

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 11.07.2011
Judgment Pronounced on: 25.07.2011

+ **CS(OS) Nos. 234/1997 and 2226/2001**

AJIT SINGH GILL & ORS. Plaintiff

- versus -

ARVIND KHOSLA & ORS. Defendant

and

AJIT SINGH GILL & ORS. Plaintiff

- versus -

ARVIND KHOSLA & ORS. Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr Kirti Uppal with Mr. Mohd. Amanullah and Mr Pradeep Chandel, Advs.

For the Defendant: Mr M.S. Vinaik & Mr Pawan Kumar Aggarwal, Adv. for D-1
Mr. Kanchan Singh &
Mr Gurvinder Singh, Adv. for D-2

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

V.K. JAIN, J

1. Initially, Suit No. 234/1997 was filed by Shri Ajit Singh Gill, his wife and two sons on 3.2.1997 seeking permanent injunction restraining defendants No. 1, 3 & 4 from interfering with their possession of property No. 324, Sant Nagar, East of Kailash, New Delhi and taking its illegal possession from them. The plaint was thereafter amended so as to seek possession of the first, second and third floors of the aforesaid property from defendants No. 1, 3 and 4. They have also sought injunction, restraining defendants No. 1, 3 & 4 from interfering with their possession of the aforesaid property and taking its illegal possession from them. Suit No. 2226/2001 has been filed by them seeking an amount of Rs 32 lac as damages.

2. The case of the plaintiffs is that plaintiff No. 1, who is carrying the business under the name and style of “Simran Creations” took on rent the whole of property bearing No. 324, Sant Nagar, East of Kailash, comprising basement, ground floor, first floor, second floor and third floor, which was jointly owned by defendant Nos. 1 and 2,

from defendant No. 2 in January, 1996 at the rent of Rs 12,000/- per month. It is alleged that since arrears of Corporation Tax amounting to Rs 19.62 lac had accumulated in respect of the suit property and MCD had issued notice for its auction in order to recover its dues, the matter was discussed between defendant Nos. 1 and 2 and defendant No. 1 asked defendant No. 2 to explore the possibility of sale of the aforesaid property. Plaintiff No.1, who was a family friend of the defendants, was apprised of in this regard and he offered to purchase the property at the market price. Defendant No. 1 agreed to sell his share of the property to the plaintiffs and asked defendant No. 2 who held a Power of Attorney from him, to execute the sale deed on his behalf. Defendant No. 2, after informing defendant No. 1 in this regard, sold the suit property to the plaintiffs and executed sale deeds in their favour. The share of defendant No. 1 in the sale consideration, amounting to Rs 8,62,500/- was sent to him by post and was accepted by him.

3. It is further alleged that on 24th January, 1997, plaintiff No. 1 was informed that defendant No. 1 along with defendants 3 and 4 had forcibly removed the staff of

“Simran Creations” and locked the premises. On reaching Delhi on 29th January, 1997, plaintiff No. 1 visited the suit property and found anti-social elements sitting inside the gate. The police was called by him and on seeing the police personnel, those anti-social elements ran away, leaving one security man on the spot, who was taken to the police station. Defendants 1, 3 and 4 placed locks over the lock of plaintiff No.1 in order to obstruct his ingress and egress and also deployed anti-social elements outside the suit property.

4. In Suit No. 2226/2001, the plaintiffs have claimed a sum of Rs 25 lac being the interest @ 12.5% per annum from 26.01.1997 to 25.09.2001 on Rs 35 lac spent by them on purchase of the suit property and carrying out its renovation, etc., Rs 2 lac towards legal and professional fee to protect their legal claim in respect of this property and Rs 2.5 lac towards travelling expenses for coming to Delhi from Mumbai on various dates. They also claimed Rs 2.5 lac towards damages for mental agony undergone by them, thereby making a total sum of Rs 32 lac.

5. In her written statement, defendant No.2 Smt. Kusum Anjali has alleged that in or around June, 1980, the suit property was taken by her on rent from its then owner

Shri Amrik Singh Pasricha and it was being used by her for her business being carried under various names. It is, however, admitted that she along with defendant No.1, who is her brother, purchased the aforesaid property from Shri Amrik Singh Pasricha on 13.8.1987 vide documents viz. agreement to sell, receipt, registered Will and power of attorney. She has further stated that between August, 1987 and September, 1993 several firms, in which she as well as defendant No.1 were involved, were operating from the suit property. Differences arose between the partners of those firms and the business operations being carried in the suit property were stopped in September, 1993. A temporary agreement was arrived at in October, 1993 wherein it was agreed that she alone would utilize the premises and if she decided to sell out, the share of defendant No. 1, in the sale proceeds would be given to him. Pursuant to the aforesaid arrangement defendant No.1 shifted his business from the suit property and whole of it came in her exclusive possession. The premises was let out by her to M/s P&P Overseas between July and December, 1995 and came to be vacated by the aforesaid tenant on or around 23.12.1995. She then leased out the entire premises to plaintiff No. 1

between January and June, 1996. She has further alleged that since municipal taxes were not paid, more than Rs.19 lac were being claimed by MCD towards arrears of taxes. In June, 1995, an auction notice was issued by MCD for auction of the suit property in order to recover the arrears of property tax. Defendant No.1 expressed his inability to contribute towards payment of property tax and asked her to explore all possible avenues including sale of the property. On 15.6.1996, she sold this property to the plaintiffs, to the knowledge of defendant No.1.

The share of defendant No.1 in the sale consideration was also sent to him by pay orders along with a letter dated 17.6.1996.

6. Defendant No.1, who is the main contesting defendant, has alleged that the plaintiff No. 1 and defendant No.2 were acting in collusion with each other so as to deprive him of his rights in the suit property. It is alleged that on purchase of the suit property from Shri Amrik Singh Pasricha, defendants No. 1 & 2 were using it for business activities of their business concerns viz. Humming Bird Pvt. Ltd., Ladybird Clothing and International Merchandising. It is also alleged that first, second and third floors of the suit

property were always in occupation of defendant No.1, who had put his lock on the entrance of the aforesaid floors and after closure of the business, it was mutually agreed that defendant No.2 would utilize the basement and ground floors for running the business of her firms whereas defendant No.1 would utilize the first, second and third floors. Defendant No.1 has denied the alleged tenancy agreement in favour of plaintiff No. 1 Shri Ajit Singh Gill and has claimed that the documents were manufactured solely with a view to show possession of the plaintiffs in respect of the entire property. It is further alleged that on 24.1.1997 defendant No.1 while visiting the suit property noticed change in the locks and put his own lock at the entrance door in addition to the replaced lock. He also lodged a report with the police expressing apprehension of his dispossession. It is also claimed that the alleged transaction of sale between the plaintiffs and defendant No.2 was only a paper transaction and there has been transfer of funds between the plaintiffs and defendant No.2. As regards the power of attorney alleged to have been executed by him in favour of defendant No.2, the case of defendant No.1 is that it is a forged and fabricated

