* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No. 112/2012**

% **Reserved on : 5th July, 2018**
Pronounced on : 13th July, 2018

AMARJEET SINGH ..... Appellant

Through: Mr. Anil K. Kher, Sr. Advocate with Mr. D.R.Bhatia and Ms. Namita Sharma, Advocates.

versus

KULDEEP SINGH AND ANR. ..... Respondents

Through: Mr.S.M. Chug and Ms. Namrata Arora, Advocates.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 30.11.2011 by which the trial court has dismissed the suit for possession and *mesne* profits. Suit was originally filed by Smt. Shilawanti the mother of the two defendants. On the death of the original plaintiff, Smt. Shilawanti, her one other son Sh. Amarjeet Singh i.e the present appellant, was

substituted in place of Smt. Shilawanti on an application being filed by him for his substitution, and which application for substitution was allowed on account of a Gift Deed dated 23.10.1998 (registered on 17.11.1998) executed by Smt. Shilawanti in favour of the present appellant Sh. Amarjeet Singh. It is also required to be noted that suit as originally filed by Smt. Shilawanti was through her husband and power of attorney holder Sh. Arjan Singh. The two respondents/defendants, namely Sh. S. Kuldeep Singh and Sh. Gurbachan Singh, are the sons of the original plaintiff Smt. Shilawanti and Sh. Arjan Singh. The present appellant Sh. Amarjeet Singh, the other son of Smt. Shilawanti, is thus the brother of the two respondents/defendants.

2(i) In the subject suit which was filed by Smt. Shilawanti against her two sons there is no dispute as regards the ownership originally of Smt. Shilawanti of the suit property being the first floor and second floor of E-216, New Rajinder Nagar, New Delhi. Smt. Shilawanti as per the subject suit prayed for possession and *mesne* profits on account of the respondents/defendants being licencees but who had failed to vacate the suit premises in spite of service of notice dated 17.5.1994 terminating their gratuitous licence. It is also to be noted that Smt. Shilawanti/original plaintiff pleaded that she got two public notices issued in two newspapers on 23.5.1994 disinheriting her two sons being the two respondents/defendants, from all the movable and immovable assets of Smt. Shilawanti.

(ii) The respondents/defendants pleaded ownership of the suit property on account of Smt. Shilawanti having executed in their favour respectively the set of documents dated 23.7.1987 and 17.8.1987 being the Agreements to Sell, Receipts, Affidavits, Wills and General Power of Attorneys. Respondents/defendants pleaded that they paid consideration of Rs.80,000/- and Rs.70,000/- respectively to Smt. Shilawanti at the time of execution of the documents dated 23.7.1987 and 17.8.1987 and that earlier in 1981 they had already paid a sum of Rs.2 lacs to Smt. Shilawanti. Respondents/defendants also denied that the mother/original plaintiff/Smt. Shilawanti had ever executed the registered Gift Deed dated 23.10.1998 in favour of the present appellant/Sh. Amarjeet Singh. It was pleaded by the respondents/defendants that the mother Smt. Shilawanti was not in a fit state of mind at the time of execution of the Gift Deed dated 23.10.1998 and that the Gift Deed was got executed by undue influence etc.

3. The following issues were framed in the suit:-

> "(i) Whether the plaintiff is the owner of the suit property? If so to what effect? OPP
>
> (ii) Whether the plaintiff executed documents regarding sale, through affidavit, agreement to sell, receipt, will, GPA dated 23.07.1987 in favour of the defendant No.1 & 2? OPD
>
> (iii) Whether the plaintiff is entitled to recover any amount on account of damages, mesne profits from the defendant. If so at what rate and for what period? OPP
>
> (iv) Relief."

4. The evidence which was led by the parties is referred to in paras 7 and 8 of the impugned judgment, and these paras read as under:-

> "7. In support of the plaintiff, following witnesses appeared in the witness box:
>
> (i) Amarjeet Singh (Son of plaintiff),
>
> (ii)Arjan Singh (husband of defendant),
>
> (iii)Rajesh Kumar, LDC, A&C department, Karol Bagh Zone, MCD.
>
> (iv)PW4 S.R.Singh, Asstt, L & DO
>
> (v)PW5 Sandeep Malhotra
>
> (vi)PW6 Ramesh Chand

(vii)PW7 Ajit Singh Thereafter, the defendants got examined below mentioned six witnesses in their defence namely:

(i). DW1 Kuldeep Singh

(ii). DW2 Gurubachan Singh

(iii). DW3 Mohan Lal

(iv). DW4 Narender Kaur

(v). DW5 Harish Bhalla and

(vi). ADW1 Sh. Gopi Chand and than the defendants' evidence was also closed.

8. In his examination in chief tendered by way of affidavit, PW1 Amarjeet Singh has reiterated the contents of the plaint. He has also placed reliance on the following documents:

(i) Site plan ExPW1/1.

(ii)Public notice ExPW1/2.

(iii)Legal Notice ExPW1/3.

(iv)35 copies of Gift Deed dated 23.10.98 ExPW1/4.

(v)Copy of mutation letter ExPW1/5.

(vi)Copy of mutation letter issued by MCD ExPW1/6.

During cross examination he conceded that the plaint bears the signatures of his father at point A and B and defendant No. 1 & 2 are his real brother. He claimed that the property belongs to him 3-4 years prior to death of his mother. He used to bear all the expenses of her day to day medical treatment which used to be in the range of Rs.2000 to 4000/- per month. He was in service with LUSA Group but his service was terminated in the year 2000. He was doing the business also. His income from the business was between 4000-5000 per month. He conceded that in the plaint the factum regarding gifting of the suit property by his mother has not been mentioned. He conceded that he took his mother to the office of Sub Registrar for registration of gift deed and the stamp papers were purchased by him in advance as per instructions of his counsel. He also admitted that his mother used to talk to him as well as to the defendants. He admitted that except his father, his mother and himself there was no other person at the time of execution of registered gift deed. He also signed the gift deed. Firstly his mother, than his father and thereafter his friend had signed the gift deed. His mother had not consulted anybody except himself, his father and advocate at the time of execution of gift deed.

