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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23rd FEBRUARY, 2026

IN THE MATTER OF:

I.A. 43315/2024

IN

+ **CS(OS) 685/2022, CC 14/2024, I.A. 4756/2025**

GOPAL KRISHAN SRIVASTAVA

.....Plaintiff

Through: Mr. Pankaj Vivek , Mr. Tarun Kumar,
Mr. SuryanshJamwal and Mr.
Hardeep Godara, Advocates

versus

M/S LAKRAS INFRACON PVT. LTD. & ORS.Defendants

Through: Mr. D.K Rustagi, Ms. Anjali Pandey
& Mr. SumitGhartan, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

I.A. 43315/2024

1. This Application under Order XII Rule 6 of the CPC has been filed by the Defendants, seeking a decree for dismissing the Suit filed by the Plaintiff.

2. The present Suit has been filed with the following prayers:

“a. Pass a decree in favour of the plaintiff and against the defendants jointly and severally directing the defendants to deliver up the documents like Agreement to Sell dated 12.07.2010, General Power of Attorney



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dated 12.07.2010, Special Power of Attorney dated 12.07.2010, Will dated 12.07.2010, and any other in the nature of agreement, attorney, possession letter or receipt etc.; and consequently declare the said documents sham, void and undisclosed deed/document and inoperative in the eyes of law and/or cancel the said documents and strike the registered documents from the records of Sub-Registrar-IX at Kapashera, New Delhi, details of which are as under:

<i>Agreement to Sell</i>	<i>Registration No. 9061 in AB No. 1, Vol. No. 5447 on pages no. 110-119 on 12.07.2010</i>
<i>General Power of Attorney</i>	<i>Registration No. 2711 in AB No. IV, Vol. No. 1457 on pages no. 60-64 on 12.07.2010</i>
<i>Special Power of Attorney</i>	<i>Registration No. 4449 in AB No. III, Vol. No. 524 on pages no. 96-97 on 12.07.2010</i>
<i>Any other deed/document</i>	

and

b. Pass a decree of possession in favour of the plaintiff and against the defendants jointly and severally thereby put the plaintiff in actual physical possession of the suit plot bearing Plot No. 121 measuring 209 sq. metres, Pocket No. 07, Block-B, Sector 23, Dwarka Residential Scheme Phase-II, New Delhi, shown in red coloured boundary in the site plan filed with the plaint; and

c. Pass a decree of perpetual injunction thereby restraining the defendants jointly and severally, and their agents, servants, employees, officials, heirs, legal



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representatives. liquidators, assigns etc. from creating any kind of third-party rights in the suit plot bearing Plot No. 121 measuring 209 sq. metres, Pocket No. 07, Block-B, Sector 23, Dwarka Residential Scheme Phase I-II, New Delhi, shown in red coloured boundary in the site plan filed with the plaint; and Any other/further and suitable relief may be granted in favour of the Plaintiff in accordance with law.”

3. Shorn of unnecessary details, the facts, as stated in the Plaint, are as under:

- a. The Plaintiff was allotted a residential plot bearing Plot No. 121 measuring 209 sq. metres, Pocket No. 07, Block-B, Sector 23, Dwarka Residential Scheme Phase-II, New Delhi [**“Suit Property”**], in a draw held on 05.02.2010 by the Delhi Development Authority [**“DDA”**]. To this effect, a Demand-cum-Allotment Letter dated 15.06.2010/07.07.2010 was also issued by the DDA. It is stated that this allotment was done in furtherance of a Recommendation Letter dated 02.07.2004 issued by the Land and Development Department, GNCTD.
- b. Prior to 2010, the Plaintiff was allotted an alternative plot in Sector 7, Dwarka, Delhi, pursuant to the abovementioned Recommendation Letter, however, the Plaintiff could not avail the same on account of paucity of funds.
- c. In order to make payment to the DDA pursuant to the Demand-cum-Allotment Letter dated 07.07.2010, the Plaintiff arranged funds to the tune of Rs. 40,00,000/- by availing a loan from the Defendant No. 2.



