

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

+ **CS(OS) No.1200/2006**

% **1st October, 2015**

MRS. VANEETA KHANNA AND ANR. Plaintiffs
Through: Mr. Sandeep Mittal, Advocate.

Versus

MR. RAJIV GUPTA AND ORS. Defendants
Through: Mr. Raj Kumar Sherawat, Advocate
with Mr. Arun Sukhija, Advocate for
defendant Nos.3 to 6.

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

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

VALMIKI J. MEHTA, J (ORAL)

1. This is a suit filed for possession, declaration, mesne profits/damages, perpetual injunction and mandatory injunction. The suit property is the property bearing no.8/289, Sunder Vihar, Paschim Vihar, New Delhi-110087 on a plot admeasuring 267 sq yds. There are two plaintiffs in the suit. Plaintiff no.1 is Smt. Vaneeta Khanna and who is the wife of plaintiff no.2/Mr. Arun Khanna. Plaintiff no.1 pleads that she

purchased rights in the suit property in terms of the original bunch of documentation dated 12.5.2004 read with the registered Agreement to Sell dated 16.6.2004 executed by plaintiff no.2 as a general power of attorney holder (registered) of defendant no.2. There are six defendants in the suit. Defendant no.1/Mr. Rajiv Gupta is the original owner of the suit property. Defendant no.2/Mr. Judge Chawla is said to be the person who had purchased the suit property from defendant no.1 in terms of documents dated 12.5.2004 including the registered General Power of Attorney dated 12.5.2004 executed by the defendant no.1 in favour of the defendant no.2. Defendant nos. 3 to 6 claim to be the *bona fide* purchasers of the suit property in terms of the later documentation dated 14.9.2004.

2. The case as pleaded by the plaintiffs is that plaintiff no.1 purchased rights in the suit property as per documentation dated 12.5.2004 and which documents are an agreement to sell, general power of attorney, registered Will, possession letter, receipt and affidavit. Out of these documents, the power of attorney executed in favour of plaintiff no.2 by the defendant no.2 was duly registered before the Sub-Registrar. One more document which was registered on 12.5.2004 is the Will executed in favour of plaintiff no.1 by defendant no.2. Other documents are unregistered

documents. The case of the plaintiffs is that for acquiring ownership rights in the suit property in terms of the documentation dated 12.5.2004, a sum of Rs.5 lacs by a crossed cheque was paid by the plaintiff no.1 to the defendant no.2. The further case of the plaintiffs is that the Agreement to Sell executed on 12.5.2004 could not be registered on account of certain deficiency in stamp duty and therefore after making up the deficiency of stamp duty, the fresh Agreement to Sell was executed and registered on 16.6.2004 in favour of plaintiff no.1 by the plaintiff no.2 acting under the registered Power of Attorney dated 12.5.2004 executed by the defendant no.2 in favour of the plaintiff no.2. Plaintiffs plead that they received possession of the suit property pursuant to the aforesaid documentation executed in favour of the plaintiff no.1. Plaintiffs also plead that since the suit property was to be got converted from lease hold to free hold, therefore, on the request of the defendant no.2, plaintiff no.1 in trust gave some signed papers in blank to the defendant no.2 so that necessary papers could be prepared and filed for conversion of the property from lease hold to free hold before the Delhi Development Authority (DDA). Plaintiffs claim that the defendant no.2 misused these blank papers and instead created/fabricated a collaboration agreement with respect to rights in favour of defendant no.2 by the plaintiff no.2 of the second floor and above of the suit property, and this

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was done because really the suit property when purchased by the plaintiff no.1 was constructed only on the ground floor and the first floor portion i.e defendant no.2 had a fraudulent intention because he realized that he could take advantage alongwith defendant no.1 that the documents executed in favour of the plaintiffs referred to the suit property with only as being the ground floor and the first floor. The further case of the plaintiffs is that when plaintiffs visited the suit property on 24.7.2004, it transpired that the locks which the plaintiff no.1 had put on the suit property on execution of the documents in favour of the plaintiff no.1, were broken and the locks were found to be broken by the defendant no.1. Plaintiffs claim that they were shocked by the action of the defendant no.1 in trespassing into the suit property and therefore a complaint was lodged with the local police station on 24.7.2004 with respect to the illegal act of trespass of the defendant no.1 in the suit property and dispossession of the plaintiffs. The defendant no.1 when called by the police informed that his sisters had filed a suit for partition against him and in that civil suit a *status quo* Order was passed by the Civil Court on 6.9.2000 restraining the defendant no.1 from transferring the suit property. Plaintiffs were shocked to learn about the pendency of the suit filed by the sisters and the plaintiffs realized that they were being cheated by the defendant nos.1 and 2. Plaintiff no.1 claims that the sisters of

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the defendant no.1 had already executed a registered Relinquishment Deed in favour of the defendant no.1 on 20.5.2002 and in fact on 17/18.12.2002 the defendant no.1's name was mutated in the records of the DDA as the sole owner of the suit property. Plaintiffs plead that defendant nos.1 and 2 have thereafter illegally and fraudulently got executed documents dated 17.8.2004, 19.8.2004 and 9.9.2004 whereby defendant no.2 claims that he had no rights in the suit property and it was only defendant no.1 who was the owner of the suit property and the defendant no.1 thereafter purports to have executed documents allegedly transferring rights in the suit property in favour of defendant nos.3 to 6 by the documents dated 14.9.2004 and received a sale consideration of Rs.11.65 lacs. Plaintiffs have referred to the FIR no.938/2004 which was registered with the police station with respect to the fraudulent dispossession of the plaintiffs of the suit property and the illegality of the documents executed by defendant no.2 in favour of the defendant no.1 and the subsequent documentation executed by the defendant no.1 in favour of defendant nos.3 to 6. Plaintiffs had earlier filed a civil suit bearing no.393/2004 before the District Court of Delhi under Sections 5 and 6 of the Specific Relief Act, 1963 seeking possession and also had sought permanent injunction and mesne profits with respect to the suit property.

