

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

Pronounced on: 10th April, 2015

+ **CS(OS) 1350/1995**

MRS. GURNAM KAUR Plaintiff
Through Mr. Manish Vashisht, Advocate
with Mr. Sameer Vashisht,
Advocate, Mr. Dhruv Rohtagi,
Advocate & Ms. Reema Yadav,
Advocate
versus

SH. PRITAM SINGH BHATIA & ORS. Defendants
Through Ms. Sadhana Sharma, Advocate
for D-3.
Mr. Kirti Uppal, Senior
Advocate with Mr. Amita
Gupta, Advocate,
Mr. Abhimanyu K. Singla,
Advocate &
Mr. Sidharth Chopra, Advocate
for D-6 to 8.

+ **TEST.CAS. 81/2008**

ADMINISTRATOR GENERAL SANJAY DEWAN
..... Petitioner
Through Ms. Avnish Ahlawat, Advocate

versus

STATE & ORS. Respondents
Through Mr. Manish Vashisht, Advocate
with Mr. Sameer Vashisht,
Advocate, Mr. Dhruv Rohtagi,
Advocate & Ms. Reema Yadav,
Advocate for Respondent no.3.
Ms. Sadhana Sharma, Advocate
for Respondent no.4.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. It will be convenient to dispose of CS(OS) No.1350/1995 titled *Mrs. Gurnam Kaur v. Pritam Singh Bhatia & Ors.* and Test Cas. No.81/2008 titled *Administrator General v. State & Ors.* together by this common judgment.
2. Initially, CS(OS) No.1350/1995 was filed by Mrs. Gurnam Kaur, widow of Late Sardar Sajjan Singh for declaration and cancellation of certain Sale Deeds, Will and General Power of Attorney on the ground that the same were forged.
3. It is the case of the Plaintiff that when these documents were purported to have been executed by deceased Sardar Sajjan Singh, he had already died on 18.04.1972. The relief claimed in the suit as per the prayer clause is extracted as under:-

“i. A decree of declaration be passed in favour of the Plaintiff and against the Defendants, declaring the Plaintiff to be the absolute owner and in possession of the property commonly known as D-1/21 and D-1/20, Rajouri Garden, New Delhi;

ii. A decree in favour of the Plaintiff and against Defendant No.1 for cancellation of the Sale Deed registered on 5.8.1991 as document No.4657 in Addl. Book No.1 Volume 5528 at pages 114 to 119. ANNEXURE 'A' pertaining to half undivided portion out of 373 sq. yds. of plot No.D-1/21, Rajouri Garden, New Delhi and the sale deed ANNEXURE 'D' pertaining to half undivided portion out of 458 sq. yds. of plot No.D-1/20, adjudging the above-said sale deeds as null and void and for directing Defendant No.1 for delivering up the sale deeds ANNEXURE 'A' and ANNEXURE 'D';

iii. A decree in favour of the Plaintiff and against Defendant No.2 for cancellation of the Sale Deed registered on 5.8.1991 as document No.4658 in Addl. Book No.1 Volume 5528 at pages 120 to 125. ANNEXURE 'B' pertaining to half undivided portion out of 373 sq. yds. of Plot No.D-1/21, Rajouri Garden, New Delhi and the sale deed ANNEXURE 'C' pertaining to half undivided portion out of 458 sq. yds. of Plot No.D-1/20, adjudging the above-said sale deeds as null and void and for directing Defendant No.2 for delivering up the said sale deeds ANNEXURE 'B' and ANNEXURE 'C';

iv. A decree in favour of the Plaintiff and against Defendants No. 6 to 8 for cancellation of the Sale Deeds registered on 6.4.1995, 19.4.1995 and 3.8.1995 and the Sale Deed awaiting registration for directing Defendants No.6 to 8 to deliver up the Sale Deeds annexed hereto as ANNEXURE F,G and H;

v. A decree against Defendant No.1 for cancellation of the forged and fraudulent General Power of Attorney dated 17.5.1990 adjudging it as null and void and for directing Defendant No.1 for delivering up the said General Power of Attorney;

vi. A decree against Defendants No. 3 & 4 for cancellation of the Will dated 5/4/1983 ANNEXURE 'E'

adjudging the same as null and void and for directing Defendants No.3 and 4 for delivering up of the said Will;

vii. A decree for permanent injunction restraining Defendants No.1 to 4 and 6 to 8 from alienating or constructing on the plot of land or any portion thereof situated at D-1/20 and D-1/21 Rajouri Garden, New Delhi by way of sale or mortgage or in any other manner either themselves or through their servants, agents assigns or attorneys or any other person;

viii. A decree for permanent injunction restraining Defendants No.1 to 4 and 6 to 8 from in any manner interfering with the peaceful possession of the Plaintiff on Plot No.D-1/20 and D-1/21, Rajouri Garden, New Delhi either themselves or through their servants, agents, assigns or attorneys or any other person.

