

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

% *Judgment Pronounced on: 13.12.2017*

+ **RFA No. 631/2016**

SURESH GUPTA Appellant/plaintiff.
Through: Mr. Aditya Kala, Adv. with
Mr.Satish Kumar, Adv.

versus

HARI KISHAN MADAN & ANR
..... Respondents/Defendant/counter-claimant.
Through: Mr. Atul Bandhu, Adv.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. Challenge in this Regular First Appeal is the judgment and decree dated 30th July, 2016 passed by learned Additional District Judge, West District, Tis Hazari, Delhi whereby the suit of the appellant was dismissed and that of the counter claim of the respondents was decreed in respect of property bearing no.261A measuring 190 square yards consisting of Khasra no.5/25, Sainik Enclave, New Delhi.
2. The appellant filed suit for a Permanent Injunction claiming to be the absolute owner of plot bearing no.261A area measuring 190 (46' x 37') square yards consisting of Khasra no.5/25, Sainik Enclave, New Delhi. He claimed that he had purchased

the said property for a sum of Rs.75,000/- from Mr.Niyadar Singh s/o Rizak Ram on 11th November, 1998. Sale documents are comprising of: -

- i. General Power of Attorney executed by said Niyadar Singh in favour of Appellant registered in the office of Sub-Registrar on 12.11.1998 (Ex.PW1/1),
 - ii. Agreement to Sale and Purchase dated 10.11.1998 attested by Notary Public on 11.11.1998 (Ex.PW1/2),
 - iii. Receipt of payment of entire sale consideration of Rs.75,000 dated 10.11.1998 executed by Niyadar Singh (Ex.PW1/3),
 - iv. Possession Letter dated 10.11.1998 Notarized on 11.11.1998 executed by Niyadar Singh (Ex.PW1/4); and
 - v. Will executed by Niyadar Singh in favour of the appellant dated 12.11.1998 (Ex.PW1/5) registered before the Sub-Registrar on 12.11.1998. This Will bears the photographs of the executants of the Will i.e. Niyadar Singh.
3. On 12th February, 2012, the respondents threatened to construct a boundary wall on the said plot and claimed to be the owner of the said property. The appellant informed the police immediately. He preferred the civil suit on 16.02.2012.
4. In their joint written statement, the respondents had taken several preliminary objections. It is alleged that the appellant has no cause of action to file the present suit; the suit is barred under Section 41(h)(i) of the Specific Relief Act, 1963;

appellant has no locus standi to file the present suit as he is neither the owner nor in possession of the property. On merits the respondents had denied that the appellant is the absolute owner of the said property or that he purchased the same from Niyadar Singh on 11th November, 1998 for a sum of Rs.75,000/-. It is pleaded by the respondent that the appellant has forged and fabricated the documents. It is also claimed by the respondents that they are in actual physical possession of the suit plot and have raised the boundary wall up to DPC level. They pleaded to have collected building material on 31st December, 2011 to raise the boundary wall and further constructions and the appellant interfered in raising the constructions without right, title and interest.

5. It is also pleaded by the respondents that on 6th October, 1986, said Niyadar Singh being the attorney of Shri Bhagwan sold the suit land measuring 567 square yards out of Khasra no.5/25, Village Rajapur Khurd, which now forms part of Abadi of Mohan Garden, to one Sh. Khairati Lal. It is claimed that Sh. Khairati Lal sold plot no.261 measuring 567 square yards, Khasra no.5/25 on 20.06.1997 by sale documents to Sh. R.P. Aggarwal, who in turn sold 200 square yards of the land in the measurement of 45' x 40' out of khasra no.5/25 situated in village Rajapur Khurd, Sainik Enclave, Mohan Garden, Delhi to the respondent No.2 which is bounded as under:-

“East: Road 20 ft.

West: Remaining part of plot no.261 of Mukesh,
South: Road 25ft,
North: plot of Mukesh Sharma”

6. The respondents filed counter claim. It is alleged in the counter claim that respondent no.2 purchased plot no.261 measuring 200 square yards out of khasra no.05/25 situated in Village Rajapur Khurd for a total sale consideration of Rs.30,000/- from Sh. R.P. Aggarwal who executed sale documents consisting of GPA, Agreement to Sell, Affidavit and Receipt duly notarized on 20.06.1997 conferring all the rights in favour of respondent No.2. The possession of the vacant plot was also handed over to respondent No.2. The respondents further alleged that they started raising boundary wall on 31.12.2011 but they were stopped by the appellant who was accompanied by some unknown persons and they reported the matter to the local police.
7. The appellant filed Replication-cum-Written statement to the counter claim of the respondents. The appellant had denied all the allegations of the respondents mentioned in the written-statement-cum-counter claim and reaffirmed the averments made in his plaint.
8. On the pleadings of the parties, following issues were framed by the learned Additional District Judge on 15th May, 2013:-
“Issue no.1: Whether the plaintiff has no locus-standi to file the present suit? OPD

