

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

Judgment Reserved on: July 29, 2015

% *Judgment Delivered on: August 14, 2015*

+ **RFA(OS) 70/2015**

SANJEEV BANSAL & ORS

..... Appellants

Represented by: Ms.Jyoti Singh, Sr.Advocate
instructed by Mr.Sameer
Sharma, Advocate.

versus

GURNAM KAUR & ORS

..... Respondents

Represented by: Mr.Manish Vashisht, Advocate
with Mr.Sameer Vashisht,
Advocate for Respondent No.1.
Mr.Mukesh Gupta, Advocate
with Mr.Aakash Goel,
Advocate for MCD.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. For the purposes of deciding the instant appeal we have considered the record of the suit which has been sent to this Court as per practice directions issued. Since learned senior counsel for the appellant, on instructions from the appellants' counsel and learned counsel for the plaintiff/the contesting respondent No.1 stated that the appeal itself be heard and no date for hearing of the appeal be fixed as contemplated by sub-Rule of Rule 11 of Order 41 of the Code of Civil Procedure, we had heard arguments in the appeal on July 29, 2015.

2. Vide a common judgment dated April 10, 2015 the learned Single Judge disposed of CS (OS) No.1350/1995 titled as 'Mrs.Gurnam Kaur vs.Pritam Singh' and Test Case No.81/2008 titled as 'Administrator General vs.State and others'. The present appeal arises from the impugned judgment dated April 10, 2015 disposing of CS (OS) No.1350/1995 by passing a decree in favour of Gurnam Kaur in terms of Para-32 (i-ix) of the prayer clause of the amended plaint with costs as prayed for besides directions to the Commissioner of Police to investigate the matter and submit a report and directions to the defendant No.5/Municipal Corporation of Delhi (MCD) not to give effect to mutation made in favour of defendant Nos.1 and 2, that is, Pritam Singh Bhatti and Paramjit Singh and to cancel the same within eight weeks.

3. Smt.Gurnam Kaur originally filed a suit against Pritam Singh Bhatti as defendant No.1, Paramjit Singh as defendant No.2, Rajouri Garden D Block and adjoining Areas Welfare Association as defendant No.3, H.S.Bhatia as defendant No.4, MCD as defendant No.5, which was later on amended and Sanjeev Bansal, Suresh Bansal and Neelam Bansal were impleaded as defendant nos. 6, 7 and 8 respectively (the appellants). The final prayers in the suit were:-

"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 Plaintiff Defendant No.5 from giving effect to the mutation made by it as detailed in the Plaintiff 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. The case of Gurnam Kaur in the suit was that her husband late Sardar Sajjan Singh vide registered Sale Deed dated September 12, 1956 purchased two plots of land bearing No.D-1/20 and D-1/21 situated at Rajouri Garden, New Delhi admeasuring 458 sq.yards and 373 sq.yards respectively. Sardar Sajjan Singh was in exclusive possession and enjoyment of the suit properties till his death on April 18, 1972 since Sardar Sajjan Singh had executed a Will on September 26, 1961 bequeathing his estate to her, she became the owner of the properties on his death. Thus on the death of

Sardar Sajjan Singh, Smt. Gurnam Kaur inherited all the properties including the suit properties and is in exclusive possession thereof as an absolute owner. The Will dated September 26, 1961 of late Sardar Sajjan Singh was probated in favour of the Plaintiff in the High Court of Malaysia in Kuala Lumpur on October 24, 1974 since the deceased had an estate in Malaysia. In February 1993 Gurnam Kaur initiated steps for mutation in her name in the records of MCD/defendant No.5 in respect of the suit properties however, the matter was being postponed. Clarifications were sought from Gurnam Kaur which she rendered. Later it was revealed to Gurnam Kaur that the suit properties had been mutated in the name of defendant Nos.1 and 2, that is, Pritam Singh Bhatti and his son Paramjit Singh on the basis of Sale Deeds. On searching from the record of the Sub-Registrar, Gurnam Kaur received certified copies of the alleged four Sale Deeds dated August 05, 1991 by virtue of which late Sardar Sajjan Singh had purportedly transferred the suit properties in the name of defendant Nos.1 and 2. It was further revealed that there was a status quo order passed by this Court in respect of the suit properties which the defendant No.1 had obtained by filing suit for permanent injunction being Suit No.3384/1990 against defendant Nos.3 and 4, that is, Rajouri Garden D Block and adjoining Areas Welfare Association and H.S.Bhatia. It was also revealed that H.S.Bhatia was claiming right on the suit properties on the basis of forged and fabricated Will dated April 05, 1983 purportedly executed by late Sardar Sajjan Singh wherein it was stated that Sardar Sajjan Singh had died in Malaysia in 1984. Suit No.3384/1990 was dismissed by this Court for non-prosecution on April 12, 1991. Thereafter defendant No.1 in order to steal the march over defendant Nos.3 and 4 conspired with defendant No.2 and

