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

Reserved on :31st July, 2018

Date of decision :16th August, 2018

+ **RFA 875/2016, CMs APPL.8942/2017, 8994/2017, 15331/2017 & 22338/2018**

SARDAR DALJIT SINGH & ORS

.....Appellants

Through: Mr. J.P. Sengh, Senior Advocate with
Mr. Hitender Kapur, Mr. Sagar
Chawla, Ms. Manisha Mehta & Ms.
Mrigna Shekher, Advocates.
(M:9810229189)

versus

SARDAR INDERJIT SINGH KHUMAN

.....Respondent

Through: Mr. Sanjeev Sindhvani, Senior
Advocate with Ms. Shobhana Takial,
Advocate. (M:9810962950)

WITH

RFA 38/2017

+
DALJIT SINGH & ORS

.....Appellants

Through: Mr. J.P. Sengh, Senior Advocate with
Mr. Hitender Kapur, Mr. Sagar
Chawla, Ms. Manisha Mehta & Ms.
Mrigna Shekher, Advocates.

versus

INDERJIT SINGH & ANR

.....Respondents

Through: Mr. Sanjeev Sindhvani, Senior
Advocate with Ms. Shobhana Takial,
Advocate. (M:9810962950)

RFA 39/2017

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DALJIT SINGH

.....Appellant

Through: Mr. J.P. Sengh, Senior Advocate with
Mr. Hitender Kapur, Mr. Sagar
Chawla, Ms. Manisha Mehta & Ms.
Mrigna Shekher, Advocates.

versus

INDERJIT SINGH

.....Respondents

Through: Mr. Sanjeev Sindhwani, Senior
Advocate with Ms. Shobhana Takial,
Advocate. (M:9810962950)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUDGMENT

Prathiba M. Singh, J.

1. Late Sh. Ishar Singh Khuman was the owner of property bearing no.GA/10, G Block, Hari Nagar, New Delhi-110056. He had acquired the property in the year 1954. He was married to Late Smt. Swaran Kaur, with whom he had a son- Sh. Inderjit Singh Khuman (*hereinafter 'Plaintiff'*) and after the demise of his first wife, he was married to Smt. Prabhjot Kaur, with whom he had three sons and one daughter. The case of the Plaintiff is that he is the owner of the suit property and that the family used to live together in the suit property. He claimed that he had purchased the suit property from his father vide Registered sale deed dated 11th March 1969. However, the Plaintiff had got married in 1973 and had shifted out of the house and thereafter moved to Australia. In 2005, when the Plaintiff decided that he wished to come back to India and live in the suit property, the Defendants created hindrances and did not allow him to begin renovation of the property. He was then forced to send notice dated 20th April, 2005 which was replied to by the Defendants vide letter dated 26th April, 2005, wherein the Defendants claimed to be the co-owners. Some of the possessions of the Defendants were also lying in the suit property. Hence, the Plaintiff filed a suit for possession, prohibitory injunction as also recovery of *mesne profits*.

2. The Defendants, in the said suit claimed that the Plaintiff was not the owner of the property, but it was owned by their father - Late Sh. Ishar

Singh Khuman. It was further claimed that after the death of the father, all the legal heirs are entitled to equal share in the suit property. The sale deed dated 11th March, 1969 relied upon by the Plaintiff by which the father, was claimed to have sold the property to the Plaintiff was alleged to be a forged and fabricated document, which was manipulated by the Plaintiff. It was claimed that one of the witnesses who had attested the sale deed had filed an affidavit before the High Court denying that he had witnessed the sale deed and also denied the signatures on the same. The Defendants claimed that most of the suit property was in their possession and use and the Plaintiff did not have any ownership rights. Complaints and counter complaints had been lodged with the police by the parties.

3. The suit was originally filed by the Plaintiff only against his three brothers. However, thereafter, the Plaintiff amended the suit and impleaded his step-mother. The pleadings captured above are on the basis of the amended complaints and the amended written statements. Initially, on 24th January, 2008, the following issues were framed:

- “1. Whether the property in question as claimed in the suit is beyond the pecuniary jurisdiction of this court? (OPD)*
- 2. Whether the plaint has not been properly valued for the purposes of court fee and jurisdiction? (OPD)*
- 3. Whether the plaint is liable to be rejected under Order 7 R 11 CPC? (OPD)*
- 4. Whether the suit is bad for non-joinder of necessary party? (OPD)*
- 5. Whether the sale deed in question is forged and fabricated by the plaintiff in order to grab the suit property? (OPD)*