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- d. The Defendant No. 2 acknowledged the Plaintiff's intention of not selling or alienating the Suit Property and thereafter, agreed to arrange the payment of cost of the Suit Property through his company, M/s LakrasInfracon Pvt. Ltd., being the Defendant No. 1 herein. Pursuant to this, the Plaintiff deposited all the original documents such as the Recommendation Letter, Demand-cum-Allotment Letter, etc. with the Defendant No. 2. Additionally, the Plaintiff also executed certain registered documents like Agreement to Sell, General Power of Attorney, Will, Special Power of Attorney, as well as certain unregistered documents in favor of the Defendant No. 1 Company, and its director, being the Defendant No. 3 on 12.07.2010. Details of the registered documents are as under:

Agreement to Sell	Registration No. 9061 in AB No. 1, Vol. No. 5447 on pages no. 110-119 on 12.07.2010
General Power of Attorney [GPA]	Registration No. 2711 in AB No. IV, Vol. No. 1457 on pages no. 60-64 on 12.07.2010
Special Power of Attorney [SPA]	Registration No. 4449 in AB No. III, Vol. No. 524 on pages no. 96-97 on 12.07.2010
Any other deed/document	

- e. It is stated that the parties were *ad idem* to the effect that notwithstanding the execution of the aforesaid documents, there was no intention to the transfer any rights of the Suit Property in favor of any of the Defendants.



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- f. In order to secure interest on the financed amount, the Defendants No. 1 and 2, inserted an amount of Rs. 12,73,500/- as having been paid in cash, however, no such cash was paid to the Plaintiff. It is further stated that the Defendants with *malafide* intention also inserted in the agreement to sell, that symbolic possession of the Suit Property was handed over to the Defendant No. 1.
- g. Thereafter, on 24.11.2010 the Defendant No. 1 Company made a total payment of Rs. 39,32,000/- to the DDA on behalf of the Plaintiff in 3 tranches.
- h. Possession of the Suit Property was handed over by the DDA in favor of the Plaintiff on 15.06.2011. Simultaneously, the Defendant No. 2, came and collected the original possession letter and slip from the Plaintiff, claiming lien on the said documents against the money advanced to the Plaintiff.
- i. Subsequently, beginning from 29.06.2011, a series of Show Cause Notices were issued by the DDA, calling upon the Plaintiff to explain as to why allotment of the Suit Property should not be cancelled on the ground that the same was transferred to the Defendant No. 1, instead of the Plaintiff. In response, the Plaintiff clarified to the DDA by way of a letter dated 02.09.2011, that the arrangement with the Defendant No.1 Company was merely a financing agreement and not meant for sale/transfer of the Suit Property.
- j. Sometime in 2012, the Plaintiff came to know that his case of allotment of the Suit Property was under re-consideration, as it



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was alleged in a letter dated 09.01.2012 addressed to the DDA, that there were some irregularities in respect of the recommendation by the Land and Development Department. Though the Plaintiff made enquiries regarding this, no response whatsoever was received from the DDA.

- k. Since the DDA was not executing the perpetual lease deed, the Plaintiff approached this Court by filing a writ petition being W.P. (C) 5014/2016 titled as '*Gopal Krishan Srivastava v. Land & Building Department &Ors.*,' which was pending adjudication at the time when the Suit was filed. Pertinently, however, the writ petition was disposed of a Coordinate Bench of this Court during the pendency of the instant Suit *vide* Order dated 01.02.2023.
- l. Subsequently, the Plaintiff again made enquiries from the DDA, and got to know that his case for execution of the perpetual lease deed could be considered, only if the Plaintiff had not executed any sale or transfer of the Suit Property. Accordingly, the Plaintiff and Defendants conducted a meeting on 12.03.2022 in the presence of a middle-man, wherein the parties agreed to cancel the documents executed on 12.07.2010, as the same were only in furtherance of a financing arrangement, which purpose stood fulfilled.
- m. *Vide* a letter dated 14.03.2022, the Defendant No. 1 Company conveyed its no-objection to the DDA for the execution of a perpetual lease deed with respect to the Suit Property in favor of the Plaintiff. At the same time, it was orally agreed between



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the parties that the Plaintiff shall refund the amount paid by the Defendant No. 1 Company to the DDA within 6 months of the No-Objection Letter dated 14.03.2022, return the original documents of the Plaintiff and also execute cancellation deeds for the financing agreement/GPA/SPA, etc., after the receipt of the amount from the Plaintiff.

