

Vijay Kumar Sharma vs James Akham on 16 February, 2022

IN THE COURT OF MS. SUNENA SHARMA: ADDL.
DISTRICT JUDGE- 04: PATIALA HOUSE COURTS: NEW DELHI

CS no.57305 of 2016

Date of institution of Suit	: 13.01.2016
Date of final arguments	: 01.02.2022
Date of judgment	: 16.02.2022

Vijay Kumar Sharma
s/o late Sh. Banarsi Lal Sharma
r/o Flat no. 8145, C-8
DDA SFS Second and Third Floor Duplex Flat
Vasant Kunj, New Delhi- 110070

.....Plaintiff.

Versus

James Akham
s/o Sh. K.P.Rongmai
r/o C/o Mother Mary School
Dhobi Nalah Road, Dimapur
Nagaland- 797112

.....Defendant.

JUDGMENT

1. Vide this judgment, I shall decide the suit filed by the plaintiff against defendant for seeking relief of declaration and permanent injunction.

2. Tersely put the facts of the plaintiff's case as set out in the plaint are that plaintiff is the owner in actual physical possession of SFS Duplex flat no. 8145 (2nd and 3rd floor) with scooter garage, in Pocket-8, Sector-C, Vasant Kunj, New Delhi (hereinafter referred as suit property), more particularly shown in red colour in site plan annexed with the plaint as Annexure. A. The suit property was allotted to plaintiff by DDA on lease hold basis on 01.07.1988.

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Subsequently, the suit property was converted into a free hold property vide a registered conveyance deed dated 15.09.2000. Plaintiff and his family have been in continuous possession of the suit property since 22.04.1989. Plaintiff has various business interest in Dimapur, Nagaland and used to frequently travel there in connection with his business. During such stay at Dimapur, plaintiff became friendly with defendant who was engaged in the business of money lending.

2.1 In the year 2011, when business of plaintiff was going through a rough phase, plaintiff approached defendant and requested him for a loan of Rs. 1,25,00,000/- (Rs. One Crore Twenty Five Lakh) which defendant agreed to pay subject to the condition that plaintiff would return the same within three years alongwith interest @ 2 % per month and would also furnish adequate collateral security. Plaintiff agreed to pay the interest at said rate on the loan amount and further told the defendant that for providing collateral security, he only had the suit property having market value much more than the loan amount. After due deliberations it was decided that repayment schedule would be worked out mutually after the entire loan amount of Rs. 1,25,00,000/- was disbursed to the plaintiff by the defendant. It was also agreed between the parties that for providing collateral security, plaintiff would execute and register a sale deed in respect of the suit property in favour of defendant showing an amount of Rs. 42,00,000/- (Rs. Forty Two Lakhs) as sale consideration, which would be a part of loan amount and same would be paid by way of account payee cheque, while the rest of the balance loan amount of Rs. 83,00,000/- was agreed to be paid in cash after execution of sale deed. It was further mutually agreed that after receipt of entire CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA SUNENA SHARMA Page no. 2 of 42 SHARMA Date:

2022.02.16 16:45:58 +0530 loan of Rs. 1,25,00,000/-, plaintiff would repay the same within three years with interest @ 2 % per month and upon repayment of entire loan alongwith interest by the plaintiff, defendant in a buy back agreement would execute the sale deed of suit property in favour of plaintiff and discharge the plaintiff from said collateral security.

2.2. It was further mutually agreed that they would incorporate the market value of suit property as Rs.1,90,000,00/-

(One Crore Ninety Lakh) in the deed of agreement to be executed and signed between them. Accordingly, a deed of agreement dated 13.06.2011 was executed between plaintiff and defendant and the same was duly witnessed by son and wife of plaintiff. On the same day i.e. 13.06.2011, plaintiff was paid Rs. 42,00,000/- i.e. Rs. 41 lakh by way of cheque and Rs. 1 lakh in cash out of the total loan amount of Rs. 1.25 crore and as per the understanding, plaintiff got executed the sale deed of suit property in favour of defendant and got it registered with the office of Sub-Registrar vide document bearing Regd. no. 6303 in Book No. I, Vol. No. 5944 on pages 88 to 97 dated 16.06.2011. It was further mutually agreed between the parties that actual physical possession of the suit property would remain with the plaintiff but in order to protect the interest of the plaintiff, a lease deed would be executed and registered thereby reflecting an amount of Rs. 25,000/- as monthly rent which though would not be required to be paid by the plaintiff to the defendant. The understanding was that if upon receipt of entire loan amount of Rs. 1.25 crore, plaintiff failed to

repay the same with agreed rate of interest within stipulated period, plaintiff shall be liable to deliver the possession of the suit property to the defendant. The sale deed dated 13.06.2011, was executed merely by way of security for CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA SUNENA SHARMA Page no. 3 of 42 SHARMA Date:

2022.02.16 16:46:05 +0530 repayment of loan and therefore, even after execution of sale deed, plaintiff and his family continued to reside and occupy the suit property and even the original conveyance deed dated 15.09.2000 of the suit property was never handed over to the defendant.

2.3 Further, it is averred that for the purpose of records, a separate lease agreement was executed between the plaintiff and defendant showing the plaintiff as lessee in the suit property at monthly rent of Rs. 25,000/- for a period of three years. The said lease agreement dated 13.06.2011 was also simultaneously got registered with the Sub-Registrar office vide document bearing Regd. no. 6326 in Book No. I, Vol. No. 5945 on pages 104 to 109 dated 17.06.2011. Out of the total loan amount of Rs.

1,25,00,000/-, defendant paid only Rs.42 lakh on 13.06.2011 and assured to pay the remaining loan amount of Rs. 83 lakh after two weeks at Dimapur saying that carrying such huge amount in cash was unsafe and moreover, said money was required by the plaintiff for his business at Dimapur only. Plaintiff accordingly, visited defendant after two weeks at Dimapur for collecting the balance loan amount but the defendant avoided to pay the same on one excuse or the other and while doing so he kept assuring the plaintiff that his (plaintiff's) obligation to return the loan would arise only after payment of entire loan amount of Rs. 1,25,00,000/- by the defendant to the plaintiff. However, despite repeated reminders and requests from the plaintiff, defendant failed to pay the balance loan amount and on account of his said conduct, plaintiff apprehended that the intentions of the defendant had either turned dishonest or defendant was not honest ever since beginning.

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2.4

The apprehension of the plaintiff proved to be true when

he received a legal notice dated 18.12.2013 from the defendant wherein defendant malafidely and illegally claimed himself to be the owner/landlord of the suit property and called upon the plaintiff to vacate the suit property on account of default in making the payment of monthly rent. After receipt of said notice from the defendant, plaintiff contacted the defendant and reminded him of the actual understanding upon which the defendant tried to assure the plaintiff that he had no intention to act upon said legal notice dated 18.12.2013 and in a short time, he would give the plaintiff remaining balance loan amount of Rs. 83,00,000/- and period of three years for repayment of loan amount would start only after the receipt of entire loan amount of Rs. 1,25,00,000/- by the plaintiff.

2.5 It is further averred in the plaint that the plaintiff was left with no choice but to wait for the defendant to honour his commitment. But finally, in the month of June 2014 immediately on expiry of three year period for repayment of loan as stipulated in the deed of agreement, plaintiff contacted the defendant and told him that he (plaintiff) would proceed to seek legal recourse for cancellation of sale deed and lease agreement. The defendant upon realizing that his entire game plan would be exposed if the plaintiff approached the court of law, started mounting pressure upon the plaintiff and threatened him of dire consequences either himself or by his accomplice Nirmal Jain and demanded the plaintiff and his family to vacate and hand over the suit property. The plaintiff for safety of his family kept quite for some time until August 2015 when plaintiff first time came to know that defendant had illegally got the electricity connection transferred in the suit property in his own name.