This suit was dismissed by the District Court by its Judgment dated
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27.11.2004 on the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) filed by the defendant no.1 in the said suit Mr. Rajiv Gupta and who is the defendant no.1 in the present suit. The suit was rejected under Order VII Rule 11 CPC on the ground that plaintiffs had suppressed the fact with respect to existence of the Collaboration Agreement dated 18.5.2004 entered into by the plaintiff no.2 with the defendant no.2 herein. This earlier suit was dismissed after the District Court recorded the statement of the plaintiff no.2 in the present suit (and who was plaintiff no.1 in the said suit) on 28.9.2004 when plaintiff no.1 in the said suit Sh. Arun Khanna stated that he had seen the collaboration agreement and his signatures appeared on the collaboration agreement but it was not known as to how the defendant no.2 in the said suit Mr. Judge Chawla (and who is also defendant no.2 in the present suit) had obtained the signatures of Sh. Arun Khanna on this collaboration agreement. The judgment of the District Court was challenged before the High Court but that challenge was not successful and this Court vide its Judgment dated 2.3.2006 in RFA No.631/2004 dismissed the appeal. The matter was thereafter carried to the Supreme Court and the Supreme Court dismissed the SLP but gave liberty and entitlement to the plaintiffs to file a suit inasmuch as the earlier suit before the District Court filed by the plaintiffs had been dismissed only under Order

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VII Rule 11 CPC. This Order of the Supreme Court dated 28.4.2006 reads as under:-

“The petitioners herein had filed a Suit purported to be under the provisions of Section 5 & 6 of the Specific Relief Act. However, in the said Suit the petitioners had prayed for grant of permanent injunction or in the alternative recovery of possession or in the further alternative a decree for specific performance of contract. Such a Suit was not maintainable in law. However, the learned Judge had dismissed the Suit purported to be in terms of Order VII Rule 11 of the Code of Civil Procedure on the ground that the plaintiff has prayed a fraud by withholding the relevant agreement and material in the matter.

In view of the fact that the plaintiff can file an appropriate suit, we do not think it to be a fit case for us to exercise our discretionary jurisdiction under Article 136 of the Constitution. The special leave petition is dismissed accordingly.” (underlining added)

The present suit was thereafter filed by the plaintiffs.

3. Though defendant no.2 appeared and filed his written statement. He however subsequently failed to appear and was proceeded *ex parte* but those *ex parte* proceedings were thereafter set aside and defendant no.2 was allowed to lead evidence. Defendant no.1 on the other hand never filed his written statement but surprisingly he appeared and cross-examined the witnesses of the plaintiffs. The main contesting defendants in the suit are actually the defendant nos.3 to 6 who claim to be the *bona fide*

purchasers of the suit property in terms of the later documentation dated 14.9.2004. As per the case of the defendant nos.3 to 6, they have purchased rights in the suit property from the defendant no.1 in terms of the documentation dated 14.9.2004, and as already stated above, the documentation dated 14.9.2004 was preceded by the documentation executed on 17.8.2004, 19.8.2004 and 9.9.2004 whereby defendant no.2 is said to have firstly cancelled the GPA in favour of the plaintiff no.2 by the defendant no.2 and defendant no.2 gave a declaration that it is the defendant no.1 who is the owner of the suit property and is entitled to deal with the same. Accordingly, defendant no.1 thereafter pleaded by defendants no. 2 to 6 has executed the documentation dated 14.9.2004 in favour of defendant nos.3 to 6. In the written statement of defendant nos.3 to 5, these defendants have pleaded that the present suit is barred by the principle of *res judicata* and that the suit has not been properly valued for the purposes of court fees and jurisdiction. Defendant nos.3 to 6 have also pleaded that plaintiffs have not come to this Court with clean hands. Defendant nos.3 to 6 have denied the legal validity of the documents executed in favour of the plaintiffs by defendant no.2.

4. In this suit, the following issues were framed on 15.7.2008:-

“Issues

- 1) Whether the Plaintiff No.1 has acquired any title to property no. 8/289, Sunder Vihar, Paschim Vihar, New Delhi and is entitled to possession thereof? OPP
- 2) If the issue no.1 is decided in favour of the Plaintiff No.1, whether the Plaintiff No.1 is entitled to any mesne profits, if so, at what rate and for what period and from whom? OPP
- 3) Whether there exists any collaboration agreement dated 18th May, 2004 between the Plaintiff No.2 and Defendant No.2, if so, to what effect? OPPr
- 4) Whether the suit is barred by resjudicata? OPD
- 5) Whether the Defendants No.3 to 5 are bonafide purchasers without notice and are not liable to deliver possession to the Plaintiff No.1? OPD 3 to 5.
- 6) Whether the Defendants No.1 & 2 are in collusion with each other and what is the effect, if any, of the documents dated 17th August, 2004, 19th August, 2004 and 9th September, 2004 inter se the said Defendants? OPP
- 7) Whether the suit is correctly valued for the purposes of court fee and jurisdiction, if not, to what effect? OPD 2
- 8) Relief.”