- n. The Plaintiff then again approached the DDA for execution of the perpetual lease deed by way of an application dated 16.03.2022 bearing Diary No. 585, reiterating that there was no sale/purchase transaction in respect of the Suit Property between the Plaintiff and Defendants.
- o. On 07.04.2022, the Defendant No. 2 informed the middle-man that an Execution Call Letter issued by the DDA was addressed to the Plaintiff, and a stamp paper for execution of the lease deed was already deposited with the DDA. This was communicated to the Plaintiff only on 23.04.2022, who was surprised to become aware of this fact, as he never purchased any stamp paper.
- p. Since the possession of the all the documents like the Recommendation Letter, Demand-cum-Allotment Letter, Possession slip, payment challans, etc. were in the custody of the Defendants, the Plaintiff was unable to get the perpetual lease deed executed despite the No-Objection Letter given by the Defendants. Upon the Plaintiff's request to return the said original documents, the Defendant No. 2 began blackmailing the Plaintiff, threatening him that unless the Plaintiff enters into



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a fresh deed of agreement for sale of the Suit Property in the Defendant No. 2's favor against a consideration of Rs. 1,50,00,000/-, he would not return the original documents. The Defendant No. 2 also disclosed that an electricity connection was installed in the Suit Property in the name of the Defendant No. 1 Company and as such, possession of the Suit Property shall not be reverted to the Plaintiff.

q. Resultantly, the Plaintiff approached this Court by way of the instant Suit.

4. Summons in the Suit was issued on 10.11.2022. Written Statements have been filed by the Defendants. Issues have yet not been framed. It is pertinent to mention that the Defendants have also filed a counter-claim, seeking a decree of specific performance of the Agreement to Sell dated 12.07.2010. However, at this juncture, this Court is not dealing with the counter-claim as the present Application is only for a decree dismissing the Suit.

5. In the Written Statement, the Defendants state that pursuant to the Agreement to Sell, an amount of Rs.52,25,000/- was paid and physical possession of the Suit Property was handed-over to the Defendants. It is further stated that the Plaintiff has executed various sale documents, including a registered General Power of Attorney dated 12.07.2010; registered Special Power of Attorney dated 12.07.2010; registered Agreement to Sell dated 12.07.2010 and registered Will dated 12.07.2010, thereby virtually transferring the Suit Property to the Plaintiff.



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6. The Defendants further aver that the Suit is barred by limitation and as also by Section 53A of the Transfer of Property Act, 1882 as well as Section 41 of the Specific Relief Act, 1963.

7. It is pertinent to mention that the four documents, cancellation of which is the subject matter of the present Suit, were filed by the Plaintiff itself along with the Plaint. Though the case setup by the Plaintiff is that the documents, which were executed on 12.07.2010, are sham and were never given up as they were only a security for the loan transaction, no material has been placed on record to substantiate this position. Moreover, in their Written Statement, the Defendants have categorically denied the existence of any loan transaction or that these documents were executed only as a security towards the loan document.

8. The present Application has been filed by the Defendants seeking dismissal of the Suit on the ground that the Defendants have already paid a sum of Rs.52,25,000/- towards the sale consideration of the Suit Property. Attention of this Court has been drawn to Paragraph No.19 of the Plaint which reads as under:

“19. That Since, the defendant No. 1 never ever had any understanding with plaintiff or sale/purchase of the suit plot and the documents dated 12.07.2010 were basically sham documents executed only for limited purpose of creating security in favour of defendant no. 1 company in order to secure the amounts paid by it to the DDA towards cost of the allotted suit plot. therefore, the defendant no. 1 company issued No-objection Letter dated 14.03.2022 addressed to the DDA thereby conveying that it had no objection to



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execution of the perpetual lease deed in favour of the plaintiff.”

9. It is the case of the Defendants that the sole basis of the present Suit is the issuance of NOC dated 14.03.2022 addressed to the DDA for execution of the perpetual Lease Deed in favour of the Plaintiff. It is, therefore, stated that in substance, what the Plaintiff is seeking is a declaration that the four documents which are sought to be cancelled were only security documents, rather than representing transfer of title. It is the case of the Defendants that this stand is completely contrary to Section 92 and 95 of the Indian Evidence Act, 1872.

10. The Defendants further state that a bare reading of the Complaint would show that the cause of action to file the present Suit arose when the first show cause notice was issued by the DDA in 2011 and, therefore, the Suit for getting these documents cancelled ought to have been filed within three years from the date of the said notice as per Article 59 of the Limitation Act, 1963, and since the Suit was not filed within the time stipulated thereunder, the present Suit is hit by Section 59 of the Limitation Act, 1963.

