

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

+ RSA No. 104/2011

% **January 03 , 2014**

SMT. SHEILA DEVI & ANR. Appellants
Through: Mr. Narender Sharma, Adv.

VERSUS

SMT. SANTOSH DEVI Respondent
Through: Mr. Raj Kumar Sherawat, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CMNo.3921/2013 (U/o 41 Rule 25 & 27 CPC by the appellants)

By this application under Order 41 Rules 25 & 27 CPC the appellant/applicant in this regular second appeal seeks to file transcript of a recorded conversation which took place between the parties when the notices of this second appeal were sought to be got served. In a second appeal, such type of application which is filed, is quite clearly an abuse of the process of law not only because the appeal has to be ordinarily decided as per records of the courts below but also because surreptitiously recording

of conversation cannot have any meaning because statements are made many a times off the cuff by any of the parties because it is not intended that the same is to be brought on the judicial record. In any case the records of this case reveal that original plaintiff, and who is the respondent herein is represented by an attorney and which is for the reason that probably the attorney may have purchased rights in the suit property. Therefore, nothing turns on the fact that the original plaintiff would state that she was not interested in coming to the court or that she has no concern with the suit property. In fact, any admissions made, cannot be relied upon by the appellants inasmuch as, the same would be against the spirit of the provision of Order 23 Rule 3 CPC which requires that any settlement outside courts can only be by means of an agreement in writing and signed by the parties. I would in fact go to say that such surreptitious actions by the parties by taking advantage of unguarded position by recording of statements should not be encouraged in the facts such as the present. The application is therefore dismissed with costs of Rs.10,000/-.

RSA104/2011

1. This regular second appeal is filed by the defendants in the suit. The respondent herein was the plaintiff in the trial court. The suit was a suit for possession, mesne profits etc. The suit property is a plot of 100 sq. yds.

situated in village Ghonda, Gujran Khadar, Illaqa Shahdara, Delhi. The trial court by its judgment dated 29.1.2010 decreed the suit for possession and mesne profits in favour of the respondent-plaintiff. Appellate court by its judgment dated 23.4.2011 dismissed the appeal. There are thus two concurrent judgments against the appellants. The dispute between the parties was/is as to who is the owner of the suit plot.

2. At the time of admission of the appeal on 2.12.2013, the following substantial question of law was framed:-

“Whether the suit for possession filed by the respondent could be decreed in the absence of examination of the plaintiff as a witness? If so, to what effect?”

3. Whereas the plaintiff claimed ownership of the plot by means of the registered sale deed dated 5.4.1971 (Ex.PW-1/2) and which was registered on 7.4.1971, defendants relied upon the sale deed executed on 8.4.1971 (Ex.DW-3/5) and registered on the same date. The original owner of the plot in question is admittedly one Sh. Chandru, son of Sh. Chhuttan resident of village Ghonda, Illaqa Shahdara, Delhi. Whereas the plaintiff claims that the suit property was purchased by the sale deed (Ex.PW1/2) dated 5.4.1971 registered on 7.4.1971, defendants claimed that Sh. Chandru had sold the property to one Sh. Ram Kumar Gupta, son of Sh. Subhash resident of Old Seemapuri, Illaqa Shahdara, Delhi by a sale deed dated

8.4.1971, and Sh. Ram Kumar Gupta sold the suit property by means of a General Power of Attorney dated 15.7.1980 (Ex.DW3/4) to one Sh. Sohan Pal, son of Sh. Naththu Singh, resident of Village Kakaar Nari P.O.Nanota District Saharanpur, U.P. It is from Sh. Sohanpal's rights that the property were purchased by the appellants-defendants by means of the Power of Attorney, Agreement to Sell and Receipt (all dated 14.8.1997 and exhibited as Ex.DW-3/1 to Ex.DW3/3)

4. Both the courts below have held the documents in favour of the appellants/defendants as non-genuine documents as such documents have not been duly proved in accordance with law. It has been held by the courts below that really it is the sale deed (Ex.PW1/2) dated 5.4.1971 executed in favour of plaintiff which is a valid document.

