

(2013) 12 DEL CK 0079

In the Delhi High Court

Case No : Regular First Appeal 596 of 2004 and Regular Second Appeal 232 of 2004

Shashi

APPELLANT

Vs

Sudershan Sharma
 Shashi Vs Sudershan Sharma and
Another

RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Specific Relief Act, 1963 — Section 41(h), 6
Transfer of Property Act, 1882 — Section 53A

Citation : (2013) 12 DEL CK 0079

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Shailendra Bhardwaj and Ms. Aroma S. Bhardwaj, for the Appellant;
O.P. Wadhwa, Ranjeet Pandey and Mr. Saurabh Kaushik, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The RFA impugns the judgment and decree dated 30th September, 2004 of the Court of the learned Addl. District Judge, Delhi in Suit No. 278/02/95 filed by the appellant. The RSA impugns the judgment and decree also dated 30th September, 2004 in RCA No. 432/2000 filed by the respondent no. 1 in RSA against the order dated 16th May, 1996 of the Court of the Civil Judge, Delhi of dismissal as not maintainable of Suit No. 138/1996 filed by the respondent no. 1 in the RSA. The suit, from which RFA No. 596/2004 is preferred, was instituted by the appellant on 28th November, 1995, for permanent injunction restraining the respondent in the RFA Smt. Sudershan Sharma from dispossessing the appellant from premises No. C-123, Karampura, New Delhi and from in any way creating any encumbrances, agreement, transfers, conveyance/sale of the said premises in favour of any third party, pleading:-

(a) that the appellant was the owner of the said property having purchased the same along with leasehold rights of the land underneath granted by the DDA, from the respondent for a total sale consideration of Rs. 2,40,000/- paid to the

respondent on 26th October, 1995;

(b) that the respondent after receiving the sale consideration from the appellant, on 26th October, 1995 itself handed over vacant peaceful possession of the property to the appellant in part performance of the Agreement to Sell and also executed other documents i.e. General Power of Attorney, Special Power of Attorney, Will, Rent Agreement, Agreement to appoint Arbitrator, Indemnity Bond and a receipt, all dated 26th October, 1995 in favour of the appellant;

(c) that the respondent turned dishonest and filed false complaint on 9th November, 1995 with PS Moti Nagar against the appellant;

(d) that the respondent thus intended to fraudulently dispossess the appellant from the suit property in collusion with the Police who had sealed the said house depriving the appellant therefrom;

(e) that all personal belongings of the appellant were still lying in the said house and the appellant thus continued to be in lawful possession of the same, notwithstanding the fact that the same had been sealed by Police;

(f) that vide legal Notice dated 9th November, 1995 the respondent had called upon the appellant not to interfere in her peaceful occupation of the premises and cancelling all the documents coercively got executed by the appellant from the respondent on 26th October 1995 and calling upon the appellant to return all papers relating to the aforesaid property;

(g) that the appellant vide reply dated 25th November, 1995 had claimed to be in lawful possession of the property and denied that the respondent had any right or interest therein; and,

(h) that the appellant had performed her entire obligations under the Agreement to Sell of the said property by the respondent and consequently the sale of the property stood concluded and the respondent was not entitled to deal with the property.

2. The respondent contested the suit by filing a written statement on the grounds:-

(i) that the suit as filed for permanent injunction was not maintainable as the appellant, on the date of institution thereof, was not in possession thereof, the same having been sealed by the Police on 9th November, 1995 in pursuance to FIR No. 586/1995 of PS Moti Nagar;

(ii) that the appellant had on 20th November, 1995 requested for de-sealing of the property and restoration of possession before the Metropolitan Magistrate but the said application was dismissed vide order dated 31st January, 1996 holding that the appellant had no right to the property;

(iii) that the respondent was the lawful owner of the property and the appellant was attempting to grab the same;

