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

+ **Date of Decision: 30.06.2015**

% **RSA 113/2015 and CAV No.270/2015 and C.M. No. 5294/2015**

AVTAR SINGH & ORS Appellants

Through: Mr. Chaman Lal Sachdeva &
Ms.Priyam Mehta, Advocates.

versus

RAJ KUMAR & ORS Respondents

Through:

+ **RSA 115/2015 and C.M. No. 5317/2015**

AVTAR SINGH & ORS Appellants

Through: Mr. Chaman Lal Sachdeva &
Ms.Priyam Mehta, Advocates.

versus

RAJ KUMAR Respondent

Through:

+ **RSA 117/2015 and C.M. No. 5327/2015**

AVTAR SINGH & ORS Appellants

Through: Mr. Chaman Lal Sachdeva &
Ms.Priyam Mehta, Advocates.

versus

RAJ KUMAR Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeals under Section 100 CPC have been preferred to assail the common judgment dated 25.11.2014 passed by Sh. Paramjit Singh, ADJ (West)-02, Tis Hazari Courts, Delhi in respect of RC No.4/2012 (arising out of Suit No.801/2008 – Old No.09/1991); RC No.5/2012 (arising out of Suit No.1852/2008), and; RC No.6/2012 (arising out of Suit No.1207/2008).

2. By the impugned common judgment, the learned ADJ dismissed all the said first appeals and affirmed the common judgment dated 02.01.2012 passed by Sh. Sanjay Sharma, JSCC cum ASCJ cum Guardian Judge (West) Delhi in the three suits aforesaid. Suit No.801/2008 was treated as the main suit and the other two suits were consolidated with the said suit for purposes of recording the evidence and trial. The learned JSCC cum ASCJ by a judgment dated 02.01.2012 dismissed all the three suits preferred by the plaintiff/appellants.

3. The appellants/plaintiffs had preferred Suit No.801/2008 against the respondents to seek a decree of possession in respect of the portions shown in red colour in the site plan of the property no.207, Bharat Nagar, Delhi, and for a decree for recovery of damages of Rs.11,500/- @ Rs.500/- per month from the period from 14.01.1989 to 31.12.1990 for wrongful use and occupation. The appellants had also preferred the other two suits (i.e. Suit Nos.1207/2008 and 1852/2008) for recovery of damages at the same rate for

the periods 02.06.2002 to 31.05.2005 and 01.06.2005 to 31.05.2008 respectively.

4. The appellants/plaintiffs claimed themselves to be the owner of quarter no.207 located in the abadi of Bharat Nagar, Delhi. The appellants claimed to have purchased the said quarter from Smt. Agya Wanti, wife of Sh. Aroora Mal – the previous owner, vide sale deed registered on 14.01.1987. The plaintiffs claimed that the previous owner Agya Wanti delivered vacant possession of the property, except a part of the property which was in possession of the defendants – relatives of Smt. Agya Wanti. The plaintiffs claimed that Agya Wanti sought time from the plaintiffs for vacating the premises in the possession of the defendants, and assured that the defendants would vacate the same after two years, to which the plaintiffs agreed. The plaintiffs claimed that since, even after the expiry of two years, the defendant did not vacate the premises despite repeated requests and reminders – including legal notice dated 28.05.1990, the plaintiffs preferred a suit for possession and damages, i.e Suit No.801/2008 against the defendant Rajkumar.

5. The defendant Rajkumar filed his written statement, disclosing that Smt. Sumitra Devi and Smt. Swaran Lata were in lawful possession of the suit property being its lawful owners for more than 35 years and, therefore, they were proper and necessary parties to the suit. The defendant Rajkumar stated that he was married to Smt. Swaran Lata, and he had been living in the suit property as the husband of Swaran Lata since 1974. Smt. Sumitra Devi was the widow of late Sh. Boora Mal, the brother of Aroora Mal and the property bearing quarter no.207 was their joint property. Consequently,

Smt. Sumitra Devi and Smt. Swaran Lata were impleaded as co-defendants in the suit.