6. *Whether the plaintiff is entitled for the possession of the portion of the suit property as claimed in the suit? (OPP)*
7. *Whether the plaintiff is entitled for the decree of injunctions as claimed in the suit? (OPP)*
8. *Relief.”*

4. Almost immediately after filing of the suit for possession, a suit for partition and permanent injunction was filed by the step mother and the step brothers of Sh. Inderjit Singh Khuman. In the said suit, a decree of partition was prayed in respect of the suit property, along with an injunction seeking to restrain Sh. Inderjit Singh Khuman from dispossessing his brothers and mother from the suit property. This second suit, which was instituted as CS(OS) 696/2005 in the Delhi High Court but was thereafter transferred to the District Court, is referred to as the ‘partition suit’, for the sake of brevity.

5. In the meantime, another suit for declaration was filed. On 22nd April, 2006, one of the brothers - Sh. Daljit Singh Khuman filed a suit for declaration and cancellation of documents and permanent injunction wherein he sought a declaration that the sale deed dated 12th March, 1969 was forged and fabricated along with an injunction restraining the Defendant i.e. Sh. Inderjit Singh Khuman from creating any third-party interest in the suit property. This suit being 1091/2006 is referred to as the ‘declaratory suit’. Thus, there are three suits:

- Suit for possession filed by Sh. Inderjit Singh Khuman against his step-mother and step brothers - ‘*Possession suit*’;
- Suit for partition filed by the step mother and two step brothers and step sisters against Sh. Inderjit Singh Khuman - ‘*Partition suit*’;

- Suit for declaration filed by one of the step brothers against Sh. Inderjit Singh Khuman - '*Declaration suit*'.

6. The suit filed by Sh. Inderjit Singh Khuman seeking possession has been taken as the lead suit. On 4th November, 2011, this court directed that the validity of the sale deed i.e. as to whether it is forged and fabricated would be the issue which would govern the suit for declaration. Additionally, in the partition suit, one issue is in respect of partition of the property and in the suit for possession, the issue in respect of possession was reframed and the issues on *mesne profits* were also framed. The additional issues framed are as under:

"CS(OS) 696/2005

(i) Whether the property bearing no.G-10-A, Hari Nagar, New Delhi, is liable to be partitioned?(Onus on both parties)

CS(OS) 2220/2010

6. Whether the plaintiff is entitled to possession of the entire suit property in the suit? (OPP) (reframed)

7. Whether the plaintiff is entitled to mesne profits/damages and if so at what rate and for what period? (OPP)

8. Whether the plaintiff is entitled to interest on the mesne profits/damages, if so, at what rate? (OPP)"

Hence the final list of issues framed are as under:

"1) Whether the property in question as claimed in the suit is beyond the pecuniary jurisdiction of this Court? OPD (deleted vide order dated 04.11.2011)

2) Whether the plaint has not been properly valued for the purpose of court fee and jurisdiction? OPD

3) Whether the plaint is liable to be rejected under Order 7 Rule 11 CPC? OPD

4) Whether the suit is bad for non-joinder of necessary party? OPD (deleted vide order dated 04.11.2011).

5) *Whether the sale deed in question is forged and fabricated by the plaintiff in order to grab the suit property? OPP*

6) *Whether the plaintiff is entitled to possession of entire suit property in the suit? OPP (reframed vide order dated 04.11.2011)*

7) *Whether the plaintiff is entitled to mesne profits / damages and if so, at what rate and for what period? OPP*

8) *Whether the plaintiff is entitled to interest on the mesne profits / damages, if so, at what rate? OPP*

9) *Whether the plaintiff is entitled for the decree of injunctions as claimed in the suit? OPP (renumbered as issue no. 9 vide order dated 04.11.2011)*

10) *Relief, (renumbered as issue no. 10 vide order dated 04.11.2011)”*

The following were the witnesses who testified in evidence.

- Sh. Inderjit Singh Khuman deposited as PW-1;
- Sh. Mukhtar Mahto – Record Keeper from the office of Sub-Registrar-II, Kashmere Gate deposited as PW-2;
- Sh. R.K. Thakur – Record Keeper from the office of Sub-Registrar-II, Basai Darapur, New Delhi deposited as PW-3;
- Sh. Daljit Singh Khuman deposited as DW-1.
- Sh. Charan Singh deposited as DW-2.

