

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 8th January, 2014

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RFA No.136/2005

JAI GOPAL SETHI

..... Appellant

Through: Mr. S.K. Chaudhary, Adv.

Versus

SANJAY SABHARWAL & ORS.

..... Respondents

Through: Mr. Rakesh K. Sharma & Ms. Arjita
Bhalla, Advs. for R-3&4.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree dated 26.10.2004 of the Court of Additional District Judge (ADJ), Delhi of dismissal of suit No.322/2001 filed by the appellant for recovery of possession of flat No.166, Block No.C-2C, Pocket-II, Pankha Road Residential Scheme (now known as Janakpuri, New Delhi) and for injunction and recovery of *mesne* profits.

2. Notice of the appeal was issued and vide *ex parte* ad-interim order dated 09.03.2005, the parties were directed to maintain *status quo* with regard to the nature, title and possession of the subject flat. On

01.09.2006 the appeal was admitted for hearing and during the pendency thereof, the respondent was restrained from alienating, encumbering or parting with possession of the subject flat. The counsel for the appellant and the counsel for the respondents No.3&4 have been heard. None appears for the respondents No.1&2 who are proceeded against *ex parte*.

3. The appellant, on 03.12.1993 instituted the suit from which this appeal arises, pleading:

- (i) that he was allotted the flat aforesaid comprising of first floor and a barsati floor and open WC on the terrace, by the DDA;
- (ii) that the appellant / plaintiff had in October, 1972 let out the first floor of the flat to one Sh. Parmanand Anand who expired in the year 1986 and thereafter his wife Smt. Padmawati Anand became the tenant;
- (iii) that the appellant / plaintiff was getting rent of Rs.150/- per month from Smt. Smt. Padmawati Anand;

- (iv) that the barsati floor portion of the flat was in possession of the appellant / plaintiff;
- (v) that the appellant / plaintiff in the year 1981 was posted at Jhansi as Assistant Engineer in U.P. Irrigation Department and could not come to Delhi often and pursue the tenant Smt. Padmawati Anand for vacating the premises;
- (vi) that the respondents / defendants No.1&2 Sh. Sanjay Sabharwal & Sh. Deepak Sabharwal are “brothers and cousins” of the plaintiff / appellant’s wife and were engaged in the business of property dealership in the name and style of M/s Vishal Property Dealers;
- (vii) that in October, 1992 the respondents / defendants No.1&2 represented to the appellant / plaintiff that the appellant / plaintiff should allow them to approach the DDA for effecting Conveyance Deed of the said flat in the name of the appellant / plaintiff and should authorize them to request the tenant Smt. Padmawati Anand to vacate the premises; they also requested the appellant / plaintiff to handover the

keys of the barsati room to them so that they start living therein to facilitate vacation of the first floor by the tenant Smt. Padmawati Anand;

(viii) that on the assurance of the respondents / defendants No.1&2 that they will hand back the keys to the appellant / plaintiff after vacation of the first floor by Smt. Padmawati Anand, the appellant / plaintiff handed over keys of the barsati floor to the respondent / defendant No.1;

(ix) that the respondent / defendant No.1 also represented to the appellant / plaintiff that for dealing with DDA they would need all the papers of the flat in original and the appellant / plaintiff in good faith handed over original papers for effecting Conveyance Deed in favour of the appellant / plaintiff and also signed on blank papers to enable the respondents / defendants No.1&2 to make applications to the DDA, MCD and other relevant authorities in this regard and also deal with the tenant Smt. Padmawati Anand on behalf of the appellant / plaintiff;

- (x) that in December, 1992 the respondent / defendant No.1 visited Jhansi and got written a letter from the appellant / plaintiff to the tenant Smt. Padmawati Anand intimating her of sale of the flat to respondent / defendant No.1;
- (xi) that the appellant / plaintiff also paid Rs.85,000/- and Rs.50,000/- to the respondent / defendant No.2 for payment to DDA for effecting Conveyance Deed of the flat in favour of the appellant / plaintiff and for construction of another room on the barsati floor;
- (xii) that the appellant / plaintiff came to Delhi on 25.11.1993 and found the respondent / defendant No.3 Sh. Subhash Chander in possession of the flat and Sh. Subhash Chander also claimed to have purchased the said flat through the respondents / defendants No.1&2; and,
- (xiii) that enquiries revealed that the respondents / defendants No.1&2 had taken possession of the first floor from the tenant Smt. Padmawati Anand and on the basis of the blank

papers got executed from the appellant / plaintiff, sold the flat to the respondent / defendant No.3.