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2.6 Later on, in December 2015, plaintiff alongwith his

accomplice Nirmal Jain and few other persons, visited suit property, manhandled and abused the plaintiff and his family members and again threatened them to vacate the suit property. In that regard, a complaint dated 12.02.2015 was also lodged by plaintiff's son Rajat Sharma in Vasant Kunj police station. Plaintiff through his son also got a complaint lodged with BSES on 28.12.2015 about unlawful transfer of electricity connection in the name of defendant. It is further averred in the plaint that the sale deed and lease agreement both dated 13.06.2011 were obtained by the defendant from the plaintiff by playing a fraud and deceit and hence, both the said documents are liable to be cancelled as null and void.

2.7 The plaint further mentions that suit property is situated in Vasant Kunj, within the territorial jurisdiction of this court. Further, the suit has been valued at Rs.42 lakh for the relief of declaration of sale deed, at Rs.200/- for the declaration of lease agreement and Rs.130/- each for the two reliefs of permanent injunctions, upon which appropriate court fees of Rs.43,336/-, Rs.200/- and Rs.13/- each has been paid.

2.8 In the prayer clause, plaintiff has prayed for declaration of aforementioned sale deed and lease deed, both dated 13.06.2011 as null and void and further sought the relief of permanent injunction for restraining the defendant as well as his heirs, assignees, agents, administrators, attorneys etc from selling, transferring or creating third party interest in the suit property and from forcibly dispossessing the plaintiff from the suit property.

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3. Pursuant to the summons of the suit, defendant appeared and contested the suit by filing written statement wherein he came up with numerous preliminary objections such as that suit is barred under Order 2 Rule 2 CPC because the plaintiff has sought declaration of the registered sale deed dated 13.06.2011 without seeking specific performance of the undated fabricated alleged deed of agreement; that the suit is barred by the provisions of Contract Act, Specific Relief Act, Article 59 of Limitation Act, Registration Act, Stamp Act, proviso to section 58 (C) of Transfer of Property Act and that plaintiff has not come to the court with clean hands and is also guilty of suppressio veri and suggestion falsi.

3.1 It has been further alleged in the WS that suit property was under mortgage with United Bank of India, Dimapur branch, Nagaland vide Deed of Mortgage dated 09.12.2009 and defendant had paid Rs.42,00,000/- to the plaintiff to get said encumbrance released and on the basis of legal evaluation of circle rates, defendant also purchased the stamp duty to get the suit property transferred in accordance with law and said amount of Rs.42,00,000/- was the total consideration amount which was received by the plaintiff for the registration and execution of deed in favour of defendant. It is further averred that defendant has become the absolute owner of the suit property by virtue of the registered sale deed dated 13.06.2011, executed by plaintiff in favour of defendant and plaintiff is thus, legally estopped from raising atrocious objections and fabricated grounds by way of present suit. Further it is averred that after service of legal notice of termination dated 18.12.2013 issued by the defendant, plaintiff has become an illegal and unauthorized occupant in the suit property.

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3.2 It is further stated that suit of the plaintiff is barred in

view of the proviso of section 58 (C) of Transfer of Property Act as there is no recital either in the registered sale deed dated 13.06.2011 or in the registered lease deed dated 13.06.2011 that the transfer by way of sale was only ostensible or conditional upon the loan agreement and as such, plaintiff is not entitled to the cancellation of sale deed or declaration of the same as null and void without mandatory compliance of Section 58(C) of Transfer of Property Act. Further the plaint is stated to have not been verified in accordance with law nor properly valued for the purpose of jurisdiction and court fees. The suit is further alleged to be false and vexatious and able to the dismissed with exemplary cost under Section 35 A of CPC.

3.3 In reply on merits, defendant reiterated the stand taken in the preliminary objections and categorically denied the claim of the plaintiff that the sale deed in question was executed only as a

collateral security or that there was any deed of agreement executed between the plaintiff and defendant on 13.06.2011 for the payment of loan amount of Rs. 1,25,00,000/-. It is categorically denied that the plaintiff is the owner in lawful possession of the suit property. It is further averred that suit property was under

mortgage with United Bank of India, Dimapur Branch, Nagaland vide Mortgage deed dated 02.12.2009 and the defendant had paid Rs. 42 lakh to the plaintiff to get said encumbrance released and the said amount received by the plaintiff was the consideration for the sale of suit property and for the execution of sale deed in favour of defendant. Defendant categorically denied that plaintiff is the owner in possession of suit property. Defendant came up with the plea that after the execution of aforementioned registered Sale deed dated Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 8 of 42 SHARMA Date:

2022.02.16 16:46:39 +0530 13.06.2011, plaintiff was left with no right, title or interest in suit property and it was only on the request of the plaintiff to meet the timely requirement of his family, plaintiff was allowed to occupy the physical possession of the suit property though the legal possession stood already transferred to the defendant on the basis of said registered sale deed.

3.4 It was further averred in the WS that vide a lease deed dated 17.06.2011, the physical possession of the suit property was reinstated to the plaintiff as a leasee and the suit property was let out to him for the period of 36 months at monthly rent of Rs.

25,000/-. it is further averred that after receipt of legal notice from the defendant, plaintiff came forward to clear his arrears of rent and issued two cheques of Rs. 5 lakh each bearing no. 32015106 and 32015107 both dated 28.11.2014 drawn on Union Bank of India, Dimapur Branch, Nagaland towards rent for 40 months commencing from 15.06.2011. But, the plaintiff requested the defendant not to present said cheques till the plaintiff was able to generate sufficient balance to honour the same and therefore, the eviction proceedings were kept in abeyance by the defendant though the defendant reserved his right and craved liberty to take appropriate action for its possession, recovery of arrears of rent and mense profit in accordance with law.

3.5 It is further averred in the WS that plaintiff has deliberately concealed from this court that the suit property was under mortgage and chronological order of events itself is self- explanatory because after receiving the consideration amount of Rs. 42 Lakh from the defendant, the plaintiff got the suit property released from the encumbrances of United Bank of India, Dimapur Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 9 of 42 SHARMA Date:

2022.02.16 16:46:46 +0530 Branch, Nagaland vide certificate dated 10.06.2011 and just after three days suit property was legally transferred by the plaintiff to defendant by execution of sale deed registered on 16.06.2011 and similarly, the lease deed was

also executed on 13.06.2011 and got registered on 17.06.2011. Further that suit property was let out to the plaintiff by the defendant after he (defendant) became the owner of the suit property by virtue to sale deed dated 13.06.2011. Further that, plaintiff never stated before the sub-registrar about conditional nature of transaction or any amount pending with defendant therefore, plaintiff is now legally estopped from raising any such objection. Defendant categorically denied to have entered into any sham transaction or buy back agreement of suit property as alleged in plaint. Defendant specifically denied to have entered into any deed of agreement on 13.06.2011.

3.6 It was further averred that after execution of the aforesaid sale deed and lease deed, the son of the plaintiff requested the defendant to make a courtesy visit at the suit premises. Accordingly, defendant visited the suit property to light candle and pray auspicious entry into the newly purchased home of the defendant and at that time, plaintiff asked the defendant to sign certain blank papers to apply for transfer of some civil services in the name of the defendant. It was further averred that the deed of agreement relied upon by plaintiff does not bear any date, which shows clearly that the same was fabricated by plaintiff only subsequent to receipt of notice of termination dated 18.12.2013 from defendant. It is averred further that, if the defendant had to pay a loan amount of Rs. 1,25,00,000/- as alleged in the plaint, the plaintiff would have never got the sale deed or lease deed registered without receiving the entire payment of alleged loan from the CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA Page no. 10 of 42 SUNENA SHARMA SHARMA Date:

2022.02.16 16:46:53 +0530 defendant.

3.7 It is averred further in the written statement that on 21.09.2009, the plaintiff had also filed a police report with the West Police Station, Dimapur, Nagaland about the loss of title documents of the suit property and plaintiff failed to disclose said important fact in the plaint. It is stated further that Panel Advocate of UBI vide his title investigation report had clearly recorded that the plaintiff did not submit the original Conveyance Deed dated 15.9.2000, therefore, the mortgage loan to the plaintiff was approved without submission of original Conveyance Deed. Hence, plaintiff has falsely stated that he intentionally did not give the Conveyance Deed dated 15.9.2000 to the defendant. The defendant denied the facts averred against him for extending threats to the plaintiff or his family members. Defendant rather alleged that it was plaintiff who used to threat defendant that he would give the premises to some gunda elements and pursuant to said threat, defendant had filed a police complaint against defendant on 26.12.2014 at PS Vasant Kunj vide DD no. 43 B.