6. The defence of the said defendants was that Smt. Agya Wanti was the wife of late Aroora Mal. Sh. Aroora Mal and Sh. Boora Mal were two brothers and joint owners, and in joint possession of the said quarter. Smt. Sumitra Devi was the widow, whereas Smt. Swaran Lata was the daughter of late Sh. Boora Mal. Sh. Aroora Mal and Sh. Boora Mal constituted a HUF with their father Sh. Devi Ditta, and after the demise of the father, both the brothers inherited the HUF property jointly in equal shares. Aroora Mal being the elder brother filed claim petition in respect of property left in Pakistan, which was verified and sanctioned and, in lieu thereof, property no.207, Bharat Nagar, Delhi was allotted in the name of Sh. Aroora Mal, wherein both brother lived together as owners in their own right and equal share since the time of allotment. Subsequently, Sh. Boora Mal protested against the allotment of property in the name of Sh. Aroora Mal alone before the concerned authorities, and a mutual agreement was reached on 20.10.1959 acknowledging the severance and partition of the HUF property no.207, Bharat Nagar, Delhi, whereby Sh. Aroora Mal became the owner of the portion in his possession towards the back side, and Sh. Boora Mal got the front side portion, and since then both brothers became owner of their respective portions of the said property.

7. Sh. Boora Mal died on 16.02.1986 leaving behind Smt. Sumitra Devi as his widow, and Smt. Swaran Lata his daughter as his legal heirs, who became the owners of the portion which fell to the share of Boora Mal on

partition. The defendants also claimed that they were in possession of the suit property as owners for the last 45 years.

8. Issues were initially framed on 04.05.1992. Issue no.5 was whether the suit is barred by limitation. The onus was placed on the defendants. An additional issue was framed on 17.12.1996 – to the effect, whether Smt. Agya Wanti did not have full title in the property in dispute.

9. The parties led their respective evidence. The original sale deed dated 14.01.1987 executed by Agya Wanti in favour of the plaintiffs was exhibited as Ex. PW-4/1. The defendants led in evidence the agreement dated 20.10.1959 which was marked as Ex. DW1/P1.

10. The executants of the said document Ex DW1/P1 having already expired on 28.12.1962 (when Sh. Aroora Mal died), and on 16.12.1986 (when Sh. Boora Mal died), as also the attesting witnesses having expired, the defendants had produced one Sh. Sashi Kumar, son of the attesting witnesses Sh. Mulkraj as DW-4. He identified the signatures of his father on exhibit DW1/P1. Similarly, Sh. Ramesh Kumar, son of the deed writer Sh. Ram Narain Grover was produced as DW-3, who produced the original register maintained by his father. He identified the handwriting and signatures of his father on Ex. DW1/P1. Ex. DW1/P1 also had the stamp of the deed writer, and had been entered in the register maintained by the deed writer, at Sl. No.3403 dated 20.10.1959, which was exhibited as Ex. DW3/1.

11. So far as the agreement Ex. DW1/P1 is concerned, the court invoked Section 90 of the Evidence Act, which raises a presumption in respect of a document which is 30 years old. Section 90, *inter alia*, provides that where

any document purports to be, or is proved to be 30 years old, and is produced from any custody which the court in the particular case considers proper, the court may presume that the signatures and every other part of such document – which purports to be in the handwriting of any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

12. The trial court relied on *Sri Lakhi Baruah Vs. Sri Padma Kanta Kalita*, AIR 1996 SC 1253, wherein the Supreme Court had held as follows:

“Section 90 of the Evidence Act is founded on necessity and convenience because it is extremely difficult and sometimes not possible to lead evidence to prove handwriting, signatures or execution of old documents after lapse of thirty years. In order to obviate such difficulties or improbabilities to prove execution of an old document Section 90 has been incorporated in the Evidence Act, which does away with the strict rule of proof of private document. Presumption of genuineness may be raised if the document in question is produced from property custody. It is however, the discretion of the court to accept the presumption flowing from Section 90. There is, however, no manner of doubt that judicial discretion under section 90 should not be exercised arbitrarily and not being informed by reasons.”