Accordingly, the suit for the reliefs of i) recovery of possession; ii) rescission of the documents fabricated on the blank papers got executed from the appellant / plaintiff; iii) declaration that the said flat had never been sold by the appellant / plaintiff; iv) mandatory injunction directing the respondents / defendants to return the original documents of the flat as well as all the documents fabricated on the said blank papers got signed from the appellant / plaintiff; v) permanent injunction restraining the respondents / defendants from dealing with the flat; and, vi) for recovery of *mesne* profits at the rate of Rs.1500/- per month was filed.

4. The respondents / defendants No.1&2 contested the suit by filing a written statement, pleading, a) that the entire flat was with the tenant and the appellant / plaintiff had by means of Agreement to Sell, General Power of Attorney (GPA), Special Power of Attorney (SPA), receipt for cash payment, transferred the same to the respondents / defendants No.1&2; b) that the respondents / defendants no.1&2 got the same effected from the tenant and thereafter transferred the same to the

respondent / defendant No.3; that there had been continuous litigation and disputes between the family of the wife of the appellant / plaintiff and the respondents / defendants No.1&2 and there was thus no question of the appellant / plaintiff signing the documents in favour of respondents / defendants no.1&2 in blank or in good faith.

5. The respondent / defendant No.3 also contested the suit by filing a written statement, pleading on the same lines as the respondents / defendants No.1&2 and clarifying that the purchase was by the wife of respondent / defendant No.3 and yet further pleading that the respondents / defendants No.1&2 were in collusion with the appellant / plaintiff.

6. Thereafter, the respondent / defendant No.4 viz. Smt. Suman Maniktala was impleaded as a respondent / defendant and she also filed a written statement on the same lines as her husband respondent / defendant no.3.

7. Needless to state that replications denying the contents of the written statements and reiterating the case in the plaint were filed.

8. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 22.04.2002:

- “1. Whether the suit of the plaintiff is barred under the provisions of Specific Relief Act? OPD*
- 2. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD*
- 3. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD*
- 4. Whether a valid transfer was made of flat number 166, C-2C, Pocket II, Pankha Road, Janak Puri, New Delhi? OPP*
- 5. Whether the plaintiff is entitled to rescission and cancellation of documents and its consequence? OPP*
- 6. Whether the plaintiff is entitled to a decree of declaration? OPP*
- 7. Whether the plaintiff is entitled to a decree of permanent and mandatory injunction as prayed for? OPP*
- 8. Whether the plaintiff is entitled to mesne profits? If so, at what rate and to what amount? OPP*
- 9. Relief.”*

9. The learned ADJ, on the basis of the evidence led, has in the impugned judgment, found / observed / held:

- (a) that no arguments were addressed by the respondents / defendants on Issues No.1 and 2; the said Issues were accordingly decided in favour of the appellant / plaintiff and against the respondents / defendants;
- (b) the suit was properly valued for the purposes of court fees and jurisdiction; accordingly, Issue No.3 was decided in favour of the appellant / plaintiff and against the respondents / defendants;
- (c) that the registered GPA and the SPA purportedly executed by the appellant / plaintiff in favour of the respondent / defendant No.1 were affixed with the photograph of the appellant / plaintiff though the appellant / plaintiff disputed appearing before the Sub-Registrar for registration thereof; the validity of the registered document has to be taken as authentic and mere denial was not enough;
- (d) that admittedly the appellant / plaintiff had not only handed over all original documents of the flat to the respondents / defendants No.1&2 but had also vide his letter dated

30.12.1992 to the tenant Smt. Padmawati Anand confirmed having sold the said flat to the respondent / defendant No.1 and the said letter fortified the documents admittedly signed by the appellant / plaintiff;

- (e) that the respondent / defendant No.1 being fully vested with the authority under the GPA and SPA aforesaid to sell the said flat, sold the same to the respondent / defendant no.4;
- (f) that the respondent / defendant No.4 purchased the said flat for valuable consideration, diligently and prudently;
- (g) that the appellant / plaintiff had allowed the respondent / defendant No.1 to hold himself out as the ostensible owner having all original documents in his possession;
- (h) that the contention of the appellant / plaintiff that title in the suit property could be conveyed only by execution of a registered sale deed is erroneous as the concept of GPA sales is well recognized mode of effecting transfer of interest in Delhi;

