

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

+ **RSA No.13/2015**

% **2nd August, 2016**

SMT. SHASHI BALA NAGPAL Appellant

Through: Mr. R.K. Saini, Advocate.

versus

SH. RAMA KANT SHAHRespondent

Through: Mr. Basant Kumar Singh, Advocate.
Ms. Jyoti Tyagi, proxy counsel for
Mr. Yeeshu Jain, Advocate for L&B.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/plaintiff against the Judgment of the First Appellate Court dated 09.09.2014 by which the first appellate court has set aside the Judgment of the Trial Court dated 19.03.2014. Trial Court by its Judgment dated 19.03.2014 decreed the suit for possession and mesne profits filed by the appellant/plaintiff by holding that appellant/plaintiff cannot become the owner of the suit property by means of documentation of dated 12.04.1988, since appellant/plaintiff had a better entitlement to possession of the suit property than

the respondent/defendant. The suit for possession was also decreed by holding that the case of the respondent/defendant was that he was a tenant in the suit property having been inducted by Sh. Satya Pal Singh and Sh. Ajit Singh, but, Sh. Satya Pal Singh and Sh. Ajit Singh deposed as PW2 and PW3 respectively in favour of the plaintiff/appellant deposing that they had not inducted respondent/defendant as a tenant in the suit property. The suit property is a property of approximately 70 sq. yds. shown in red colour in the site plan filed by the appellant/plaintiff, exhibited as Ex.PW1/2, forming part of R-54, Gopal Park, Model Town, Delhi. Appellant/plaintiff pleaded that he is the owner of the suit property and that respondent/defendant is a trespasser who trespassed in the suit property on 01.03.2004 and that plaintiff came to know about the trespassing only on 02.10.2004. The subject suit came to be filed on 30.10.2004 for possession and mesne profits.

2. Respondent/defendant contested the suit and filed his written statement. The main case of the respondent/defendant as per para 2 of the reply on merits of the written statement is that the respondent/defendant took the possession of the suit property on rent from Sh. Satya Pal Singh and Sh. Ajit Singh on 01.05.1997 and regularly paid rent to these persons.

3. Trial court on 08.02.2005 framed the following issues:-

“(1) Whether the plaintiff has suppressed vital and material facts from this court? OPD.

(2) Whether there is no cause of action against the defendant? OPD.

(3) Whether the present suit is not maintainable? OPD.

(4) Whether the defendant is in possession of the suit premises as a tenant under the landlordship of Sh. Satya Pal and Ranjeet Singh? OPD.

(5) Whether the plaintiff is the owner of the suit property bearing No.R-54, Gopal Park, Model Town, Delhi? OPP

(6) Whether the defendant is a trespasser in the suit property? OPP.

(7) Whether the plaintiff is entitled to damages @ Rs.3000/- per month from the defendant? OPP.

(8) Whether the plaintiff is entitled to relief prayed for? OPP.

(9) Relief.”

4. The plaintiff got herself examined as PW1 and she proved the following documents:-

“7. The plaintiff was then called upon to lead plaintiff evidence. She got examined herself as PW1 stating in her evidence by way of affidavit most of the averments of the plaint and relied upon the following documents: -

1. Special Power of Attorney dated 27.10.2004 as Ex.PW1/1.
2. Site plan as Ex. PW1/2.
3. General Power of Attorney dated 12.4.1988 as Ex.PW1/3.
4. Receipt dated 12.4.1988 as Ex.PW1/4.
5. Will dated 12.4.1988 as Ex.PW1/5.
6. Agreement to sell dated 12.4.1988 as Ex.PW1/6.
7. Affidavit dated 12.4.1988 as Ex.PW1/7.

8. Letter dated 20.8.2002 issued by the Government of NCT of Delhi as Ex.PW1/8.
9. Receipt dated 8.4.1980 executed by Kewal Park Small Scale Marketing Association as Ex.PW1/9.
10. Receipt dated 20.10.1980 executed by Kewal Park Small Scale Marketing Association as Ex.PW1/10.
11. Letter dated 28.7.1980 of the aforesaid association as Ex.PW1/11.
12. Allotment letter dated 21.9.1980 as Ex.PW1/12.
13. Letter dated 28.3.1983 as Ex.PW1/13.
14. Certificate of sale on non judicial stamp paper of Rs.18,540/- as Ex.PW1/14.
15. Copy of the Town Planning site plan as Mark X.”