4. In replication, plaintiff reiterated his stand taken in the plaint as true and correct and denied all the allegations and averments made in the WS which are contrary to

plaintiff's case, as false and incorrect. Although, it is not denied by plaintiff that the suit property was mortgaged with the United Bank of India, Dimapur Branch, Nagaland vide deed of Mortgage dated 02.12.2009 but he denied that the sum of Rs.42,00,000/- was paid to the plaintiff to get said encumbrance released. It is further submitted that plaintiff required a sum of Rs.1,25,00,000/- for which the parties entered into an agreement which was reduced into writing vide deed of Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 11 of 42 SHARMA Date:

2022.02.16 16:47:04 +0530 agreement executed on 13.06.2011. Out of said loan amount of Rs.1,25,00,000/-, the defendant released a sum of Rs.42,00,000/- which was utilized by the plaintiff for release of encumbrance over the suit property. It is further averred that in order to secure the loan, the plaintiff executed and registered the sale deed dated 13.06.2011 in respect of the suit property showing the sale consideration as Rs.42,00,000/- though admittedly the market value of the suit property as on that date was Rs.1,90,00,000/- which is also evident from the perusal of the deed of agreement executed on 13.06.2011. Therefore, there was no reasons for plaintiff to sell the suit property to the defendant for meager amount of Rs.42,00,000/-. It is further averred that after getting the sale deed of the suit property registered in his name, defendant turned dishonest and failed to extend the balance loan amount of Rs.83,00,000/- despite repeated requests and reminders of plaintiff.

Therefore, plaintiff offered to return the loan amount of Rs.42,00,000/- which was agreed by defendant and in partial discharge of his debt plaintiff handed over two cheques of Rs.5,00,000/- each to the defendant. Defendant, however, did not present the same for reasons best known to him. It is submitted further that true nature and essence of transaction was duly incorporated by the parties in the deed of agreement executed on 13.06.2011.

4.1 Plaintiff further categorically denied that he has misused or abused the process of law by filing this suit or that suit is liable to be dismissed or that case of the plaintiff is barred by the provisions of section 58 (c) of the Transfer of Property Act. Rather, plaintiff averred that reliance placed by the defendant on said provision is misconceived in as much as the sale deed dated 13.06.2011, cannot Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 12 of 42 SHARMA Date:

2022.02.16 16:47:09 +0530 be read in isolation and the factum of execution of sale deed in respect of suit property by way of security is duly recorded in the deed of agreement entered into between parties on 13.06.2011.

5. After completion of pleadings following issues were framed on 19.07.2019:-

1. Whether any loan transaction took place between the parties? OPP.

2. Whether the suit is maintainable without seeking any specific performance of undated deed of Agreement of loan of Rs.1.25 crores (wrongly mentioned as Rs.1.25 Lakh) ? OPP.

3. Whether the plaintiff was merely a lessee under defendant vide lease deed dated 17.06.2011 ? OPD.

4. Whether the present suit is barred under the proviso of Section 58(c) of Transfer of Property Act ? OPD.

5. Whether the plaintiff is entitled to decree of declaration as prayed for in para (i) and (ii) of Prayer clause ? OPP.

6. Whether plaintiff is entitled for a decree of permanent injunction, as prayed for in para (iii) and (iv) of Prayer clause ? OPP.

7. Relief.

6. In order to prove its case plaintiff examined five witnesses including himself as PW1. PW2 is Yogender Kumar Sharma Sr. Telephone Operator from Telephonic Exchange, Chankyapuri, who brought the record of telephone connection in the name of Rajat Sharma son of Vijay Kumar Sharma i.e the plaintiff herein at the address of the suit property and exhibited the same on record as Ex. PW2/A (colly) and PW2/B (Colly). PW-3 Narinder CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA SUNENA SHARMA Page no. 13 of 42 SHARMA Date:

2022.02.16 16:47:16 +0530 Kumar is from Delhi Jal Board and he had brought the original allotment register of Delhi Water Supply and Sewage disposal undertaking of MCD as well as the water bill in respect of the suit property in the name of plaintiff and filed said documents on record Ex. PW3/D and Ex.PW3/E respectively. PW-4 Ajay Yadav is from A & C Department, Dwarka and he brought the House Tax record of the suit property. As per his version the suit property was mutated in the name of James Akham i.e. defendant for the purpose of payment of property tax for limited period and no notice was issued to original owner before carrying out said mutation. He proved the relevant record as Ex. PW4/A. PW-5 Amitabh Shrivastav is from BSES Rajdhani Power Limited. He brought the documents submitted by defendant James Akham with BSES Rajdhani Power Limited for transfer of electricity connection in the name of defendant in respect of the suit property and proved the same as Ex. PW5/A.

7. In order to rebut plaintiff's case, defendant examined himself only as DW-1. Both the plaintiff and defendant filed their examination in chief by way of affidavits wherein they both seem to have narrated the contents of their respective plaint and WS on solemn affirmation. Hence, for brevity sake contents of their affidavits are not repeated here. Plaintiff in his affidavit has relied upon

various documents such as SPA executed by plaintiff in his favour as Ex.PW-1/1, site plan of the suit property as Ex. PW1/2, Conveyance Deed dated 15.09.2000 as Mark A, electricity bills for the period w.e.f. 10.01.2011 till 06.11.2015 as Ex. PW1/3 (colly), three original House Tax receipt as Ex. PW1/4 (colly), 10 water bills as Ex. PW1/5 (colly), copy of undated deed of agreement as Mark B, registered sale deed dated 13.06.2011 executed by plaintiff in favour of defendant as Ex. PW1/6, lease agreement dated Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA SHARMA Date: Page no. 14 of 42 2022.02.16 16:47:23 +0530 13.06.2011 as Ex. PW1/7, legal notice dated 18.12.2013 as Ex. PW1/8, police complaint dated 16.12.2015 as Ex. PW1/9 and complaint dated 28.12.2015 as Ex. PW1/10.

8. Witnesses from both the sides were duly cross- examined by respective opposite counsels and relevant part of their cross-examination shall be referred in later part of this judgment while rendering findings on the issues.

9. I have given my thoughtful consideration to respective arguments raised by the counsels for the parties and also carefully perused the entire record including written submissions and supporting judgements filed by the parties.

10. My issue-wise findings are as under:

ISSUE NO.1 "Whether any loan transaction took place between the parties ? OPP."

ISSUE NO.3 "Whether the plaintiff was merely a lessee under defendant vide lease deed dated 17.06.2011 ? OPD."

10.1 The above two issues have been taken together as the same are inter-connected and common evidence has been led by the parties on both the said issues. The onus of proving issue no.1 was upon plaintiff whereas, the onus to prove issue no.3 was put on defendant.

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2022.02.16 16:47:28 +0530 10.2 As per plaintiff's case in the year 2011, his business was not doing well, he required financial assistance and approached defendant for loan of Rs.1.25 crore, which defendant agreed to pay subject to condition that plaintiff will repay it within three years with 24% per annum interest and shall also furnish a collateral security against the loan. Accordingly, plaintiff agreed to provide collateral security by executing a sale deed of the suit property in favour of defendant wherein Rs.42 lakh which was part of the loan amount, was shown as a sale consideration. Defendant agreed to pay the remaining balance of Rs. 83 lakh in cash at Dimapur after two weeks of execution of sale deed. It was further agreed that after the repayment of entire loan within 03 years with agreed rate of interest, defendant in a buy back arrangement would execute the sale deed of the suit property in favour

of plaintiff and would discharge the plaintiff from said collateral security.

