

## Abdul Nasir Khatri vs Also At on 29 July, 2020

IN THE COURT OF MR. HARGURVARINDER SINGH JAGGI,  
ADDL. DISTRICT JUDGE - 02, SOUTH WEST DISTRICT,  
DWARKA COURTS, DELHI

CS DJ ADJ No. 515957/2017  
CNR No. DLSW010011382016

[Through Video Conference]

IN THE MATTER OF:

Abdul Nasir Khatri  
S/o Late A.R. Khatri  
R/o C - 1/11  
Safdarjung Development Area  
New Delhi - 110016

... Plaintiff

v.

Mohd. Tariq Khan  
S/o Hussain Ali Khan  
R/o T - 19, Baldeo Residency  
Greater Noida  
Uttar Pradesh

Also at:  
2449, Baradari, Ballimaran  
Delhi - 110006

... Defendant

Date of institution of suit:	02.07.2007
Date of judgment reserved:	14.07.2020
Date of pronouncement of judgment:	29.07.2020

### JUDGMENT

1. A suit for specific performance of an agreement dated 25.05.2007 (hereinafter "agreement") has been preferred by Abdul Nasir Khatri (hereinafter "Khatri"/ "plaintiff") against Mohd. Tariq Khan (hereinafter "Khan"/ "defendant"). The facts urged by Khatri in his plaint are that he entered into an agreement with Khan for sale-purchase of Khan's flat bearing No. 703, Cat.-A, 7th Floor, plot No. 18, Sector -10, Fakhurddin Memorial Co-operative Group Housing Society Ltd., Dwarka, New Delhi - 110075 (hereinafter "suit property") for a total sale consideration of 22,00,000/- (Rupees Twenty two lakhs only). Khatri made part payment to Khan of 18,00,000/- (Rupees Eighteen lakhs only) in two tranches. The first tranche of payment was made by Khatri to Khan on 04.07.2006 of 5,00,000/- (Rupees Five lakhs only) through a pay order No. 823626 drawn upon ABN Amro Bank and the second tranche of payment was made by Khatri to Khan on 25.05.2007 of 13,00,000/- (Rupees Thirteen lakhs only) in cash. A receipt dated 25.05.2007 was signed and executed by Khan duly acknowledging the receipt of 18,00,000/- (Rupees Eighteen lakhs only) towards the sale consideration of 22,00,000/- (Rupees Twenty two lakhs only) witnessed by Himal

Singh and Sunil Goel. The balance sale consideration of 4,00,000/- (Rupees Four lakhs only) was to be paid by Khatri to Khan when Khan got the suit property converted from leasehold to a freehold property and executed a sale deed.

2. Even after receiving 18,00,000/- (Rupees Eighteen lakhs only) from Khatri, Khan did not get the suit property converted into freehold despite repeated requests. On 20.06.2007, Khatri gained knowledge from one Chet Ram, a local property dealer based out of Dwarka, Delhi that Khan contacted him for sale of suit property to third parties.

3. As per Khatri, on account of increase in the prices of suit property, greed and dishonesty made Khan disregard and breach the terms of the contract arrived between them. Further, Khatri had always been ready and willing to perform his part of the obligation but as per him it was Khan who shied away from his obligations. Khatri had no other recourse, than to knock the doors of the Court and seek specific performance of the contract arrived between the parties on the basis of a receipt dated 25.05.2007.

4. Khan filed a lengthy written statement<sup>1</sup> wherein he had not only taken preliminary objections to the Khatri's claim but also contended the same on merits. The preliminary objections urged by Khan in his written statement are as under:

(i) Khatri's suit is fraudulent, vexatious, frivolous and mala fide in nature based upon fictitious and concocted story.

(ii) Khatri has preferred the suit on the basis of a forged, fabricated document i.e. receipt dated 25.05.2007.

(iii) Khatri undervalued the suit property to avoid affixation of court fee on the true and correct valuation of the suit property.

(iv) The receipt dated 25.05.2007 is inadmissible in evidence and is hit by the provisions of the Indian Stamp Act, 1899, the Registration Act, 1908 and the Indian Evidence Act, 1872.

5. On merits, Khan has pleaded that the entire claim urged by Khatri is false and baseless. Khan has urged in his defence that Khatri and himself are good friends, who not only enjoyed a good friendship but they also worked together and had financial dealings.

6. Khan has pleaded in defence that sometime back in November 1998 he was in need of money to pay for a flat purchased by him and initially took a loan of 2,00,000/- (Rupees Two lakhs only) from Khatri. Khatri advanced a loan of 2,00,000/- (Rupees Two lakhs only) by issuing a cheque in favour of Aashiana Cooperative Group Housing Society Limited. After sometime, when Khan was in need of more money, Khatri further advanced a loan of 1,00,000/- (Rupees One lakh only) by issuing a cheque in favour of Aashiana Cooperative Group. The defendant filed his written statement on 06.09.2007 Housing Society Limited. Khan has urged that at the time of advancement of loan,

Khatri insisted that Khan must handover the papers of his flat, as Khan did not have the papers with him, he succumbed to the demands of Khatri and signed on a blank paper and blank stamp paper of denomination of 2/- (Rupees Two only). It seems, Khan did sense something amiss and he instantly on 30.11.1998 lodged a police complaint with regard to the blank unsigned papers and the same being misused. Khan has pleaded that he signed on the blank papers as Khatri told him that the same would be used for writing a loan agreement. Khan often inquired about the loan agreement from Khatri but the same was never provided to him. Khan repaid the entire loan to Khatri but never got to see the copy of the loan agreement. On his inquiry, Khatri assured Khan that with the loan repaid, the loan agreement has been destroyed. However, Khan has urged that his worse fear became a reality when he received the summons of the present suit along with plaint and documents and he realised that the blank papers signed by him back in November 1998 have been misused by Khatri, nine years later in 2007 by forging and fabricating a purported receipt dated 25.05.2007.

7. Khan in his defence has stated that the question of him selling the suit property to Khatri does not arise and he never entered into any agreement for sale-purchase of the suit property. Khan has urged that no amount of 13,00,000/- (Rupees Thirteen lakhs only) in cash was paid by Khatri to him on 25.05.2007. Khan has also urged in his defence that over a period of time he had not only been working on deals of sale-purchase of immovable properties for Khatri on commission but also undertaken interior decoration jobs and other works for him to be reimbursed for the services rendered by him. Khatri had paid an amount of 5,00,000/- (Rupees Five lakhs only) through pay order dated 04.07.2006 towards services rendered by Khan to him. Khatri by mentioning the payment of 5,00,000/- (Rupees Five lakhs only) on 04.07.2006 along with 13,00,000/- (Rupees Thirteen lakhs only) in cash in the receipt dated 25.05.2007 as part-payment towards the sale consideration of the suit property has forged and fabricated a document i.e. receipt dated 25.05.2007.

8. Khan has also urged a plea that for various deals and interior jobs and works undertaken by him for Khatri, Khatri does owe him a huge sum of money and he reserves his right to recover the same by initiating appropriate legal action.

9. Khan has repeatedly urged in his written statement that he never entered into any agreement to sell his flat i.e. suit property with Khatri. Khan has urged that Khatri's claim of paying an amount of 5,00,000/- (Rupees Five lakhs only) on 04.07.2006 as part-payment for the suit property is falsified, as Khan himself purchased the suit property on 06.07.2006 from one Akbar Iqbal Yar Khan.

10. Khan has also taken a plea in his written statement that the present suit is a personal vendetta by Khatri, as Khan had preferred an application under Order I, Rule 10 of the Code of Civil Procedure, 1908 (hereinafter "CPC") seeking impleadment in a suit between the daughter of Khatri, namely, Sayed Saba Khatri and one Syed Ahmad Faizy. Khan has averred in his written statement the deal with regard to his daughter's flat was done through him and with the same gone sour, Khatri unleashed his vengeance upon Khan and filed a frivolous suit.

11. Khan has also urged that the question of him selling the suit property to Khatri for 22,00,000/- (Rupees Twenty two lakhs only) does not arise, as he himself purchased the same for 20,00,000/- (Rupees Twenty lakhs only) on 06.07.2006 through registered documents on which he paid stamp duty, registration charges to the tune of 1,50,000/- (Rupees One lakh and fifty thousand only) and commission of 40,000/- (Rupees Forty thousand only). Thus, the plea urged by Khatri of selling the suit property by him to Khatri for 22,00,000/- (Rupees Twenty two lakhs only) does not make any sense and is a false claim.

12. Khan has denied the fact of entering into any agreement of sale-purchase of suit property for a total sale consideration of 22,00,000/- (Rupees Twenty two lakhs only) with Khatri. Khan has also denied receiving 13,00,000/- (Rupees Thirteen lakhs only) in cash from Khatri on 25.05.2007. Khan has denied signing and executing the receipt dated 25.05.2007 and urged that the said receipt is a forged and fabricated document.

13. Lastly, Khan has also denied meeting Khatri on 22.06.2007 at Sheikh Sarai and the question of him refunding 18,00,000/- (Rupees Eighteen lakhs only) to Khatri does not even arise, as he never entered into any transaction for sale-purchase of his flat and he never received a sum of 13,00,000/- (Rupees Thirteen lakhs only) in cash on 25.05.2007.

14. Khatri in his replication has denied all the averments and contentions made by Khan in the written statement. Khatri denied Khan's claim of the receipt dated 25.05.2007 being forged and fabricated.

15. Khatri has averred in his replication that the receipt dated 25.05.2007 was prepared by one Manoj Kumar, known to both the parties and the same was prepared at the request of Khan. Khatri has also averred that the receipt dated 25.05.2007 is a genuine document and the same need not be compulsorily registered. Khatri has averred that the receipt dated 25.05.2007 is very well admissible in evidence and is the proof of Khan agreeing to sell the suit property for 22,00,000/- (Rupees Twenty two lakhs only) and against which he has already received 18,00,000/- (Rupees Eighteen lakhs only) from Khatri.

16. Khatri admitted the fact of Khan borrowing an amount of 3,00,000/- (Rupees Three lakhs only) from him and the same being repaid. Khatri has urged that the loan was a friendly loan and interest free, which was paid back by Khan after 6 years. Khatri has denied forging and fabricating the receipt dated 25.05.2007 on the blank papers bearing signatures and thumb impression of Khan. Khatri has urged that on the loan being repaid by Khan, he destroyed the loan agreement.

17. Khatri denied that Khan undertook any interior decoration work or had any running account between them. Khatri has also denied that he owes 7,25,000/- (Rupees Seven lakhs and twenty five thousand only) to Khan on account of commission, remuneration. With regard to the Khan's claim of having not received any sum of 13,00,000/- (Rupees Thirteen lakhs only) in cash, Khatri in his replication has stated that a sum of 13,00,000/- (Rupees Thirteen lakhs only) was paid by him to Khan in presence of others on 25.05.2007. Khatri pleaded that his claim as prayed for in the plaint be allowed against Khan. Issues

18. On completion of pleadings, the issue Nos. 1, 2, 3, 4, 5 and 6 were framed vide order dated 18.03.2009 and the issue No. 3A was framed as an additional issue on 29.07.2009. The issues to be adjudicated between the parties are as under:

1. Whether the defendant had entered into an agreement with plaintiff on 3.7.2006 for sale of his flat No. 703, Cat-A, 7th Floor, Plot No. 18, Sector - 10, Fakhruddin Memorial Co-

Op. Group Housing Society Limited, Dwarka, New Delhi?

OPP

2. Whether the plaintiff had paid an amount of Rs.5,00,000/- by pay order No. 823626 dated 4.7.2006 as part payment on 4.7.2006 and further part payment of Rs.13,00,000/- in cash on 25.5.2007 to the defendant towards the sale of aforesaid suit flat against sale consideration of Rs.22,00,000/-? OPP

3. Whether the signature and thumb impression of the defendant were obtained on blank papers by the plaintiff in November, 1998 and that papers have been forged and fabricated with the receipt dated 25.05.2007 as alleged by the defendant? OPD 3A. Whether the alleged receipt dated 25.5.2007 is inadmissible in evidence as per provisions of the Indian Stamp Act, Registration Act and Evidence Act? OPD

4. Whether the plaintiff is entitled to relief of specific performance as prayed in the plaint.

5. Whether plaintiff is entitled to cost.

6. Relief.

Evidence led by the Parties

19. To discharge the onus of issues framed on 18.03.2009 and 29.07.2009 the plaintiff along with six other witnesses stepped into the witness box to prove his claim against the defendant.

20. The following persons testified as plaintiff witnesses:

S.No.	Name	Rank of Witness
(i)	Abdul Nasir Khatri (Plaintiff-in-person)	PW1
(ii)	Himal Singh	PW2
(iii)	Sunil Goel	PW3
(iv)	Manoj	PW4
(v)	Mohd. Gufran	PW5

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|-------|---|-----|
| (vi)  | Amit Kumar, Officer, Oriental Bank of<br>Commerce, Sarvepriya Vihar, Delhi    | PW6 |
| (vii) | Vineet Mathur, Sr. Officer, Royal Bank of<br>Scotland, Barakhamba Road, Delhi | PW7 |

21. The plaintiff testified as PW1 and recorded his examination in chief on 26.05.2010. The plaintiff relied upon the following documents. S.No. Description and Date, if any of the Document Exhibit Mark put on the Document

(i) Evidence by way of affidavit of plaintiff. Ex.PW1/A

(ii) Certified copy of application under Section 151 of Ex.P1 the Code of Civil Procedure, 1908 (CPC) for withdrawal of application under Order I, Rule 10, CPC on behalf of Mohd. Tariq Khan in civil suit titled as Ms. Saba Nasir Khatri v. Mr. Syed Ahmad Faizy - Suit No. 30 of 2007 dated 05.02.2007.

(Marked and numbered as Ex.P1 vide order dated 13.12.2017. In examination in chief marked as Ex.PW1/8, however, by the observations of Ld. Joint Registrar in cross-examination of PW1 on 27.01.2012 the same was noted as Ex.P1)

(iii) Original bank statement of plaintiff with ABN Ex.PW1/1 Amro Bank.

(iv) Copy of registered agreement to sell dated Ex.PW1/2 06.07.2006. [Ex.P-1A] (Exhibited as Ex.P-1, vide examination in chief dated 26.05.2010. However, by the observations of Ld. Joint Registrar in cross-examination of PW1 on 27.01.2012, the same was marked as Ex.P-1A).

(v) Copy of registered general power of attorney dated Ex.PW1/3 06.07.2006. [Ex.P-2] (Exhibited as Ex.P-1, vide examination in chief dated 26.05.2010)

(vi) Copy of share certificate in favour of Akbar Yar Ex.PW1/4 Khan. [De-exhibited] (Mode of proof objection. Document de-exhibited, vide examination in chief dated 26.05.2010)

(vii) Copy of bank statement of plaintiff with ABN Ex.PW1/5 Amro Bank showing cash withdrawal of [De-exhibited] 6,00,000/- on 25.05.2007.