- (i) that the respondent / defendant No.4 thus acquired a valid right and interest in the property; Issue No.4 was thus decided in favour of the respondents / defendants and against the appellant / plaintiff;
- (j) that the appellant / plaintiff till then had not initiated any criminal action against the respondents / defendants No.1&2;
- (k) that the appellant / plaintiff had also not sought recovery of the amounts received by the respondents / defendants No.1&2 from the respondents / defendants No.3&4; and,
- (l) under such circumstances, it is difficult to believe that the appellant / plaintiff who is an educated person had been duped time and again or led into parting with the original papers of the suit property; accordingly, Issues No.5 to 8 were decided in favour of the respondents / defendants and against the appellant / plaintiff.

and the suit was dismissed.

10. The counsel for the appellant / plaintiff has argued:

- (I) that the Agreement to Sell dated 03.10.1992 purportedly executed by the appellant / plaintiff in favour of the respondent / defendant No.1, while describing the residence of the appellant / plaintiff at Jhansi, records Jhansi to be situated in the State of Madhya Pradesh when in fact it is situated in the State of Uttar Pradesh and which is indicative of the same having not been typed at the time of signing thereof by the appellant / plaintiff as the appellant / plaintiff would know whether Jhansi is situated in the State of Madhya Pradesh or Uttar Pradesh;
- (II) that though the said Agreement to Sell dated 03.10.1992 shows consideration of Rs.95,000/- to have been paid by the respondent / defendant No.1 to the appellant / plaintiff but leaves blank the manner in which the said amount had been paid;
- (III) similarly though the said Agreement to Sell dated 03.10.1992 also states that the said sum of Rs.95,000/-

had been paid by means of a separate receipt but no separate receipt had been produced;

- (IV) that the GPA purportedly executed by the appellant / plaintiff in favour of the respondent / defendant No.1 including with a power to sell the said flat, is dated 13.06.1991; that since the Agreement to Sell purportedly executed by the appellant / plaintiff and relied upon by the respondents / defendants is only of 03.10.1992, there was no occasion for the appellant / plaintiff to on 13.06.1991 i.e. one year prior thereto execute a power of attorney as part of the transaction of sale; the same is indicative of the respondents No.1&2 having fabricated documents on blank papers got signed from the appellant / plaintiff and of the documents being not part of a sale transaction; attention in this regard is also invited to the signatures of the appellant / plaintiff on the reverse of the two pages of the power of attorney dated 13.06.1991 even though the same is not registered;

- (V) the documents purportedly of sale are thus haphazard and not as are usually prepared of the transaction of sale;
- (VI) that the registered Power of Attorney dated 26.02.1993 purportedly executed by the appellant / plaintiff in favour of the respondent / defendant No.1 does not at the reverse of the first page bear the thumb impression of the appellant / plaintiff and which is indicative of the appellant / plaintiff being not present at the time of registration thereof;
- (VII) Sh. Niranjan Lal shown as the Arbitrator in the agreement dated 11.01.1993 of Appointment of Arbitrator purportedly executed by the appellant / plaintiff and the respondent / defendant No.1, is a confidant of the respondents / defendants No.3&4 and not a confidant of the respondents / defendants No.1&2; the same is indicative of the documents purportedly executed by the appellant / plaintiff in favour of the respondents / defendants No.1&2 having been fabricated at the same

time as the sale by the respondents / defendants No.1&2 in favour of the respondents / defendants No.3&4; otherwise there was no occasion for the confidant of the respondents / defendants No.3&4 being appointed as an Arbitrator in the agreement for Appointment of an Arbitrator between the appellant / plaintiff on the one hand and the respondents / defendants No.1&2 on the other hand;

- (VIII) that the letter dated 30.12.1992 written by the appellant / plaintiff in his own handwriting, to the tenant Smt. Padmawati Anand is in response to the letter dated 14.10.1992 of the tenant Smt. Padmawati Anand brought by the respondents / defendants No.1&2 to the appellant / plaintiff, enquiring from the appellant / plaintiff whether he had sold the flat in her tenancy; that the appellant / plaintiff had written the letter dated 30.12.1992 as dictated by the respondents / defendants No.1&2;