10.3 Hence, it is all along the plaintiff's case that registered sale deed and lease deed dated 13.06.2011 were never intended to be acted upon between the parties and same were executed only in the nature of collateral security. As per plaintiff's case, it was a transaction of loan and just to secure the loan amount, a collateral security was furnished in the form of executing a sale deed in the name of defendant but, the intention was never to transfer the property in the name of defendant. As per plaintiff's case, the sale deed was got executed from him by the defendant deceitfully on the pretext of granting loan of Rs. 1.25 Crores. Plaintiff has alleged that defendant did not pay the balance loan amount of Rs.83 lakh as his intentions turned dishonest and instead, defendant got him served with a legal notice dated 18.12.2013 thereby seeking possession of suit property from plaintiff after terminating his tenancy and Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 16 of 42 SHARMA Date:

2022.02.16 16:47:34 +0530 claiming himself to be the owner cum landlord and plaintiff as tenant in the suit property. Later on, in December, 2015 defendant also sought to forcibly evict plaintiff which led the plaintiff to approach the court by way of present suit for seeking declaration of aforementioned sale deed and lease deed as null and void and for permanent injunction to restrain defendant from taking forcible possession of suit property from plaintiff and from creating any third party interest in the same.

10.4 It is an admitted position on record that neither in the sale deed nor in the lease deed dated 13.06.2011, which are two contemporary documents, there is any mention of any such loan transaction or of any buy back arrangement between the parties.

For proving the alleged nature of transaction as that of loan, plaintiff has placed reliance on the Deed of Agreement dated 13.06.2011, which being the photocopy copy of the document was initially marked as Mark A at the time of tendering of affidavit of PW-1. However, later on during cross-examination after the defendant identified his signatures on Mark A, the same was exhibited as Ex. DW1/P1.

10.5 It is contended on behalf of plaintiff that during cross- examination, PW1 not only identified his signature on said deed of agreement but also admitted that the same was executed in Delhi and in this manner having the contents of said agreement conclusively proved, it stands established that defendant failed to honour his commitment under said agreement which was a precondition for crystallization of any rights in respect of suit property in favour of defendant. It is argued that non-performance on the part of defendant of his obligation under the Deed of Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 17 of 42 SHARMA Date:

2022.02.16 16:47:41 +0530 Agreement would by legal implication render the sale deed and lease deed as non est as same were executed merely as security documents to secure the loan.

10.6 Counsel further argued that as per said Deed of Agreement Ex DW1/P1, defendant was to pay the balance loan amount of Rs.83 lacs which the defendant admittedly never paid.

Hence, in terms of said agreement, it is only in event of plaintiff failing to repay the loan of Rs. 1.25 Crores within period of 3 years, the defendant's right to ownership could have fructified that too subject to defendant paying further sum of Rs. 65 lakh because, the market value of property at that time was admittedly 1.9 Crores. Whereas, except paying a paltry sum of Rs.42 lacs, the defendant did not pay the balance amount of Rs.83 Lakhs so as to create an obligation upon plaintiff to repay the entire amount of Rs. 1.25 Crores within a period of 3 years.

10.7 It is vehemently argued that a new line of argument that document Ex. DW1/P-1 was fabricated on blank signed papers which were allegedly got signed from defendant after execution of sale deed, has been taken to create a cloud over said agreement. But surprisingly, in the entire cross-examination of PW1, who is an attesting witness of said document, no suggestion was put to PW-1 to the effect that defendant's signatures were taken on blank signed documents or that said alleged blank signed papers were used to fabricate said deed of agreement Ex. DW1/P-1. It is further argued that since there is not even a whisper of said suggestion in the cross-examination of PW-1 and on the contrary, the answers of defendant to the question put to him in the cross-examination whereby, he admitted his signature on EX. DW1/P-1, conclusively CS no.57305 of 2016 Digitally Vijay Kumar Sharma Vs. James Akham signed by SUNENA Page no. 18 of 42 SUNENA SHARMA SHARMA Date:

2022.02.16 16:47:48 +0530 proves the plaintiff's case that Deed of agreement Ex. DW1/P1 was executed between the parties and the terms and condition entailed therein were binding upon them.

10.8 It is further submitted that the argument taken by defendant that the two cheques issued by plaintiff of Rs. 5 lakh each dated 28.11.2014 were towards payment of rent cannot be accepted while the contention of the plaintiff that they were issued towards partial refund of loan amount carries more credence in as much as admittedly the two cheques were never presented for encashment by the defendant despite the defendant being conscious of the fact that he was entitled to rent and had every right to encash the same and there is no plausible explanation from the defendant for his such omission which leads to an inevitable presumption that the same were given for partial refund of loan and the defendant whose intention was malafide did not encash the same thereby ending up creating evidence against himself.

10.9 It is further argued that it is only pursuant to the legal notice dated 18.12.2013 received from the defendant, the plaintiff became conscious of malafide intention of the defendant and as man of ordinary prudence, the plaintiff proceeded to partially discharge his liability by sending two cheques of Rs. 5 lakh each and therefore, the allegation of afterthought is completely ruled out and rather if said contention of plaintiff is judged on the touchstone of preponderance of probability, the same is loaded with credence and ought to be accepted.

10.10 It is further argued that as was clearly envisaged in the Ex. DW1/P-1, the liability of plaintiff to repay the loan was to Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 19 of 42 SHARMA Date:

2022.02.16 16:47:53 +0530 arise only after the payment of entire loan of Rs. 1.25 crore and it is upon the failure upon the part of the plaintiff to repay said loan within stipulated period, the defendant would have been at liberty to treat the sale as confirmed in his favour upon the payment of further amount of Rs. 65 lakh. Therefore, the sale deed was neither conditional sale nor could be termed as mortgage sale as the entire amount towards loan had never been paid. It is further argued that mortgage in true sense of term could have come into existence only after the entire amount of Rs. 1.25 crore was paid by the defendant to the plaintiff. As such, the provision of Section 58 (C) of Transfer of Property Act has no application in the facts and circumstances of the case.

10.11 As regard the line of argument of defendant that remedy in law for the plaintiff was to seek specific performance of the agreement, it was argued that in the legal notice dated 18.12.2013, defendant denied the very existence of loan agreement and therefore, plaintiff relied upon said agreement to show that sale deed was never intended to be acted upon and its execution was only in the form of security and coupled with the fact that defendant chose to deny the very execution of the agreement and on the contrary asserted his ownership rights on the strength of the registered sale deed, the remedy available with the plaintiff was not to enforce the agreement but to seek a declaration to treat the sale deed as null and void especially when plaintiff proceeded to discharge the loan by making partial payment of Rs.10 lacs by issuing two cheques in favour of plaintiff.

10.12 It is further argued that the defendant having accepted the position that the value of the property was Rs. 1.9 CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 20 of 42 SHARMA Date:

2022.02.16 16:47:58 +0530 crore, obviously wants to usurp the property by malafidely choosing to deny the very existence of the agreement Ex. DW1/P-1 and having faced with the situation during his cross-examination where defendant ended

up in admitting the execution of Ex. DW1/P-1, defendant is now cleverly attempting to cover up such admission by webbing a story of suspicious circumstances surrounding the loan agreement Ex. DW1/P-1. As regard the date of purchase of stamp paper of Ex. DW1/P-1 being that of May 2011, on which the defendant has placed much emphasis, it is argued that in the cross- examination, defendant has categorically admitted that negotiations regarding loan had commenced 2-3 months prior to execution and registration of document and considering said position, it is not surprising if the stamp paper was purchased in May 2011.

10.13 It is further argued that the malafide intention of the defendant is writ large from his conduct in applying for mutation in the MCD and for transfer of electricity meter in his name only after receipt of two cheques of Rs. 5 lakh from the defendant on 28.11.2014, which the plaintiff paid him towards partial return of the loan subsequent to receipt of legal notice dated 18.12.2013 from the defendant.

11. On the other hand, the defendant in the WS has set up the defence that by virtue of the registered Sale deed dated 13.06.2011, he has become the absolute owner of the suit property. Defendant has categorically denied that the sale deed was executed as a collateral security or that there was any deed of agreement dated 13.06.2011 executed between plaintiff and defendant as alleged in the plaint. It is further the defendant's case that at the time of execution of the sale deed, he was requested by plaintiff to Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA SHARMA Date:

Page no. 21 of 42 2022.02.16 16:48:04 +0530 allow him i.e the plaintiff to occupy physical possession of the suit property till some alternative accommodation is made for the plaintiff and his family. As per request, a lease deed dated 17.06.2011 was executed, vide which a tenancy was created in favour of plaintiff allowing him to retain the possession as a lessee for a period of 36 months at monthly rent of Rs. 25,000/-.

