

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

+ **RFA No. 339/2000**

% **Reserved on: 9th October, 2017**
Pronounced on: 24th October, 2017

RAJ KUMAR SETHI & ANR. Appellants

Through: Mr. Rajat Aneja, Ms. Rashmi
Verma and Ms. Nisha Sharma,
Advocates.

versus

JANKI DEVI @ USHA KIRAN Respondent

Through: Mr. T.K. Ganju, Sr. Advocate
with Mr. Rohit Gandhi,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit challenging the impugned judgment dated 9.3.2000 passed by the trial court dismissing the suit for declaration and injunction filed by the appellants/plaintiffs with respect to the suit property. The suit property is 1157 sq. yards of land situated in Khasra Nos. 201 and 1274/191 in

Village Kilokari, Delhi and known as Plot Nos. 51, 51A and 51B, Block-A, Friends Colony, Delhi.

2. The facts of the case are that the appellants/plaintiffs pleaded that they had purchased the suit property vide a sale deed dated 16.2.1959 from one Sh. Pishori Lal Anand. Sh. Pishori Lal Anand was stated to have purchased the suit property from the original owners namely Sh. Ram Sarup, Sh. Ram Chander, Sh. Budh Singh, Sh. Dewan Singh, Sh. Chaman and Sh. Shadi (all being the successors-in-interest of Sh. Ram Dayal) by virtue of an oral sale of the year 1953. Appellants/plaintiffs pleaded that after purchase of the suit property they came in and have continued to be in the physical possession thereof. It was also pleaded in the plaint that one Sh. Shiv Dei Lal claimed himself to be the owner of the suit property in the year 1984 and got himself recorded as the owner of the suit property. However, on the representation of the appellants/plaintiffs the competent authority vide its order dated 1.12.1987 withdrew the permission. Sh. Shiv Dei Lal died on 25.1.1987 and the respondent/defendant claims herself to be the daughter of Sh. Shiv Dei Lal and hence claimed that she was owner of the suit property.

Respondent/defendant relies upon a probate granted in her favour and a Will of Sh. Shiv Dei Lal. In the suit therefore reliefs were claimed for declaration and injunction that the appellants/plaintiffs were the owners of the suit property and the respondent/defendant has no title to the suit property. Respondent/defendant was also sought to be restrained by an injunction from interfering in possession of the appellants/plaintiffs over the suit property.

3. The respondent/defendant contested the suit. It was pleaded that the appellants/plaintiffs were not in possession and took possession of the suit property by practicing fraud under the garb of the injunction order granted by the Court. It was pleaded that the appellant no.1/plaintiff no.1, who was in the revenue department, had fabricated revenue records to create evidence of his title although it was Sh. Shiv Dei Lal who was the owner of the suit property by virtue of purchase of the suit property from Sh. Ram Dayal vide a sale deed dated 23.2.1923. This Court notes that Sh. Ram Dayal was the predecessor-in-interest of the six persons from whom Sh. Pishori Lal Anand had purchased the suit property and from which Sh. Pishori Lal Anand, the appellants/plaintiffs had purchased the suit property. The

respondent/defendant also pleaded that an oral sale in favor of Sh. Pishori Lal Anand relied upon by the appellants/plaintiffs and effected by the six successors-in-interest of Sh. Ram Dayal in favour of Sh. Pishori Lal Anand, was invalid on account of non-registration. Respondent/defendant pleaded to be the owner of the property on account of a Will executed in her favour by Sh. Shiv Dei Lal and of which probate was obtained.

4. The following issues were framed by the trial court:-

- “1. Whether the plaintiff is the owner of the land comprised in khasra No. 201 and 1274/191 village Kilokari, presently known as flat No. 51, 51A, 51B Block-A, Friends Colony, New Delhi? OPP.
2. Whether the probate issued in case No. 106/88 by the Hon’ble District Judge, Delhi is void, nonest and has no effect in law? OPP
3. Whether the suit of the plaintiff is not maintainable as alleged in preliminary objection No. 1? OPD
4. Whether the suit has not been properly valued for the purposes of court fees and jurisdiction? OPD
5. Whether the suit is liable to be stayed under Section 10 CPC as alleged in preliminary objection No. 4? OPD
6. Whether the sale deed in favour of the plaintiff is an outcome of fraud, if so to what effect? OPD
7. Whether the plaintiffs are entitled to the relief claimed? OPP.
8. Relief.”