got executed the Sale Deeds, the cancellation whereof was sought in the present suit. It was thus claimed that the Sale Deeds dated August 05, 1991 were forged and fabricated entered into between defendant Nos.1 and 2 and 6 to 8 fraudulently and defendant Nos.6 to 8 have no right, title or interest in the properties.

5. To the unamended plaint written statement was filed by defendant Nos.3 and 4 claiming that the Association was the absolute owner of the suit property by virtue of the Will executed on April 05, 1983 by Sardar Sajjan Singh in favour of the Association in welfare of the inhabitants of the locality and the Association has been in continuous adverse possession of the said plot for the last 30 years. It was further stated that Sardar Sajjan Singh contracted several marriages during his lifetime and the defendants were not aware that the Plaintiff was a legally wedded wife of Sardar Sajjan Singh. Written statement was also filed by the defendant No.5/MCD stating that the suit properties were initially assessed in the name of Sardar Sajjan Singh however, on the basis of the Registered Sale Deed the same were mutated in the name of Pritam Singh Bhatti and Paramjit Singh vide letter dated July 17, 1993. An application under Order I Rule 10 CPC was filed by defendant Nos.6, 7 and 8 seeking impleadment in the suit which was allowed and an amended plaint was filed on March 01/02, 1998.

6. A written statement was filed by defendant No.6 to 8 claiming to be bona fide purchasers of half share in property No.D-1/21 and 1/4th share in property No.D-1/20, Rajouri Garden for full consideration and with physical possession from Paramjit Singh son of Pritam Singh Bhatti the vendor. The details of Sale Deeds in favour of defendant Nos.6 to 8 were noted. On December 02, 2002 a written statement was filed by defendant Nos.1 and 2

accompanied by an affidavit of one S.K.Bhatia claiming that the suit properties had been sold to defendant Nos.1 and 2 on August 05, 1991 by virtue of registered Sale Deeds and they were in the possession of the properties since then. Further by virtue of two agreements dated July 22, 1997 Sale Deeds were executed in favour of Satish Kumar Bhatia and possession was handed over. Besides the Sale Deed a registered Power of Attorney was also executed in favour of Satish Kumar Bhatia. In the replication Gurnam Kaur sought action against Satish Kumar Bhatia and also reiterated her stand in the amended plaint as noted above.

7. Vide order dated January 09, 2006 issues were settled. Issues Nos.1, 3 and 5 were re-settled and thus the issues finally settled for determination are:

- “1. Whether the plaintiff has valued the suit property 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&2.*
- 4. Whether Sardar Sajjan Singh was alive in the year 1983 or 1991 as per the respective claim of defendant No.3 and 4 and defendant 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 property will? If so, to what effect? Onus on 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 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 & 2.*
10. *Whether sale deed dated 3.8.1995, 6.4.1995 and 19.4.1995 are executed by competent person? OPD 6, 7 & 8.*
11. *Whether the defendants 1 and 2 were in possession of the suit property to the date of filing of the suit? OPD 1 & 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 prayer clause 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 the defendants 1 and 2 were competent to sell the property to defendants 6 to 8 and are they bonafide purchasers for consideration? If so to what effect? Onus on the parties.*
- 19. Relief.”*