(Mode of proof objection. Document de-exhibited, vide examination in chief dated 26.05.2010)

(viii) Copy of bank statement of plaintiff with Oriental Ex.PW1/6 Bank of Commerce showing cash withdrawal of [De-exhibited] 5,00,000/- on 26.05.2007.

(Mode of proof objection. Document de-exhibited, vide examination in chief dated 26.05.2010)

(ix) Original receipt-cum-agreement dated 25.05.2007. Ex.PW1/7

(x) Certified copy of application under Order I, Rule Ex.PW1/8 10, CPC on behalf of Mohd. Tariq Khan seeking impleadment in civil suit titled as Ms. Saba Nasir Khatri v. Mr. Syed Ahmad Faizy - Suit No. 30 of 2007 dated 05.02.2007.

(xi) Receipt dated 15.07.2006 issued by Mr. Mohd. Ex.PW1/9 Gulfran for payment of commission of 20,000/-

(xii) Receipt dated 15.07.2006 issued by Mr. Mohd. Ex.PW1/10 Gulfran for payment of commission of 20,000/-

(xiii) Photocopy of cheque No. 401930 dated Ex.PW1/DX1 27.11.1998 for an amount of 2,00,000/- drawn upon Oriental Bank of Commerce, Sarvepriya Vihar, Delhi in favour of Ashiana C.G. Housing Society.

(xiv) Photocopy of cheque No. 401931 dated Ex.PW1/DX2 02.06.1999 for an amount of 1,00,000/- drawn upon Oriental Bank of Commerce, Sarvepriya Vihar, Delhi in favour of Ashiana C.G. Housing Society.

(xv) Income Tax Return of Abdul Nasir Khatri for A.Y. Ex.PW1/X2(OSR) 1990-00(sic).

(xvi) Income Tax Return of Abdul Nasir Khatri for A.Y. Ex.PW1/X3(OSR) 2007-08.

(xvii) Income Tax Return of Abdul Nasir Khatri for A.Y. Ex.PW1/X4(OSR) 2008-09.

22. Mr. Amit Kumar, Officer of Oriental Bank of Commerce, Sarvepriya Vihar, Delhi testified as PW6 and produced the following summoned record on 28.08.2015:

S.No. Description and Date, if any of the Document Exhibit Mark put on the Document

(i) Bank statement of Abdul Nasir Khatri of A/c No. Ex.PW6/1 05002010000010 with Oriental Bank of Commerce, Sarvepriya Vihar, Delhi for the relevant period 01.04.2007 to 28.06.2007.

23. Mr. Vineet Mathur, Sr. Officer of Royal Bank of Scotland, Barakhamba Road, New Delhi testified as PW7 and produced the following summoned record on 01.10.2015:

S.No. Description and Date, if any of the Document Exhibit Mark put on the Document

(i) Bank statement of Abdul Nasir Khatri of A/c No. Ex.PW7/1 1038786 with Royal Bank of Scotland, New Delhi for the relevant period 01.03.2007 to 31.05.2007.

24. On the other hand, the defendant along with five other witnesses justified to refute the plaintiff's claim and discharge the onus to prove the issues.

25. The following persons testified as defendant' witnesses:

S.No. (i)	Name	Rank of Witness
(i)	Mohd. Tariq Khan (Defendant-in-person)	DW1
(ii)	Ghanshyam, JJA Record Room Sessions, Tis Hazari, Delhi	DW2
(iii)	HC Babu Lal, PS Hauz Khas	DW3
(iv)	Amar Singh, Asstt. Manager, Oriental Bank of Commerce, Sarvepriya Vihar, Delhi	DW4
(v)	D.K. Bhardwaj, President, Ashiana Co-op. Group Housing Society, Mayur Vihar, Delhi	DW5
(vi)	Nilmani Kumar, Asstt. Manager, Indian Overseas Bank, DDA Market, Mandawli IP Extn., Delhi	DW6

26. The defendant testified as DW1 and recorded his examination in chief on 21.11.2017. The defendant relied upon the following documents.

S.No. Description and Date, if any of the Document Exhibit Mark put on the Document

(i) Evidence by way of affidavit. Ex.DW1/A

(ii) Agreement for Sale (Bayana) dated 24.06.2004 Ex.D1 between Mr. Rasheed Ahmad and Mr. Abdul Nasir Khatri.

(Vide order dated 13.12.2007 and examination in chief recorded on 21.11.2017)

(iii) Letter dated 11.12.2004 issued by Abdul Nasir Ex.D2 Khatri to Azad Cooperative Group Housing Society.

(Vide order dated 13.12.2007 and examination in chief recorded on 21.11.2017)

(iv) Certified copy of application under Section 151 of Ex.P1 the Code of Civil Procedure, 1908 (CPC) for withdrawal of application under Order I, Rule 10, CPC on behalf of Mohd. Tariq Khan in civil suit titled as Ms. Saba Nasir Khatri v. Mr. Syed Ahmad Faizy - Suit No. 30 of 2007 dated 05.02.2007.



(Marked and numbered as Ex.P1 vide order dated 13.12.2017. In examination in chief marked as Ex.PW1/8, however, by the observations of Ld. Joint Registrar in cross-examination of PW1 on 27.01.2012 the same was noted as Ex.P1)

(v) Photocopy of cheque No. 401930 dated Ex.PW1/DX1 27.11.1998 for an amount of 2,00,000/- drawn upon Oriental Bank of Commerce, Sarvepriya Vihar, Delhi in favour of Ashiana C.G. Housing Society.

(vi) Photocopy of cheque No. 401931 dated Ex.PW1/DX2 02.06.1999 for an amount of 1,00,000/- drawn upon Oriental Bank of Commerce, Sarvepriya Vihar, Delhi in favour of Ashiana C.G. Housing Society.

Examination in Chief Recorded on 21.11.2017 -

Documents Mark-A to Mark-P

(vii) Copy of receipt acknowledging payment of Mark-A 2,00,000/- to Ashiana Coop. Group Housing Society Ltd. by a cheque issued by plaintiff on account of the defendant.

(viii) Copy of police complaint dated 30.11.1998. Mark-B

(ix) Copy of receipt acknowledging payment of Mark-C 1,00,000/- to Ashiana Coop. Group Housing Society Ltd. by a cheque issued by plaintiff on account of the defendant.

(x)	Copy of defendant's bank statement.	Mark-D
(xi)	Copy of sale deed between Saba Khatri and Nargis Muzammin.	Mark-F
(xii)	Invoice raised by the defendant.	Mark-H
(xiii)	Copy of drafts paid towards conversion charges.	Mark-I
(xiv)	Copy of sale deed dated 19.01.2006 executed by Saba Nasir Khatri in favour of Syed Ahmad Faizy.	Mark-J
(xv)	Copy of sale deed dated 25.04.2006 executed by Bhagirath Vihar Sahkari Avas Samiti Ltd. in favour of Zahid Nasir Khatri.	Mark-K
(xvi)	Copy of sale deed dated 25.04.2006 executed by Bhagirath Vihar Sahkari Avas Samiti Ltd. in favour of Abdul Nasir Khatri.	Mark-L
(xvii)	Copy of agreement to sell and purchase dated 08.05.2006 between Prithvi Raj Sehgal and Saba Nasir Khatri.	Mark-M
(xviii)	Copy of agreement to sell and purchase dated	Mark-N

06.07.2006 between Sikandar Iqbal Yar Khan and  
Gazala Nasir Khatri.

- |       |   |                |
|-------|---|----------------|
| (xix) | Copy of demand draft Nos. 671503-671508 all dated 15.05.2006 for an amount of 39,260/- each towards conversion charges. | Mark-0(Colly.) |
| (xx)  | Copy of complaint dated 14.05.2007 lodged by the defendant against Nasir Khatri and Syed Ahmed Faizi.                   | Mark-P         |

27. Mr. Ghanshyam, JJA, Record Room Sessions, Tis Hazari Courts, Delhi testified as DW2 and produced the following summoned record on 24.01.2018:

S.No. Description and Date, if any of the Document Exhibit Mark put on the Document

- (i) Copy of the application u/O I, Rule 10, CPC Ex.P-1(sic) moved by Tariq Khan in Saba Nasir Khatri v. Syed Ahmad - C.S. No. 143/16 bearing Goshwara No. 308D decided on 09.06.2016.

28. Mr. Babu Lal, Head Constable, PS Hauz Khas, New Delhi testified as DW3 and produced the following documents summoned record on 24.01.2018:

S.No. Description and Date, if any of the Document Exhibit Mark put on the Document

- (i) Order dated 22.06.2015 issued by Addl. Dy. Ex.DW3/1 Commissioner of Police, Central District with regard to weeding out, destruction of old records.
- (ii) Letter dated 12.03.2015 issued by Dy. Ex.DW3/2 Commissioner of Police to the Director Khadi Village and Industry Commission with regard to recycling of old records of police station Hauz Qazi(sic), Central District Delhi.
- (iii) Receipt issued by Handmade Paper Section, Ex.DW3/3 Gandhi Darshan, Rajghat with regard to receipt of old records.
- (iv) Memo issued by the office of Addl. Commissioner Ex.DW3/4 of Police dated 14.11.2014 recording the proposal for destruction of old record.

29. Mr. Amar Singh, Asstt. Manager, Oriental Bank of Commerce, branch office Sarvepriya Vihar, New Delhi testified as DW4 and produced the following summoned record on 24.01.2018:

S.No. Description and Date, if any of the Document Exhibit Mark put on the Document

(i) Letter dated 23.01.2018 by the branch Manager of Ex.DW4/A the bank.

30. Mr. Nilmani Kumar, Asstt. Manager, Indian Overseas Bank, DDA Market, Mandawli, IP Extn., Delhi testified as DW6 and produced the following summoned record on 28.02.2018:

S.No. Description and Date, if any of the Document Exhibit Mark put on the Document

(i) Statement of account of Mohd. Tariq Khan of A/c Ex.DW6/A No. 153401000003500 for the relevant period of 01.04.2004 to 13.12.2004.

Submissions advanced by the learned Counsels for the parties

31. Mr. Joginder Singh Sehrawat, learned counsel for the plaintiff and Ms. Sonia Arora Menon, learned counsel for the defendant advanced their arguments on 14.07.2020. Mr. Joginder S. Sehrawat, opened his arguments on the note that the parties to the suit are no strangers and they did have good relations since 1983 until defendant withdrew and retracted from his commitment arising out of an agreement to sell the suit property to the plaintiff out of sheer greed.

32. The learned counsel for the plaintiff submitted that by June 2006 the defendant had negotiated with erstwhile owner, namely, Akbar Iqbal Yar Khan to purchase the suit property for an amount of 20,00,000/- (Rupees Twenty lakhs only). The defendant on 03.07.2006 approached the plaintiff and expressed his desire to sell the suit property. At that point in time, the plaintiff was in need of an independent residential unit for his son and agreed to purchase the suit property from the defendant for an amount of 22,00,000/- (Rupees Twenty two lakhs only).

33. The learned counsel submitted that on 04.07.2006, the plaintiff made part payment of 5,00,000/- (Rupees Five lakhs only) to the defendant against the total sale consideration of 22,00,000/- (Rupees Twenty two lakhs only) through a pay order No. 823626 dated 04.07.2006 drawn upon ABN Amro Bank (Ex.PW1/1). The learned counsel further submitted that the balance sale consideration was to be paid by the plaintiff to the defendant once the defendant got the suit property converted from leasehold to freehold. The learned counsel added that it was also agreed that the plaintiff would reimburse the defendant all the expenses with regard to conversion of suit property. The learned counsel with great emphasis added that as the parties to the suit were good friends and very well known to each other no formal agreement to sell was executed between the parties at that point in time.

34. The learned counsel for the plaintiff submitted that in May 2007, the defendant informed the plaintiff that he needed more money and only after further payment would he take steps for conversion of property. The learned counsel submitted that on 25.05.2007, the plaintiff paid a further sum of 13,00,000/- (Rupees Thirteen lakhs only) in cash to the defendant. The learned

counsel further submitted that with regard to the payment of 13,00,000/- (Rupees Thirteen lakhs only), the plaintiff has proved a withdrawal of 6,00,000/- (Rupees Six lakhs only) in cash from ABN Amro Bank on 25.05.2007 and withdrawal of 5,00,000/- (Rupees Five lakhs only) in cash from Oriental Bank of Commerce on 26.05.2007. The learned counsel further added that balance 2,00,000/- (Rupees Two lakhs only) in cash was very well available at the disposal of the plaintiff on 25.05.2007. The learned counsel further submitted that in the above manner the plaintiff paid a sum of 18,00,000/- (Rupees Eighteen lakhs only) to the defendant against the total sale consideration of 22,00,000/- (Rupees Twenty two lakhs only).

35. The learned counsel for the plaintiff submitted that the plaintiff was always ready and willing with the balance amount of 4,00,000/- (Rupees Four lakhs only) to be paid to the defendant once the suit property was converted into freehold and the necessary documents were signed, executed and registered. The learned counsel submitted that regardless of the defendant having received a sum of 18,00,000/- (Rupees Eighteen lakhs only) from the plaintiff, greed possessed the defendant and his intentions blatantly converted into dishonesty and mala fide.

36. Mr. Sehrawat, learned counsel for the plaintiff submitted that the defence urged by the plaintiff that the receipt dated 25.05.2007 (Ex.PW1/7) is a forged and fabricated document is a bogey. The learned counsel drew attention of the Court to the averments in the written statement and to the testimony of the defendant and stressed that there are clear and unequivocal admissions by the defendant that the signature on the receipt dated 25.05.2007 are his signatures.

37. The learned counsel for the plaintiff submitted that on one hand the defendant admitted his signatures on the receipt dated 25.05.2007, on the other hand not only the defendant has urged that the plaintiff fraudulently sought signatures of the defendant back in the year 1998 on blank paper and a blank stamp paper, but also such blank paper bearing the defendant's signature has been misused by the plaintiff. The learned counsel for the plaintiff submitted that the defendant did not stop at this juncture, rather, the defendant urged in his defence that the paper on which the receipt was prepared was over 9 (nine) years old and torn from two places, which had been cello-taped.

38. The learned counsel for the plaintiff submitted that similarly, the contention urged by the defendant that the sum of 5,00,000/- (Rupees Five lakhs only) paid by the plaintiff through a pay order was a part-payment by the plaintiff to the defendant for undertaking deals on commission and interior decoration work is a ruse. The learned counsel added that the defendant had been a long time friend of the plaintiff and he had been privy to various dealings, business affairs and personal issues and has cleverly slithered the same as a defence.

39. The learned counsel for the plaintiff submitted that the defence urged by the defendant that the sum of 5,00,000/- (Rupees Five lakhs only) was towards the part-payment of services on commission basis and interior decoration works rendered by the defendant falls like a pack of cards. The learned counsel pointed out that the defendant has also urged that it is the plaintiff who owes the defendant money in lakhs for all the work done and services rendered by him and not to omit that the defendant has averred that he reserves the right to take appropriate recourse in law to seek such recovery. The learned counsel submitted that this Court must note the fact that even after

passing of almost 13 years i.e. from the date of filing of written statement on 07.09.2007, the defendant has not filed and/or initiated recovery of such coveted money claim. The learned counsel added that such false defence, pleas and conduct of the defendant only leads to one conclusion that the defendant would go to any extent to deprive the plaintiff of his valid and legal claim against him.