5. The only issue which is argued by the counsels for the parties before this Court is as to whether it was Sh. Shiv Dei Lal who was the owner of the suit property because he had in his favour the sale deed dated 23.2.1923 or whether it was Sh. Pishori Lal Anand

who was the owner as he had validly purchased the suit property by an oral sale of the year 1953 from the six successors-in-interest of the original owner Sh. Ram Dayal and from which Sh. Pishori Lal Anand appellants/plaintiffs have purchased the suit property by the registered sale deed dated 16.2.1959.

6. The relevant issue framed by the trial court in this regard is issue no. 1 and this issue no. 1 was decided by the trial court against the appellants/plaintiffs as per the discussion contained in paras 9 to 13 of the impugned judgment, and these paras read as under:-

“9. Issue No. 1.

The land in suit is actually only 802 sq. yards although the plaintiffs purchased 1157 sq. yards. Part of the land purchased by the plaintiffs is said to have been lost under the municipal roads and to the adjoining plot No. 50. The sale deed of the plaintiffs describes the land as measuring 1157 sq. yards falling in Khasra Nos. 1274/191/2/1 and 201 in the Revenue Estate of Village Kilokari. The plaintiffs have described the suit property as 802 sq. yards now known as plot No. 51, 51A & 51B in Block-A, Friends Colony, Delhi. In the documents on record the area in which the land is situated is also described as New Delhi and as forming part of Tehsil Mehrauli. The location of the plot is an important consideration in the case as the plaintiffs have to depend upon title of their vendor Pishore Lal, according to the plaintiffs, obtained titled by an oral sale. In para-6 of the plaint the plaintiffs plead that their vendors obtained title vide an oral sale and no document of sale was executed since at the time the provisions of Transfer of Property Act were not applicable to the land in question. The date of the alleged oral sale is conspicuously absent in this para. The plaintiffs claim that there was a mutation in favour of their vendors dated 09.04.53. Exbt. P-15 is the certified copy of the order of mutation in respect of khasra No. 1274/19 and 201 of Village Kilokari, Tehsil Mehrauli, Delhi. This mutation cannot prove an oral sale. Nor does a mutation grant any title. Assuming that an oral sale was permissible in law sometimes before the said mutation on 09.04.53, the same has to be duly proved. The defendant denies that Pishori

Lal ever purchased the suit property. She even dispute the title of the alleged vendors of Pishori Lal. In respect of proof of oral sale, there is no evidence on the record. The plaintiff No. 1's bare testimony that Kishori Lal (Pishori Lal) had purchased this land through oral sale of Rs.1,000/- from Sh. Ram Sarup is merely a re-statement of the plaintiff's case. There is no proof as to who and when sold what to whom. No witness to the said alleged oral sale is produced before the Court. Even the plaintiff No. 1 does not say that such oral sale took place in his presence. The plaintiff No. 1 does not even state as to who were the people from the whom Pishori Lal purchased by virtue of the alleged oral sale. He merely says that Pishori Lal purchased the land from "Ram Sarup and others" who were the recorded owners. Whether "Ram Sarup and others" who made the alleged oral sale had title is yet another question. The fact remains that there is no evidence to prove that an oral sale took place in favour of Pishori Lal, the vendors of the plaintiff, by anyone whatsoever.