Issue no.2: Whether the suit is not maintainable in the present form? OPD

Issue no.3: Whether the defendant is entitled for a decree of permanent injunction, as prayed in counter claim? OPD

Issue no.4: Whether the plaintiff is entitled for a decree of permanent injunction, as prayed? OPP

Issue no. 5: Relief”

9. In support of his case the appellant examined himself as PW1. He also examined PW2 Sh. R.K. Thakur, Record Keeper from the office of Sub-Registrar. On the other hand, the respondents No.1 & 2 examined themselves as DW2 & DW1 respectively. They have also examined DW3 Sh. Niyadar Singh, DW4 Sh. Arjun Singh, Additional General Inspector, DW5 Sh. Ravinder Kumar, LDC from the office of Sub-Registrar and DW6 Sh. Anil Kumar, LDC from MCD House Tax Department, West Zone, New Delhi.
10. By impugned judgment and decree dated 30th July, 2016 the Trial Court has decreed the Counter Claim of the respondents not qua property No.261 claimed by them but in respect of property no.261 A, Sainik Enclave, New Delhi claimed by the appellant and dismissed the suit of the appellant.
11. The learned counsel for the appellant has argued that the trial court had erred in decreeing the respondent’s counter claim for plot No.261A of the appellant where the counter claim was with

respect to plot No.261. He argued that appellant is the owner in possession of plot no.261A measuring 190 square yards, Sainik Enclave, New Delhi whereas the respondent has claimed that he is the owner of the plot no.261 measuring 200 square yards out of Khasra no.5/25, Razapur, Delhi forming part of Sainik Enclave, Mohan Garden, Delhi. The learned counsel argued that it was never the case of the respondents that they were the owner of the plot no.261A which is in fact the plot of the appellant.

12. He further argued that appellant has proved the documents of title executed in his favour. He argued that General Power of Attorney Ex.PW1/1 executed in favour of the appellant by the vendor Niyadar Singh was duly executed and registered with the Sub-Registrar on 12th November, 1998. He emphasised that this Power of Attorney was irrevocable in nature. He submitted that his vendor Niyadar Singh had also executed Agreement to Sale and Purchase, the Receipt and Possession Letter in favour of the appellant which are Ex.PW1/2, PW1/3 and PW1/4. He argued that complete sale consideration of Rs.75,000/- was paid by appellant to his vendor Niyadar Singh at the time of execution of the said sale documents in his favour. He further argued that Niyadar Singh had also executed a Will on 12th November, 1998 Ex.PW1/5 in favour of the appellant in respect of the said plot which was duly registered with the jurisdictional Sub-Registrar. He argued that since the entire sale consideration was paid to

the vendor Niyadar Singh and possession was delivered to the appellant and an irrevocable Power of Attorney was executed and registered in favour of the appellant, an interest was created in favour of the appellant under Section 202 of the Indian Contract Act, 1872 and as such the appellant has acquired the title and interest in the property in question.

13. He argued that when the sale documents in favour of appellant (Ex.PW1/1 to PW1/5) were tendered in evidence by the appellant while appearing as PW1, the exhibits were not objected to by the respondents.
14. He argued that the vendor of the appellant namely Niyadar Singh was examined by the respondent as DW 3 who deposed in his examination-in-chief that he never executed any Power of Attorney in favour of the appellant. He referred to his cross-examination wherein interestingly he stated that he could not say whether the documents Ex.PW1/1, PW1/2, PW1/3 and PW1/4 bear his signatures or not. He argued that the Will Ex.PW1/5 dated 12th November, 1998 was put to the vendor Niyadar Singh in his cross-examination to identify his photograph affixed thereon and he stated that he could not identify his photograph. The learned counsel for the appellant argued that DW 3 has committed the offence of perjury. He argued that all the sale documents executed in favour of the appellant not only bear the signatures of vendor Niyadar Singh (DW 3) but also his thumb impressions. He argued that the GPA

registered in favour of appellant with the Sub Registrar is a notice to the general public and the respondents cannot claim ignorance of the same.