document. As regards the deposit of Rs.8,62,500/- in his account, defendant No.1 has claimed that he came to know of the deposit only on 19.12.1996 and on the very same date he reported the matter to the police informing it about the aforesaid deposit. It is further alleged that defendant No. 1 wrote to his bank seeking a clarification with respect to these deposits. His bank was informed by Union Bank of India that the drafts deposited in the account were issued by their Napean Sea Branch, Bombay. When bank of defendant No.1 enquired from Union Bank of India, Napean Sea Branch vide letter dated 26.12.1996, it was informed that the drafts were purchased by one Mr. Ajit Singh Gill.

7. Defendant No.1 has also filed a counter claim seeking a decree for declaration that the sale deed dated 15.6.1996 executed by defendant No.2 on his behalf is collusive, fraudulent, illegal and void.

8. The following issues were framed in CS(OS) No.234/1997:

1. Whether four sale deeds dated 15th June, 1996 relating to the suit property were validly executed by defendant No.2 in favour of the plaintiffs and defendant No.2 was duly authorized and competent to execute the same for and on behalf of defendant No.1? If not, its effect? – OPP

2. Whether the amount of Rs.8,62,500/- representing his share of sale consideration was deposited in the bank account of defendant No. 1 without his knowledge? If not, its effect? – OPD-1
3. Whether the suit property is properly valued for the purpose of court fee and jurisdiction? – OPP
4. Whether the plaintiffs are entitled to recover possession of first, second and third floors of the suit property in view of averments made in the plaint? OPP
5. Relief.

Counter Claim

1. Whether the defendant No. 1 is entitled to the relief of declaration as prayed for? If not, its effect? – OPD-1

The following issues were framed in CS(OS) No. 2226/2001:

1. Whether the plaintiff has no cause of action to maintain the present suit against the defendants?
2. Whether the present suit is liable to be stayed under Section 10 CPC in view of the pendency of the earlier suit bearing No. 234/1997?
3. Whether the plaintiff is entitled to any damages from the defendants and, if so, to what extent?
4. Whether the plaintiff is entitled to any interest and, if so, at what rate, for what amount and for which period?

5. Relief.

ISSUE NOS. 1, 2 & 4 in Suit No. 234/1997 and Issue No. 1 in the Counter Claim

9. The plaintiffs have filed the affidavit of plaintiff No. 1 Mr. Ajit Singh Gill by way of evidence and have also produced three more witnesses. In his affidavit by way of evidence, plaintiff No. 1 Mr. Ajit Singh has supported on oath, the case set up in the plaint and has stated that the entire suit property was taken by him on rent from defendant No.2 in January, 1996 vide agreement dated 3.1.1996 Exh. P-95. He has stated that defendant No. 1 agreed to sell his share to him and informed defendant No. 2 that since he might not be readily available, she (defendant No.2) should execute the sale deed on his behalf as she also held power of attorney executed by him in her favour and the suit property was accordingly sold to them. He has further stated that on 24.1.1997 he was informed by his local manager Mr. Harvinder Singh that defendant No.1 along with defendants No. 3 & 4 had forcibly removed their staff and locked all the rooms of the building by putting his new locks. The main entrance was also locked by him. Mr. Harvinder put his lock over their lock. When he came to

Delhi on 29.1.1997 and visited the suit property, he found bad elements sitting inside the gate and informed the police. In the meantime defendants No. 1, 3 & 4 also reached there. They also placed locks over the locks of the plaintiffs. The matter was reported by him to the police on 1.2.1997.

10. PW-2 Mr. Sanjay Rawat is an official in the office of Sub-Registrar who produced the sale deeds Exh. PW-2/1 to PW-2/4. PW-3 is an official from State Bank of India, Lajpat Nagar, who has produced the copy of Account Opening Form in respect of account of the plaintiff No. 1 with SBI, Lajpat Nagar and has also produced the copy of the statement of his bank account. PW-4, an official from MCD, has produced the copies of demand and collection registers for the years 1994-97, 2000-03 and 2003-04.

11. In her affidavit by way of evidence, defendant No.2 – Ms.Kusum Anjali has stated that the suit property was taken on rent by her from Shri Amrik Singh Pasricha in June, 1980 and was being used by her for her business purposes, till the time it was purchased on 13.08.1989. She has further stated that after purchase of the suit property, she as well as defendant No.1 were operating from these premises and were carrying business under the

names of M/s. Jordan Fashions, M/s. Creative M/s. Fashions and M/s. Humming Bird Private Limited, M/s. International Merchandising and Ladybird Clothing. She has also stated that the business operations were stopped in September, 1993 as disputes arose between the partners of the aforesaid firms. According to her, a temporary arrangement was arrived at between the two groups wherein it was agreed that she alone would utilize the suit premises and if she decided to sell it, the share of defendant No.1 in the sale proceeds would be given to him. Pursuant to the aforesaid arrangement, defendant No.1 shifted his business to another premises and possession of the entire suit premises thereafter remained with her.

She has claimed that the suit premises was let out by her to M/s P&P Overseas vide agreement dated 1st July, 1995. In or around 23rd December, 1995, M/s P&P Overseas vacated the premises and it was thereafter let out by her to plaintiff No. 1 between January, 1996 and June, 1996. She has further stated that since arrears of tax were not paid to MCD, auction notice was issued by it. When she discussed the matter with defendant No. 1, it was decided to sell the suit property and accordingly this property was sold by

defendant No.2 on 15th June, 1996 with the knowledge and consent of defendant No.1. She has alleged that the share of defendant No. 1 in the sale proceeds was sent to him by way of pay orders along with her letter dated 17th June, 1996 Ex.D-2/62. She has further stated that the sale deed in respect of the suit property was executed in Mumbai as plaintiff No. 2, who is the wife of plaintiff No. 1, was a serious heart patient and was advised not to travel.

