

**(2005) 05 DEL CK 0099**

**In the Delhi High Court**

**Case No : CS (OS) No. 256 of 1990**

S.K. Gupta (since deceased through LRs. Mrs. Saroj Gupta,  
Mr. Puneet Gupta and Mr. Amit Gupta)

**APPELLANT**

**Vs**

Avtar Singh Bedi and Others

**RESPONDENT**

**Date of Decision : 24-05-2005**

**Acts Referred:**

Income Tax Act, 1961 — Section 269UC  
Stamp Act, 1899 — Section 36

**Citation : (2005) 122 DLT 437 : (2005) 82 DRJ 513**

**Hon'ble Judges : Pradeep Nandrajog, J**

**Bench : Single Bench**

**Advocate : B.B. Sawhney and Aman Usman, for the Appellant; K.S. Sidhu  
Maldeep Sidhu and Apurab Lal, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

Pradeep Nandrajog, J.—Ex.PW-1/1 is the foundation of the present suit. It reads as under :

" RECEIPT

Received Rs. 1,00,000/- (Rs. One lac only) in cash from Shri S.K.Gupta, S/o Shri R.B.Gupta, R/o R-79, Greater Kailash-I, New Delhi-110048 as part & advance payment against the sale of our land and property bearing No. T-10, Rajouri Garden, New Delhi, measuring 436 sq. yards as per the settled bargain in lump sum of Rs. 25,00,000/-(Rs. twenty five lacs only). This property was registered in our mother's name Smt. Sita Wanti, W/o Shri Bhagat Singh Bedi. It was transferred in her name through succession certificate and also he died on 26th August, 1979. This property was mutated in his four sons names.

1. Sh. Jagjit Singh Bedi.
2. Sh. Avtar Singh Bedi

3. Sh. Prithipal Singh Bedi

4. Sh. Surjan Singh Bedi

After the death of Shri Jagjit Singh Bedi, his wife (i) Mrs. Mohinder Kaur Bedi, (ii) Mrs. Harcharan Kaur Bachcher, (iii) Mrs. Priti Kumra, (iv) Sh. Avtar Singh Bedi (v) Sh. Taranjit Singh Bedi, became legal heirs of the share of the property of Sh. Jagjit Singh Bedi.

The balance payment will be made within three months after getting all clearances including Income tax, Urban Land Ceiling Act etc. etc. at the time of registration of sale deed before the Sub-Registrar, Delhi.

The property can be transferred in the name of purchaser or his nominee or his nominees.

Sd/- 1. Sh. Avtar Singh Bedi Sd/- 2. Sh. Prithipal Singh Bedi Sd/- 3. Sh. Surjan Singh Bedi Sd/- 4.(i) Mrs. Mohinder Kaur Bedi Sd/- 5(ii) Mrs. Harcharan Kaur Bachcher Sd/- 6(iii) Mrs. Preeti Kumra Sd/- 7(iv) Sh. Avtar Singh Bedi Sd/- 8(v) Sh. Taranjit Singh Bedi

Witnesses:

1. Kuldip Bedi

2. Gurmeet Bedi"

2. Based on Ex.PW-1/1, case of the plaintiff is that the defendants, the 8 executants of Ex.PW-1/1, agreed to sell property bearing No. T-10, Rajouri Garden, New Delhi to the plaintiff at an agreed price of Rs. 25,00,000/- and received a sum of Rs. 1,00,000/- as part payment and advance towards sale consideration. Balance sum of Rs. 24,00,000/- was to be paid within 3 months of the defendants obtaining the requisite clearances including the income tax clearance and at the time of execution of the sale deed. plaintiff, time and again requested defendants to obtain the requisite permissions. On 9.1.1989, plaintiff caused to be issued a legal notice to the defendants calling upon them to obtain the requisite clearances. plaintiff expresses his willingness to comply with his obligation and pay the balance sum of Rs. 24,00,000/- before the Sub-Registrar at the time of execution of sale deed. Defendants responded to plaintiff's legal notice dated 9.1.1989 vide reply dated 19.1.1989. Reply accepted receipt of Rs. 1,00,000/- towards advance part sale consideration. However, defendants took a stand in the reply dated 19.1.1989 that the receipt does not constitute an agreement of sale because it lacks essential ingredients of an agreement of sale. Defendants further stated in the reply that plaintiff had not furnished requisite information to the Income Tax Authorities. Defendants stated that sum of Rs. 1,00,000/- stood forfeited due to default of the plaintiff. plaintiff alleges in the suit that the defense afore-noted is legally not sustainable. defense is a ruse to wriggle out of the sale consideration. Making averments in the plaint that plaintiff was always ready and willing and continues to be ready and willing to pay the