ix. A mandatory injunction against Defendant No.5 for cancelling the mutation made by it in respect of plot No.D-1/21; and

x. A permanent injunction restraining as detailed in the Plaint Defendant No.5 from giving effect to the mutation made by it as detailed in the Plaint and from making any further mutations in the name of any person other than the Plaintiff in respect of the said plots bearing Nos. D-1/20 and D-1/21, Rajouri Garden, New Delhi.”

4. Succinctly put, the case of the Plaintiff is that sometime in the year 1993, the Plaintiff applied for mutation of the suit properties *i.e.* Plot Nos.D-1/20 and D-1/21, Rajouri Garden, New Delhi, measuring 458 sq. yds. and 373 sq. yds. respectively in her name. However, she was being put off by

the concerned Department of the Municipal Corporation of Delhi on one pretext or the other. Finally, in August, 1994, the Plaintiff came to know that mutation of the earlier said properties has already been effected in favour of Defendants no.1 and 2 on the basis of some bogus Sale Deeds. Consequently, the Plaintiff obtained certified copies of the forged Sale Deeds on 11.08.1994.

5. The Plaintiff also came to know that Defendant no.1 had also filed a suit bearing CS(OS) No.3384/1990 seeking relief of permanent injunction against Defendant no.4 (Rajouri Garden Welfare Association) in respect of the suit properties on the basis of a forged General Power of Attorney purported to have been executed by Late Sardar Sajjan Singh in his name and registered in the office of Sub-Registrar, Panchkula, Haryana on 17.05.1990.
6. The Association, in turn also propounded a Will dated 05.04.1983 and built up a story that Late Sardar Sajjan Singh had died in Malaysia in the year 1984.

7. During pendency of the suit against Defendants no.1 to 5, an application being IA No.8904/1997 under Order 1 Rule X of the Code of Civil Procedure, 1908 (CPC) for impleadment was filed by Defendants no.6 to 8, claiming themselves to be the owner of the suit properties by way of three registered Sale Deeds dated 06.04.1995, 19.04.1995 and 03.08.1995 purported to have been executed by Defendants no.1 and 2 in their favour. The application was allowed and they were impleaded as Defendants in the said suit.
8. The Plaintiff's case is that Late Sardar Sajjan Singh never executed any Sale Deeds nor any Power of Attorney in favour of Defendants no.1 or 2. He never executed any Will in favour of Defendant no.3. The documents of transfer and the Will propounded are claimed as forged as Late Sardar Sajjan Singh had died on 18.04.1972, much before the claimed execution of the transfer documents by the Defendants.
9. In their written statements, Defendants no.1 and 2 have taken a stand that the suit properties were sold to them by virtue of four separate registered Sale Deeds dated 05.08.1991. The suit filed

in the year 1995 is therefore, barred by limitation.

10. In reply to the specific plea that Late Sardar Sajjan Singh had expired on 18.04.1972, Defendants no.1 and 2 pleaded that he was alive at the time of execution of the Sale Deed and had stayed at House No.679, Gali Peepal Wali, Rajouri Garden, New Delhi. It was also pleaded that Defendants no.1 and 2 were *bona fide* purchasers.
11. Defendants no.3 and 4, who are Rajouri Garden, D-Block, Welfare Association and its General Secretary respectively, came up with the plea that Will dated 05.04.1983 was executed in favour of the Association for the welfare of the inhabitants of the locality. The Will was handed over to the Association by one Lt. Col. (Retired) A.L. Talwar few months before he (Sajjan Singh) died in December, 1990. It is also the plea of the Association that the Association is in continuous adverse possession of the plots for the last 30 years.
12. Municipal Corporation of Delhi(MCD), Defendant no.5 in its written statement took up the plea that properties no.D-1/20 and

D-1/21, Rajouri Garden, New Delhi were initially assessed in the name of Shri Sajjan Singh. Later, on the basis of the registered Sale Deeds produced by Defendants no.1 and 2 vide their letter dated 13.07.1992, the plots were mutated in the name of these Defendants. Defendants no.1 and 2 were also informed that the mutation was only for the purpose of payment of property tax and it would not confer any legal title. The MCD denied that there was any collusion on the part of its officers with Defendants no.1 and 2.