- (iv) that the respondent along with her family members had been residing in the said property since acquiring the same on 14th April, 1986 and was also running the business of cloth shop and beauty parlour therein;
- (v) that the property comprises of two shops, two rooms, two latrines, kitchen and bathroom;
- (vi) that the appellant was residing in neighbourhood, in property no. C-110, Karampura, New Delhi;
- (vii) that the respondent in the month of December, 1994 had borrowed Rs. 50,000/- from the appellant and on which the appellant was charging exorbitant rate of interest;
- (viii) that the appellant had also arranged some committees (chits) for the respondent but the respondent could not continue the payment of monthly chit money;
- (ix) that the appellant claimed a sum of Rs. 1,23,000/- to be due from the respondent to the appellant;
- (x) that the appellant asked the respondent to accompany her to the Court to enter into an agreement recording that the respondent will pay Rs. 1,50,000/- to the appellant within three months and if the respondent did not pay the said money then the respondent's house would become that of the appellant;
- (xi) that the respondent under coercion entered into the said agreement with the appellant;
- (xii) however on the night on 25th October, 1995 the appellant along with other persons came to the house of the respondent and demanded that the respondent transfer the said property in favour of the appellant;
- (xiii) that the appellant on 26th October, 1995 forced the respondent to accompany her and the respondent under pressure and threat executed Power of Attorney of her property and other documents in the name of the appellant;
- (xiv) that though the appellant promised that she would pay Rs. 3 lacs to the respondent but did not give even a single penny;
- (xv) that the appellant also forcefully took the keys of the property of the respondent on 26th October, 1995;
- (xvi) that the respondent on 9th November, 1995 lodged the FIR No. 586/1995 supra but the Police officials instead of handing over the possession of the house of the respondent to the respondent, sealed the property;
- (xvii) that the respondent on 20th November, 1995 got cancelled documents got executed by the appellant under coercion and got sent the notice dated 9th November, 1995 to the appellant in that regard;

(xviii) denying that any amount of Rs. 2,40,000/- by way of sale consideration had been paid by the appellant to the respondent; and,

(xix) denying that the respondent had in part performance of the Agreement to Sell dated 26th October, 1995 put the appellant into possession of the property.

3. Needless to state that the appellant filed a replication reiterating the contents of the plaint and denying the contents of the written statement.

4. On the pleading aforesaid in the suit, the following issues were framed on 11th August, 1998:-

1. Whether the plaintiff is entitled for an injunction against the defendants restraining her from dispossessing the plaintiff from the premises in question or creating any third party interest in the property? OPP

2. Whether the defendant is lawful owner and in possession of the suit property, if so its effect? OPD

3. Whether the plaintiff has no locus standi to file the present suit? OPD

4. Whether the suit is not properly valued for the purpose of jurisdiction and costs? OPD

5. Whether there is any cause of action in the suit? OPD

6. Relief, if any.

5. The suit from which RSA No. 232/2004 arises was filed on or about 16th May, 1996 by the respondent impleading only the SHO Police Station Moti Nagar as defendant thereto and who is respondent no. 2 in the RSA, for mandatory injunction directing the SHO to handover the property to the respondent.

6. The said suit was on 16th May, 1996 itself dismissed in limine by the learned Civil Judge before whom it was filed, observing that since the property was under the seal of the SHO, the only recourse available was to file appropriate petition for de-sealing of the property before the superior to the SHO or by filing a suit in Civil Court for declaration to the effect that the action was null and void and the suit as filed was not maintainable.

7. The respondent filed RCA No. 432/2000 supra against the said dismissal in limine of her suit.

8. It is informed that the appellant filed Revision Petition against the order dated 20th November, 1995 supra of the Metropolitan Magistrate refusing to restore possession of the property to the appellant. The said revision is informed to have been dismissed as not maintainable vide order dated 13th May, 1996.

9. The appellant thereafter filed Writ Petition (Criminal) No. 396/1996 for quashing of the sealing memo dated 9th November, 1995 with respect to the property. The said writ petition was disposed of vide order dated 4th July, 2000

of the Division Bench of this Court, observing/holding (i) that the Police did not have any right to seal the property and if there was any breach of peace in relation to the possession of the suit property, the remedy open to the Police was to file a Kalandara which had not been done; (ii) recording the consent of the parties, to the premises being de-sealed (by the SHO) and the keys thereof being handed over to the Civil Judge dealing with the suit for mandatory injunction filed by the respondent (supposedly incorrect as the suit had been dismissed in limine on 16th May, 1996 and only the RCA preferred against the dismissal of the suit was then pending); and, (iii) recording that the appellant had also moved an application for impleadment in the said suit and to which the respondent had no objection and directing the suit filed by the appellant and the RCA to be decided by the same Court and further directing that the said Court will pass appropriate orders for handing over the keys to the rightful person.

