

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

+ **RFA No.764/2018**

% **11th September, 2018**

JAI SINGH KANWAR & ORS. Appellants

Through: Mr. S.N. Gupta, Advocate (M.
No.9810077343).

versus

ANIL GOEL Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.36931/2018(exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.764/2018 and C.M. No.36930/2018(stay)

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the Judgment of the Trial Court dated 31.05.2018 by which the trial court has decreed the suit for possession and injunction filed by the respondent/plaintiff with respect to the suit property measuring

500 sq yds out of Khasra no.122, situated at Village Babarpur, Opposite to Mala Devi School, in the abadi of Chhajjupur, Illaqa Shahdara, Delhi, marked in red colour in the site plan.

3. The facts of the case are that the respondent/plaintiff pleaded that he had purchased the suit property in terms of the documentation dated 20.11.2001 from one Sh. Santosh Kumar. Sh. Santosh Kumar had purchased the suit property from Sh. Om Singh Kanwar, father of the appellants/defendants in terms of the documentation dated 07.09.1992. Respondent/Plaintiff claimed that out of the set of documents dated 07.09.1992, executed by Sh. Om Singh Kanwar, in favour of Sh. Santosh Kumar, two documents being the Will and Power of Attorney were registered before the Sub-Registrar. The respondent/plaintiff pleaded that possession of the suit property was handed over by Sh. Om Singh Kanwar to Sh. Santosh Kumar and thereafter Sh. Santosh Kumar delivered possession of the suit property to the respondent/plaintiff. The appellants/defendants, however, trespassed into the property and started undertaking construction. Despite a police complaint being made by the respondent/plaintiff on 01.10.2011, the appellants/defendants did not

hand over possession back to the respondent/plaintiff, and thereafter the subject suit was filed pleading that appellants/defendants are land grabbers and well known politically linked persons.

4. The appellants/defendants contested the suit and took up various defences. The first defence taken was that the suit was barred under the provisions of Delhi Land Reforms Act, 1954. The second defence which was raised was that there were proceedings before the revenue authorities as to who were the co-owners of the lands, including the suit land, and ultimately the issue was decided firstly by ADM vide order dated 30.11.1994 giving ownership to four brothers, and one of the brother being Sh. Om Singh Kanwar, the father of the appellant/defendant. The revision filed before the Financial Commissioner was dismissed vide order dated 12.09.1995. A challenge before this Court to the order of the Financial Commissioner in W.P.(C) No.4088/1995 was also dismissed on 20.05.2010. An SLP filed against the Judgment of this Court dated 20.05.2010 was also dismissed by the Supreme Court on 03.01.2011. Therefore, it was pleaded that the appellants/defendants, who are legal heirs of Sh. Om Singh Kanwar, and in whose favour the aforesaid orders were passed

by the revenue authorities, and which reached finality to the Supreme Court, therefore the respondent/plaintiff had no right, title and interest in the suit property.

5. After pleadings were complete, the trial court framed issues and parties led evidence. These aspects are recorded in para 5 of the impugned judgment and this para 5 reads as under:-

“5. The following issues were framed on the pleading of the parties by Hon'ble High Court of Delhi on 07.12.2012.

1. Whether this Court does not have jurisdiction to try the present suit, as alleged in the written statement? OPD
2. Whether Mr. Om Singh had executed the documents such as Agreement to Sell, Power of Attorney and Will etc. in respect of the suit land in favour of Sh. Santosh Kumar and had handed over possession to him in terms of those documents as alleged in the plaint? OPP
3. Whether Mr. Santosh Kumar had executed the documents such as Agreement to Sell, Power of Attorney and WILL etc. in respect of the suit land in favour of plaintiff Mr. Anil Goel and had handed over possession to him in terms of those documents, as alleged in the plaint? OPP
4. Whether the plaintiff is entitled to possession of the suit land? OPP
5. Whether the plaintiff is entitled to injunction claimed by him? OPP
6. Relief

In order to prove his case the plaintiff examined four witnesses. The plaintiff examined himself as PW-1, Santosh Kumar (the previous owner of the suit property) as PW-2, Sachin Goel (from EDMC) as PW-3 and Gopal Dutt (record keeper from S.R office Seelampur) as PW-4.