13. The trial court held that Ex. DW1/P1 had been produced from proper custody and held that:

“The defendant no.2 is daughter and defendant no.1 is son – in – law of Sh. Bura Mal. The agreement was executed between Sh. Arura Mal and Sh. Bura Mal on 20.10.1959. It is proved to be a 30 years old document. DW-3 has proved the register Ex.DW-3/1 maintained by his father / deed writer wherein the

said agreement was entered at serial no. 3053 dated 20.10.1959. Ex.DW-3/1 also records the summary of the said agreement. DW-3 identified handwriting and signature of his father. DW-4 identified signature of his father / attesting witness on the said agreement. The defendants have fulfilled twin conditions for raising presumption of due execution of the agreement dated 20.10.1959 Ex.DW-1/P1. Moreover, perusal of the document Ex.DW-1/P1 shows that it is an ancient document. There is no sufficient ground to doubt genuineness of the said document. Therefore, presumption of due execution of the agreement dated 20.10.1959 can be. The plaintiffs have not led any evidence to prove the contrary.

73. Accordingly, the agreement dated 20.10.1959 Ex.DW-1/P1 executed between Sh. Arura Mal and Sh. Bura Mal in respect of the suit property is held proved in accordance with law”.

14. At this stage, I consider it appropriate to take note of Ex DW1/P1. The said document was originally drawn in Urdu. It was then translated to Hindi and English language. The English translation, insofar as it is relevant reads as follows:

“We, Arura Mal, First Party and Bura Mal, Second Party, enter this agreement mutually and in disposed mind that the suit property has been allotted in the name of Arura Mal and Bura Mal is a member of the family. Arura Mal is the head of the family and therefore, the suit property was allotted in his name. The suit property is jointly owned by the parties since the date of allotment. The half portion of the said quarter having bath room and water closet is in possession of Arura Mal and remaining half portion without bath room and water closet is in possession of Bura Mal. The properties in Sialkot, Pakistan were the joint properties of the parties. However, Arura Mal had preferred claim against the said properties and Bura Mal had not preferred any claim in respect of the said properties. Therefore, claim of Rs. 9,067/- vide Index no. P/SL-1/5338 was sanctioned in the name of Sh. Arura Mal. However, Sh. Bura

Mal is entitled to half of the said claim. Sh. Bura Mal had lodged his protest before the Department of Rehabilitation for seeking his half portion of the claim. We have mutually arrived at a family arrangement that Arura Mal would get the cost of the suit property adjusted from the claim amount. On adjustment and grant of ownership rights, Arura would sell the half portion of the suit property to Bura Mal. It further provides that Bura Mal has made a statement before the Department of Rehabilitation that entire claim be given to Arura Mal and Bura Mal would not raise any objection thereto. It further provides that Arura Mal would execute sale deed in respect of the half portion (herein the portion in dispute) within 15 days from the date of execution of title deeds of the suit property and otherwise, Bura Mal shall have right to get the sale deed executed through court at risk and cost of Arura Mal. Parties and their legal heirs shall abide by terms and condition of agreement. Bura Mal shall not pay any amount at the time of registration of the sale deed since the entire claim amount has been received by Arura Mal. Arura Mal, 1st party shall have no right to take possession of the said portion.”