5. Appellant/plaintiff also examined Sh. Satya Pal Singh and Sh. Ajit Singh as PW2 and PW3 respectively that they were neither the owners nor the landlords of the suit property nor the respondent/defendant was induced by them in the suit property as their tenant, because, their houses were in fact in the adjoining plots R-55 and R-56. PW2 and PW3 admitted the ownership of plaintiff of the suit property.

6. Trial court decided issue no.5 as to the ownership of the appellant/plaintiff against the appellant/plaintiff by holding that though the appellant/plaintiff has claimed herself to be the owner of the suit property on the basis of documents exhibited as Ex.PW1/3 to Ex.PW1/7 executed in her favour by Sh. Rakesh Bhushan Gupta having ownership of the suit property, however, since

the documents were not registered documents, appellant/plaintiff hence cannot become the owner of the suit property under Section 54 of the Transfer of Property Act, 1882 which provides that an immovable property can only be transferred by a registered instrument. As regards issue no.6 it was held that defendant was a trespasser in the suit property and that appellant/plaintiff in view of the documents exhibited as Ex.PW1/3 to Ex.PW1/7 and Ex. PW1/9 to Ex.PW1/14 had a better entitlement to possession of the suit property than the defendant, hence appellant/plaintiff was entitled to the possession of the suit property. This discussion is found in paras 24 and 25 of the judgment of the trial court and which paras read as under: -

“24. His plea as to be a tenant in the suit property has also been negated in view of the discussion and decision of the issue No.4 earlier in the present Judgment. Although, the plaintiff cannot technically be stated as an owner of the suit property however, in view of the documents Ex. PW1/3 read with Ex. PW1/4, Ex. PW1/6 and Ex. PW1/7 considered along with the document Ex. PW1/9 to Ex. PW1/14, it can be concluded that the plaintiff is having a title in the suit property better than that of the defendant. The plaintiff having paid consideration of Rs.40,000/- to the previous owner of the property, Sh. Rakesh Bhushan Gupta who in turn had executed the General Power of Attorney, Ex.PW1/3 can be stated to be acquiring the status of an agent of the original owner Sh. Rakesh Bhushan Gupta and having an interest in the property and in light of Section 202 of the Indian Contract Act, the said agency is not terminable in absence of any express contract between Sh. Gupta and the plaintiff. No such contract has been shown to the court by the defendant. The position as to the transfer of interest by executing documents such as General Power of Attorney, agreement to sell etc. has been dealt elaborately by the Hon’ble Delhi High Court in the case of **Hardip Kaur v. Kailash & Anr., 193 (2012) DLT 168.**

25. Thus, it cannot be said that the plaintiff is without any right qua the suit property. The defendant, as noted above, has failed to substantiate his claim that he was a tenant in the suit property as none of his witnesses had deposed on the basis of personal information that he was so. The defendant has also not proved on record any other legal capacity in which he is in possession of the suit property

and in view of the categorical testimony of PW2 and PW3, this court remains with no ground for not holding that the defendant is a trespasser in the suit property. Even otherwise, in his cross-examination recorded on 23.8.2013, the defendant has categorically admitted that the plaintiff was the owner of the suit property and that he was a trespasser therein. In light of the aforesaid, the present issue stands decided against the defendant and in favour of the plaintiff.”

(underlining added)

7. As regards issue no.8 as to entitlement of the appellant/plaintiff to the relief especially as the Secretary (L&B), Government of NCT of Delhi has vide Letter dated 20.08.2002 (Ex.PW1/8) informed appellant/plaintiff of acquiring of the suit land and appellant/plaintiff was thus offered alternate accommodation in lieu of acquisition. It was held by the trial court that since the government had not obtained physical possession of the suit land hence as per Section 16 of the Land Acquisition Act, 1894 the title in the property did not pass to the government, and that in any case the decision in the suit is not a decision of the land as between the appellant/plaintiff and the government. This discussion is found in paras 28 to 32 of the judgment of the trial court and these paras read as under:-