Issue No.1

5. Let me first take up issue no.1, and which is the most crucial issue in the present case as to whether the plaintiff no.1 can be said to have

purchased rights in the suit property under the documentation dated

12.5.2004 and the registered Agreement to Sell dated 16.6.2004. The documents which have been proved and exhibited by the plaintiffs in support of their case are as under:-

- (i) Registered General Power of Attorney dated 12.5.2004 executed by defendant no.1 in favour of defendant no.2; Ex.PW1/1
 - (ii) Agreement to Sell in favour of plaintiff no.1 by defendant no.2 dated 12.5.2004; Ex.PW1/2
 - (iii) Registered General Power of Attorney executed by defendant no.2 in favour of plaintiff no.2; Ex.PW1/6
 - (iv) Receipt dated 12.5.2004 by defendant no.2 in favour of plaintiff no.1; Ex.PW1/3
 - (v) Affidavit dated 12.5.2004 by defendant no.2 in favour of plaintiff no.1; Ex.PW1/4
 - (vi) Registered Will dated 12.5.2004 executed by defendant no.2 in favour of plaintiff no.1; Ex.PW1/5
 - (vii) Registered Agreement to Sell dated 16.6.2004 executed by plaintiff no.2 in favour of plaintiff no.1 acting as the registered Power of Attorney holder dated 12.5.2004 of defendant no.2 in favour of plaintiff no.2; Ex.PW1/8
 - (viii) Police complaint dated 24.7.2004 of the plaintiff no.1 being illegally
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dispossessed; Ex.PW1/9

(ix) Order of the Supreme Court in SLP No.6902/2006 dated 28.4.2006;

Ex.PW1/19

6. With respect to whether the documents dated 12.5.2004 read with registered Agreement to Sell dated 16.6.2004, and which documents have transferred the title and possession to the plaintiffs, create or do not create any legal rights in favour of plaintiff no.1 with respect to the suit property, the arguments urged on behalf of the defendant nos.3 to 6 have to be examined at this stage. The **first** argument urged on behalf of the defendant nos.3 to 6 in this regard is that as per the plaint, the plaintiff no.1 claims to be the owner of the suit property by the documents including the Agreement to Sell dated 12.5.2004, but since the Agreement to Sell dated 12.5.2004 is an unregistered Agreement to Sell, hence no rights in the suit property were created in favour of the plaintiff no.1 in view of the amended Section 53A of the Transfer of Property Act, 1882; by the Act 48 of 2001 w.e.f 24.9.2001; inasmuch as after 24.9.2001 an agreement to sell can only be looked into if the agreement to sell is duly stamped and registered. **Secondly**, it is argued on behalf of the defendant nos.3 to 6 that the registered Agreement to Sell dated 16.6.2004 shows the lie of the plaintiffs

that Agreement to Sell dated 12.5.2004 could not be registered on the same date on account of deficiency in the stamp duty inasmuch the stamp duty of the registered agreement to sell shows that the same was purchased earlier in April, 2004, i.e prior to the documentation dated 12.5.2004 in favour of plaintiff no.1, and this Court therefore should not believe the case urged on behalf of the plaintiffs that the Agreement to Sell dated 12.5.2004 could not be registered on account of deficiency of stamp duty. **Thirdly**, it is argued that plaintiffs have not filed the documents said to have been executed on 12.5.2004 in favour of defendant no.2 by defendant no.1 and by which defendant no.2 is said to have become owner of the suit property for further transferring the suit property in favour of the plaintiff no.1. **Fourthly**, it is argued that the documents of May, 2004 could not have been validly and legally executed by defendant nos.1 and 2 in favour of plaintiff no.1, inasmuch as on this date the interim Order dated 6.9.2000 passed in the suit of the sisters of the defendant no.1 was operating and which interim order continued to operate till 3.9.2004 and therefore during the operation of an interim order of a Civil Court, no valid title could have passed from the defendant nos.1 and 2 to the plaintiff no.1. **Fifthly** and finally it is argued that even before the documents dated 12.5.2004 were executed in favour of the plaintiff no.1 by the defendant no.1, in favour of the defendant nos.3 to 6

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there were executed and existed the documentation dated 22.3.2004 being the registered General Power of Attorney dated 22.3.2004 and a registered Will dated 22.3.2004.

7. On behalf of the defendants the following documents have been proved and relied upon:-

- (i) Registered General Power of Attorney dated 22.3.2004 executed by defendant no.1 in favour of defendant no.3; Ex.D-1
- (ii) Registered Will dated 22.3.2004 executed by defendant no.1 in favour of defendant no.3; Ex.D-2
- (iii) Registered Agreement to Sell dated 14.9.2004 by defendant no.1 in favour of defendant nos.3 to 5; Ex.D-3W1/6
- (iv) Receipt dated 14.9.2004 in favour of defendant nos.3 to 5; Ex.D3W1/10
- (v) Judgment of the District Court dated 27.11.2004; Ex.PW1/16
- (vi) Judgment dated 2.3.2006 in RFA No.631/2004; Ex.PW1/17

8. At this stage Section 48 of the Transfer of Property Act, 1882 requires to be referred to. This section provides that when with respect to one property documents of transfer of rights therein are executed at different

points of time, then, earlier documents would prevail over later documents.

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 of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.”

9. When a person owns a property he owns a bundle of rights ie an owner may let out the property—one right, he may then mortgage the same—second right, and then he may sell whatever rights remaining, in him as a mortgagor of a tenanted property—a third right. In my opinion, rights which are talked of in any property which is the subject matter of Section 48 of the Transfer of Property Act, would include rights either in whole or in part of the property and either entire ownership rights or even part rights in the property. Section 48 of the Transfer of Property Act specifically uses the expression rights in an immovable property and not complete ownership rights indicating that once different rights exist in an immovable property; qua one right in an immovable property which is transferred at one earlier point of time, the said earlier transaction will prevail over a right of the same nature created later qua the same immovable property. For example, if a

tenancy right is created with respect to one floor in a property on one date and thereafter tenancy rights are again created with respect to the same floor on a later date, then the earlier tenancy rights created will prevail over the later created tenancy rights. Tenancy rights are obviously lesser rights than the complete ownership rights in a suit property. Therefore, if valid rights are created as per the doctrine of part performance of Section 53A of the Transfer of Property Act in favour of the plaintiff no.1, even if thereafter there are rights created in the suit property in favour of defendant nos.3 to 6 in terms of the later documents relied upon by them, such later documents are of no purport and effect because once rights have already been transferred by an earlier set of documents, merely because subsequent set of documents are created the said later documentation cannot transfer rights ie *nemo dat quod non habet*.