5. The Trial court in its judgment dated 29.1.2010 has held the sale deed (Ex.PW1/2) in favour of the respondent-plaintiff as proved by observing as under:-

“17. There can be no dispute with regard to the proposition of law laid down by Hon'ble Supreme Court in ***Janki Vashdeo Bhardwaj Vs. Indus Ind Bank Ltd. AIR 2005 Supreme Court 439.*** However, a perusal of sale deed Ex.PW-1/2 shows that it is duly registered document in favour of the plaintiff. Section 90 of Indian Evidence Act raises a presumption regarding genuineness of a document which is 30 years old and is produced from proper custody. In AIR 1976 Allahabad 213, it was held that documents 30 years old can be read as evidence

without formal proof. Apart from PW-1 and PW-2, the plaintiff has also examined PW-5 Dharmender Singh from the office of Sub-Registrar IV, Seelampur who has proved the sale deed in favour of the plaintiff after comparing the same with the records. Hence, it cannot be said that the plaintiff has not led any evidence to prove the sale deed Ex.PW-1/2.” (underlining added)

6. Appellate court in its own words has given the following findings to uphold the findings of the trial court to hold the title documents in favour of the respondent-plaintiff to be valid, and which paras 9 and 18 to 24 read as under:-

“9. As regards issue No.4, court returned the findings in favour of plaintiff after discussing the evidence led by both sides and also advertng to the objections of the defendants such as non-proving the sale deed of the plaintiff in terms of Sec.68 of the Indian Evidence Act and non-appearance of the plaintiff in witness box to prove the same and non-appearance of signatures of PW 2 in the sale deed. The authorities relied on by Ld. Defence counsel were also adverted to and Ld. Trial court observed that the perusal of sale deed dated Ex.PW1/2 shows that it was duly registered document in favour of plaintiff and Sec.90 of Indian Evidence Act raises a presumption regarding the genuineness of documents 30 years old and produced from proper custody. Court held that sale deed Ex.PW1/2 was proved by PW5 from office of Sub-registrar-IV, Seelampur, Delhi and reliance was placed on authority reported in AIR 1976 Allahabad 213 wherein it was held that documents 30 years old can be read in evidence without formal proof.

18. Before advertng to the points raised by the counsel for appellant, I would like to refer to the testimony of the witnesses recorded in the trial court. In his affidavit dated 15.01.2003, **Ram Kumar Gupta, s/o Late Sh. Swaroop Singh, who is husband of the plaintiff**, has averred on oath that he along

with Sh. Hari Singh, Pritam Singh, Kundan Lal Verma and Guru Dutt Singh, who were known to him prior to 05.04.1971, had purchased the land from Sh. Chandru, s/o Sh. Chuttan, r/o Village Ghonda, Illaqa Shahdara, Delhi through sale deeds and that he had purchased the suit property in the name of the wife Smt. Santosh Devi vide Sale Deed Ex.PW1/2; that Sh. Kundan Lal Verma and Sh. Guru Dutt were working with him in MCD at Town Hall, Delhi in the year 1971 and Sh. Hari Singh and Sh. Pritam Singh were related and known to Sh. Guru Dutt Singh. He has referred to the sale deeds of all these afore mentioned persons in his affidavit and has endeavoured to support the averments as made in the plaint. In para no. 12 of his affidavit, he has categorically stated that in the sale deed of Hari Singh and Pritam Chand Ex.PW1/4 and Ex.PW1/5, the boundary of their plot in the North was given as of Ram Kumar (name of this witness Ram Kumar Gupta) as they were aware that he had purchased the plot on that date in the name of his wife Smt. Santosh. He also categorically stated that he had never sold that plot of land to any one. He also stated that he did not know any Kartar Singh nor did he attend any court in any case prior to this date. He also gave justification for not visiting the plot from 1998 to September, 2001 as his brother Sh. J.B.Tayal had met with an accident and they remained as such busy in his treatment and Sh. J.B.Tayal expired on 30.07.2001. His death certificate was exhibited as Ex.PW1/7. He has proved all the relevant documents as mentioned in the affidavit. In his cross-examination, he admitted that he had not stood as a witness in the sale deed.