balance sale consideration present suit was filed on 25.1.1990 praying as under :

"(a) pass a decree in favor of the plaintiff and against the defendants for specific performance of the agreement incorporated in Annexure P-1 and the defendants be directed to specifically perform the terms thereof and to accept the balance sale price of Rs. 24,00,000/- at the time of execution and registration of the sale deed and transfer complete and clear title in the said property bearing No. T-10, Rajouri Garden, New Delhi measuring 476 sq. yds. and to hand over the vacant possession thereof.

(b) Alternatively, and only if for any reason, this Hon''ble Court is of the view that specific performance cannot be granted, then decree for compensatory damages of Rs. 25,00,000/- be directed to be passed against he defendants."

3. Defendants were served. Only defendants 1 and 3 filed a written statement. Vide order dated 28.11.1991, defendants 2 and 4 to 8 were proceeded against ex-parte. Said order continues to exist.

4. defense of defendants 1 and 3 is substantially in compliance with their response as contained in their reply dated 19.1.1989 to plaintiff's legal notice dated 9.1.1989. Ex.PW-1/1 is stated to be a mere receipt lacking material ingredients of agreement of sale. Maintainability of the suit is challenged on the ground that requisite permission u/s 269 of the Income Tax Act was not obtained. It is denied that plaintiff was possessed of sufficient funds to purchase the suit property. Defendants 1 and 3 state that property was owned by their father, late Sardar Bhagat Singh Bedi who bequeathed the same to defendants 1 and 3 under will dated 21.8.1970. A further defense has been taken that Ex.PW-1/1 has been signed by Smt. Anita Bedi as general attorney of her husband, defendant No. 1, and that Smt. Anita Bedi was never constituted as his general attorney by defendant No. 1. It is further stated in the written statement that Ex.PW-1/1 does not mention as to which recipient received the sum of Rs. 1,00,000/-. On the factum of the receipt, Ex.PW-1/1, in para 9 of the written statement, defendants 1 and 3 have pleaded as under :

"9. . . . . In fact, the plaintiff played a fraud on the defendants. He wrote the said receipt with own hand without disclosing contents thereof to the defendants and obtained the signatures of eight persons on the same, when in fact, seven of the signatories have no connection with the property and they had no right, title or interest in the said property. Even Smt. Anita Bedi was not the power of attorney holder of defendant No. 1 and as such she even could not sign on behalf of defendant No. 1."

5. On the pleadings of parties, following issues were framed on 13.1.1993 :

1. Whether no concluded and valid agreement was arrived at between the parties. OPP

2. Whether the plaintiff was ready to perform his part of agreement? OPP

3. Whether defendants were ready to perform their part of agreement? OPP
4. Whether the alleged agreement is not enforceable for alleged non-compliance with the provisions of Section 269 of the Income Tax Act, 1961? OPD
5. Whether the plot in question belongs only to defendants 1 and 3? If so, to what effect? OPD

6. Relief.

6. Parties went to trial. During the pendency of the suit, plaintiff died. His legal heirs, namely, wife Mrs. Saroj Gupta and sons Mr. Puneet Gupta and Mr. Amit Gupta were brought on record.