“28. The defendant has argued that the suit property which is admittedly part of Khasra No.31 has been acquired by the Government vide Gazette Notification dated 19.8.1992 and the same is also evident from the document, Ex. PW1/8 i.e. the letter issued by the Secretary (L&B), Government of NCT of Delhi informing the plaintiff that the land measuring 26 bigha including the suit land has been acquired and the Award was announced by the Collector. The plaintiff was offered an alternate accommodation in order to mitigate the difficulties of dislocation. It has been argued that since the property including the suit property has been acquired by the Government, the plaintiff remains with no right over the same and even possession of the property has been taken by the Government.

29. Interestingly, the defendant has not explained as to when the possession has been taken by the Government, how he remains in possession of the same. It has been argued that the Notification under the Land Acquisition Act as passed by the Government is a law existence of which has to be presumed as per the Indian Evidence Act. Reliance in this regard has been placed upon the decision **AIR 2009 (NOC) 1876 (All) in case of U.P. Sunni Central Board of Waqf v Town Area Committee.** There is no dispute to the fact that a Gazette Notification of the Government is a law however, in the facts of the present case, the said decision is not of much help to the defendant for the reason that he is still in possession of the property as a trespasser and as noted above, the plaintiff is having a title better than that of the defendant in the suit property.

30. The Hon'ble Delhi High Court in the case of **Sh. Shiv Prasad Pandey v Smt. Meera Devi in RSA No.133/10 on 19.9.2011** has held that by virtue of Section 16 of the Land Acquisition Act, 1894, the property did not pass on to the Government for a land acquired under the said Act until the physical possession of the same is not taken by the Government. It was observed by His Lordship that there have been repeated policies issued by the Government whereby the unauthorized colonies situated on land acquired by the Government but whose possession was not taken have been approved by the Government. This court is bound by the aforesaid Judgment of the Hon'ble High Court and no material on record is there from which it can be deduced that the aforesaid decision of the Hon'ble High Court is not applicable in the facts of the present case.

31. In view of the decision, the physical possession of the suit property admittedly has not been obtained by the Government till date and as such it cannot be said that the plaintiff has no right to recover the said possession against the defendant. Moreso, when the defendant in his cross-examination has categorically admitted himself to be a trespasser and the plaintiff to be the owner of the suit property. If there is any dispute with respect to the acquisition proceedings, the same is a matter inter se between the plaintiff and the Government and the defendant cannot be permitted to retain the possession without having any right over the land.

32. Accordingly, plaintiff is held entitled to the decree of possession as to the suit property under the possession of the defendant in plot No.R-54, Gopal Park, Model Town, Delhi as shown in red colour in the site plan annexed with the plaint. The plaintiff has further prayed for a permanent injunction restraining the defendant and the persons claiming, through him from transferring the possession of the suit property to any third person. For the reason that the defendant is having no right, title or interest in the suit property, the defendant is restrained from creating any third party interest in the suit property or transferring its possession to any third person. Issue stands decided accordingly in favour of the plaintiff and against the defendant.” (emphasis is mine)

In view of the abovesaid reasoning, trial court decreed the suit for possession of the appellant/plaintiff along with a decree for mesne profits/damages of Rs.3000/- per month.

8. The first appellate court by the impugned judgment has set aside the judgment of the trial court on the ground that once the trial court has held the appellant/plaintiff not to be the owner of the suit property then there does not arise any question of the suit for possession and mesne profits to be decreed. The first appellate court also observed that since appellant/plaintiff has not made Government of NCT of Delhi a party, the suit is bad for non-joinder of parties and, therefore, the suit had to be dismissed. These observations are made by the first appellate court in paras 9 to 13 of the impugned judgment and which paras read as under:-

“9. That the observations made by the Ld. Trial court in para No.21, 22 and 27 of the impugned judgment/ decree is self contradictory inasmuch as the trial court itself has observed that the documents placed on record by the respondent/plaintiff cannot be established as the respondent/plaintiff is the owner of the suit property. It has been specifically observed by the Ld. Trial Court in para No.27 of the judgment that the plaintiff has failed to prove herself as the owner of the suit property. And if respondent/plaintiff has failed to prove the ownership of the suit property then however, the suit for possession and mesne profits is not maintainable against the appellant/defendant.