10. The arguments urged on behalf of defendant nos.3 to 6 have to be rejected that plaintiffs are claiming rights in the suit property only by the documentation dated 12.5.2004 which being unregistered did not create any rights, inasmuch as, the contents of the plaint have to be read as a whole and when so done it is seen that plaintiffs are claiming rights in the suit property not only in terms of the documentation dated 12.5.2004 but also in terms of

the registered Agreement to Sell dated 16.6.2004. Once the Agreement to Sell dated 16.6.2004 is duly stamped and registered, plaintiff no.1 will under Section 53A of the Transfer of Property Act, 1882 have rights in the suit property and better rights than those created under any subsequent date documents which are executed with respect to the suit property by either the defendant no.1 or defendant no.2 or defendant nos.1 and 2 jointly. Also, it is relevant to note that at the time of executing of the registered Agreement to Sell dated 16.6.2004 by the plaintiff no.2 in favour of plaintiff no.1, plaintiff no.2 was acting under the valid and subsisting registered Power of Attorney executed on 12.5.2004 by the defendant no.2 in favour of the plaintiff no.2 as such Power of Attorney was not cancelled when the Agreement to Sell dated 16.6.2004 was executed by the plaintiff no.2 in favour of the plaintiff no.1. Transferring of possession to plaintiffs is mentioned in the Agreements to Sell dated 12.05.2004 and 16.6.2004. Also, in the written statement of the defendant no.2 there is no dispute that defendant no.2 executed the documents dated 12.05.2004 and the defence is only that these documents were executed as security and which documents alleged were given up in the Collaboration Agreement dated 18.05.2004 being executed between the plaintiff no.2 and the defendant no.2. As will be discussed below, the defendant no.2 has failed to prove any Collaboration Agreement dated

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18.05.2004. In my opinion, therefore plaintiff no.1 did get valid title rights in the suit property in terms of the documentation dated 12.5.2004 read with the registered Agreement to Sell dated 16.6.2004.

11(i). It was then argued on behalf of the defendant nos.3 to 6 that once the defendant nos.3 to 6 had in fact rights prior in date to the plaintiff no.1 in the suit property inasmuch as defendant nos.3 to 6 had in their favour the earlier executed registered Power of Attorney and the Will dated 22.3.2004, then by the selfsame logic of Section 48 of the Transfer of Property Act, the defendant nos.3 to 6 would hence be owners of the suit property and not the plaintiff no.1. The argument of the defendant nos.3 to 6 is impressive only at the first blush, however the argument is really without any substance and liable to be rejected for reasons given hereinafter.

(ii) Firstly, the defendant nos.3 to 6 have made no whisper at all of these documents dated 22.3.2004 in their written statement and have not pleaded any rights in their favour in terms of these documents dated 22.3.2004. No such issue has also been framed of defendant nos. 3 to 6 having title rights because of the documents dated 22.3.2004. The documents dated 22.3.2004 were introduced only at the stage of evidence of the defendants. Thus on the principle that no amount of evidence can be looked at on a case which is not

put up, these documents cannot be looked into to create rights in favour of defendant nos. 3 to 6. In my opinion, counsel for the plaintiffs is correct in arguing that the defendant nos.3 to 6 did not rely upon the documents dated 22.3.2004 in their favour because rights under those documents had been given up and never enforced and knowing so for that reason, the defendant nos.3 to 6 never relied upon or wanted to take benefit of the documents dated 22.3.2004 by claiming rights under such documents in terms of their pleadings. It is only during the course of the evidence being led in the suit that the defendant nos.3 to 6 suddenly realized that they may not succeed on the basis of the documents dated 14.9.2004 executed in their favour and therefore they thought it fit to introduce a totally new case under the documents dated 22.3.2004 and which admittedly is not even pleaded.

(iii) The second reason for not giving any valid entitlement to the defendant nos.3 to 6 of the documents dated 22.3.2004 is that these documents dated 22.3.2004 do not reflect that possession of the suit property under these documents was specifically given to the defendant nos.3 to 6 by the defendant no.1 as I do not find any language in these documents dated 22.3.2004 which categorically states that possession of the suit property was transferred by defendant no.1 in favour of the defendant nos.3 to 6.

(iv) Thirdly, it may also be noted that entitlement to remain in possession has to be in terms of a document which gives both legal and physical possession and entitlement to legal possession is only through the doctrine of part performance under Section 53A of the Transfer of Property Act in terms of a registered agreement to sell only, but such a registered agreement to sell admittedly does not exist in favour of the defendant nos.3 to 6 as on 22.3.2004 because on 22.3.2004 the documents executed and in favour of the defendant nos.3 to 6 were only a Power of Attorney and a registered Will and that too without there being given possession of the suit property as stated above.

(v) Therefore, in my opinion defendant nos.3 to 6 cannot rely upon the documents dated 22.3.2004 of they either having been given title rights in the suit property by these documents or having been given possession of the suit property by these documents or having been given possession in the nature of part performance under Section 53A of the Transfer of Property Act in terms of the documents dated 22.3.2004.