7. plaintiff examined two witnesses. PW-1, Shri Rajinder Kumar Gupta, brother of the plaintiff deposed that he and the plaintiff commenced business of builders and property developers about 30 years back and successfully implemented about 35 projects. He deposed that the plaintiff and he "through out worked and carried on business together". He further deposed that some time in the year 1998 "we came to know from market sources that the suit property was for sale". To quote in verbatim, deposition of PW-1 further records :

(a) We came to know from market sources that the suit property was for sale.

(b) Negotiations thereafter took place between the defendants and us.

(c) Deal was finalized on or about 16.3.1988 for Rs. 25,00,000/- for sale of the suit property to the plaintiff.

(d) Cash was handed over to defendants 2 to 4 and to the wife of defendants No. 1 in my presence and in the presence of defendants 5 to 8.

(e) Defendant No. 1 was stated to be an officer of Border Security Force posted in Assam and thus not personally available for signing. His wife Mrs. Anita Bedi was stated to be his constituent attorney. Photocopy of the power of attorney dated 2.2.1988 authenticated by notary public was supplied to us by her.

8. PW-1 deposed that photocopy of the power of attorney dated 2.2.1988 supplied to the plaintiff was Ex.PW-1/2. He deposed that on 9.1.1989, legal notice Ex.PW-1/3 was sent to which reply dated 19.1.1989, Ex.PW-1/5 was received. Witness deposed that he and his brother i.e. late plaintiff had been assessed to income tax and wealth tax for over 30 years. Wealth tax assessment relating to assessment year 1988-89 being Ex.PW-1/7 was proved by the witness. Witness further deposed that vide Ex.PW-1/8, his brother signed Form 37-I to obtain sale permission. He deposed that the appropriate authority wrote back on 13.2.1990 and 19.3.1990 vide Ex.PW-1/11 and PW-1/12 refusing permission since defendants did not sign Form 37-I. PW-1 further deposed that as per Municipal Bye Laws a covered area of about 8139.60 sq.ft. could be constructed and a net profit of about Rs. 30,00,000/- could be generated from sale of the reconstructed house.

9. The second witness, Shri Q.L.Dua, PW-2, an Architect and Civil Engineer, deposed that as per the Municipal Bye Laws, 8139.60 sq.ft. covered area could be constructed and that cost of construction @ Rs. 295/- per sq.ft. would aggregate to about Rs. 24,00,000/-.

10. Cross-examination of PW-1 may be noted in its totality as counsel for the plaintiff had made submissions pertaining to cross-examination. Cross-examination reads as under :-

"I had gone through the plaint. It is correct that there is no averment in the plaint I along with my deceased plaintiff were in the business of builder and developer of the property. Voluntary stated that it is not necessary to say so in the plaint. It was not necessary to mention in the plaint that the amount of Rs. 1,00,000/- was given by the plaintiff in my presence. It is incorrect to say that I have not any personal knowledge about the averment made in the plaint. The averments made in the plaint are of my personal knowledge. There is no document on record to indicate that I was associated with the deceased plaintiff. (Voluntary). If any document is required I can bring partnership deed. The notice Exhibited dated 9.1.1989 PW-1/3 is not countersigned by the deceased plaintiff. It is incorrect to suggest that no cause of action arose for the institution of the suit and the relief claimed therein."

11. PW-2 was not cross-examined.

12. Defendants examined two witnesses. DW-1, Shri A.S.Bedi (defendant No. 1) deposed that there was no valid agreement between the parties for sale of the property. That he never executed any general power of attorney in favor of his wife. That he did not receive any consideration from the plaintiff. That the property belonged to Sardar Bhagat Singh, his father which was bequeathed to him and defendant No. 3 by way of a will.

13. In cross-examination he stated that his wife was a Graduate and that in the year 1989, he was posted as DIG, Nagaland. He denied having executed any power of attorney on 2.2.1988 in favor of his wife. He denied that his wife ever informed him of having executed Ex.PW-1/1. He stated that he learnt about the existence of the said document during the court proceedings. He admitted that he signed the written statement filed by him after understanding its contents. Qua the legal notice, Ex.PW-1/3, he admitted that reply Ex.PW-1/5 was sent, but stated that the legal notice was received by somebody else and he learnt about the legal notice and reply only in February, 1991.