10. Assuming that an oral sale took place in favour of Pishori Lal in respect of the suit land or the land falling in khasra No. 1274/191 and 201 in Village Kilokari, Tehsil Mehrauli, Delhi the next question would be whether such an oral sale was the legal mode of transferring the immovable property. At the time of arguments the learned counsel for the plaintiffs referred to certain authors to say that in Punjab and parts of Delhi there was a custom of sale of land by oral transactions. In that case existence of such custom in the area in which the land is situate, is required to be proved. The plaintiffs have not taken any steps to prove that in the area in question there was any custom of sale done orally.

11. The learned counsel for the defendant has produced on record a notification issued by the Central Government published in the Gazette of India Part-I dated 03.06.1939. Vide notification No. 189/38-III dated 30.05.39 the provisions of Transfer of Property Act as contained in Sections 54, 107 & 123 were extend to certain areas of Delhi. These areas are (a) area within the jurisdiction of Delhi Municipal Committee (b) area within the jurisdiction of New Delhi Municipal Committee, area within the jurisdiction of Notified Area Committee Civil Lines and (d) area within the jurisdiction of Notified Area Committee, Fort.

12. The learned counsel for the defendant however could not specifically identify if the suit property or the village Kilokari fell within any of the areas mentioned in the Notification of 1939.

13. Be that, as it may, since the actual oral sale in favour of the vendors of the plaintiffs has not been proved by the plaintiffs and further the existence of any custom permitting such oral sale is not proved by the plaintiffs, the title of the plaintiffs cannot be taken as having been established. It may be added here that the learned counsel for the plaintiffs either in the oral submissions or in the written note of arguments could not mention any law either statutory or oral showing validity of a transfer of title in immovable property in 1953 or thereabout in Delhi. I am therefore

constrained to hold that the plaintiffs have failed to prove their title. Issue No. 1 is decided against the plaintiffs.” (underlining added)

7. A reading of the aforesaid paras of the impugned judgment shows that the trial court was impressed by the fact that the oral sale relied upon by the appellants/plaintiffs in favour of Sh. Pishori Lal Anand is not established by any evidence and this is more so because the date of the oral sale is absent in the plaint. As regards the mutation order obtained in favour of Sh. Pishori Lal Anand on 9.4.1953 Ex.P-15 it is held that respondent/defendant though had proved the notification with respect to the provision of Section 54 of the Transfer of Property Act, 1882, being extended only to certain areas of Delhi, however, the respondent/defendant failed to prove that the areas which were mentioned in the notification included the area where the suit property is situated and thus it is held that in the year 1953 the provisions of the Transfer of Property Act did not apply to the suit land.

8. Learned counsel for the appellants/plaintiffs has vehemently argued that the trial court has committed a complete illegality in holding that the appellants/plaintiffs are not the owners inasmuch as it is argued that an oral sale was made of the suit property

in favour of Sh. Pishori Lal Anand and is clearly demonstrated by Sh. Pishori Lal Anand getting the property mutated in his name in terms of the order dated 9.4.1953 which was proved as Ex.P-15. The Jamabandi (record of rights) in favour of Sh. Pishori Lal Anand was proved as Ex.PW1/2. It is argued that this mutation order dated 9.4.1953 shows acting upon the *factum* of oral sale and thus mutation is a clear proof that there in fact was an oral sale of the suit property to Sh. Pishori Lal Anand and since at the relevant time in the year 1953 the Transfer of Property Act was not extended to Delhi so far as the area of the suit property, hence there was no requirement of a registered sale deed. It is also argued by the appellants/plaintiffs on the basis of their sale deed of the year 1959 that not only Sh. Pishori Lal Anand got mutation done in his name, thereafter, even the appellants/plaintiffs got the mutation done in their name in the revenue record which was proved as Ex.PW1/3. It is further argued that in around the year 1959 there was doubts as to acquisition of the suit land and therefore appellants/plaintiffs had made inquiries from the Land Acquisition Collector and who by his letter dated 6.12.1960 Ex.PW1/4, addressed the appellants/plaintiffs that the suit land was

