufficient to invalidate registered conveyances concerning parties who have not even been confronted with the documents relied upon against them.

106. It is equally significant that defendant no.8, who is one of the subsequent purchasers, has specifically pleaded that she purchased only the third floor of the property through a registered sale deed dated 06.11.2009 for valuable consideration and that she has no concern with the ground floor, which is the subject matter of the present suit. She has further asserted that she is a bona fide purchaser without notice of any prior dispute and has opposed only the claim of defendant no.4 while maintaining the validity of her own title.

107. The plaintiffs have not produced any evidence to demonstrate that defendant no.8 or any of the other subsequent purchasers had knowledge

of any prior defect in title or had acted in collusion with defendant no.1. Mere allegations of collusion are insufficient. Fraud must be proved by cogent evidence and cannot be presumed.

108. More importantly, while deciding Issue no.1 and Issue no.2, the Court has already held that the plaintiffs have failed to establish that they acquired valid title under the sale deed dated 07.08.2009 and have also failed to establish that the prior sale deeds dated 08.04.2008 and 10.07.2008 in favour of defendant no.4 are null and void. Once those findings have been returned, the very foundation of the plaintiffs' challenge to the subsequent sale deeds disappears.

109. If defendant no.1 had already executed valid registered Sale Deeds in favour of defendant no.4 in the year 2008, she had no subsisting title thereafter. Consequently, any subsequent sale deeds executed by her would not confer title upon subsequent purchasers. However, such a finding does not automatically entitle the plaintiffs to a declaration that those subsequent Sale Deeds are void. The plaintiffs can succeed only on the strength of their own title and not on the weakness of the defendants' case. Since the plaintiffs have failed to establish their own superior title, they cannot seek a declaration against subsequent purchasers merely because defendant no.1 may have executed multiple conveyances.

110. The principle that a plaintiff must succeed on the strength of his own case and not on the weakness of the defence has been consistently reiterated by the Supreme Court, particularly in suits involving declaration of title. Furthermore, no evidence has been led to identify the precise portions conveyed to defendants no.5 to 10, the terms of those

conveyances, or the consideration paid thereunder. The Court cannot declare unidentified and unproved documents to be null and void in the absence of proper proof.

111. The plaintiffs have also not sought consequential relief of possession against those purchasers, nor have they proved that any of them dispossessed the plaintiffs from the ground floor. The evidence on record rather indicates that the parties were asserting competing claims over different portions of the property, thereby making the dispute substantially one of title rather than possession.

112. In these circumstances, the Court is of the opinion that the plaintiffs have failed to discharge the burden cast upon them. They have neither proved the contents and validity of the alleged sale deeds executed in favour of defendants no.5 to 10 nor established any legal basis for declaring those documents null and void. Accordingly, Issue no.3 is decided against the plaintiffs and in favour of the contesting defendants.

Issue no. 4 Whether the suit filed by the plaintiffs is not maintainable in the present form? If so, its effect? OPD-1

113. The onus to prove this issue was upon defendant no.1. Defendant no.1 has objected to the maintainability of the suit on several grounds, namely that the plaintiffs have not approached the Court with clean hands, have suppressed material facts, have not sought appropriate reliefs, and that the transaction dated 07.08.2009 was merely a loan transaction secured by execution of documents and not an actual sale.

114. The objection regarding maintainability has to be distinguished

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from the merits of the plaintiffs' claim. A civil suit is not rendered non-maintainable merely because the plaintiff ultimately fails to establish his title. The question of maintainability concerns the jurisdiction of the Court and the legal competence of the suit, whereas the merits concern the entitlement to relief.

115. The plaintiffs have sought declarations regarding their alleged ownership, declaration that the rival sale deeds are void, permanent injunction and mandatory injunction. Such reliefs are recognised under the Specific Relief Act and are maintainable before a Civil Court. The objection that the Sale Deed dated 07.08.2009 was executed merely as security for a loan also does not render the suit non-maintainable. It is only a defence on merits.

116. Similarly, the plea that the plaintiffs suppressed material facts regarding the earlier sale deeds or the mortgage created in favour of defendant no.11 affects the credibility of their case but does not oust the jurisdiction of the Court.