PW2 Sh. Arjan Singh in his examination in chief tendered by way of affidavit Ex-PW2/X testified that he is the husband of Late Smt Shilawanti (the plaintiff in the case), who was the owner of the suit property which was duly registered at the office of Sub Registrar, New Delhi. The said property was purchased by the plaintiff from her own savings. She also got constructed a house on the said property consisting of ground floor, first floor and 2 floor. The ground floor remained in the occupation of the plaintiff and Amarjeet Singh besides himself whereas defendant No. 1 & 2 were residing on first and 2nd floor respectively. The occupation of the defendant was that of a licensee. He also proved the site plan ExPW1/1. He confirmed that defendant No. 1 & 2 were provided sufficient funds to raise their respective business and in return they promised to pay the monthly expenses of Rs. 10000/ to him and the plaintiff to meet their expenses but subsequently defendants were failed to discharge their moral obligation and they started harassing, abusing and hurting him and his wife. Vide the legal notice Ex-PW1/2 the plaintiff asked the defendant to remove their goods from the property of the plaintiff. He also gave public notice in the newspaper. He also exhibited gift deed Ex-PW1/4. He denied that the plaintiff had received any sale consideration or executed any document in favour of defendant No. 1 & 2 confirming any independent right, title or interest in the defendants in respect of the first floor, second floor and terrace of the property. He also denied that defendants are in possession of first and 2nd floor in their own right and they made additions or alteration of permanent nature in the property in their occupation from their own funds. He confirmed that his son Amarjeet Singh has become the absolute exclusive owner of the property in question by way of gift deed. The defendants have been failed to pay mesne profits @ 7000/- per month despite of issuance of notice. They are liable to pay mesne profits at the said rate and also @ 15000/- per month till the vacation of the property by the defendant.

In additional evidence by way of affidavit he stated that Late Smt. Shilawanti executed GPA in his favour ExPW2/1 which was registered with Sub Registrar, Delhi on 05.01.94.

During cross examination he confirmed that plaint bears his signatures. He also conceded that he used to sign the application filed in the court but sometimes plaintiff also used to sign the same. He also conceded that his wife filed the suit after consulting him. He conceded that he has not stated to his counsel that defendants used to beat and abuse his wife. He conceded that his wife might have not signed any paper or application regarding suit. He has not seen his wife writing and signing. He after seeing the affidavit of Smt. Shilawanti marked A claimed that it does not bear the signature of his wife on mark at point A, B & C but he claimed that gift deed Ex PW1/4 bears the signature of his wife, however, at point Mark D the said document does not bear the signature of his wife. His wife was having a joint bank account with him in Indian Oversees Bank, Rajinder Nagar. He did not recollect the account number. He stated that he was not having any dispute with his daughter. His wife had not consulted anybody before executing the Gift Deed. He also admitted that he was residing with the plaintiff Amarjeet Singh. He confirmed that at the time of registration at the office of Sub Registrar, Asaf Ali Road his wife, one advocate and one witness were present but he did not recollect the name of said witness and the said witness was not residing on the opposite to his house. He claimed that his wife signed the documents Ex-PW2/1 but he could not tell as to whether the witness Sh. Jitender Oberoi signed the GPA Ex-PW2/1. The power of attorney was signed by Shilawanti in his presence and two other persons at the office of Sub Registrar but he could not tell whether it was signed by Sh. Jitender Oberoi. He denied that at the time of execution of Ex-PW2/1 he used to sit at the shop of Jitender Oberoi which was situated in front of their house.

PW3 Sh. Rajesh Kumar LDC brought original record of house tax of the suit property which is Ex-PW1/6. He, however, conceded that he does not have any personal knowledge of the case nor he dealt with mutation of the property in dispute. He claimed that letter dated 03.01.85 bears the signature of Smt. Shilawanti which is Ex-PW3/D1.

PW4 Sh. S.R.Singh brought record of L & DO office, Nirman Bhawan Ex-PW1/5.

During cross examination he stated that there is no letter on record purported to be written by Smt. Shilawanti to the extent that she had gifted property to her son. He also proved lease deed Ex-PW4/D3.

PW5 Sandeep Malhotra, a property dealer, confirmed that rent of adjoining area of the suit property varies from 10000/- to 15000/- and the certificate dated 15.03.04 Ex-PW5/1 was issued by him under his signature. He also proved the registered lease deed Ex-PW5/2.

During cross examination he claimed that in the year 1990 the rent was Rs. 8000-9000. He denied that he was deposing at the instance of plaintiff.

PW6 brought the record ExPW1/5 from the office of Sub Registar, Asaf Ali Road, but he claimed that he had no knowledge about the said document as it was not registered in his presence. He also claimed that he was not having any knowledge as to whether the documents was written in the language which was not known to Smt. Shilawanti or the contents were not explained to her before registration. He also could not tell as to if the endorsement to that effect was made on the back of the document.

PW7 Ajit Singh brought GPA executed by Smt. Shilawanti Ex PW2/1 but he confirmed that the same was not executed in his presence, nor it was signed in his presence nor it was registered in his presence. He conceded that as per rules one copy of the documents is pasted in book IV under the Registration Act and he produced the register during cross examination. He admitted that the signature of Smt. Shilawanti at point A Ex-PW2/1 is at the bottom of page No. 1 and Ex-PW2/1 bears the signatures at point B,C,D,E,F & G at bottom of each page. He also admitted that ExPW2/1 bears the signature of Smt. Shilawanti at point A, B, C, D, E, F & G at the left side of the page. He admitted that when he came to the court he had brought copy of Ex-PW2/1 in a loose form. He conceded that he does not know how to maintain the registered document in the office of Sub Registrar. He has not brought any written authority from HOD for giving his evidence in the court."