40. Mr. Sehrawat, learned counsel for the plaintiff emphatically submitted that law frowns upon blowing hot and cold in same breath. The learned counsel for the defendant further added that the onus to prove that the signature, thumb impression of the defendant were obtained on blank papers by the plaintiff in November 1998 and the receipt dated 25.05.2007 is a forged and fabricated, which the defendant miserably failed to discharge. The learned counsel submitted that with no shred of evidence led by the defendant and his signatures being admitted on the receipt, a decree of specific performance with regard to the suit property is bound to be passed in favour of the plaintiff and against the defendant.

41. The learned counsel for the plaintiff submitted that the plaintiff was cross- examined at length, over 3 years and yet nothing adverse or fatal to the plaintiff's claim could be elicited by the defendant. The learned counsel for the plaintiff submitted that not only the author of the receipt dated 25.05.2007, namely, Manoj (PW4) but also both the witnesses, Himat Singh (PW2) and Sunil Goel (PW3) have testified in favour of the plaintiff and against the defendant. The learned counsel added that the plaintiff has proved the factum of payment of not only 5,00,000/- (Rupees Five lakhs only) but also 13,00,000/- (Rupees Thirteen lakhs only).

42. Mr. Sehrawat, learned counsel for the plaintiff submitted that the defence urged by the defendant that the question of defendant entering into any agreement for sale on 03.07.2006 or 04.07.2006 with the plaintiff does not arise is an afterthought and completely hollow contention. The learned counsel submitted that the defendant had been negotiating with Akbar Yar Khan much prior to signing and registration of agreement to sell and general power of attorney both dated 06.07.2006. The learned counsel further submitted that as a matter of fact by the end of June 2006, the transaction between Akbar Yar Khan and the defendant for sale-purchase of the suit property was finalised and it was thereafter between 30.06.2006 until 06.07.2006, the defendant made payment to Akbar Yar Khan in tranches.

43. Mr. Sehrawat, learned counsel for the plaintiff submitted that the plaintiff has a good case for specific performance of the contract arrived between the parties through receipt dated 25.05.2007 and placed reliance upon the judicial pronouncement by the High Court of Delhi in Dr. Pankaj Kumar v. K.L. Katyal.<sup>2</sup> The learned counsel on the aspect of plaintiff being ready and willing to perform his part of the contract placed reliance upon the judgment of the Apex Court in the case of Ramakrishna Pilla and Anr. v. Muhammed Kunju and Ors.<sup>3</sup> and of the High Court of Delhi in Naresh Gaur & Ors. v. Uma Gupta.<sup>4</sup>

44. Mr. Sehrawat, learned counsel for the plaintiff submitted that the additional issue No. 3A framed on 29.07.2009 by this Court is of no relevance to the suit. However, the learned counsel added that with no evidence led by the defendant on the additional issue, the same is bound to be held against the AIR 2013 Del 199 (20008) 4 SCC 212 (2009) 163 DLT 25 defendant. The fact of the

payment of 18,00,000/- (Rupees Eighteen lakhs only) and the receipt dated 25.05.2007 (Ex.PW1/7) stands proved, as the defendant has admitted his signatures on the same.

45. The learned counsel for the plaintiff contended that an agreement to sell can be an oral agreement, as there is no bar in law to have an oral agreement. The learned counsel submitted that there is no requirement in law to get a receipt of money registered and pay stamp duty on the same. The learned counsel submitted that no case for impounding the receipt dated 25.05.2007 is made out under the Indian Stamps Act, 1899.

46. The learned counsel for the plaintiff towards the end submitted that in case this Court finds and reaches to a conclusion that the plaintiff is not entitled to a decree of specific performance as prayed, the Court may as an alternative relief pass a money decree of 18,00,000/- (Rupees Eighteen lakhs only) as refund of money paid by the plaintiff to the defendant.

47. Per contra, Ms. Sonia Arora Menon, learned counsel for the defendant strongly contended the arguments advanced by Mr. Sehrawat, learned counsel for the plaintiff. The learned counsel opened her arguments on the note that the case urged by the plaintiff is marred by falsity, forgery and deception and the fate of the same is inevitable i.e. dismissal with exemplary costs.

48. The learned counsel for the defendant submitted that the plaintiff has based his case on an alleged receipt dated 25.05.2007 and portrayed that the defendant entered into an agreement to sell the suit property for a sum of 22,00,000/- (Rupees Twenty two lakhs only). The learned counsel further submitted that as per plaintiff, he paid a sum of 5,00,000/- (Rupees Five lakhs only) through pay order dated 04.07.2006 to the defendant and made further payment of 13,00,000/- (Rupees Thirteen lakhs only) in cash to the defendant on 25.05.2007.

49. The learned counsel contended that no amount of 18,00,000/- (Rupees Eighteen lakhs only) as urged by the plaintiff was paid to the defendant against the sale consideration of the suit property. The learned counsel further added that when the defendant did not enter into any agreement to sell the suit property with the plaintiff, the question of plaintiff paying a sum of 18,00,000/- (Rupees Eighteen lakhs only) does not arise.

50. Ms. Sonia A. Menon, learned counsel for the defendant submitted that not only the receipt dated 25.05.2007 is a forged and fabricated document but also the amount of money shown to be paid is a sham transaction. The learned counsel contended that the plaintiff had advanced a total loan of 3,00,000/- (Rupees Three lakhs only), a sum of 2,00,000/- (Rupees Two lakhs only) on one occasion in November 1998 and a sum of 1,00,000/- (Rupees One lakh only) on a later occasion. The learned counsel added that it was at that point in time when the plaintiff demanded property papers of his flat as collateral, the defendant succumbed to the demands made by the plaintiff and gave his signatures and thumb impression on a blank paper and a stamp paper of 2/- (Rupees Two only) denomination. The learned counsel submitted that the same was done with the understanding that aforesaid papers would be used by the plaintiff for preparing a loan agreement.

51. The learned counsel submitted that the defendant did often inquire about the loan agreement and status of the blank papers from the plaintiff. The plaintiff assured him that the same were sought for loan agreement. The learned counsel for the defendant submitted that the hunch in the mind of the defendant prevailed and he did lodge a complaint with police on 30.11.1998 with regard to the same. However, the greed and dishonesty possessed the mind and soul of the plaintiff, who after a span of almost a decade fabricated a document with signature of the defendant in form of the alleged receipt dated 25.05.2007.

52. With regard to the alleged payments of 5,00,000/- (Rupees Five lakhs only) and 13,00,000/- (Rupees Thirteen lakhs only) shown by the plaintiff as payment of 18,00,000/ (Rupees Eighteen lakhs only) towards the sale consideration of 22,00,000/- (Rupees Twenty two lakhs only), the learned counsel submitted that the same are nothing but overt display of chicanery. The learned counsel submitted that though the plaintiff in his plaint feigned ignorance about working with the defendant and whereas in his replication denied having any working, professional relationship with the defendant. However, the learned counsel submitted that the same has been admitted by the plaintiff during his cross-examination that the defendant had been working for him and the defendant even undertook interior decoration works and other jobs work for the plaintiff and his family members.

53. The learned counsel for the defendant submitted that a sum of 5,00,000/ (Rupees Five lakhs only) was paid by the plaintiff to the defendant through a pay order dated 04.07.2006 as part-payment for the services rendered by the defendant to the plaintiff towards interior decoration jobs, commission on deals facilitated by him. The learned counsel for the defendant added that the plaintiff has intentionally diverted the payment of 5,00,000/- (Rupees Five lakhs only) as part-payment towards the sale consideration of the suit property, whereas no such transaction of selling the suit property by the defendant to the plaintiff was agreed and entered upon.

54. Ms. Arora, the learned counsel for the defendant submitted that similarly, the plaintiff's claim of having paid a sum of 13,00,000/- (Rupees Thirteen lakhs only) in cash is a sham and the same vaporises into thin air as the truth elicited from the documentary evidence and the cross-examination of the plaintiff and his witnesses does reveal that the claim urged by the plaintiff is ephemeral.

55. The learned counsel for the defendant submitted that no money to the tune of 13,00,000/- (Rupees Thirteen lakhs only) in cash was paid to the defendant by the plaintiff on 25.05.2007. The learned counsel for the defendant submitted that it has come on record from the bank statements proved by the plaintiff that the plaintiff did not have 13,00,000/- (Rupees Thirteen lakhs only) in cash on 25.05.2007. The learned counsel added that even going by the version of the plaintiff, on 25.05.2007 the plaintiff withdrew 6,00,000/- (Rupees Six lakhs only) in cash on 25.05.2007 from his bank account with Royal Bank of Scotland (Ex.PW7/1) and had 2,00,000/- (Rupees Two lakhs only) in cash with him. The learned counsel pointed out that on the other hand the bank statement of plaintiff's account with Oriental Bank of Commerce (Ex.PW6/1) shows that it was on 26.05.2007 that the plaintiff withdrew a sum of 6,00,000/- (Rupees Six lakhs only) in cash. The learned counsel submitted that the plaintiff's bank statement (Ex.PW6/1) not only disproves the plaintiff's

claim of having paid 13,00,000/- (Rupees Thirteen lakhs only) in cash to the defendant on 25.05.2007 itself, when he did not even have the adequate cash at his disposal, but also the testimony of the witnesses to the receipt (Ex.PW1/7), Himat Singh (PW2) and Sunil Goel (PW3), who testified that a sum of 13,00,000/- (Rupees Thirteen lakhs only) was paid in cash on 25.05.2007 by the plaintiff in their presence.

56. The learned counsel for the defendant unleashed the undercurrent of her arguments on the author and witnesses of the alleged receipt dated 25.05.2007. The learned counsel submitted that the all key witnesses of the plaintiff viz, PW1 to PW4 turned their credibility upside down and lied on oath that a sum of 13,00,000/- (Rupees Thirteen lakhs only) was paid in cash in their presence to the defendant on 25.05.2007, when the plaintiff did not even have that amount of cash at his disposal.

57. The learned counsel for the defendant read out the testimony of plaintiff (PW1), Himat Singh (PW2), Sunil Goel (PW3) and Manoj (PW4) and stressed that their cross-examination is marred by variance, dishonesty and which points only in one direction of not believing them as credible witnesses. The learned counsel for the defendant submitted that the witnesses PW2 - Himat Singh and PW4 - Manoj are not independent witnesses. The learned counsel submitted that both of them stated to be employees of the plaintiff and thus they are interested witnesses, who did not testify freely despite being under oath. The learned counsel for the defendant further submitted that the testimony of PW2, PW3 and PW4 does not inspire any confidence and resultant of which the plaintiff failed to discharge the onus to prove that a sum of 13,00,000/- (Rupees Thirteen lakhs only) was paid in cash to the defendant on 25.05.2007.

58. The learned counsel for the defendant submitted that it has come out in the cross-examination of the author of the receipt, namely, Manoj (PW4) that the alleged receipt dated 25.05.2007 was prepared as a handwritten, despite there being computers in the office and usually such works are done through computer generated documents.

59. The learned counsel for the defendant submitted that the testimony of the plaintiff (PW1) has revealed such contradictions between the case pleaded by the plaintiff in his plaint and the truth surfacing during the cross-examination that the fate of the suit would only result in its dismissal with costs.

60. Ms. Arora, the learned counsel for the defendant contended the submissions advanced by Mr. Sehrawat that the plaintiff has always been ready and willing to perform his part of the contract. Ms. Arora, learned counsel submitted that at first place when there has been no agreement in place between the parties, the question of the plaintiff being ready and willing does not arise. The learned counsel further added that the receipt dated 25.05.2007 is a forged, fabricated and a bogus document and thus no relief of specific performance is to be granted to the plaintiff.

61. The learned counsel for the defendant submitted that the parties to the suit were thick of friends and bad blood between them brewed when the defendant herein preferred an application under Order I, Rule 10 of the Code of Civil Procedure, 1908, to which the plaintiff's daughter was a party



therein. The learned counsel added that even though the plaintiff denied any kind of dealings with the defendant, yet the defendant always valued and cherished his friendship with the plaintiff and did not undertaken any steps which would damage their friendship any further. The learned counsel for the defendant further submitted that though the friendship between the parties have continued but they have stopped having any financial dealings between themselves ever since the present suit was filed by the plaintiff.

62. The learned counsel for the defendant submitted that the alleged receipt dated 25.05.2007 is not a legally tenable document, and the same cannot be a basis for preferring a suit for specific performance. The learned counsel added that neither the document bears any requisite revenue stamp, stamp duty being paid nor it is a registered document as the same pertains to an immovable property. The learned counsel further submitted the document i.e. alleged receipt dated 25.05.2007 is hit by the provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908 and thus cannot be considered as admissible evidence.

63. The learned counsel contended the submissions advanced by the learned counsel for the plaintiff that this Court may pass an alternative relief of a refund, money decree of 18,00,000/- (Rupees Eighteen lakhs only). The learned counsel further contended that with the plaintiff's case is based on a forged, fabricated document, therefore, no case for any relief by this Court is made out and such pleas must be rejected outrightly.

64. Lastly, the learned counsel for the defendant stressed upon her swansong argument that the plaintiff's claim is way too, an over-stretched claim. The learned counsel submitted that it is an admitted fact that the defendant purchased the suit property from Akbar Yar Khan on 06.07.2006 through registered documents for an amount of 20,00,000/- (Rupees Twenty lakhs only). The learned counsel further submitted that when the defendant himself purchased the suit property on 06.07.2006, the question of him entering into an agreement to sell for an amount of 22,00,000/- (Rupees Twenty two lakhs only) and accepting 5,00,000/- (Rupees Five lakhs only) as part-payment on 04.07.2006, when the defendant himself had yet not acquired and possessed the suit property.

65. The learned counsel for the defendant submitted this Court must not lose sight of the fact that not only the defendant purchased the suit property, a leasehold property for a sum of 20,00,000/- (Rupees Twenty lakhs only) but also paid stamp duty and corporation tax to the tune of 1,50,000/- (Rupees One lakh and fifty thousand only) and other ancillary expenses such as commission, thus it would not make any logical and economic sense for the defendant to sell the suit property after its conversion from leasehold to freehold for 22,00,000/- (Rupees Twenty two lakhs only). The learned counsel for the defendant concluded on the note that the suit must be dismissed as the plaintiff has failed to prove his claim of entering into an agreement to sell and also pay a sum of 18,00,000/- (Rupees Eighteen lakhs only) as part-payment towards the sale consideration of the suit property.

66. Mr. Sehrawat, learned counsel for the plaintiff re-joined his arguments by stating that the defendant has failed to upheaval the plaintiff's claim and the evidence before this Court. The learned

counsel further added that the defendant has admitted his signatures, receipt of money and thus nothing else remains than passing of a decree of specific performance directing the parties to complete the sale by making the balance payment of 4,00,000/- (Rupees Four lakhs only) and signing, execution and registration of sale deed.