Defendant has further taken up the defence that after service of legal notice of termination dated 18.12.2013, issued by the defendant upon the plaintiff, plaintiff has become an illegal and unauthorized occupant in the suit property.

11.1 Let us now advert to the evidence led by parties on the aforementioned issues. Plaintiff has examined his son/SPA as PW-1. PW-1 filed his power of attorney executed by his father in his favour as PW1/1. As per his deposition, the entire transaction of his father with the defendant had taken place in his presence and he remained personally involved in the negotiation and discussions in respect of said transaction and was thus, personally conversant with the entire facts of the case. In his examination in chief which is available on record as PW1/A, the witness seems to have deposed on the lines of averment in the plaint. As per his deposition plaintiff and his family is in continuous occupation of the suit property i.e. flat no. 8145, pkt. 8 Sector C DDA, SFS, second and third floor duplex flat, Vasant Kunj since 22.04.1989 and his father was allotted said property by DDA vide lease deed and subsequently, the property was converted into free hold vide registered conveyance

deed dated 15.09.2000 available on record as Mark A. The witness has relied upon the original electricity and water bills in the name of plaintiff as Ex. PW1/3 (colly) and Ex. PW1/5 (colly) respectively and the House Tax receipts issued by MCD as Ex. PW1/4 (colly).

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Page no. 22 of 42 2022.02.16 16:48:09 +0530 11.2 Further as per version of PW-1, in the year 2011, when plaintiff was undergoing a rough phase, he approached defendant for financial assistance of Rs. 1.25 Crores for the purpose of his business. PW-1 further deposed that defendant agreed to pay said amount as loan to plaintiff subject to plaintiff furnishing a collateral security and also subject to the condition of repayment of loan with interest @ 2 per cent per month within three years. The repayment schedule and quantum payment as monthly installment was agreed to be worked out only after disbursement of the entire loan to the plaintiff by the defendant. PW-1 further testified that it was mutually agreed that plaintiff would execute a sale deed in respect of suit property in favour of defendant as a collateral security and would show Rs. 42 lakh as sale consideration which would be part of loan amount and would be payable by plaintiff to defendant by way of account payee cheque. However, the rest of the amount of Rs. 83 lakh was agreed to be paid in cash after the execution of sale deed.

11.3 In the affidavit, PW-1 further deposes that parties had mutually agreed that they would incorporate market value of suit property as Rs. 1.9 cr in the deed of agreement to be executed between them and accordingly, Deed of Agreement dated 13.06.2011 was duly executed and signed between plaintiff and defendant and as insisted by the defendant, the same was also witnessed by plaintiff's wife and his son i.e. PW-1 herein. PW-1 further deposed that the original agreement dated 13.06.2011 was kept by the defendant in his custody and possession and only the photocopy Mark B of the same was given to the plaintiff. Witness identified plaintiff's signature on said agreement at point 'A' and deposed that plaintiff had signed the same in his (PW-1) presence Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 23 of 42 SHARMA Date:

2022.02.16 16:48:16 +0530 and in the presence of his mother. Witness also identified his own signature at point 'C' and signature of his mother at point 'D' on said document Mark B. 11.4 As already noted above defendant categorically denied execution of any such Deed of Agreement between him and the plaintiff in the Written Statement and alleged that at the time of his visit to suit property to light candle and pray for his auspicious entry into the newly purchased home, plaintiff took his signature on certain blank papers on the pretext of applying for transfer of some civil services in the name of the defendant. DW-1 in his examination in chief

(Ex.DW1/A) has also deposed on the same lines.

11.5 At the time of argument, the counsel for defendant argued that the said documents which were got signed from plaintiff in blank on the pretext of applying for some civil services were subsequently misused and the document Ex. PW1/D1 was a forged document prepared by using said papers only. It is argued that despite the fact that all the three documents i.e. the sale deed, the lease deed and the alleged loan agreement/deed of agreement were executed contemporaneously, there is no reference of said Deed of Agreement either in the sale deed or in the lease deed.

11.6 As per plaintiff's case, he had executed a registered sale deed in favour of plaintiff only as a collateral security taking loan of Rs.1.25 Cr from defendant whereas, the market value of suit property at that time was much more than Rs. 1.9 Crores. Deed of Agreement which is an undated document carrying only the month and year of execution as June, 2011, is the only document on which the whole reliance has been placed by plaintiff to show the alleged CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA SUNENA SHARMA Page no. 24 of 42 SHARMA Date:

2022.02.16 16:48:22 +0530 nature of transaction as loan transaction. As per plaintiff's case, out of Rs. 1.25 Cr, he received only Rs. 42 lakh at the time of execution of Sale Deed, which was shown as a sale consideration of the suit property in the sale deed. As per plaintiff, he was to receive the remaining balance of Rs. 80 lakh in cash two weeks later after the execution of Sale Deed. Further, as per said deed of agreement only in event of plaintiff's failure to return 1.25crore, the sale was to become absolute but that too on payment of further sum of Rs. 65 lakh which was the difference between the market value of suit property and the loan amount. That is to say, in event of non performance on the part of plaintiff to return the loan amount, the total value of money which the defendant was supposed to pay for claiming absolute right of ownership in the suit flat was nearly five times higher than the actual consideration mentioned in the sale deed. Obviously, the purpose behind doing so was just to evade payment of stamp duty which is payable on the consideration amount mentioned in the sale deed. It is hard to believe that the market rate of any property could be five times higher than the notified circle rate of the government. Further, such huge sum of Rs.80 lacs which was allegedly payable as balance loan was to be paid in cash, which is again against the mandate of taxation laws.

11.7 The circle rate of land or any property is its threshold rate below which its sale can not be registered. Thus, the stamp duty in any case cannot be on the value less than the value in accordance with the circle rate of the property irrespective of the fact how less is the sale consideration actually mentioned in the sale deed. As per sale deed Ex PW1/6, circle rate of suit property at that time was Rs.39,67,200/-. Except, the recital contained in the alleged deed of agreement ExDW1/P1, plaintiff has failed

to adduce CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA SUNENA SHARMA Page no. 25 of 42 SHARMA Date:

2022.02.16 16:48:28 +0530 any other evidence to prove that at relevant time, the market rate of property was Rs. 1.9 crores as alleged in the plaint. Even otherwise, undervaluation of property is no ground to challenge the legality of sale. Even in the instant case legality of sale deed is challenged on fraud and deceit by alleging that the sale deed was executed merely as a security document to ensure the repayment of loan, which was not even wholly paid as per the agreement, as such giving no occasion to plaintiff to make any default in repayment so as to create an absolute right of ownership in favour of defendant.

11.8 Assuming for the sake of argument, that sale deed was executed merely as a security document with buy back arrangement on clearance of loan as alleged, even in that case, it seems to be only a case of non performance of agreement on the part of defendant. However, from no parameter, it can be categorised as a fraudulent sale within the meaning of section 17 of Contract Act to make it voidable under section 19 of said Act so as to approach the court for seeking its cancellation under section 31 of Specific Relief Act. From the evidence on record, it is clear beyond doubt that on execution of sale deed, both parties were well aware about the nature of transaction as that being of absolute sale otherwise, there was no occasion for the plaintiff to enter into a lease deed with the defendant and changing his (plaintiff's) status merely as a tenant in the suit property.