5. Trial court has decided issue no.1 in favour of the respondents/defendants by holding that appellant/plaintiff had failed to establish the fact that any valid Gift Deed was executed by Smt. Shilawanti in his favour. This conclusion has been arrived at by the trial court giving this finding as per but just one single line in para 12 at internal page 36 of the impugned judgment. I may also note that trial court has also given further reasoning with respect to rejection of

the Gift Deed even while discussing issue no.2, and which reasoning is given in para 13 at internal page 40 of the impugned judgment, and where it is held by the trial court; again by a single line observation; that the appellant/plaintiff has failed to prove that the Gift Deed dated 23.10.1998 was executed by Smt. Shilawanti without any force, undue influence or coercion and therefore it cannot be said that the gift deed was a voluntary act of deceased Smt. Shilawanti. It was also held by the trial court that appellant/plaintiff took active participation in preparing of the gift deed and which aspect goes against him. Trial court has rejected the gift deed by concluding; again by a single line conclusion; that Smt. Shilawanti was an illiterate old lady suffering from mental disorder. Trial court has then held that the suit was not validly filed on the ground that the registered Power of Attorney Ex.PW2/1 executed by Smt. Shilawanti in favour of her husband Sh. Arjan Singh cannot be said to be validly executed as the power of attorney is 'not a registered power of attorney', the independent attesting witness thereto did not depose, and also because the clerk from the sub Registrar's office/PW-7 who appeared on 2.8.2007 stated that when he appeared earlier on 9.11.2006, he had brought the copy of Ex.PW2/1 in a loose form. Trial court has held that respondents/defendants have proved the documents and executed in their favour by Smt. Shilawanti as Ex.DW1/1 to Ex.DW1/5 and Ex.DW2/1 to Ex.DW2/5 being the Agreement to Sell, General Power of Attorney, Will etc and hence the respondents/defendants are the owners of the first and second floors of the subject property because the appellant/plaintiff led no 'rebuttal evidence' thereto. The relevant discussion of the trial court with respect to the aforesaid aspects are contained in paras 12 and 13 of the impugned judgment and these paras read as under:-

"12. **Issue No.1**:-

Whether the plaintiff is the owner of the suit property? If so to what effect ? OPP

The onus to prove this issue has been placed upon the plaintiff.

As per submissions of Ld. counsel for plaintiff, original plaintiff namely late Smt. Shilawanti was the absolute owner of the suit property and as such she was competent to sell, transfer or otherwise dispose off the suit property and the present plaintiff, who has stepped into her shoes by virtue of Gift Deed validly executed by Smt. Shilawanti has acquired the absolute title in the suit property and thus he being the absolute owner is entitled to get the possession of the property illegally occupied by the defendants. The present plaintiff has produced sufficient evidence to establish that the property was gifted by his mother, later Smt. Shilawanti in the year 1998 and the interest in the property has devolved upon the present plaintiff. A Gift Deed has also been executed in his favour and later on, it was also mutated in favour of the present plaintiff. The evidence in this behalf i.e. PW1, PW2 & PW3 in unequivocal terms has proved that the property has been gifted in favour of the applicant, the same is registered in the records of the office of the SubRegistrar, Asaf Ali Road, New Delhi and the same has been proved by PW6 i.e. Ex.PW1/4.

Per contra, as per submissions of Ld. counsel for defendants, though it is not in dispute that Smt. Shilawanti, the mother of the defendants was the absolute owner of the suit property and she was well competent to sell, transfer or alienate the same being its absolute owner and she had validly executed the documents of sale like Affidavit, Agreement to Sell, Receipt, Will, GPA dated 23.07.1987 & 17.08.1987 in favour of defendants no.1 & 2 respectively after receiving the due consideration amount from them and therefore, the defendants no.1 & 2 are the absolute owners and in possession of their respective portions of the suit property. In their respective testimonies DW1, DW2, DW3, DW4 & DW5 have proved the case of the defendants. The documents were further proved by the DW5 Harish Bhatt. There was no rebuttal to the said exhibited documents relating to Agreement to Sell, GPA, Will, Receipt etc. Sh. Amarjeet Singh (LR plaintiff) has relied his claim of his ownership on the basis of Gift Deed executed by the deceased (mother of the parties) in his favour but the said Gift Deed is not the document upon which the reliance can be placed safely, firstly the Gift was not voluntary act of the deceased as it is established from the evidence of DW4 that the Doner was sick old lady and suffering from Mental Disorder. Further the Donee took active steps in the preparation of Gift Deed. The plaintiff in his cross examination had admitted the drafting of Gift Deed at their instructions and the Donee had taken active participation in the Gift Deed. Moreover, the witness of the Gift Deed Sh. Arjan Singh had admitted that he has not seen his wife, the deceased signing the Gift Deed. In these circumstances, the Gift Deed can not be relied upon.