10. As per the provisions of law the person who approached to the court and claiming possession over the suit property then he has to file the documents of ownership over the suit property and he has to stand on his own legs and required to have been proved all documents of ownership but in this case it is observed by the Ld. Trial Court that the respondent/plaintiff has failed to prove that she is the ownership of the suit property. Therefore, the impugned judgment/ decree passed by the Ld. Trial court is not sustainable in the eyes of law.

11. It is also observed by the Ld. Trial Court in para No.28 that the defendant has argued that the suit property admittedly part of Khasra No.31 has been acquired by the Government vide Gazette Notification dated 19.08.1992 and the same is also evident from the document Ex.PW1/8 i.e. letter issued by the Secretary (L&B). Government of NCT of Delhi informing the plaintiff that the land measuring 26 bigha including the suit land has been acquired and the award was announced by the Collector. And the plaintiff was offered an alternate accommodation in order to mitigate the difficulties of dislocation. It has been argued that since the property including the suit property has been acquired by the Government, the plaintiff remains with no right over the same and even possession of the property has been taken by the Government.

12. But in this suit it is observed that suit land has been acquired by the Government and a road was made over the suit property and some portion of the suit property left vacant to which the appellant/defendant has trespassed but in this suit the plaintiff has failed to make the Government i.e. NCT of Delhi as party and as per the provisions of law admittedly the some portion of the suit property has been acquired by the Government and the Government and NCT of Delhi is necessary and proper party and without making the Government as party which is necessary for proper adjudication of the present suit by the Ld. Trial Court and the judgment/decreed passed by the Ld. Trial court is not sustainable in the eyes of law.

13. It is observed in para No.31 of the impugned judgment that the defendant in his cross examination has categorically admitted himself to be a trespasser and the plaintiff to be the owner of the suit property. If there is any dispute with respect to the acquisition proceedings, the same is a matter inter se between the plaintiff and the Government and the defendant cannot be permitted to retain the possession without having any right over the land.”

9. Learned counsel for the appellant/plaintiff argued that appellant/plaintiff is in fact the owner of the suit property by virtue of the documents dated 12.04.1988 inasmuch as the law is that these documents executed before 24.09.2001 when Act 48 of 2001 was passed amending Section 53A of the Transfer of Property Act and other related sections of related statutes and the agreement to sell of 1988 was not to be registered as per the then existing Section 53A of the Transfer of Property Act. Reference of this Court is invited to

a judgment passed by this Court in ***Shri Ramesh Chand Vs. Suresh Chand and Anr., 188 (2012) DLT 538***, which holds that documents in the nature of agreement to sell encompassing the doctrine of part performance under Section 53A of the Transfer of Property Act need not be registered and also that the power of attorney given for consideration is irrevocable and cannot be revoked. In ***Shri Ramesh Chand's*** case (*supra*) this Court analysed the relevant paras of the judgment of the Supreme Court in the case of ***Suraj Lamps and Industries Pvt. Ltd. Vs. State of Haryana and Anr., 183 (2011) DLT 1 (SC)*** and which relevant paras of the judgment of the Supreme Court in ***Suraj Lamps and Industries Pvt. Ltd.'s*** case (*supra*) did not prohibit transactions falling under Section 53A of the Transfer of Property Act and Section 202 of the Indian Contract Act, 1872.

10. It is also argued on behalf of the appellant/plaintiff that appellant/plaintiff in any case had a better entitlement to possession and to support this argument reliance is placed upon a judgment passed by this Court very recently on 27.07.2016 in the case of ***Govindan Soman Vs. Atam Prakash Malik & Anr.*** in ***RSA No.159/2012***. It is argued on behalf of the appellant/plaintiff that the first appellate court has fallen to a grave error by dismissing the suit thus leading to grave miscarriage of justice inasmuch as though respondent/defendant did not claim any title of suit property and only claimed that he was a tenant but even this tenancy was denied by these so called

landlords. It is argued that the first appellate court has most illegally and perversely dismissed the suit in view of the ratios of the judgments of this Court in the cases of *Shri Ramesh Chand (supra)*, *Shri O.P. Aggarwal & Anr. Vs. Shri Akshay Lal & Ors., RFA No.127/2004* decided on *15.03.2012* and *Govindan Soman (supra)*.