7. The Trial Court vide its judgment dated 3rd October, 2016 decreed the suit for possession and *mesne profits* filed by Sh. Inderjit Singh Khuman and dismissed the partition suit and declaration suit. The findings of the Trial Court are as under:

- That the onus to prove that the sale deed is forged and fabricated is upon the Defendants;

- That the Defendants attempted to prove that the sale deed in favour of the Plaintiff was forged and fabricated by relying on the affidavit of one of the witnesses to the sale deed, viz., Sh. Harbans Singh. However, Sh. Harbans Singh could not be cross-examined as he expired during the pendency of the suit. Thus, the affidavit of Sh. Harbans Singh cannot be taken into consideration;
- That the adequacy of consideration is not a standard to judge the validity of the sale deed;
- That the sale deed is in the *Urdu* language and the translation having been filed, it cannot be said that the same was not proved in accordance with law. Since no objection was raised at that time when the document was exhibited, the Defendants cannot be allowed to challenge the translation if they themselves filed the suit for declaration challenging the sale deed wherein they annexed the translation;
- Since the original sale deed has been produced, a presumption can be drawn under Section 90 of the Indian Evidence Act, 1872 that the document has been duly executed;
- Since Late Sh. Ishar Singh Khuman never questioned the execution of the sale deed during his lifetime, a presumption attaches to it;
- The electricity connection, building plan and house tax assessment, etc. all show that the same are in the name of Sh. Inderjit Singh Khuman;

- Since the sale deed has been proved, Plaintiff is entitled to possession and *mesne profits*;
- Since the sale deed is not forged and fabricated, the declaration, sought for cannot be granted;
- Since as per the sale deed, the ownership vests in the Plaintiff – Sh. Inderjit Singh Khuman, the partition sought for cannot be granted.

Contentions in the appeal

8. Mr. J.P. Sengh, Ld. Senior Counsel appearing for the Appellant submits that the interpretation and presumption of the Trial Court under Section 90 of the Indian Evidence Act, 1872 is contrary to law. He submits that the only witness to the sale deed, Sh. Harbans Singh having filed an affidavit before this court that he had not attested the sale deed, is an important circumstance to show that the sale deed was forged. Moreover, a sale transaction always involves a buyer and a seller whereas only Late Sh. Ishar Singh Khuman has purportedly signed the sale deed and the Plaintiff, Sh. Inderjit Singh Khuman has not signed on the sale deed. Mr. Sengh further submits that the father – Late Sh. Ishar Singh Khuman was a Junior Commission Officer in the Indian Army and had adequate funds to purchase and construct the suit property. He did not depend upon his son – Sh. Inderjit Singh Khuman, who had shifted out from the house in the late 1960s himself, for his livelihood and maintenance of his family. Unfortunately, the Defendants could not produce Sh. Harbans Singh as he passed away during the pendency of the suit. Even the wife of Sh. Harbans Singh– Smt. Sujana Kaur, who was to be brought to the witness stand has expired. He submitted that the version of the Plaintiff that he carried out the construction and

permitted his family to stay there is not believable. Moreover, the Plaintiff relies upon a Power of Attorney given by him to his father for enabling the construction in the suit property. Sh. Inderjit Singh Khuman actually shifted to Australia and until 2005, the sale deed did not see the light of the day. The sale deed cannot also be believed because the address of Late Sh. Ishar Singh Khuman is mentioned as Tilak Nagar whereas he was already staying in Hari Nagar. He further submitted that the sale deed which is in *Urdu* language has not been properly proved. According to Mr. Sengh, the signatures of Late Sh. Ishar Singh Khuman also do not match and there is doubts on the signatures which are in two different inks. The credibility of Sh. Inderjit Singh Khuman is also questioned as he claims in his affidavit that he was present at the time of the execution of the sale deed and there is no reason as to why he should not have signed the sale deed. It is further submitted that there is no proof that the consideration mentioned in the sale deed was actually paid and whether the document is genuine. The most important question raised by Mr. Sengh is that when the sale deed was executed in 1969, seeking enforcement of the same by a suit in 2005, after the death of the father, itself shows that the sale is a sham transaction. He further relies upon the following judgments of the Supreme Court to submit that the drawing of a presumption under Section 90 of the Indian Evidence Act is discretionary and that the said provision does not give rise to a presumption as to the correctness of the recitals in a document.

i) ***Om Prakash v Shanti Devi, (2015) 4 SCC 601***

ii) ***Gangamma v Shivalingaiah, (2005) 9 SCC 359***

The presumption, according to Mr. Sengh, is completely rebuttable.