Having heard the rival submissions of Ld. counsels for the parties, I find that the LR plaintiff namely Sh. Amarjit Singh has been failed to discharge the onus of proving the issue in his favour. The document (the Gift Deed) upon which he is relying his claim is not the document which can be relied upon as the LR **plaintiff has been failed to establish that the said Gift Deed was validly executed by the mother of the parties in his favour.** Moreover, the instant suit which has been filed by late Sh. Arjan Singh, the husband of Smt. Shilawanti (since deceased) has been filed without having any valid authorization from the plaintiff, so the suit as filed is not maintainable as the same has not been validly instituted. The **suit is liable to fail for the reason that initially the suit was filed by the husband of the deceased on the basis of Power of Attorney but the said document is not a valid document as the Power of Attorney was not registered** in accordance with the provisions of Registration Act. The said Attorney has no value because the document was not maintained as per

Sec.51, Sec.52(C) of the Registration Act. **As per the evidence of Clerk PW7, the alleged Attorney Ex.PW2/1 is a loose sheet** and the original and copy of the said attorney are not same. Moreover no attesting witness was produced to prove the Attorney. **One of the witnesses Sh. Jatinder Oberio, who has been living just opposite to the house of the plaintiff has not been produced by the plaintiff** and fact that he has been living in front of house of plaintiff has been proved by defendants by examining the official of Post Office as ADW-1 who had categorically proved that Sh. Jatinder Oberio is living in the same house. Further PW7, who brought the GPA in the court conceded that the same was neither signed nor executed nor registered in his presence and he brought the copy of Ex.PW2/1 in a loose form.

For the aforesaid, the issue is liable to be decided against the plaintiff and same stands decided accordingly.

13**. Issue No.2**:

Whether the plaintiff executed documents regarding sale, through affidavit, agreement to sell, receipt, will, GPA dated 23.07.87 in favour of the defendant No.1 & 2? OPD.

The onus to prove this issue has been placed upon the defendants no.1 & 2.

As per defendants, the deceased Smt. Shilawanti, the absolute owner of the suit property entered into an Agreement to Sell with the defendant no.1 in respect of the first floor of the property in dispute. Similarly, the deceased entered into an Agreement to Sell during her lifetime with the defendant no.2 in respect of the barsati floor. The defendants raised construction on their respective floors with the knowledge of the plaintiffs. The Agreement to Sell, Power of Attorneys, Wills, Receipts, duly executed by the deceased Smt. Shilawanti are already on record and the same have been duly exhibited and proved by the defendants. The defendants are the absolute owner in occupation of their portions of the suit property and the plaintiff has no cause of action or right of action to bring the suit as the original plaintiff has divested herself of all rights, title and interest in the suit property after having receiving the consideration and having executed the documents confirming the independent rights, title and interest of the defendants which vested absolutely in defendants no.1 & 2 respectively and they are in their possession thereof in their own right. Further the defendants have made structural changes, construction, alteration etc. of permanent nature in their respective portions from their own sources and the said construction and alteration were carried out prior to 1985.

On the other hand according to plaintiff, the documents upon which the defendants are relying upon are not admissible in evidence and cannot be taken in support. The documents have not been even otherwise registered nor any attesting witness has been produced to show as to who has written the documents. In the absence of any proof to show that the documents have been executed by the Executant and the same have been registered in accordance with law, they can not be relied upon. They are also not duly registered as per the requirement of law. Thus the defendant are in unauthorized occupation of their respective portions of the suit property and they are liable to vacate the same.

Having heard the respective rival submissions of the counsels for the parties, I have come to the considered opinion that this issue is liable to be decided in favour of defendants and against the plaintiff as the defendants have been able to establish that they are the absolute owner in occupation of their portions of the suit property and the plaintiff has no cause of action or right of action to bring the suit as the original plaintiff has divested herself of all rights, title and interest in the suit property after having receiving the consideration and having executed the documents confirming the independent rights, title and interest of the defendants. in their testimonies the DW1 and DW2 have exhibited and proved the documents of sale i.e Ex.DW1/1 to Ex.DW1/5. The documents were further proved by the DW5, the independent witness. **There was no rebuttal to the said exhibited documents Ex.DW1/1 to Ex.DW1/5** and therefore, the defendants are entitled to protect their possession U/s 53A of Transfer of Property Act. **On the other hand the plaintiff has been failed to prove that the Gift Deed dated 23.10.1998 was validly executed by Smt. Shilawanti in his favour without any force, undue influence or coercion and as such it can not be termed as the voluntary act of deceased. The plaintiff in his cross examination conceded that he took active steps in getting the Gift Deed drafted/ prepared. Further it is established from the evidence of DW4 that the Doner of Gift Deed was sick and illiterate old lady and she was also suffering from mental disorder. The witness of Gift Deed Sh. Arjan Singh had admitted that he has not seen his wife, the deceased signing the Gift Deed. Therefore, the Gift Deed can not relied upon**. Thus, the Gift Deed is not a valid document and it does not satisfy the requirement of valid attestation.

Hon'ble Supreme Court of India in a case reported as AIR 1965 SC 1788 has laid down that for a valid Gift Deed:

(i).there must be two witnesses.

(ii).each one has been the executant signing.

(iii).each of two witnesses must have signed in the presence of the executant.

Thus, the issue is liable to be decided in favour of defendants and against the plaintiff. Issue stands decided accordingly."

(emphasis supplied by this Court)

6. In my opinion, the aforesaid discussion and reasoning cannot be said to be the discussion and reasoning as legally required so as to arrive at findings and conclusions on very important aspects of the ownership of an immovable property, execution and registration of documents and mental capacity/incapacity, because single line observations and findings/conclusions, can in no manner be held to be legally adequate and as has been done by the trial court in paras 12 and 13 of the impugned judgment and which have been reproduced above. The stark illegalities in the impugned judgment are as under:-

(i) There is no law that a power of attorney for filing of the suit has to be a registered document under the Registration Act, 1908 and it is not the law that an unregistered power of attorney cannot be a basis for filing of the suit. In fact even on facts, this finding is completely an illegal and absurd finding inasmuch as the factum of registration of the power of attorney was duly proved by summoning of the witness

PW-7 from the office of the sub Registrar namely Sh. Ajit Singh. The relevant depositions and the cross-examination of Sh. Ajit Singh on the two dates of 9.11.2006 and 2.8.2007 read as under:-

"PW7 Sh. Ajit Singh, LDC, Office of Sub-Registrar-III, Asaf Ali Road, New Delhi
On S.A.
I have brought the summoned records pertaining to General Power of Attorney executed by Smt. Shila Wanti which is Ex.PW2/1. I have seen the Ex.PW2/1 on the record and the same is as per the copy brought by me. The same is registered in our records.
XXXXX

By Sh. Surender Chugh, Ld. Counsel for the defts.

