

**(2012) 05 DEL CK 0651**

**Delhi High Court**

**Case No:** CS (OS) No. 1955 of 2009

S.B. Arora

APPELLANT

Vs

Mrs. Avtar Kaur  
Cheema and Others

RESPONDENT

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**Date of Decision:** May 4, 2012

**Hon'ble Judges:** Manmohan Singh, J

**Bench:** Single Bench

**Advocate:** S.M. Chugh, for the Appellant; Lalit Gupta, for D-1 and 2 along with defendant No. 1 in person and Ms. Shobhana Takiar, for D-3, for the Respondent

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### **Judgement**

Manmohan Singh, J.

The matter was listed before the Court on 17.04.2012 for framing of issues, when the learned counsel appearing on behalf of defendants No. 1 & 2 made the submission that the issues in the present case are not required to be framed and the suit itself can be disposed of in view of the facts stated by the defendants in the written statement and documents placed on record. After small hearing, the matter was adjourned to today. The direction was also issued that the plaintiff and defendant No. 1 would remain present before the Court in person. Today, the plaintiff and defendant No. 1 are present in Court. The plaintiff is a property dealer. Defendant No. 1 (widow) is more than 80 years old lady.

2. Order XV CPC provides that, "Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronouncement judgment." The Rule of this Order set-out a procedure where the Court may decide a claim or a particular issue without trial. I am of the considered view that the present case is a fit case in which this Court can exercise its discretion under the provisions of Order XV of CPC.

3. THE PLAINTIFF'S CASE

(a) The plaintiff filed the suit for specific performance of agreement dated 12.10.2006 against three defendants, namely, Mrs. Avtar Kaur Cheema, Jaindra Singh Cheema, and Paramjit Singh Cheema. The case of the plaintiff is that Late Shri Avtar Singh Cheema and defendants No. 1 to 3 were the joint owners of the office Flat No. 408, Prakash Deep Building, Tolstoy Marg, New Delhi. They jointly sold the said flat to the plaintiff by virtue of the agreement dated 12.10.2006. Defendants No. 1 & 2 along with the deceased Avtar Singh Cheema received a sum of Rs. 6 lac as advance money. The said defendants also delivered all the original documents of the said flat to the plaintiff.

(b) Later on, in January 2008, the plaintiff came to know that a suit for partition against Avtar Singh Cheema and defendants No. 1 & 2 was pending and there was an order of status-quo in respect of possession and title of the suit premises. The plaintiff thereafter wrote a letter dated 10.04.2008 to Sh. Avtar Singh Cheema and defendants No. 1 & 2 for cheating and concealing the order of this Court and extracting illegally the sum of Rs. 6 lac as part payment for the sale of respective shares in the suit property, i.e. 3/4th share. The legal notice was also issued by the plaintiff to the defendants on 09.07.2009. According to the plaintiff, no reply to the said notice was given. The plaintiff was always ready and willing to make the balance payment. As on today, the value of the flat is Rs. 90 lac. The failure on the part of the defendants to execute the sale documents in favour of the plaintiff caused a loss of Rs. 45 lac, as at the time of filing of the suit, the market value of the flat was Rs. 25,000/- per Sq. ft.

(c) Along with the suit, the plaintiff also filed the original documents, i.e. agreement to sell dated 12.10.2006, payment receipts of Rs. 5 lac and Rs. 1 lac respectively, original rent agreement dated 14.02.2001, Court order dated 20.04.2004 in Suit No. 2490/2004, copy of notice dated 09.07.2009 and the original sale documents of the property in dispute.

#### 4. DEFENDANT No. 1'S CASE

(a) Defendants No. 1 & 3 have filed their separate written statements. Defendant No. 2 adopted the written statement of defendant No. 1. The case of defendant No. 1 is straight and simple. It is stated in the written statement that the plaintiff has not come before this Court with clean hands and is guilty of concealment of material facts. The said defendant in order to establish her case, inter-alia, made the statement that the suit filed by the plaintiff is in gross abuse of the process of law and it has been filed by the plaintiff with ulterior motive of harassing defendant No. 1. The plaintiff, in fact, is a property dealer who is a extortionist and he had an evil eye on the property of defendant No. 1 who is more than 80 years old. The ultimate goal of the plaintiff is to force defendant No. 1 to sell her property to the plaintiff at throw away price and to extort money from her.

(b) The specific statement has been made by defendant No. 1 that the plaintiff never had requisite funds to complete the deal. Thereafter, at the request of the plaintiff, the refund of Rs. 6 lac was made to him in cash. Although defendant No. 1 was entitled to forfeit the said amount, despite of that the said amount was refunded by defendant No. 1 and Avtar

Singh Cheema to the plaintiff. The said refund was duly acknowledged by the plaintiff in writing vide receipt dated 26.08.2008, and the agreement dated 12.10.2006 thereafter was cancelled mutually.

5. I have examined the documents filed by the parties. The defendants have filed the original receipt regarding refund of the amount received by the plaintiff. The plaintiff, who is present in Court, has verified his signatures thereon and admitted the same. The submission of the learned counsel for the plaintiff is that the said money, no doubt, was received by the plaintiff but the same was received with regard to the different transactions, as the plaintiff earlier gave the said amount to the son of defendant No. 1. Hence, receipt issued by the plaintiff pertains to the said loan.

6. It is pertinent to mention here that said facts never mentioned in the plaint by the plaintiff in this regard. There is no whisper on behalf of the plaintiff that he has received Rs. 6 lac cash from defendant No. 1 on that account.

7. During the course of arguments, the plaintiff has admitted the receipt issued by him for Rs. 6 lac to defendant No. 1. Surprisingly, in the replication filed by the plaintiff, rather it is denied by him that the said amount was refunded to him. In the replication, it is stated by the plaintiff that defendant No. 1 has forged the receipt, and the said document is a forged one. The only justification after showing the documents to the plaintiff is given by his counsel that in the said receipt, the details of the property are not mentioned. After having examined the pleadings and documents, it is totally not possible to believe the story of the plaintiff. The fact of the matter is that the plaintiff has paid the sum of Rs. 6 lac towards the property in cash, and it is apparent that when the plaintiff came to know about the status-quo order passed by the Court with regard to the property, he wrote the letter dated 10.04.2008 and within about 4 months, the plaintiff has received the sum of Rs. 6 lac in cash. In case the plaintiff has received the said amount in different transactions, he ought to have mentioned the same in the plaint or clarified in the replication, rather in the replication, while dealing with the contentions of the written statement, the plaintiff had alleged that the said receipt is a forged document.

8. Under these circumstances, this Court is of the considered view that the suit filed by the plaintiff is false and frivolous and is bogus one and it has been filed against the defendants in order to harass defendant No. 1 who is a widow and old lady. The plaintiff is a property dealer. This Court expects that he should not have behaved with the senior person in this manner. He must respect for the truth. There is no merit in the suit. Hence, the same is dismissed with cost of Rs. 10,000/- which shall be deposited by the plaintiff with the Delhi High Court Legal Services Committee, within two weeks from today and the receipt thereof shall be filed on record, with an advance copy thereof to the learned counsel for the defendants.

9. As regard the return of original documents are concerned, liberty is granted to defendants to move the requisite application.

10. The defendant No. 1 is entitled to the costs. The pending applications also stand disposed of.