117. Ld. Counsel for defendant no.11 also argued that the plaintiffs ought to have sought possession and cancellation of documents instead of merely seeking declarations. The Court has considered this submission. The plaint itself contains a specific prayer seeking declaration that the subsequent sale deeds are null and void. Thus, it cannot be said that the plaintiffs omitted to seek declaratory relief. Whether such relief is liable to be granted is altogether a different matter.

118. It was also argued that the suit is barred under Order II Rule 2 CPC. No evidence whatsoever has been produced to establish the

essential ingredients of Order II Rule 2 CPC, namely existence of an earlier suit founded upon the same cause of action in which the present reliefs were omitted. The burden was upon the defendants. No previous plaint, written statement or judgment has been proved. Consequently, this objection cannot succeed.

119. Defendant no.1 further pleaded that the plaint discloses no cause of action. This contention is also liable to be rejected. The plaint clearly pleads execution of the sale deed dated 07.08.2009, alleged delivery of possession, subsequent rival sale deeds, alleged interference with possession and competing claims over title. These averments undoubtedly disclose a cause of action. Whether the cause of action ultimately succeeds on evidence is an entirely different matter. The Supreme Court has consistently held that while deciding maintainability, the Court is required to examine the averments contained in the plaint and not the probable defence.

120. Accordingly, although the plaintiffs have ultimately failed to establish their entitlement to the reliefs claimed, it cannot be held that the suit itself was inherently not maintainable. Therefore, Issue no.4 is decided against defendant no.1 and in favour of the plaintiffs.

Issue no.5 Whether the suit has not been properly valued for the purpose of Court fee? OPD-1

121. The burden of proving this issue was also upon defendant no.1. Defendants no.1, 4 and 11 contended that the plaintiffs ought to have valued the suit on the market value of the property since they were substantially seeking cancellation of several registered sale deeds. The

plaintiffs, on the other hand, submitted that they were executants of none of the impugned documents except beneficiaries under their own sale deed dated 07.08.2009 and had correctly valued the declaratory reliefs.

122. It is well settled that where a plaintiff is not the executant of the document sought to be avoided and merely seeks a declaration that such document is void or not binding upon him, ad valorem Court fee on the market value is ordinarily not payable. Such suits are governed by the provisions relating to declaratory relief. The defendants have not produced any valuation report, circle rate notification or expert evidence demonstrating that the valuation adopted by the plaintiffs is contrary to law.

123. Neither has any issue regarding deficiency of Court fee been pursued by moving an application under Section 11 of the Court Fees Act for determination of proper valuation. The objection has remained a bald pleading unsupported by evidence. The burden having been placed upon defendant no.1 has not been discharged. Accordingly, Issue no.5 is decided against defendant no.1 and in favour of the plaintiffs.

Issue no.6 Whether the suit against defendant no.8 is not maintainable and is bad for misjoinder of parties? OPD-8

124. The burden of proof lay upon defendant no.8. Defendant no.8 pleaded that she had purchased only the third floor through a registered sale deed dated 06.11.2009 and had no concern whatsoever with the ground floor which forms the subject matter of the present suit. She therefore contended that she had been unnecessarily impleaded.

125. The plaintiffs themselves pleaded that defendant no.1 executed

multiple sale deeds in favour of different purchasers in respect of various portions of the property and that all such transactions formed part of the same fraudulent design. The plaintiffs have also sought declarations affecting the validity of subsequent sale deeds. Once such relief is claimed, the purchasers under those documents become necessary or at least proper parties to the proceedings. Any declaration regarding validity or invalidity of those sale deeds could directly affect their legal rights. Therefore, their presence before the Court cannot be regarded as unnecessary. The fact that defendant no.8 purchased only the third floor may ultimately disentitle the plaintiffs to relief against her, but it does not render her impleadment legally impermissible.

126. The Supreme Court has consistently held that where adjudication of title may affect the rights of a purchaser, such purchaser is a proper party. Accordingly, the objection of misjoinder cannot be accepted. Issue no.6 is decided against defendant no.8 and in favour of the plaintiffs.

Issue no.7 Whether the present suit is barred by the provisions of Sections 91 and 92 of the Indian Evidence Act? OPD-4

127. The burden of proving this issue was upon defendant no.4. Defendant no.4 argued that the plaintiffs were attempting to contradict the terms of duly registered Sale Deeds by alleging oral understandings, fraud and fabrication and that such evidence was barred under Sections 91 and 92 of the Indian Evidence Act. The contention deserves only partial acceptance.