10. The parties went to trial on the basis of the aforesaid issues in the suit filed by the appellant only and no separate issues were framed in the suit filed by the respondent which was dismissed in limine and against which RCA was filed.

11. The learned Addl. District Judge has vide the impugned judgment dated 30th September, 2004, dismissed the suit filed by the appellant and axiomatically directed handing over of the keys deposited in the Court to the respondent, finding/observing/holding:-

(a) that the case of the appellant was that she had purchased the property from the respondent;

(b) on the other hand the case of the respondent was that she never sold the property and the documents were prepared, got signed and registered by the appellant from the respondent under threat and coercion;

(c) that the appellant appearing as PW1 had admitted giving three months time to the respondent on 12th October, 1995 either to repay the loan amount or to execute relevant documents of the property in favour of the appellant-if that was so, there was no occasion for the respondent to approach the appellant on 25th October, 1995 and to say that the respondent wanted to dispose of the house in order to discharge her liability qua the appellant;

(d) that the appellant had been unable to prove the source from which she claimed to have paid the sale consideration of Rs. 2,40,000/- to the respondent;

(e) that there were inconsistencies between the deposition of the appellant as PW 1 and the deposition of her husband Shri Harish Chand examined as PW 2;

(f) that though the case of the appellant in the plaint in the suit filed by her was of having paid the sale consideration of Rs. 2,40,000/- but the appellant in her cross examination claimed to have purchased the house for Rs. 3,90,000/-;

(g) that the appellant at one stage in her cross examination had admitted that she was doing the business of committees/chits earlier but at another place had

denied the same-thus evidence of the appellant was self-contradictory;

(h) that thus the case of the appellant about the transaction with the respondent was not true and the case of the respondent of having taken loan of Rs. 50,000/- from the appellant and the appellant subsequently getting the documents of property executed under threat and coercion was true;

(i) that the appellant was thus not entitled to any injunction restraining the respondent from dispossessing the appellant from the property or creating any third party interest therein;

(j) that the respondent had proved registered deeds of cancellation of the documents got executed by the appellant from the respondent forcibly;

(k) that the respondent was thus the lawful owner of the property though not in possession thereof, the same having been sealed;

(l) that though the case of the appellant had been found to be false but the appellant could not be said to be having no locus to institute the suit;

(m) issue no. 4 qua valuation of the suit for the purpose of Court Fees and jurisdiction was not pressed by the respondent; and,

(n) that since it had been found that the documents regarding purchase of the property were got executed by the appellant from the respondent under threat and coercion and had been cancelled, it was also held that the appellant had no cause of action for the suit.

12. The learned Addl. District Judge, vide the same judgment dated 30th September, 2004 in the RCA No. 432/2000 has held that since this Court vide order dated 4th July, 2000 in W.P. (Criminal) No. 396/1996 had directed the keys deposited in the Court to be delivered to rightful claimant and since the respondent had been held to be the owner, disposed of the RCA No. 432/2000 by directing delivery of keys of the property to the respondent.

13. Notice of the RFA and of the application for stay accompanying the RFA was issued and vide interim order dated 16th March, 2005 in the appeal, the possession of the property was permitted to be handed over to the respondent after preparation of an inventory of articles lying therein and for which purpose a Court Commissioner was appointed; the respondent was however restrained from in any manner selling, encumbering or creating any third party interest in respect of the property and also restrained from carrying out any construction therein. Similarly, notice of the RSA also was issued. Though initially, the direction of the Additional District Judge directing delivery of keys of the premises to the respondent was stayed but subsequently as aforesaid, on 16th March, 2005 when the RFA as well as the RSA were listed together, order of delivery of possession of property to the respondent was made.