15. The Trial Court proceed to construe the meaning and nature of Ex DW1/P1, by highlighting the crucial recordings made therein by the two executants viz, late Sh. Aroora Mal and late Sh. Boora Mal. Based on a plain reading of Ex. DW1/P1, the trial court returned the finding that:

“Sh. Arura Mal and Sh. Bura Mal had joint properties in Sialkot, Pakistan. Sh. Arura Mal had lodged claim in respect of the said properties. The claim was sanctioned in the name of Sh. Arura Mal. A dispute had arisen between Sh. Arura Mal and Sh. Bura Mal. In order to maintain family peace and harmony and to recognize right of Sh. Bura Mal, they had arrived at a family settlement. Sh. Arura Mal and Sh. Bura Mal were already in possession of their respective portions of the suit property. Sh. Bura Mal had lodged his protest against sanction of the entire claim amount in favour of Sh. Arura Mal and thereafter, Sh. Bura Mal had agreed to grant of entire

claim amount to Sh. Arura Mal subject to adjustment of cost of the suit property from the said claim amount. They were already in possession of their respective portions and by way of the said document, they had acknowledged the rights already in existence in the suit property. The agreement Ex.PW-1/1 had not created right, title or interest in favour of the parties for the first time in the suit property. They had entered into a bona-fide family arrangement and this Court. Therefore, the said agreement would not lose its validity and vitality only for the reason that Sh. Bura Mal had not filed any suit for specific performance of the said agreement in so far as execution of sale deed is concerned. It clearly provided that the parties or their legal heirs shall abide by the said agreement and further, Sh. Arura Mal has no right to taken possession of the said portion.

79. The agreement Ex.DW-1/P1 was executed between Sh. Arura Mal and Sh. Bura Mal the benefit of the family. The intention behind the said agreement was bring harmony in the family and to put an end to the dispute between them”.

16. The submission of the plaintiffs/appellants – that the document Ex. DW1/P1 would not confer any right on the defendants, for want of registration, and enforcement of the Agreement to Sell within three years on expiry of 15 days from the date of execution of lease deed in favour of Smt. Agya Wanti, was rejected by holding that the document Ex. DW1/P1 was of a nature of family agreement and, therefore, it does not require registration. It was not compulsorily registerable. It did not effect partition of the suit property. It was in recognition of right of the parties, and recognition of the mode of enjoyment of the suit property. It was held that merely because Ex.DW1/P1 provided that Sh. Boora Mal could get sale deed of his portion executed through Court – if Sh. Aroora Mal failed to execute sale deed within 15 days from the date of execution of sale deed in his favour by

DEPARTMENT OF REHABILITATION, it would not make the document redundant, and that there was no necessity for Sh. Boora Mal to file a suit for specific performance, since the agreement was duly acted upon and parties continued to act on the same.

17. The trial court also relied on several decisions including, those of the Supreme Court, which have laid down the approach that the Court should adopt while dealing with a family settlement, and returned the finding that:

“Accordingly, it is hereby held that the agreement dated 20.10.1959 Ex.DW-1/P1 was a family arrangement. It was executed to bring to end an issue regarding entitlement of claim in respect of joint properties in Sialkot, Pakistan. The sale consideration of the suit property was adjusted from the claim amount. The family arrangement was duly acted upon. It did not require registration. It did not create new rights in the suit property. It merely recognized pre - existing rights of the parties in respect of their portions of the suit property. Both the parties were in occupation of their respective portions even before the execution of the said agreement. Sh. Arura Mal and his legal heirs had no right to seek possession of the said portion from Sh. Bura Mal or his legal heirs. There was no necessity of seeking setting aside of lease deed and conveyance deed executed in favour of Smt. Agya Wanti. Smt. Agya Wanti had no right to execute sale deed in respect of the said portion in favour of the plaintiffs. The plaintiffs have no right, title or interest in the said portion of the suit property. Moreover, Sh. Bura Mal had been living in the said portion as an owner thereof since 20.10.1959 and therefore, his title was hostile to Sh. Arura Mal and his legal heirs. The defendants have perfected their title in respect of the said portion by way of adverse possession on 20.10.1971. Therefore, the suit of the plaintiffs is barred by limitation”.