128. Sections 91 and 92 embody the best evidence rule and prohibit oral evidence from contradicting, varying, adding to or subtracting from the

terms of a written contract. However, the provisos to Section 92 specifically permit evidence to establish fraud, illegality, want of due execution, failure of consideration, absence of intention and other recognised exceptions. Where a party alleges that a document itself is void on account of fraud or that it was never intended to operate according to its tenor, evidence to prove such plea is not barred. Therefore, the present suit itself cannot be said to be barred merely because allegations of fraud have been made.

129. At the same time, while deciding the merits, the Court has already held that the plaintiffs have failed to prove fraud. Failure to prove fraud does not mean that the suit was barred under Sections 91 and 92. It merely means that the plaintiffs failed to discharge their burden. Accordingly, defendant no.4 has failed to establish that the suit itself is barred by Sections 91 and 92 of the Indian Evidence Act. Issue no.7 is decided against defendant no.4 and in favour of the plaintiffs.

Issue no. 8 Whether the Sale Deed dated 07.08.2009 executed by defendant no.1 in favour of the plaintiffs and defendant no.3 is a forged document? OPD4

130. The onus to prove this issue was upon defendant no.4. It is the case of defendant no.4 that after having already executed two registered sale deeds dated 08.04.2008 and 10.07.2008 in its favour, Defendant no.1 had no subsisting right to execute another sale deed dated 07.08.2009 in favour of the plaintiffs and defendant no.3. Defendant no.4 further alleged that the sale deed dated 07.08.2009 was forged and fabricated. The evidence on record, however, does not support the plea that the document

itself is forged.

131. PW-6 Rahul, Record Keeper from the office of the Sub-Registrar, produced the original volume register and categorically proved that the sale deed dated 07.08.2009 was duly registered as Registration no.12995 in Book no.1. He compared Ex.PW1/10 with the original volume register and deposed that the document corresponded with the official record. His testimony remained unshaken in cross-examination except for the fact that he had no personal knowledge of the execution of the document.

132. Similarly, defendant no.1 has never disputed execution of the sale deed. Rather, DW-2 Yashi Johri admitted throughout evidence that defendant no.1 had executed the sale deed dated 07.08.2009 and had received consideration of approximately Rs. 36 lakhs. His defence was not that the signatures were forged but that the transaction was intended only as security for a loan.

133. The distinction between a forged document and an ineffective document is well settled. A document executed by the true owner but without authority or after divesting title is not a forged document merely because it fails to convey title. The Hon'ble Supreme Court in ***Prem Singh*** (supra) has held that a distinction exists between void documents and forged documents. A document may be void for want of title or authority, yet it is not forged unless its execution itself is fabricated or denied.

134. The evidence led by defendant no.4 establishes that defendant no.1 had already transferred her ownership in favour of Defendant no.4 in the year 2008. Thus, defendant no.1 lacked transferable title on 07.08.2009.

However, this circumstance only renders the subsequent conveyance legally ineffective to pass title. It does not establish that the document itself was fabricated or forged. No handwriting expert has been examined. No plea of impersonation has been established. No evidence has been produced to prove fabrication of signatures, thumb impressions or registration record. On the contrary, the execution of the document stands admitted by defendant nos.1 and 2 themselves.

135. Accordingly, while the Court has already held under Issue no.1 that the sale deed dated 07.08.2009 did not convey valid title because defendant no.1 had already divested herself of ownership, defendant no.4 has failed to establish that the document is forged. Issue no.8 is, therefore, decided against defendant no.4 and in favour of the plaintiffs. The sale deed dated 07.08.2009 is held to be a genuine registered document, though incapable of conveying title owing to the absence of ownership in defendant no.1 on the date of its execution.

Issue no. 9 Whether a valid equitable mortgage of the suit property was created by defendant no.1 on 04.08.2009 in favour of defendant no.11? If so, its effect? OPD11

136. The burden of proof lay upon defendant no.11. Defendant no.11 pleaded that defendant no.1 had deposited the original title documents on 04.08.2009 while standing guarantor for the credit facilities extended to M/s Sarvottam Overseas Pvt. Ltd., thereby creating an equitable mortgage. PW-1 denied knowledge of the alleged mortgage. DW-2 also denied execution of any guarantee and disputed creation of any mortgage. However, at the stage of final arguments defendant no.11 placed on

record the certified copy of the Recovery Certificate passed by the Debt Recovery Tribunal against M/s Sarvottam Overseas Pvt. Ltd., wherein defendant no.1 has been arrayed as guarantor.