11.9 Perusal of Deed of Agreement Ex. DW1/P-1 shows that it does not bear the date of execution as it only mentions the month and year of execution as June, 2011. It also shows that besides plaintiff's son Rajat Sharma i.e. PW-1, names of two more attesting witnesses were mentioned out of whom one is Sh. Nirmal Jain s/o CS no.57305 of 2016 Digitally Vijay Kumar Sharma Vs. James Akham signed by SUNENA Page no. 26 of 42 SUNENA SHARMA SHARMA Date:

2022.02.16 16:48:34 +0530 late Sh. Bal Chand Jain and the other is plaintiff's wife Smt. Sushma Sharma. But the document has been signed only by two witnesses namely Sh. Rajat Sharma and Smt. Sushma Sharma. As per the deposition of PW1, Pankaj Jain s/o Tikam Chand Jain, who was one of common friend of plaintiff and defendant, had come to Delhi for witnessing the sale deed and lease deed executed between plaintiff and defendant, and Pankaj Jain was also present at the time of execution of said deed of agreement. But surprisingly, plaintiff did not examine either himself or his wife or even Pankaj Jain, who could have been an independent witness to prove the alleged nature of transaction. The contention raised by plaintiff in this regard is that since defendant in his cross examination admitted the very execution of said deed of agreement Ex DW1/P1 by identifying his signature on the same, he is assumed to have also admitted the contents of said document and therefore, there was no requirement for plaintiff to examine any other witness in this regard. Further,

it is argued that it is the quality not quantity of evidence that matters. It is argued that PW1, who is also one of the attesting witness of said deed of agreement has come up with clinched evidence regarding execution of said document and his evidence has remained unflickered despite vigorous cross examination. Hence, none examination of plaintiff or any other witness to said document cannot lead to any adverse inference against plaintiff.

11.10 As much reliance has been placed on the testimony of defendant/DW1 for plaintiff having discharged the onus of proving both the execution and content of deed of agreement Ex DW1/P1, it's essential to thoroughly examine his (defendant/DW1) testimony with regard to said deed of agreement. As already noted above in evidentiary affidavit, defendant/DW1 has almost reiterated CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA Page no. 27 of 42 SUNENA SHARMA SHARMA Date:

2022.02.16 16:48:41 +0530 averment of his written statement on solemn affirmation. In the affidavit, DW1 specifically denied that any deed of agreement was to be signed between the parties as alleged. As per his deposition, with the registration of the sale deed dated 13.06.2011 which was registered on 16.06.2011 and subsequent registration of the lease deed dated 13.06.2011 on 17.06.2011, the entire right, title and interest in the suit property got vested in the defendant and the physical possession was permitted to reinstate with the plaintiff in the capacity of the lessee. It is specifically denied that the agreement as alleged was witnessed by son and wife of the plaintiff; or that the defendant had ever insisted the plaintiff to execute any such agreement, or made plaintiff's family members to sign or witness the agreement as alleged.

11.11 DW1 deposes further that he is a native of Dimpaur, Nagaland and for the last 18 years he was working as a Civil and Electrical Contractor as Proprietor of M/s J.A.Brothers, and his said concern is duly registered and approved with the government of Nagaland and he has been delivering projects of public importance.

Further that, family of the defendant consisted of his wife since deceased, two daughters and two sons. The plaintiff was into the business of bakery etc. and developed acquaintance with the defendant. The defendant was frequently visiting Delhi but had no permanent place of residence for himself or his children. The plaintiff suggested to the defendant that the suit property could be purchased by the defendant and since the defendant was not to immediately shift or permanently stay in Delhi, the plaintiff could be reinstated as a lessee for few years till the children of the plaintiff were settled. Further that, when defendant started to examine the title documents of the suit property closely it transpired that the CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA SUNENA SHARMA Page no. 28 of 42 SHARMA Date:

2022.02.16 16:48:48 +0530 property had been mortgaged with the United Bank of India, Dimapur, Nagaland. On 10 June, 2011 the defendant received the clearance

certificate by clearing all the dues after he made payment of Rs. 42 lakh to the plaintiff out of which Rs. 1 lakh was paid in cash while Rs. 41 lakh was paid through cheque vide cheque no. 026444 drawn on Allahabad Bank, Dimapur, Nagaland which was duly cleared on 10.06.2011. DW1 further deposes in his affidavit that with said money received from defendant, plaintiff repaid his mortgage dues to said bank and got the property redeemed. The plaintiff accepted the aforesaid amount as consideration for the sale of the suit property and as per the circle rates prevailing in the said area appropriate stamp duty was paid by the defendant and after about 3 days on 16th June, 2011, plaintiff registered the Sale Deed in defendant's favour and whereby, all the rights, title and interests in the suit property got transferred in favour of defendant.

11.12 DW1 further testified in his examination in chief that at the same point of time, plaintiff also passed on the legal possession to the defendant and on account of the fiduciary relationship between the parties, the defendant reinstated the plaintiff under the status of lessee vide lease deed registered on 17.06.2011 for a period of three years. At the time of execution of said documents Mr. Rajat Sharma, son of the plaintiff was present before the Sub-

Registrar. Further he deposed that after the execution, the plaintiff and his son requested the defendant to pay a courtesy visit at the suit premises and perform his prayers as per Christian rites and accordingly, plaintiff, his son and the defendant first went to a Church, and then the defendant alongwith them went to the suit property for auspicious entry into the newly purchased home and there, plaintiff asked the defendant to sign certain blank papers to CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA Page no. 29 of 42 SUNENA SHARMA SHARMA Date:

2022.02.16 16:48:53 +0530 apply for transfer of some civic services in the name of the defendant and at that time plaintiff's wife was not even present in the suit property. DW1 categorically denied that any deed of agreement was executed between the parties on 13.06.2011 or any payment was made by the defendant to the plaintiff on that date as alleged.

11.13. DW1 categorically deposed in his examination in chief that alleged deed of agreement had been fabricated by plaintiff as an afterthought two years after receipt of termination notice dated 18.12.2013 from the defendant and one year after delivering two cheques for Rs. 5 lakh each towards arrears of rent of 40 months starting from June, 2011.

11.14 Much emphasis has been placed by plaintiff on defendant's cross examination to urge that both the signature and contents of deed of agreement have been admitted by him (DW1/defendant). I have carefully perused the cross examination of DW1, wherein he stated that both the sale deed and lease deed were executed on same date of 13.06.2011 but he did not remember if the e-stamp paper in respect for

said deeds were purchased on 11.06.2011. As per his deposition, even after 13.06.2011, plaintiff remained in possession as the lease deed was executed in plaintiff's favour. PW-1 admitted that Deed of Agreement (Mark B/Ex. DW1/P-1) was prepared in Delhi and same bore his signatures on all pages (at point R-1 to R-5 and point B) as well as his thumb and fingers impression and he signed the same in Delhi. But, he categorically denied the suggestion that he signed Ex.

DW1/P-1 after reading the same or that whatever was agreed between him and plaintiff was written in Ex. DW1/P-1. In answer to CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA SUNENA SHARMA Page no. 30 of 42 SHARMA Date:

2022.02.16 16:49:00 +0530 the suggestion that all three documents i.e deed of agreement, sale deed and the lease deed were executed on the same day, DW-1 first admitted it to be correct but he again said that the Deed of Agreement/Ex. DW1/P-1 was not executed on the same day and only Sale Deed and Lease Deed were executed together. The said deposition of DW1, nowhere suggests that there is any admission on the contents of document. The defendant has duly stuck to his stand taken in WS by denying that he had signed Ex. DW1/P-1 after reading it or that the whatever was agreed between him and plaintiff was written in Ex. DW1/P-1.

12. I may here mention that even in the written statement, it was nowhere defendant's case that his signatures were forged on deed of agreement. In the affidavit of admission and denial of plaintiff's documents, defendant has denied said deed of agreement simply for reason of it being only a photocopy. In para 12 page 24 of WS, defendant has alleged that deed of agreement was fabricated by plaintiff only after receipt of legal notice dated 18.12.2013 from the defendant and on similar line, defendant has deposed even in his examination in chief. I am of the considered view, that in the light of said stand taken by the defendant in his WS and his similar deposition in examination-in-chief and further his denial regarding contents of deed of agreement EX. PW1/D1 during his cross- examination, it was incumbent upon plaintiff to have controverted his denial by confronting him with the question or suggestion that no papers were ever got signed in blank from defendant or that said Deed of agreement was already typed when the same was signed by DW1 or to the effect that it was never fabricated or prepared on blank signed papers as alleged. Whereas, cross examination of DW1 is totally lacking in this regard as no such question or suggestion CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA SUNENA SHARMA Page no. 31 of 42 SHARMA Date:

2022.02.16 16:49:06 +0530 was put to DW1 to controvert his stand that he had not signed the same (Ex. PW1/D1) after reading it or that the contents contained therein were never agreed upon between the parties. In the facts and circumstances of the case, the legal obligation of the plaintiff was not over just after securing an admission from DW1 regarding his signatures on said document as the same would not prove the contents of document just by implication especially when the very execution of said document is shrouded with so many serious doubts.