It is correct that Ex.PW2/1 was not executed in my presence nor it was signed in my presence and nor it was registered in my presence. It is correct that as per the rules one copy of the registered documents is pasted in book-IV under the Registration Act. It is correct that I have not brought the said register. Volunteered there is no such register.

RO&AC (RAKESH KUMAR)
ADJ/DELHI/09.11.2006

PW-7 Sh. Ajit Singh, Record Keeper recalled for further examination-in-chief.

On S.A.

I have brought the summoned record pertaining to the document bearing registration No.43 Vol. 2070 168-175 dated 05.01.1994 which is Ex.PW2/1 on the court record. The said document is forming part of book No. IV Vol. 2070 in our record.

XXXXX

By Sh. Surender Chugh, Ld. counsel for defendant.

It is correct that the document on my record is the photocopy of the Ex.PW2/1. It is correct that the signatures of Smt. Shilawanti is at point 'A' in Ex.PW2/1 at the bottom of the page No.1. It is correct that the copy in my record the signatures of Smt. Shilawanti are at point 'A' on the left side of the page. It is correct that Ex.PW2/1 bears the signatures at points

B,C,D,E,F & G are at bottom of the each page. It is correct that the document on my record which is the photocopy of the Ex.PW2/1 bears the signatures of Smt. Shilawanti at point 'A', B, C, D, E, F & G are on the left side of the page. The said copy also Ex.X.1. It is correct that on the last date of hearing when I came to the court I had brought the copy of Ex.PW2/1 in a loose form. Today, I brought the register. It is correct that today I have brought the said document along with other documents. I do not know the rules of registration of documents under the Registration Act. I cannot say the volume which I have brought today in court contain all the registered documents which ought to have been pasted in the register. It is correct that I do not know how to maintain the registered documents in the Office of Sub-Registrar. The notice was sent to the concerned officer of the Sub-Registrar Office. It is correct that the head of the said office is known as Sub-Registrar. I have not brought any written authority from head of the department. It is wrong to suggest that I have no authority to give evidence in the court. It is wrong to suggest that I have come to the court in connivance of Sh. Amarjit Singh.

RO & AC (RAKESH KUMAR)
ADJ/DELHI/02.08.2007"

Trial court, therefore, has arrived at completely illegal finding of the suit not having been validly filed by Sh. Arjan Singh and who was the husband of Smt. Shilawanti.

(ii) Trial court has most illegally held the Gift Deed not to be proved by returning just a single line finding at internal page 36 and para 12 of the impugned judgment which has been reproduced above that the appellant/plaintiff has failed to establish that the gift deed was validly executed in his favour by the mother Smt. Shilawanti. Trial court has again thereafter given a very cryptic finding in para 13 of the impugned judgment that appellant/plaintiff has failed to prove the Gift

Deed dated 23.10.1998 as not having been executed without any force, undue influence or coercion and that execution of the gift deed is not by voluntary act of the deceased Smt. Shilawanti because once again this is only a cryptic one line observation given at internal page 40 of the impugned judgment. Trial court has again completely given an illegal finding that the Gift Deed is invalid because the present appellant being the son of Smt. Shilawanti took active part in getting the gift deed drafted because this Court fails to understand as to how the donee taking part in the preparation of the gift deed can in any manner invalidate an otherwise registered gift deed. Once mental incapacity of the donor is not proved by any medical documents whatsoever, and the trial court has again given a very cryptic finding that Smt. Shilawanti was a sick and illiterate old lady suffering from mental disorder inasmuch, and as already stated, no medical documents whatsoever have been filed that Smt. Shilawanti was suffering from mental disorder. Simple oral self-serving statement of respondents/defendants, and their two witnesses who deposed as DW-4 and DW-5 namely Smt. Narinder Kaur and Sh. Harish Bhalla, will not mean that by such self-serving oral statements it is proved that

Smt. Shilawanti was not in a sound state of mind. If such self-serving oral averments have to be believed by Courts, then in the respectful opinion of this Court, no human being's mental capacity would be safe because only on the basis of oral statements it can be declared by the courts that a person is suffering from mental disorder.

(iii) Trial court has accepted ownership of the respondents/defendants simply on the basis that the documents have been proved as Ex.DW1/1 to Ex.DW1/5 and Ex.DW2/1 to Ex.DW2/5 ignoring vital aspects with respect to non proving of passing of consideration which was allegedly paid in cash; and that too once in the year 1981 and then in the year 1987; and then by ignoring the vital fact of non acting upon of the documents by the respondents/defendants by their not seeking mutation etc or of their not filing income tax returns on such basis and so on, and which aspects are discussed below.

7. This Court has already reproduced the paras 12 and 13 of the impugned judgment which contain the only discussion with respect to issues and therefore this Court is again forced to observe that reasoning and conclusion given by the trial court while discussing

issues are really no reasoning and conclusions in the eyes of law and the judgment of the trial court is an apology for a speaking judgment as required from a court of law.