9. On the other hand, Ld. Senior Counsel for the Plaintiff relies upon a letter sent by Late Sh. Ishar Singh Khuman to the municipal authorities where he himself claims to be the Power of Attorney holder of Sh. Inderjit Singh Khuman. If Late Sh. Ishar Singh Khuman was himself the owner, there was no need for him to claim that he was the Power of Attorney holder. He further submits that the Power of Attorney so issued is also not fully believable as there are two versions of the Power of Attorney, one executed in Mumbai and one executed in Delhi. He further submits that it is not necessary for a sale deed to be signed by the purchaser. Sale deeds are different from wills and gift deeds, which require an attesting witness. He also submits that the affidavit of Sh. Harbans Singh is forged and fabricated as he was never produced in the witness box as long as he was alive. He submits that all the essential services in respect of the suit property are in the name of Sh. Inderjit Singh Khuman. Since Late Sh. Ishar Singh Khuman never challenged his right and title, the heirs of Late Sh. Ishar Singh Khuman also cannot challenge the same. The fact that the value of the property could have been higher does not mean that the sale deed is forged. According to Learned Sr. Counsel, all the taxes in respect of the suit property are being paid by his client – Sh. Inderjit Singh Khuman after the execution of the sale deed. He also relies upon the following judgments:

- i) Prem Singh & Ors. v Birbal & Ors., AIR 2006 SC 3608*
- ii) Paramjit Anand v Mohan Lal Anand, CS (OS) No. 575/2007 (decided on 4th April, 2018)*
- iii) Mahesh Chander Ahuja v Tilak Raj Ahuja, 2018 (3) AD Delhi 130*

- iv) *Anil Jain v Mohinder Kumar Jain*, RFA No. 291/2018
(decided on 23rd March, 2018)
- v) *Vinay Rai v Anil Rai* 2010 (7) AD Delhi 769
- vi) *Rudnap Export-Import v Eastern Associates*, AIR 1984
Delhi 20
- vii) *Sudhir Engineering Co. v Nitco Roadways Ltd.*, 1995
R.L.R. 286
- viii) *Anil Gulati v Promila Gulati*, 2015 (222) DLT 17
- ix) *Muneer Ahmed v State of Rajasthan*, AIR 1989 SC 705
- x) *Leela Goel v Prem Sagar Sharma*, 2006 (91) D.R.J. 683
- xi) *Ishwar Singh v Suraj Bhan & Anr.*, RSA No. 44/2012,
(decided on 28th September, 2016)
- xii) *Bayanbai Kaware v Rajendra*, (2018) 1 SCC 585

Analysis of the documents and evidence on record.

10. The sale deed in original which is in *Urdu* along with the translation is placed on record. The translation reads as under:

“ SALE DEED FOR RS. 1500/-
I Jamadar Ishar Singh Khuman S/o Sardar Thakar Singh Khuman R/o Care of Sardar Sewak Singh Plot No. 57 Partap Nagar Colony, Tilak Nagar, Delhi have sold my plot open residential plot bearing No. G/A/10, Area 60 Ft/45 Ft equal to 300 Sq. Yds. area East Road 30 Feet West Road 15 Ft. North Road, 30 Feet Wide South Plot No. G/121 Road situated at Block G- Hari Nagar, Area of Village Tihar, Delhi of which I am the sole and exclusive owner in possession which I had purchased from Bans Gopal vide sale deed bearing No. 382, Book No. 1 volume 2832 registered on 20.1.1954 which is free from all encumbrances and charges. As

such, I have sold the above said plot for a total sum of Rs.1500/- to Sardar Inderjit Singh S/o Sardar Ishwar Singh R/o of Plot NO. 57, Pratap Colony, Tilak Nagar and executed the sale deed in his favour. I have received the total consideration in full. The possession has been given to the purchaser at the spot. Executed on this 11 day of March 1969.”