- (IX) that the signatures of the tenant Smt. Padmawati Anand on the document filed by the respondents / defendants of surrender of tenancy rights by her are different from her signatures on the letter dated 14.10.1992 supra and the respondents / defendants No.1&2 appear to have fabricated the signatures of the tenant Smt. Padmawati Anand on the letter dated 14.10.1992 to make the appellant / plaintiff write the reply dated 30.12.1992 confirming sale of the flat in favour of the respondent / defendant No.1;
- (X) that the receipt purportedly issued by the respondent / defendant No.1 to the tenant Smt. Padmawati Anand of 'No Dues' is dated 01.02.1993 whereas the possession receipt executed by Smt. Padmawati Anand of surrender of tenancy rights in the flat is dated 07.02.1993; the 'No Due Certificate' could not have been issued before delivery of possession by the tenant and the same again shows unnatural haphazard documentation;

- (XI) that for the Power of Attorney to become irrevocable under Section 202 of the Indian Contract Act, 1872, the same has to be executed on the same date as the Agreement to Sell and it will not be so if the documents are of separate dates;
- (XII) that the appellant / plaintiff had been living outside Delhi, could not be in Delhi on all the dates which the various documents purported to be executed by him bear;
- (XIII) that the respondent / defendant No.3 in his affidavit dated 29.10.2002 by way of examination-in-chief in para No.5 admitted that the tenant Smt. Padmawati Anand was only in occupation of the first floor and the second / barsati floor was with the appellant / plaintiff and this stand is contrary to the written statement of the defendants No.1&2;
- (XIV) that consideration for surrender of tenancy rights is claimed to have been paid by the respondents / defendants No.3&4 directly to the tenant Smt. Padmawati

Anand; if that was so, the date of surrender of tenancy rights by the tenant Smt. Padmawati Anand and the date of Agreement to Sell by the respondents / defendants No.1&2 in favour of the respondents / defendants No.3&4 would have been the same; however while the surrender of tenancy rights by the tenant is on 07.02.1993, the Agreement to Sell in favour of the respondent / defendant No.4 is of 10.03.1993;

(XV) that the respondents / defendants No.3&4 cannot thus claim to be *bona fide* purchasers as they could not have paid consideration to the tenant for surrender of tenancy rights before Agreement to Sell in their favour;

11. Per contra, the counsel for the respondents / defendants no.3 & 4 has argued:-

A. that the appellant / plaintiff at the contemporaneous time was stuck for over 20 years with a tenant paying a low rent of Rs.150/- per month and was thus desirous of selling the property and has turned dishonest after the

tenant surrendered the tenancy rights on receiving consideration;

B. that the letter dated 14.10.1992 by the tenant to the appellant / plaintiff as well as the reply dated 30.12.1992 of the appellant / plaintiff thereto show the same to be by registered post / UPC / registered AD and thus falsify the version of the appellant / plaintiff of the said letter having been personally collected by the respondent / defendant No.1 from the appellant / plaintiff;

C. that if the appellant / plaintiff had merely authorized the respondents / defendants No.1&2 to have the Conveyance Deed executed and the flat vacated from the tenant, there would have been no occasion for the appellant / plaintiff to, in the letter dated 30.12.1992 to the tenant state that the property had been sold to the respondent / defendant No.1;

D. that the respondents / defendants No.1&2 are the brothers-in-law of the appellant / plaintiff and the

appellant / plaintiff has not lodged any police complaint against them;

E. that the appellant / plaintiff did not produce his service record to show that on the dates which the documents executed by him at Delhi bear, he was at Jhansi; and,

F. that the appellant / plaintiff in fact on the said dates had sold other properties also.

12. The counsel for the appellant / plaintiff in rejoinder has reiterated that neither payment of any sale consideration by the respondents / defendants No.1&2 to the appellant / plaintiff has been pleaded nor has been proved.

13. I had during the hearing enquired from the counsel for the appellant / plaintiff whether the appellant / plaintiff, in his examination-in-chief deposed of the various discrepancies as have been highlighted above or during the cross examinations of the respondents / defendants gave an opportunity to the respondents / defendants to reply thereto.