12. D2W2m Shri Hominder Bhardwaj is an attesting witness to the power of attorney dated 16.11.1987 purporting to be executed by Shri Arvind Khosla in favour of defendant No. 2 Ms. Kusum Anjali. He has stated that the aforesaid power of attorney was executed and signed by defendant No. 1 in his presence, and in the presence of another person Ms. Suman Sehgal. D2W3 Mr. Ujjwal Kumar Mishra is Deputy Manager of State Bank of India, Lajpat Nagar who has produced a copy of the letter written by SBI, Lajpat Nagar, New Delhi to M/s. Ladybird Clothing and copies of statement of account in respect of M/s. Ladybird Clothing, M/s. International Merchandising, M/s. Humming Birds Pvt. Ltd. and defendant No. 2 Ms. Kusum Anjali.

13. In his affidavit by way of evidence defendant No. 1, Shri Arvind Khosla has stated that suit property was being used by him and defendant No. 2 for the activities of their family business. He has further stated that in September, 1993 disputes arose between him and defendant No. 2 and it was agreed that the basement and ground floor would be used and occupied by defendant No. 2 whereas he would use and occupy first, second and third floor portions. They accordingly locked their respective portions of the suit property whereas the main entrance was locked with a common lock. He has also stated that plaintiff No. 1 had opened two accounts in January, 1996 giving the residential address of defendant No. 2 Smt. Kusum Anjali as his business address and agreement dated 3.1.1996 was created by him in connivance with defendant No.2. According to him, plaintiff No. 1 was never inducted as a tenant in any portion of the suit property. He has claimed that the power of attorney dated 16.11.1987 purporting to be executed by him is a forged and fabricated document. He has further stated that on 18.12.1996 his manager Mr. R.B.Unni Krishnan informed him about deposit of Rs. 8,62,500/- in his account on 30.8.1996. He thereupon

visited the bank on the next day and made enquiry in this regard. He was informed that 04 cheques/Demand Drafts of Union Bank of India, Napean Sea Branch were deposited in his account on 29.8.1996. Assuming that this could be some mistake/error, he submitted an application requesting the bank to rectify the error and also lodged a complaint with the police, seeking necessary legal action. He has further stated that when he visited the suit property on 24.1.1997 he found that the common lock on the main entrance had been replaced by another lock. He therefore put another lock on the main entrance and also informed the police in this regard. As regards the sale deeds dated 15.6.1996, he has claimed that they are sham and fraudulent transactions. He has also stated that as against one cheque of Rs.2,17,500/- credited to her account on 23.7.1996, defendant No. 2 transferred a sum of Rs.2 lac to the account of the plaintiff No. 1 on 25.7.1996. As against the remaining three cheques credited in her account on 25.9.1996, she transferred Rs.4 lac on 4.10.1996 and Rs.3 lac on 5.10.1996 to the account of the plaintiff No.1. He has also claimed that the prevalent market price of suit property was more than Rs.1,20,00,000/- at the time of

alleged sale.

14. Vide order dated 07.02.1997, Shri B.L.Wali, Advocate, was appointed as Local Commissioner to find out as to who was in possession of the suit property and whose articles were lying therein. When he reached the suit property, the main gate was not found locked, though it was latched from inside. The Local Commissioner prepared inventory of the articles found in room No.1 which was stated to be the reception and room No.2 which was next to the reception. He could not open rooms No.3 & 4 since keys of one lock each put on those rooms was not available with the parties. Out of the four locks found on room No.3, three locks were opened by the plaintiffs, whereas the fourth lock could not be opened. The locks opened from the keys provided by the plaintiffs included the lock permanently fixed on the main door of the room (night latch). Three locks were found on room No.4 out of which two including night latch permanently fixed on the main door, was opened by the plaintiffs. The third lock, however, could not be opened. A new lock was thereafter put by the Local Commissioner on the main gate of the premises. He also took photographs of the site and submitted them along with

his report.

The Local Commissioner again visited the suit property in compliance of the order passed by this Court on 05.05.1997. The locks which had been put on rooms No.3 & 4 and which could not be opened on 08.02.1997, were broken in the presence of the parties. One lock was thereafter opened by defendant No.1 with the help of a key. The Local Commissioner prepared an inventory of the articles lying in room No.3 & 4. The Local Commissioner found that the basement of the suit property comprised of six rooms besides one generator room and a toilet. Locks of room A & B of the basement were opened by an employee of 'Simran Creations'. No locks were found on rooms C & D. The lock of the first floor leading to room A was opened by defendant No.1. The lock of the second floor was also opened by defendant No.1. The lock of the room on the terrace floor, however, was opened by an employee of the plaintiff.

15. The case of the plaintiffs and defendant No. 2 is that the whole of property No. 324, Sant Nagar, East of Kailash, New Delhi was let out to defendant No. 1 in January, 1996 and this is also the case of defendant No. 2

that M/s P&P Overseas was the tenant in respect of the whole of this property before it was vacated by them on 23rd December, 1995 and it was let out to plaintiff No. 1. Admittedly, the suit property was jointly owned by defendants No. 1 and 2, who purchased it from Shri Amrik Singh Pasricha in November, 1987. This is not the case either of the plaintiffs or of defendant No. 2 that the joint ownership of the suit property was not in the knowledge of plaintiff No.1, who even otherwise, claims to be a family friend of both the defendants and, therefore, must be knowing that the suit property is jointly owned by them. Since the suit property was jointly owned by the defendants, it could have been let out only by both of them or by one of them with the consent/permission of the other. A jointly owned property cannot be let out by one of the co-owners, without permission/consent of the other co-owner and if this is done, the tenancy created by one of the co-owners would not bind the other co-owner. This is not the case of defendant No. 2 that the suit property was jointly let out by her and defendant No. 1 to plaintiff No. 1. This is also not her case that she had let out the property to plaintiff No. 1 with the permission/consent of defendant No. 1. In her

cross-examination, defendant No.2 has admitted that defendant No.1 never authorized her to induct plaintiff No.1 as a tenant to the suit property. Defendant No. 2 Kusum Anjali when asked as to on whose behalf she had inducted plaintiff No. 1 as tenant in the suit property, stated that she had inducted him as a tenant since she held Power of Attorney on behalf of Shri Amrik Singh Pasricha. When asked as to whether the plaintiff No. 1 was inducted as a tenant on behalf of defendant No. 1 as well, she stated that there was no question of plaintiff No. 1, being inducted as tenant on behalf of defendant No. 1 as she was holding Power of Attorney on behalf of Shri Amrik Singh Pasricha to rent out the property. Though in the later part of her statement, she stated that she has apprised defendant No. 1 about it sometime in the first week of January, 1996, she did not claim that the tenancy was created with the prior approval/consent of defendant No. 1. In any case, there is no evidence of defendant No. 1 having consented to plaintiff No. 1 being inducted as a tenant in the suit property. No rent is alleged to have been paid by plaintiff No. 1 to defendant No. 1. The rent receipts filed by the plaintiffs purport to have been executed only by defendant No. 2, Ms.