13. Defendants no.6 to 8 filed a joint written statement contending purchase of certain shares in the suit properties through various registered Sale Deeds from Defendants no.1 and 2. The details of purchase as given by Defendants no.6 to 8 are as under:

- “i) Sale Deed dated 3.8.1995 of 1/4th share of plot no.D-1/21, Rajouri Garden, New Delhi sold by Shri Paramjit Singh S/o Pritam Singh for consideration of ₹1,75,000/- duly registered in favour of Sanjeev Bansal, Defendant no.6 herein;*
- ii) Sale Deed dated 6.4.1995 of 1/4th share of plot no.D-1/21, Rajouri Garden, New Delhi sold by Shri Paramjit Singh S/o Pritam Singh for a consideration of ₹1,75,000/- duly registered in*

favour of Smt. Neelam Bansal, Defendant no.8 herein;

iii) Sale Deed dated 19.4.1995 of 1/4th share of plot no.D-1/20, Rajouri Garden, New Delhi sold by Shri Paramjit Singh S/o Sh. Pritam Singh for a consideration of ₹1,75,000/- duly registered in favour of Sh. Suresh Bansal, Defendant no.7 herein.”

14. Defendants no.6 to 8 further took up the plea that in pursuance of the Sale Deeds, they took the possession of the suit properties. When they applied for mutation of the said property in their name, the MCD declined to make any mutation on the ground that the title suit was pending in the High Court. They denied the plea that they were not *bona fide* purchasers of the property from Defendants no.1 and 2.
15. In the replication filed by the Plaintiff to the written statement of Defendants no.1 and 2, they reiterated the averments made in the plaint and thus, denied the averments made in the written statement. On the basis of the pleadings of the parties, issues were framed by this Court by an order dated 19.01.2006. Issues no.1, 3 and 5 were further reframed by an order dated 13.02.2006. The issues as framed and re-casted are as under:

- “1. Whether the plaintiff has valued the suit properly for the purposes of court fee and jurisdiction? OPP;*
- 2. Whether the suit of the plaintiff is barred by limitation for relief of declaration? OPD;*
- 3. Whether the written statement is liable to be struck off from the record being not properly signed and verified in accordance with law? OPD1 and 2;*
- 4. Whether Sardar Sajjan Singh was alive in the year 1983 or 1991 as per the respective claims of Defendants no.3 and 4 and Defendants no.1 and 2? OPD;*
- 5. Whether Sardar Sajjan Singh was alive in the year 1983 or 1991 as alleged by some of the Defendants and had executed a will dated 26.9.1961 which is the legal and proper will? If so, to what effect? Onus on the parties;*
- 6. Whether Defendant No.3 is in open hostile continuous and adverse possession for more than 30 years as claimed ? OPD-3;*
- 7. Whether any valid Will dated 5.4.1983 was executed in favour of Defendant no.3? If so, its effect? OPD-3;*
- 8. Whether the suit property is duly mutated in favour of Defendants no.1 and 2,? If so, its effect? OPD 1 and 2;*
- 9. Whether the sale deed dated 5.8.1991 has been validly executed by a competent person? OPD 1 and 2;*
- 10. Whether sale deeds dated 3.8.1995, 6.4.1995 and 19.4.1995 are executed by competent person? OPD 6, 7 and 8;*
- 11. Whether Defendants no.1 and 2 were in possession of the suit properties till the date of filing of the suit?*

OPD 1 and 2;

