

CS No.10752/2016

In the matter of :

(1) Sh. Mool Chand,  
S/o Late Sh. Jwala Prasad,  
R/o H.No.E-3/64-B,  
Shiv Ram Park, Nangloi,  
New Delhi-110041.

..... Plaintiff

VS.

(1) Sh. Rambir Singh Gahlot.  
(2) Smt. Babita Gahlot,  
R/o Singh Gahlot.

## JUDGMENT

1. This is a suit for Permanent Injunction, Mandatory Injunction and Declaration.
  
2. Brief facts of the case as per the Plaintiff are that he was in urgent need of money and borrowed a sum of Rs.20,000/- from defendant No.1 in August 2013 @ 3% per month interest and started paying the interest to the defendant No.1 month to month. That at the time of taking of loan, the defendants No.1 & 2 took the original title deed and the previous chain of documents of the property bearing No. E-3/64-B, Shiv Ram Park, Nangloi, Delhi for the security. That the defendants No.1 and 2 also took signatures of the plaintiff on the blank and printed papers for the security of the loan. That the plaintiff was assured by the defendants to return the documents of the property and signed papers as soon as the amount is returned by the plaintiff. That the plaintiff and his brother Gori Shankar are the joint owners and in the possession of the property in question. That for last two months, the plaintiff is requesting defendants No.1 and 2 to accept their amount and return his documents

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but they are not accepting the money nor are returning the documents. That the defendants are pressurising the plaintiff to vacate the suit property.

3. It is pertinent to mention here that vide order dated 06.07.2015, the Plaint was allowed to be amended while allowing an application filed by the plaintiff U/o VI Rule 17 of CPC.

4. In the Written Statement filed by defendants No.1 and 2, certain preliminary objections are taken like that the plaintiff has not come with clean hands and has also suppressed material facts. That the plaintiff has sold out 20 Sq.yards portion of the property No. E-3/64-B, Shiv Ram Park, Nangloi, Delhi to the defendant no.2 on 30.08.2013 after executing GPA, Agreement to Sell, etc. for Rs.2,00,000/-. That the possession was also handed over to the defendant No 2 but plaintiff desired to retain it for further 6 months on monthly license-fee @ Rs.5,000/- which was paid on that very day. That the electricity connection was also changed in the name of defendant No.2 with the consent of the Plaintiff. It is also pleaded that the suit is bad for misjoinder and non-joinder of parties. It is also pleaded by the defendant that the suit was not valued properly.

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1. *Whether the plaintiff is entitled to decree of permanent injunction thereby restraining the defendants from dispossessing the plaintiff and his family members from the suit property, as prayed for? OPP*
  
2. *Whether the plaintiff is entitled to the decree of mandatory injunction, thereby, directing the defendants no.1 & 2 to return / handover the original title deed of the suit property to the plaintiff, as prayed for ? OPP*
  
3. *Whether the plaintiff is entitled to the decree of declaration thereby stating that the suit property is the property of the plaintiff and his family members, as prayed for ? OPP*

**defendants no.2 as null, void and cogent? OPP**

4. **Whether the suit is bad for mis-joinder of parties ?  
OPD**
5. **Whether the suit is bad for non-joinder of necessary  
parties ? OPD**
6. **Whether the suit has not been properly valued for  
the purpose of court-fee and Jurisdiction ? OPD**
7. **Relief.**

7. The plaintiff got examined himself as PW-1, who during his examination in chief relied upon various documents that is Ex-PW1/1 to Ex-PW1/25. Plaintiff's evidence was closed on 26.11.2018.

8. That defendant No.1 got himself examined as DW-1, in support of their defence. The defendants also got examined Sh. Sandeep Rai (DW-2). Defendant's evidence was closed on 07.07.2019.

**Issue-wise findings are as under :-**

9. **Issue No.4 and 5**

Both the issues are inter-connected, hence, the same are taken up together. The onus to prove the same was upon the defendant, who have pleaded that the brother of the plaintiff was co-owner of the



assured to vacate the portion later on as his children were studying. It is also deposed on page no.2 itself that they took the possession of the suit premises on the same day after execution of Sale-Deed. There is no such Sale-Deed placed on record by the defendants.

During his further cross-examination dated 15.01.2019 (at page no.1), while his attention was drawn towards site plan filed by the plaintiff (Ex-PW1/1), the same was admitted to be correct by him. It was also deposed by him that the suit property was never partitioned. Sh. Sandeep Rai (DW2) also talked about a Sale-Deed but there is no sale deed placed on record in this case.