19. Another witness examined by the plaintiff is PW3 Sh. Kuldeep Singh who is son of Pritam Chand and it was Pritam Chand, who along with PW2 Ram Kumar Gupta, had purchased the property from its seller Chandru which property was from the same Khasra No. 454. In his affidavit Ex.PX in para no.3, Kuldeep Singh has categorically mentioned that till 1998, suit plot was lying vacant and it was owned by Smt. Santosh Devi and in the year 1998, defendants came to the site and started raising construction over the plot and when he objected for the same, defendants disclosed that they had purchased the plot

from the plaintiff and her husband and that they are the owners of that plot. In his cross-examination, this witness stated that he had been residing in the property no.K/21/27, Gali No.2, West Ghonda (Purported property of his father Sh. Pritam) since 1980. There is no specific suggestion given to this witness that the defendants did not disclose to him having not purchased the plot from the plaintiff and her husband. Now, let us advert to cross-examination of Sheela Devi who is defendant no.1 in the trial court and is appellant herein. In her cross-examination dated 07.11.03, she has admitted the suggestion that Santosh Devi had sold out the property to her. Why such admission was made by the defendant no.1, has not been explained and this corroborates the version of PW 3 that it was so projected by appellant herein that she had purchased the property from Santosh. It is the version of the appellant that the suit property was owned by Chandru who sold it vide registered Sale Deed dated 08.04.1971 to **Sh. Ram Kumar Gupta, s/o Late Sh. Subhash**, r/o Old Seema Puri, Illaqa Shahdara, Delhi. It is noted that the purported sale deed thus executed in favour of Sh. Ram Kumar Gupta,s/o Subhash, in the boundary mentioned, in the east of the plot, 15 feet gali has been shown whereas in the west, gali of 10 feet has been shown. In the North, plot of Kalu Ram has been shown whereas in the South, plot of others has been shown. The same property is being claimed by the plaintiff and sale deed was executed prior to 08.04.1971 as it was executed on 05.04.1971 and in the boundaries, it has been mentioned as under:-

East-Gali 15 feet.

West-Gali 10 feet.

South-Plot of Hari Singh and Pritam Chand and,
North, Land of vendor (to be noted not land of Kalu)

20. There is a difference in the identification of the occupier of the plot towards the North of the suit land as in the purported sale deed of Chandru in favour of Ram Kumar Gupta, towards North of the suit land, there is a plot of Sh. Kalu Ram which Sale Deed is dated 08.04.71 but in the sale deed of the plaintiff dated 05.04.71, in the North, land of vendor has been shown and not of Kalu Ram. It is noted that despite opportunity,

defendants did not prove the sale deed executed by Chandru in favour of Ram Kumar Gupta, s/o Subhash and in her affidavit dated 16.04.03 Ex.DW3/5, defendant no.1 who is appellant herein has stated that she received this document Ex.DW3/5 when she purchased the property and that she had verified from the Sub-Registrar Office and the documents entered in the books of Sub-Registrar. However, in her subsequent cross-examination dated 07.11.03, she stated that she had not verified the sale deed of Ram Kumar Gupta Ex.DW3/5. She also could not say whether document Ex.DW3/5 was not entered in the Office of Sub-Registrar.

21. DW2 is R.K.Yadav, who is father of the appellant herein and in his cross-examination, he stated that he had brought the original sureties (sic) executed by Sh. Chandru in favour of Ram Kumar Gupta , s/o Subhash dated 08.04.1971 registered as document no.103 from page 40.27 to 28 in vol. no.1 book no. 13 on 08.04.1971 Ex.DW 2/P1 which documents were admitted to be not executed in his presence. He could not tell if Ex.DW2/P1 was false, forged or fabricated document. Although, he denied that Ex.DW2/P1 was not entered in books of Sub-Registrar but for the reasons best known, these documents were not got proved by the Office of the Sub-Registrar.