- 12. Whether the Plaintiff is entitled for relief of declaration as prayed in clause (i) of the prayer in the amended plaint? OPP;*
 - 13. Whether the plaintiff is entitled for relief of cancellation of sale deed as prayed in prayer clause (ii), (iii) and (v) of the amended plaint? OPP;*
 - 14. Whether the plaintiff is entitled for relief of cancellation of power of attorney as prayed in para (v) of the amended plaint? OPP;*
 - 15. Whether the plaintiff is entitled for relief of cancellation of Will dated 5.4.1983 as prayed in prayer VI of the amended plaint? OPP;*
 - 16. Whether the plaintiff is entitled for relief of permanent injunction as prayed in para VII, VIII and X of the prayer clause in the amended plaint? OPP;*
 - 17 .Whether the plaintiff is entitled for relief of mandatory injunction as claimed in para IX of prayer clause in amended plaint? OPP;*
 - 18. Whether defendants no.1 and 2 were competent to sell the property to Defendants no.6 to 8 and are they bonafide purchasers for consideration? If so, to what effect? Onus on the parties; and*
 - 19. Relief.”*
16. In the probate case, the issues were framed by an order dated 16.04.2010, which are as under:

“1. Whether the estate of late Sardar Sajjan Singh – Plot Nos.D-1/20 and D-1/21, Rajouri Garden, New Delhi is liable to be vested in the

Administrator General? OPP;

2. *Whether the estate of late Sardar Sajjan Singh would vest in Respondent No.3, being his widow, as stated in the written statement of Respondent no.3? OPD3;*
3. *Whether Sardar Sajjan Singh died on 18.04.1972, as stated in the written statement of Respondent No.3? OPD3;*
4. *If Issues no.2 and 3 are decided in affirmative, whether Respondent No.2 is left with any rights qua the estate of deceased late Sardar Sajjan Singh as alleged by him? OPD2; and*
5. *Relief.”*

17. In CS(OS).1350/1995, evidence of the Plaintiff was recorded by video conferencing. Jagjit Singh, son of the Plaintiff in CS(OS).1350/1995 and Respondent no.3 in Test.Cas. 81/2008 appeared as DW-1. Defendant no.7, Suresh Bansal, on the other hand, also appeared as DW-1. Before dealing with the issues, it will be appropriate to discuss briefly the evidence produced by the parties. In her Affidavit Ex.PW1/A, the Plaintiff testified that she was married to late Sardar Sajjan Singh on 11.09.1946 at Ipoh, Perak, Malaysia. She was blessed with eleven children whose names and dates of birth were mentioned in para 2 of the Affidavit. She deposed that her

husband had purchased two plots of land bearing nos. D-1/20 and D-1/21, measuring 458 and 373 sy. yds respectively situated at Rajouri Garden, New Delhi vide registered Sale Deed dated 12.09.1956. The Plaintiff in pursuance of the directions of this Court produced the original Sale Deed. She testified that her husband Late Sardar Sajjan Singh had executed a Will dated 26.09.1961 bequeathing all his properties in her favour. She deposed that the earlier stated two plots of land were never sold by her husband to any third party. The alleged Sale Deeds dated 05.08.1991 relied upon by Defendants no.1 and 2 are forged and fabricated. She deposed that the Sale Deeds could not have been executed in the year 1991 as her husband had passed away on 18.04.1972. She deposed that Letter of Administration was granted in her favour by the Chief Judge of Kolkata Court on 21.07.1988. She, in her cross-examination on behalf of the Administrator General in Test.Cas.18/2008 and by the counsel for Defendants no.6 to 8 in CS(OS).1350/1995 boldly stood the test of cross-examination and was able to give all the details of her family.

18. In his Affidavit Ex.DW1/A, Dr.Jagjit Singh S/o Late Shri Sardar Sajjan Singh testified that he was the fourth child of his parents Late Shri Sardar Sajjan Singh and Smt. Gurnam Kaur. He was born on 11.01.1952 in Selangor, Malaysia. He produced his birth certificate Ex.DW1/1. He testified that his father had purchased two plots of land by virtue of Sale Deed dated 12.09.1956. He deposed that the Sale Deeds dated 05.08.1991 are forged and fabricated. He added that his father expired on 18.04.1972. His father had executed a Will dated 26.09.1961 and upon the same, a certificate of probate dated 31.12.1973 was issued by the High Court in Malaysia at Kuala Lumpur in Petition No.651 of 1972. Certified copy of the certificate of probate was proved as Ex.DW1/7. The witness was cross-examined at length. Nothing could be brought in his cross-examination which could dispute his relation with deceased Sardar Sajjan Singh or with the Plaintiff or to shatter his testimony.
19. Suresh Bansal, Defendant no.7 in his Affidavit DW-1/A deposed about the execution of the Sale Deeds dated 05.08.1991

by Late Sardar Sajjan Singh in favour of Defendants no.1 and 2 and consequent purchase of certain shares in the same by Defendants no.6 to 8 from Defendants no.1 and 2. Thrust of his evidence is that Defendants no.6 to 8 are *bona fide* purchasers of certain portions of plots of land bearing nos. D-1/20 and D-1/21, Rajouri Garden, New Delhi.