14. Second witness for the defendants, Shri Surjan Singh Bedi defendant No. 3, examined himself. His deposition was recorded as that of DW-3. He too deposed that there was no agreement for sale and that defendant No. 1 had inherited the property under the will executed by their father.

15. In his cross-examination, defendant No. 3 admitted receipt of legal notice Ex.PW-1/3. He admitted that it was handed over to late Nand Lal Chaudhary to

be replied. He stated that he did not instruct Mr. Nand Lal Chaudhary as to what reply should be sent. He admitted his signatures on the receipt Ex.PW-1/1. He further stated that his brother, Mr. Prithi Pal Singh, obtained his signatures on blank papers and informed that this was in relation to transaction relating to some other property. He further stated that he could not say whether defendant No. 1 had executed any power of attorney in favor of his wife. He stated that he was not aware of the defense taken in the written statement. He further stated that he was not aware of the plea taken in para 2 of the written statement where it was pleaded that signatures of defendants 2 to 8 had been obtained on certain documents for applying for income tax permission.

16. Issues framed in the suit may now be dealt with in light of the pleadings of the parties and the evidence brought on record. But before that, it would be useful to note a few facts pertaining to the pleadings of the parties and the oral evidence of the defendants.

17. In the written statement filed by defendants 1 and 3, it has not been denied that defendant No. 3 had not executed Ex.PW-1/1. A definite stand was taken in para 9 of the written statement, as to how signatures of defendants 2 to 8 and wife of defendant No. 1 came to be penned on Ex.PW-1/1. Since Ex.PW-1/1 was admitted as having thereon the signatures of the persons who are signatories thereto, no issue was framed which required determination about the very legal existence of Ex.PW-1/1.

18. Testimony of DW-3 when he stepped into the witness box as to how his signatures appeared on Ex.PW-1/1 has to be ignored as it is in complete variance with his stand in the written statement. Said defendant cannot wish away his stand taken in the written statement by stating that he did not read the contents of the written statement. Further, pleadings of the plaintiff that on 9.1.1989 a legal notice Ex.PW-1/3 was served upon the defendants to which their lawyer replied on 19.1.1989 vide Ex.PW-1/5 has not been denied. Evidence of defendants 1 and 3, when they appeared in the witness box, that they were unaware of the contents of the reply and that the reply was sent by their lawyer without receiving instructions from them has to be rejected for the reason, there cannot be variance between the pleadings and proof. Defendants 1 and 3 have chosen to take a different stand when they appeared as their witnesses for the reason, reply dated 19.1.1989 Ex.PW-1/5 sent by the lawyer of the defendants does not allege anywhere that Mrs. Anita Bedi was never constituted as the general attorney by defendant No. 1. While replying to the legal notice dated 9.1.1989, lawyer of the defendants, dealing with Ex.PW-1/1 stated as under :

"1. That para 1 of your notice is correct to the extent that a receipt was executed by my clients for a sum of Rs. one lac in favor of your client for the sale of property bearing No. T-10, Rajouri Garden, New Delhi for Rs. 25,00,000/-. However, said receipt does not constitute an agreement for sale. . . . ."

19. Reply sent by the counsel for the defendants, in fact by all the executants of

Ex.PW-1/1, admitted execution of the document. defense taken by the lawyer as per reply to the notice was that it was a mere receipt and did not constitute an agreement for sale. Thus PW-1/1 has to be treated as a duly executed document.