The sale deed is exhibited as Ex. PW 1/2 and its translation is exhibited as Ex.PW1/3. The property tax receipt issued by the MCD dated 29th March, 2005 is in the name of Sh. Inderjit Singh Khuman (Ex.PW1/7). Letter dated 29th December, 1970 has been issued by the MCD in favour of Sh. Inderjit Singh Khuman, sanctioning the plan. A further letter dated 27th March, 1974 has been issued by MCD in favour of Sh. Inderjit Singh Khuman in respect of property tax (Ex. PW1/6). DESU has issued a letter dated 27th December, 1971 in favour of Plaintiff in respect of a refund (EX.PW1/8). The DWSSB has issued a letter dated 12th January, 1977 in respect of sewer lines running in the area near the property (EX.PW1/9). On the sale deed, the signature of Late Sh. Ishar Singh Khuman appears at two places, namely, point A and point X. Additionally, there is another place where the signature appears, though the same has not been specifically pointed out in evidence. It is only at point X that the signature is in two inks. Point A is in blue ink and point X is in two inks – blue and black and the third unmarked signature is purely in blue ink. A perusal of the reverse of page 1 of the sale deed, where two of the signatures appear, show that after the unmarked signature in blue ink, the signature at point X starts with blue but has been completed in black ink. But no doubts can be raised as to the genuineness of the document or the signatures inasmuch as there are other writings on the document that may be

of the officials of the Sub-Registrar's office in blue ink, which pen may have been used by Mr. Ishar Singh Khuman. The signature in all the three places is uniform. Moreover, an officer from the Sub-Registrar's office has produced the record to show that the said document is duly registered. The police complaints filed by Sh. Inderjit Singh Khuman and his mother have been exhibited as Ex.PW1/12.

11. In the oral evidence, Sh. Inderjit Singh Khuman admits that he, along with his step-mother, step brothers and sister were living as a joint family. He further claimed that while he was studying engineering between 1962 to 1966, he was working as an Engineer in the Indian Naval Dockyard and earning a stipend. He admits that his father Late Sh. Ishar Singh Khuman, after his retirement had got into the business of transport with one of his cousin brothers, which he used to run after his retirement. He denied knowledge about the various properties owned by his father. He stated that Sh. Harbans Singh, who had witnessed the sale deed was the husband of Smt. Prabhjot Kaur's sister. He had no knowledge as to the whereabouts of Sh. Darshan Singh – the other witness to the sale deed. He denied the suggestion that the signatures of Sh. Harbans Singh and Sh. Darshan Singh were forged and fabricated. He claimed that his father was being supported by him financially and denied that his father had a substantial bank account. He denied that his father had any fixed deposit between 1965 to 1980. He stated that he did not recall as to where he was between January, 1969 to April, 1969. He submits that from 1st March, till 15th March, 1969 he was in Delhi. He further stated that he did not remember when he became the citizen of Australia. He also admitted that in 1969, the price of the suit property could have been Rs.60 lakhs. He admitted that he never stayed with

his step-mother and her children, but only used to visit them occasionally. He further admitted that his step mother took care of him. He claimed that he was not aware that one of his step-brothers was also residing in Australia – Sh. Harpal Singh. He also claimed ignorance about the complaints filed by his step-mother against him. He admitted to having filed a complaint on 30th April, 2005 against Sh. Harpal Singh for trespassing in the suit property. He did not have any documentary proof to show that he had contributed for the construction of the suit property. He admitted that in 1971, he owned a property in Mumbai in Santa Cruz. He also admitted that his wife had never worked in India and at the time of their marriage, she was a citizen of Australia. He further admitted that his step mother was staying in the suit property since the time it was constructed. He admitted that he was summoned by the Police Station, Hari Nagar upon a complaint filed by his step mother. He further admitted that that keys of the suit property were in his step mother's custody. He had exhibited a document Ex.PW1/4 which was an unsigned agreement for the construction of the suit property. This document is not signed by anyone, but the original bears several notings in fountain pen. In his affidavit, Sh. Inderjit Singh Khuman relied on this to claim that his father was acting as his attorney, however, the said document is in two handwritings and the notation that Late Sh. Ishar Singh Khuman is the General Power of Attorney of Sh. Inderjit Singh Khuman is in a separate handwriting. He further claimed that he had given a Power of Attorney in the name of his father and that the house tax for the suit property was being paid from 1971 by him or by his father on behalf of him. He could not show any document to the effect that he gave the funds to his father for the house tax. He claimed that from 1981, after the death of his father, his brother Sh.