67. The learned counsel for the plaintiff submitted that the contentions advanced by the learned counsel for the defendant of him not having acquired the suit property until 06.07.2006 and entering into an agreement, contract on 04.07.2006 being a bogey seems attractive on the face of it. The learned counsel submitted that however, this Court must not lose sight of the fact that transactions of sale and purchase of immovable properties do not mature and close in one day itself. The learned counsel further submitted that the defendant had made payments to the erstwhile owner of the suit property and thus by 30.06.2006, the defendant very well had interest in the suit property.

68. The learned counsel for the plaintiff further submitted that about the misuse of the blank papers, the defendant did not lodge any complaint against the plaintiff or seriously pursued any action. The learned counsel for the plaintiff further submitted that the tall claims made by the defendant that plaintiff owes him money in lakhs of Rupees are hollow and baseless. The learned counsel further added that till date no money claim has been preferred by the defendant against the plaintiff. The learned counsel prayed that the suit be decreed in favour of the plaintiff and against the defendant.

#### Reasoning & Findings

69. I, have perused the complete case record, considered and deliberated over the submissions advanced by the learned counsels for the parties. The issue-wise findings ensue in the following paragraphs of this judgment.

Whether the defendant had entered into an agreement with plaintiff on 3.7.2006 for sale of his flat No. 703, Cat-A, 7th Floor, Plot No. 18, Sector - 10, Fakhruddin Memorial Co-Op. Group Housing Society Limited, Dwarka, New Delhi?

And Whether the plaintiff had paid an amount of Rs.5,00,000/- by pay order No. 823626 dated 4.7.2006 as part payment on 4.7.2006 and further part payment of Rs.13,00,000/- in cash on 25.5.2007 to the defendant towards the sale of aforesaid suit flat against sale consideration of Rs.22,00,000/-?

70. The issue No. 1 and issue No. 2 are taken up together for consideration as they are co-related and intertwined. The onus to prove issue No. 1 and issue No. 2 was saddled upon the plaintiff.

71. The case urged by the plaintiff is that on 03.07.2006 he entered into an agreement of sale-purchase of the suit property with the defendant. The plaintiff has urged that it was the defendant, who approached him and expressed his desire to sell the suit property. The plaintiff was in need to purchase a flat for his eldest son and he entered into an agreement with the defendant,

who agreed to sell the suit property to the plaintiff for an amount of 22,00,000/- (Rupees Twenty two lakhs only). The plaintiff on 04.07.2006 paid an amount of 5,00,000/- (Rupees Five lakhs only) to the defendant through a pay order drawn upon ABN Amro Bank. It is urged by the plaintiff as the parties were known to each other no formal agreement to sell was executed between them at that point in time i.e.03.07.2006 or 04.07.2006.

72. The plaintiff has also averred in the plaint that as per the agreement arrived between the parties, the defendant agreed to get the suit property converted from leasehold to freehold property, the costs of which would be reimbursed by the plaintiff. It is averred by the plaintiff that the defendant kept dilly dallying and postponing the conversion of the suit property regardless of the repeated requests by the plaintiff.

73. As per the plaintiff, the defendant in the month of May 2007 stated that he needed more money and he would take steps for getting the suit property converted into a freehold only on receipt of further part-payment. The plaintiff acted upon the assurance advanced by the defendant and paid a sum of 13,00,000/- (Rupees Thirteen lakhs only) in cash to the defendant on 25.05.2007. It is in the above said manner that the plaintiff paid a sum of 18,00,000/- (Rupees Eighteen lakh only). For the sake of clarity, the payments made by the plaintiff as averred in the plaint were as under:

S.No.	Date of Payment	Mode of Payment	Amt. ( )
i.	04.07.2006	Pay Order	5,00,000.00
ii.	25.05.2007	Cash	13,00,000.00
		Total	18,00,000.00

74. The plaintiff has averred in the plaint that on payment of 13,00,000/- (Rupees Thirteen lakhs only) in cash by him to the defendant on 25.05.2007, at his insistence, the defendant executed a receipt-cum-agreement dated 25.05.2007 confirming that he has received a total amount of 18,00,000/- (Rupees Eighteen lakh only) towards the sale of the suit property. It is also averred by the plaintiff that it was agreed that the balance amount of 4,00,000/- (Rupees Four lakhs only) shall be paid on execution of sale deed and conversion of suit property by the defendant from leasehold to freehold and simultaneous handover of the vacant possession of the suit property.

75. On 20.06.2007, the plaintiff gained knowledge from one Chet Ram, a local property dealer based out of Dwarka, New Delhi that the defendant contacted him for sale of suit property to third parties.

76. The plaintiff has averred that the defendant's intention became mala fide and dishonest because the market value of the suit property had gone up in the area. The plaintiff has averred that on gaining knowledge about the defendant's mala fide intention, he confronted the defendant and during their meeting on 22.06.2007, the defendant did not deny the same and insisted that he is willing to refund the entire part sale consideration of 18,00,000/- (Rupees Eighteen lakhs only) to the plaintiff. The proposal of refund of part sale consideration was refused by the plaintiff.

77. The plaintiff has further averred that the defendant moved by his greed is likely to transfer the suit property and handover the possession to a third party and frustrate the agreement between the parties.

78. The plaintiff has averred in the plaint that he has always been ready and willing to perform his part of the contract by reimbursing the freehold charges to the defendant, make the balance payment on execution of sale deed and handing over the possession of the suit property by the defendant.

79. The plaintiff has averred that he has a right to seek specific performance as the defendant committed breach of contract by failing to get the suit property converted from a leasehold to freehold and denying execution of necessary sale documents on one pretext or another.

80. On the other hand, the defence urged by the defendant in his written statement is that no agreement to sell the suit property was entered between the parties. The defendant has stated in his defence that the parties were very well known to each other and had financial dealings between them, as the defendant used to help and work in closing sale-purchase transactions of immovable properties for the plaintiff. It is averred by the defendant that the plaintiff used to pay commission to the defendant. It is also averred by the defendant that he undertook various works for interior decoration, furnishing jobs, electrical jobs, etc., for the plaintiff and his family members, for which the plaintiff made part- payments for the services rendered by the defendant. The defendant has urged that an amount of 5,00,000/- (Rupees Five lakhs only) paid by pay order on 04.07.2006 was one such part-payment made by the plaintiff to the defendant for the services rendered by him.

81. The defendant has repeatedly denied in his written statement about entering into any agreement to sell for his flat i.e. suit property with the plaintiff. The defendant has also denied the fact of receiving any payment of 13,00,000/- (Rupees Thirteen lakhs only) in cash from the defendant on 25.05.2007 towards the alleged agreement to sell. With regard to the alleged receipt dated 25.05.2007 (Ex.PW1/7), the defendant has averred in his written statement that the same is a forged and fabricated document.

82. The defendant has urged in his defence that the purported receipt is a handwritten document which is not in his handwriting and the same has been stated to be executed by the defendant. The defendant has negated the plaintiff's claim that the alleged receipt had been executed on 25.05.2007. It is urged by the defendant that the alleged receipt is written on a paper almost 9 (nine) years old bearing his signature and thumb impression at the time of the filing of the suit.

83. The defendant in his written statement has also urged that in the year 1998 he required some financial help to make certain payments to Aashiyana Cooperative Group Housing Society Limited. As the parties to the present suit were good friends and the defendant used to do various property deals on behalf of the plaintiff on commission, the defendant borrowed 2,00,000/- (Rupees Two lakhs only) from the plaintiff through cheque No. 401930 dated 27.11.1998. The said cheque was directly issued by the plaintiff in favour of Aashiyana Cooperative Group Housing Society Limited and which was credited in defendant's account with the society. It is averred by the defendant that

the plaintiff agreed to give a loan of 2,00,000/- (Rupees Two lakhs only) on a condition that defendant would give the papers of his flat. As the defendant was in urgent need of money at that point in time and he did not have the papers of the flat readily available with him, defendant submitted to the coercion and unreasonable demand of the plaintiff and endorsed his thumb impression and signature on a blank paper and a blank stamp paper of 2/- (Rupees Two only). It was agreed between the parties that the blank papers would be used by the plaintiff for writing a loan agreement and receipt for aforesaid cheque drawn.

84. The defendant being worried and concerned about his signatures on blank papers being misused by the plaintiff, immediately lodged a police complaint on 30.11.1998. Thereafter, the defendant took a further loan of 1,00,000/- (Rupees One lakh only) for the same purpose through cheque No. 401931 dated 02.01.1999, once again issued by the plaintiff directly in favour of Aashiana Cooperative Group Housing Society Limited. It is averred by the defendant that he repaid the entire loan of 3,00,000/- (Rupees Three lakhs only) to the plaintiff by cheque No. 314660 dated 03.10.2004. It is also averred by the defendant that during this entire period he asked the plaintiff to show him the loan agreement which was to be typed on the blank papers signed by him, however, the plaintiff never showed any such document to the defendant. It is also averred by the defendant that at the time of repayment of loan he had specifically asked the plaintiff to return the blank papers which were obtained by him from the defendant. The plaintiff replied to defendant that he would destroy the said documents and defendant need not worry. The defendant has averred that on repayment of loan by him to the plaintiff, the defendant asked the plaintiff not to misuse the blank papers signed by the defendant and destroy the same.

85. The defendant has averred that he only realized at the time of repayment of loan in October 2004 that the plaintiff lied to him, as neither any loan agreement and receipt were prepared on those blank papers nor the blank papers were destroyed. The defendant only after receiving the copy of the plaint along with the copy of documents realised that the plaintiff with mala fide intention fabricated and forged the alleged receipt dated 25.05.2007 on the blank papers obtained by the plaintiff by deceit, fraud and coercion way back in November 1998.

86. To prove the plaintiff's claim of having entered into an agreement to sell with the defendant and having made a payment of 18,00,000/- (Rupees Eighteen lakhs only) as part-payment, the plaintiff examined seven witnesses in total. The plaintiff (PW1) along with Himal Singh (PW2), Sunil Goel (PW3), Manoj (PW4), Mohd. Gufran (PW5) stepped into the witness box. Whereas, Amit Kumar (PW6) and Vineet Mathur (PW7) were the summoned witnesses, who produced the bank statement from the Oriental Bank of Commerce and Royal Bank of Scotland, respectively.

87. Section 61 of the Indian Evidence Act, 1872 deals with proof of contents of documents. The contents of documents may be proved either by primary or secondary evidence. The primary evidence means the document itself is produced for inspection of the Court whereas the secondary evidence means and includes certified copies, public documents, copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, copies compared with such copies, copies made from or compared with the original, counter parts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some

person who has himself seen it.

88. Once a document is properly admitted, the contents of that documents are also admitted in evidence though those contents may not be conclusive evidence

- See P.C. Purushothama Reddiar v. S. Perumal. 5 Mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document. If the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue - See Ramji Dayawala and Sons (P) Ltd. v. Invest Import.<sup>6</sup> In the case at hand, neither the receipt dated 25.05.2007 is properly admitted by the defendant nor the fact of the payment of 13,00,000/- (Rupees Thirteen lakhs only) in cash on 25.05.2007, and thus, the contents of the receipt dated 25.05.2007 are disputed facts and in issue.

89. The receipt dated 25.05.2007 (Ex.PW1/7) reads as under:

"RECEIPT I, Mohd. Tariq Khan S/o Late Sh. H.A. Khan, R/o T-19, Baldco Residency, Greater NOIDA, UP, do hereby acknowledge the receipt of Rs.18 Lacs (Rupees eighteen lacs) from Abdul Nasir Khatri, Son of Late Shri A.R. Khatri, r/o C1/11 S.D.A. ND-16, towards the sale of my self acquired flat No.703, Cart. A, 7th floor, Plot No.18, Sector-

(1972) 1 SCC 9 (1981) 1 SCC 80 10, Fakruddin Memorial Coop Group Housing Society Ltd, Dwarka, New Delhi-75 as per details given below:

DETAILS OF PAYMENT In Cash Rs.13,00,000/- (Rs thirteen Lacs) 25.05.07 By Cheque No. : Rs.5,00,000/- Vide pay order no. 823626 Dated 04/07/06 Drawn on ABN Amro Bank Hauz Khas ND-16 I say that the consideration of the aforesaid flat has been fixed at Rs.22 Lacs (Rupees twenty two lacs) between the parties. The balance sale consideration of Rs. 4 Lacs (Rs. Four Lacs) shall be paid by Abdul Nasir Khatri, to the seller on registration of sale after getting the same converted from lease hold to freehold and simultaneously handing over the vacant physical possession of the said flat.

Dated: 25.05.2007 (Mohd. Tariq Khan) Executant Witnesses:

(i) Hemant Singh Sd/- [25.05.2007.]  
B-8, Chattarpur Ext.  
ND-74

(Thumb Impression)

(ii) Sunil Goel Sd/- [25/05/07]  
56 GF, Defence Colony  
ND.

Sd/- "

90. The plaintiff's entire case is based on the above receipt dated 25.05.2007 (Ex.PW1/7) and the primary document of the same is produced in Court and forms part of the record. The said receipt is stated to bear the signature of the defendant and signed by him in the presence of Himal Singh and Sunil Goel, whose signatures are also appended on the receipt as witnesses. Though, the plaint does not disclose, who was the author of the said receipt? It was only in replication, filed pursuant to the defendant's written statement and contentions, did the plaintiff disclose that the receipt dated 25.05.2007 was prepared by Manoj Kumar known to both the parties.

91. From careful perusal of the plaint it is observed that other than the formal paragraph of cause of action i.e. para 21, there is mention of the part-payment of 13,00,000/- (Rupees Thirteen lakhs only) on 25.05.2007 only in the paragraph Nos. 12 and 13 of the plaint, which are reproduced in verbatim, as under:

"12. That the plaintiff relying on the assurance of the defendant further paid a sum of Rs.13,00,000/- (Rupees thirteen lacs only) in cash on 25.5.2007 making a total payment of Rs.18,00,000/-

(Rupees eighteen lacs only) till then.

13. That on receipt of the amount of Rs.13,00,000/- on the insistence of the plaintiff, the defendant duly executed a receipt- cum-agreement dated 25.5.2007 confirming that he has received a total amount of Rs.18 lacs from the plaintiff towards the sale of his flat No. 703 Cat-A, 7th floor, Plot No. 18 Sector 10, Fakhurddin Memorial Cooperative Group Housing Society Limited, Dwarka, New Delhi-75. It was also agree that the plaintiff shall pay the balance sale consideration of Rs.4,00,000/- (Rupees four lacs) on execution of sale deed and defendant getting the flat converted to free hold and simultaneously handing over the vacant possession."

[Emphasis added by underlining and highlighting of text]

92. The plaintiff in his evidence by way of affidavit dated 05.10.2009 (Ex.PW1/A) has deposed in paragraph Nos. 12, 13, 19 and 20 as under:

"12. I say that relying on the assurance of the defendant, I further paid a sum of Rs.13,00,000/- (Rupees thirteen lacs only) in cash on 25.5.2007 making a total payment of Rs.18,00,000/- (Rupees eighteen lacs only) till then. The copy of my Bank statement of ANB(sic) Amro Bank showing a withdrawal of Rs.6,00,000/- cash on 25.5.2007 is on record and the same is Exh.PW-1/5 and the copy of my Bank statement of Oriental Bank of Commerce showing another withdrawal of Rs.5,00,000/- cash on 26.5.2007 is also on record and is Exh.PW-1/6.