12.1 Although, during cross examination of PW1, defendant has also failed to put any question or suggestion to PW1 with regard to his (defendant's) alleged stand that his signatures were taken on blank papers or that deed of agreement was fabricated on said blank signed documents but, we cannot lose sight of the fact that the onus of proving issue no. 1 regarding existence of loan transaction heavily rested upon the plaintiff for the reason that his whole case is revolving around this very document of deed of agreement. The other two contemporaneous documents i.e the sale deed and lease deed of which cancellation has been sought in this case, are absolutely silent about any such loan transaction. There is no whisper of any such deed of agreement in either of said two documents which are registered documents carrying much more weight of genuineness and credibility as compared to the deed of agreement Ex. DW1/P-1, which is an unregistered document. Since the plaintiff was under a legal obligation to discharge said burden of proof, failure on the part of plaintiff to confront the defendant/DW1 on these vital aspects will certainly lead to an adverse inference against the plaintiff.

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12.2 On the other hand, DW1 has categorically denied the plaintiff's case which he (DW1) was confronted with in the form of suggestions such as that as per the agreement, defendant had agreed to extend the loan of Rs. 1.25 crore to the plaintiff or that in order to secure the repayment of the loan, the Sale Deed of the suit property was agreed to be executed in his favour towards security only or that he had made payment of Rs.42 lakh as part payment of the loan or that the same was shown as sale consideration in the Sale Deed or that he agreed to pay the remaining amount of Rs.83 lakh later on. DW1 further denied the suggestion that there was never any understanding between him and the plaintiff for the transfer of right, title or interest in suit property in his favour.

12.3 Further in his cross examination, DW-1 denied that only as an abundant caution, lease Deed was executed between the parties with the understanding that the plaintiff was neither a tenant nor he would be under any obligation to pay rent to him. DW-1 further denied that he had not paid the balance amount of Rs.83 lakh due to ill intentions or that plaintiff was required to repay the loan amount within a period of 03 years from the date of receiving entire loan amount of Rs. 1.25 Crores. He denied the suggestion that plaintiff had given two cheques of Rs. 5 lakh each towards part payment or refund of loan of Rs 42 lakh and not towards payment of arrears of rent. He denied that the legal notice dated 18.12.2013 served upon the plaintiff was false and frivolous. He admitted that no receipt was given by him to the plaintiff in respect to the alleged security deposit of one month and alleged one month rent. DW1 deposed that since he was living in Dimapur, it took time for him to process mutation and transfer of electricity connection in his name.

He denied that the Sale Deed was never intended to be treated as a CS no.57305 of 2016 Digitally signed by Vijay Kumar Sharma Vs. James Akham SUNENA SUNENA SHARMA Page no. 33 of 42 SHARMA Date:

2022.02.16 16:49:17 +0530 document of transfer of title but was always to remain as a document of security or that he dishonestly took advantage of Sale Deed by suppressing the fact that Agreement of Loan Ex.DW1/P-1 was actual document executed between the parties. DW1 categorically denied the suggestion that he willfully and consciously breached the understanding contained in Ex. DW1/P-1.

12.4 Indisputably, a lease deed was also simultaneously executed between plaintiff and defendant after the execution of sale deed on 13.06.2011. But, had the transaction been merely a loan transaction, there was no reason for the plaintiff not to mention said fact in the sale deed in terms of section 58(C) of Transfer of Property Act and further there was no reason even to execute the lease deed in respect of suit property. As per common market practice for entering into such transaction for securing loan, usually the mortgage by conditional sale as embodied in section 58(c) of Transfer of Property Act are entered. But, for such transactions to be considered as mortgage, the conditions i.e on default of payment of the mortgage money on a certain date, the sale shall become absolute, or that on such payment being made, the sale shall become void, or that on such payment being made the buyer shall transfer the property to the seller, have to be mentioned in the very same document which effects or purports to effect the sale.

Whereas, no such condition has been mentioned in the sale deed ExPW1/6. There was no reason for the parties to make things so complex by first making the sale absolute by executing a sale deed without making any recital of alleged loan transaction or conditional sale and then simultaneously executing a lease agreement to change the status of plaintiff as that of a lessee in suit property and then executing a loan agreement to ensure buy back arrangement.

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2022.02.16 Page no. 34 of 42 16:49:25 +0530 Further, it is highly unbelievable that a prudent person would execute a sale deed and create an absolute right of ownership in favour of other person upon receipt of only 1/5th of the actual value of his property. There is no plausible reason put forth by plaintiff to show as to why plaintiff kept waiting for almost 5 years to take a legal recourse against the buyer i.e the defendant, the alleged creditor, who defaulted in making the payment of loan as per alleged agreement. As per plaint, the remaining balance of Rs.83 lakhs was payable

just after two weeks of sale deed, whereas, there is no proof in support of plea that any written or oral demand was ever raised by plaintiff from the defendant. Even in his deposition, plaintiff has nowhere specified any date or occasion when he raised such alleged demands from the defendant.

12.5 Admittedly, before filing the present suit on 13.01.2016, plaintiff did not ever send a single written communication to the defendant for demanding the payment of alleged balance loan amount. Plaintiff did not send any reply even to the legal notice of termination dated 18.12.2013, received from the defendant whereby plaintiff was asked to vacate the suit property on account of termination of his tenancy. Instead of countering defendant's claim of ownership by sending a reply, plaintiff issued two cheques allegedly in partial discharge of loan and knocked the doors of court only after more than two years of receipt of said legal notice. This whole conduct of plaintiff is unbecoming of a prudent man and bound to raise a serious doubt on the truthfulness of his claim.

12.6 As per deed of agreement Ex.DW1/P1, the plaintiff was liable to pay monthly interest of 2% on the loan amount. But admittedly, plaintiff never paid a single penny towards interest to Digitally signed by SUNENA CS no.57305 of 2016 SUNENA SHARMA SHARMA Date:

Vijay Kumar Sharma Vs. James Akham 2022.02.16 16:49:31 Page no. 35 of 42 +0530 the defendant at any point of time despite the fact that even after execution of sale, all along plaintiff continued to enjoy the possession of suit property, nor he ever paid a penny towards rent. If the interest till date, at the alleged agreed rate of 24% per annum is calculated on said amount of Rs.42 lakhs which was allegedly given as part loan, the same would come about a crore of rupees, while the arrears of rent as per lease deed would also be more Rs.35 lacs. Whereas, in the entire plaint there is no whisper of return of the loan or the interest or even the rental, which again shows the malafide on the part of plaintiff.

12.7 In the light of above discussion, preponderance of probabilities are tilting against plaintiff as far as the claim of alleged loan transaction is concerned. As a necessary corollary, defendant is able to successfully prove the status of plaintiff as that of merely a lessee in the suit property by virtue of a registered lease deed Ex.PW1/7 which is an admitted document. Hence, I feel no hesitation in deciding both the aforementioned issues against plaintiff and in favour of defendant. Ordered accordingly.

13. ISSUE NO.2 "Whether the suit is maintainable without seeking any specific performance of (wrongly mentioned as without) undated deed of Agreement of loan of Rs.1.25 lakh ? OPP."

The onus of proving this issue was upon the plaintiff. The issue seems to have been framed in the light of defendant's objection taken in this regard in the written statement. However, it Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 36 of 42 SHARMA Date:

2022.02.16 16:49:37 +0530 is pertinent to mention here that present suit is not a suit for redemption of mortgage but has been filed for declaration of the registered sale deed and lease deed both dated 13.06.2011 on the ground that same were got executed by the defendant by playing a fraud and deceit upon plaintiff.