20. First of all, I shall deal with the issues framed in the Test Cas. 81/2008 filed by the Administrator General.

ISSUE NO.1:

21. As per Section 34 of the Indian Succession Act, 1925, where an intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules thereafter contained and if he has left none who are of kindred to him, the properties shall go to the Government. Similarly, as per Section 10 of the Administrators-General Act, 1963, whenever any person has died leaving assets exceeding rupees fifty thousand in value and the High Court is satisfied that there is immediate danger of

misappropriation, deterioration or waste of such assets, the High Court may upon the application of the Administrator-General or any person interested in such assets, direct the Administrator General to take possession of such assets. In fact, because of certain claims being made by third persons and consequent upon filing of CS(OS)1350/1995, this Test Cas.81/2008 was filed by the Administrator-General on the premise that the Plaintiff might not be the legal heir of deceased Sardar Sajjan Singh. Gurnam Kaur, the Plaintiff in CS(OS).No.1350/1995 was impleaded as Respondent no.3 in Test Cas.81/2008. She through her lawyer has produced the original title documents of both these properties bearing nos. D-1/20 and D-1/21, Rajouri Garden, New Delhi *i.e.* the Sale Deed executed on 12.09.1956 by D.L.F. Housing & Constructions Ltd. in favour of S.Sajjan Singh, S/o S. Anokh Singh, R/o 11, Market Street, Klang, Malaya. (The original Sale Deed has been taken out from the sealed envelope by the Court Master for perusal by the Court. The Sale Deed shall be re-sealed in presence of the counsel for the Plaintiff). The original Sale Deed and various other

documents including the birth certificate of DW1 Jagjit Singh sufficiently establish that Gurnam Kaur, Respondent no.3 in Test Cas.81/2008 and Plaintiff in CS(OS).1350/1995 is the widow of deceased Sardar Sajjan Singh and Dr.Jagjit Singh is the son of Late Sardar Sajjan Singh.

22. It may be mentioned that the widow is not seeking probate of any Will in the instant Test Cas. 81/2008. The widow is simply defending the petition filed by the Administrator General. Initially, the Rajouri Garden Welfare Association who was impleaded as Respondent no.4 in Test Cas.81/2008 and Defendants no.3 and 4 in CS(OS).1350/1995 had propounded a Will, but during the course of the trial, it was stated that the Association was simply protecting the property belonging to Late Sardar Sajjan Singh. Since it is established that deceased Sardar Sajjan Singh was survived by legal heirs, the property is not liable to be vested in the Administrator General. It is immaterial whether any Will dated 26.09.1961 was executed by Late Shri Sajjan Singh in favour of his wife.

ISSUES No.2, 3, 4 and 5:

23. In view of decision upon Issue no.1 above in Test Cas.81/2008, these issues have become redundant as far as Test Cas.81/2008 is concerned. Rights of Plaintiff Gurnam Kaur as against the private parties in CS(OS).1350/1995 shall be dealt with a little later while dealing with the issues framed in the civil suit.
24. In view of decision on Issue no.1 above, Test Cas.81/2008 is hereby dismissed. No costs.

ISSUE No.1 in CS(OS)1350/1995:

25. The Plaintiff has valued the suit for the purpose of cancellation of forged documents at ₹7.01 lakhs being the value of the forged Sale Deeds and *ad valorem* court fee has been paid thereon and for the relief of declaration as prayed, a court fee of ₹20/- has been affixed. It has not been stated by the Defendants as to how the suit has not been correctly valued for the purpose of court fee and jurisdiction. In my view, the suit is properly valued. Issue no.1 is accordingly decided in affirmative.