#### ISSUE NO. 1

20. Issue No. 1 has, Therefore, to be dealt with in the context of pleadings of defendants 1 and 3 and admissions contained in the pleadings, as noted above. In the reply to the legal notice as also the written statement, defense pertaining to the reply is that it does not conclude the contract between the parties. Dr. K.S.Sidhu, in his oral as well as written submissions urged that Ex.PW-1/1 was titled as "receipt" and that as a matter of fact it was a receipt. Picking up the expression "as per settled bargain" used in Ex.PW-1/1 counsel urged it meant that bargain was concluded between the parties prior to execution of the receipt. Counsel argued that the settled bargain was oral as the plaintiff did not rely upon any written document from which the terms of settled bargain may be asserted. Dr. Sidhu argued that for an agreement to come into existence, there must be a proposal and its acceptance. He urged that the proposal must contain a promise which must be unconditionally accepted and there must be reciprocity. Counsel urged that Ex.PW-1/1 lacked reciprocity for the reason it did not bear the signatures of the plaintiff. Counsel further urged that PW-1, brother of the plaintiff categorically stated that the two had jointly executed various projects after purchasing properties and redeveloping the same and then selling them. Counsel urged that it was a case of partnership having entered into the contract and since partnership had not sued, plaint had to be rejected. Dr. K.S.Sidhu further urged that as per the Stamp Act, an agreement for sale of immovable property was chargeable to stamp duty and hence PW-1/1 was inadmissible in evidence. Counsel further urged that photocopy of the power of attorney, Ex.PW-1/2, was not proved as original was not brought on record and hence authority of Anita Bedi to execute EX.PW-1/1 on behalf of defendant No. 1 was not established. Dr. K.S. Sidhu, learned senior counsel relied upon:

- (i) Vavarthar Abdul Wahab Saheb Vs. Pallapotha Kanaka Anjaneyalu and Others,
- (ii) Sivananda Roy Vs. Janaki Ballav Pattnaik and Others,
- (iii) Afsaar Hussain and Another Vs. Trilokchand Premchand,
- (iv) 1974 R.L.R. 286 Jagatjit Ind. Corp. v. Union of India; and
- (v) Sait Tarajee Khimchand and Others Vs. Yelamarti Satyam alias Satteyya and Others,

21. Before dealing with the submissions urged by Dr. K.S. Sidhu and the decisions cited it may be noted at the outset that in the written statement filed by the defendants, admissibility of Ex.PW-1/1 on ground of it being not drawn on a stamp paper of adequate value has not been urged. Similarly the issue that it was the partnership which had entered into the transaction with the defendants has not been raised. No issues have been struck. It is trite that a party cannot

try and establish a case not set up in the pleadings. Only defense urged qua PW-1/1 is that it lacks material ingredients of an agreement of sale and that Anita Bedi had no authority to execute PW-1/1 on behalf of defendant No. 1. This has resulted in issue No. 1 alone being framed in relation to Ex.PW-1/1.

22. Not only Ex.PW-1/1 was not challenged as inadmissible in evidence in the pleadings, even when proved, no objection was raised. Decision relied upon Vavarthar Abdul Wahab Saheb Vs. Pallapotha Kanaka Anjaneyalu and Others, , is clearly distinguishable. In said case, admissibility of the Hundi being unstamped was raised in the written statement. Issue was struck whether the Hundi is unstamped and hence the suit is not maintainable. A witness was examined on commission. The commissioner gave a mark to the Hundi but did not decide on it's admissibility. It was in said circumstances that it was held that the document was inadmissible.

23. As held in Javer Chand and Others Vs. Pukhraj Surana, where a question as to the admissibility of a document is raised on the ground that it has not been stamped or has not been properly stamped, the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the court. Once a document has been marked as an exhibit in a case and has been used by the parties in examination and cross examination of their witnesses, Section 36 of the Stamp Act 1899 comes into operation. The reasons are obvious. If a party challenges admissibility of a document being unstamped or inadequately stamped, the opposite party can make up the deficiency with penalty and overcome the legal bar.