18. The claim of the plaintiffs that they were bonafide purchaser without notice, for valuable consideration, was considered and rejected by the Trial

Court, by returning a finding that the plaintiffs failed to exercise due diligence before purchasing the suit property. They had the opportunity to ascertain the nature of possession of the defendants, but they failed to exercise normal prudence. The trial court held that it had come in evidence that the property was divided into two independent portions since the date of allotment. Both portions were separated by a wall. Both portions had separate entrances. Aroora Mal and Boora Mal and their families were using their respective portions without any hindrance from the other. Thus, the plaintiffs could not be said to have acted bonafide, in ignoring the independent enjoyment of the respective portions of the quarter by the families of Aroora Mal and Boora Mal.

19. The first appellate court concurred with the findings returned by the trial court. The first appellate court held that the presumption of genuineness was rightly raised by the Trial Court, since the agreement Ex. DW1/P1 had been produced from proper custody – as defendant no.2 is the daughter and defendant no.1 is the son-in-law of Sh. Boora Mal. The said agreement between Aroora Mal and Boora Mal dated 20.10.1959, was more than a 30 year old document. Both the executants, the attesting witnesses, and the deed writer had expired. The son of the deed writer DW-3 had proved the register Ex. DW3/1, wherein an entry had been made with regard to the execution of the said agreement at Sl. No.3053 dated 20.10.1959. Ex. DW3/1 also contained the summary of the agreement. DW-4, the son of the attesting witness also identified the signatures of the attesting witnesses. In these circumstances, the first appellate court held that the presumption had rightly been raised in relation to Ex. DW1/P1 dated 20.10.1959.

20. The first appellate court also affirmed the finding of the trial court that Ex. DW1/P1 was in the nature of a family arrangement and, consequently, did not require registration, since it did not effect partition of the suit property. It was only in recognition of existing rights of property, and recorded the mode of enjoyment of the suit property. The first appellate court also re-affirmed the finding that there was no necessity for Sh. Boora Mal to file a suit for specific performance, since the family arrangement had been acted upon by the parties.

21. The first appellate court also relied on the decision of this court in *Keshav Chander Thakur & Anr. v. Krishan Chander & Ors.*, 211 (2014) DLT 149 (DB), wherein this court had held that family affairs which have been settled long back (in that case between 1970-76) cannot be permitted to be disturbed on frivolous and vexatious grounds.

22. The submission of Mr. Sachdeva, learned counsel for the appellant is that apart from proving the agreement dated 20.10.1959 (Ex. DW1/P1), it was essential for the defendants to substantiate their stand that Aroora Mal and Boora Mal constituted a HUF, and that they held joint properties in Sialkot, Punjab prior to partition, and that the claim lodged by Aroora Mal was in respect of the property wherein Boora Mal also had interest. Mr. Sachdeva submits that no evidence was brought on record on the aforesaid aspect and, thus, the findings returned by the Trial Court, as well as first appellate court, are without any foundation. Mr. Sachdeva submits that the presumption in respect of a 30 year old document under section 90 of the Evidence Act only attaches to the signature and every other part of such document. However, it does not attach to the contents of the said document.

In this regard, he has placed reliance on *Mohinuddin & Anr. V. President, Municipal Committee, Khargone*, AIR 1993 MP 5.

23. Mr. Sachdeva further submits that the appellants/plaintiffs were bonafide purchasers without notice for valuable consideration from Smt. Agya Wanti, the widow of late Sh. Aroora Mal. The title of the suit property stood recorded in favour of Agya Wanti, and there was nothing to indicate that late Sh. Boora Mal or his heirs had any right, title, or interest in the suit property. He submits that Smt. Agya Wanti had assured the appellants that after two years, the defendants – who were her relatives, would vacate the portion in their occupation and the plaintiffs had no reason to disbelieve the said representation. He submits that under the agreement dated 20.10.1959, Aroora Mal had agreed that he would execute a sale deed in favour of Boora Mal in respect of half of the property, after the execution of the title deed. However, the same was not so executed. Yet, late Sh. Boora Mal had failed to take any action by filing a suit for specific performance to get half of the property transferred in his name. Such a claim was since long barred by time.