11. Learned counsel for the respondent/defendant has supported the judgment of the first appellate court and the reasoning given therein in favour of the respondent/defendant.

12. For disposal of the present second appeal the following substantial question of law is framed: -

“Whether the first appellate court has fallen into a grave illegality and perversity in passing the impugned judgments by ignoring the ratios of the judgment of this Court in the cases of *Shri Ramesh Chand (supra)*, *Shri O.P. Aggarwal & Anr. (supra)* and *Govindan Soman (supra)* inasmuch as not only the documents of ownership of the suit property relied upon by the appellant/plaintiff are prior to 24.09.2001 when Act 48 of 2001 was brought in by the legislature, but also because the appellant/plaintiff had a better entitlement of possession of the suit property than the respondent/defendant who had only claimed tenancy

rights and which tenancy rights in fact were denied by the landlords under whom the respondent/defendant claimed to be a tenant?”

13. In order to appreciate the arguments of entitlement of the appellant/plaintiff to ownership of the suit property, I would at this stage refer to paras 1 to 3 of the judgment in the case of *Shri Ramesh Chand (supra)* and which paras read as under: -

“1. This Regular First Appeal was dismissed by a detailed judgment on 28.2.2011. A Special Leave Petition was filed in the Supreme Court against the judgment dated 28.2.2011 and the Supreme Court has remanded the matter back for a fresh decision by its order dated 31.10.2011. The order of the Supreme Court dated 31.10.2011 is based on the issue of the Supreme Court passing the judgment in the case of *Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana and Anr. 183 (2011) DLT 1 (SC)*, and as per which judgment the Supreme Court overruled the Division Bench judgment of this Court in the case of *Asha M. Jain Vs. Canara Bank 94 (2001) DLT 841*. Since the judgment of this Court dated 28.2.2011 had relied upon the Division Bench judgment in the case of *Asha M. Jain (supra)*, and which judgment was over ruled the Supreme Court in the case of *Suraj Lamps & Industries Pvt. Ltd. (supra)*, the matter was therefore remanded back to this Court.

2. Before I proceed to dispose of the appeal, and which would turn substantially on the judgment in the case of *Suraj Lamps & Industries Pvt. Ltd. (supra)*, it is necessary to reproduce certain paras of this judgment of the Supreme Court, and which paras are paras 12, 13, 14 and 16, and which read as under:-

“12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (**except to the limited right granted under Section 53A of Transfer of Property Act**). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

Scope of Power of Attorney

13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of

an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section [1A](#) and Section [2](#) of the Powers of Attorney Act, 1882). It is revocable or terminable at any time **unless it is made irrevocable in a manner known to law**. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In *State of Rajasthan v. Basant Nehata* [MANU/SC/0547/2005](#) : 2005 (12) SCC 77 this Court held:

“A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favor of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. **Except in cases where power of attorney is coupled with interest**, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.”

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

Scope of Will

14. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivos. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see Sections [69](#) and [70](#) of Indian Succession Act, 1925). Registration of a will does not make it any more effective.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer

of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.”

(emphasis added)

3. A reference to the aforesaid paras shows that unless there is a proper registered sale deed, title of an immovable property does not pass. The Supreme Court has however reiterated that rights which are created pursuant to Section 53A of the Transfer of Property Act, 1882 dealing with the doctrine of *part performance* (para 12), an irrevocable right of a person holding a power of attorney given for consideration coupled with interest as per Section 202 of the Contract Act, 1872 (para 13) and devolution of interest pursuant to a Will (para 14). Therefore, no doubt, a person strictly may not have complete ownership rights unless there is a duly registered sale deed, however, certain rights can exist in an immovable property pursuant to the provisions of Section 53A of the Transfer of Property Act, 1882, Section 202 of the Contract Act, 1872. There also takes place devolution of interest after the death of the testator in terms of a Will.”