24. Suit has been filed by Shri S.K. Gupta in his personal name and Ex.PW-1/1 has been relied upon as foundation of the action. Defendants have not pleaded that transaction was with the partnership firm. Thus no issue has been framed. A reading of the plaint shows that S.K. Gupta has sued in his individual capacity, a fact not disputed in the written statement. It is immaterial whether the benefit of a suit is to go to any person other than the plaintiff ultimately. The law has been stated thus in Lindley on Partnership (Edition 10) at page 350:

"One partner may sue alone on a written contract made with himself if it does not appear from the contract itself that he was acting as an agent of the firm; and one partner ought to sue alone on a contract entered into with himself, if such contract is in fact made with him as principal, and not on behalf of himself and others."

25. Thus plurality of the language used by PW-1 is inconsequential. Ex.PW-1/1 shows a transaction between the plaintiff and the executants of the document.

26. In view of the legal position noted above, none of the decisions cited by learned counsel for the defendants has any relevance.

27. In the context of issue No. 1 only two things now need to be considered. The first is whether Ex.PW-1/1 concludes a contract between the parties. The second

is whether Anita Bedi had the authority to bind defendant No. 1. In the context of the first, argument of learned counsel for the defendants that the document is titled as a receipt and hence is not an agreement is neither here nor there. Label of a document is not determinative of its legal status. As held by this court in AIR 1991 Delhi 315 Nanak Builders & Investors Pvt. Ltd. v. Vinod Kumar Alagh, mere heading or title of a document cannot deprive the document of its real nature. It is the substance and not the form which matters. Where a document acknowledges receipt of earnest money/part sale consideration and contains all the essential and basic ingredients of an agreement to sell and is signed by the vendor(s), it would constitute a legal and valid agreement for sale.

28. Ex.PW-1/1 describes the property which is the subject matter of the document. It records the settled bargain between the parties that it would be sold for Rs. 25 lakhs. It acknowledges receipt of Rs. 1 lakh as part and advance payment against sale of the property. It further records the time for execution of the sale deed, being when Income Tax and ULCR Act 1976 permissions are obtained and balance sale consideration paid when sale deed is executed after permissions aforementioned are obtained. Ex.PW-1/1 has all the essential and basic features of an agreement for sale. It has been signed by the vendor(s). That the vendee has not signed the same is neither here nor there for the reason the vendee has accepted liability under the document. Argument of Dr. K.S. Sidhu that since the document refers that there is a settled bargain means that the document is a receipt and the settled bargain was prior in point of time, is without any substance. Before any written document is executed there has to be discussions during which parties agree on the terms. It is thereafter that the document is prepared and signed. What is relevant in law is whether parties intended to enter into a jural relationship upon execution of a document or not after they had settled the terms. In the instant case, reference to the settled bargains has to be understood to mean that during negotiations certain terms were agreed to and these stood incorporated in Ex.PW-1/1.

29. On the issue of Anita Bedi not being authorised to act on behalf of defendant No. 1, two things stand out. First, while replying to the legal notice dated 9.1.1989, vide reply dated 19.1.1989, defendants never took the stand that Anita Bedi was never constituted as the general attorney of defendant No. 1. The two are husband and wife. Further, in his examination-in-chief, PW-1 categorically stated that photocopy of power of attorney executed by defendant No. 1 in favor of his wife was supplied to his brother when Ex.PW-1/1 was executed and that Ex.PW-1/2 was the photocopy. The witness was not cross-examined on his said testimony. It has gone unchallenged. Defendant No. 1 has not produced Anita Bedi, his wife, as a witness. Her signatures on PW-1/1 have not been denied. Defendants have withheld a material witness. Cumulative effect would be that plaintiff would be entitled to a finding in his favor that Anita Bedi had the authority to execute PW-1/1 on behalf of her husband. Dr. K.S. Sidhu, learned counsel for the defendants had made a feeble plea that the power of attorney was not registered and Therefore could not be the basis to determine

the authority of Anita Bedi for the reason, she had acted under it in respect of immovable property. This plea has not been raised in the written statement. No evidence has been led on the factum of registration or non-registration of PW-1/2. Defendants cannot argue a case not set up. I may additionally note that testimony of PW-1 that defendant No. 1 was posted in Nagaland when the contract was concluded has gone unchallenged. There is every presumption that defendant No. 1 had authorised his wife to deal with his share in the suit property.