22. In this case, due registration of sale deed by the plaintiff has been proved which means that the sale deed was duly executed. If defendant challenges such due execution, onus shifts on her to dispute the same which could had been done in this case by calling the executants or the witnesses to the sale deed of the plaintiff. When two parties are there before the court contesting on the same property, the court is required to see as to who has better title over the property which can be proved on the basis of oral as well as documentary evidence out of which, documentary evidence has greater value and weight over the oral evidence. In this case, defendant wants to establish her title on the basis of oral evidence only as all her documents, except the power of attorney, are unregistered whereas the sale deed executed by Sh. Chandru in favour of Ram Prakash Gupta, s/o Subhash on 08.04.71 has not been duly

proved on the other hand, the sale deed by the plaintiff has been proved. Defendant has claimed that Chandru sold the suit property to Ram Kumar Gupta, s/o Subhash on 08.04.71 vide registered sale deed but the executor of sale document has not been brought nor the registration of this document has been proved by calling relevant record from Sub-Registrar's Office. Moreover, I this document, the facsimile of the stamp on the reverse of the document from the Sub-Registrar Office is different from the sale deeds duly registered and proved by the plaintiff, of herself and of Sh. Pritam Chand, Hari Singh, Kundan Lal Verma, Gurdutt Singh which all were registered on 15.04.71.

23. In view of the preponderance of probability, the non proving of the registered deed dated 08.04.71 by the defendants casts a doubt on its veracity as claimed by the plaintiff for which an application u/s 340 Cr.P.C moved by the plaintiff is there on record which was albeit dismissed on technical ground. It is further noted that Ld. Trial court has wrongly appreciated that Ram Kumar Gupta in the sale deed dated 08.04.71 is the same person who is husband of the defendant as the parentage of the husband of the plaintiff is different from the parentage of Ram Kumar Gupta whose sale deed is dated 08.04.71.

24. In the TCR, there is also on record a notification filed by the plaintiff dated 03.06.66 which shows that Ghonda in Illaqa Shahdara ceases to be a rural area and notification no. is F.9(2)/66 LAW CORP from Delhi Administration, Delhi so if Ghonda wherein the suit property lies ceases to be a rural area, the applicability of Delhi Land Reform Act in that area is also questionable. So in the totality of the facts and circumstances, the authority relied on by the appellant is distinguishable on facts. The appeal is devoid of merits and I do not find any illegality or infirmity in the order of Ld. trial court except the observation with regard to appreciation that Ram Kumar Gupta, husband of plaintiff, is the person in chain from whom defendant no.1 drove title whereas the fact of the matter is that he is different from that Ram Kumar Gupta whose father's name is Subhash whereas father of husband of plaintiff is Swaroop Singh and not Subhash. As such, there being no merit

in the appeal, same is hereby dismissed. No order as to cost. Trial Court record be sent back alongwith copy of the judgment. Appeal file be consigned to Record Room.” (emphasis added)

7. A reading of the aforesaid paragraphs show the following salient conclusions:-

Whereas the plaintiff-respondent proved the sale deed in her favour inasmuch as there was a valid presumption under Section 90 of the Evidence Act, 1872, appellants-defendants failed to discharge the onus of proof which shifted upon them by failing to bring into evidence either the proof of execution or of registration of the disputed sale deed dated 8.4.1971 (Ex.DW3/5) in favour of Sh. Ram Kumar Gupta

To the aforesaid conclusions I must also add that once the sale deed (Ex.PW1/2) dated 5.4.1971 is proved, then even if there exists a subsequent document being the sale deed dated 8.4.1971 (Ex.DW3/5) executed in favour of Sh. Ram Kumar Gupta, the same could not have validly passed the title to Sh. Ram Kumar Gupta inasmuch as vide Section 48 of the Transfer of Property Act, 1882, priority of documents is as per the chronology of the title deeds. Section 48 of the Transfer of Property Act, 1882 reads as under:-

“48. Priority of rights created by transfer- Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised

to their full extent together, each later created right shall, in the absence contract or reservation binding the earlier transferees, be subject to the rights previously created.”