Kusum Anjali.

This is also not the case of defendant No. 2 that she had inducted plaintiff No. 1 as a tenant in exercise of the authority given to her by defendant No. 1 vide Power of Attorney dated 18th November, 1987 (Ex. PW-1/X1). She claims to have acted pursuant to the Power of Attorney executed by the previous owner Shri Amrik Singh Pasricha in her favour. Since the suit property had already been sold by Shri Amrik Singh Pasricha to defendants way back on 13th August 1987, defendant No. 2 had no right in law to let it out to plaintiff No. 1, on the strength of the Power of Attorney executed by the previous owner Shri Amrik Singh Pasricha in her favour. A perusal of the rent deed, purporting to be executed by defendant No. 2 in favour of plaintiff No. 1 also indicates that the alleged letting out was only by defendant No. 2 and not on behalf of both the defendants. Had plaintiff No. 1 taken the suit property on rent from both the defendants, he would have paid rent to both of them and not only to defendant No. 2 Kusum Anjali. This is yet another indicator that defendant No. 1 was not a party to the tenancy, alleged to have been created in favour of plaintiff No. 1

16. There is no evidence of defendant No. 2, being in exclusive possession of the suit property under an arrangement with defendant No. 1, at the time tenancy is alleged to have been created in favour of plaintiff No. 1. It is an admitted case that defendants No. 1 and 2 were carrying business in partnership under various business names such as M/s. Jordan Fashions, M/s. Creative Fashions and M/s. Humming Bird Private Limited, M/s. International Merchandising and M/s. Ladybird Clothing. This is also an admitted case that disputes and differences arose between defendants No. 1 and 2 in the year 1993, consequent to which business operations in the suit premises were stopped. The case of defendant No. 2 is that in or around 1993, a temporary arrangement was arrived at between two groups and it was agreed that she alone would utilize the premises. The case of defendant No. 1, on the other hand, is that as per a mutual agreement between him and defendant No. 2, it was agreed that he would occupy the basement and ground floor, whereas, she would occupy the first, second and third floor of the suit property. There is no documentary or independent evidence either of the arrangement, claimed by defendant No. 2 or of the arrangement claimed by

defendant No. 1. Even otherwise, as far as the arrangement pleaded by defendant No. 2 is concerned, that appears to be quite improbable and unnatural. Since the suit property was jointly owned by defendants No. 1 and 2 in equal shares and the relations between them had become strained to such an extent that joint business which they were carrying had to be stopped, there could have been no reason for defendant No. 1 to agree to defendant No. 2, coming into exclusive possession of the whole of the suit property. No co-owner is likely to enter into such one sided arrangement and this is more so when the relations between the co-owners were far from cordial. Therefore, it is difficult to accept that defendant No. 2 was in exclusive possession of the whole of the suit property in January, 1996, under an arrangement with defendant No. 2 and, therefore, she could not have validly transferred the possession of the whole of the suit property to plaintiff No. 1. I, therefore, have no hesitation in holding that the alleged tenancy in favour of plaintiff No. 1 was not created with the consent of defendant No. 1 and, thus, is not binding on him.

17. There are umpteen circumstances which indicate that there was no bona fide agreement of tenancy created

between defendant No. 1 and plaintiff No. 1. As per clause 10 of the Tenancy Agreement dated 3rd January, 1996, defendant No. 1 paid an advance of Rs 36,000/- and a security deposit equivalent to six months' rental. The security deposit was to be returned on determination of the tenancy after adjustment of arrears, if any. In his cross-examination, plaintiff No. 1 stated that he paid Rs 72,000/- as security by way of a cheque in January, 1996. However, there is no documentary proof of any such payment having been made by cheque. According to plaintiff No. 1, the security deposit was subsequently refunded to him by way of a business adjustment as he had purchased some goods from defendant No. 2 and Rs 72,000/ was adjusted. However, in their replication, the plaintiffs have emphatically claimed that they had no business dealings with defendant No. 2. In fact, in his cross-examination dated March 28, 2008, plaintiff No. 1 was unable to recollect any monetary transaction with defendant No. 2 other than the sale of the suit property. It has also been admitted by plaintiff No. 1 that he never tendered any rent to defendant No. 1 at any point of time. No reason has been given by plaintiff No. 1 for not paying or even tendering half of either

the security deposit or the rent to defendant No. 1, despite his being a co-owner of the suit property. In his cross-examination, plaintiff No. 1 has admitted that he had opened two bank accounts at the residential address of defendant No.2. These bank accounts, according to plaintiff No. 1, were opened in January, 1996. These accounts were introduced by defendant No. 2, as admitted in her cross-examination. Plaintiff No. 1 has not given the date of opening the bank accounts at the residential address of defendant No. 2. If the suit property had been taken on rent on 03rd January, 1996, as is claimed by the plaintiffs, there could be no occasion for him to give the residential address of defendant No. 2 while opening the bank accounts, unless the accounts were opened on 1st or 2nd January, 1996 and the opening of the accounts was so urgent that the plaintiff No. 1 could not have waited till 03rd January, 1996 so as to give correct address of the account holder to the bank. Ordinarily, the account of a business firm is not opened at the residential address of an outsider when the firm has never carried business at that address. If the tenancy was created with effect from 03rd January, 1996, the negotiations must have been taken place a few days before

that date and, therefore, plaintiff No. 1 would be knowing that he was going to take the whole of the suit property on rent and in that case, he would have liked to defer the opening of the bank account till 03rd January instead of opening it on 1st or 2nd January so that he could give correct address of the firm to the bank. This is yet another circumstance which shows that no bona fide tenancy was created by defendant No.2 in favour of plaintiff No. 1. Ex. P-36 and P-42 are the affidavits sworn by defendant No. 2 on 29th October, 1996. In para 1 of affidavit, she specifically stated that she was lawful occupant of Property No. 324, Sant Nagar and was having a domestic connection in her name. She requested DESU to sanction domestic load on 1 KW and domestic power load of 5 KW for the purpose of cooling and heating and undertook that electricity supply will be used for the purpose for which it had been sanctioned and not for manufacturing purpose. If defendant No.2 had let out the whole of the suit property to plaintiff No. 1 on 3rd January, 1996, for commercial purpose, there could be no question of her stating, on oath, in October, 1996 that she was a lawful occupant of the suit property and seeking enhancement of the load for residential

purpose. This circumstance also points out that no bona fide tenancy was created by defendant No. 2 in favour of plaintiff No. 1.