30. Issue No. 1 is accordingly decided in favor of the plaintiff and against the defendants. It is held that there was a concluded and valid agreement arrived at between the parties.

32. Evidence in respect of issue No. 2 has surfaced through the mouth of PW-1. Wealth tax assessment relating to the year 1988-89 has been proved as Ex.PW-1/7. Net wealth of Sh. S.K. Gupta is Rs. 14,75,578/-. Assets reflected in PW-1/7 are in sum of Rs. 47,66,272/-. Witness has proved legal notice dated 9.1.1989, Ex.PW-1/3 calling upon the executants of Ex.PW-1/1 to obtain the necessary permissions and execute the sale deed after receiving the balance sale consideration. Ex.PW-1/8 and PW-1/11 and PW-1/12 show that the deceased plaintiff even took steps to obtain income tax clearance which could not be obtained as the income tax authorities refused permission because defendants had not signed the statement in Form 37-I. Evidence establishes the readiness and willingness of the plaintiff to perform his part of the agreement. On the factum of means, as held in AIR 1950 90 (Privy Council) , in order to prove himself ready and willing a purchaser need not necessarily produce the money or to vouch a concluded scheme for financing the transaction.

33. To be prepared for something would mean to be equipped with what is needed for the action or event. Prepared to pay money would not mean that the plaintiff has to prove that he went about jingling money to demonstrate his capacity to pay the purchase price. It is sufficient if the plaintiff establishes that he had means to arrange for payment of the consideration payable by him. One cannot lose sight of the fact that many a sale transaction is financed by back up loans. Wealth tax assessment of the deceased for the year in question establishes that he was a man of means. His conduct, evidenced from PW-1/3, PW-1/8 and PW-1/11 and 12, establishes that the plaintiff was always ready and willing to perform his part of the agreement.

34. Issue No. 2 is accordingly decided in favor of the plaintiff and against the defendants. It is held that the plaintiff was ready and willing to perform his part of the agreement.

35. To succeed on issue No. 3, defendants had to prove that they were ready to perform their part of the agreement. To prove that, defendants had to firstly establish that they obtained the necessary Income Tax clearance as also sanction/clearance under ULCR Act, 1976. They were to further establish that having

obtained the same they notified the plaintiff and called upon him to pay the balance sale consideration and get the sale deed executed. No evidence to establish the aforesaid has been brought on record by the defendants. On the contrary, the very defense shows that the defendants were resiling from the agreement. Defendants have failed to establish that they were ready to perform their part of the agreement. Issue No. 3 has to be decided against the defendants. It is held that the defendants were not ready to perform their part of the agreement.

36. In view of the following decisions:-

- a) Surinder Grover Vs. Sheela Sahni and Others,
- b) Ajit Prasad Jain Vs. N.K. Widhani and Others,
- c) Hardeodas Agarwalla Trust Vs. Vijay Singh Choraria,
- d) Rajesh Aggarwal Vs. Balbir Singh and Another,

the issue No. 4 stands conclusively settled against the defendants and in favor of the plaintiff. It has been held in these decisions that statutory clearances not being obtained do not make a contract unenforceable. Defendants can be ordered to obtain the necessary clearances. Issue No. 4 is accordingly decided by holding that the agreement, Ex.PW-1/1 is enforceable notwithstanding that the defendants did not obtain the necessary clearance under the Income Tax Act, 1961.