14. The counsel for the appellant / plaintiff fairly admitted that neither had been done.

15. I am of the view that a party to a suit or an appeal thereagainst is not entitled to rely on any contradictions as aforesaid particularly relating to pleadings and documents or *inter se* documents, without giving an opportunity to the other party to explain the same.

16. A so called ‘apparent inconsistency’ can have an explanation in fact. Without an opportunity being given to explain the said inconsistency, no decision on the basis thereof can be taken. It is only when an opportunity has been given after drawing the attention of the parties thereto, that a finding can be returned of the same having not been specifically explained and thus being fatal to the case set up by that party. Reference if any in this regard can be made to ***Rajinder Pershad Vs. Darshana Devi*** (2001) 7 SCC 69 and ***Chanchal Dhingra Vs. Raj Gopal Mehra*** MANU/DE/3647/2013.

17. In my opinion, the most significant aspect of the present matter is the relationship between the appellant / plaintiff and the respondents / defendants No.1&2. According to the appellant / plaintiff, the

relationship was close (howsoever distant cousins the respondents / defendants No.1&2 may be of the wife of the appellant / plaintiff) to the extent of the appellant / plaintiff in spite of being a highly educated person occupying a responsible post in the Government blindly trusting the respondents / defendants No.1&2 not only with the title documents and all other documents of his property but also with his signatures on blank papers; so much so that the counsel for the appellant / plaintiff when asked, could not state whether the appellant / plaintiff admitted his signatures on a particular document or not and fairly stated that the appellant / plaintiff himself was in doubt as to which signatures were his and which were not his. The closeness of the relationship is further evident from the appellant / plaintiff in his own hand writing a letter dated 30.12.1992 to the tenant Smt. Padmawati Anand to the effect that he had sold the said flat to the respondent / defendant No.1 and that the respondent / defendant No.1 had full rights to deal therewith with effect from October, 1992. Copies of the said letter were also forwarded to the respondent / defendant No.1 and one Sh. S.P. Anand.

18. Even if the version of the appellant / plaintiff were to be accepted, the fact remains that the appellant / plaintiff, by, i) signing plethora of

blank sheets enabling the respondents / defendants No.1&2 to fill up anything thereon; ii) by handing over all documents relating to the property to the respondents / defendants No.1&2; and, iii) in his own hand writing the letter dated 30.12.1992 to the tenant Smt. Padmawati Anand with copy to the respondent / defendant No.1, allowed the respondents / defendants No.1&2 to fully deal with the property and the respondents / defendants No.1&2 have indeed so dealt, with the respondents / defendants No.3&4.

19. Though the counsel for the appellant / plaintiff has argued that the respondents / defendants No.3&4 are in collusion with the respondents / defendants No.1&2 but has been unable to show any nexus between them. It is not the case of the appellant / plaintiff that they are partners in any business or in other properties.

20. It can also safely be presumed that the tenant Smt. Padmawati Anand would not have surrendered the tenancy rights without consideration and which has admittedly not flown from the appellant / plaintiff. The appellant / plaintiff thus also allowed the respondents / defendants No.1&2 to invest in the property.

21. There is no reason to doubt that the respondents / defendants No.1&2 would have transferred the property to the respondents / defendants No.3&4 without any consideration. The respondents / defendants No.3&4 were thus led, owing to the conduct aforesaid of the appellant / plaintiff, into changing their position. Section 41 of the Transfer of Property Act, 1882 provides that where, with the consent express or implied of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it. This Court recently in ***Raj Kumari Garg Vs. S.M. Ezaz*** 190 (2012) DLT 741 dismissed a suit for possession, *inter alia* invoking the said Section 41 of the Transfer of Property Act. The appeal thereagainst was dismissed by the Division Bench vide judgment reported in MANU/DE/3860/2012. The facts of the present case are comparable with the facts of the cited judgment and which apply with full force. The appellant / plaintiff by his conduct aforesaid let the respondents / defendants No.1&2 represent to others that they were the ostensible owners of the flat and to transfer the same for consideration and the appellant / plaintiff cannot now be permitted to

void the said transfer on the ground that the respondents / defendants No.1&2 were not authorized to do so.