15. He further argued that the respondent had placed on record the photostat copies of General Power of Attorney Ex. DW 1/8, affidavit Ex.DW1/9, Agreement to Sell Ex.DW1/10 and receipt Ex.DW1/11 which were allegedly executed by one R.P. Aggarwal in favour of respondent no.2. He further pointed out that the documents are forged and fabricated and that the non judicial stamp paper for the execution of the General Power of Attorney were allegedly purchased from the Stamp Vendor on 20th June, 1992 at serial no.14370 but bear only the impression of the stamp of a notary public dated 20th June, 1997. He submitted that the copy of the GPA does not bear any date. He also points out that the copy of the affidavit, copy of the agreement for sale and the copy of the receipt are all dated 20th June, 1997 whereas the stamp paper for agreement was purchased on 20th June, 1992, which is five years in advance. He further argued that the respondent had failed to prove the title in favour of their vendor, that is, R.P.Aggarwal.
16. The Ld. Counsel for the appellant pointed out that the copy of Sale Deed i.e. EXDW1/2 executed by Niyadar Singh for himself and as attorney of Shri Bhagwan in favour of Khairati Lal on 06.10.1986, registered on 09.10.1986 in respect of land measuring 567 Square Yards out of Khasra No.5/25 Village

Rajapur Khurd, Delhi for a consideration of Rs.20,000/- does not mention any plot No.261 as claimed by the respondents. This Sale Deed has not been proved and it was never put to Niyadar Singh who appeared as DW3. Its attesting witness was also not examined. He argued that the document has not been proved in accordance with law.

17. The Ld. Counsel for the Appellant also pointed out that the photocopy of the GPA, Affidavit, Agreement to Sell & Receipt Mark B to Mark E executed by Khairati Lal in favour of R.P. Aggarwal were not proved by the respondents. He argued that even Annexure Mark B, a copy of GPA bears the number of the property as 261 which pertains to a different property as on the West side, there is a road whereas in the Counter Claim, on the West side, property of one Mukesh Sharma is described. He pointed out that the Agreement to Sell i.e. Mark D does not bear the signature of the vendee & it is not attested by any witness. Similarly, he referred to copy of the Receipt i.e. Mark E which does not bear signatures of any witness.
18. The learned counsel for the appellant argued that the respondents have failed to prove the chain of title in their favour. He argued that they have neither examined Khairati Lal nor R.P Aggarwal to prove alleged title in their favour. He emphasized that copy of Sale Deed was not put to DW-3 Niyadar Singh in his deposition by the respondents.

19. Learned counsel for the appellant further argued that the documents of title i.e. the General Power of Attorney and the Will were not only executed in favour of the appellant but were also registered in respect of the property in question i.e. plot no. 261A whereas the copies of the documents placed on record by the respondent are merely photocopies. He argued that neither of the documents was registered in favour of the respondents in respect of plot no.261 nor the documents were proved and tendered in evidence and the trial court has committed a patent error in not relying upon the registered document executed in favour of the appellant and placed reliance only on the photostat copy of the documents placed on record by the respondents which are just waste piece of papers and are not at all admissible in evidence. He emphasized that the Trial Court has committed an error in decreeing the claim of the respondents in respect of plot No.261A which was not even claimed by them and in fact they claimed relief with respect of plot No.261 for which they failed to prove their entitlement.
20. Per contra it is argued by the learned counsel for the respondents that the appellant has no right, title or interest in the suit property. He argued that the alleged vendor of the appellant has been examined by the respondents as DW 3 who had deposed that he never sold the property in question to the appellant. He argued that the respondent has proved that the property in question was in fact sold by Niyadar Singh to

Khairati Lal and the copy of the registered sale deed is already on record as Ex.DW1/2 in favour of Khairati Lal. He argued that Khairati Lal had sold the property in question to R.P. Aggarwal from whom the respondent No.2 has purchased the plot in question. He argued that there is no infirmity or illegality in the judgment of the trial court and the appeal may be dismissed.

21. I have heard the learned counsel for the parties.
22. The respondent has filed the Written Statement-cum-Counter Claim on 5th March, 2012. On the heading of the Written Statement it is nowhere reflected that the respondents were also filing a Counter Claim. It was never pointed out to the trial court that it contains the Counter Claim as well. The procedure of filing and registering the Counter Claim is mentioned in order 8 Rule 6A to 6G of the Code of Civil Procedure, 1908 (in short as 'CPC'). Order 8 Rule 6A reads as under:-

“6A. Counter-claim by defendant –(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.”

23. Under sub-Rule 4 of Rule 6A of Order 8 of CPC the counter claim filed by the respondent is required to be treated as a plaint and governed by the rules applicable to the plaints. Therefore, it was the duty of the respondents to bring it to the notice of the trial court at the time of filing the Written Statement cum Counter Claim that such pleadings had been filed by him. The trial court should have registered the Counter Claim as a separate suit and tried the suit as also the Counter Claim together. The trial court became aware of filing the counter claim on the next date of hearing, that is, 14th March, 2012 when the case was adjourned for filing of rejoinder to the counter claim. The trial court should have registered at that moment of time the counter claim as a separate suit. It was not done even at the time of framing of the issues.
24. Be that as it may be, it would not be expedient in the interest of justice to set aside the judgment on this score. However, the points for consideration in this appeal are:-

(I) Whether the respondent/counter claimant/defendant is the owner and in possession of plot no.261/261A measuring 200 square yards out of Khasra no.5/25, Village Rajapur forming part of Sainik Enclave, Delhi.