12. At this point it requires to be noted that a contractual document can only be cancelled by a contractual document i.e if a sale deed is executed, then it is not open to a seller of a sale deed to unilaterally cancel

the contractual document being a sale deed. This I am saying so because if rights are validly created in the suit property in favour of the plaintiff no.1 by the documents dated 12.5.2004 and 16.6.2004, then merely because thereafter defendant nos.1 and 2 have executed various cancellation deeds cancelling any rights in the suit property of the plaintiff no.1, such unilateral actions surely cannot have the legal effect of taking away and cancel the valid title rights which the plaintiff no.1 had in the suit property by virtue of the documents dated 12.5.2004 and 16.6.2004 in her favour. Thus all documents executed after 12.5.2004 and 16.6.2004 in favour of anyone by the defendant nos. 1 and 2 jointly or severally are illegal, null and void including the documents dated 17.8.2004, 19.8.2004 and 14.9.2004 and these latter documents post 16.6.2004 are accordingly declared to be null and void and of no legal effect.

13. I also reject the argument urged on behalf of the defendant nos.3 to 6 that the judgment of the Supreme Court in the case of *Suraj Lamp and Industries Private Limited Vs. State of Haryana and Anr., (2012) 1 SCC 656* helps the defendant nos.3 to 6 to show that the documents dated 12.5.2004 and 16.6.2004 do not create any rights in favour of the plaintiff no.1. This is because paras 19 and 24 of the judgment in the case of *Suraj*

Lamp and Industries Private Limited (supra) in fact protect the rights created under Section 53A of the Transfer of Property Act and these paras 19 and 24 of the judgment in the case of *Suraj Lamp and Industries Private Limited (supra)* read as under:-

- “19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53A of Transfer of Property Act). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.
24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.” (underlining added)

Clearly therefore the judgment of the Supreme Court in the case of *Suraj Lamp and Industries Private Limited (supra)* does not help the defendant nos.3 to 6 but in fact goes against defendant nos. 3 to 6 because the Supreme Court has held that whatever rights are created under Section 53A of the Transfer of Property Act are protected and would be available. Also, it is further noted that in the present case the judgment of the Supreme Court in the case of *Suraj Lamp and Industries Private Limited (supra)* will *ex facie* not apply because the rationale and the ratio of the judgment of the Supreme Court in the case of *Suraj Lamp and Industries Private Limited (supra)* was to prevent unregistered documents transferring title in immovable properties that too without payment of stamp duty, however in the present case the agreement to sell which has been executed is no doubt post 24.9.2001 i.e after the Act 48 of 2001 came in amending Section 53A of the Transfer of Property Act, but the Agreement to Sell dated 16.6.2004 is a duly stamped and registered document as required by law. I therefore reject this argument urged on behalf of the defendant nos.3 to 6.

14. Defendants no.3 to 6 have argued that the reason given by the plaintiffs of inadequate stamp duty being the reason for not registering the Agreement to Sell dated 12.5.2004 is a false one, because, the stamp papers

of the Agreement to Sell dated 16.6.2004 show that they were already purchased in April, 2004 prior to the execution of the Agreement to Sell dated 12.5.2004 in favour of plaintiff no.1, however this argument is misconceived because no doubt the stamp papers of the agreement to sell are of April, 2004 but since there was deficiency of stamp papers of value of Rs.5,700/-, the deficiency was made up after 12.5.2004 and which is seen from the stamps of franking qua making up of deficiency in stamp duty on the first page of the Agreement to Sell dated 16.6.2004.

In any case once the Agreement to Sell dated 16.6.2004 is otherwise a validly executed and registered document as held above even for the sake of argument that the plaintiffs have not stated the complete truth cannot simply and only for that reason be a reason in law to legally discard a validly executed and registered Agreement to Sell dated 16.6.2004. As repeatedly held by courts, the maxim of *falsus in uno, falsus in omnibus* has no application in this country.

15. The defendants no.3 to 6 also have argued that plaintiffs have not filed documents executed by defendant no.1 in favour of defendant no.2 on 12.5.2004 but in my opinion this was not necessary as it is enough for the plaintiffs to have filed and proved as Ex.PW1/1 the registered GPA dated

12.5.2004 executed by defendant no.1 in favour of defendant no.2 as the documents executed by defendant no.2 in favour of the plaintiff no.1 is under this registered General Power of Attorney Ex.PW1/1 dated 12.5.2004.

16. Even the argument that documents dated 12.5.2004 were executed in favour of defendant no.2 and plaintiff no.1 during the currency of an interim order in a suit filed by the sisters of defendant no.1 and hence are invalid, has no legs to stand upon firstly because any *locus* to argue such aspect would be only of the sisters and not of defendants no.3 to 6 and secondly as clarified by the Supreme Court recently in the judgment in the case of ***Thomson Press (India) Limited Vs. Nanak Builders and Investors P. Ltd. And Ors. (2013) 5 SCC 397*** that transfer during pendency of a suit is only to protect the plaintiff if a suit succeeds because of the principle of *lis pendens* under Section 52 of the Transfer of Property Act and it is noted that the suit of the sisters has been compromised with defendant no.1 and withdrawn. Therefore, the defendant nos. 3 to 6 cannot rely upon this argument and which is rejected.