8. I may note that admittedly the seller in both the sale deeds dated 5.4.1971 (Ex.PW-1/2) and 8.4.1971(Ex.DW3/5) is the same Sh. Chandru i.e both the parties claimed the original owner to be Sh. Chandru to whom the title has passed. Also, it is very important to note that the non-genuineness of the sale deed Ex.DW3/5 dated 8.4.1971 relied upon by the defendants becomes clear from the fact that in the said sale deed the plot to the north of the subject plot is shown to be of Sh. Kalu Ram and which could not be because Sh. Kalu Ram only later purchased the plot (which is to the north of the subject plot) by the sale deed dated 15.4.1971 (Ex.DW3/P2) i.e in an earlier document of 8.4.1971, how can there be reference of a transfer of title which takes place subsequently in favour of Sh. Kalu Ram on 15.4.1971. In an indirect way, this aspect has been touched upon by the appellate court in paras 19 and 20 of its judgment, which have been quoted above.

9. The question framed by this Court at the time of admission of this second appeal with respect to proof of the sale deed dated 5.4.1971 in favour of the plaintiff has to be held in favour of the respondent-plaintiff not only because of the reasoning of the trial court and the appellate court which

is flawless, and which is based upon Section 90 of the Evidence Act, 1872 and the fact that the onus of proof had shifted upon the defendants for their showing by summoning the executants (or witnesses) of the title deeds by which the appellants/defendants claimed ownership and by summoning the sub-Registrar with respect to the registration of the alleged sale deed dated 8.4.1971 in which they failed, but also that the substantial question of law as framed by this Court needs to be answered in favour of the respondent-plaintiff by virtue of the judgment of the Supreme Court in the case ***R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P.Temple & Anr. 2003(8) SCC 752*** and which judgment holds that unless objection is raised at the relevant time to the mode of proof of a document, any objection as to proof of document stands waived and the document stands proved. Supreme Court has observed that if objection as to the mode of proof is taken at the relevant point of time then the person against whom the objection is raised is put to notice and thereafter such person can lead evidence on the technical aspects of the mode of proof, but if no objection is raised, there is prejudice to the party against whom objection is raised subsequently. Paras 20,21 and 23 of the judgment in the case of ***R.V.E.Venkatachala (supra)*** read as under:-

“20. The learned counsel for the defendant-respondent has relied on *The Roman Catholic Mission v. The State of Madras and Anr.* AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though-brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons; firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.

21. Privy Council in *Padman and Ors. v. Hanwanta and Ors.* (1915) PC 111: 19 CWN 929 did not permit the appellant to take objection to the admissibility of a registered copy of a will in appeal for the first time. It was held that this objection should have been taken in the trial court. It was observed:

"The defendants have now appeal to the Majesty in Council and the case has been argued on their behalf in great detail. It was urged in the course of the argument that a registered copy of the will of 1898 was admitted in evidence without sufficient foundation being led for its admission. No objection, however, appears to have been taken in the first court against the copy obtained from the Registrar's office being put in evidence. Had such objection being made at the time, the District Judge, who tried the case in the first instance, would probably have seen that the deficiency was supplied. Their lordships think that there is no substance in the present contention."

23. Since documents A30 and A34 were admitted in evidence without any objection, the High Court erred in holding that these documents were inadmissible being photo copies, the originals of which were not produced."

10. Learned counsel for the appellant argued before me that by mere proof of registration of the sale deed (Ex.PW1/2) the said document is not proved. It is also argued that the provision of Section 90 of the Evidence Act only raises a rebuttable presumption in favour of the respondent/plaintiff and that the rebuttable presumption has been discharged by the respondent by cross-examining the witnesses of the respondent-plaintiff by putting suggestions as to the non-execution of the sale deed (Ex.PW-1/2). It is further argued that once the plaintiff does not step into the witness box and the attorney who deposed on behalf of the plaintiff did not have personal knowledge of execution of the sale deed (Ex.PW1/2), the courts below were not justified in returning a finding and conclusion with respect to the plaintiff being owner of the suit property and it is argued that courts below

ought to have held that the sale deed (Ex.PW1/2) was not proved and could not be looked into in favour of the respondent-plaintiff.

11. In my opinion, the arguments urged on behalf of the appellants are misconceived for various reasons:-

(i) Firstly, no doubt registration of a document is not a proof of a document however, the courts below in this case have held the document to be proved by raising the presumption under Section 90 of the Evidence Act as the sale deed (Ex.PW1/2) was more than 30 years old at the time when the same was led in evidence.