not covered in acquisition scheme of the Government. It is argued that thereafter in the year 1962 acquisition proceedings were initiated in terms of a notification made on 24.9.1962 resulting in Award no. 1603/664 which included the suit land. The acquisition proceedings were challenged by the appellants/plaintiffs and the writ petition was allowed in favour of the appellants/plaintiffs vide judgment dated 1.3.1974 resulting in quashing of the acquisition. SLP filed against the judgment of the High Court was dismissed and which order of the Supreme Court is filed and proved as Ex.PW1/5. It is argued that thereafter again a fresh notification for acquisition was issued in the year 1978 and though the appellants/plaintiffs failed in their writ petition but their appeal being LPA No. 66/1987 was allowed and certified copy of this judgment was proved as Ex.PW1/6. It was held in the judgment in LPA No. 66/1987 that the suit land was outside the purview of the acquisition proceedings. It is also argued that the appellants/plaintiffs had filed returns under the Urban Land (Ceiling and Regulation) Act, 1976 and order passed by the competent authority under the Urban Land Act was proved as Ex. PW1/8. It was pleaded that as on the spot today an area of 802 sq. yards is available,

and with respect to this area of the suit land appellants/plaintiffs had entered into a collaboration agreement for construction with M/s Dubey Builders and Industries and copy of which agreement was proved as Ex. PX whereby two plots remained with the appellants/plaintiffs and one plot went to the builder.

9. It is argued that the best proof that transaction did in fact take place is whether the parties acted upon the same and whereas the appellants/plaintiffs as also Sh. Pishori Lal Anand acted as owners by getting mutation done in their name as also thereafter appellants/plaintiffs repeatedly being successful in getting the acquisition proceedings of the suit land cancelled, therefore it is clear that the appellants/plaintiffs were the owners of the suit property. It is argued that respondent/defendant, and prior to her Sh. Shiv Dei Lal, claimed to have purchased the suit property in terms of the sale deed dated 23.2.1923 Ex.DW1/3, yet, this document being the sale deed never saw light of the day from the year 1923 till around the year 1981-84 when Sh. Shiv Dei Lal for the first time claimed ownership of the suit land on the basis of Ex.DW1/3. It is argued that no doubt the sale deed dated 23.2.1923 has been proved as Ex.DW1/3, however,

merely filing a document does not mean that the same has to be believed by the Court because proof of a document is different than the weight to be attached to the document viz the credibility and validity of the same. It is argued that if the sale deed Ex.DW1/3 dated 23.2.1923 was a genuine transaction of sale of the suit property by Sh. Ram Dayal to Sh. Shiv Dei Lal then there was no reason why for no less than around five decades, i.e no less than as many as about 53 years, this document did not see the light of the day i.e from the year 1923 to early 1980s, and whereas it is in this period that the appellants/plaintiffs and their predecessor-in-interest Sh. Pishori Lal Anand from the year 1953 till 1980 acted as and were shown as owners of the suit land in the revenue record. Learned counsel for the appellants/plaintiffs also argued that the appellants/plaintiffs have filed in the trial court the entire original certified copies of the revenue record from the year 1922-23 till the year 1950-51 (Jamabandi- record of rights) and from the year 1971 to 1988-89 (Khasra Girdawari- record of yearly cultivation and possession). This revenue record of Jamabandi from the year 1922-23 to 1950-51 does not show that Sh. Shiv Dei Lal had claimed to be the owner of the property and that the

suit property was at all at any point of time in these years mutated in his name in this revenue record from the year 1922-23 to 1950-51. It is also argued that the revenue record being Khasra Girdawaris from the year 1971 to 1988-89 shows that appellants/plaintiffs were shown to be the owners of the suit land. Accordingly, it is argued that the alleged sale deed Ex.DW1/3 is not a genuine document in the sense that in fact no sale took place from Sh. Ram Dayal in favour of Sh. Shiv Dei Lal and possibly either the document itself was never executed or that it could be that the document was not acted upon and/or revoked or there would exist other reason for there actually being no sale of the suit property by Sh. Ram Dayal to Sh. Shiv Dei Lal, i.e it is argued that once the revenue record for over five decades nowhere showed that Sh. Shiv Dei Lal was the owner of the suit property and on the contrary this record showed ownership of Sh. Pishori Lal Anand and thereafter appellants/plaintiffs from the year 1959 as regards the suit property, hence the trial court ought to have held that the appellants/plaintiffs are owners of the suit property and it has been illegally held by the trial court without discussing all the

aforesaid arguments that appellants/plaintiffs are not the owners of the suit property.