(II) Whether the plaintiff/appellant is owner in possession of plot no.261 A out of Khasra no.05/25, village Rajapur.

Point No. I

25. It has been the case of the respondents that on 6th October, 1986 Niyadar Singh for himself and his attorney Sri Bhagwan sold land measuring 567 square yards out of Khasra no.05/25 of village Razapur which now forms part of Abadi of Mohan Garden to Khairati Lal who in turn sold plot no.261 measuring 567 square yards to one R.P.Aggarwal on 20th June, 1997. They claimed that the respondent no.2 purchased the said plot no.261 measuring 200 square yards in the measurement of 45' x 40' out of Khasra no.5/25 from R.P.Aggarwal on 20th June, 1997. In the counter claim the respondents have given the boundaries of the plot purchased by them which reads as under:-

“East : Road 20 ft.
West: Remaining part of plot no.261 of Mukesh Sharma,
South: Road 25 Ft.
North: Plot of Mukesh Sharma”

26. Admittedly, it was a vacant plot. The respondents claimed ownership in name of respondent no.2 in respect of plot No.261. The respondents had never claimed that they are the owners in

possession of plot no.261A either in their pleadings or in their documentary or oral evidence.

27. Consequently, the judgment of the trial court restraining the Appellant from interfering with the possession of the respondents in respect of Plot No.261A measuring 190 Square Yards, Plot No.5/25, Sainik Enclave, New Delhi cannot be sustained and is liable to set aside.
28. It is a settled position in law that the Vendee is required to prove the title of his vendor. Since the respondents had claimed that they are the owners in possession of plot no.261, they ought to have examined not only their vendor R.P.Aggarwal but also vendor of Sh.R.P. Aggarwal i.e. Khairati Lal to prove their ownership of plot no.261. They have placed on record the photocopies of General Power of Attorney Ex.DW 1/8, affidavit DW 1/9, Agreement to Sell DW 1/10 and receipt DW 1/11 allegedly executed by R.P. Aggarwal in favour of respondent no.2. Exhibition of these documents was objected to by the learned counsel for the appellant for the reason that these documents are neither attested by the witnesses nor registered in accordance with law. These documents have not been proved by the respondents in accordance with law. The copy of the General Power of Attorney bears initials of two witnesses but their names are not mentioned. Their parentage and addresses are not mentioned. This Power of Attorney is also not registered and it bears only the impression of attestation of

stamp of the notary public who has also not mentioned the serial number of his Register at which it was registered. This document bears a stamp date of 20.06.1997 whereas the Stamp Paper indicates the date of sale of stamp as 20.06.1992 which is 5 years prior to date of documents. The copy of the agreement for sale Ex.DW 1/10 also bears the signatures of two witnesses which are not legible and their names, parentage and addresses are not mentioned. The receipt Ex.DW 1/11 is attested by one witness who has also not been examined to prove this document.

29. The respondents had placed on record copies of the documents by which one Khairati Lal executed General Power of Attorney, affidavit, Agreement for Sale and receipt in favour of the R.P. Aggarwal which are Mark B to Mark E. The respondents have not examined the vendor of R.P. Aggarwal or Sh. Khairati Lal to prove the title/documents. Their documents are therefore not worth considering in evidence.
30. The respondents have placed on record a copy of the registered Sale Deed executed by Niyadar Singh in favour of Khairati Lal in respect of a piece of land measuring 567 square yards out of Khasra no.05/25.
31. In the copy of the Sale Deed dated 6th October, 1986 which Niyadar Singh executed in favour of Khairati Lal does not contain the boundaries of the plot sold by him. It only mentions

a piece of land measuring 567 square yards out of Khasra no. 05/25 situated in Razapur, Delhi.