37. On issue No. 5, defendants 1 and 3 have, in their deposition stated that the property was bequeathed to them by their late father under a will. defense to this effect has been raised in the written statement filed. However, in the reply to the legal notice sent by the plaintiff, said defendants did not question the authority of the other executants of Ex.PW-1/1 in joining in the execution of the said document. Defendants 1 and 3 have not explained as to how their brothers and sisters executed Ex.PW-1/1. In their examination-in-chief, defendants 1 and 3 did not whisper or even explain as to why their brothers and sisters signed and executed Ex.PW-1/1. Attempt made by the two to explain away the reply sent by their lawyer on 19.1.1989 (Ex.PW-1/5) and the theory of their brother Prithvi Pal Singh having obtained signatures on blank papers is nothing but a desperate attempt to wriggle out of the bargain. This theory surfaced for the first time in cross-examination. It has to be rejected. I need not bother myself much for the reason, defendants 1 and 3 are bound by Ex.PW-1/1 in view of my finding on issue No. 1. If said defendants alone are the co-owners of the suit property and other defendants have no concern therewith it would have no effect having adverse consequence on the plaintiff. Said defendants would be bound to perform their obligations under Ex.PW-1/1. Finding on issue No. 5 accordingly is that assuming defendants 1 and 3 alone to be the co-owners of the suit property, it would have no bearing on the relief claimed and the suit.

38. What relief should be granted. Unfortunately, Dr. K.S. Sidhu, learned Senior

Counsel for the defendants did not make any submissions nor pointed out any feature requiring equity to be bent in favor of the defendants. Counsel stuck to his arguments as finally penned down in the written submissions dated 15.4.2005. defense has been found to be unsustainable.

39. Sh. B.B. Sawhney, learned Senior Counsel for the plaintiffs urged that since the plaintiffs have established the case set up, notwithstanding the discretion of the court, relief must ensure to the plaintiff. Counsel urged that the defendants had set up a patently false case. It was urged that the defendants had a dishonest intention right from the beginning. In the context of Ex.PW-1/5, being the reply dated 19.1.1989 by the defendants to the plaintiff's legal notice, Sh. B.B. Sawhney urged that the defendants denied any concluded bargain in the reply and at the same time alleged default against the plaintiff and stated that they had forfeited the sum of Rs. 1 lakh received by them under the receipt, Ex.PW-1/1. Counsel urged that had the defendants been bonafide in their belief that there was no concluded contract, defendants ought to have offered to refund the part sale consideration. This, accordingly to the counsel shows the dishonest intention of the defendants, disentitling them to any discretion from the court.

40. It is unfortunate that the suit which was filed in the year 1990 has taken 15 years for a decision. Docket explosion is one of the primary reasons for what has happened. Neither party is to be blamed for this. However, this court cannot lose sight of the fact that since 1990 there has been a steep increase in the value of property. It has also to be kept in mind that Rs. 1 lakh has remained with the defendants since 1989. Banks were offering interest @ 12% p.a. compounded quarterly in the year 1989 which remained the same till the year 1995. Interest rates started falling and currently stand at 6% p.a. compounded quarterly. The sum of Rs. 1 lakh would Therefore become Rs. 3 lakhs (approximately) as of today. When arguments were on, I had asked counsel for the plaintiff to report whether the plaintiff was willing to pay a higher price and if yes, what sum. Sh. B.B. Sawhney, learned Senior Counsel for the plaintiff informed that plaintiff was ready and willing to pay a sum of Rs. 25 lakhs over and above the agreed sale price. Defendants did not agree to the offer made by counsel for the plaintiff.

41. Notwithstanding the dishonest defense taken by the defendants, I would be inclined to grant benefit to the defendants as per concession made by counsel for the plaintiff.

42. Suit is accordingly decreed in favor of the plaintiff and against the defendant. Decree is passed that on the plaintiff paying a further sum of Rs. 49 lakhs (Rupees forty nine lakhs) to the defendants, defendants would execute a sale deed in favor of the plaintiff (legal heirs of the plaintiffs) in respect of property bearing No. T-10, Rajouri Garden, New Delhi and would deliver vacant possession thereof to the plaintiff. Defendants would obtain the necessary permissions, if still required. Defendants are granted 4 months time from date of judgment and decree to do the needful and intimate the plaintiff of having obtained the permissions. If no permission is required, defendants would intimate the plaintiff

within one month from today. Two months time is granted to the plaintiff to tender the sale consideration from date of receipt of the intimation(s) afore-recorded.

43. plaintiff would be entitled to costs against defendants No. 1 and 3.

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