14. The relevant paragraph of the judgment in the case of ***Shri O.P.***

Aggarwal & Anr. (supra) is para 11 and which reads as under: -

“11. No doubt, documents such as Agreement to Sell, Power of Attorney, Will etc do not strictly confer ownership rights as a sale deed, however, such documents create certain rights in an immovable property, though which are strictly not ownership rights but definitely the same can be construed as entitling the persons who have such documents to claim possession of the suit property inasmuch as at least the right to the suit property would stand transferred to the person in whose favour such documents have been executed. The Supreme Court in the recent judgment of ***Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana and Anr. 183 (2011) DLT 1(SC)*** has reiterated the rights created by virtue of Section 53A of Transfer of Property Act, 1882 and Section 202 of the Contract Act, 1872 in paras 12, 13 and 16 of the said judgment.”

15. The relevant paragraphs of the judgment in the case of *Govindan Soman (supra)* are paras 7 to 10 and which paras read as under: -

“7. Two issues have been urged on behalf of the parties before this Court, firstly with to lack of respect to *locus standi* of the respondents/plaintiffs to file the subject suit and which was the subject matter of issue no.V framed by the trial court, and secondly as to whether the appellant/defendant has proved relationship of landlord and tenant between the parties and which was the subject matter of issue no.III framed by the trial court.

8. Before proceeding further it is required to be noted that the agreement to sell by Sh. Narendra Paul in favour of the respondent no.2/plaintiff no.2/wife has been proved as Ex.PW1/1, receipt of the payment of sale consideration from respondent no.2/plaintiff no.2/wife to the erstwhile owner Sh. Narendra Paul has been proved as Ex.PW1/3, Will in favour of the respondent no.2/plaintiff no.2/wife has been proved as Ex.PW1/4 and the registered General Power of Attorney in favour of the respondent no.1/plaintiff no.1/husband has been proved as Ex.PW1/2. The sale consideration for purchasing of the title in the suit property by respondent no.2/plaintiff no.2 is a sum of Rs.1,90,000/- and which is said to be received as per the receipt Ex.PW1/3.

9. I may at this stage state that on the basis of the registered General Power of Attorney executed by Sh. Narendra Paul in favour of the respondent no.1/plaintiff no.1/husband, the respondent no.1 had executed a registered sale deed in favour of his wife/respondent no.2/plaintiff no.2 on 29.6.2010, but this sale deed executed during the pendency of the litigation was not allowed to be brought on record as an application filed under Order XLI Rule 27 CPC of the respondents/plaintiffs was dismissed by the first appellate court. However, that would not make any difference, inasmuch as, respondents/plaintiffs have proved their title to the suit property, inasmuch as, the documents executed in this case give rights to the plaintiffs under Section 53A of the Transfer of Property Act, 1882 containing the doctrine of part performance and Section 202 of the Indian Contract Act, 1872 which provides for irrevocability of a general power of attorney given for consideration. These documents are documents prior to 24.9.2001 when by Act 48 of the year 2001 provision of Section 53A of the Transfer of Property Act and other related provisions were amended and thereby benefit of the doctrine of part performance after 24.9.2001 could only be taken if the agreement to sell was stamped and registered. The subject documents, therefore, having been executed before 24.9.2001 are valid and confer title upon the respondents/plaintiffs and so held by this Court in the judgment in the case of *Shri Ramesh Chand Vs. Suresh Chand and Anr., 188 (2012) DLT 538* and in which judgment the relevant paras of the judgment of the Supreme Court in the case of *Suraj Lamps and Industries Pvt. Ltd. Vs. State of Haryana and Anr., 183 (2011) DLT 1 (SC)* have been reproduced which allow transactions which are in the nature of doctrine of part performance under Section 53A of the Transfer of

Property Act, and irrevocable general power of attorney falling under Section 202 of the Indian Contract Act, once the documents are executed prior to 24.9.2001.

10(i) Learned counsel for the appellant/defendant very strongly argued that these documents dated 16.6.1994 cannot confer title upon the respondents/plaintiffs because Sh. Narendra Paul never executed these documents. However, the argument urged on behalf of the appellant/defendant is liable to fail for various reasons.