11. At the outset, this Court is of the opinion that Article 59 of the Limitation Act, 1963, is not applicable to the facts of the present case. A conjoint reading of the Complaint and the documents only indicates that the occasion for invoking Section 59 of the Limitation Act, 1963, has not even arisen, for the reason that the Defendants did not take any step which would have given the Plaintiff any cause of action to get the contract rescinded. Be that as it may, in 2011, the cause of action only arose against the DDA and not against the Defendants and, therefore, the objection of the Defendants as



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to the Suit being barred by limitation, is untenable. In the present Suit, the Plaintiff is exercising the right *in personam* against the Defendants and not a right *in rem* against the DDA.

12. However, in the opinion of this Court, the entire case of the Plaintiff hinges on an oral financing arrangement, for which, not a single document has been filed by the Plaintiff, to indicate that all these documents were executed only as a security for the purported loan advanced by the Defendants.

13. In view of the above, the stand of the Plaintiff is clearly his by Section 92 of the Evidence Act, 1872. Section 92 of the Evidence Act, 1872, reads as under:

“Section 92. Exclusion of evidence of oral agreement.

*When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, **no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:***

Proviso (1). -- Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1[want or failure] of consideration, or mistake in fact or law.



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Proviso (2). -- The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). -- The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). -- The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). -- Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods in ships from Calcutta to London. The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy cannot be proved.



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(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called the Rampore tea estate is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of Bs as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse of Rs. 500. B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written -- "Rooms, Rs. 200 a month". A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A



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may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered."

14. The registered documents, cancellation of which has been sought, have been filed by the Plaintiff itself and, therefore, the Plaintiff admits the documents, which means that the documents need not be proved. When the documents need not be proved, in view of Section 92 read with Section 95 of the Evidence Act, 1872, the Plaintiff is precluded to lead evidence for the purpose of contradicting, varying, adding to, or subtracting the terms of the contract which has been reduced in the form of an document. This Court can only look into the documents as admitted by the Plaintiff. There is nothing in any of the four registered documents indicating that these documents have been executed only as a security of an oral loan transaction. No other document has been produced by the Plaintiff to substantiate the case that the registered documents were treated only as a security for a Loan Agreement. In the absence of anything to the contrary, the Plaintiff is precluded from leading any evidence to show that there was any other oral agreement which contradicts the document which have been reduced into writing in terms of Section 92 of the Evidence Act, 1872.



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15. In the opinion of this Court, none of the provisos of Section 92 of the Evidence Act, 1872, apply to the facts of the present case. Proviso 1 is attracted only if there are facts which would indicate that the document is executed due to fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law. Proviso 2 can be applied only if the oral agreement is not inconsistent with its terms of the written document. Proviso 3 applies only when there is existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved. Proviso 4 deals with subsequent oral agreement. Proviso 5 deals with usage or custom which is not expressly mentioned in any contract.

16. Undoubtedly, the Defendants have executed an NOC for the documents (being the perpetual lease deed) to be executed in the favour of the Plaintiff but that does not help the Plaintiff. Unless the DDA conveys the title of the Suit Property to the Plaintiff, the Defendants cannot get the specific performance of the Agreement to Sell which has been entered into between the parties. The NOC, therefore, cannot be used for the purpose of varying or contradicting the Agreement to Sell and other documents which have been executed by the Plaintiff in favour of the Defendants or give credence to the stand taken in the Plaint that the documents have been executed only as a security to the loan agreement.

17. While dealing with a case relating to proviso 6 to Section 92 of the Evidence Act, the Apex Court in Mangala Waman Karandikar v. Prakash Damodar Ranade, (2021) 6 SCC 139, has held as under:



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“15. It is manifest from these two sections that it is only in cases where the terms of the document leave the question in doubt, then resort could be had to the proviso. But when a document is a straightforward one and presents no difficulty in construing it, the proviso does not apply. In this regard, we may state that Section 95 only builds on Proviso (6) of Section 92.