(ii) Counsel for the appellants admitted before this Court that Section 90 raises rebuttable presumption in favour of respondent/plaintiff but it is argued that the rebuttable presumption is discharged by the appellants/defendants by cross-examination of the witnesses of the respondent-plaintiff, however, in my opinion this argument is misconceived because there is nothing in the cross-examination by which admissions are shown to have been made in favour of the appellants with respect to their not existing or of non-execution of the sale deed (Ex.PW1/2). Merely putting suggestions in cross-examination cannot amount to discharge of onus of proof. If appellant-defendant wanted to discharge onus of proof which shifted upon them, then it was necessary for them either to call the

executants (or the witnesses) of the sale deed (Ex.PW1/2) or their legal heirs if such were dead, but admittedly no effort was made in this regard by the appellants/defendants to call any of such persons. In fact, it may be noted that the appellants/defendants did not even summon the record from the Sub-Registrar to show registration of the sale deed (Ex.DW 3/5) which was relied upon by them, and as noted by the courts below.

(iii) Also, learned counsel for the respondent-plaintiff is justified in relying upon the judgment of the Supreme Court in the case of ***R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P.Temple & Anr. 2003(8) SCC 752*** which holds that unless objection is taken with respect to exhibition of the documents at the time of exhibition of the documents, challenge to the mode of proof of the documents stands waived and the document would stand proved.

12(i) Therefore, in the opinion of this Court it was not at all necessary for the plaintiff to have appeared personally to prove the sale deed (Ex.PW1/2) and the courts below were justified in relying upon the provision of Section 90 of the Evidence Act to hold that the sale deed (Ex.PW1/2) stands proved taken with the fact that the appellants/defendants failed to discharge the onus of proof which shifted upon them to show non-execution of the sale deed (Ex.PW1/2), and which onus is not discharged by

simply putting suggestions in cross-examination as argued on behalf of the appellants/defendants. The ratio of the Supreme Court judgment in the case of *R.V.E.Venkatachala Gounder(supra)* is a complete answer to the arguments of the appellants/defendants because there is no objection to the exhibition of the sale deed (Ex.PW1/2) on behalf of the appellants/defendants at the time of cross-examination of the witness PW-1.

12(ii) Therefore, I answer the substantial question of law in favour of the respondent-plaintiff and against the appellants-defendants and hold that the sale deed dated 5.4.1971 (Ex.DW1/2) executed in favour of the respondent-plaintiff was validly proved even in the absence of the examination of the plaintiff-respondent as a witness and by adopting the reasons and conclusions of the courts below as also the ratio of the judgment of the Supreme Court in the case of *R.V.E.Venkatachala (supra)*.

13. I may also at this stage make a reference to one other conclusion which has already been adverted to by the appellate court and which is that Sh. Ram Kumar Gupta who is the purchaser in the sale deed dated 8.4.1971 relied upon by the appellants/defendants is not the Ram Kumar Gupta who is the husband of the respondent-plaintiff. This is because Sh. Ram Kumar Gupta who is the husband of the respondent-plaintiff is the son of Sh. Swaroop Singh and whereas Sh. Ram Kumar

Gupta who is shown to be a purchaser in the sale deed (Ex.DW3/5) dated 8.4.1971 relied upon by the defendants is the son of one Sh. Subhash. In addition to the aforesaid reasoning given by the courts below I would like to note that the address of Sh. Ram Kumar Gupta s/o Subhash in the sale deed dated 8.4.1971 is left mysteriously vague because the address is only Old Seemapuri, Illaqa Shahdara, Delhi State and Sh. Ram Kumar Gupta s/o Swarup Singh who is the husband of respondent-plaintiff has always been shown right from the time of purchase of the suit property from 5.4.1971 till the time of filing of the suit at the specific address of residence at 98-D, Municipal Colony, Azadpur, Delhi. The residence of the respondent-plaintiff is of the Municipal Colony because husband of the respondent-plaintiff was an employee of Municipal Corporation of Delhi (MCD).

14. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 03 , 2014
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VALMIKI J. MEHTA, J