8. During the course of proceedings defendant No.1 on his own behalf and as legal heir of defendant No.2 filed an application under Section 151 CPC being IA No.18838/2013 taking the plea that the written statement placed on record was not signed by them and thus they sought setting aside of the proceedings which was dismissed vide order dated August 04, 2014. I.A.No.18838/2013 was accompanied with an affidavit of Shri Pritam Singh Bhatti, Defendant No.1 who filed the same in his own capacity and as legal heir of Defendant No.2 being his father. The stand of Pritam Singh Bhatti was that his son Paramjit Singh arrayed as Defendant No.2 died during the pendency of the present suit on February 03, 2002 and that he was survived by his widow, son and two daughters. The prayers in the application were:-

- “(a) Applicant/Defendant no.1 and legal heirs of the Defendant no.2 may kindly be permitted to file their*

written statement and file documents in support of their claim;

- (b) proceedings under the Contempt of Court Act, 1971 may kindly be initiated against the contemnors as detailed and described in the present application for their fraudulent acts;*
- (c) for the offences committed by contemnors under the Indian Penal Code may kindly be referred to CBI or other investigating agency for needful investigation in the matter as their Hon'ble Court deems fit and proper; and*
- (d) pass any other/further order(s) which this Hon'ble Court deems fit in the facts and circumstances of the present case."*

9. Before dealing with the contentions of the learned counsel for the appellant raised in the appeal it would be relevant to note the decision of the learned Single Judge in I.A.No.18838/2013 under Section 151 CPC seeking directions wherein the plea taken was that Defendant Nos.1 and 2 had never been served and one Mr.S.K.Bhatia who filed the written statement on behalf of Defendant Nos.1 and 2 was never authorised. The relevant portion of order dated August 04, 2014 is as under:

"11. At this moment, it will be apposite to refer to the various orders passed by this Court from 26.05.1995 till 20.02.1997. A number of attempts were made to serve Defendants no.1 and 2 by registered post and ordinary process. On the summons issued on 26.05.1995, one Boota Singh, at the given address reported that Defendants no.1 and 2 had shifted to Kang Poultry Farm, Sector 38, Chandigarh. Summons dated 20.07.1995 were then attempted to be served at the address of Kang Poultry Farm. One person by the name of Amrik Singh, who was

owner of Kang Poultry Farm informed them that there was no such poultry farm named King Poultry Farm. The summons were then sent on 16.11.1995 when it was reported that Defendant no.2 has left the residence. Again summons were issued on 12.12.1996 which reported that Defendants no.1 and 2 are not residing there. Similarly, on 04.03.1997, summons were received back unserved and thus, an application for substituted service dated 17.10.1995 was moved by the Plaintiff. By an order dated 01.02.1996, the application was kept pending and as stated above, further attempts were made to serve Defendants no.1 and 2 by ordinary process till 26.05.1997. Even when the application for substituted service was moved, the learned Joint Registrar had taken care to get the publication done in the prominent newspapers in circulation in Delhi as well as in Punjab. Thus, the publication of summons was done in Indian Express, New Delhi Edition, Indian Express, Chandigarh Edition, Punjab Kesari, Jalandhar Edition and Punjab Kesari, Delhi Edition on dated 14.03.1997.

12. A number of Advocates put in appearance on behalf of Defendants no.1 and 2 from 03.03.1998 till 28.01.2005. I would extract the same as under:-

Date	Counsels	Defendants
03.03.1998	Ms.Sushma Juyal	For D1 and D2
07.09.1998	Ms.Anu Mehta	For D1 and D2
03.02.1999	Ms.Pinki Anand	For D1 and D2
07.05.1999	Ms.Anu Mehta	For D1 and D2
01.09.1999	Ms.Anu Mehta	For D1 and D2
26.05.2000	Ms.Reema Khurana	For D1 and D2
05.09.2000	Ms.Divya Tiwari	For D1 and D2
18.10.2001	Ms.Meenakshi Dogra	For D1 and D2
19.04.2002	Ms.Meenakshi Dogra	For D1 and D2
10.10.2002	Ms.Pinki Anand	For D1 and D2
12.12.2002	Ms.Meenakshi	For D1 and D2
13.08.2003	Ms.Shashi	For D1 and D2
03.12.2003	Ms.Shashi Tripathi	For D1 and D2

06.08.2004	Ms.Kiran Arora	For D2 only
12.08.2004	Ms.Kiran Arora	For D2 only
12.10.2004	Ms.Kiran Arora	For D2 only
28.01.2005	Mr.H.K.Sharma	For D2 only

13. In the application, although Defendant no.1 has stated that he never authorised Mr. S.K. Bhatia, Advocate but there is no specific averment that the Advocates mentioned earlier (in the table) were never authorised to appear. Since Defendants no.1 and 2 claim execution of four sale deeds by Late Sardar Sajjan Singh in their favour in the year 1991, they ought to have been in possession of the original Sale deeds, if they had really purchased the suit property.