Daljit Singh Khuman was depositing the house tax, which was reimbursed by him. However, he did not have any document to prove the reimbursement. He also admitted that the electricity charges were being paid by his father from the money given by him and after the death of his father, somebody from the family was paying the electricity charges. On 10th April, 2012, at the end of the cross-examination, Sh. Inderjit Singh Khuman was directed to produce the Power of Attorney. He admitted that the sale deed does not bear his signatures and further stated that the consideration amount of Rs.1,500/- was paid in cash by him to his father. He stated that his father purchased stamp papers for the sale deed on 11th March, 1969. He stated that the value of the suit property in 2009 was Rs.60,000 to 70,000/- but again sought to resile from the said statement. He denied the suggestion that in 2009, the value of the property was more than Rs.1 crore. He stated that he had never seen Sh. Harbans Singh signing and writing except in the sale deed Ex.PW1/2. He denied the suggestion that all the heirs are entitled to equal shares in the suit property. On 13th December, 2012, he stated that there was no Power of Attorney of 1969 but the Power of Attorney was of 1970 which was executed in Mumbai. Thereafter, another Power of Attorney was executed in Delhi and he placed on record both the said Powers of Attorney.

12. DW-1, Sh. Daljit Singh Khuman deposed that he is a permanent resident of B10/7435, Vasant Kunj, New Delhi. He claimed that he used to reside in the suit property along with his family for several years and from 1998, he was living at the Vasant Kunj address. He further stated that Defendant No.2– Sh. Agyapal Singh Khuman is a resident of Mumbai and Defendant No.3 – Sh. Harpal Singh migrated to Australia. His mother –

Smt. Prabhjot Kaur passed away in 2010 when she was residing with Defendant No.2. He further stated that Sh. Inderjit Singh and his wife had possession of one room attached with a bathroom from March, 2005 as they used to visit the suit property from Australia and his mother had permitted them to stay in the said room. He stated that in April, 2004, incidents took place in the house wherein the Plaintiff started threatening his step-mother as she did not vacate the suit property and he was then forced to file police complaints in the Police Station Hari Nagar. He further stated that on 4th May, 2005, property dealers visited the suit property along with the Plaintiff which is when a verbal deal took place between the family members. He claimed that Sh. Harbans Singh, who claimed to be a witness in the sale deed, had already filed an affidavit that he had not signed the sale deed. He further stated that his father was the owner of two plots i.e. E-38 or E-39, Uttam Nagar as also a plot in Dabri, Delhi. He further stated that his father had substantial accounts and also had accounts in Haryana Finance Private Limited and Anand Finance Company, Delhi and was regularly paying income tax.

13. He could not show any document to establish that his father was employed after his retirement. He stated that his father was into the transport business and prior to this, he was an administrative officer in a private company in Rajouri Garden. He claimed that he was not aware that the completion certificate or the sanction plan was issued for the suit property in the name of Sh. Inderjit Singh Khuman. He claimed that Sh. Harbans Singh was very close to his father, being his co-brother. He admitted that the electricity connection was in the name of Sh. Inderjit Singh Khuman in the

suit property. He denied that his father had represented himself as an attorney of Sh. Inderjit Singh Khuman.

14. DW-2, Sh. Charan Singh was the brother of Late Sh. Ishar Singh Khuman. He claimed that Late Sh. Ishar Singh Khuman was working in the administration of a school till 1965 post his retirement in 1961. He further claimed that thereafter he was doing business and was an owner of a truck. He claimed that Late Sh. Ishar Singh Khuman was financially sound after his retirement and that he looked after the needs of his family. He further claimed that the suit property was never sold to his son – Sh. Inderjit Singh Khuman. In his cross-examination, DW-2 stated that he is a resident of Chandigarh since 1988 and prior to that, he was a resident of Mumbai from 1951 to 1988. He worked in the navy and only came to Delhi on and off. He claimed that Late Sh. Ishar Singh Khuman was Naib Subedar and retired in 1961. Between 1969 to 1971, DW-2 was a Lieutenant Commander in Indian Navy. He claimed that he was posted in Mumbai and at that time, he was quite close to Late Sh. Ishar Singh Khuman. He admitted that he attested his signatures in the Power of Attorney Ex.DW-2/P1 executed in Mumbai. He claimed that he had never seen the sale deed of the suit property.

Analysis and Findings

15. An analysis of the documents and the oral evidence on record shows that the execution of the sale deed and its existence cannot be disputed. The sale deed is a registered document which carries a presumption in law under the Registration Act, 1908. The existence of the sale deed has been proved by the officer from the Sub-Registrar's office. The other documents which go to show that the ownership of the property vests with the Plaintiff include the letters of the MCD dating back to 1970 and 1974. The receipts for the

property tax, the letter for electricity payments in 1971 and the letter of DWSSB in 1977, all go to show that the ownership of the property was always with Sh. Inderjit Singh Khuman i.e. the Plaintiff.