14. The counsels have been heard.

15. It is informed that the trial in pursuance to FIR No. 586/1995 is still going on.
16. The Court Commissioner appointed by this Court to prepare the inventory of articles lying in the property has reported that apart from household goods, there were cosmetic items and textile materials and furnishings, though dilapidated, lying in the premises. The counsel for the respondent has argued that the same belong to the respondent.
17. Though the counsels have argued with respect to the evidence recorded but what intrigues me is that the suit in which the findings of title have been given, was merely a suit for permanent injunction restraining dispossession of the appellant. The Supreme Court in *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others*, has held:-
- (i) where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without consequential injunction is the remedy;
 - (ii) where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he is to sue for possession with consequential injunction;
 - (iii) where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for injunction simpliciter;
 - (iv) a cloud is said to rise over a person's title when there is some apparent defect in his title to a property or when some prima facie right of a third party over it, is made out or shown;
 - (v) as a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue and the prayer for injunction will be decided with reference to finding of possession;
 - (vi) but where de jure possession has to be established on the basis of title to the property, as in case of vacant sites, the issue of title may directly and substantially arise for consideration as without finding thereon, it will not be possible to decide the issue of possession;
 - (vii) but a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title; where the averments regarding title are absent and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction;
 - (viii) even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction; and,
 - (ix) where there are necessary pleadings regarding title, and appropriate issue relating to title, on which parties lead evidence, if the matter involved is simple

and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction; but such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction; it is only where the plaintiff suing for injunction has a clear title and possession that he should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property.

18. The Supreme Court in *Anathulla Sudhakar supra* was concerned with a suit for injunction simpliciter to restrain the defendant from interfering with the plaintiff's possession of the open plot of land. The defendant not only claimed title to the said land but also claimed to be in possession thereof. The Trial Court decreed the suit. The defendant filed an appeal in which the First Appellate Court held that the plaintiff had not *prima facie* made out a case of title or possession and in the circumstances a mere suit for injunction was not maintainable at least when the defendant filed the written statement denying title and setting up a clear and specific case of title in himself. It was further held that the plaintiff at that stage ought to have converted the suit from one for mere injunction to one for declaration and injunction. The first appeal was accordingly allowed and the suit dismissed. The High Court in second appeal held that the plaintiff had established title to the land and from which title an inference of possession could be presumed. It was further held that it was not necessary for the plaintiff to sue for declaration of title as the question of title was incidental to the question of possession. The Supreme Court set aside the judgment of the High Court and restored the judgment of the First Appellate Court, holding as aforesaid.

19. Not only so, another interesting aspect of the matter is that admittedly on the date of institution of the suit, the appellant was not in possession of the property and the property had been sealed by the Police a few days prior to the institution of the suit. The question arises whether in this circumstance, the appellant could be said to be in possession of the property so as to maintain a suit for injunction against his dispossession.

20. In my view no. Though ultimately in the criminal writ petition *supra* it was held that the Police was not entitled to seal the property but the fact remains that on the date of institution of the suit the appellant was not in possession thereof; without the appellant being in possession, he could not have maintained a suit for injunction restraining his dispossession.

21. The Supreme Court in *Baleshwar Tewari (Dead) by LRs. and others Vs. Sheo Jatan Tiwari and others*, reiterated that the word "possession" is sometimes used inaccurately as synonymous with the right to possess. It was yet further held that there are three requisites of possession; firstly there must be actual or potential physical control; secondly physical control is not possession, unless accompanied by intention and lastly, the possibility and intention must be visible or evidenced by external signs, for if the thing shows no sign of being under the control of anyone, it is not possessed. It was yet further held that when there is

a bare right to possess bereft of any dominion or factum of control, it will be a strange legal travesty to assert that an owner is in possession merely because he has a right to possess.

22. Reference with benefit may also be made to the dicta of the Division Bench of the Bombay High Court in *The State of Maharashtra, (Notice to be served on the Collector), The Special Land Acquisition Officer, Scarcity No. 1 and The Executive Engineer, Kadawa Project Division Vs. Punja Trambak Lahamge (since deceased through his legal heirs Dinkar Punjaji Lahamge, Yashwant Punjaji Lahamge, Mandabai Kamlakar Elmane and Gangabai Punjaji Lahamge)*, where in the context of land acquisition law it was held that possession being a legal right must arise legally and for possession to be accepted in law, the Court should be satisfied that possession has been acquired by the concerned party by due process of law and is not result of an unlawful act.