ISSUE No.2:

26. The case of the Plaintiff is that the cause of action arose in

August, 1994 when Defendant no.5 MCD refused to give any hearing to the Plaintiff when she approached Defendant no.5 for mutation of the property. It further arose on 02.09.1995 when the Plaintiff came to know that the Defendants have colluded in forging the Sale Deeds and have got the mutation done. The suit was instituted in the year 1995 itself which is clearly within limitation. Thus, the Defendants' plea that the suit is barred by limitation is unfounded and is not tenable. The issue is decided in negative.

ISSUES No. 3, 4 and 5:

27. Defendants no.1 and 2 have subsequently by an application taken up the plea that the written statement placed on record was not signed by them. Their application for setting aside certain proceedings and proceeding them *ex parte* was dismissed by a detailed order dated 04.08.2014 whereby this Court had also issued direction for registration of a criminal case against them to be investigated by EOW Cell of Delhi Police. Whether the written statement is taken into consideration or not is inconsequential as no evidence worth

considering has been produced by Defendants no.1 and 2 to prove that late Sardar Sajjan Singh was alive in the year 1983 or 1991. The Plaintiff has placed on record the death certificate of late Sardar Sajjan Singh and a copy of the Will dated 26.09.1961. This Court need not go into the validity or otherwise of the Will purported to have been executed by Late Sardar Sajjan Singh in favour of his wife Gurnam Kaur, Plaintiff herein as it is established from his death certificate that Sajjan Singh had expired on 18.04.1972. Thus, the Sale Deed dated 05.08.1991 could not have been executed by Late Sardar Sajjan Singh. Nothing was brought on record by Defendants no.1 and 2 or even by Defendant no.3 to show that late Sardar Sajjan Singh was alive in 1983 or 1991. Accordingly, Issues no.3, 4 and 5 are decided against Defendants no.1 and 2 and Issue no.7 is decided against Defendant no.3.

ISSUE NO.6

28. Onus to prove this issue was upon Defendant no.3 (Rajouri Garden D Block and Adjoining Areas Welfare Association). No evidence was led by Defendant no.3 as to how and when it

came into the possession of the suit property. It may be mentioned that by an order dated 28.07.2008 passed in Test Cas. No.81/2008 this Court had directed that possession of plots bearing nos.D-1/20 and D-1/21, Rajouri Garden shall vest with the Administrator General for safe custody. By a subsequent order dated 12.03.2009, the order dated 28.07.2008 was confirmed and held to be in force. It was further directed that Defendant Gursharan Singh, who had claimed his building material to be lying in the suit plots was directed to remove the same from the plots in question within a period of 15 days. Relevant portion of the order dated 12.03.2009 is extracted hereunder:-

“The counsel for Ms. Gurnam Kaur states that Mr. Gursharan Singh is intending to raise construction over the plots with respect where to the letters of Administration is sought in this petition. Vide ex parte dated 28th July, 2008 which is still in force, it was ordered that the possession of the plots shall vest with the Administrator General, for safe custody. Thereafter on 14th Jan., 2009 in the presence of counsel for all the parties, it was recorded that the plots are being used as children’s play ground. The counsel for Mr. Gursharan Singh states that though some building material is lying on the plots, the same was put by Mr. Gursharan Singh prior to the order dated 28th July, 2008 and Mr. Gursharan Singh is still

in possession of the plots. It is clarified that since as per the order dated 28th July, 2008 which is still in force the possession has been vested with the Administrator General for safe custody, no activity of construction shall be carried out on the said plots. Mr. Gursharan Singh is free to remove the said building material within fifteen days from today failing which the Administrator General in whose custody the plots are shall be free to have the said building material removed from the site.....”

29. At the time of hearing arguments in the case, the learned counsel for Defendant no.3 fairly conceded that Defendant no.3, which is the Welfare Association of the residents of the Rajouri Garden is not in adverse possession of the plots. It was stated that the Association simply protected the possession from the hands of unauthorised persons.
30. In view of the above discussion, Issue no.6 is decided against Defendant no.3 on merits and also as not being pressed.