32. Much reliance has been placed by the respondent in the testimony of DW 3 Niyadar Singh. When he appeared in the witness box, the said Sale Deed allegedly executed by him in favour of Khairati Lal was never put to him. Therefore, the respondents have failed to prove that he has become the owner of plot no.261 by purchasing the same from R.P.Aggarwal. **It is a well settled principle of law that the possession of a vacant site goes with the title.** It is not the case of the respondents that they are merely in possession of plot no.261. Rather they have claimed that they are in possession in their capacity as owner. Once the respondents failed to prove the ownership in favour of respondent no.2, they cannot claim to be in possession of the suit property which is admittedly a vacant site.
33. Here it is interesting to note the findings of the trial court as recorded in para no.22 of the impugned judgment dealing with the core issue between the parties, which reads as under:-

“Issue no.3: Whether the defendants is entitled for a decree of permanent injunction, as prayed in counter claim? OPD

The defendants claimed to have purchased the suit property from Sh. R.K. Aggarwal. That Sh. R.K. Aggarwal has purchased the suit property from Sh. Niyadar Singh. The DW-3 Sh. Niyadar Singh has corroborated the testimony of the defendants. The defendants have relied upon the documents Ex. DW1/1 and Ex. DW 1/25 to prove their ownership qua the suit

property. The documents relied upon by the defendants are corroborated with the testimony of the DWs 2 to DW 6. The documents and material produced on record proved that the defendants are having right or interest over the suit property. The defendants are able to prove their possession over the suit property. The defendants are able to prove the settled possession in the suit property. A person who is in settled possession in the property is liable to be protected from any unauthorized interference. The plaintiff has failed to prove his right, title or interest over the suit property.”

34. Learned Additional District Judge without reading deposition of DW-1 and looking into exhibited documents observed that the respondents have relied upon the documents Ex.DW 1/1 and DW 1/25 to prove their ownership in relation to the suit property. DW 1/1 is in fact the site plan of plot no.261 in which even the name of Draughtsman is not mentioned. No one has signed this document. This is nothing but a waste piece of paper. DW 1/25 is the copy of the information supplied under RTI Act by the office of Additional DCP of Police cum Central Public Information Officer, West District regarding the inquiry conducted by SI Ram Bhau. Documents Ex.DW1/3 to Ex.DW1/7 were de-exhibited then and there by the Ld. ADJ on 21.07.2014 in the statement of DW1 in examination-in-chief and they were marked as Mark A to Mark E. Ex.DW1/2 is copy of House Tax Receipt and Ex.DW1/3 is copy of an application for an electricity connection by the Respondent No.2. Obviously, these documents are not title documents. In fact,

respondent no.2 mentioned 25 exhibits in her affidavit tendered in evidence on 21.07.2014 in the Trial Court. In her statement, she tendered documents Ex.DW1/1 to DW1/25. An error was noticed by Trial Court immediately and the documents Ex.DW1/3 to DW1/7 were de-exhibited and put as Mark A to E. It was observed that Ex.DW1/14 to 18, Ex.DW1/21 and Ex.DW1/22 were already part of the appellant's evidence as Ex.PW1/D2 to D6 & PW1/D7 & D8. Document Ex.DW1/23 was de-exhibited and marked as Mark 'H'. Therefore on the record only the following the documents of respondents were exhibited: -

- i. DW1/2 – Photostat copy of Sale Deed dated 06.10.1986.
- ii. DW1/8 to DW1/11 – Photostat copies of sale documents in favour of Respondent No.2 by R.P. Aggarwal.
- iii. DW-1/12 – Copy of House Tax Receipt dated 28.02.2017.
- iv. DW1/13 – Copy of application by respondent no. 2 to BSES for electricity connection.
- v. DW1/24 – Copy of proposal of water bill.
- vi. DW1/25 – Copy of inquiry report dated 01.03.2012 under RTI Act.

35. It appears that the Ld. ADJ did not bother himself to peruse the file before adjudicating the issue. He has failed to apply his Judicial approach as to what documents are exhibited and if these are available on the record. There are only nine documents which were exhibited with objections of appellant as DW1/2, DW1/8 to 11, DW1/12, DW1/13, DW1/24 & DW1/25.

Rest of the documents were either put as 'Mark' on being de-exhibited in the statement of DW2.

36. Therefore, the finding of the trial court that the respondents have been in possession of the suit plot is perverse, whimsical and without any evidence which cannot be sustained and is liable to be set aside.

POINT NO.II

37. To prove his case the appellant has examined himself as PW1. The original Power of Attorney is Ex.PW1/1 which is executed by the vendor Niyadar Singh and is duly registered with the office of the Sub-Registrar. PW 2 Sh. R.K. Thakur, Record Keeper from the office of the Sub-Registrar Basai Darapur brought the original record of the GPA dated 12th November, 1998. PW-2 testified that Ex.PW1/1 was registered in their office on 12th November, 1998 and bears the thumb impression and signatures of the executants and the two attesting witnesses.
38. Under Section 85 of the Indian Evidence Act, 1872, presumption of correctness attaches to such Power of Attorney which has been so executed and authenticated. Section 85 reads as under:-

“85. Presumption as to powers-of-attorney.