24. Mr. Sachdeva submits that in these circumstances, the impugned judgments are laconic and the substantial questions of law as framed by the appellant in the memorandum of appeal should be framed and the appeal be set down for hearing.

25. On the other hand, learned counsel for the respondent/caveator has made his submissions in support of the impugned judgment, by relying on the same.

26. Having heard learned counsel for the parties, perused the judgment of the Trial Court as well as that of the First Appellate Court, and the evidence/documents relied upon – particularly Ex. DW1/P1, I am of the view that no substantial question of law arises in the present case, requiring consideration of this Court, and I do not find any merit in the submissions of learned counsel for the appellants.

27. In a second appeal under Section 100 CPC, it is well-settled that the Court would not interfere with concurrent findings of fact which have been arrived on the basis of appreciation of evidence led by the parties, unless the findings of the Court below were vitiated by non-consideration of relevant evidence, or exhibited an erroneous approach to the matter, or if the findings recorded by the Court below are perverse. Both the Trial Court, as well as the First Appellate Court, have believed the agreement Ex. DW1/P1 dated 20.10.1959 entered into between Sh. Aroora Mal and Sh. Boora Mal. As noticed hereinabove, Ex. DW1/P1 has been proved by producing the son of one of the attesting witnesses, as well as the son of the deed writer. These witnesses recognised the signatures of their respective fathers on the agreement Ex. DW1/P1, and the son of the deed writer (DW-3) also produced the original register maintained by his father, wherein the entry with regard to execution of the agreement Ex. DW1/P1 was found to have been made against serial number 3403 dated 20.10.1959 (Ex.DW-3/1). Both the Courts below have invoked Section 90 of the Evidence Act, since the said document Ex. DW1/P1 was produced from the custody of the daughter and son-in-law of late Sh. Boora Mal and the executants, witnesses and deed writer were all dead with passage of more than 30 years. The appellant had

not been able to dislodge the presumption of genuineness in relation to Ex. DW1/P1. The appellant has not been able to show any error in approach of the Courts below, in believing Ex.DW1/P1 by involving the presumption under Section 90 of the Evidence Act. The finding with regard to execution of Ex.DW1/P1 is premised on cogent and sufficient evidence as noticed hereinabove, and no perversity has been pointed out by the appellant in the finding with regard to the execution of Ex.DW1/P1 by late Sh. Aroora Mal and late Sh. Boora Mal. Thus, this concurrent finding of fact cannot be interfered in this second appeal.

28. Both the Courts below have held that Ex. DW1/P1 was not a partition deed as it did not effect a partition. It merely recognised the pre-existing position with regard to the rights of Sh. Aroora Mal and Sh. Boora Mal in the suit property, and about their pre-existing living arrangement. Consequently, it did not require registration under the Registration Act. This finding of the Courts below is premised on a reading and construction of Ex.DW1/P1. I have already extracted above the analysis and discussion found in the judgment of the Trial Court with regard to construction of Ex.DW1/P1. Pertinently, Mr. Sachdeva has not advanced any submission to say that the said construction/ interpretation is erroneous or perverse for any reason whatsoever. In fact, Ex.DW1/P1 is a very clearly and intelligently drafted document and the intent and purport of the parties in executing the said document is evident from a plain reading thereof. It leaves no manner of doubt that it is merely a memorandum recording a prior completed family settlement arrived at between Aroora Mal and Boora Mal. There is no quarrel with the proposition that such a memorandum does not require

registration, as it does not purport to create or transfer any rights, but merely recognises a completed partition. Reference may be made to *Shri Mangat Ram & Another Vs. Shri Ram Narain Gupta & Another*, I.A. 2698/07 in CS(OS) No. 549/1995 decided by this Court on 05.04.2010. Thus, no question of law, much less a substantial question of law, which could be said not to have been settled by binding judicial precedents, arises on this submission of Mr. Sachdeva.