10. Learned senior counsel for the respondent/defendant per contra argued that once the sale deed Ex.DW1/3 dated 23.2.1923 has been proved it cannot be argued otherwise by the appellants/plaintiffs that Sh. Shiv Dei Lal was not the owner of the suit property. It is argued on behalf of the respondent/defendant that the name of Sh. Shiv Dei Lal was got mutated in the revenue record in the year 1984 and which order has been filed, proved and exhibited in the trial court collectively with various other documents as Ex. DX. Reliance is also placed by the respondent/defendant on the contents of the order passed by the Revenue Assistant on 10.4.1989 whereby various aspects of merits in favour of the respondent/defendant and her predecessor-in-interest Sh. Shiv Dei Lal is discussed. This Court notes that the certified copy of the entire revenue record pertaining to request for mutation and cancellation of mutation by Sh. Shiv Dei Lal and appellants/plaintiffs, inasmuch as, exists in the file of the trial court, and parties admit to and rely on the same, I have however not been able to find a specific exhibit number to this document. However,

since these are admitted documents, and both the parties agree that this Court can refer to such certified copy of the revenue record as regards mutation and cancellation of mutation which is in the record of the trial court I am referring to the same. Reliance is also placed on behalf of the respondent/defendant on the letter Ex.PW1/X1 dated 23.6.1987 written by one of the appellants/plaintiffs to the Revenue Assistant and in unnumbered paragraph 3 of this letter it is argued that the appellant no.1/plaintiff no.1/Sh. R.K. Sethi has admitted that Sh. Shiv Dei Lal had purchased the suit property in the year 1923.

11. I note that learned counsel for the appellants/plaintiffs states that the appellants/plaintiffs have given up their challenge to the fact that the respondent/defendant has in her favour the judgment of the probate court dated 8.12.1988 passed by the Court of Sh. V.B. Bansal, District and Sessions Judge, Delhi Ex.DW1/5 i.e it is to be taken that the respondent/defendant has proved the Will of Sh. Shiv Dei Lal in her favour Ex.P-1 in the probate case, and therefore, respondent/defendant can be taken as the successor-in-interest of Sh. Shiv Dei Lal.

12. In my opinion, this first appeal has to be allowed and the impugned judgment of the trial court dated 9.3.2000 is liable to be set aside and accordingly it is so done. The reasons are given hereinafter.

13. I agree with the argument on behalf of the appellants/plaintiffs that no doubt there is an original document being a sale deed dated 23.2.1923 Ex.DW1/3, however, it is rightly argued that merely proving of this document would not mean that such a valid or genuine document in fact existed or if it existed it was acted upon. In my opinion, merely because a document is filed and proved does not mean that it has to be finally accepted by the court that such document should be taken as final for its validity, contents, effect etc, inasmuch as, proof of a document is different from weight to be attached to such document. No doubt, the document Ex.DW1/3 is a sale deed dated 23.2.1923, however, this sale deed never saw the light of the day from the year 1923 till early 1980's i.e for over five decades. Had the sale deed Ex.DW1/3 been genuine then within a few years at best of the same being executed then definitely Sh. Shiv Dei Lal would have applied for mutation in his name in the revenue record and would have got a mutation order showing him as the owner of the