14. This Court by orders dated 28.01.2014, 27.03.2014 and 01.05.2014 asked Defendant No.1 (applicant herein) to produce the original sale deeds dated 05.08.1991 in the Court. Since the sale deeds were not produced on 27.03.2014, last opportunity was granted to them to produce the sale deeds on the next date, subject to payment of costs of Rs.20,000/-. On 01.05.2014, although costs were paid, but further time was sought to produce the Sale deeds. By this time, Defendant no.1 never informed the Court that Defendant no.1 is not in possession of the original sale deeds or that the same have been lost, misplaced or have been fraudulently obtained by anybody.

15. During the hearing of arguments, the learned counsel for Defendant No.1 has handed over a copy of the FIR No.1 2 3 registered in Police Station SAS Nagar, Punjab on 09.06.2014. In the FIR a story has been setup that these sale deeds were handed over to one R.K. Tandon, to get some prospective buyer. It is stated in the FIR that "Since he was close to my son, by reposing faith in him I handed over to him the aforesaid original sale deeds with the hope that he will return the same. After few days, I requested to him to return the sale deeds but he disclosed that the same have been handed over to my son Paramjit Singh, since deceased.

On inquiry from my son he said that he has not received the same from him. When contacted, Sh. R.K. Tandon, he claimed that he had returned the same to my son but because of him being alcoholic he must have misplaced the same. I have no other option but to report the same to the police by lodging a DDR with regard to the misplacing of the aforesaid sale deeds and I published a public notice in the newspaper. But still I was unable to digest the story/pretence concocted by the aforesaid Sh. R.K. Tandon that the sale deeds had been handed over to my son. Recently I have been approached by one Rajinder Singh, resident of Patiala saying that my two plots lying vacant in New Delhi and he inquired from me as to whether I am interested to sell the same. On my inquiry he disclosed that he came to know about my ownership of the aforesaid plots from Sh. R.K. Tandon, property dealer who in order to satisfy him showed him the original sale deeds of the aforesaid plots.”

16. It is improbable may unbelievable that valuable original title documents would be handed over by Defendant no.1 to a property dealer in the year 1993 to find out a customer and a person will keep quiet for over two decades. The four sale deeds dated 05.08.1991 are for a consideration between Rs.1,75,000/- - Rs.1,80,000/- each. In the year 1991, a sum of Rs.7 lacs was not a small amount. How much payment was made in cash, how much by cheque and how much by pay order has not been mentioned in these sale deeds.

17. Not only this, the sale deeds dated 05.08.1991 could not have been executed by Late Sardar Sajjan Singh in the year 1991 as he had already expired on 18.04.1972. All the more, Defendant No.1 should also have been in possession of the previous documents of title, that is, Sale deed dated 12.09.1956. The learned counsel for Plaintiff and Defendant No.1 were directed to produce the sale deed dated 12.09.1956 in the Court within seven days.

18. *The learned counsel for the Plaintiff has been able to produce the sale deed on 28.07.2014 but Defendant No.1 has failed to produce the same. Obviously, how could he do so when he is not in possession thereof? Yet, from production of the sale deed dated 12.09.1956, it is established that Defendant No.2's plea that the sale deeds dated 05.08.1991 were handed over to one R.K. Tandon has to be taken with a pinch of salt.*

19. *For the purpose of deciding this application, I ought not to have gone into all these questions in detail. This is only to show a palpably false claim raised by and on behalf of Defendants no.1 and 2. Suffice it to say that several attempts were made to serve Defendants no.1 and 2 by ordinary process and that having failed, Defendants no.1 and 2 were ordered to be served through publication in reputed newspapers. They failed to put in appearance. They failed to show sufficient cause that they did not receive the publication. Curiously, Defendant No.1 has given his address as resident of 679, Gali Pipalwali, Maan Singh Chowk, Amritsar, Punjab in the sale deeds dated 05.08.1991 propounded by him which are sought to be cancelled by way of instant suit. The application is completely silent as to when Defendants no.1 and 2 shifted from the address as mentioned in the sale deeds which has also been mentioned in the memo of parties filed in the suit.*