ISSUE NO.7

31. In the written statement, it was claimed by Rajouri Garden D Block and Adjoining Areas Welfare Association that a Will dated 05.04.1983 was executed in its favour by deceased Sajjan Singh. However, the said Will was not produced by Defendant

no.3. I have already discussed the testimony of the Plaintiff that her husband Late Shri Sajjan Singh had passed away on 18.04.1972. His death certificate ExDW1/4 was also proved on record. All the more, the Plaintiff had also obtained probate of the Will dated 26.09.1961 by a certificate of probate dated 31.12.1973 by High Court of Malaysia at Kuala Lumpur. Thus, any Will dated 05.04.1983 could not have been executed by deceased Sajjan Singh in favour of Defendant no.3 for the reason that he was not even alive on the date of the alleged execution of the Will and that the said Will has never seen the light of the day. Moreover, at the time of hearing, it was conceded by the learned counsel for Defendant no.3 that it is not possessed of any Will dated 05.04.1983. The issue is accordingly decided in negative.

ISSUES NO.8 & 9

32. Onus to prove these issues was on Defendants no.1 and 2. They failed to produce any evidence that the Sale Deeds dated 05.08.1991 were executed by Late Shri Sajjan Singh in their favour. As stated earlier, Late Shri Sajjan Singh had expired by

that time. It is established that Late Shri Sajjan Singh had expired on 18.04.1972 itself. Thus, the Sale Deeds dated 05.08.1991 could not have been executed by Late Shri Sajjan Singh or his authorised representative in favour of Defendants no.1 and 2. Consequently, it is held that the alleged Sale Deeds were forged and manipulated. Therefore, the mutation effected by the Municipal Corporation of Delhi on the basis of the Sale Deeds dated 05.08.1991 is also illegal and of no consequence. Issues no.8 and 9 are accordingly decided against Defendants no.1 and 2.

ISSUES NO.10 & 18

33. I have already held above that Late Shri Sajjan Singh had expired on 18.04.1972 and have also returned finding that the Sale Deeds dated 05.08.1991 are forged Sale Deeds. Since Defendants no.1 and 2 did not have any title in respect of the suit properties, they were not competent to execute any Sale Deed in favour of Defendants no.6,7 and 8. It may be mentioned that Defendants no.6,7 and 8 failed to produce the originals of the Sale Deeds dated 03.08.1995, 06.04.1995 and

19.04.1995. Rather, they relied on an FIR alleged to have been registered intimating about loss of the original Sale Deeds. Defendants no.6,7 and 8 also failed to produce the original Sale Deed dated 12.09.1956 executed by DLF in favour of Late Shri Sajjan Singh. On the other hand, the original Sale Deed dated 12.09.1956 was produced by the Plaintiff and was kept in a sealed cover. None of the Defendants have come forward with any explanation as to how the Plaintiff could be in possession of the original Sale Deed dated 12.09.1956 if Late Shri Sajjan Singh had sold the properties to Defendants no.1 and 2 and Defendants no.1 and 2 in turn to Defendants no.6,7 and 8. Thus, the Sale Deeds dated 03.08.1995, 06.04.1995 and 19.04.1995 claimed by Defendants no.6,7 and 8 although not proved but even if assumed to be executed by Defendants no.1 and 2 are of no consequence as Defendants no.1 and 2 never had any title in respect of the two plots in question. Issues no.10 and 18 are accordingly decided in negative (against Defendants no.1,2 and 6 to 8).

ISSUE NO.11

34. Onus to prove this issue was on Defendants no.1 and 2. They have not led any evidence to show that they ever obtained possession of the property. In the absence of any title, they could not have obtained possession. The issue is accordingly decided in negative.

ISSUES NO.12 TO 17 & 19

35. In view of my findings on the issues above, the suit of the Plaintiff is decreed in terms of para 32 (i to ix) prayer clause of the amended plaint dated 02.03.1998.

36. Defendant no.5, MCD is directed not to give effect to the mutation made by it in favour of Defendants no.1 and 2 and to cancel the same within a period of eight weeks from the date of this judgment.

37. The suit of the plaintiff is decreed with costs in terms of the prayers as stated above.

38. By an order dated 04.08.2014 an FIR was ordered to be registered by Commissioner of Police, Delhi within a period of 7 days and a responsible officer was ordered to be deputed to

carry out the investigation on urgent basis under the supervision of an officer, not below the rank of DCP working in EOW of Delhi Police. Let a status report of the investigation be filed within a period of four weeks. The supervising officer shall be present before the Court on 18.05.2015.

39. A copy of the order be transmitted to the Commissioner of Police and Standing Counsel for the Govt. of NCT of Delhi.
40. Pending applications, if any, also stands disposed of.

(G.P. MITTAL)
JUDGE

APRIL 10, 2015

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