17. Issue no.1 is therefore decided in favour of the plaintiff no.1 and against the defendants.

Issue no.3

18. I may note that the alleged Collaboration Agreement dated 18.5.2004 on which a lot of hullabaloo was created by the defendant no.2 that plaintiff no.2 had executed this collaboration agreement in favour of the defendant no.2 with respect to the second floor and above of the suit property, the same has not even been proved by any of the defendants including the defendant no.2. The original of this collaboration agreement has not seen the light of the day ever and only a photocopy has been filed and which has not even been proved by the defendant no.2. Therefore, there is no valid and legal collaboration agreement which ever came into existence between the plaintiff no.2 and the defendant no.2. This is all the more so because counsel for the plaintiffs is justified in arguing that a collaboration agreement by its very nature means that an owner of a property because of giving rights under the same to a builder will in fact be got paid certain amounts and not that a builder/defendant no.2 is paid an amount under a collaboration agreement and which is said to have happened under the Collaboration Agreement dated 18.5.2004 because under the collaboration agreement it is mentioned that an amount of Rs.5 lacs is paid by cheque by plaintiff no.2 to the defendant no.2, and which itself therefore as stated

above is totally illogical. Not only this payment of Rs.5 lacs under the so called collaboration agreement by plaintiff no.2 to defendant no.2 is wholly illogical, this fact itself is otherwise shown to be a totally imaginary thing because there has never been proved that any cheque of this number or account of this number stated in the cheque of Rs.5 lacs; alleged to be received by the defendant no.2 from the plaintiff no.2 under the collaboration agreement; even existed at all. Clearly therefore the collaboration agreement is a forged and fabricated document and once the same is not proved, I need not even refer to the same for any rights under the same being created in favour of the defendant no.2. It also needs to be noted at this stage that defendant no.2 has not appeared or has been represented during the entire course of hearing of the final arguments of the present suit before this Court.

19. In view of the discussion given above it is held that there is no Collaboration Agreement dated 18.5.2004 and this issue is therefore decided in favour of the plaintiffs and against the defendants.

Issue no.2

20. Once the plaintiff no.1 becomes the owner of the title rights in the suit property, as issue no.1 is decided in favour of the plaintiff no.1, plaintiff no.1 will be entitled to mesne profits as plaintiff no.1 has been wrongly ousted from the possession of the suit property. In the affidavit by way of evidence filed by the plaintiff no.1 as PW1, PW1 has deposed that the rate of rent of the similar premises of the area would be Rs.15,000/-per month. To this aspect there is no cross-examination whatsoever by the defendants. Therefore in the absence of cross-examination, the relevant portion of examination-in-chief is therefore taken as not disputed and hence this Court accepts an amount of Rs.15,000/- per month as mesne profits of the suit premises. Also, taking judicial notice of rents in Delhi, I do not find that in the year 2006 a property situated on a plot of land admeasuring 267 sq yds having a ground floor and the first floor in the city of Delhi would have rent less than Rs.15,000/- per month. Plaintiff no.1 is therefore held entitled to a money decree of mesne profits at Rs.15,000/- per month as against the defendants no.1 and 2 from 24.7.2004 till 14.9.2004 and after 14.9.2004, the defendant nos. 3 to 6 will be liable to pay mesne profits at Rs.15,000/- per month to the plaintiffs till the plaintiffs receive possession of the suit property. I also deem it fit to award interest at 9% per annum simple

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pendente lite and future in exercise of powers of this Court under Section 34 CPC for and from end of each month for which mesne profits are payable to the plaintiff no.1 by the defendants in terms of the present judgment till entire amount of mesne profits alongwith interest is cleared by the defendants to the plaintiff no.1. Issue no.2 is accordingly decided in favour of the plaintiff no.1 and against the defendants.

Issue No.4

21(i). The question to be decided under issue no.4 is that whether the present suit is barred by *res judicata* on account of earlier Judgments of the District Court dated 27.11.2004, High Court dated 2.3.2006 and the Order of the Supreme Court dated 28.4.2006.

(ii) The Order of the Supreme Court dated 28.4.2006 has already been reproduced above, and the same leaves no manner of doubt that the Supreme Court has categorically entitled the plaintiffs to file a fresh suit, inasmuch as, the earlier suit has only been rejected under Order VII Rule 11 CPC. It is well known that rejection of a suit under Order VII Rule 11 CPC is not a decision on merits for such an earlier decision to operate as *res judicata* under Section 11 CPC with its Explanations. For application of the

principle of *res judicata* the earlier decision has to be a decision on merits and not a technical rejection of the suit. That a technical rejection/dismissal of a suit does not operate as *res judicata* is clear from the judgment of the Supreme Court in the case of ***Sheodan Singh Vs. Smt. Daryao Kunwar AIR 1966 SC 1332*** and the relevant para of which judgment reads as under:-

- “14. This brings us to the main point that has been urged in these appeals, namely, that the High Court had not heard and finally decided the appeals arising out suits Nos. 77 and 91. One of the appeals was dismissed on the ground that it was filed beyond the period of limitation while the other appeal was dismissed on the ground that the appellant therein had not taken steps to print the records. It therefore urged that the two appeals arising out of suits Nos. 77 and 91 had not been heard and finally decided by the High Court, and so the condition that the former suit must have been heard and finally decided was not satisfied in the present case. Reliance in the connection is placed on the well-settled principle that in order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been on the merits. Where, for example, the former suit was dismissed by the trial court for want of jurisdiction, or for default of plaintiff's appearance, or on the ground of non-joinder of parties or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letters of administration or succession certificate when the same is "required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation or for failure to pay additional court fee on a plaint which was undervalued or for want of cause of action or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision not being on the merits would not be res judicata in a subsequent suit. But none of these considerations apply in the present case, for the Additional Civil Judge decided all the four