13. I say that on receipt of the amount of Rs.13,00,000/- and on my insistence, the defendant duly executed a receipt-cum-agreement dated 25.5.2007 confirming that he has received a total amount of Rs.18,00,000/- (eighteen lacs) from me towards the sale of his flat No. 703 Cat-A, 7th floor, Plot No. 18 Sector 10, Fakruddin(sic) Memorial Cooperative Group Housing Society Limited, Dwarka, New Delhi 110075. It was also agreed that I shall pay the balance sale consideration of Rs.4,00,000/- on execution of sale deed and defendant getting the flat converted to free hold and simultaneously handing over the vacant possession. The original receipt-cum-agreement dated 25.5.2007 is already on record and the same is marked as Exh. PW-1/7. The receipt bears the signatures of the defendant at point 'X' & 'Y' and this thumb impression at point 'Z'. The receipt is witnessed by two persons namely, Sh. Himlal Singh and Sunil Goel.

14. ... ..

.....

.....

.....

19. I say that it is absolutely false that the receipt dt. 25.5.2007 is forged and fabricated. The receipt is duly signed by the defendant and it also bears the thumb impression of the defendant. The receipt dt. 25.5.2007 was prepared by Sh. Manoj Kumar known to both the parties.

20. I say that the loan of Rs.3,00,000/- in 1998-99 from me to the defendant was an interest free friendly loan. It is wrong that defendant was charging any commission from me in respect of certain property deals. It is false that I ever asked for papers of the defendant's flat at the time of advancing of above said loan. The defendant has been dealing with me as a friend and never charged any commission from me. The loan of Rs.3 lacs was repaid by the defendant after about 6 years did not carry any interest and was friendly loan. I never obtained the defendant's signatures and thumb impression on blank papers. A loan agreement was executed for 2 lacs loan on a stamp paper of Rs.2/- and on one additional page. Both papers were signed by the defendant. The said loan agreement consisting of two pages to the knowledge of the defendant was destroyed on the loan being repaid. The police complaint dated 30.11.1998 of the defendant shows dishonest mind of defendant and I was never aware of the said complaint. The defendant took a further loan of Rs.1 lacs(sic) even after lodging the alleged complaint on 30.11.1998. The complaint dated 30.11.1998 is false."

[Emphasis added by underlining and highlighting of text]



93. Before proceeding further, it is observed that the trial lasted for over 08 years i.e. 26.05.2010 to 28.02.2018. It is also observed that though the plaintiff was cross-examined on 26.05.2010, but on an application moved by the defendant under Order XVIII, Rule 17, CPC seeking recall of plaintiff as a witness for further cross-examination, the Court vide order dated 18.01.2011 allowed the motion with a caveat that one effective opportunity would be given to the defendant's counsel to cross-examine plaintiff (PW1) and no deferment of the cross-examination would be permitted. However, pursuant to order dated 18.01.2011, the PW1 was cross-examined on 25.05.2011, 30.08.2011, 27.01.2012, and 14.01.2013. With such lengthy cross-examination of the plaintiff and the defendant, this Court has to deal with the same on thread bare analysis.

94. The plaintiff during his cross-examination stated that he met defendant on 03.07.2006 at his office, D-56, Defence Colony in the afternoon. The plaintiff further stated in his cross-examination that he had seen the title documents of property in suit prior to 3.7.06. The plaintiff further stated that on 03.07.06 or 04.07.06, the defendant took the draft. The plaintiff once again stated that he had seen the title document of defendant prior to 03.07.06 and it was an agreement to sell. On a suggestion being put forward to the plaintiff that the defendant was not the owner of the suit property till 03.07.06, the plaintiff voluntarily stated that he had seen the agreement to sell and he presumes that the defendant was the owner of the suit property. The plaintiff denied the suggestion that no meeting took place between the parties on 03.07.06.

95. Further during his cross-examination, the plaintiff stated that in the last week of May 2007 on 25.05.2007 he met the defendant at his brother's office in Sheikh Sarai. The plaintiff further stated that he withdrew an amount of 13,00,000/- (Rupees Thirteen lakhs only) from his bank accounts. On being confronted with the contents of paragraph No. 12 of his evidence by way affidavit (aka examination-in-chief) that a sum of 6,00,000/- (Rupees Six lakhs only) was withdrawn on 25.05.2007 from ABN Amro Bank; a sum of 5,00,000/- (Rupees Five lakhs only) on 26.05.07 from Oriental Bank of Commerce and the remaining amount was lying in cash with me. The plaintiff admitted that the statement made by him in paragraph No. 12 of his affidavit is correct. The plaintiff further stated that I have stated in my affidavit that I paid 13,00,000/- (Rupees Thirteen lakhs only) on 25.05.07 and remaining amount was lying with me in cash.

96. The plaintiff during his cross-examination testified that with his meeting on 25.05.2007 with the defendant, Himal Singh, Sunil Goel and Manoj were present and plaintiff's brother was not present in his office. The plaintiff stated that the office was open. The plaintiff stated that Manoj is an employee of his brother; Sunil Goel had come to meet him at his brother's office and Himal Singh was present, who had come to see him as he was their driver earlier.

97. During his cross-examination on 26.05.2010, the plaintiff also stated that Ex.PW1/7 was a simple receipt and not an agreement. The plaintiff stated that in 1998 certain documents were executed for grant of loan to defendant and on repayment by the defendant, the documents were destroyed. The plaintiff stated that no copies of the documents were retained. The plaintiff denied that the defendant used to be involved in sale-purchase of property by the plaintiff or his family members. The plaintiff stated that he has knowledge that defendant is a property dealer for commission. The plaintiff also stated that for one flat only, he authorized the defendant to do the

interior job, however he again said, repair work.

98. Initially, the plaintiff was cross-examined on 26.05.2010, however on account of an application under Order XVIII, Rule 17, CPC moved by the defendant seeking recall of plaintiff (PW1) for further cross-examination being allowed by Court vide order dated 18.01.2011, the plaintiff (PW1) was cross-examined on 25.05.2011, 30.08.2011, 27.01.2012 and 14.01.2013.

99. During his cross-examination on 25.05.2011, the plaintiff stated that he knows the defendant for past 20-25 years through his brother. The plaintiff also stated that he had personal relationship with the defendant and not professional relationship. The plaintiff denied that defendant was striking deals in his name, as his property dealer. However, the plaintiff admitted that the defendant did strike a deal regarding some property for his daughter. The plaintiff voluntarily stated that the defendant did not work as a property dealer but on personal level and no commission was paid to him.

100. The plaintiff also testified that he did not obtain any receipt for 5,00,000/- (Rupees Five lakhs only) paid by him to the defendant. However, the plaintiff had taken receipt of 13,00,000/- (Rupees Thirteen lakhs only) paid by him to the defendant towards the purchase of the suit property. The plaintiff further stated that 5,00,000/- (Rupees Five lakhs only) was paid by bank draft and 13,00,000/- (Rupees Thirteen lakhs only) was paid in cash.

101. With regard to the payment of 13,00,000/- (Rupees Thirteen lakhs only), the plaintiff during his cross-examination on 25.05.2011 stated that the amount of 13,00,000/- (Rupees Thirteen lakhs only) was paid by him on 25.05.2007 after drawing 6,00,000/- (Rupees Six lakhs only) from ABN Amro Bank, Hauz Khas, 5,00,000/- (Rupees Five lakhs only) from Oriental Bank of Commerce and 2,00,000/- (Rupees Two lakhs only) was lying in cash with him. The plaintiff also stated that he had seen the bank statement of Oriental Bank of Commerce (Ex.PW1/X1) and the same is a genuine statement.

102. On being quizzed about the receipt dated 25.05.2007 (Ex.PW1/7) being handwritten, the plaintiff stated that he cannot tell the reason, why it is a handwritten receipt. The plaintiff stated that the receipt was not prepared in his presence and the same was given to him by the defendant after he got it prepared from his staff at his Sheikh Sarai office. The plaintiff admitted that he also has an office at Defence Colony and the office at Sheikh Sarai is of his brother.

103. On 30.08.2011, during his cross-examination admitted that he had given a cheque (Ex.PW1/DX1) for an amount of 2,00,000/- (Rupees Two lakhs only) to Ashiyana Group Housing Society. The plaintiff stated that the cheque (Ex.PW1/DX1) was given by him on the basis of a memorandum of understanding with defendant. The plaintiff further stated that the memorandum of understanding was with regard to a flat booked by the defendant in which he paid 75% of the sale consideration, which was purchased by the defendant from someone. The plaintiff also stated that he had also paid a sum of 1,25,000/- (Rupees One lakh and twenty five thousand only), out of which 1,00,000/- (Rupees One lakh only) was paid by cheque (Ex.PW1/DX2) and the balance 25,000/- (Rupees Twenty five thousand only) also by cheque, which was drawn in the name of the

society or defendant. The plaintiff stated that the said transactions are reflected in his income tax returns. The further cross- examination of the plaintiff was deferred for want of production of income tax returns.

104. On 27.01.2012, the plaintiff produced his income tax returns for the year 1999-2000, 2007-08 and 2008-09, which were marked as Ex.PW1/X2(OSR), Ex.PW1/X3(OSR) and Ex.PW1/X4(OSR), respectively. The plaintiff stated that the amount of 3,25,000/- (Rupees Three lakhs and twenty five thousand only) given by him to the defendant was not a loan but towards his share of 25% in the partnership firm. The plaintiff again said it was 25% towards his share in the flat purchased. The plaintiff stated that he did have financial relationship with the defendant.

105. Further, the plaintiff stated that the property was not purchased by the parties jointly, but as the defendant did not have full money and to prevent forfeiture, the defendant sought his help and the plaintiff gave him the requisite amount of 3,25,000/- (Rupees Three lakhs and twenty five thousand only).

106. The plaintiff stated that the memorandum of understanding was executed at the time of payment of 3,25,000/- (Rupees Three lakhs and twenty five thousand only) on a stamp paper. The plaintiff does not remember the denomination of stamp paper on which it was written, but it was type written. The plaintiff further stated that after the amount of 3,25,000/- (Rupees Three lakhs and twenty five thousand only) was paid back by the defendant, the memorandum of understanding was torn by him in the presence of the defendant, and there was no one else present other than both of them.

107. The plaintiff denied the suggestion that he took signatures of the defendant on a blank paper and blank stamp paper and fabricated the receipt on the basis of which the present suit is filed.

108. The plaintiff once again stated during his cross-examination that he never paid commission to the defendant for any deals. The plaintiff admitted that the defendant moved an application seeking impleadment in litigation with regard to a flat No. I-100, Azad Apartments. The plaintiff voluntarily stated that the aforesaid application was withdrawn. The plaintiff denied the suggestion that the same was withdrawn because of the threats advanced by the plaintiff. The plaintiff also denied the suggestion that the present suit was filed immediately on filing of the application by the defendant seeking impleadment. The plaintiff stated that he does not remember if the present suit was filed subsequent to the filing of aforementioned impleadment application. The plaintiff denied the suggestion that the present suit is counter blast to the defendant's impleadment application.

109. The plaintiff further in his cross-examination stated that he made complete payment for the renovation work done by the defendant for the flat No. I-100, Azad Apartments and the same was done in cash.

110. The plaintiff stated in his cross-examination that the defendant used to sign documents, as a witness, which were prepared by the plaintiff as a property consultant as and when the defendant used to be with him. The plaintiff further stated that he never paid any money to the defendant for

signing such documents as a witness. The plaintiff also stated that the defendant used his office space for personal occupation as a property dealer. The plaintiff further stated that in case the defendant got a property for the plaintiff, the defendant would take commission from the other party and not from the plaintiff.

111. The plaintiff during his cross-examination stated that he agreed to pay 22,00,000/- (Rupees Twenty two lakhs only) for the suit property valued at 20,00,000/- (Rupees Twenty lakhs only) because it was a deferred payment, distinguishable from his daughter's flat, which was a one-time payment. The plaintiff further stated that the payment of 22,00,000/- (Rupees Twenty two lakhs only) was to be made by him after the property was converted into a freehold property. The plaintiff also stated that the conversion from leasehold to freehold was to be done by the defendant within three to four months. The plaintiff stated that the defendant did not get the property converted into freehold, and therefore he did not pay the balance amount.

112. During his cross-examination on 14.01.2013, the plaintiff stated that the receipt dated 25.05.2007 (Ex.PW1/7) was written by Manoj Kumar, who is an employee of his brother. The plaintiff stated that his brother is engaged in manpower export and Manoj Kumar looks after the office work of his brother. The plaintiff also stated that Manoj Kumar is conversant with operating computers. The plaintiff further stated that he was not aware about the preparation of the receipt (Ex.PW1/7) and thus he could not ensure that the same was printed on computer.

113. The plaintiff admitted that the receipt dated 25.05.2007 (Ex.PW1/7) was not prepared in his presence. The plaintiff learnt subsequently through defendant that the receipt was written by Manoj Kumar. The plaintiff stated that though he was in the same office, but in different cabin when the receipt was prepared by Manoj Kumar. The plaintiff also stated that the particulars of the pay order were mentioned in the receipt dated 25.05.2007 (Ex.PW1/7) on the information provided by the defendant. The plaintiff stated that he was busy and he asked the defendant to get the receipt prepared instead of doing the same himself.

114. With regard to the witnesses of the receipt dated 25.05.2007 (Ex.PW1/7), namely, Himat Singh and Sunil Goel, the plaintiff stated that Himat Singh was a driver of his brother and Sunil Goel had come to office for some other purpose when the receipt (Ex.PW1/7) was being prepared. The plaintiff admitted that he did not specifically call Himat Singh and Sunil Goel to witness the execution of a receipt. The plaintiff stated that both the witnesses signed the receipt (Ex.PW1/7) in his presence. The plaintiff admitted that he did not ask the defendant to execute receipt dated 25.05.2007 (Ex.PW1/7).

115. Further during his cross-examination, the plaintiff stated that with regard to the execution of the loan agreement as deposed by him in paragraph No. 2 of his evidence by way of affidavit (Ex.PW1/A), a sum of 2,00,000/- (Rupees Two lakhs only) only was advanced as loan out of 3,00,000/- (Rupees Three lakhs only). The plaintiff further stated that the loan agreement mentioned the amount of loan as 2,00,000/- (Rupees Two lakhs only) and the same was torn away by both of them. The plaintiff further stated that as he received back the complete payment, he tore away the agreement.

116. With regard to Chet Ram, property dealer and meeting on 22.06.2007, the plaintiff testified in his cross-examination that he knows Chet Ram is a property dealer in Dwarka and the plaintiff has asked him to sell his flat. The plaintiff admitted that on 22.06.2007 a meeting was held in his office at Sheikh Sarai, which was not with Chet Ram. The plaintiff said that on 22.06.2007 the meeting was with the defendant and it was the plaintiff who had specifically called the defendant for the meeting.