(ii) Firstly, the appellant/defendant has no *locus standi* to question the transfer of title through the documents dated 16.6.1994 of Sh. Narendra Paul in favour of the respondents/plaintiffs because it is only Sh. Narendra Paul who could have questioned the documents. Admittedly, Sh. Narendra Paul has never questioned or challenged execution of the documents dated 16.6.1994 executed by him in favour of the respondents/plaintiffs. Therefore this argument is liable to be rejected that the respondents/defendant have no title on the ground that the appellant/defendant has no *locus standi* to question the documents dated 16.6.1994.

(iii) Challenge by the appellant/defendant to the documents dated 16.6.1994 is also liable to fail because self-serving stand in the written statement and in deposition that the documents are not executed by Sh. Narendra Paul in favour of the respondents/plaintiffs would not amount to acceptable evidence for this Court to hold in favour of the appellant/defendant that Sh. Narendra Paul did not execute the documents in favour of the respondents/plaintiffs on 16.6.1994. Mere oral deposition cannot be taken as discharge of onus of proof.

(iv) Yet another reason is that in last line of preliminary objection no.1 of the written statement, the appellant/defendant himself admits the relationship of landlord and tenant between him as the tenant and the plaintiffs as the landlord.

Therefore, in my opinion, the contention and the argument of the counsel for the appellant/defendant, that the respondents/plaintiffs and especially respondent no.2/plaintiff no.2 is not the owner of the suit property, is an argument without any substance and is accordingly rejected.” (underlining added)

16. In fact, I would like to note that the facts of this case are more or less similar to the facts of the judgment in the case of ***Govindan Soman (supra)*** and ratio of the said judgment, including of lack of *locus* to question title documents by a stranger, applies to full force inasmuch as respondent/defendant in this case also does not claim any ownership rights but only has claimed tenancy rights,

however, these tenancy rights have not been proved and in fact the so called landlords under whom the respondent/defendant claimed to have become tenant, namely Sh. Satya Pal Singh and Sh. Ajit Singh, have appeared as witnesses for appellant/plaintiff as PW2 and PW3 and denied that they had at all inducted the respondent/defendant as tenant in the suit property.

17. The sequitur of the above discussion is as under: -

(i) Appellant/plaintiff has title rights in the suit property by virtue of the documentation dated 12.04.1988 read with the ratios of the judgments in the cases of ***Shri Ramesh Chand (supra)*** and ***Govindan Soman (supra)***.

(ii) The appellant/plaintiff in any case has better right of possession in the suit property as rightly held by the trial court in para 24 of its judgment read with the relevant paragraphs of the judgments in the cases of ***Shri O.P. Aggarwal & Anr. (supra)*** and ***Govindan Soman (supra)***.

(iii) Respondent/defendant has not claimed any ownership right in the suit property, and has only claimed tenancy rights, but even these alleged tenancy rights have not been proved to exist by the respondent/defendant and the so called landlords under whom the appellant/plaintiff claimed to have been a tenant have deposed otherwise in favour of the appellant/plaintiff.

(iv) Government itself has written a Letter dated 20.08.2002, Ex.PW1/8 to the appellant/plaintiff that since appellant/plaintiff was in possession of the acquired land, appellant/plaintiff was entitled to the alternative possession.

(v) There is no dispute between the appellant/plaintiff and the government/land acquiring authority and in case the land acquiring authority seeks to take possession of the subject land from the appellant/plaintiff on the ground that it is an acquired land then at that stage such issues will be decided in such appropriate independent legal proceedings.

18. As a result of the above discussions, the substantial question of law is answered in favour of the appellant/plaintiff and against the respondent/defendant whereby the Judgment of the First Appellate Court dated 09.09.2014 is set aside and the Judgment of the Trial Court dated 19.03.2014 decreeing the suit is restored by allowing the second appeal. Parties are left to bear their own costs.

19. Finally, I may note at the cost of repetition that nothing in this judgment is a reflection to the entitlement to the suit land as between the appellant/plaintiff and the Union of India or any other land acquiring authority, and which aspect will be considered in accordance with law if the same may arise as between the land acquiring authority/Union of India and the appellant/plaintiff.

AUGUST 02, 2016
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VALMIKI J. MEHTA, J