23. When we examine the facts of the present case in the aforesaid light, though the appellant, in the plaint had made the requisite plea of his title to the property by way of an Agreement of Purchase dated 26th October, 1995 thereof from the respondent and of being put into possession of the property by the respondent in part performance of the Agreement to Sell but it was the admitted position that the appellant on 9th November, 1995 i.e. in less than a fortnight of the date when he claimed to have been so put in possession, had been divested of such possession by the Police. The appellant on the date of institution of the suit was also aware from the legal notice dated 9th November, 1995 got served by the respondent on the appellant that the respondent was denying/controverting the Agreement to Sell with the appellant and/or denying having put the appellant into possession of the property and had also cancelled the documents under which the appellant was claiming to be in possession of the property. If not then, the appellant at least on the filing of the written statement by the respondent had become aware of the stand of the respondent of denying any Agreement to Sell in favour of the appellant or having put the appellant into possession and of the appellant having forcibly taken possession of the property. The appellant still did not convert the suit from that merely of permanent injunction restraining the respondent from dispossessing the appellant from the property or from creating third party rights in the property to a suit for declaration of rights claimed by him in the property but chose to proceed with the suit for mere injunction.

24. I am of the view, that in the aforesaid circumstances, even though the respondent also admits appellant to be in possession of the property from 26th October, 1995, albeit forcible, the appellant, once divested of possession by the police on 9th November, 1995, could not at the time of filing of the suit on 28th November, 1995 claim to be in possession of the property so as to maintain a suit for mere injunction against dispossession. The possession of the appellant in the face of stand aforesaid of the respondent, known to the appellant before the institution of the suit, cannot be said to be visible and evidenced by external signs or settled or undisputed or lawful or without any cloud. The possession

claimed by the appellant inspite of admission of police having sealed the property, was de jure possession, akin to that of vacant land and to establish which the appellant was required to establish his title to the property and without a finding thereon, the issue of possession could not be decided. The appellant thus, cannot be said to be in possession of the property on the date of institution of the suit and the suit for injunction was thus not maintainable. The appellant cannot be said to be a meddler, vexatiously or wrongfully making a claim to the property.

25. The Trial Court of course on the pleadings of the parties did frame issue No. 2 supra of the title claimed by the appellant and on which issue the parties led evidence and the Trial Court has returned a finding of the appellant having failed to prove his title as well, lest possession of the property.

26. Before I proceed to deal with the evidence to gauge whether the findings returned by the learned Addl. District Judge are on a proper appreciation of the evidence recorded, it is deemed necessary to highlight one other aspect. The title/right in immovable property claimed by the appellant in the present case is not under a document of transfer by sale, gift etc. of the property to him but on the basis of an Agreement to Sell coupled with delivery of possession. I have wondered as to what is to be the remedy of a agreement purchaser in possession of immovable property who, rightly or wrongly, has not only been divested of possession albeit with the assistance of the Police but the agreement in whose favour is also denied by the seller. A mere agreement to sell does not create any rights in the property. It only gives a right to enforce the same to acquire rights in the property. Reference if any required, can be made to Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, When such agreement to sell is accompanied with delivery of possession of the property agreed to be sold, Section 53A of the Transfer of Property Act, 1882 debars the seller from enforcing against the purchaser any right other than as provided in the agreement to sell. However Section 53A has in Mohan Lal (Deceased) through his Lrs. Kachru and Others Vs. Mirza Abdul Gaffar and Another, been held to be only a shield and not a sword. It is a right in favour of purchaser to defend his possession. It was held in AIR 1949 410 (Nagpur) that if a purchaser is forcibly ejected by the seller, he can file a suit for recovery of possession not pursuant to Section 53A but u/s 6 of the Specific Relief Act. In my view the appropriate remedy of such an agreement purchaser of immovable property is only to sue for specific performance of the Agreement of Sale in his favour and for recovery of possession. The remedy of such an agreement purchaser divested of possession can by no stretch of imagination be of permanent injunction only.

27. Once that is found to be the position, the relief of permanent injunction claimed would also be barred by Section 41(h) of the Specific Relief Act, 1963 which provides that when equally efficacious relief can be obtained by any other usual mode of proceeding, an injunction cannot be granted.

28. Not only did the respondent in the present case controvert the Agreement of

Sale in favour of the appellant and delivery of possession in pursuance thereto but the respondent vide notice dated 9th November, 1995 and subsequently on 20th November, 1995, i.e. prior to the institution of the suit also cancelled the Agreement to Sell, Power of Attorney, Will etc. by registering cancellation deeds thereof. Thus, as on the date of institution of the suit, the documents on the basis whereof the appellant claimed title as agreement purchaser in possession of the property also did not exist and stood cancelled. The appellant, without seeking cancellation of the documents by which the Agreement to Sell Power of Attorney, Will etc. in his favour had been revoked, could not on the basis of cancelled documents claim title.