117. The plaintiff denied the suggestion that no meeting between the parties took place on 22.06.2007 at Sheikh Sarai office. The plaintiff stated that he demanded refund of his money from the defendant. The defendant admitted that he demanded return of 18,00,000/- (Rupees Eighteen lakhs only) from defendant. The defendant denied the suggestion that his suit is based on falsehood and the receipt dated 25.05.2007 (Ex.PW1/7) is a forged and fabricated document. The defendant denied that he has preferred the present suit against the defendant to pressurize him. The defendant also denied the suggestion that no sum of 13,00,000/- (Rupees Thirteen lakhs only) was paid by him in cash to the defendant.

118. Now moving forward to the testimony of the author of the receipt dated 25.05.2007, namely, Manoj (PW4). Manoj deposed in his examination-in-chief, evidence by way of affidavit (Ex.PW4/X) that he is working with Mr. Abdul Nasir Khatri for more than 15 years and he also knows Mohd. Tariq Khan for last about 10 years. Manoj also deposed that it was him, who prepared the receipt dated 25.05.2007 (Ex.PW1/7) in his handwriting at the request of Mohd. Tariq Khan in the office of Mr. Abdul Nasir Khatri at 13, Second Floor, Commercial Complex, Sheikh Sarai, Phase - II, New Delhi - 110017.

119. During his cross-examination, Manoj (PW4) stated that he is a qualified electronic engineer and conversant with computers. Manoj also stated that he can typewrite on computers. Manoj stated that he is working as a manager HR in the firm of Mr. Nasir for about 20 years. About knowing Mohd. Tariq Khan, Manoj said he used to accompany Mr. Nasir and thus he knew him.

120. Manoj further stated in cross-examination that though he is not aware about all business dealings of Mr. Nasir, but he only knows to the extent of work assigned to him. Manoj stated that he has knowledge that Mr. Nasir also deals in property transactions. Manoj also stated that he is aware that Mohd. Tariq is a property dealer. However, he is not aware that Mr. Nasir and Mohd. Tariq also jointly sell and purchase properties.

121. Manoj testified that on 25.05.2007, he was present in his office and his working hours at office are 10:00AM to 06:00PM. Manoj stated that he cannot tell on 25.05.2007 at what time did Mr. Nasir come to office, but he was at office on 25.05.2007. Manoj admitted that the receipt dated 25.05.2007 (Ex.PW1/7) is in his handwriting. Manoj stated that normally he works by hand and also by computer depending upon the nature of the work. Manoj further stated that generally he does office work on computers, looks after office administration and purchases A4 size papers for official work.

122. During the cross examination, a specific question being put to Manoj during his cross examination that when generally official documents are typed and that too on A4 size paper, why was the receipt (Ex.PW1/7) written by him on an old and torn paper? Manoj answered that on 25.05.2007, the computer broke down and Mohd. Tariq wanted Manoj to write the receipt immediately and he prepared the same after taking out a random paper from his drawer. Manoj also stated that he wrote the receipt at the dictation of Mohd. Tariq and not of his own.

123. Manoj stated that in the year 2007, there were three computers in his office and all three broke down as the same were connected LAN. Manoj denied the suggestion that the receipt dated 25.05.2007 (Ex.PW1/7) was fabricated on a blank paper, which already bore signatures and thumb impressions of Mohd. Tariq. Manoj also denied the suggestion that he wrote the receipt (Ex.PW1/7) on request of Mr. Nasir. Manoj also denied the suggestion that the dates 25.05.2007 written under the names of the witnesses - Himat Singh and Sunil Goel in the receipt (Ex.PW1/7) are in his handwriting. Manoj denied the suggestion that the receipt (Ex.PW1/7) was not executed on 25.05.2007. Manoj stated that the receipt (Ex.PW1/7) was prepared sometime after lunch and they got for lunch at 2:00PM. Manoj denied the suggestion that he is deposing falsely.

124. Himat Singh (PW2), one of the witnesses to the receipt dated 25.05.2007 stepped into the witness box on 05.07.2013. Himat Singh in his examination-in- chief, evidence by way of affidavit (Ex.PW2/X) deposed that he is working with Mr. Abdul Nasir Khatri since 1980 and he knows Mohd. Tariq Khan from the last so many years. Himat Singh deposed that the receipt dated 25.05.2007 (Ex.PW1/7) was executed by Mohd. Tariq Khan in his presence and he witnessed the same at serial No. 1 and bears his signature at point-A. Himat Singh further deposed that the signature of Sunil Goel are at point-B and that of Mohd. Tariq Khan at point-X and point-Y and thumb impression at point-Z. Himat Singh has deposed that he identifies the signature and thumb impression of Mohd. Tariq Khan and signature of Sunil Goel. Himat Singh has also deposed in his affidavit that Mr. Abdul Nasir Khatri paid an amount of 13,00,000/- (Rupees Thirteen lakhs only) in cash to Mohd. Tariq Khan in his presence. It is observed that the evidence by way of affidavit filed by Himat Singh is dated 05.10.2009 bears the same attestation date.

125. During his cross-examination, Himat Singh stated that he is matriculated and working as a driver. He stated to be conversant with English but cannot answer in English. At his request, the questions during the cross-examination were put to him in Hindi language.

126. Himat Singh stated that presently he is working as a freelance driver. He also stated that earlier he was working with Mr. Abdul Nasir, who is present in Court. Himat Singh further states that he worked with Mr. Abdul Nasir until January 2010. It is observed from the testimony of Himat Singh that after correctly reading the paragraph No. 2 of his evidence by way of affidavit, he could not tell the meaning of word 'executed'.

127. Himat Singh stated that the receipt (Ex.PW1/7) was executed on 25.05.2007 after 2:00PM in the office of Abdul Nasir. On a specific question being put to Himat Singh whether the amount of 18,00,000/- (Rupees Eighteen lakhs only) mentioned in the receipt (Ex.PW1/7) was paid on same date, Himat Singh answered that in his presence only 13,00,000/- (Rupees Thirteen lakhs only)

was paid in cash. Himat Singh further stated that as far as he remembers, the amount of 13,00,000/- (Rupees Thirteen lakhs only) was paid in his presence, which constituted of 500/- (Rupees Five hundred) and 100/- (Rupees One hundred) denominations. Himat Singh further stated that the money was handed over to Mr. Tariq Khan by Mr. Nasir at his office in the presence of Sunil Goel and himself. Himat Singh further stated that the receipt (Ex.PW1/7) was written by Manoj. Himat Singh stated that he can recognize Manoj and Himat Singh. Himat Singh further stated that Manoj is HR manager of Abdul Nasir.

128. Himat Singh stated that he was present outside the cabin of Mr. Nasir and they asked me to witness. He further stated that he cannot tell as to from where Mr. Nasir took out money, but the money was already lying on his table and he handed over the same to Mr. Tariq and asked me to sign the receipt (Ex.PW1/7). Himat Singh further stated that Manoj writes with his right hand.

129. Himat Singh denied the suggestion that the receipt (Ex.PW1/7) was fabricated on a blank paper bearing signatures and thumb impressions of Mr. Tariq Khan. Himat Singh voluntarily stated that when Mr. Tariq Khan signed, the Ex.PW1/7 had already been written and he signed subsequent to Mr. Tariq's signature. Himat Singh further stated that Sunil Goel signed the receipt (Ex.PW1/7) after 2:00PM.

130. Himat Singh denied the suggestion that no receipt was executed on 25.05.2007. Himat Singh also denied the suggestion that on 25.05.2007 Mr. Tariq Khan never visited the Sheikh Sarai office. Himat Singh also denied the suggestion that on 25.05.2007 he was not present at Sheikh Sarai office. Himat Singh stated that even presently, he remains in the Sheikh Sarai office though he is not working with Mr. Nasir.

131. Himat Singh admits his signature at point-A in receipt (Ex.PW1/7). He stated that the date 25.05.2007 written under his signature is also in his handwriting. Himat Singh denied the suggestion that the date under his signature on the receipt (Ex.PW1/7) is not in his handwriting. Himat Singh denied the suggestion that he is deposing falsely.

132. The testimony of Sunil Goel (PW3) was recorded on 12.07.2013, who is stated to be one of the witnesses to the receipt (Ex.PW1/7). Sunil Goel in his evidence by way of affidavit dated 05.10.2009, deposed that he knows Abdul Nasir Khatri and Tariq Khan for about last 10-12 years. Sunil Goel deposed that the receipt dated 25.05.2007 (Ex.PW1/7) was executed by Mohd. Tariq Khan in his presence and he witnessed the same at Sr. No. 2. Sunil Goel has also deposed that Abdul Nasir Khatri paid an amount of 13,00,000/- (Rupees Thirteen lakhs only) in cash to Mohd. Tariq Khan in his presence. Sunil Goel deposed that the receipt dated 25.05.2007 (Ex.PW1/7) was prepared by Manoj Kumar, an employee of Abdul Nasir Khatri in his office at Sheikh Sarai. Sunil Goel has deposed that besides him Himat Singh witnessed the receipt (Ex.PW1/7). Sunil Goel deposed that receipt dated 25.05.2007 bears his signatures(sic) at point-B, signatures(sic) of Himat Singh at point-A, and signatures of Mohd. Tariq Khan at point-X and point-Y and thumb impression at point-Z. Sunil Goel deposed that he can identify their signatures as they all signed in his presence.

133. During his cross-examination, Sunil Goel (PW3) stated that he studied till 2nd year of graduation and he is engaged in building construction work. Sunil Goel stated that Mr. Nasir is his family friend for past about 15 years and prior to that was known to his father.

134. Sunil Goel answered that on 25.05.2007 at about 2:30PM he had gone to Sheikh Sarai office of the plaintiff as he had some work at the authority. Sunil Goel admitted that when he reached the office of the plaintiff, the plaintiff was present there. Sunil Goel stated that Mr. Tariq, Mr. Himal, driver were also present in the office of the plaintiff. Sunil Goel further stated that the receipt (Ex.PW1/7) was already prepared when he reached the office. He further stated that he signed the receipt after reading the same. Sunil Goel further stated that the money was paid in his presence. He said that he personally did not count the money but the same was in 500/- (Rupees Five hundred) and 100/- (Rupees One hundred) denominations. Sunil Goel further stated that the remaining persons signed the receipt in his presence. Mr. Tariq signed in his presence, followed by Himal, who after signing went out and then he signed the receipt. Sunil Goel stated that the money was handed over prior to signing of the receipt. Sunil Goel stated that he does not know, who prepared the receipt (Ex.PW1/7).

135. Sunil Goel denied the suggestion that the receipt (Ex.PW1/7) is a fabricated document and no receipt was executed on 25.05.2007. He further denied the suggestion that he did not sign the receipt (Ex.PW1/7) on 25.05.2007 and the same was signed subsequently. Sunil Goel also denied the suggestion that the receipt dated Ex.PW1/7 was fabricated on a blank paper bearing signatures and thumb impressions of Mr. Tariq. He further denied the suggestion that his evidence by way of affidavit was prepared without his instructions. Sunil Goel voluntarily stated that he read his affidavit before signing the same.

136. Marching ahead to the testimony of the Mohd. Tariq Khan (defendant), who testified as DW1 on 21.11.2017 and 07.12.2017. The defendant during his cross-examination stated that he knows plaintiff since last 35 years and have good relations with plaintiff. The defendant denied the suggestion that he used the office of the plaintiff for his work. The defendant voluntarily stated that he used the plaintiff's office only when any deal was done with the plaintiff. The defendant admitted that the plaintiff helped him financially. He voluntarily stated that the plaintiff helped in the year 1998 and 1999 by advancing a loan for making payment for his flat. The defendant denied the suggestion that the plaintiff paid him 3,00,000/- (Rupees Three lakhs only) at the time of his second marriage.

137. During the cross-examination, complaint dated 30.11.1998 (Ex.DW1/PX-

1) was produced and shown to the defendant. The defendant stated that the complaint (Ex.DW1/PX-1) bears his signature at point-A and was made by him on 30.11.1998. The defendant further stated that even after the complaint (Ex.DW1/PX-1) being made by him, he had good relations with the plaintiff. The defendant further stated that he neither filed any suit for cancellation nor any criminal case against the plaintiff in respect of the allegations made in the complaint (Ex.DW1/PX-1).



138. With regard to the defendant being questioned on the receipt (Ex.PW1/7), the defendant admitted that the same bears his signatures at point-X, point-Y and his thumb impression at point-Z. The defendant denied the suggestion that he put his signature on the receipt as per his own wish. The defendant voluntarily stated that he put his signatures and thumb impression on a blank paper and gave the same to the plaintiff. The defendant denied the suggestion that after reading the receipt (Ex.PW1/7), he put his signatures and thumb impression. The defendant stated that he neither serve any notice to the plaintiff in respect of cancellation of receipt (Ex.PW1/7) nor filed any complaint against the said receipt.

139. During his cross examination, the defendant stated that he did not carry out any forensic investigation of the receipt (Ex.PW1/7). The defendant further stated that he had business relationship with the plaintiff since 2004-2005. The defendant denied doing any deal in partnership with the plaintiff.

140. With regard to the suit property, the defendant deposed that he purchased the same from Mr. Akbar Iqbal Yar Khan for a total sale consideration of 20,00,000/- (Rupees Twenty lakhs only). The defendant further stated that other than a registered agreement to sell, he did not get a sale deed executed from Mr. Akbar Iqbal Yar Khan. The defendant further stated that he paid brokerage commission @1% to Mohd. Gufran. The defendant denied the suggestion that the reason for non-execution of sale deed was sufficiency of funds. The defendant denied the suggestion that he sold the suit property to plaintiff through receipt dated 25.05.2007 (Ex.PW1/7). The defendant admitted that he had put different signature on the complaint dated 30.11.1998 (Ex.DW1/PX-1) and receipt dated 25.05.2007 (Ex.PW1/7). The defendant denied the suggestion that he put different signatures to cheat people. The defendant admitted that his signatures at point-A on Ex.DW1/PX2 and Ex.P-1 are same.

141. During his cross-examination, the defendant admitted that the payment made by the plaintiff on 27.11.1998 was not related to the present deal i.e. suit property. The defendant also admitted that the loan transaction as mentioned in paragraph No. 6 of his affidavit (Ex.DW1/A) also had no concern with the present matter. The defendant on a question being put to him about the loan agreement being executed answered that an agreement was to be executed on a blank signed paper he had given to the plaintiff.

142. Further, the defendant stated that he received commission @1% from the plaintiff with regard to the deal of J-116, Azad Apartment. The defendant further stated that commission with regard to the deal of I-100, Azad Apartment was with Sayed Ahmad Faizi and the same was on account. The defendant voluntarily stated that he did the interiors for this flat. The defendant denied the suggestion that no commission was paid or settled in respect of the flat No. I-100, Azad Apartment. The defendant denied the suggestion that the plaintiff paid entire expenses, which the defendant bore for the interior work of flat No. I-100, Azad Apartment.