16. The Defendants, however, seek to challenge the title to the suit property on the basis of the allegation that the sale deed is a forged and fabricated document. The onus to prove forgery was upon the Defendants, which they sought to discharge by filing an affidavit of Sh. Harbans Singh, one of the witnesses to the sale deed. An affidavit was filed by the Defendants in the partition suit where the Court had granted an injunction, directing Sh. Inderjit Singh Khuman not to sell or transferring the suit property. The said affidavit reads as under:

“Affidavit of Shri Harbans Singh S/o Late Shri Himmat Singh, aged about 80 years, previously residing at Quarter No.734, Sector-6, R.K.Puram, Delhi and presently residing at G-96, G-Block, Hari Nagar, New Delhi - 110064.

I the above named deponent do hereby solemnly affirm and declare as under:-

1. That I have gone through the alleged photocopy of sale deed dated 12-03-1969 alleged to have been executed by Late Shri Ishar Singh as the same has been shown to me by Shri Daljeet Singh, plaintiff in the suit pending before this Hon'ble Court.

2. That I have never been witness to the alleged sale deed dated 12-03-1969 and the signature alleged to have been of mine are forged and fabricated.

3. That I and Late Shri Ishar Singh were closely related to each other and at no point of time as per my knowledge Late Shri Ishar Singh has sold his property to his son, namely, Shri Inderjeet Singh.”

17. The said affidavit is exhibited as Ex.PW-1/D1. On the other hand, the Plaintiff - Sh. Inderjit Singh Khuman relies upon a copy of a completion certificate issued by the MCD where while acknowledging the receipt of the said certificate, Sh. Inderjit Singh Khuman signed as the General Power of Attorney holder. The Defendants also rely upon two Powers of Attorney, namely, DW-2/P1 executed in Mumbai and the other Power of Attorney executed in Delhi. The Mumbai Power of Attorney is dated 20th July, 1971 and the Delhi Power of Attorney is dated 15th April, 1971. The Mumbai Power of Attorney stands proved as the same has also been recognized by DW-2, Sh. Charan Singh, who was the brother of Late Sh. Ishar Singh Khuman. He was in the Naval Dockyard in Mumbai. The fact that Sh. Charan Singh recognized Late Sh. Ishar Singh's signatures on the said Power of Attorney proves that Sh. Inderjit Singh Khuman issued a Power of Attorney in favour of his father – Late Sh. Ishar Singh Khuman. The Power of Attorney executed in Mumbai does not mention the suit property. The contents of this Power of Attorney read as under:

“WHEREAS I am a permanent resident of DELHI and am desirous of constructing my own house at DELHI, for which I have to apply to the DELHI DEVELOPMENT AUTHORITIES, but as my duty is mostly on the Ship I am not in a position to attend personally to all the formalities required for the grant of loan for the abovesaid purpose. I therefore hereby authorise my abovesaid attorney to do the following acts and deeds pertaining to the said loan on my behalf:

- 1. To submit plan for the construction of the house to DELHI DEVELOPMENT AUTHORITIES.*
- 2. To make necessary application for loan and receive the loan amount on my behalf.*

- 3. To pass necessary receipt when the said loan is received from the said authorities.*
- 4. To furnish the necessary information to the Delhi Development Authorities.*
- 5. To sign the necessary documents on my behalf regarding the loan.*
- 6. To represent wherever my presence is needed in connection with the loan.*

AND GENERALLY TO DO ALL OTHER INCIDENTAL ACTS as deemed fit by my attorney in connection with the grant of loan mentioned above and I hereby undertake to ratify and confirm all his acts and deeds done within the scope of the stipulated subject, as if done by me in person.

In witness whereof I the abovenamedINDERJIT SINGH KHUMAN set my hand to this POWER OF ATTORNEY at BOMBAY, this 20th day of July, 1970”

18. The Power of Attorney executed in Delhi, which is not an exhibited document, however, mentions the MCD. There is thus no doubt that there was a Power of Attorney executed by Sh. Inderjit Singh Khuman in favour of his father at Mumbai. This has been proved by an independent witness DW-2, Sh. Charan Singh. The other independent corroborative evidence consists of the letters issued by the various governmental authorities, namely, MCD, DESU and DWSS. All the documents issued by these authorities have been issued in the name of Sh. Inderjit Singh Khuman.