137. The Recovery Certificate undoubtedly establishes that recovery proceedings culminated in favour of defendant no.11 against the borrower and guarantor. However, the existence of recovery proceedings does not, by itself, conclusively establish that a valid equitable mortgage over the present suit property has been proved in accordance with law in this civil suit. No officer from defendant no.11 entered the witness box. The original title deeds allegedly deposited with the Bank have not been proved through admissible evidence.

The memorandum of deposit of title deeds, if any, has not been exhibited. The Deed of Guarantee has also not been formally proved by any competent witness.

138. Thus, the essential ingredients required for proving creation of an equitable mortgage under Section 58(f) of the Transfer of Property Act, 1882 have not been established in the present proceedings. The burden was entirely upon defendant no.11. It is settled that pleadings or documents filed during arguments cannot substitute substantive evidence. Accordingly, defendant no.11 has failed to discharge the burden cast upon it. Nevertheless, since the plaintiffs themselves have failed to establish title under the sale deed dated 07.08.2009, the failure of defendant no.11 to prove equitable mortgage does not improve the plaintiffs' case. Issue no.9 is decided against defendant no.11.

Issue no.10 Whether the plaintiffs along with defendant no.3 are entitled

to the declarations prayed for? OPP

139. The burden rested upon the plaintiffs. The declaratory relief sought by the plaintiffs substantially depends upon the validity and legal effect of the sale deed dated 07.08.2009. The evidence establishes that defendant no.1 had already executed two registered sale deeds dated 08.04.2008 and 10.07.2008 in favour of defendant no.4. PW-1 himself admitted during cross-examination that both sale deeds are genuine registered documents. Defendant no.1 ceased to be owner after their execution. Defendant no.1 had no authority to execute the sale deed dated 07.08.2009. These admissions strike at the very foundation of the plaintiffs' case.

140. The plaintiffs have also failed to establish fraud or forgery in the earlier sale deeds. Similarly, defendant nos.1 and 2 have failed to establish that the sale deeds of 2008 were merely loan transactions. Consequently, defendant no.4 acquired title in 2008. Under the *maxim nemo dat quod non habet*, a person cannot convey better title than he himself possesses.

141. The principle has repeatedly been recognised by the Hon'ble Supreme Court, including in ***Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana AIR 2012 SC 206*** and ***Prem Singh*** (supra). Therefore, defendant no.1, having already divested herself of ownership, could not legally transfer the property again. The plaintiffs also admitted that they never received actual possession. Their own evidence establishes that they failed to verify the title records from the office of the Sub-Registrar before purchasing the property despite being experienced property dealers. The declaratory relief sought by the plaintiffs cannot therefore be

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granted. Issue no.10 is decided against the plaintiffs.

Issue no. 11 Whether the plaintiffs along with defendant no.1 are entitled to the reliefs of permanent and mandatory injunctions as prayed for? OPP

142. The burden of proving this issue was upon the plaintiffs. The reliefs of permanent and mandatory injunction claimed by the plaintiffs are entirely consequential to the declaration sought by them. The plaintiffs have prayed that the defendants be restrained from creating third-party interest in the suit property and that the subsequent transferees be directed to restore possession and documents.

143. It is well settled that an injunction is an equitable and discretionary relief. A plaintiff seeking injunction must establish an existing legal right requiring protection. Where title itself is not established, the consequential relief of injunction cannot ordinarily be granted. Reference may be made to ***Anathula Sudhakar v. P. Buchi Reddy AIR 2008 SC 2033*** wherein the Hon'ble Supreme Court held that where title is under serious dispute, declaration of title is the appropriate remedy and injunction follows only upon establishment of such title.

144. In the present case, while deciding Issue Nos. 1, 2, 3, 8 and 10, this Court has already held that:

(i) Defendant no.1 had already divested herself of ownership by executing the registered sale deeds dated 08.04.2008 and 10.07.2008 in favour of defendant no.4;

(ii) the sale deed dated 07.08.2009 executed in favour of the plaintiffs and defendant no.3 could not convey any valid title;

(iii) the plaintiffs have failed to establish that the earlier sale deeds are void or liable to be cancelled; and

(iv) the plaintiffs are not entitled to declaration of ownership.