suit property in the revenue record. Jamabandi is a long record of rights and Khasra Girdawari is the annual record of cultivation and possession of revenue land. In the revenue record being the Jamabandi filed from the year 1922-23 till 1950-51, it is seen that Sh. Shiv Dei Lal's name does not appear as the owner of the suit property. As per the revenue record being Khasra Girdawaris from the year 1971 onwards till 1988-89, it is the appellants/plaintiffs who have been shown as owners and in possession of the suit property. The appellants/plaintiffs have also proved mutation order in favour of Sh. Pishori Lal Anand as Ex.P-15 and Jamabandi in the name of Sh. Pishori Lal Anand Ex.PW1/2. No doubt, there is no proof of oral sale in the sense that there is no document which evidences the oral sale contemporaneously, however, from the fact that the oral sale in favour of Sh. Pishori Lal Anand of the year 1953 was acted upon by getting mutation done in favour of Sh. Pishori Lal Anand as also the Jamabandi got changed in his name, in the opinion of this Court this is sufficient proof of the oral sale in favour of Sh. Pishori Lal Anand by the then owners of the suit property and who were successors-in-interest of the first original owner Sh. Ram Dayal. The trial court has

erred in holding that the mutation done in favour of Sh. Pishori Lal Anand and the appellants/plaintiffs as also the revenue record from the year 1922-23 till 1989-89 cannot confer title because in law mutation cannot confer title, but, no doubt mutation in itself does not confer title but mutation which exists in the revenue record in favour of Sh. Pishori Lal Anand and thereafter appellants/plaintiffs for decades is a very vital aspect to determine the ownership of the suit property especially when the sale deed Ex.DW1/3 of the year 1923 is asserted and relied upon only after five decades. Mutation and the revenue record becomes important in this case because the sale was an oral sale in favour of Sh. Pishori Lal Anand and one of the ways to examine that such an oral sale took place was if Sh. Pishori Lal Anand applied and got mutation in his name of the suit property on the basis of oral sale and which Sh. Pishori Lal Anand in fact did. The Khasra Girdawari thereafter in favour of the appellants/plaintiffs from the year 1971 till 1988-89 also shows that in the revenue record possession and ownership of the suit land was shown to be of the appellants/plaintiffs and not of Sh. Shiv Dei Lal. Therefore, in my opinion, the sale deed Ex.DW1/3 is not to be held as conclusive i.e it

cannot be held only on the basis of filing of this document that Sh. Shiv Dei Lal had become owner of the suit property in the year 1923. It is therefore held that such document being the sale deed Ex.DW1/3 was either a nominal transaction or not a genuine transaction or the transaction was revoked or the transaction was never acted upon as a sale etc, inasmuch as, for over five decades, and as detailed above, revenue record in fact showed ownership not of Sh. Shiv Dei Lal but of Sh. Pishori Lal Anand and the appellants/plaintiffs. Accordingly, findings on issue no.1 of the trial court are set aside and it is held that appellants/plaintiffs are the owners of the suit land.

14. In my opinion, the argument urged on behalf of the respondent/defendant by placing reliance on the 'admission' of the appellant no.1/plaintiff no.1/Sh. R.K. Sethi in the letter dated 23.6.1987 Ex.PW1/X1 which states that Sh. Shiv Dei Lal was the owner of this land in the year 1923 is an aspect which cannot be read out of the context because this was a letter written after disputes had already arisen and this letter is written not by a lawyer in legal terms, and therefore what was actually intended to be said by appellant no.1/plaintiff no. 1/Sh. R.K. Sethi in this letter dated 23.6.1987 when

it is said that Sh. Shiv Dei Lal was the owner way back in the year 1923 it was to only state that the claim of Sh. Shiv Dei Lal was as an owner from the year 1923, and that the same is however to be conditioned by the immediate subsequent statement made thereafter in the self-same letter that the land was however purchased by the appellants/plaintiffs in February, 1959 from the recorded owner. A civil case is decided on preponderance of probabilities and even if an 'admission' exists of Sh. R.K. Sethi in the letter dated 23.6.1987, yet, this Court cannot ignore the voluminous revenue record of the year 1922-23 till 1988-89 and in which record there is no existence shown of ownership of the suit land of Sh. Shiv Dei Lal.