The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.”

39. Section 85 provides that the court shall presume that the Power of Attorney to have been executed before, and authenticated by a Notary Public or any Court, Magistrate, Indian Consul or Vice-Consul or the representative of the Central Government, was so executed and authenticated. Section 85 enumerates list of authorities/offices where if the Power of Attorney executed and so authenticated shall carry presumption of correctness. Enumeration of authorities/offices in the provision is inclusive and not exhaustive. All the vital documents like Sale Deed, Conveyance Deed, Mortgage Deed, Gift Deed, Will etc. are executed and registered in the office of Sub-Registrar, which is more reliable than the Notary Public as generally Notary Public do not put serial number on attested documents which gives an impression that these are not entered in his register which they are required to maintain. **Therefore, the Power of Attorney executed and authenticated by a Sub-Registrar also carries a presumption of correctness.** As such Power of Attorney Ex.PW1/1 is admissible in evidence and carry presumption of its being so executed and authenticated.
40. The respondents have examined the vendor of the appellant Niyadar Singh as DW 3 and it is relevant to refer to his testimony which reads as under:-

“DW-3: Statement of Sh. Niyadar Singh, s/o. Late Sh. Rizak Ram r/o. Village Dabri, Delh.

ON SA

I was the Bhoomidhar of the Agricultural land measuring about 8 Killas in the village Rajapur Khurd, Hastal, Delhi. I have sold this land to the property dealers for the plotting. I have executed the attorney of the land in favour of number of persons. I executed the attorney in favour of khasra no. 5/25 to Sh. Kharati Lal. My statement was recorded by the police in respect of the land khasra no. 5/25. The statement was recorded in the presence of Sh. Suresh Gupta and both the defendants. I also signed the writing and identify my signatures at point X on the document already Ex.PW1/D1. I also seen the documents of both the parties and the documents of the defendants are correct. I never executed any attorney in favour of Sh. Suresh Gupta.

XXXXXX by Sh. Ashok Kumar Kala, Ld counsel for the plaintiff.

I cannot identify the persons to whom I sold my land. (Vol. Because of lapse of time). The defendants did not purchase the land in question from me. I did not execute any document in favour of the defendants in respect of this land (vol. I have sold the land to Sh. Kharati Lal). I carved out about 250 plots out of 8 killas. My land of 8 killas had different khasra numbers. I cannot tell the khasra numbers of my land today as it is 25 years old transactions. I used to get the documents executed in respect of my land at the office of Sub-Registrar, Kashmere Gate. I never visit the office of Sub-Registrar at Janakpuri. Our area now falls in the jurisdiction of Sub Registrar Kapashera, Delhi. I cannot say whether the document Ex. PW1/1, Ex. PW1/2, Ex. PW1/3 and Ex. PW1/4 bear my signatures or not. I never visited the office of Sub-Registrar, Janakpuri in respect of land in question. I

cannot identify my photograph on document Ex. PW1/5.”

41. It comes out from the statement of Niyadar Singh, Vendor that he had 8 Killa of land in the Village Rajapur Khurd and had sold it to various property dealers by carving out plots. He executed Power of Attorney in favour of several persons. He sold Khasra No. 5/25 to Khairati Lal. In a sentence he states that due to lapse of time he could not identify the persons to whom he sold the land and in next breath he stated that he did not execute Power of Attorney in favour of the appellant. He carved out 250 plots out of 8 Killas which were bearing separate Khasra numbers and could not tell Khasra numbers. He did not tell the area of Khasra No. 5/25.
42. It is matter of common knowledge that one killa is equivalent to 4840 Sq.Yards. One Killa has one Khasra number with sub-numbers. Even if document Ex.DW-1/2, copy of Sale Deed executed by Niyadar Singh in favour of Khairati Lal is considered, it is only for 567 Sq.Yards, out of Khasra No.5/25, Village Rajapur Khurd. Total area of Khasra No.5/25 is not mentioned in the Sale Deed.
43. Interestingly, the vendor Niyadar Singh in his cross-examination testified that he could not say whether document Ex. PW 1/1 (registered original General Power of Attorney), PW 1/2 (Agreement to Sale and Purchase), Ex.PW-1/3 (Receipt) and Ex. PW 1/4 (possession letter) in favour of

appellant bears his signatures or not. When he was shown the original Will Ex. PW 1/5 registered in favour of appellant, he deposed that he could not identify his photograph on this document Ex.PW 1/5.