It is held by the Hon'ble Apex Court of India in "Suraj Lamp & Industries (P) Vs. State of Haryana & Anr", 2009 (7) SCC 363 that ;

*"18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are 'transfers' or 'sales' and that such transactions can not be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale.*

*Nothing prevents affected parties from getting*



best known to them. The defendant No.1 (DW1) also did not disclose any consideration amount in his evidence affidavit. It is pertinent to mention here that in Para (2) of written statement (preliminary objection), it is pleaded by the defendants No.1 and No.2 that the plaintiff sold out 20 Sq. yards area to defendant No.2 for receipt of Rs. 2,00,000/-.

40. Since the area mentioned it was bought by defendant

property and without whom the suit was not maintainable.

As per the plaintiff, he borrowed Rs.20,000/- from the defendant No.1 on interest and his property documents were taken by the defendants as security.

The defendants have failed to disclose as to why they were not the necessary party. It is the case of the defendants No.1 and 2 themselves that the plaintiff sold out 20 Sq. yards. portion of the built-up property to the defendant No.2 on 30.08.2013. Accordingly, it cannot be stated that the suit is bad for non-joinder or misjoinder of parties. Hence the issues are decided against the defendants and in the favour of Plaintiff.

10. **Issue No.6**

The onus to prove of this issue was upon the defendant, who have pleaded that the suit was not valued properly for the purpose of court-fees and jurisdiction.

This is interesting to note down that the defendants have failed to disclose as to what was the correct valuation or as to what should have been the valuation for the purpose of court fees and jurisdiction. This is a suit for Declaration, Permanent and Mandatory





Injunction. The plaintiff has valued the suit at Rs.200/- for Declaration, at Rs.130 each for Permanent and Mandatary Injunction and has paid sufficient court fees.

Hence, the issue is decided against the defendants and in favour of the plaintiff.

11. Issue No.1 to 3

All the issues are inter-connected. Hence, all are taken up together. It is plea of the plaintiff that in August, 2013 he has borrowed a sum of Rs.20,000/- from the defendant No.1 on interest @ 3% per month. It is also the plea taken by him that at the time of taking of loan, defendants took the original title and previous chain of documents from the plaintiff as security. It's also the plea of the plaintiff that defendants have taken his signatures on blank and printed papers. That the defendants are not accepting their amount of Rs. 20,000/- nor returning the documents of the plaintiff.

12. It is the plea of the defendants No.1 and 2 that the plaintiff has concealed the material facts and has concocted a false story. It is also the plea taken that the plaintiff sold out 20 Sq.yards portion of the property to the defendant No.2 on 30.08.2013 after executing G.P.A.,



registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments / leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other development authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision."

14. In the case in hand, the defendants are not having any sale deed to suggest that the plaintiff has sold out 20 sq.yards of the area of the property in question to the defendant no.2 for a consideration of Rs.2 lacs. For the sake of arguments, if the documents filed by the defendants are presumed to be true and correct, the same was executed on 30.08.2013 i.e much after the pronouncement of Suraj Lamp case (Supra). So, the documents i.e GPA, Agreement to Sell etc. filed by defendants alongwith written statement on 17.01.2015 can not be treated as the title documents.



15. In his evidence affidavit, the defendant no.1 (DW1) did not state anything as to the pleadings of the plaintiff that Rs.20,000/- was given to him by the defendants on interest @ 3% per month. The defendant no.1 (DW1) also did not state anything that the documents of the property in question were not given to them as security by the plaintiff as pleaded by the plaintiff in this case. The defendant no.2 did not come to the witness box to prove her pleadings.

Hence, on the basis of the pleadings and the evidence led by the parties and also in the light of law settled in Suraj lamp case (Supra), all the issues are decided in favour of the plaintiff and against the defendants.

16. **Relief.**

In view of the findings on above issues, the suit is decreed with the following reliefs ;

(i) A decree of Permanent Injunction is passed in favour of the plaintiff and against the defendants, their legal heirs, representatives, attorneys etc., restraining them from dispossessing the plaintiff and his family members from the suit



property No.E-3/64-B, Shiv Ram Park, Nangloi, Delhi – 41 as shown in red colour, forcibly and illegally and without due process of law.

(ii) A decree of Mandatory Injunction is also passed directing the defendants no.1 & 2 to return / hand over the documents and back chain of the suit property No.E-3/64-B, Shiv Ram Park, Nangloi, Delhi – 41 to the plaintiff.

(iii) A decree of Declaration is also passed in favour of plaintiff and against the defendants declaring the title deed i.e GPA, Agreement to Sell, Affidavit, Possession Letter, Receipt and Will dated 13.08.2013 etc. in favour of defendant no.2, pertaining to suit property as null and void.

No order as to costs.

Decree-sheet be prepared accordingly.

File be consigned to record room after necessary compliance.

**PRONOUNCED ON**  
*04<sup>th</sup> of July 2020.*

  
**(RAJINDER KUMAR)**  
**SCJ/RC(WEST)/DELHI**