20. *It is also very strange that though Defendants no.1 and 2 were interested in resale of these plots since the year 1993 and had also given the original documents (as claimed by Defendant no.1 in the FIR) to a property dealer R.K. Tandon, but strangely enough they could not find any customer for more than 20 years.*

21. *In the application, it is claimed that in the last week of May, 2013 Defendant no.1 came to Delhi in connection with some work and therefore, visited the suit property and then*

it was discovered that some unscrupulous persons had an evil eye on the suit property and wanted to usurp the same. The source of this information has also not been stated by Defendant no.1 (the applicant herein).

22. Suffice it to say that Defendants no.1 and 2 were aware of the proceedings. They were avoiding the process of the Court and were therefore, served by publication.

23. I am of the considered opinion that Defendants No.1 and 2 did pass on instructions to some Advocate to put in appearance but did not execute proper vakalatnama lest they may be caught. The application under Section 151 CPC moved Defendant no.1 (applicant) to join the proceedings is bereft of any merit; the same is accordingly dismissed.

24. The matter seems to be very serious as there are certain unscrupulous people who are trying to play with the valuable property assuming that its owner is settled abroad and misusing the process of the Court. The applicant (Defendant No.1) himself made a request for referring the matter for investigation to the CBI.

25. In the facts and circumstances of the case, the Commissioner of Police, Delhi is required to register an FIR within a period of seven days and to depute a responsible officer to carry out investigation on urgent basis. The investigation shall be supervised preferably by an officer not below the rank of DCP, working in EOW of Delhi Police.”

10. The order dated August 04, 2014 was challenged by the defendant No.1 by filing an appeal before this Court being FAO (OS) No.460/2014 which was dismissed by this Court vide order dated November 07, 2014 with the following observations:

“1. Learned counsel for the appellant states that the

appellant has no grievance against the final direction issued in paragraph 25 of the impugned order dated August 04, 2014. Even the appellant would be interested in an investigation to unearth the truth. Learned counsel says the grievance is to certain observations which conclusively opined that the appellant is behind the fraud.

2. We do not find any such observations in the impugned order. It is trite that to record a prima facie opinion, backdrop facts on which prima facie opinion is stated by Court have to be noted. It is settled law that while such facts are being noted it does not mean that the learned Court has returned a finding of fact on a fact in issue between the parties.

3. We dispose of the appeal observing that each and every observation concerning a fact noted by the learned Single Judge would not be treated as a conclusive finding nor would it be treated as a conclusive opinion rendered by the learned Single Judge.

4. In view of the clarification given above, learned counsel for the appellant states that nothing survives for adjudication.

5. The appeal is accordingly dismissed as not pressed.”

11. Vide the impugned judgment the learned Single Judge held that Gurnam Kaur had placed on record the death certificate of late Sardar Sajjan Singh and the copy of the Will dated September 26, 1961. From the death certificate it was established that Sardar Sajjan Singh expired on April 18, 1972 and thus the Sale Deeds dated August 05, 1991 could not have been executed by late Sardar Sajjan Singh. Nothing further was required to be proved and hence the suit of Gurnam Kaur was required to be decreed in her favour. The issue of valuation of the suit, cause of action, suit being barred

by limitation, adverse possession of Defendant No.3, whether the Sale Deeds dated August 05, 1991 and Sale Deeds dated August 03, 1995, April 06, 1995, April 19, 1995 and fourth one not registered were validly executed were all decided against the Defendants and the Plaintiff was held to be entitled to the reliefs as prayed in the suit.