18. The case of the plaintiffs and defendant No. 2 is that the whole of the suit property was let out to plaintiff No. 1 on 03rd January, 1996 and, thereafter sold to the plaintiffs in January, 1996. This is not the case either of the plaintiffs or of defendant No. 2 that only a part of the suit property was let out to plaintiff No. 1 and a part was retained by defendant No. 2 with her. When the Local Commissioner carried out the inspection on 18th May, 1997, in the presence of the parties, he found voluminous record of the joint firms of defendants No. 1 and 2 in the premises.

These were:

- i. records of Humming Bird, International Merchandising Provident Fund File (11 in number) from 1985 to 1993.
- ii. Records of Jordan Fashion (Sundry files) of Ladybird Clothing etc.
- iii. Export samples, handicraft wooden (which were lying in a drawer and whose lock was opened/closed by the employee of the plaintiffs Mr.Tulsi.
- iv. Nine registers of Creative Fashions from 1984 to 1993 regarding salary/attendance register.
- v. Five registers form the year 1989 to 1993 pertaining

to International Merchandising.

- vi. Twelve registers of Hamingbird Pvt. Ltd. from the year 1982 to 1993.
- vii. Seven registers of Jordan Fashions from the year 1985 to 1993.
- viii. Records of Hamingbird International Merchandising Provident Fund File (11 in number) from 1985 to 1993.
- ix. Records of Jordan Fashion (Sundry files) of Ladybird Clothing Etc.
- x. Nine registers of Creative Fashions from 1984 to 1993 regarding salary/attendance register.
- xi. Five registers from the year 1989 to 1993 pertaining to International Merchandising.
- xii. Twelve registers of Hamingbird Pvt. Ltd. from the year 1982 to 1993.
- xiii. Seven registers of Jordan Fashions from the year 1985 to 1993.

It would be appropriate to note here that according to defendant No.2, the whole of the suit property had been let out to M/s P&P Overseas before it was then let out to plaintiff No. 1. Defendant No.2 has not examined anyone from P&P Overseas to prove that the suit premises had been let out by her to them and was vacated by them in December, 1995. Had the whole of the suit property been let out either to M/s P&P Overseas or to plaintiff No. 1, the

voluminous record of the joint firms of defendants No. 1 and 2, would not have been found lying there at the time of the inspection by the Local Commissioner. This is one more circumstance which shows that the plea taken by the plaintiffs and defendant No. 2 in this regard is not true.

19. Since plaintiff No.1 knew it very well that the suit property was jointly owned by defendants No. 1 and 2, he would have negotiated with both of them and not only with defendant No. 2, if he was to take the suit property on rent. Since plaintiff No. 1 claims to be a family friend of defendants, there could have been no difficulty in his speaking to defendant No. 1 in this regard before taking the property on rent. In fact, the stand taken by plaintiff No. 1 in his cross-examination that defendant No. 1 did not have the authority to give the suit premises on rent as only defendant No. 2 had the General Power of Attorney. This stand taken by plaintiff No. 1 is wholly untenable since the property had been purchased by the defendants way back in August, 1987 and, in fact, plaintiff No. 1 expressly admitted in his cross-examination dated 10th October, 2007 that after 13th August, 1987, Shri Amrik Singh Pasricha did not have any right to give the premises on rent or to sell the same. If

as per the understanding of plaintiff No. 1, Shri Amrik Singh Pasricha did not have any right to let out the suit property after 13th August, 1987, he could not have acted on the assumption that his attorney defendant No.2 Kusum Anjali had the authority to let it out without permission of defendant No. 1, who was the other co-owner of the property.

20. The next question which comes up for consideration is as to whether the transaction between the plaintiffs and defendant No. 2, to the extent it pertains to the sale of the share of defendant No. 1, was a genuine and bona fide transaction or the sale deed to that extent was a sham and fraudulent document having been executed by defendant No. 2 in connivance with the plaintiffs with a view to deprive defendant No. 1 of his share in the suit property.

21. The sale deeds in favour of the plaintiffs have been executed by defendant No.2 alone and defendant No.1 is not a party to them. Defendant No.2 has executed the sale deeds on her behalf as also in her capacity as the attorney of defendant No.1. The case of the plaintiffs and defendant No.2 is that while executing the sale deeds on behalf of defendant No.1, defendant No.2 was acting in exercise of the

authority given to her by defendant No.1 vide Power of Attorney dated 18.11.1987 (Ex. PW-1/X-1). The Power of Attorney, which has been denied by defendant No.1, is rather short and cryptic and reads as under:-

“I, Arvind Khosla hereby through this Power of Attorney authorize my sister Kusum Anjali to conduct all real estate transaction on my behalf. Hence, she is authorized to buy and sell and sign papers on my behalf, should I not be present.”

It is evident from a bare perusal of this document that defendant No.2 could have bought and sold real estate and signed papers on behalf defendant No.1, only in his absence. If defendant No.1 was available for selling his property and/or executing the documents pertaining to the transaction entered into by him, defendant No.2 could not have acted on his behalf. This is not the case either of the plaintiffs or of defendant No.2 nor have they led any evidence to prove that defendant No.1 was not available when the plaintiffs entered into the transaction of sale of the suit property. If defendant No.1 was available and, therefore, could himself have entered into a transaction to sell the suit property, defendant No.2 was not competent to sell his share in the suit property to the plaintiffs. In her

cross-examination, defendant No.2 has admitted that it was never agreed between her and defendant No.2 that she would be entitled to sell the suit property on her own.

22. In **Azam Khao vs. S.Sattar**, AIR 1978 Andhra Pradesh, 442, the Power of Attorney empowered the agent to do acts and carry on his money lending business and to do all other acts in that behalf in absence of plaintiff from India. It was held that the power given to the agent stood impliedly revoked because of the fact that it was executed only when the plaintiff returned to India. The same principle applies to the present case and, therefore, defendant No.2 had no authority either to agree to sell the share of defendant No.1 or to execute sale deed on his behalf, since he was very much available at the time she claims to have negotiated the deal with the plaintiffs as well as at the time the sale deeds were executed at Mumbai. Similarly, defendant No.2 was not competent to execute the sale deeds on behalf of defendant No.1 in case he was available to execute the document.

23. The sale deeds have been executed and got registered at Mumbai though the suit property is situated in Delhi. The is not the case of any party that defendant No.1

was out of the country or even out of the town when the sale deeds were executed at Mumbai. There is no credible evidence to prove that defendant No.1 was not available for going to Bombay to execute the sale deeds. This is not the case of defendant No.2 that she had requested defendant No.1 to accompany her to Bombay to execute the sale deeds in favour of the plaintiffs.