suits on the merits and decided the issue as to title on merits against the appellant and his father. It is true that the High Court dismissed the appeals arising out of suits Nos. 77 and 91 either on the ground that it was barred by limitation or on the ground that steps had not been taken for printing the records. Even so the fact remains that the result of the dismissal of the two appeals arising from suits Nos. 77 and 91 by the High Court on these grounds was that the decrees of the Additional Civil Judge who decided the issue as to title on merits stood confirmed by the order of the High Court. In such a case, even though the order of the High Court may itself not be on the merit the result of High Court's decision is to confirm the decision on the issue of title which had been given on the merits by the Additional Civil Judge and thus it effect the High Court confirmed the decree of the trial court on the merits, whatever may be the reason for the dismissal of the appeals arising from suits Nos. 77 and 91. In these circumstances though the order of the High Court itself may not be on the merits, the decision of the High Court dismissing the appeals arising out of suits Nos. 77 and 91 was to uphold the decision on the merits as to issue of title and therefore it must be held that by dismissing the appeals arising out of suits Nos. 77 and 91 the High Court heard and finally decided the matter of it confirmed the judgment of the trial court on the issue of title arising between the parties and decision of the trial court being on the merits the High Court's decision confirming that decision must also be deemed to be on the merits. To hold otherwise would make res judicata impossible in cases where the trial court decides the matter on merits but the appeal court dismisses the appeal on some preliminary ground thus confirming the decision of the trial court on the merits. It is well-settled that where a decree on the merits is appealed from, the decision of the trial court loses its character of finality and what was once res judicata again becomes res sub judice and it is the decree of appeal court which will then be res judicata. But if the contention of the appellant were to be accepted and it is held that if the appeal court dismisses the appeal on any preliminary ground, like limitation or default in printing, thus confirming in toto the trial court's decision on merits, the appeal court's decree cannot be

res judicata, the result would be that even though the decision of the trial court given on the merits is confirmed by the dismissal of the appeal on a preliminary ground there can never be res judicata. We cannot therefore accept the contention that even though the trial court may have decided the matter on the merits there can be no res judicata if the appeal court dismisses the appeal on the preliminary ground without going into the merits, even though the result of the dismissal of the appeal by the appeal court is confirmation of the decision of the trial court given on the merits. Acceptance of such a proposition will mean that all that the losing party has to do to destroy the effect of a decision given by the trial court on the merits is to file an appeal and let that appeal be dismissed on some preliminary ground, with the result that the decision given on the merits also becomes useless as between the parties. We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision to the trial court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal.”
(underlining added)

22. In my opinion, therefore, the earlier judgments of the District Court and the High Court would not operate as *res judicata* more so in view of the observations of the Supreme Court in its Order dated 28.4.2006 specifically observing that the plaintiffs would be entitled to file a fresh suit inasmuch as dismissal of the earlier suit was only under Order VII Rule 11 CPC.

23. Issue no.4 is therefore decided in favour of the plaintiffs and against the defendants.

Issue no.5.

24. This issue is as to whether defendant nos. 3 to 5 can claim to have title to the suit property as *bona fide* purchasers without notice in spite of the plaintiffs having title rights in the suit property by virtue of the documents dated 12.5.2004 and 16.6.2004. This issue also will have to be answered in favour of the plaintiffs and against the defendants for the reasons as given hereinafter.

25(i). A claim of *bona fide* purchaser for value without notice is in terms of Section 19(b) of the Specific Relief Act. This provision of Section 19(b) of the Specific Relief Act requires that before rights are claimed under this particular principle, it is necessary for the subsequent purchasers have to plead and prove that their actions are firstly *bona fide* and secondly that they do not have any notice of a previous transaction of transfer of title with respect to the suit property.

(ii) It is noted that in the written statement of the defendant nos. 3 to 5 they have not even whispered about their purchase of rights as being

bona fide and that they purchased the rights in the suit property without notice of the earlier title in favour of the plaintiff no.1. Not only there is no pleading but even in the evidence led on behalf of defendant nos. 3 to 6 there is not even a whisper that defendant nos. 3 to 6 have purchased rights in the suit property without having notice of the title created in favour of plaintiff no.1 by the documentation dated 12.5.2004 and 16.6.2004. It is also seen that once the Agreement to Sell dated 16.6.2004 in favour of the plaintiff no.1 was a registered document, defendant nos. 3 to 6 are deemed to have notice of this agreement by virtue of *Explanation I* to Section 3 of the Transfer of Property Act which provides that registration of a document operates as a notice. Therefore, neither there is any pleading nor any evidence that defendant nos.3 to 6 have purchased the rights in the suit property without notice of the prior title in favour of the plaintiff no.1 and which pleading the defendant nos. 3 to 6 cannot legally take up in view of *Explanation I* to Section 3 of the Transfer of Property Act.

(iii) Though learned counsel for the defendant nos. 3 to 6 argued that in the affidavit by way of evidence filed on behalf of defendant nos. 3 to 6, they have used the expression '*bona fide*', however, not only no amount of evidence can be looked into on the plea of *bona fide* action of the defendant

nos. 3 to 6 which is not pleaded in the written statement, but also that even assuming there is a plea of *bona fides*, the same is not sufficient because the same had to be accompanied by pleadings and proof of defendant nos. 3 to 6 having purchased rights in the suit property without having notice of the title of plaintiff no.1, and which the defendant nos. 3 to 6 have miserably failed to plead and prove as so discussed above.

(iv). Also, in law, once title rights are transferred pursuant to Section 53A of the Transfer of Property Act, there does not arise application of Section 19(b) of the Specific Relief Act and which applies if there is only an ordinary agreement to sell which requires specific performance and not an agreement to sell under Section 53A of the Transfer of Property Act. Object of Section 19(b) of the Specific Relief Act is to give precedence to a later sale deed of *bona fide* purchases for value without notice and not for giving precedence to transfer of later rights although rights in an immovable property has earlier already been validly transferred and in such a case it is the Section 48 of the Transfer of Property Act that will apply and not Section 19(b) of the Specific Relief Act.

26. I therefore hold that defendant nos. 3 to 6 cannot be said to be *bona fide* purchasers for value without notice and issue no.5 is therefore decided in favour of the plaintiffs and against the defendants.

Issue no.6.