29. Though in view of my said findings above, of the suit for injunction being not maintainable, there is no need to scan through the evidence led but for the sake of completeness, I proceed to do so.

30. The following position emerges:-

A. The transaction, of the appellant having loaned money to the respondent is admitted by both the parties. While according to the appellant she had loaned a sum of Rs. 1,50,000/- to the respondent, accordingly to the respondent the loan was of Rs. 50,000/- only.

B. The respondent admits that to secure the said loan the respondent on 12th October, 1995 had executed and got registered a General Power of Attorney and a Will with respect to the said property in favour of the appellant. It is not the plea of the respondent also that the appellant had got the said documents executed forcibly or fraudulently. A perusal of the said documents shows the respondent to have vide the registered General Power of Attorney authorized appellant to sell the property, execute and register Sale Deed and receive the sale consideration. The Power of Attorney as well as Will are without any limitation at all.

C. The execution and registration by the respondent of the General Power of Attorney, Special Power of Attorney, Will, Agreement to Sell, Receipt for Rs. 2,40,000/-, Affidavit, Indemnity Bond with respect to the property in favour of the appellant on 26th October, 1995 is also not in dispute. While it is the case of the appellant that the respondent being unable to re-pay the loan had decided to sell the property and which the appellant had agreed to buy for Rs. 2,40,000/-, it is the case of the respondent that though she had three months' time from 12th October, 1995 to re-pay the loan but the appellant and her husband forced and coerced the respondent to execute the said documents at knife point and by posing a threat to the life of the children of the respondent.

D. It is not in dispute that the respondent went out of the possession of the property on 26th October, 1995. While according to the appellant the respondent in pursuance to the Agreement to Sell removed her belongings from the property and delivered possession thereof to the appellant, it is the case of the respondent that the appellant exercising coercion, under which documents were got

executed from the respondent, also took the keys of the property from the respondent. Admittedly the respondent was not residing/occupying the property from 26th October, 1995.

E. The respondent lodged the FIR only on 9th November, 1995 and in pursuance to which the property was sealed on the same day.

31. The question for adjudication thus was, whether the execution of the documents dated 26th October, 1995 by the respondent and handing over of the keys of the property by the respondent to the appellant on 26th October, 1995 was under coercion from the appellant. Unfortunately no specific issue on the said aspect was framed.

32. The learned Addl. District Judge has believed the version of the respondent for the reason:

I. Since according to both the parties, a period of three months from 12th October, 1995 had been fixed for re-payment of the loan by the appellant to the respondent, there was no occasion for the respondent to within 13 days of 12th October, 1995 approach the appellant to sell the property;

II. the appellant had failed to prove/establish being possessed of the sale consideration of Rs. 2,40,000/- paid to the respondent; and,

III. though the document of sale showed the consideration as Rs. 2,40,000/-, the appellant in her deposition having deposed the same to be Rs. 3,90,000/- i.e. Rs. 2,40,000/- paid at the time of Agreement to Sell and Rs. 1,50,000/- which was earlier given as loan.

33. I am unable to agree with the first of the reason aforesaid. Mere fact that on 12th October, 1995 the time of three months had been agreed for repayment of the loan does not give rise to any presumption that the respondent could not have on 25th October, 1995 agreed to sell the property.

34. The second and the third reason aforesaid given by the learned Addl. District Judge also, though on correct appreciation of evidence, have to be seen in the Indian context where payments in cash, especially for immovable property and the documents of transfer of immovable property not reflecting the entire purchase consideration are a norm rather than an exception. It is also not in dispute that a sum of Rs. 1, 23,000/- according to the respondent and Rs. 1, 50,000/- according to the appellant were due on loan account. The deposition of the appellant of such of such sale consideration being Rs. 3, 90,000/- is in this context as it is not the case of the appellant that the loan amount is still due.

35. Though the learned Addl. District Judge has referred to certain other inconsistencies in the statement of the appellant and her husband but in my view the same are not material.

36. I am of the view that the case of the respondent, of the appellant having coerced and compelled the respondent to on 26th October, 1995 sign the

documents and deliver keys of the property, on knife point and by meeting out threats to the life of the children of the respondent cannot be believed for the following reasons:-

(i) The respondent also as aforesaid admits a loan transaction and though claims the loan to be of Rs. 50,000/- only but admits that at the time of registration of the Power of Attorney and the Will on 12th October, 1995 a sum of Rs. 1,23,000/- was due to the appellant and further admits that it was agreed on 12th October, 1995 that if the respondent was unable to re-pay the loan within the said three months, she would convey her said property to the appellant.