24. In his cross-examination, plaintiff No.1 stated that he had asked defendants No.1 & 2 to come to Bombay for registration of sale deed but defendant No.1 told him that since he has executed a Power of Attorney in favour of defendant No.2 and since Shri Amrik Singh Pasricha also had executed a Power of Attorney in her favour, he need not come to Bombay for this purpose. However, when defendant No.1 was cross-examined, no such suggestion was given to him either by the plaintiffs or by defendant No.2. In fact, when plaintiff No.1 was asked as to whether he was suggesting that availability of defendant No.1 to visit Bombay in June 1996 was not an issue, the witness answered in the affirmative.

Since the plaintiffs and defendant No.2 have failed to prove that defendant No.1 was not available for

negotiating with the plaintiffs for the sale of his share in the suit property nor have they been able to prove that he was not available for execution of the sale deeds, defendant No.2 was not competent in law to execute the sale deed on his behalf and consequently the sale deeds executed by her are not binding on defendant No.1 and do not affect his right, title and interest in the suit property.

25. As noted earlier, it was very well known to plaintiff No. 1 that the suit property was jointly owned by the defendants. It is also an admitted case that disputes and differences had arisen between the defendants way back in the year 1993 to such an extent that they had stopped the business which they were jointly carrying in different names. Even the notice with respect to demand and house tax by defendant No. 2 to defendant No. 1, was sent by post despite his being the real brother of defendant No. 2 and being a resident of Sector 15A, Noida, which is a sector, adjoining Delhi-U.P. border. Despite the suit property being jointly owned by the defendants and the relations between them being far from cordial, there is no evidence of any negotiations between the plaintiffs and defendant No. 1 with respect to the sale of the suit property. This is not the case

of the plaintiffs that they had negotiated with defendant No. 1 for purchase of the suit property. This is also not their case that there was a joint meeting between them and the defendants, wherein negotiations took place for the sale of the suit property to them. This is also not the case of defendant No. 2 that she had informed defendant No. 1 that she was selling the suit property to the plaintiffs total sale for consideration of Rs 17,25,000/-. In the normal course of human conduct, if a property is jointly owned by two persons, the purchaser would negotiate with both of them and not only with one of them. This is more so, when the relations between the sellers are not cordial. If defendant No. 1 was to sell his share in the suit property, he would have negotiated directly with the plaintiffs, particularly for the purpose of fixing the sale consideration and the schedule of payment. It is difficult to believe that defendant No. 1 authorized defendant No. 2 to sell his share in the suit property, without even ascertaining the price at which the property was to be sold. If he were to sell his share in the suit property, defendant No. 1 would have ascertained the prevailing market value of the property from property dealers or some other relevant source before entering into

any sale transaction, instead of just asking defendant No. 2 to sell his share as well, without taking trouble even to ascertain the price at which the property was to be sold and verifying whether that price reflected true market value of the property or not. The sale of an immovable property being a very important transaction and the stakes in such transactions being quit high, it is difficult to accept that defendant No. 1 had given a blanket authority to defendant No. 2 to sell his share in the suit property, without ascertaining, who the buyer was, at what price the property was to be sold and what market value of the property at that time was.

26. The case of the plaintiffs and defendant No. 2 is that the share of defendant No. 1 in the sale consideration was paid to him by way of four pay orders/bank drafts, which were delivered to defendant No. 2, who sent them to defendant No. 1 by registered post, whereas the share of defendant No. 2 in the sale proceeds were given to her by way of cheques. No reason has been given by the plaintiffs for not delivering the pay orders directly to defendant No. 1, instead of handing them over to defendant No. 2. This becomes important as the relations between the defendants

were not at all cordial and this is the case of the plaintiffs as well as defendant No. 2 that defendant No. 1 was not even ready to contribute his share in the arrears of property tax which were payable to MCD. This is a circumstance which indicates that the sale transaction took place at the back of defendant No. 1 and without his consent or knowledge.

27. The case of defendant No. 1 is that the pay orders in the name of defendant No. 1 were sent to him by registered post. No reason has been given by defendant No. 2 for not delivering the pay orders directly to defendant No. 1, instead of sending them by post. In the ordinary course of human conduct, she would have personally delivered the pay orders to defendant No. 1 if she had sold the property with his consent and would not have taken the risk of the pay orders getting lost in transit when sent by post. This is one more circumstance which indicates that the sale consideration was not with the consent or knowledge of defendant No. 1.

28. Defendant No. 2 has filed the copy of a letter, alleged to have been written by her to defendant No. 1 on 17th June, 1996 Pay Orders are alleged to have been enclosed to this letter. Defendant No. 2 has also filed the

postal receipt, whereby this letter is alleged to have been sent to defendant No. 1. However, she has not produced the person who delivered the letter to the post office for onward transmission to defendant No. 1 and admittedly she herself did not deliver the letter to the post office. The postal receipt does not bear the complete address of defendant No. 1, only the name Arvind Khosla and Noida having been written on the receipt. Defendant No. 1 has stated, on oath, that he never received either this letter or the pay orders. Considering the fact that the postal receipt does not bear either the house number or the sector number of Noida, where defendant No. 1 was residing and defendant No. 2 has not produced the person who delivered the letter to the post office, I am not inclined to draw the statutory presumption of service of this letter on defendant No. 1. The statutory presumption would have been possible only if full address of defendant No. 1 was written on the postal receipt.

29. A perusal of the statement of account in which these pay orders were deposited would show that the pay orders were deposited in the account of defendant No. 1 on 30th August, 1996. Had the suit property been sold with

the consent or knowledge of defendant No. 1, there could have been no reason for him to keep the pay orders with him for more than two months, before depositing them in the bank. Defendant No. 1 had nothing to gain by keeping the pay orders of Rs 8,62,500/- with him for more than two months. He only would have incurred loss of interest for more than two months by delaying the deposit of these pay orders in his account. The alleged delay between despatch of these pay orders and their deposit in the bank account of defendant No. 1 indicates that defendant No. 1 was, in fact, not aware of the deposit and someone surreptitiously deposited these pay orders in his account. Another circumstance, which indicates that defendant No. 1 was not aware of deposit of these pay orders, is the cash deposit of Rs 3,000/- made by him in that account on 10th October, 1996. Had defendant No. 1 himself deposited the pay orders of Rs 8,62,500/- on 30th August, 1996, there would have been no occasion for him to deposit Rs 3,000/- in case in the same account on 10th October, 1996. This is another circumstance which indicates that the sale transaction was not in the knowledge of defendant No. 1 and the pay orders were not deposited by him.