19. There has been no doubt that till 2005, the family was in joint occupation of the suit property. However, in 2005, it appears that severe animosity had been generated amongst the family members. It is quite unfortunate that even though the Plaintiff admitted that Smt. Prabhjot Kaur took good care of him, she was forced to go to police and lodge a complaint

against him. However, this Court cannot be swayed by the emotions of the case but has to go by the documents established on record. A perusal of the original sale deed does not give an impression to the Court that the signatures were forged. It is indeed unfortunate that Sh. Harbans Singh passed away before he could make his statement before the Court. In his affidavit he did say that the signatures were forged but since he could not be cross examined, his affidavit cannot be relied upon. The signatures on the sale deed and the affidavit filed by the Defendants are completely in variance but the allegation of the Defendant is that the signature on the sale deed is forged and fabricated and the allegation of the Plaintiff is that the signature on the affidavit is forged. Since he did not appear before the Court, his affidavit is not conclusive either way and this Court has to go by the independent contemporaneous evidence which is available on the record.

20. It is quite strange that the sale deed is not signed by Sh. Inderjit Singh Khuman despite the fact that he claimed to have been in Delhi during that period. However, as per the settled law, it is not always necessary for the purchaser to sign the document. The witness who appeared from the Sub-Registrar's office clearly stated,

"I have the original Sale Deed Ex.PW-1/2 and compared the same with the record brought by me today and it is correct".

Thus, all the documents from the governmental authorities prove the case of the Plaintiff being the owner of the property. The onus on the Defendant to prove that the sale deed was forged and fabricated is not discharged.

21. Registration of a sale deed has consequences in law and there is a presumption as to the validity of the same as held in ***Prem Singh & Ors. V.***

Birbal & Ors. (2006) 5 SCC 353 (hereinafter, “*Prem Singh*”) and recently by this Court in ***Mahesh Chander Ahuja v. Tilak Raj Ahuja 2018 (3) AD Delhi 130*** (hereinafter, “*Mahesh Chander Ahuja*”). The Supreme Court in ***Prem Singh*** held as under:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

In ***Mahesh Chander Ahuja (supra)***, this Court held,

“15. Once the Relinquishment Deed is registered, mere raising of a haze or cloud around it would not be sufficient to dispute the same. Thus, the Relinquishment Deed appears to be a genuine document and the doubts raised by the Defendant are not valid. Moreover, the official from the Sub-Registrar’s office also confirms the contents of the Relinquishment Deed by matching the original with the copy which is in the Registrar’s record.”

...

19. ...The attesting witness has appeared and confirmed its execution and so have the officials from the Sub-Registrar’s office. The provisions of the Registration Act are clear to the effect that the endorsement made by the registrar is presumed to be correct.”

22. A sale deed does not require an attesting witness, unlike a Will or a Gift Deed. The registered sale deed carries a presumption of being valid and since the onus upon the Defendants has not been discharged, this Court

concludes that the sale deed is a valid and legally recognized document vesting the ownership in favour of the Plaintiff.

23. The parties were living in a joint family until the dispute arose in 2005, the father of the parties, Late Sh. Ishar Singh Khuman passed away in 1980 and for almost 25 years, the Plaintiff's step-mother and the other brothers continued to live in the suit property. At no point had the Plaintiff asserted his right or ownership in the suit property prior to 2005. This being the factual position, this Court is of the opinion that no *mesne profits* are liable to be paid to Sh. Inderjit Singh Khuman by his step-brothers or step-mother. Thus, the decree insofar as *mesne profits* is concerned is set aside.

24. The presumption under Section 90 drawn by the Trial Court may not be correct inasmuch as the law cited by the Appellants is settled that the said presumption is clearly discretionary. However, this Court is not going by the presumption of the document being more than 30 years old but by the fact that the sale deed has been proved in evidence by an independent witness i.e. the officer from the Sub-Registrar's office, as also the fact that the ownership of the Plaintiff has been established through independent documents of various governmental authorities.

25. The decree in respect of possession and mandatory injunction is upheld.

26. The result of the sale deed being held to be valid and enforceable and vesting ownership rights in the Plaintiff is that the suits for declaration and partition are liable to be dismissed.

27. A decree for possession is accordingly granted in favour of the Plaintiff – Sh. Inderjit Singh Khuman. The Defendants are directed to

handover vacant and peaceful possession of the suit property within 8 weeks, failing which, the Plaintiff would be entitled to seek remedies in law.

28. All the appeals are disposed off in the above terms. All pending applications are also disposed of. No order as to costs.

PRATHIBA M. SINGH, J.
JUDGE

AUGUST 16, 2018
Rahul