15. At this stage, I would like to note that the revenue record being the Jamabandi from the year 1922-23 till the year 1950-51 as also the Khasra Gridawaris from the year 1971 to 1988-89 has not been formally proved in the court below and therefore it is argued by the counsel for the respondent/defendant that these documents cannot be looked at by this Court. This argument of the respondent/defendant is misconceived because the revenue records filed are indubitably certified copies of the revenue records, and is therefore a public record

as per Section 74 of the Indian Evidence Act, 1872. This Court as per Section 57 of the Indian Evidence Act is bound to take judicial notice of seals of a certified copy and the notations of the certified copy as regards the public record and therefore the revenue record being the Jamabandi from the year 1922-23 till the year 1950-51 as also the Khasra Gridawaris from the year 1971 to 1988-89 are definitely documentary evidence that this Court can consider for the purpose of deciding of the issue of ownership of the suit land.

16. I may note that it is the appellants/plaintiffs who had since the year 1960 till late 1980 initiated and contested the proceedings for quashing of the acquisition proceedings *qua* the suit land and Sh. Shiv Dei Lal only conveniently stepped in thereafter to claim ownership. There were as many as two legal proceedings which were initiated by the appellants/plaintiffs and who were successful after contest in variations in getting the acquisition quashed with respect to the suit land. This clearly shows that for decades appellants/plaintiffs held themselves to be the owners of the suit land and in this period there is no assertion of title by the respondent/defendant or her predecessor-in-interest Sh. Shiv Dei Lal

qua the suit land. It is the appellants/plaintiffs who are in actual physical possession of the suit land and which is demonstrated from the Khasra Gridawaris from the year 1971 to 1988-89, and which record being over the period of 12 years, therefore, clearly by virtue of law of prescription contained in Section 27 of the Limitation Act, 1963 it is the appellants/plaintiffs who will have to be taken as owners of the suit property as they are in possession of the suit property for over a period of 12 years. I disagree with the arguments urged on behalf of the respondent/defendant that the appellant/plaintiffs were not in possession of the suit land and came into possession only during the pendency of the suit because this argument is negated by the Khasra Gridawaris of the years 1971 to 1988-89 i.e of 18 years.

17. In my opinion, also once the revenue record showed the ostensible owner as Sh. Pishori Lal Anand with the fact that the revenue record from the years 1922-23 till 1988-89 does not show Sh. Shiv Dei Lal as owner of the suit property, consequently, when the appellants/plaintiffs purchased the suit property from Sh. Pishori Lal Anand because the public record showed ownership of the suit property of Sh. Pishori Lal Anand, then, in my opinion,

appellants/plaintiffs can place reliance upon the spirit of provision of Section 41 of the Transfer of Property Act whereby the appellants/plaintiffs have also held to be as the owners i.e *bonafide* purchasers for value by virtue of Section 41 of the Transfer of Property Act. In addition to the appellants/plaintiffs having become owners of the suit property by law of prescription contained in Section 27 of the Limitation Act read with Articles 64 and 65 thereof, Section 41 of the Transfer of Property Act provides that if in the public record a particular person is shown to be the owner and the actual owner takes no steps to get the public record corrected then if a third person purchases the property being misled by what existed in the public record showing ownership of the property, then, the purchaser becomes a *bonafide* purchaser for value and gets valid title to the property although the seller may not have title to the property. Section 41 of the Transfer of Property Act reads as under:-

“41. Transfer by ostensible owner.—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 authorised to make it:

Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

18. In view of the aforesaid discussion this RFA is allowed. A decree is passed in favour of the appellants/plaintiffs and against the respondent/defendant declaring the appellants/plaintiffs as the owner of the suit property known as Plot Nos. 51, 51A and 51B, Block A, Friends Colony, New Delhi. Respondent/defendant and her agents, etc are restrained from in any manner interfering in possession of the suit property situated in Village Kilokari, Delhi owned by the appellants/plaintiffs.

OCTOBER 24, 2017

VALMIKI J. MEHTA, J