30. Ex.D-1W1/2, is the letter, written by defendant No. 1 to State Bank of India, Ring Road, Lajpat Nagar, informing him that on 18th December, 1996, that he had sent his accountant to the bank to confirm the credit of draft of Rs 1,36,350/-and his accountant informed him that besides the amount of Rs 1,36,350/-, there was another heavy credit in his account. He further informed the Bank Manager that on enquiry from the bank, he was surprised to learn that on 30th August, 1996, four cheques of Union Bank of India, drawn on Napean Sea RoadBranch, Mumbai for a sum of Rs 8,62,500/-, had been credited to his account. He further stated that these drafts/cheques were not deposited by him or under his instructions and there was some apparent mistake/error which the bank should rectify. He also lodged a complaint with SHO, Police Station Lajpat Nagar on the same day, informing him about the aforesaid deposit in his account and requesting him to register a case, investigate the matter and take appropriate legal action. The conduct of defendant No. 1 in writing to the bank as well as to the police on 19th December, 1996 is yet another proof that neither the sale transaction nor the deposit of the pay orders was in his knowledge.

31. As noted earlier, the share of defendant No.2 in the sale consideration is stated to have been paid to her by four cheques at the time of registration of the sale deed on 15th June, 1996. In her cross-examination, defendant No. 2 has admitted that she deposited the first cheque in her account on 23rd July, 1996 and the remaining three cheques were negotiated by her on 25th September, 1996. There is no plausible explanation for defendant No. 2, retaining the cheques with her and thereby, incurring loss of interest which she would have earned by depositing the cheques immediately on receiving them from the plaintiffs. In her cross-examination, defendant No. 2 stated that the cheques were withheld by her at the instance of the plaintiff No.1. She claimed that the cheques were withheld as she had committed to plaintiff No.1 that she would not encash them till all the problems of MCD were sorted. Plaintiff No. 1, on the other hand, has denied that the presentation of these cheques was deferred by defendant No. 2 on his request. The case of the plaintiffs is that the dues of MCD were to be paid by them in addition to the sale consideration of Rs 17,25,000/- which they paid to the defendants. If that be so, there could have been no reason for defendant No. 2 to

defer the deposit of cheques till the issue of property tax with MCD was finally settled. The case of defendant No. 1 is that the plaintiffs did not have enough credit balance in their account when these cheques were issued. No evidence has been led by the plaintiffs to prove that they had sufficient balance in their account when they issued these cheques to defendant No. 2. No bank statement had been filed by them. Hence, the plea taken by defendant No. 1 in this regard cannot be said to be altogether unfounded.

32. There is one withdrawal entry of Rs 4,00,000/- dated 04th October, 1996 and one withdrawal entry of Rs 2 lakh dated 05th October, 1996 in the account of defendant No. 2. In her cross-examination, defendant No. 2 first expressed ignorance when asked as to whether these payments pertained to plaintiff No. 1, but later admitted that these payments were made by her to plaintiff No. 1. The case of defendant No. 2 was that she had been receiving money from the plaintiffs for payment of property tax and it was that amount which was repaid by her. She claimed that she received 12 lakh on 01st April, 1996, Rs 3 lakh on 13th April, 1996 and Rs 5,50,000/- on 20th November, 1996 and Rs 8,40,000/- on 03rd May, 1997 from the plaintiff in MCD

account. On the other hand, the plea taken by the plaintiffs with respect to these transactions is that those were business transactions between Simran Creations proprietorship concern of plaintiff No. 1 and Jordan Fashions proprietorship concern of defendant No. 2. Thus, defendant No. 2 claims that these transactions represent receipt of amount from the plaintiffs against MCD dues and their repayment, whereas according to the plaintiffs, these entries reflect the business transactions between plaintiff No. 1 and defendant No. 2. It would also be pertinent to note here that when he came in the witness box, plaintiff No. 1 stated that he did not remember whether he had any monetary transaction other than the sale transaction with defendant No. 2. I fail to appreciate why the plaintiffs would make payment of Rs 15 lakh to defendant No. 2 in April, 1996 when they purchased the suit property only on 15th June, 1996. This is nowhere the case of the plaintiffs that they had made advance payment to defendant No. 2 in property tax account. Neither any such plea has been taken either by the plaintiffs or by defendant No. 2 nor has plaintiff No. 1 stated so during his examination in the Court. I also fail to appreciate why the plaintiffs would

make payment of Rs 5,50,000/- to defendant No. 2 on 20th November, 1996 and 8,40,000/- on 03rd May, 1997 if they were to pay the dues of property to MCD. More importantly in her cross-examination, defendant No. 2 stated that the aforesaid amount of Rs 20 lakh which she received from the plaintiffs was repaid by her by paying Rs 2 lakh on 19th July, 1996, 3 lakh on 03rd October, 1996, 4 lakh on 04th October, 1996, 50,000/- on 08th October, 1996, 50,000/- on 1st November, 1996, 5 lakh on 05th May, 1997 and 3,40,000/- on 06th May, 1997. Again, I fail to appreciate why these amounts were repaid by defendant No. 2 to the plaintiff if they were made for payment to MCD. If the payment to MCD was to be paid directly by the plaintiffs, there could be no occasion for them to transfer Rs 20 lakh to defendant No. 2 in the first instance. If the payment to MCD was to be made by defendant No. 2, there would be no occasion for her to refund the amount which she received from the plaintiffs. Another important aspect in this regard is that the dues of MCD were settled for Rs 7,67,188/-, an amount far below the amount of Rs 20 lakh, alleged to have been received by defendant No. 2 from the plaintiffs and returned to them at a later date.

33. It is an admitted case that the original documents, pertaining to the suit property, except one Power of Attorney, were throughout in possession of defendant No. 1 and were never given by him to the plaintiffs. Ordinarily, no prudent buyer would purchase the immovable property, without taking the previous document of title from the seller. There is absolutely no explanation for the plaintiffs not obtaining the original documents of the suit property from defendant No. 1 on or before registration of the sale deeds in their favour. In fact, even after registration of the sale deed in their favour, the plaintiffs never wrote to defendant No. 1, asking him to deliver the original title documents to them. Admittedly, no sale deed in favour of the defendants has been executed by the previous owner Shri Amrik Singh Pasricha. Therefore, the previous documents of title were very important to the plaintiffs and in the normal course human conduct they would not have entered into a transaction for purchase of the property, without first taking the documents of title from defendant No. 1. The documents of title, which were in possession of defendant No. 1, were very crucial evidence of the sale transaction by the previous owner Shri Amrik Singh

Pasricha in favour of the defendants and, therefore, had the plaintiffs purchased the suit property with the consent and knowledge of defendant No. 1, they would definitely have insisted on taking them from him on or before completion of the transaction. This, to my mind, is a very important circumstance which clearly shows that the share of defendant No. 1 in the suit property was not sold with his consent or knowledge.