13.1 As per plaintiff's case, after receipt of notice dated 18.11.2013 from the defendant, plaintiff came to know about malafide intentions of defendant as he claimed himself to be the owner cum landlord of the suit property on the strength of alleged sale deed and lease deed which were executed by plaintiff only as collateral security against loan of Rs.1.25 Crores out of which defendant paid only Rs. 42 lakhs. Apprehending the malafide intentions of defendant, plaintiff decided to proceed for discharge of part loan taken from the defendant, and accordingly, plaintiff issued two cheques of Rs. 5 lakhs each in partial discharge of said loan of Rs. 45 lakh.

13.2 Keeping into account said stand of the plaintiff, the remedy of seeking specific performance from the defendant before approaching the court for cancellation of sale deed, would not have been available with the plaintiff. Hence, in my considered view the maintainability of the present suit cannot be questioned on account of plaintiff's failure to seek the specific performance of said deed of agreement Ex. PW1/D1. The issue is accordingly, decided in favour of the plaintiff and against the defendant.

14. ISSUE NO.4.

"Whether the present suit is barred under the proviso of Section 58(c) of Transfer of Property Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 37 of 42 SHARMA Date:

2022.02.16 16:49:43 +0530 Act ? OPD."

The onus of proving this issue was upon the defendant. In the WS, defendant has taken a preliminary objection regarding bar of proviso to Section 58 (c) of Transfer of Property Act. However, I do not find any merit in said objection for the reason that said provision of Section 58(c) of the Act deals with mortgage by conditional sale and the Section reads as under :-

(c) Mortgage by conditional sale.--Where, the mortgagor ostensibly sells the mortgaged property-- on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called mortgage by conditional sale and the mortgagee a mortgagee by

conditional sale: 1[Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.] 14.1 For a sale to be considered as mortgage by conditional sale, the aforementioned conditions have to be duly mentioned in the recitals of the sale document itself. In the instant case, although plaintiff has also tried to set up the case being that of conditional sale but, he has sought the cancellation of sale deed on the ground of fraud and deceit by alleging that defendant despite having agreed to pay loan of Rs.1.25 Crores, paid only part of the loan amount to the extent of Rs. 42 Lakhs and failed to make remaining payment.

Therefore, as per plaintiff's case, the defendant did not even pay the whole of the loan amount so as to create any obligation on his (plaintiff's) part to repay the same or to seek redemption of mortgage under Order 34 rule 7 CPC by discharging the loan.

14.2 In the light of said background of the case, I am of the view that plaintiff cannot be non suited on account of bar of proviso Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 38 of 42 SHARMA Date:

2022.02.16 16:49:49 +0530 to Section 58(c). Issue is accordingly, decided in favour of the plaintiff and against the defendant.

15. ISSUE no. 5.

"Whether the plaintiff is entitled to decree of declaration as prayed for in para (i) and (ii) of Prayer clause ? OPP."

The onus of proving this issue was upon the plaintiff. Plaintiff has sought declaration of the sale deed and lease deed as null and void mainly on the ground that both the said documents were executed in the nature of collateral security and the same was never executed to be acted upon between the parties. As per plaintiff's case, sale deed was got executed from him by the defendant deceitfully on the pretext of granting him loan of Rs. 1.25 Crores out of which only Rs. 42 lakh was paid as the defendant failed to pay the balance amount of Rs. 83 lakhs. However, to prove the nature of transaction to be that of only collateral security or of loan or of conditional sale, the plaintiff's case hinges solely upon the deed of agreement Ex. DW1/P1.

15.1 Whereas, while returning my findings on issue no.3 and 4, it has already been held above that plaintiff miserably failed to prove that any loan transaction ever took place between the parties. Although the defendant admitted his signatures on said deed of agreement but, he never admitted the contents of the same nor the plaintiff has been able to prove its contents for the reasons discussed above while dealing with said issues. Hence, in the light of my findings on issue no. 3 and 4, this issue is also liable to be Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA SHARMA Date:

Page no. 39 of 42 2022.02.16 16:49:56 +0530 decided against the plaintiff and in favour of the defendant. Even the plea of fraud and deceit also remained unsubstantiated. Rather, even from the pleaded case of the parties, it is categorically clear that plaintiff was well aware about the nature of transaction being that of absolute sale by virtue of sale deed Ex. PW1/6, otherwise, there would have been no reason for the parties to enter into lease deed ExPW1/7 in respect of suit property immediately after execution of sale deed and to change the status of plaintiff as that of lessee in the property.

15.2 In the light of aforementioned discussion, this issue is decided against the plaintiff and in favour of defendant.

16. ISSUE no. 6.

"Whether plaintiff is entitled for a decree of permanent injunction, as prayed for in para

(iii) and (iv) of Prayer clause ? OPP."

The onus of proving this issue was also upon the plaintiff. Plaintiff has sought relief of permanent injunction for restraining the defendant as well as his heirs, assignees, agents, administrators, attorneys etc from selling, transferring or creating third party interest in the suit property and from forcibly dispossessing the plaintiff from the suit property. The said reliefs have also been sought by the plaintiff on the strength of his alleged ownership in the suit property. But, since the plaintiff has failed to prove his case for the relief of declaration, the reliefs of permanent injunction which are more in the nature of consequential reliefs shall also be not available to the plaintiff. As on date, by virtue of a registered sale deed ExPW1/D1, defendant is the owner of the suit Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA Page no. 40 of 42 SHARMA Date:

2022.02.16 16:50:02 +0530 property.

16.1 It is also an admitted position on record that defendant has already filed a suit for possession against the plaintiff herein, which is stated to be pending in the court of Sh. R.L.Meena, Ld. ADJ, Patiala House Courts. In the light of these circumstances, there is no question of any forcible dispossession of the plaintiff from the suit property as alleged in the plaint. Even otherwise, relief of injunction is an equitable relief which ought not to be granted in favour of a person who has approached the court with unclean hands or is guilty of suppressing the material facts from the court.

16.2 In the instant case, plaintiff has concealed some material facts which came into light after the defendant filed his written statement. Said conduct of plaintiff certainly disentitles him for grant of any equitable relief. Plaintiff had taken a loan from United Bank of India, Dimapur against mortgage of suit property and he availed the loan only on the basis of the copy of the conveyance deed by

claiming to have lost the original conveyance deed and in that regard he had also filed a police complaint. During cross-examination, PW-1 also admitted about said fact but despite that, a contrary stand seems to have been taken in the plaint wherein plaintiff came up with a false plea that at the time of execution of sale deed Ex.PW1/D1, the conveyance deed of suit property was not deliberately handed over to defendant because, he was yet to pay the balance amount of Rs. 83 lakh.

16.3 Plaintiff has also not disclosed the material fact that he had issued two cheques of Rs. 5 lakh each in favour of defendant after receipt of legal notice dated 18.11.2013 from him. It is only Digitally CS no.57305 of 2016 signed by SUNENA Vijay Kumar Sharma Vs. James Akham SUNENA SHARMA SHARMA Date:

Page no. 41 of 42 2022.02.16 16:50:08 +0530 after the defendant disclosed said fact in his WS, the plaintiff in his replication came up with an admission regarding issuance of said cheques which he claimed to have issued towards partial discharge of loan and not towards rent as alleged by the defendant.

16.4 In the light of above discussion, I am of the view that plaintiff is not entitled even to said reliefs of permanent injunction.

Issue no. 6 is accordingly, decided against the plaintiff and in favour of the defendant.

17. RELIEF.

In the light of my above findings on the issues settled in this case, suit is liable to be dismissed. Accordingly, suit is hereby dismissed. However, parties are left to bear their own costs. Decreesheet be prepared accordingly. File be consigned to record room. Digitally signed by SUNENA SUNENA SHARMA SHARMA Date:

Announced in the open court
on 16th February, 2022.

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16:50:15
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(Sunena Sharma)
Additional District Judge-04
Judge Code DL00222
PHC/New Delhi.

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Vijay Kumar Sharma Vs. James Akham

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