8. At this stage, this Court would like to summarize the following aspects and which clearly show that the present appellant had become owner of the suit property by virtue of the registered Gift Deed dated 23.10.1998 and that the respondents/defendants were not the owners of the first floor and second floor of the property allegedly on account of the documents Ex.DW1/1 to Ex.DW1/5 and Ex.DW2/1 to Ex.DW2/5:-

(i) The first aspect is that the documents of the year 1987 relied upon by the respondents/defendants to claim ownership in their favour are not legally valid documents because of the fact that consideration in the said documents is said to have passed on from respondents/defendants to Smt. Shilawanti in cash but the alleged cash payments made are (in 1981 and 1987) not independently proved by filing by the respondents/defendants of their bank accounts or having the requisite financial capacity or availability of funds. It is very easy to make statements, of the payment in cash as consideration for transfer of an immovable property instead of by making the payment of consideration through the banking instrument and which payment by a banking instrument will be sufficient evidence in law of the factum and the date of the transaction. No doubt cash consideration does pass but courts in facts of a case such as the present would searchingly examine this aspect of payment of consideration in cash on account of non-existence of any evidence that the documents were acted upon and acting upon being one of the best evidence of genuineness of a transaction. It is seen that the respondents/defendants have made averments of making a total payment of Rs.3,50,000/-, with Rs.2 lacs having been paid in the year 1981 and a sum of Rs.1,50,000/- (Rs.80,000/- by respondent no.1/defendant no.1 and Rs.70,000/- by respondent no.2/defendant no.2) in the year 1987 when the documents were executed, but no evidence of any worth or having credibility to satisfy the judicial conscience has been filed by the respondents/defendants for the Court to believe and hold that they had in, either in the year 1981 or in the year 1987, with them any amounts in cash, much less the total amount of Rs.3,50,000/- lacs, for paying the same to the mother Smt.

Shilawanti. Admittedly, and already stated above, no bank accounts have been filed by the respondents/defendants that they had moneys available with them in the year 1981 and 1987 totalling to Rs.3,50,000/- in cash with the further fact that the respondents/defendants have also not filed any income tax returns or any other documents to show that the respondents/defendants or their family members ever had any properties, cash moneys or were persons of means as shown from documents so as to be able to generate or have with them the alleged amount of Rs.3,50,000/- said to be paid to the mother Smt. Shilawanti. Therefore, in the opinion of this Court on mere self-serving statement of passing of consideration of Rs.3,50,000/- in cash, the same in the facts of the present case of the factum of the alleged transfer of 1987 having found not to have been acted upon, it cannot be held that respondents/defendants have discharged the onus of proof in the facts of the present case that the mother had transferred rights in the first and second floor of the suit property to the respondents/defendants.

(ii) The second and an important aspect to be noted is that in the case the respondents/defendants had indeed become owners of the first and second floor of the subject property, then why the respondents/defendants did not they seek mutation of the first floor and second floor in their names; both in records of the municipal corporation for the purpose of payment of house tax and with the L&DO who had leased the suit property in terms of the perpetual lease. Right from the year 1987 till the suit was filed in the year 1994 there is not even an application made by the respondents/defendants for seeking mutation of the two floors in their respective names. This position has to be contrasted with the fact that on the appellant/plaintiff becoming owner of the suit property in terms of the Gift Deed dated 23.10.1998, he not only got the mutation done in his name of the suit property before the House Tax Department but he also got the property mutated in his name in the records of the Land and Development Office, and with respect to which the necessary documents have been proved as Ex.PW1/5 and Ex.PW1/6.

(iii) The respondents/defendants have neither applied nor got mutation done in their favour of the two floors of the suit property, it is clear that the respondents/defendants have not filed any income tax returns of their having become owners of the suit property. In fact, no income tax returns whatsoever have been filed by the respondents/defendants, and which was otherwise necessary even with respect to the aspect of financial capacity of the respondents/defendants to pay the alleged consideration of Rs.3.50 lacs to the mother Smt. Shilawanti, and which aspect has been otherwise elaborated above.

(iv) This court completely disbelieves the stand of the respondents/defendants that the mother Smt. Shilawanti asked the respondents/defendants to keep the documents of the year 1987 as secret because she feared that the present appellant and her husband Sh. Arjan Singh will create fights, inasmuch as such self serving averments cannot be accepted in the facts of the present case and more so when the case of the respondents/defendants themselves is that the mother had allegedly suffered from mental disorder and once that is so then there was no reason why the respondents/defendants would not have taken necessary steps to get their ownership recorded in different public records.

(v) Even for the sake of arguments and assuming that it is taken that the respondents/defendants were told by the mother Smt.

Shilawanti not to disclose the documents executed in their favour, yet on the respondents/defendants having become the owners of the suit property they would have paid their share of the house tax with respect to their portions of the suit property, but admittedly there is no proof of payment of house tax of the first floor and second floor respectively by the respondents/defendants because had they done so, they would have with them either the original house tax receipts from the year 1987 to 1994 when the suit was filed (and that admittedly the respondents/defendants have filed no such original house tax receipts) or some sort of written acknowledgment from Smt. Shilawanti or Sh. Arjan Singh that the respondents/defendants had paid to their parents every year after 1987 their share of house tax. It is also relevant to note that the respondent no.1/defendant no.1 who appeared as DW-1 in his cross-examination on 28.7.2004 conceded that though he claimed that he was contributing one third of the house tax of the suit property he had not filed any document whatsoever to show that he was contributing one third of the house tax of the suit property. In fact the respondent no.2/defendant no.2 in his cross-examination on 28.7.2004 conceded that he did not know the rate of the house tax in the year 1990 and he did not know whether any house tax was increased in the year 1981 and in fact both the respondents/defendants in their cross examination conceded that though they had claimed that they had incurred expenses for renovation of the suit property, but not a single document was filed by these respondents/defendants to show that they had incurred any expenditure for renovation done in their portion, and as claimed by them.

(vi) One other aspect showing that Smt. Shilawanti never transferred the first and second floor rights to the respondents/defendants allegedly by any documents of 1987 becomes also clear from the facts that Smt. Shilawanti had disinherited the respondents/defendants by insertions in newspapers and served them with a legal notice to vacate, and this aspect is elaborated at a later stage in this judgment while dealing with the issue of validity of the Gift Deed dated 23.10.1998.