145. Once the principal declaratory relief fails, the consequential reliefs of injunction automatically become unsustainable. The evidence also establishes that the plaintiffs never obtained actual physical possession of the suit property. PW-1 himself admitted in his cross-examination that only symbolic or paper possession was delivered; actual physical possession was never handed over. The sale deed does not record delivery of actual possession. Thus, the plaintiffs cannot even seek protection of an existing possession.

146. Similarly, mandatory injunction directing restoration of possession or directing defendants to hand over documents cannot be granted where the plaintiffs themselves have failed to establish a legally enforceable title. The Hon'ble Supreme Court in ***Premji Ratansey Shah*** (supra) has held that injunction is granted only to protect a lawful possession or an established legal right and cannot be granted merely because a plaintiff asserts a disputed claim. Defendant no.4's registered sale deeds having been held valid and prior in time, no injunction can be granted restraining defendant no.4 from asserting rights flowing from those registered conveyances.

147. Likewise, no injunction can be granted against defendant no.11 Bank merely because the plaintiffs dispute the mortgage. The plaintiffs have failed to establish any superior title capable of overriding the rights, if any, claimed by the Bank. The equitable conduct of the plaintiffs also deserves consideration. PW-1 admitted that despite being an experienced

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property dealer for nearly twenty-five years, he never verified the title from the office of the Sub-Registrar although such verification was admittedly available. A purchaser who voluntarily abstains from making elementary inquiries regarding title cannot invoke equitable jurisdiction to defeat prior registered conveyances. Therefore, the plaintiffs have failed to establish any subsisting legal right warranting grant of permanent or mandatory injunction. Issue no.11 is accordingly decided against the plaintiffs and in favour of the defendants.

Relief

148. In view of the findings returned on the foregoing issues, the plaintiffs have failed to establish any legal right, title or interest in the suit property capable of being protected by a decree of declaration or injunction.

149. The evidence on record establishes that defendant no.1 had executed two registered sale deeds dated 08.04.2008 and 10.07.2008 in favour of defendant no.4 prior to the execution of the sale deed dated 07.08.2009 relied upon by the plaintiffs. The plaintiffs themselves, through the admissions of PW-1, have acknowledged the genuineness of the earlier registered sale deeds and admitted that defendant no.1 had ceased to have any right, title or authority to execute the subsequent sale deed dated 07.08.2009.

150. Although the Court has held that the sale deed dated 07.08.2009 is a genuine registered document and is not forged, it is equally held that the said sale deed did not convey any valid title, as defendant no.1 had already divested herself of ownership by virtue of the prior registered

conveyances in favour of defendant no.4. Consequently, the plaintiffs cannot derive any enforceable right therefrom.

151. The plaintiffs have further failed to prove that the sale deeds dated 08.04.2008 and 10.07.2008 executed in favour of defendant no.4 are null, void or liable to be declared illegal. Likewise, defendant nos.1 and 2 have failed to substantiate their plea that the said transactions were merely loan transactions and not absolute sales.

152. As regards defendant no.11, the Court has held that the plea of creation of an equitable mortgage on 04.08.2009 has not been duly proved in the present proceedings by leading cogent evidence. However, such finding does not improve the case of the plaintiffs, who have independently failed to establish any valid title to the suit property. It is clarified that nothing contained in this judgment shall prejudice or affect the rights of defendant no.11, if any, arising out of proceedings before the competent forum, including the proceedings before the Debt Recovery Tribunal or the Recovery Officer, which shall be decided on their own merits in accordance with law.

153. The reliefs of permanent and mandatory injunction being purely consequential to the relief of declaration, and the plaintiffs having failed to establish either title or possession, no injunction can be granted in their favour. Consequently, the suit filed by the plaintiffs stands dismissed.

154. In the facts and circumstances of the case, particularly considering that the plaintiffs themselves appear to have been victims of successive transactions executed by defendant nos.1 and 2, while at the same time having failed to exercise due diligence by verifying the title records

before purchasing the property, this Court is of the opinion that the ends of justice would be met by directing the parties to bear their own costs. Accordingly, the suit is dismissed with no order as to costs. Decree sheet be prepared accordingly.

File be consigned to the Record Room.

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Announced in open Court
on 07th Day of July 2026

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

(This judgment contains 63 pages.)