143. The defendant admitted that a deal of three flats was finalised in Fakruddin Memorial Cooperative Group Housing Society, Dwarka out of which one flat was purchased by the defendant, which is the subject matter of the suit.

The defendant further stated that he has received payment of commission in respect of two flats which were purchased by the plaintiff. The defendant denied the suggestion that the entire payment of commission for all the deals have been paid by the plaintiff.

144. With regard to the payment of 5,00,000/- (Rupees Five lakhs only) dated 04.07.2006, the defendant admitted that he received the same from the plaintiff. However, the defendant voluntarily stated that the payment of 5,00,000/- (Rupees Five lakhs only) was on account of work and commission. The defendant denied the suggestion that the payment of 5,00,000/- (Rupees Five lakhs only) by the plaintiff was for purchase of the suit property. The defendant voluntarily stated that the payment of 5,00,000/- (Rupees Five lakhs only) was made to him even before he had purchased the suit property from the previous owner.

145. The defendant denied the suggestion of having received a sum of 13,00,000/- (Rupees Thirteen lakhs only) towards the sale of the suit property. The defendant admitted that the valuation of the suit property was 20,00,000/- (Rupees Twenty lakhs only) when he purchased the suit property. The defendant denied the suggestion of having agreed to sell the suit property to the plaintiff on being offered 22,00,000/- (Rupees Twenty two lakhs only). The defendant stated that he had paid 1,50,000/- (Rupees One lakh and fifty thousand only) approximately as stamp duty at the time of purchase of the suit property. The defendant denied the suggestion that he sold the suit property to the plaintiff as at that point of selling the same to the plaintiff, he was earning 50,000/- (Rupees Fifty thousand only). The defendant voluntarily stated that no reasonable person would sell the property at 22,00,000/- (Rupees Twenty two lakhs only) after having it purchased it for 20,00,000/- (Rupees Twenty lakhs only), paying stamp duty of 1,50,000/- (Rupees One lakh and fifty thousand only) and 40,000/- (Rupees Forty thousand only) as commission @2%. The defendant said that no commission was paid to the plaintiff. The defendant voluntarily stated that the commission was paid to Mohd. Gurfan.

146. The defendant denied the suggestion that on account of financial strife, he was constrained to sell the suit property to the plaintiff for 22,00,000/- (Rupees Twenty two lakhs only). The defendant also denied the suggestion that he signed the receipt (Ex.PW1/7) in presence of witnesses - Himat Singh and Sunil Goel. The defendant denied the suggestion that he is resiling from the transaction due to escalation in the market price of the suit property. The defendant also denied the suggestion that he had received 18,00,000/- (Rupees Eighteen lakhs only) qua the said transaction. The defendant denied the suggestion that he is deposing falsely.

147. The dictum in law is as old as the hills, one who avers must prove. Law of Evidence provides the legal framework for an orderly and reliable means of adjudicating a suit or proceeding between the parties. The Law of Evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The Code of Civil Procedure, 1908, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872, constitute the trinity of the principal procedural codes that govern the law of procedure as applied in the courts. The Law of Evidence lays down the ground rules for determining on whom the burden of proof will lie for proving his case in a suit or proceeding which he has set in motion, what facts may be considered as relevant for treating them as evidence and what facts may be proved and in what manner so as to ensure high probative

value, who may be considered as competent witnesses to prove the facts and the modes of examining those witnesses.

148. Evidence is the usual means of proving or disproving a fact or matter in issue. The law of evidence envisages the proof of facts by the parties by means of: (i) oral evidence - which means and includes all statements which the court permits or requires to be made before it by witnesses in relation to the facts in issue; (ii) documentary evidence - is all documents produced for the inspection of the court, and (iii) material objects - such as guns, knives, etc., to which the oral evidence relates.

149. The Halsbury's Laws of India, Evidence 7 on the Incidence of Legal Burden, reads as under:

"[145.022] (C) Incidence of Legal Burden As a rule, legal burden lies on the party who has set in motion the legal machinery by filing a case. The simple principle is: "You went to the Court, so you prove your case". In this sense, it is the Plaintiff or Prosecution, as the case may be, who should prove the case. The same rule can also be expressed in another form: "You want a judgment in your favour, so you bear the burden and prove the case."

"It is well established dictum of the Evidence Act that misplacing the burden of proof vitiates the judgment."<sup>8</sup> The rules relating to burden of proof are based upon certain practical considerations of convenience and reasonableness and also of policy. The rules relating to burden of proof are the following:

S 101: Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

S 102: The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

S 103: The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

150. Thus, the Evidence Act has clearly laid down that the burden of proving a fact always lies upon the person who asserts it. Until such burden is discharged, Halsbury's Laws of India, Second Edition, Volume 18, Evidence in paragraph 145.022 at page 47 Rangammal v. Kuppuswami (2011) 12 SCC 220 the other party is not required to be called upon to prove his case. The court has to examine as to whether the person whom the burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party - See Rangammal v. Kuppuwami.<sup>9</sup>

151. A fact is said to have been proved in Court of law when the court is persuaded to believe in its existence or to consider its existence probable. 'Burden of proof' is defined in Section 101 of the Indian Evidence Act, 1872 (hereinafter "Evidence Act") as "Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person." Section 101 Evidence Act makes a distinction between a party proving his case on the basis of facts which he asserts and a person bound to prove the existence of any fact.

152. The principle that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought under the circumstances of the particular case, to act upon the supposition that it exists. In civil cases, the standard of proof is satisfied on a balance of probabilities.

153. On applying the aforesaid legal principle to the case at hand, whether a transaction and receipt dated 25.05.2007 (Ex.PW1/7) is bona fide and a genuine one or is a sham and bogus, the defendant alleging it to be sham need not take burden of proof until the transaction and the receipt are proved by the plaintiff to be genuine, bona fide by the opposite party. Thus, it is for the plaintiff to prove that the receipt dated 25.05.2007 (Ex.PW1/7) is bona fide and genuine.

ibid.

154. The observations and findings arrived by this Court on sieving the evidence led by the parties are as follows:

(i) Though, the plaintiff claims to have paid a sum of 5,00,000/-

(Rupees Five lakhs only) to the defendant on 04.07.2006 through pay order towards the sale consideration of 22,00,000/- (Rupees Twenty two lakhs only) of the suit property, yet the plaintiff took no receipt for the same from 04.07.2006 until 25.05.2007, despite him being well versed with the ins and outs of the transactions of sale-purchase of immovable properties.

(ii) The plaintiff has urged that the parties were very well known to each other and thus no written agreement was signed. However, the same does not seem to be a plausible reason, explanation merely for the reason that first payment of 5,00,000/- (Rupees Five lakhs only) as per plaintiff made on 04.07.2006 and the second payment of 13,00,000/- (Rupees Thirteen lakhs only) on 25.05.2007, yet between the two dates, viz 04.07.2006 and 25.05.2007, the plaintiff maintained complete silence about the purported transaction entered between them.

(iii) The plaintiff has also urged that it was agreed between the parties that the balance sale consideration would be paid once the suit property is converted into a freehold and the plaintiff would reimburse all such expenses, which appears to be a material condition of agreement, yet the same has no mention in the alleged receipt dated 25.05.2007. The receipt dated 25.05.2007

(Ex.PW1/7) does not say anything about reimbursement of conversion charges, though plaintiff has testified about the same.

(iv) The plaintiff has led no evidence to show and prove that he checked with the defendant about the status of conversion of suit property. Mere pleadings and oral submissions do not suffice.

(v) The plaintiff during his cross-examination on 14.01.2013 stated that Himat Singh(PW2) was driver of his brother, whereas PW2 during his cross-examination on 05.07.2013 stated that he was working as a driver for the plaintiff.

(vi) Manoj(PW4) is stated to be the author of the receipt dated 25.05.2007. The plaintiff during his cross-examination on 14.01.2013 stated that Manoj Kumar is an employee of his brother and looks after the office work of his brother. Whereas, PW4 in his examination-in-chief (evidence by way of affidavit) and also during his cross-examination on 12.07.2013 stated he works as a HR manager in the firm of Mr. Abdul Nasir Khatri.

(vii) Chet Ram, who informed the plaintiff that the defendant is looking for a buyer to sell the suit property did not step into the witness box for either party.

(viii) The plaintiff on one hand denied he had no financial dealings, however, during his cross-examination he admitted having financial dealings with the defendant.

(ix) On 30.08.2011 during his cross-examination stated that he paid 3,25,000/- (Rupees Three lakhs and twenty five thousand only) to Aashiana Cooperative Group Housing Society Ltd. as 75% share. Later, on 27.01.2012, the plaintiff during his cross-examination stated that 3,25,000/- (Rupees Three lakhs and twenty five thousand only) was not a loan but towards his share of 25% in the flat purchase.

(x) The plaintiff admitted the fact of advancing loan to the defendant back in 1998 but to the tune of 2,00,000/- (Rupees Two lakhs only) out of 3,00,000/- (Rupees Three lakhs only). The plaintiff also stated during his cross-examination on 14.01.2013 that the execution of the loan agreement in para No. 20 of his evidence by way of affidavit, was torn and thrown away by both of them. An adverse inference can easily be drawn from the testimony of the plaintiff, that the plaintiff was in possession of papers containing defendant's signatures and thumb impression.

(xi) The crux of plaintiff's suit rests on the fulcrum of his claim having paid 13,00,000/- (Rupees Thirteen lakhs only) in cash to the defendant on 25.05.2007 in presence of Himat Singh(PW2) and Sunil Goel(PW3) towards the total sale consideration of 22,00,000/- (Rupees Twenty two lakhs only). The defendant not only denied having entered into any agreement, transaction of sale of the suit property with the defendant, but also denied that any amount of 13,00,000/- (Rupees Thirteen lakhs only) was paid in cash to him on 25.05.2007.

It has come in crystal clear evidence that the plaintiff did not have complete 13,00,000/- (Rupees Thirteen lakhs only) in cash with him on 25.05.2007. The plaintiff himself has lead documentary

evidence and oral evidence to the above effect.

The plaintiff has testified and placed on record his ABN Amro bank statement corroborating his claim of withdrawing 6,00,000/- (Rupees Six lakhs only) in cash on 25.05.2007. However, the plaintiff's bank statement of Oriental Bank of Commerce corroborates the fact that an amount of 5,00,000/- (Rupees Five lakhs only) was withdrawn on 26.05.2007 and not 25.05.2007.

Thus, the plaintiff fails to prove the fact that he even had 13,00,000/- (Rupees Thirteen lakhs only) in cash with him to pay to the defendant on 25.05.2007.

(xii) The plaintiff has led no evidence to even show his sufficiency and availability of 2,00,000/- (Rupees Two lakhs only) in cash with him on 25.05.2007. No day book, cash book, books of accounts have been produced for scrutiny to prove his such claim.

(xiii) With a clear adverse finding against the plaintiff out of his own admission and count of having withdrawn an amount of 5,00,000/- (Rupees Five lakhs only) from Oriental Bank of Commerce on 26.05.2007, the fact of the plaintiff paying 13,00,000/- (Rupees Thirteen lakhs only) in cash to the plaintiff on 25.05.2007 is disproved.

(xiv) When the plaintiff was clearly short of 5,00,000/- (Rupees Five lakhs only) on 25.05.2007, the question of Himat Singh(PW2) and Sunil Goel(PW3) seeing 13,00,000/- (Rupees Thirteen lakhs only) in cash and that too of the denomination of 500/- and 100/- currency notes does not arise.

(xv) The testimony of the two witnesses, namely, Himat Singh(PW2), Sunil Goel(PW3) to the receipt dated 25.05.2007, the testimony of the author of the receipt, namely, Manoj (PW4) and the plaintiff himself qua an amount of 13,00,000/- (Rupees Thirteen lakhs only) paid on 25.05.2007 by the plaintiff to the defendant in cash is found to be untrue, falsified and disproved.

(xvi) The defendant's claim of no amount of 13,00,000/- (Rupees Thirteen lakhs only) in cash was paid by the plaintiff to him on 25.05.2007 is found to be true and duly proved.

(xvii) The receipt dated 25.05.2007(Ex.PW1/7) is not a genuine document. It is found to be a sham and a fabricated document. (xviii) Sunil Goel(PW3) in his evidence by way of affidavit has deposed that the receipt was prepared by Manoj Kumar an employee of Abdul Nasir Khatri in his office at Sheikh Sarai. However, during his cross-examination PW3 stated that he does not know, who prepared the receipt (Ex.PW1/7).

155. To arrive at a conclusion whether the defendant had entered into an agreement with the plaintiff on 03.07.2006 for sale of the suit property, this Court is of the considered view from the pleadings and evidence on record that when the defendant himself purchased the suit property from Akbar Iqbal Yar Khan on 06.07.2006 through a registered agreement to sell (Ex.P-1A) and general power of attorney dated 06.07.2006 (Ex.P-2), the event of plaintiff having seen the title documents prior to 03.07.2006 does not arise.

156. On one hand in his examination-in-chief, the plaintiff has deposed that the documents - registered agreement to sell and registered general power of attorney both dated 06.07.2006 were executed between Akbar Yar Khan and the plaintiff and on the other hand during his cross-examination, the plaintiff stated that he had seen the title documents prior to 03.07.2006. It is observed that the plaintiff even denied the suggestion that the defendant was not the owner of the suit property till 03.07.2006. It appears that the statements made by the plaintiff on 26.05.2010 during his cross-examination that he had seen the title documents of the suit property executed between the erstwhile owner and the defendant herein prior 03.07.2006 is false and incorrect.

157. The entire case of the plaintiff falls flat on its face and the reason to arrive at this conclusion is that the plaintiff's claim of having paid 13,00,000/- (Rupees Thirteen lakhs only) in cash to the defendant on 25.05.2007 in the presence of the two witnesses, namely, Himal Singh and Sunil Goel does not inspire any confidence and the same is negated. The reason for disbelieving the plaintiff's claim of having paid 13,00,000/- (Rupees Thirteen lakhs only) in cash on 25.05.2007 to the defendant is that the plaintiff himself has deposed in paragraph No. 12 of his evidence by way of affidavit (Ex.PW1/A) that the copy of his ABN Amro bank statement (Ex.PW1/5) shows a withdrawal of 6,00,000/- (Rupees Six lakhs only) in cash on 25.05.2007 and the copy of his Oriental Bank of Commerce statement (Ex.PW1/6) shows another withdrawal of 5,00,000/- (Rupees Five lakhs only) in cash on 26.05.2007.

158. During his cross-examination on 26.05.2010, the plaintiff was confronted by the learned counsel for the defendant with the paragraph No. 12 of his affidavit (Ex.PW1/A). The plaintiff clearly stated that the statement made by him in paragraph No. 12 of his affidavit (Ex.PW1/A) is correct. The plaintiff further testified that he has stated in his affidavit that he paid 13,00,000/- (Rupees Thirteen lakhs only) on 25.05.2007 and remaining amount was lying with him in cash.