22. Though the said Section 41 of the Transfer of Property Act is subject to the proviso that the transferee has taken reasonable care to ascertain that the transferor had power to make the transfer and has acted in good faith and though there are discrepancies in the documents but in my view the same do not in any manner undermine the reasonable care and caution which the respondents No.3&4 were required to take or their good faith, especially when the appellant / plaintiff has not cross examined either the respondents / defendants No.1&2 or the respondents / defendants No.3&4 with respect thereto.

23. It is worth taking judicial notice of that transactions of sale purchase of immovable property largely remain in the hands of deed writers and / or typists sitting in the Court complexes or in the office of the Registrar of Assurances and sellers / purchasers of immovable property rarely contact advocates or persons steeped in law or competent to verify the title at the time of such sale purchase. Notice can also be taken of the fact that standard form documents of Agreement to Sell,

Power of Attorney, Will, affidavit, receipt, possession letter, agreement to appoint arbitrator etc. are available with such typists / deed writers who merely change the names of the parties and the address of the property. Notice can yet further be taken of the fact that such documents change hand often, without even documents of sale being prepared. Discrepancies as pointed out, abound in such documents if the same were to be minutely examined. I am also of the view that such discrepancies / mistakes in the documents as pointed out, occur when the documents are being executed / prepared bona fide and in good faith and without expecting the other party to challenge the same and are unlikely to occur when documents are fabricated with the knowledge that they are likely to be challenged.

24. The learned ADJ is correct in drawing adverse inference against the appellant / plaintiff, for inspite of having been duped by the respondents / defendants No.1&2 not taking any action whatsoever against them. The only inference is that the relationship of the appellant / plaintiff with the respondents / defendants No.1&2 remains good, even if the version of the appellant / plaintiff of them having duped the appellant / plaintiff were to be believed. When the appellant / plaintiff based his

cause of action against the respondents / defendants No.3&4 on such actions of cheating on the part of the respondents / defendants No.1&2, the appellant / plaintiff cannot be entitled to the relief against the respondents / defendants No.3&4 without taking appropriate action in law against the respondents / defendants No.1&2. The learned ADJ is further correct in holding that even in the suit from which this appeal arises, no relief against the respondents / defendants No.1&2 has been claimed and the relief sought is only with respect to the property in which the respondents / defendants No.1&2 have no stake today and with which only the respondents / defendants No.3&4 are concerned.

25. I am further of the view that even if it were to be held that the appellant / plaintiff as well as the respondents / defendants No.3&4, both have suffered on account of the respondents / defendants No.1&2, it is the appellant / plaintiff who has to bear the burden of such loss, being more to blame for enabling the respondents / defendants No.1&2 to do so. It has been the settled principle of law noticed recently by me in ***Rajesh Gupta Vs. Central Bank of India*** MANU/DE/4583/2013.

26. I had during the hearing asked the counsel for the appellant / plaintiff whether the appellant / plaintiff even now has anything to show that on the dates which the documents purportedly executed by him at Delhi bear, he was performing his duties outside Delhi. The counsel for the appellant / plaintiff fairly stated that there is nothing.

27. The appellant / plaintiff claims to have signed documents in blank and to have handed over the title documents in his favour to the respondents / defendants No.1&2, for the purpose of having the conveyance deed of the property executed in his favour. The appellant / plaintiff has failed to prove this. It has not been proved that the scheme for conversion of leasehold rights in the property converted to freehold and whereupon only, the conveyance deed could be executed, was in force in the year 1992 or that the property was capable of being so converted.

28. Though the Supreme Court in *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana* (2012) 1 SCC 656 has held that documents such as Agreements to Sell, Power of Attorney etc. are not documents of transfer of title of property and further, though the respondent / defendant No.4

has not sued for specific performance of the Agreement to Sell and thus remains an agreement purchaser only but the appellant / plaintiff has not claimed relief on this basis. The appellant / plaintiff instituted the suit challenging the Agreement to Sell and other documents purportedly executed by him and in which he had been unsuccessful. Once the respondent / defendant No.4 is found to be agreement purchaser in possession, her possession would be protected under Section 53A of the Transfer of Property Act.

29. No merit is thus found in the appeal which is dismissed. I refrain from imposing any costs on the appellant / plaintiff in the hope that the appellant / plaintiff would not pursue the matter further.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

JANUARY 08, 2014

‘gsr’..