29. The Courts below have held that there was no necessity for Boora Mal or his heirs to challenge the lease deed and the conveyance deed executed in favour of Smt. Agya Wanti, w/o late Sh. Aroora Mal, or to seek specific performance of the agreement contained in Ex. DW1/P1 – whereunder Sh. Aroora Mal undertook to execute a sale deed in favour of Sh. Boora Mal in respect of half of the property once the sale deed/ conveyance deed had been executed in his favour by the Government.

30. In my view, both the Courts below have rightly held that since the parties had already divided the suit property amongst themselves and had been living in the suit property as co-owners – in exclusive possession of their respective portions, in recognition of their respective rights, there was no occasion for Sh. Boora Mal, or his heirs to ever initiate any action against Sh. Aroora Mal or Smt. Agya Wanti to assert their rights in the suit property. The failure of Sh. Boora Mal or his heirs to seek specific performance of the obligation undertaken by Sh. Aroora Mal to execute the sale deed, once the Government had executed the conveyance deed, did not impinge on the rights of Sh. Boora Mal as recognised by Sh. Aroora Mal himself vide Ex. DW1/P1 and by Smt. Agya Wanti his widow, subsequently, by her

conduct. She never sought to challenge to settled possession of the Boora Mal, or the respondents, even after the demise of Aroora Mal or after getting the conveyance deed executed in her favour for decades together. At the highest, the failure of Boora Mal/ respondents to seek specific performance of the agreement to sell contained in Ex.DW1/P1 only barred the remedy of Sh. Boora Mal and his heirs to seek specific performance of the said agreement, whereunder Sh. Aroora Mal undertook to transfer the right, title and interest of Sh. Boora Mal by executing a formal sale deed. At the same time, the continued exclusive occupation and enjoyment of their portion by the respondents on the strength of Ex.DW1/P1 shows that they were occupying their portion as owners, i.e. their possession was hostile to late Shri Aroora Mal and Smt. Agya Wanti. Yet they did not take any action for their dispossession within the period of 12 years after execution of Ex.DW1/P1.

31. Mr. Sachdeva has placed reliance on *Mohinuddin* (supra) to submit that mere proof of Ex. DW1/P1 as the agreement executed between Sh. Aroora Mal and Sh. Boora Mal does not prove the contents of the said document, and there was no evidence led by the respondent/ defendant to establish that the claim lodged by Sh. Aroora Mal with the Rehabilitation Department was in respect of HUF property left in Pakistan, wherein Sh. Boora Mal also had an interest.

32. I do not find merit in this submission of Mr. Sachdeva. Firstly, the ostensible owner of the suit property late Sh. Aroora Mal was himself a party to Ex. DW1/P1, where he acknowledged the pre-existing rights of his

brother late Sh. Boora Mal as a joint owner of the suit property, and also acknowledged the partition of the suit property.

33. Secondly, the decision in *Mohinuddin* (supra) was rendered in a completely different factual context. The plaintiffs had claimed that their father had purchased the suit property in the year 1920 by a sale deed for consideration of Rs.25/-. It was claimed that after the demise of the father, the plaintiffs had become joint owners. They applied to the Nagarpalika for permission to construct building on the land, which was declined on the ground that the plaintiffs did not have title over the land and the title vested in the Nagarpalika. The plaintiffs filed a suit for declaration of their title, and that they are entitled to construct building on the land. The suit was contested by the Nagarpalika. However, the same was decreed. In first appeal preferred by the Nagarpalika, the Nagarpalika succeeded and the decree was set aside and the suit was dismissed. In second appeal before the High Court, it was argued that the sale deed was over 30 years old and, therefore, by virtue of Section 90 of the Evidence Act, the same stood proved. The argument of the Nagarpalika was that the plaintiffs had not established their possession of the land in question, and no evidence had been led by the plaintiffs that they were in possession of the land in question. The plaintiffs only spoke of their father having purchased the land on the basis of a sale deed. The land was an open parcel, and it had no fencing, or wall. It was being used as a pathway. It was argued that in the absence of proper proof that there was delivery of land in question to the plaintiff's father it could not be held or said that there was delivery of possession to him. The High Court accepted the aforesaid submission of the