159. Further, during his cross-examination on 25.05.2011, the plaintiff stated an amount of 13,00,000/- (Rupees Thirteen lakhs only) was paid by him in cash on 25.05.2007 after drawing 6,00,000/- (Rupees Six lakhs only) from ABN Amro Bank, Hauz Khas; 5,00,000/- (Rupees Five lakhs only) from Oriental Bank of Commerce and 2,00,000/- (Rupees Two lakhs only) was lying in cash with him. The plaintiff further stated that he had seen his bank statement of Oriental Bank of Commerce(Ex.PW1/X1)10 and the same is a genuine statement.

160. This Court observes that no evidence has been led by the plaintiff to substantiate and corroborate his claim of having 2,00,000/- (Rupees Two lakhs only) lying with him in cash on 25.05.2007.

Relevant entries at portion marked-X. The same document was summoned and produced by witness PW6 - Amit Kumar, Officer Oriental Bank of Commerce, Branch Sarvepriya Vihar, Delhi and marked as PW6/1.

161. The only logical conclusion which can be arrived from the documentary evidence and plaintiff's testimony on record is that the plaintiff was short of 5,00,000/- (Rupees Five lakhs only) on 25.05.2007 as he himself has led evidence proving that an amount of 5,00,000/- (Rupees Five

lakhs only) in cash was withdrawn by him from Oriental Bank of Commerce on 26.06.2007. It also not the case of the plaintiff that he arranged 5,00,000/- (Rupees Five lakhs only) in cash from some other source on 25.05.2007 to pay to the defendant on 25.05.2007 and probably returned the same on 26.05.2007. The documentary evidence and the oral evidence led by the plaintiff himself screams out aloud that the plaintiff did not have full 13,00,000/- (Rupees Thirteen lakhs only) in cash at his disposal on 25.05.2007 to pay to the defendant and was certainly 5,00,000/- (Rupees Five lakhs only) short, which was withdrawn by him on 26.05.2007 from Oriental Bank of Commerce, Sarvepriya Vihar, Delhi.

162. With a clear finding of non-availability of 13,00,000/- (Rupees Thirteen lakhs only) in cash at plaintiff's disposal on 25.05.2007, the question of the same being paid to the defendant on 25.05.2007 towards the sale consideration of 22,00,000/- (Rupees Twenty two lakhs only) is disproved and the receipt dated 25.05.2007 (Ex.PW1/7) being bona fide and genuine are ruled out.

163. Alas! The plaintiff did fail to shift the onus casted upon him to prove both the issues. In view of the above observations and findings, the issue Nos. 1 and 2 are decided against the plaintiff and in favour of the defendant.

Whether the signature and thumb impression of the defendant were obtained on blank papers by the plaintiff in November, 1998 and that papers have been forged and fabricated with the receipt dated 25.05.2007 as alleged by the defendant?

164. The onus to prove issue No. 3 was casted upon the defendant. At the outset, I would say that pleadings is not evidence. Pleadings - plaint and written statement lay the bedrock of a claim, defence but the parties have to lead evidence to prove their assertions.

165. In the case at hand, the defendant has urged in his defence that the plaintiff obtained his signature and thumb impression on blank papers in November 1998 and used the same for preparing the alleged receipt dated 25.05.2007 by forgery and fabrication. The defendant's claim is that the paper on which the alleged receipt dated 25.05.2007 (Ex.PW1/7) was prepared was a blank paper signed by him back in the year 1998, when the defendant had initially availed a loan of 2,00,000/- (Rupees Two lakhs only) and later on a further loan of 1,00,000/- (Rupees One lakh only) from the plaintiff. The defendant has also averred in his written statement that he did sign and endorse his thumb impression on a blank paper and on a stamp paper of 2/- (Rupees Two only) denomination, however, the plaintiff neither used the same for the purpose of loan agreement nor destroyed them. It is observed from the testimony of the defendant that he has admitted his signature on the receipt dated 25.05.2007, but has denied that the same were for the purpose of sale-purchase of the suit property, but it was for the purpose of loan agreement.

166. The defendant has repeatedly denied entering into any agreement, sale- purchase transaction of the suit property with the plaintiff. The defendant has denied that an amount of 5,00,000/- (Rupees Five lakhs only) was paid by the plaintiff to him on 04.07.2006 as part-payment for the agreement arrived between them on 03.07.2006. The defendant has denied payment of 13,00,000/- (Rupees Thirteen lakhs only) in cash by the plaintiff to him on 25.05.2007. The



defendant has pleaded that the receipt dated 25.05.2007 is not genuine.

167. As in the preceding paragraphs of this judgment, this Court has arrived at finding(s) that no amount of 13,00,000/- (Rupees Thirteen lakhs only) in cash was paid by the plaintiff to the defendant. It has also come on record and clear findings by this Court that the amount of 13,00,000/- (Rupees Thirteen lakhs only) in cash was not paid by the plaintiff to the defendant in presence of Himat Singh, Sunil Goel, as the plaintiff did not have the cash amount of 13,00,000/-

(Rupees Thirteen lakhs only) available with him. The plaintiff's own bank statement from the Oriental Bank of Commerce - Ex.PW6/1 reveals and prove that an amount of 5,00,000/- (Rupees Five lakhs only) was withdrawn by the plaintiff from his concerned bank account on 26.05.2007, thus the question of him having the alleged sum of 13,00,000/- (Rupees Thirteen lakhs only) for payment to the defendant on 25.05.2007 does not arise.

168. Though, the defendant has not led any evidence to prove the factum of forgery and fabrication, but there is sufficient evidence on record to prove and arrive at a finding that the alleged receipt dated 25.05.2007 is not a genuine document. The document i.e. alleged receipt dated 25.05.2007 purports to have paid a sum of 18,00,000/- (Rupees Eighteen lakhs only) as part-payment against the total sale consideration of 22,00,000/- (Rupees Twenty two lakhs only). However, it is proved by the documentary evidence led by the plaintiff himself that the amount of 5,00,000/- (Rupees Five lakhs only) which is stated to be part of the 13,00,000/- (Rupees Thirteen lakhs only) paid in cash on 25.05.2007 by the plaintiff to the defendant was withdrawn by the plaintiff on 26.05.2007, thus, the question of 13,00,000/- (Rupees Thirteen lakhs only) being paid in cash to the defendant by the plaintiff does not arise. Consequentially, an inevitable finding and conclusion is arrived at, the document i.e. receipt dated 25.05.2007 is not a genuine document but a fabricated one.

169. In view of the above observations and findings with regard to the issue No. 3, this Court rules issue No. 3 in favour of the defendant and against the plaintiff to an extent that the receipt dated 25.05.2007 is a fabricated document. Issue No. 3A Whether the alleged receipt dated 25.5.2007 is inadmissible in evidence as per provisions of the Indian Stamp Act, Registration Act and Evidence Act?

170. The onus to prove issue No. 3A was also casted upon the defendant. The issue No. 3A is an issue of law. It is plaintiff's case that the parties had entered into an agreement to sell with regard to the sale-purchase of the suit property on 03.07.2006 for a total sale consideration of 22,00,000/- (Rupees Twenty two lakhs only). It is also the case of the plaintiff that in furtherance of the agreement to sell on 03.07.2006, the plaintiff on 04.07.2006 paid a sum of 5,00,000/- (Rupees Five lakhs only) as part-payment towards the sale consideration for the suit property. The plaintiff has also urged in the plaint that it was agreed that the defendant would get the suit property converted into freehold from leasehold and execute a sale deed. It is averred by the plaintiff that the parties were known to each other and no formal agreement was signed between them on 03.07.2006 or 04.07.2006.

171. As per the plaintiff's version, the defendant sometime in the month of May 2007 asked for more money to be paid as part-payment, and only thereafter, he would undertake steps for the conversion of the suit property. The plaintiff has averred to advance a sum of 13,00,000/- (Rupees Thirteen lakhs only) in cash to the defendant on 25.05.2007 and a receipt dated 25.05.2007 was executed. It is plaintiff's case that the defendant after having received a sum of 18,00,000/- (Rupees Eighteen lakhs only) from him, a sum of 5,00,000/- (Rupees Five lakhs only) on 04.07.2006 through pay order and a sum of 13,00,000/- (Rupees Thirteen lakhs only) in cash on 25.05.2007, the defendant signed and executed a receipt dated 25.05.2007. It was further agreed that the balance sale consideration of 4,00,000/- (Rupees Four lakhs only) was to be paid by the plaintiff to defendant once the suit property was converted into freehold.

172. The plaintiff has urged that despite having received a sum of 18,00,000/- (Rupees Eighteen lakhs only), the defendant failed to get the suit property converted into freehold property, execute a sale deed and handover the vacant possession of the suit property. The plaintiff was apprehensive that with the defendant having breached the contract, he would sell the suit property someone else and create a third party interest. Hence, the present suit seeking decree of specific performance.

173. What boils down from the averments made in the plaint is that there was an oral agreement between the parties on 03.07.2006, which was acted upon on 04.07.2006, when the plaintiff made a part-payment of 5,00,000/- (Rupees Five lakhs only) to the defendant against the total sale consideration for the suit property. Thereafter, on 25.05.2007 further payment of 13,00,000/- (Rupees Thirteen lakhs only) in cash was made by the plaintiff to the defendant and a written receipt dated 25.05.2007 (Ex.PW1/7) was executed duly acknowledging the agreement for sale and purchase of the suit property. The question which needs to be answered is whether a plaintiff could maintain the present suit on the basis of the receipt dated 25.05.2007 and the said receipt would be inadmissible in evidence, as per the provisions of the Indian Stamp Act, 1899 (hereinafter "Stamp Act"), the Registration Act, 1908 (hereinafter "Registration Act") and the Indian Evidence Act, 1872 (hereinafter "Evidence Act").

174. Under the Indian law, it is settled position that there can also be an oral agreement to sell, as held by the Apex Court in *Brij Mohan & Ors. v. Sugra Begum & Ors.*<sup>11</sup> There is no requirement of law that an agreement or contract for sale of immovable property should only be in writing.

175. The Apex Court in *Aloka Bose v. Parmatma Devi*<sup>12</sup> has held that even if a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid. The Apex Court further held that in India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser.

(1990) 4 SCC 147 (2009) 2 SCC 582 pp. 17-18, p. 587

176. This Court observes that in the case at hand the possession of the suit property did not exchange hands between the parties, thus making the agreement to sell not compulsorily registrable as per the provisions of the Registration Act.

177. Assuming for the sake of arguments, even if the receipt dated 25.05.2007 (Ex.PW1/7) in question was required to be compulsorily registered, yet proviso to Section 49 of the Registration Act would provide adequate protection and leverage to the plaintiff to maintain the present suit for specific performance against the defendant.

178. Section 49 of the Registration Act, reads as under:

"49. Effect of non-registration of documents required to be registered.--No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)]<sup>13</sup>, to be registered shall--

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877),<sup>14</sup> [\*\*\*]<sup>15</sup> or as evidence of any collateral transaction not required to be effected by registered instrument.]<sup>16</sup> [Emphasis added by underlining] Ins. by Act 21 of 1929, s. 10.

See now the Specific Relief Act, 1963 (47 of 1963).

Certain words omitted by Act 48 of 2001 s. 6(w.e.f. 24-9-2001).

Ins. by Act 21 of 1929, s. 10.

179. With regard to the contention of the defendant that the receipt dated 25.05.2007 is inadmissible in evidence under the ambit and purview of the Evidence Act, the same cannot be held to be inadmissible in evidence for want of registration and payment of stamp duty. It is observed that the receipt dated 25.05.2007 is a relevant document for deciding the controversy, dispute between the parties and the plaintiff produced the primary document for Court's scrutiny. It has been observed in the preceding paragraphs of this judgment that one who asserts must prove, thus the onus to prove the execution, contents and genuineness of the said document is upon the plaintiff. The plaintiff can very well maintain his suit for specific performance of receipt-cum-agreement dated 25.05.2007 against the defendant.

180. Accordingly, the issue No. 3A is answered against the defendant and in favour of the plaintiff.

Whether the plaintiff is entitled to relief of specific performance as prayed in the plaint?

181. This Court has arrived at findings on the basis of intrinsic evidence that the receipt dated 25.05.2007 is not a genuine document. It has also been ruled that the same is a fabricated document. It is not out of place to observe herein that the plaintiff failed to lead any evidence to prove his readiness and willingness to prove his entitlement for relief of specific performance.

182. The reliance placed by the plaintiff on Dr. Pankaj Kumar v. K.L. Katyal;<sup>17</sup> Ramakrishna Pilla and Anr. v. Muhammed Kunju and Ors.<sup>18</sup> and Naresh Gaur & Ors. v. Uma Gupta<sup>19</sup> is found to be misplaced and clearly not applicable to the facts of the present case.

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183. With regard to the oral submission advanced by Mr. Sehrawat, learned counsel for the plaintiff on the plea of alternative relief of refund of 18,00,000/- (Rupees Eighteen lakhs only) and a money decree be passed in favour of the plaintiff and against the defendant, this Court observes that the same is untenable on the following grounds:

(i) the plaintiff has failed to seek recourse to Section 22 of the Specific Relief Act, 1963 until the stage of final arguments, and

(ii) this Court has found and ruled that no sum of 13,00,000/- (Rupees Thirteen lakhs only) in cash was paid by the plaintiff to the defendant on 25.05.2007 and the receipt dated 25.05.2007 is not a genuine document, rather a fabricated one.

Lastly, the position in law is crystal clear that one needs to approach the Courts of justice with clean hands. The Courts cannot come to the aide and succour of a litigant, who has knocked its doors with unclean hands, soiled with falsity. Thus, the plaintiff is held to be not entitled for any alternative relief in the eyes of law.

Whether plaintiff is entitled to cost?

184. With the issue Nos. 1, 2, 3 and 4 ruled against the plaintiff, this Court holds and rule that the plaintiff is not entitled for any costs.

Relief.

185. The findings reached by this Court and also by ruling the issue Nos. 1, 2, 3, 4 and 5 against the plaintiff and in favour of the defendant, no relief is warranted to be granted in favour of the plaintiff.

186. With the present case pending before the Court for as many years as baker's dozen and inference drawn from the case record, both Khatri and Khan were given repeated opportunities to amicably settle their dispute keeping in mind their friendship dating back over three decades and overt bonhomie during court proceedings, I am reminded of a quote by famous author, which I must quote as a parting note, "Friendship is like money, easier made than kept."

- Samuel Butler

187. That said, this Court deems appropriate to order that plaintiff's suit for decree of specific performance be dismissed. Accordingly, the ex parte interim order dated 02.07.2007 and made absolute vide order dated 18.03.2009 is vacated. Consequentially, all interim applications if pending stand dismissed as infructuous. Keeping in mind the protracted trial and conduct of the parties, this Court further deems appropriate to order that the parties must bear their own costs. Decree sheet be drawn accordingly.

188. File be consigned to record room only after due compliance and necessary action.

HARGURVARINDER	Digitally signed by
SINGH JAGGI	HARGURVARINDER SINGH
	Date: 2020.07.29 14:1

Pronounced through Video  
Conferencing on July 29, 2020

(Hargurvarinder Singh Jaggi)  
Addl. District Judge-02  
South West District  
Dwarka Courts Complex, Delhi