12. The appellants before this Court claim to be bona fide purchasers from Paramjit Singh in respect of half share of suit property D-1/21 and 1/4th share in Property D-1/20, Rajouri Garden after paying a valid consideration. The appellants also challenge that Sardar Sajjan Singh died on April 18, 1972 or that he executed the Will dated September 26, 1961 in the name of Gurnam Kaur or that the same was validly probated or that she was in possession of the suit property being the absolute owner thereof. Learned counsel for the appellants claims that the Will is stated to have been probated as per Malaysian laws, the said probate proceedings cannot be recognised and are not binding on the Indian Courts. Further the original Will allegedly in favour of Gurnam Kaur was never produced before the Court, Gurnam Kaur and her family being foreigners were not in possession and occupation of the suit properties and no prayer for possession had been made; despite the fact that Sardar Paramjit Singh had died during the pendency of the suit however, his legal heirs were not brought on record and instead of abetment the suit proceeded against the dead person, the written statement allegedly filed by defendant Nos.1 and 2 has in fact not been filed by them; on the written statement signatures of defendant Nos.1 and 2 do not appear and the same was signed by one Satish Kumar Bhatia who is a stranger to the proceedings.

13. Learned counsel for the Respondent No.1/Plaintiff who enters on

caveat contends that having proved that Sardar Sajjan Singh died on April 18, 1972 the Plaintiff was not required to prove anything else as the Sale Deeds could not have been executed and were forged and fabricated documents and thus no illegality was committed by the learned Single Judge in decreeing the suit in favour of Gurnam Kaur.

14. We have heard learned counsel for the parties.

15. During the course of trial Gurnam Kaur examined herself as PW-1 and filed her evidence by way of affidavit. In her evidence by way of affidavit Gurnam Kaur reiterated her stand, marriage being solemnised with late Sardar Sajjan Singh on September 11, 1946 at Malaysia and that she was blessed with 11 children whose names and date of birth were given. She also deposed regarding the purchase of the suit properties by her husband vide registered Sale Deed dated September 12, 1956. The original Sale Deed dated September 12, 1956 was also produced. Further copy of the Will dated September 26, 1961 by late Sardar Sajjan Singh bequeathing all his properties in favour of Gurnam Kaur, the Plaintiff was also placed and thus it was deposed that the subsequent Sale Deeds dated August 05, 1991 were fabricated documents as her husband had passed away on April 18, 1972. Smt.Gurnam Kaur has been cross-examined by counsel for the Defendant Nos.6 and 8 and Defendant No.3. In the entire cross-examination by Defendant Nos.6 to 8 there is no suggestion that Sardar Sajjan Singh did not leave for his heavenly abode on April 18, 1972 in Malaysia.

16. Dr.Jagjit Singh also appeared and filed his evidence by way of affidavit Ex.PW-1/A in the testamentary case as noted above and deposed about the death of his father and the Sale Deed dated August 05, 1991 being forged and fabricated. He also placed on record the certified copy of the

certificate of probate dated December 31, 1973 vide Ex.PW-1/7. He also produced his passport which noted the names of his parents as Sardar Sajjan Singh and Smt.Gurnam Kaur as Ex.PW-1/3.

17. On behalf of Defendants Suresh Bansal appeared as DW-1 who filed his evidence by way of affidavit in line with the version in the written statement. Further in cross-examination learned counsel for the Defendant No.1 suggested to Suresh Bansal that defendant No.6 to 8 did not purchase the properties from defendant No.2 nor did defendant No.2 sell any property to Defendant Nos.6 and 8. The suggestion was of course denied. The suggestion by learned counsel for the Defendant No.1 was that the Sale Deeds dated April 06, 1995, April 19, 1995, August 03, 1995 and the sale deed awaiting registration were forged and fabricated but the same was refuted. Suresh Bansal admitted that he did not challenge the refusal of MCD to mutate the properties in favour of Defendant Nos.6 to 8. He did not produce the original Sale Deeds but only filed the photocopies of the same on the pretext that the same were produced before the MCD. Though he stated that the consideration amounts as noted in the Sale Deeds were reflected in the income tax returns however, no certified copies of the said returns were filed. Suresh Bansal admitted that he had not paid the house tax for the suit properties from the date of execution of Sale Deeds.