(ii) As aforesaid the documents voluntarily executed on 12th October, 1995 empowered the appellant to sell the property and there was really no need for the appellant to, if had acted with dishonest intention, compel and coerce the respondent in signing other documents, as the General Power of Attorney and Will voluntarily executed by the respondent on 12th October, 1995 were enough for the appellant to sell the property.

(iii) The respondent lodged the FIR of the alleged incident of 26th October, 1995 after nearly 14 days on 9th November, 1995. It is not the case of the respondent that the respondent and her family between 26th October, 1995 and 9th November, 1995 were under any threat. Rather it is the case of the respondent that during the said time she was residing faraway in Gandhi Nagar at the house of her brother-in-law Shri Balkishan. Had the appellant indulged in any such coercive actions as are alleged, the respondent would have immediately lodged the FIR.

(iv) The evidence of coercion is also not very clear. It is not as if the property is situated in a forlorn area. The respondent in her cross examination admitted that the property is surrounded by other houses and was provided with a telephone connection. In a crowded city like Delhi, it is not easy for anyone to so coerce another to sign documents, especially when the coercion is stated to have begun in the night and continued till the next day culminating in the office of Sub Registrar. The respondent admitted that about three and a half hours were spent at the office of the Sub Registrar in getting the documents prepared.

(v) The possibility thus of the respondent, after executing the documents of transfer of her property in favour of the appellant on 26th October, 1995, having changed her mind and having lodged the FIR with the intent to get back the property, cannot be ruled out.

37. At the same time, the appellant has failed to lead cogent evidence of the respondent having vacated the property on 26th October, 1995 and having taken out her goods. The respondent was admittedly not only staying in the property but also carrying on the business of beauty parlour therein. Had the respondent so removed her goods from the house, all the persons residing in the neighbourhood would have been aware of it and the appellant has chosen not to lead the evidence of a single one of them. It may also be mentioned that as per

the report of the Court Commissioner appointed in these appeals, the goods found in the property appear to be of the respondent.

38. The counsel for the respondent has raised argument of the registration of the documents of 26th October, 1995 at Kashmiri Gate instead of at Janakpuri where the documents of 12th October, 1995 were registered. However merely from the said fact no presumption of coercion can be drawn.

39. The position which thus emerges is that though the respondent had executed and registered the documents on 26th October, 1995, had not removed her goods from the property and not delivered vacant possession of the property to the appellant and taking advantage of the same the respondent on 9th November, 1995 changed her mind and lodged the FIR.

40. However as aforesaid, the suit for injunction is found to be not maintainable and that being the position, the findings aforesaid are but for the sake of complete adjudication and not intended to be binding in a properly constituted proceeding, if the appellant chooses to institute one.

41. As far as the question, whether the respondent in the suit instituted by her and from which RSA has arisen, was entitled to a direction to the SHO to deliver the possession of the property to the respondent, is concerned, the same has lost its significance in view of the consent order in Writ Petition (Criminal) No. 396/1996 supra, of whosoever being found to be entitled to possession being entitled to the keys of the property which the SHO was directed to deposit in the Court and which the learned Addl. District Judge has directed to be delivered to the respondent. Thus in my view, the RCA No. 432/2000 from which RSA No. 232/2004 arises as well as the said RSA No. 232/2004 were/are infructuous.

42. As far as RFA No. 566/2004 is concerned, the same is dismissed though for reasons other than those given by the learned Addl. District Judge.

43. In the light of the aforesaid, since the suit from which the RFA arises has been held to be not maintainable, it is deemed appropriate to relegate the parties to a properly constituted suit. Since sufficient time has lapsed, it is deemed appropriate to give time of three months to the appellant to institute appropriate proceedings and to continue the interim order in force in these appeals for the said period of three months. If the appellant institutes such a proceeding, then the further interim order if any beyond three months shall be subject to the interim order if any in such proceedings. On the contrary, if the appellant chooses not to institute such appropriate proceeding, the interim order in force shall lapse after a period of three months from today. In the circumstances no costs.

Decree sheet be drawn up.