*16. If the contrary view is adopted as correct it would render Section 92 of the Evidence Act, otiose and also enlarge the ambit of Proviso (6) beyond the main section itself. Such interpretation, provided by the High Court violates basic tenets of legal interpretation. [Rohitash Kumar v. Om Prakash Sharma, (2013) 11 SCC 451 at p. 459 : (2013) 3 SCC (L&S) 368] **Section 92 specifically prohibits evidence of any oral agreement or statement which would contradict, vary, add to or subtract from its terms. If, as stated by the learned Judge, oral evidence could be received to show that the terms of the document were really different from those expressed therein, it would amount to according permission to give evidence to contradict or vary those terms and as such it comes within the inhibitions of Section 92. It could not be postulated that the legislature intended to nullify the object of Section 92 by enacting exceptions to that section.**”*

(emphasis supplied)

18. Similarly, the Apex Court in Tamil Nadu Electricity Board v. N. Raju Reddiar, (1996) 4 SCC 551, has observed as under:

“7. At the outset it must be borne in mind that the agreement between the parties was a written agreement and therefore the parties are bound by the terms and conditions of the agreement. Once a



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contract is reduced to writing, by operation of Section 91 of the Evidence Act, 1872 it is not open to any of the parties to seek to prove the terms of the contract with reference to some oral or other documentary evidence to find out the intention of the parties. Under Section 92 of the Evidence Act where the written instrument appears to contain the whole terms of the contract then parties to the contract are not entitled to lead any oral evidence to ascertain the terms of the contract. It is only when the written contract does not contain the whole of the agreement between the parties and there is any ambiguity then oral evidence is permissible to prove the other conditions which also must not be inconsistent with the written contract. The case in hand has to be adjudged bearing in mind the aforesaid principles and the plaintiffs being conscious of this position along with the tender appended a letter and in that letter inserted certain terms by writing in ink to establish the case that the acceptance of the plaintiffs' tender would tantamount to the acceptance to the terms contained in the letter in which there was insertion in writing to the effect that it was on multi-slab basis. It is in this context the question whether such handwritten portion was originally there or was subsequently inserted assumes great significance. We are unable to accept the stand taken by the learned counsel for the respondents that there was no such issue on this question inasmuch as this question was considered by the learned trial Judge while discussing Issue 1 on the basis of evidence laid and the trial Judge had given a finding in favour of the plaintiffs. The said finding, however, on the face of it appears to us to be wholly unsustainable. As has been stated earlier there was no signature either by the persons submitting the tender or by the persons receiving the same on the handwritten portion of the letter. The learned trial Judge had noticed that the certified copy which was



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issued by the Board on 11-7-1978 of the aforesaid letter clearly contains the handwritten portion and therefore he came to the conclusion that the handwritten portion was there at the time of submission of the tender. The tender itself was submitted on 12-7-1978 and we fail to understand how the Board could grant a certified copy of the letter on 11-7-1978 when the plaintiffs' case itself is that along with the tender he had appended the letter in question. On this ground alone it can be safely held that handwritten portion in Exhibit P-1 was not there at the time of submission of the tender but was subsequently inserted obviously with the connivance of the officers of the Board. The Board in its rejoinder-affidavit filed in this Court has stated that the attested copy was actually received on 28-12-1978, much later than the finalisation of the tenders and agreement and in order to build up a case the aforesaid interpolation has been made. In the facts and circumstances of the present case the aforesaid stand of the Board appears to us to be wholly justified and at any rate we have no hesitation to come to the conclusion that the handwritten portion in Exhibit P-1 was not there initially and has been inserted subsequently. The main basis of the plaintiffs' case on which a multi-slab rate was claimed therefore fails. The written agreement between the parties nowhere indicates that the rate to be paid to the plaintiffs was on multi-slab basis and the terms and conditions of the written contract is not susceptible of such a construction."

(emphasis supplied)

19. In addition, Sections 74 and 77 of the Indian Evidence Act, 1872, is also attracted to the facts of the present case, as the documents were registered in the Sub-Registrar's office and as such, are public documents, of which certified copies were filed before this Court.



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20. In view of the above discussion, this Court is of the opinion that a decree dismissing the Suit is liable to be passed, *inter alia* on the basis of the admitted documents filed along with the Plaint.

21. As far as the prayers in the Plaint are concerned, they also cannot be granted and a decree dismissing the Plaint is liable to be passed. This Court is not making any comment as to whether the counter-claim of the Defendants seeking specific performance is within the time or not, or whether the Defendants are entitled to decree for specific performance, as these issues will be seen at the time of examining the counter claim.

22. The present Application is disposed of accordingly.

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23. List for framing of issues in the Counter-Claim on 21.04.2026.

SUBRAMONIUM PRASAD, J

FEBRUARY 23, 2026

Rahul/AP