27. This issue is inconsequential and therefore is not pressed on behalf of the plaintiffs, inasmuch as, even assuming there is any collusion between defendant nos. 1 and 2, the same will not affect any rights of the plaintiff no.1 because plaintiff no.1 contractually has got title rights in the suit property in her favour by the documentation dated 12.5.2004 and 16.6.2004. This issue is disposed of accordingly.

Issue no.7

28. This is the final issue to be decided as to whether the suit has been properly valued for the purpose of court fee and jurisdiction and onus of this issue was placed upon the defendants. Once evidence is led by both the parties, onus pales into insignificance and I have to examine what is the evidence existing on record, as to whether the suit can or cannot be said to be properly valued for the purpose of court fee and jurisdiction.

29. Plaintiff has valued the suit for the purpose of jurisdiction with respect to possession at Rs.20,05,000/-. On behalf of the defendant nos. 3 to 6 the argument raised is that this Court does not have pecuniary jurisdiction and the suit is not properly valued because actually the value of suit property would be around Rs.5 lacs and at which value plaintiff no.1 had purchased the title rights in the suit property by virtue of documents dated 12.5.2004 and 16.6.2004. It is also argued on behalf of defendant nos. 3 to 6 that in the earlier civil suit filed in the District Court, plaintiffs had valued the suit for the purpose of jurisdiction at Rs.5 lacs and therefore, in this suit it cannot be said that suit is properly valued at Rs.20, 05,000/- for the purpose of giving pecuniary jurisdiction to this Court.

30(i). Though, counsel for the defendant nos. 3 to 6 wanted this Court to refer to various judgments on the issue of pecuniary jurisdiction, however, I do not deem it fit to refer to elementary proposition of law which is cited in judgments because surely it is no doubt the law that courts cannot entertain suits which are not as per its pecuniary jurisdiction, but, existence of pecuniary jurisdiction is firstly an issue of fact ie by means of evidence the factual aspect has to be established and only when the facts come in, it is then that the application of law would be required. There is no dispute as to

the proposition of law that if this Court does not have pecuniary jurisdiction then this Court cannot try the suit because plaintiff has overvalued the suit.

(ii) The issue is that whether plaintiffs have overvalued the suit. I am of the opinion that as per the evidence led in the present case, it cannot be held that plaintiffs have overvalued the suit for the purposes of pecuniary jurisdiction for possession of the suit property. There are various reasons for this Court to hold so. Firstly in the earlier suit which was filed wherein pecuniary jurisdiction was mentioned at Rs.5 lacs, the same was filed by the plaintiffs in the year 2004 whereas this suit has been filed two years later in the year 2006. Surely therefore the value of the property would have changed from the year 2004 to 2006. Secondly, not only the value of the property would have changed, admittedly the documentation in favour of the defendant nos. 3 to 6 themselves just within four months of the documentation in favour of the plaintiffs resulted in doubling the valuation of the suit property i.e from Rs.5 lacs to Rs.11,65,000/- because Rs. 11,65,000/- is the value stated in the documents of the defendant nos. 3 to 6.

(iii) I also take judicial notice of the rise in the value of the properties in Delhi.

(iv) Further, it is to be noted that there is no evidence which is led on behalf of the defendants that if the valuation of the suit property on the date of filing of the suit if was not Rs.20,05,000/- then it was of which lower specific value. There is no whisper in the entire evidence which is led on behalf of the defendants no.3 to 6 that the specific value of the suit property is not Rs.20,05,000/- but a lower amount falling below the pecuniary jurisdiction of this Court.

(v) In view of the above facts, in my opinion, it cannot be held that the suit is not properly valued for the purpose of court fee and jurisdiction with respect to the relief of possession when the plaintiff has valued the suit at Rs.20,05,000/- for the cause of action and relief of possession of the suit property.

31. Issue no.7 is also therefore decided in favour of the plaintiffs and against the defendants.

Relief:-

32. In view of the above discussion all the issues are decided in favour of the plaintiffs and against the defendants. Suit of the plaintiffs is decreed against the defendants for possession of the property bearing no.

8/289, Sunder Vihar, Paschim Vihar, New Delhi-110087 admeasuring 267 sq yds. In case the defendants or any of them have raised any construction on the suit property above the second floor, then in case the defendants so wish then they can remove such construction without of course in any manner causing damage to the ground floor and the first floor of the suit property which construction was existing when the plaintiff no.1 purchased the rights in the suit property and when plaintiff no.1 was dispossessed from the suit property on 24.7.2004. The defendant nos. 3 to 6 may however state a monetary value of construction over the first floor of the suit property, ie second floor and above, and the plaintiff no. 1 at her sole option may agree to pay that value to the defendant nos. 3 to 6 whereby defendant nos. 3 to 6 can receive such value and leave the construction of second floor and above intact. Plaintiff no.1 will also be entitled to mesne profits at Rs. 15,000/- per month from 24.7.2004 till 14.9.2004 as against the defendant nos. 1 and 2 alongwith interest at 9% per annum simple *pendente lite* and future and mesne profits at same rate from 14.9.2004 at Rs.15,000/- per annum simple from defendant nos. 3 to 6 alongwith *pendente lite* and future interest at 9% per annum simple till payment payable for and from the end of the month when mesne profits are payable. It is also declared that the documentation executed between the defendants after 16.6.2004 is illegal, void and of no

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legal effect and the same will not in any manner cause derogation of the rights of the plaintiff no. 1 in the suit property under the documentation dated 12.5.2004 and 16.6.2004. Defendants are also injuncted from claiming themselves to be the owners of the suit property or acting as such. Parties are left to bear their own costs. Decree sheet be prepared.

OCTOBER 01, 2015
Ne/ib/nn

VALMIKI J. MEHTA, J.