9. Therefore in the opinion of this Court, the trial court has fallen into a grave error in accepting the ownership of the respondents/defendants of the first floor and the second floor of the suit premises on the basis of documents of the year 1987 inasmuch as neither any consideration has been proved to have been paid in cash

by the respondents/defendants to Smt. Shilawanti because self serving statements in the documents of the year 1987 cannot be believed of payment of consideration in cash in the facts of this case, and that no follow up action was taken by the respondents/defendants in getting their floors mutated in their names either before the Municipal Corporation or before the Land and Development Office, and further that the respondents/defendants have not paid house tax at any point of time because they did not have any original house tax receipts with them and though it is claimed by the respondent no.1/defendant no. 1 that he paid one third of the share of the house tax to the mother Smt. Shilawanti that no document whatsoever was filed by respondents/defendants to support or buttress this fact. Trial court in my opinion therefore has wrongly held that respondents/defendants became the owners of the suit property in terms of the documentation Ex.DW1/1 to Ex.DW1/5 and Ex.DW2/1 to Ex.DW2/5 and that such documents are either forged and fabricated documents or would be sham or nominal documents only.

10. It is accordingly held by this Court that Smt. Shilawanti continued to be the owner of the suit property and ownership of the

suit property being the first floor and the second floor of the subject Rajinder Nagar property was never transferred by Smt. Shilawanti to the respondents/defendants in terms of the documents of the year 1987.

11(i). The next aspect to be considered is whether Smt. Shilawanti had executed the Gift Deed dated 23.10.1998 (Ex.PW1/4) in favour of her son being the present appellant.

(ii) In this regard it is seen that indubitably the Gift Deed dated 23.10.1998 is a registered document. The husband of Smt. Shilawanti namely Sh. Arjan Singh, and who is the father of the parties, has deposed as PW-2 that his signatures appeared as a witness to this gift deed. He has identified the signatures of Smt. Shilawanti on the gift deed as also acceptance of the Gift Deed by the present appellant in terms of his signatures appearing on the gift deed. I fail to understand as to how the trial court has given finding that Sh. Arjan Singh had admitted that he does not recognize the signatures of Smt. Shilawanti on the Gift Deed inasmuch as the cross examination of Sh. Arjan Singh recorded on 20.2.2004 shows that he has specifically stated "I have seen Gift Deed Ex.PW1/4 it bears the signature of my wife".

(iii) Trial court has committed a complete illegality in holding that the respondents/defendants have been successful in proving that Smt. Shilawanti was suffering from mental disorder inasmuch as oral statements made by the respondents/defendants and their two witnesses cannot be accepted for holding that Smt. Shilawanti was suffering from mental disorder and of her not understanding the factum of the execution of the gift deed. This is all the more so because the husband of Smt. Shilawanti was a witness to the gift deed and this is so deposed by him as PW-2. Trial court has also in a completely unjustified manner committing an illegality holding that the gift deed cannot be said to be free from undue influence and pressure on account of 'appellant having failed to establish the same' inasmuch as the onus that the mother Smt. Shilawanti was of unsound mind was not on the appellant/plaintiff but was on the respondents/defendants. Also, this onus was a very serious onus to discharge, and that mental disorder of a person without any medical documents could not have been held to be proved in favour of the respondents/defendants simply on account of oral self-serving statements of the respondents/defendants and their witnesses.

12. Learned counsel for the respondents/defendants argued on the basis of the judgment of the Supreme Court in the case of ***Rosammal Issetheenammal Fernandez (Dead) by LRs. and Others Vs. Joosa Mariyan Fernandez and others AIR 2000 SC 2857*** that the gift deed should be held to be not proved because the independent second witness to the gift deed had not been brought and which is required by Section 68 of the Indian Evidence Act, 1872, but this argument of the counsel for the respondents/defendants is completely baseless because this argument overlooks the Proviso to Section 68 of the Indian Evidence Act and which states that where the document is a registered document there is no requirement of calling any attesting witness to the registered document so as to prove the registered document. An attesting witness to a document is only required if a document is a Will, and not otherwise, as clearly stated in the Proviso to Section 68 of the Indian Evidence Act. In any case admittedly Sh. Arjan Singh, the husband of the donor, had appeared as PW-2 and he proved the gift deed being an attesting witness to this gift deed. This

argument of the respondents/defendants is therefore misconceived/baseless and is accordingly rejected.

13. In fact, one of the best ways to understand as to whether a document has or has not been executed is to see whether the concerned party has acted on the basis of the document in question, and as already stated above the appellant/plaintiff had acted on the basis of the registered Gift Deed dated 23.10.1998 in his favour by getting the property mutated in his name both before the Municipal Corporation and the Land and Development Office as is seen from the documents Ex.PW1/5 and Ex.PW1/6. The concerned official from the L&DO appeared as PW-4 (namely Sh. S.R.Singh) and he proved the document Ex.PW1/5. Similarly the concerned witness from the corporation appeared as PW-3 (namely Sh. Rajesh Kumar) and he proved the mutation letter in the corporation/house tax records as Ex.PW1/6.