Nagarpalika. It was in this context that the High Court, *inter alia*, observed – while dealing with the appellant’s reliance on Section 90 of the Evidence Act as follows:

“..... Assuming that the document is more than thirty years old and comes from proper custody, there would be no presumption that contents of the same are true. The portion of Ex. P/1 reciting delivery of possession to plaintiff’s father cannot be considered to be proved in absence of proof of delivery of piece of land to plaintiff’s father. Bombay High Court’s decision in Chandulal’s case (supra) would support this view.”

34. However, in the present case, the situation is materially different. Sh. Aroora Mal was a party to Ex. DW1/P1; he acknowledged the pre-existing rights of Sh.Boora Mal, and also the fact that they were living separately in different portions of the suit property. Unlike in the present case, in ***Mohinuddin*** (supra), the Nagarpalika was not a party to the sale deed and could, therefore, raise a challenge to the facts recorded in the sale deed which was more than 30 years old. Pertinently, in the present case, it has come in evidence that the late Sh. Boora Mal and, thereafter, the defendants have continuously been in exclusive possession, use and enjoyment of their portion of the suit property. Their portion is divided by a wall, from the portion earlier in occupation of Sh. Aroora Mal, and thereafter his widow Smt. Agya Wanti. Thus, there was no necessity, or occasion for the defendants/ respondents to independently establish that the claim preferred by Sh. Aroora Mal before the Rehabilitation Department pertained to HUF property left in Pakistan and not merely his personal property. This position had been admitted and acknowledged by Aroora Mal himself in Ex.DW1/P1. The exclusive possession of the respondents/ defendants itself

was a notice to the whole world of the potential claim of the defendants in the suit property.

35. The submission of Mr. Sachdeva that the appellants were bona fide purchasers without witnesses for valuable consideration and, therefore, their rights have to be protected qua the entire suit property also has no merit. Both the Courts below have rejected this submission of the appellants and, in my view, rightly so. When the appellants proceeded to purchase the suit property from Smt. Agya Wanti, the defendants were in settled possession of a clearly divided and demarcated portion of the suit property. There was a wall existing between the two portions, and the defendants had exclusive possession and a separate entry into their portion. The appellant ought to have been vigilant, and should have conducted due diligence by enquiring from the defendants the capacity in which they were in exclusive occupation of a separated portion of the suit property. Had they done the needful, they would have learnt of the existing rights of the respondents/ defendants in the suit property. Merely because the conveyance deed stood solely in the name of Smt. Agya Wanti, it was not enough for the appellants to proceed on the basis that it was only Smt. Agya Wanti who was the owner of the entire property. It is claimed that Smt. Agya Wanti had assured that the defendants shall vacate the suit premises in about two years of the purchase of the property by the appellants. Pertinently, it is not even the appellants case that any such assurance was given by the defendants. If Smt. Agya Wanti gave a false assurance, it was for the appellants to go after Smt. Agya Wanti. The respondents are not bound by any such alleged representation held out by

Smt. Agya Wanti, and their rights could not have been compromised by Smt. Agya Wanti.

36. Reliance placed by Mr. Sachdeva on *Sahadeva Gramani (Dead) By LRs Vs. Perumal Gramani and Others*, (2005) 11 SCC 454, is misplaced. In view of the aforesaid factual discussion, this decision has no application in the facts of this case.

37. The finding of the Courts below on the aspect of limitation qua the suit of the plaintiff is also well-reasoned and does not call for framing any substantial question of law.

38. For all the aforesaid reasons, in my view, there is no substantial question of law which can be said to have arisen in the present appeals. The concurrent findings of fact have been arrived at on the basis of evidence led by the parties and there is no perversity in the impugned judgment. Accordingly, the present appeals are dismissed leaving the parties to bear their respective costs.

VIPIN SANGHI, J

JUNE 30, 2015

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