44. It is settled principle of law that it is the bounden duty of the Court to uphold the truth and do justice. Every litigant is expected to state truth before the court whether it is in the pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in courts of law. The ultimate object of judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the Court should be truthful. Once the court discovers any falsehood, concealment, distortion, obstruction or confusion in the pleadings or documents, the court should in addition to full restitution impose appropriate costs. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process. This so held by the **Hon'ble Supreme Court in A. Shanmugam vs. Ariya K.R.K.M.N.P. Sangam Tr. Pres. Etc, SCC (2012) (6) SCC 430**
45. The documents filed by the appellant in original on the record Ex.PW 1/1 to PW 1/5 bear not only the signatures of the vendor, that is, Niyadar Singh but also his thumb impressions. The General Power of Attorney Ex. PW 1/1 was duly registered with the Sub-Registrar in respect of the property in question.

However, when these documents were put to him the vendor DW 3 Niyadar Singh has very conveniently in order to help the respondents with mala-fide intentions gave the answer dishonestly to the question that he could not say whether these documents bear his signatures or not. He did not deny that these documents do not bear his signatures. Regarding the photograph affixed on the Will Ex. PW 1/5, he has again very conveniently said that he cannot identify his photograph. The learned ADJ has been lackadaisical and mute spectator and as expected did not note the demeanor of the witness at the time of recording the deposition. He should have confronted the witness of his face with the Photograph at the time of evidence.

46. Here it is relevant to refer Section 73 of the Evidence Act. It reads as under: -

“73. Comparison of signature, writing or seal with others admitted or proved. – in order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person.”

47. Under Section 73 of the Indian Evidence Act, 1872, the Court has power to compare the signatures of a person which has been proved to the signatures of the same person whose authenticity is in question. The **Hon'ble Supreme Court in Lalit Popli vs. Canara Bank & Ors. 2003 (3) SCC 583** while laying down the scope of the court's power to compare a person's signatures to test its authenticity held as under:-

“It is to be noted that under Sections 45 and 47 of the Evidence Act, **the court has to take a view on the opinion of others, whereas under Section 73 of the said Act, the court by its own comparison of writings can form its opinion.** Evidence of the identity of handwriting is dealt with in three sections of the Evidence Act. They are Sections 45, 47 and 73. Both under Sections 45 and 47 of the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. **Irrespective of an opinion of the handwriting expert, the court can compare the admitted writing with the disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act.** Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of the handwriting expert need not be invariably corroborated. It is for the court to decide whether to accept such an uncorroborated evidence or not. **It is clear that even when an expert's evidence is not there, the court has power to compare the writings and decide the matter.** (See *Murari Lal v. State of M.P.* [(1980) 1 SCC 704 : 1980 SCC (Cri) 330].”

48. This court has perused the signatures of the vendor of the appellant Niyadar Singh (DW 3) as appearing on the General Power of Attorney Ex. PW 1/1, Agreement to Sell Ex. PW 1/2, receipt Ex. PW 1/3, possession letter Ex. PW 1/4 and registered letter Ex. PW 1/5 and compared the same with his admitted signatures who had signed as DW 3 before the learned Additional District Judge on 29th August, 2014. It is found on close scrutiny that the admitted and disputed signatures are identical in all features and facet.
49. Clause 2 of the Agreement to Sell & Possession Letter i.e. Ex.PW1/4 itself states that the possession of the vacant plot/suit property was handed over to the appellant at the time of the execution of the said Agreement to Sell dated 11.11.1998. Complete payment of the sale consideration of Rs.75,000/- was made to the vendor Niyadar Singh as per the Receipt Ex.PW1/3 & Agreement to Sell and Purchase i.e. Ex.PW1/2. The GPA which is Ex.PW1/1 is irrevocable. Section 202 of the Indian Contract Act reads as under:
- “202. Termination of agency where agent has an interest in subject-matter.**
Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.”
50. This Court in **Shikha Properties (P) Ltd. v S Bhagwant Singh & Ors. 1998 SCC OnLine Del 423** while laying down that an

interest is created in favour of the vendee if an irrevocable Power of Attorney is executed coupled with Agreement to Sell and full payment of consideration, held as under:

“I have considered the whole matter. The agreements to sell and the irrevocable power of attorneys executed, for consideration for sale received by the defendants, in favour of the plaintiff company were meant not only to get the sale deeds executed, but also conferred rights on the plaintiff to manage the properties and deal with the tenants, create leases or sub-leases. Pursuant to their execution, the properties being in occupation of tenants/occupants, constructive possession of the properties appears as handed over to the plaintiff, since the plaintiff has been dealing with the tenants, recovering rent and virtually exercising ownership rights all this while. As noticed above, and as is evident from the pleas raised in support and resistance to the suit, briefly referred to above, serious questions requiring trial and decision, on the pleas set up by the parties and the issues struck, arise in the suit and it will neither be proper nor desirable to express any opinion on them at this stage. For the purpose of this application for temporary injunction, the court to take only a prima facie view of the matter. Bearing in mind the view expressed by a division bench of this court in *Harbans Singh's case* (Supra) and followed in *Prem Raj and H.L. Malhotra's cases* (Supra) to the effect that if an irrevocable power of attorney is executed for consideration, the same cannot be cancelled, and having regard to the fact that the plaintiff company has been managing the suit properties all the while right from the year 1983, I feel that the plaintiff has a prima facie case and the balance of convenience lies in its favour. If the operation of the impugned notice, revoking the general power of attorneys, is not stayed and the defendants are given a free hand to deal with the subject properties the way they like, the plaintiff is likely to suffer irreparable injury. The

decisions in *Satyabrata Ghose's* and *Ram Gopal Reddy's cases*(Supra), relied upon by learned counsel for the defendants, are clearly distinguishable on facts. None of the authorities cited by learned counsel for the defendants deals with the intent and scope of section 202 of the Contract Act. In *Satyabrata's case* (Supra), the Apex Court, while dealing with Section 54 of the Transfer of Property. Act, merely held that doctrine of frustration is applicable to contracts for sale of land in India. Similarly in *Ram Gopal Reddy's case* (Supra), as is evident from the head note itself, the Hon'ble Court merely noticed the uncontested principle of law that where the immovable property sold is more than Rs. 100/- title does not pass to a transferee unless sale deed is registered. These authorities do not advance defendants' case. The instant case, prima facie, is covered by Section 202 of the Contract Act as admittedly, having paid consideration for sale and having been dealing with the suit properties practically as owners, for fairly long, the plaintiff appears to have vital "interest" in it, requiring protection till it is held as washed away or nullified on the pleas raised by the defendants, which can be determined only after full trial."

51. The appellant had paid full sale consideration for the suit property which is evident from the receipt dated 11.11.1998 which bears the vendors' i.e. Niyadar Singh's signatures and thumb impressions and also from Clause 1 of the Agreement to Sell which clearly states that the entire consideration amount of Rs.75,000/- has been received by the vendor from the vendee i.e. the appellant.
52. The respondent's primary argument was that that the appellant had forged and fabricated the documents to defeat their claim. It

is not in dispute that the appellant had brought on record original registered documents in evidence to prove his case. The Hon'ble Supreme Court in *Maya Devi v. Lalta Prasad*, (2015) 5 SCC 588 while laying down the evidentiary value of registered documents held as under:

“16. There can be no gainsaying that when the probative value of documents is to be assessed, specially those dealing with the creation of any interest in property or its transfer, of a value exceeding Rs 100, obviously documents which have been duly registered regardless of whether or not that was legally mandatory, would score over others.”

In light of the ratio in *Maya Devi's case (supra)*, it was up to the respondents to substantiate their claim that the appellant had forged and fabricated his documents and in the absence of any such proof the Court is bound to accept the registered documents as being genuine and assigning a better claim than unregistered photostat copies/documents of the respondents particularly when chain of title is not proved.

53. In the light of these observations also, the appellant has been able to prove that his vendor Niyadar Singh had executed sale documents Ex. PW 1/1 to PW 1/5 in his favour in respect of suit property. The sale consideration of Rs.75,000/- was paid to Niyadar Singh by the appellant and the possession of plot no.261A area measuring 190 square yards (46 ft x37 ft) out of Khasra no.05/25 in village Razapur, Sainik Enclave, New Delhi was delivered to him. Therefore, an interest, within the

meaning of Section 202 of the Contract Act, in the plot no.261A was created in favour of the appellant particularly when the Power of Attorney is irrevocable on payment of entire sale consideration and receiving physical possession of the suit property. Hence, in the light of this discussion, the appellant has been able to show that by the documents Ex. PW 1/1 to PW 1/5 he had acquired a valuable interest in the property in question though he might not have become technically a full owner of the property for want of a proper sale deed. Therefore, the appellant is entitled to a decree of permanent injunction in his favour and against the respondents. The suit of the appellant for permanent injunction is hereby decreed in his favour restraining the respondents from interfering in any manner.

54. The appeal is accordingly allowed with costs throughout and the judgment and decree of the Trial Court dated 30.07.2016 is set aside. The Counter claim of the respondents is dismissed. The suit of the appellant for Permanent Injunction is decreed with costs in his favour and against the respondents restraining them from dispossessing him from the plot in question and from interfering in the peaceful possession thereof of the appellant in any manner.
55. The appeal is disposed of accordingly.

VINOD GOEL, J.

DECEMBER 13, 2017

"shailendra"//