18. Thus as against the version of Gurnam Kaur about the death of her husband on April 18, 1972 which is proved by documentary evidence there is a conflict in the stands of Defendant No.1 and Defendant Nos.6 to 8 in as much as the case of Defendant No.1 was that the Defendant No.2 did not execute the alleged Sale Deeds in favour of Defendant Nos.6 to 8 and no transaction took place between them. Thus in view of this evidence on

record the finding of the learned Single Judge that Sardar Sajjan Singh having died on April 18, 1972 the alleged Sale Deeds dated August 05, 1991 and further Sale Deeds dated August 03, 1995, April 06, 1995, April 19, 1995 and the sale deed pending registration were null and void and decreeing the suit in favour of Gurnam Kaur and against the appellants cannot be said to be based on no evidence.

19. As per the issues settled, the onus to prove that the Sale Deeds dated August 03, 1995, April 06, 1995, April 19, 1995 and the one pending registration were executed by a competent person was on Defendant Nos.6 to 8/the appellants herein. As noted above the original Sale Deeds were neither filed nor were they proved to be validly executed. As a matter of fact the stand of defendant No.1 who is the father of defendant No.2, while cross-examining DW-1 was that these Sale Deeds were never executed and thus were sham transactions. The appellants/defendant Nos.6 to 8 having failed to establish their case based on the Sale Deeds as noted above cannot claim that they were the bona fide purchasers of the suit properties from the defendant No.2. From the cross-examination of Defendant Nos.5 and 6 to 8 it has been brought out that they never paid the house tax of the property and claimed that when the property was purchased in the year 1995 it had only a boundary wall and two rooms which is contrary to the condition of the properties at the moment. No material has been placed by the appellants to show their continuous possession in the suit property.

20. In view of the aforesaid discussion, the appellants/defendant Nos.6 to 8 cannot take refuge to the stand of defendant No.1 that no written statement was filed by them and in fact one Satish Kumar Bhatia filed written statement on their behalf without their knowledge and defendant No.2 had

passed away during the pendency of the trial. The defendant Nos.1 and 2 were served through publication as noted vide order dated July 10, 1997. No explanation has been rendered as to how they got to know about the suit proceedings when they entered appearance and the delay in entering the appearance.

21. Learned counsel for defendant Nos.1 and 2 Ms.Anu Mehta for the first time entered appearance on September 07, 1998. Thereafter there is no challenge to the authority of the various counsel appearing on behalf of defendant Nos.1 and 2. Applications under Order VII Rule 11 CPC being I.A.Nos.10588-89/1999 were filed on behalf of defendant Nos.1 and 2 on May 26, 2000. Both these applications were dismissed on November 22, 2001. On October 10, 2002 learned counsel for defendant Nos.1 and 2 sought further time to file the written statement to the amended plaint which was allowed, subject to costs. The amended written statement was filed on December 02, 2002 though the written statement and all the applications were filed by Satish Kumar Bhatia as defendant Nos.1 and 2 who also filed an application for impleadment which was dismissed. As per the status report filed by the Police pursuant to the FIR registered Paramjit Singh Bhatti is stated to have passed away on February 03, 2003. Thus at best it is a case of no appearance on behalf of Pritam Singh Bhatti and Paramjit Singh Bhatti pursuant to service through publication. However neither Pritam Singh Bhatti nor legal heirs of Paramjit Singh Bhatti are appellants in the present appeal.

22. A vakalatnama of counsels B.V.Niren and Prasouk Jain, Advocates was filed on July 01, 2013 on behalf of defendant No.1 who later on sought discharge from the Court and were discharged vide Order dated October 30,

2013. Further the cross-examination of Suresh Bansal DW-1 was conducted by Shri Vijay Kumar Gupta learned counsel for defendant No.1/Pritam Singh Bhatti on December 07, 2013 after vakalatnama on behalf of defendant No.1 and Legal Heir of defendant No.2 was filed by R.K.Rathore, Vijay Gupta and Mehul Gupta, Advocates on October 30, 2013 wherein stand contrary to that of the appellants was taken.

23. We need to emphasize one fact before bringing the curtains down, for the reason in the teeth of said fact nothing survives for consideration. Gurnam Kaur has proved that Sardar Sajjan Singh died on April 18, 1972. The question therefore of Sardar Sajjan Singh having signed the four sale deeds on August 05, 1991 does not arise. The question therefore of he having executed any Will on April 05, 1983 does not arise.

24. Thus, we find no merit in the appeal and the same is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 14, 2015
‘vn’