14 Learned counsel for the respondents/defendants also sought to argue that the gift deed should be held to be illegal and void on account of having been executed on account of undue influence

and pressure and for this purpose reliance was placed by the counsel for the respondents/defendants upon the following judgments:-

(a) ***Lakshmi Amma and another Vs. Telengala Narayana Bhatta and another AIR 1970 SC 1367 (V 57 C 288)***

(b) ***Subhas Chandra Das Mushib Vs. Ganga Prosad Das Mushib and Ors. (1967)1 SCR 331 and***

(c) ***Lotika Sarkar Vs. Preeti Dhoundial & Ors. 2010 (114) DRJ 369***

(ii) I need not refer to the ratios of the aforesaid judgments in detail because undoubtedly a document which is got executed by undue influence and/or illegal pressure, would have to be declared as void, but whether or not there is undue influence or illegal pressure will depend on facts of each case and the evidence led in the case. It is also to be noted that there is a difference between influence and undue influence which is an illegal undue influence and illegal pressure. If the mother Smt. Shilawanti lived with her husband and the present appellant on the ground floor, and the present appellant alongwith his father being the husband of Smt. Shilawanti were taking care of Smt. Shilawanti, then there is nothing unnatural or any undue influence or illegal pressure if Smt. Shilawanti thought of executing the registered gift deed in favour of the present appellant. In fact when the father Sh. Arjan Singh appeared as PW-2, he was put a suggestion on behalf of the respondents/defendants on 20.2.2004 that Smt. Shilawanti used to love the respondents/defendants equally as the present appellant, and to this suggestion of respondents/defendants, Sh. Arjan Singh categorically denied the same and volunteered that respondents/defendants are '*Badmaash*' i.e crooks, and who used to abuse and beat their mother Smt. Shilawanti. By simply making self-serving statements on behalf of the respondents/defendants in their depositions and their two witnesses, the respondents/defendants cannot be said to have discharged the serious onus of proof that the Gift Deed dated 23.10.1998 was executed by Smt. Shilawanti allegedly on account of undue influence or coercion or illegal pressure by the appellant/plaintiff or Sh. Arjan Singh being the husband of Smt. Shilawanti and the father of the present appellant.

(iii) This argument of the respondents/defendants also has to fail for the reason that appellant/plaintiff has proved in his evidence that the mother Smt. Shilawanti way back in the year 1994 had disinherited the respondents/defendants by insertions in two newspapers on 23.3.1994 and which insertions in the newspapers have been proved and exhibited as Ex.PW-1/2. This public notice of the year 1994 is as many as around 4 ½ years prior to execution of the Gift Deed dated 23.10.1998. Also, the appellant/plaintiff has proved the legal notice Ex.PW1/3 sent to the respondents/defendants to vacate the suit property. Therefore, the respondents/defendants cannot contend that they had good relationship with their mother and that there was no reason why the mother would not have executed the registered Gift Deed dated 23.10.1998 in favour of the present appellant Sh. Amarjeet Singh. These aspects also show that Smt. Shilawanti by her alleged documents of the year 1987 never transferred the first and second floors to the respondents/defendants.

(iv) It is therefore held that the registered Gift Deed dated 23.10.1998 was validly executed by Smt. Shilawanti in favour of the present appellant.

15. At this stage, one contention urged on behalf of the counsel for the respondents/defendants is to be considered, and which is the argument that once the suit was not validly filed by Sh. Arjan Singh, then the suit could not have continued by the present appellant in terms of the registered Gift Deed dated 23.10.1998. This argument

is firstly misconceived because it has been already held above that the suit was originally validly filed by Sh. Arjan Singh as the registered power of attorney holder of his wife Smt. Shilawanti. Secondly, this contention now raised is misconceived, and answered against the respondents/defendants, in terms of the judgment of the Supreme Court in the case of ***Dhurandhar Prasad Singh Vs. Jai Prakash University AIR 2001 SC 2552*** and which judgment holds that even if there is *pendente lite* assignment of a property, then still the original parties to the suit can continue the suit without impleading the assignee, and the judgment passed in such a suit will bind the assigns and representatives of the original parties to the suit.

16. Learned counsel for the respondents/defendants then argued that appellant/plaintiff should be held to be unsuccessful because appellant/plaintiff led no rebuttal/rejoinder evidence after evidence was led by the respondents/defendants by stepping into the witness box as also their leading in evidence the two witnesses DW-3 and DW-4 who deposed in their favour, however this argument is misconceived that since there is no rebuttal/rejoinder evidence on behalf of the appellant/plaintiff therefore the appellant/plaintiff has

failed in dislodging the documents of 1987 or that the Gift Deed dated 23.10.1998 was not executed by Smt. Shilawanti in favour of the appellant/plaintiff because it is seen that the appellant/plaintiff as also Sh. Arjan Singh in their affirmative evidence had already duly deposed with respect to the documents of the year 1987 being forged and fabricated documents and having not been executed by Smt. Shilawanti. Even in the cross-examination when suggestions were put to the present appellant Sh. Amarjeet Singh (and who deposed as PW1) and his father Sh. Arjan Singh (who deposed as PW-2), both of them consistently stated that that the documents of the year 1987 allegedly executed by Smt. Shilawanti are forged and fabricated and also that the Gift Deed dated 23.10.1998 was validly executed by Smt. Shilawanti in favour of the present appellant. Therefore there was no requirement of rebuttal evidence of invalidity of the documents of the year 1987, once otherwise the appellant/plaintiff had already led evidence in this regard and the trial court has clearly erred in so holding. This argument of the respondents/defendants is therefore rejected.

17. The counsel for the appellant/plaintiff does not press for the relief of *mesne* profit.

18. In view of the aforesaid discussion, the impugned judgment of the trial court dated 30.11.2011 is set aside. The suit of the appellant/plaintiff is decreed for possession of the first floor and the second floor of the property bearing no. E-216, New Rajinder Nagar, New Delhi, and as additionally shown in red and yellow colours in the site plan filed as Ex.PW1/1. For the sake of execution of the decree, the decree is to be executed with respect to whatsoever is the present first floor and the second floor of property no. E-216, New Rajinder Nagar, New Delhi. Parties are left to bear their own costs.

JULY 13,2018 **VALMIKI J. MEHTA, J**
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