34. The suit property is situated in Delhi and normally, the sale deed should have been registered in Delhi. The case of the plaintiff is that since plaintiff No. 2, who is the wife of plaintiff No. 1 was not well, the sale deed was got registered at Mumbai. However, no evidence has been led by the plaintiffs to prove that plaintiff No. 2 was sick on or around the date when the sale deed was registered at Mumbai. A perusal of the sale deed in her favour would show that plaintiff No. 2 was present before the Sub-Registrar at the time of registration of the sale deed. Had she not been well, she would not attended the office of Sub-Registrar and would have authorized either plaintiff No. 1 or some other person to get the sale deed registered on her behalf. Moreover, if plaintiff No. 2 was not

well, she could easily have authorized either her husband plaintiff No. 1 Shri Ajit Singh Gill or her sons, who are plaintiffs No. 3 and 4 in the suit to get the sale deed registered on her behalf before the Sub-Registrar at Delhi. In these circumstances, the registration of the sale deeds at Mumbai is clearly a suspicious circumstance and gives an impression that the transaction between defendant No. 2 and the plaintiffs being fraudulent, as far as the sale of the share of defendant No. 2 in the suit property is concerned, they wanted to conceal it from him and that is why they got the sale deed registered at Mumbai, instead of getting it registered in Delhi in the normal course.

35. It was contended by the learned counsel for the plaintiffs that the amount of Rs 8,62,500/- has been utilized by defendant No.1 by keeping it in FDR, which shows that the sale of his share in the suit property was effected with his consent. I, however, find no merit in this contention. The amount was kept in FDR only on 26th March, 1997 much after filing of the suit and appearance of the parties before the Court and, therefore, no such inference can be drawn on account of the aforesaid amount having been kept in FDR.

36. For the reasons given in the preceding, I hold as under:

- i. Defendant No. 2 was not in exclusive possession of the suit property with the consent of defendant No.2 or under an arrangement with him and the same was in joint possession of the defendants No. 1&2 in January, 1996;
- ii. No bona fide tenancy in respect of the suit property was created in favour of plaintiff No. 1 and though it cannot be disputed that he came to occupy part of the suit property sometime prior to 24th January, 1997;
- iii. The tenancy, even if, created in favour of plaintiff No. 1, is not binding on defendant No. 1;
- iv. There was no bona fide transaction for sale of the share of defendant No. 1 in the suit property and the sale deeds dated 15th June, 1996, executed by defendant No. 2 in favour of the plaintiffs are collusive and fraudulent documents which are not binding on

defendant No. 2 and do not affect his right, title and interest in the suit property.

- v. Defendant No. 2 was not competent to execute the sale deed and get it registered on behalf of defendant No. 1;
- vi. The amount of Rs 8,62,500/- was deposited in the bank account of defendant No. 1 without his knowledge;

37. Since the sale deed, executed by defendant No. 2 on 15th June, 1996 is not binding on defendant No. 1, he continues to be co-owner of the suit property along with the plaintiffs who have become owner only to the extent of share of defendant No. 2 in it. During the pendency of the suit, a Division Bench of this Court had allowed use of first, second and third floor of the suit property to defendant No. 1 and use of the basement and the ground floor to the plaintiffs, pursuant to the statements recorded on September 02, 2002 in FAO(OS) No. 344 of 2001. Since the plaintiffs and defendant No. 2 are co-owners of the suit property, 50% being owned by the plaintiffs and the remaining 50% by defendant No. 1, there is no necessity for this Court to disturb the arrangement agreed between the

plaintiffs and defendant No. 1 before the Division Bench of this Court on 02nd September, 2002. It would be open to defendant No. 1 as well as to the plaintiffs to seek partition of the suit property and in that event, it will be for the Court which deals with such a suit to pass appropriate order with respect to possession of the suit property. The issues are decided accordingly.

38. However, the amount of Rs 8,62,500/- which was deposited in the account of defendant No. 1, needs to be refunded to the plaintiffs with appropriate interest since the sale deed has been held not binding on defendant No. 1. This amount was withdrawn by defendant No. 1 from his bank on 26th March, 1997 and kept in a fixed deposit. This amount was deposited in the Court on 11.5.2005. Defendant No.1, therefore, has to pay, to the plaintiffs the amount of interest which he received from the bank on the aforesaid amount of Rs 8,62,500/- whether in the savings bank account or at the time this amount was kept in fixed deposit. He is also to pay to the plaintiffs interest at the rate of 6% per annum on the amount earned by him by way of interest. The Registry needs to release the amount of Rs 8,62,500/-, deposited by defendant No. 1 in this regard to

the plaintiffs along with interest which has accrued on that amount.

Issue No. 3

39. No independent evidence has been led either by the plaintiffs or by the defendants to prove the value of the suit property on the date of institution of the suit. In fact, no such evidence has been led by them to prove the value of the suit property on the date on which the sale deeds were executed by defendant No. 2 in favour of the plaintiffs. No property dealer has been examined by any party to prove the market value of the suit property either in June, 1996 or at the time of filing of this suit in February, 1997. No sale deed of any property in the locality has been produced to prove the market value of the suit property on a comparative basis. No serious arguments were advanced by the parties on this issue. I, therefore, need not record any finding on this issue.

Issue No. 2 in CS(OS) 2226/2001

40. Since both these suits are now being finally disposed of, this issue has become infructuous and is deleted.

Issue No. 1,3,4 and 5 in CS(OS) 2226/2001

41. In view of my findings on the issues framed in Suit No. 234/1997, the plaintiffs in this suit are not entitled to any relief.

ORDER

Both the suits are hereby dismissed, except to the extent that defendant No. 1 is hereby directed to pay to the plaintiffs the amount earned by him as interest on the sum of Rs 8,62,500/- which was deposited in his account, along with interest on that amount at the rate of 6% per annum, from the date of receipt of interest by him, till payment to the plaintiffs in terms of this order. The amount of Rs.8,62,500/-, which defendant No.1 had deposited in the Court be released to the plaintiffs, along with interest which has accrued on that amount. In view of my findings on the issues, no order needs to be passed on the counter-claim of defendant No.1.

Decree sheets be drawn accordingly.

(V.K. JAIN)
JUDGE

25th JULY, 2011
bg/vn/'sn'