Defendants examined only one witness. The defendant no. 1 examined himself as DW-1. Other two defendants did not turn up to examine themselves as witnesses.

PW-1 tendered his evidence by way of affidavit (Ex. PW 1/A) and relied upon the following documents :-

1. Original registered GPA dated 07.09.1992 executed by Om Singh Kanwar in favour of Santosh Kumar as Ex PW 1/2.
2. Original registered WILL dated 07.09.1992 executed by Om Singh Kanwar in favour of Santosh Kumar as Ex PW 1/3.
3. Original registered Agreement to Sell dated 07.09.1992 executed by Om Singh Kanwar in favour of Santosh Kumar as Ex PW 1/4.
4. Original receipt dated 07.09.1992 executed by Om Singh Kanwar in favour of Santosh Kumar as Ex PW 1/5.
5. Original affidavit dated 07.09.1992 executed by Om Singh Kanwar in favour of Santosh Kumar as Ex PW 1/6.
6. Original GPA dated 20.11.2001 executed by Santosh Kumar in favour of plaintiff as Ex PW 1/7.
7. Original Agreement to Sell dated 20.11.2001 executed by Santosh Kumar in favour of plaintiff as Ex PW 1/8.
8. Original receipt dated 20.11.2001 executed by Santosh Kumar in favour of plaintiff as Ex PW 1/9.
9. Original WILL dated 20.11.2001 executed by Santosh Kumar in favour of plaintiff as Ex PW 1/10.

10. Original office copy of complaint dated 01.10.2011 made by the plaintiff to the SHO Welcome and DCP North East District Delhi as Ex PW 1/11

DW-1 tender his evidence by way of affidavit (Ex. DW 1/A and relied upon the following documents :-

1. Certified copy of the order in case no. 93/RA/Shah/78 passed on 02.09.1992 as Ex. DW 1/2
2. Certified copy of the order dated 25.11.1992 passed by the Revenue Assistant as Ex. DW 1/3
3. Certified copy of the order in appeal no. 40/92 passed by Addl. Collector on 30.11.1994 as Ex. DW 1/4
4. Certified copy of the order in case no. 9/95 CA passed by the financial Commissioner on 12.09.1995 as Ex. DW 1/5
5. Certified copy of the order in WP © No. 4088/1995 passed by Hon'ble High Court on 20.05.2010 as Ex. DW 1/6
6. Certified copy of in SLP Civil No. 26376/2010 order dated 03.01.2011 as Ex. DW 1/7
7. Copy of Khatoni of Village Babarpur as Ex. DW 1/8 & Ex. DW 1/9

This Court has heard the arguments on behalf of the parties and gone through the material available on record.”

6. Two issues have been argued on behalf of the appellants/defendants before this Court. Firstly, it is argued on behalf of the appellants/defendants that their father Sh. Om Singh Kanwar could not sell the property in view of the fact that proceedings were pending before the revenue authorities, and also that the father of the appellants/defendants Sh. Om Singh Kanwar was only a co-owner.

Secondly, it is argued that the documents, dated 20.11.2001, which are relied upon by the respondent/plaintiff for claiming rights in the suit property, are illegal and cannot be looked into in view of the judgment of the Supreme Court in the case of *Suraj Lamps & Industries Pvt. Ltd. v. State of Haryana and Anr.* 183 (2011) DLT 1 (SC); (2012) 1 SCC 656.

7. So far as the first argument of the appellants/defendants is concerned, the argument is without merit because it was the father of the appellants/defendants, Sh. Om Singh Kanwar, who was admittedly a co-owner of the land in Khasra no. 122. He had executed the documents dated 07.09.1992 in favour of Sh. Santosh Kumar, the predecessor-in-interest to the respondent/plaintiff. These documents have been proved by the respondent/plaintiff, as noted in para 5 of the impugned judgment, which has been reproduced above. The appellants/defendants being the legal heirs and sons of Sh. Om Singh Kanwar have no *locus standi* to question the documents executed by their father, Sh. Om Singh Kanwar, in favour of Sh. Santosh Kumar inasmuch as Sh. Om Singh Kanwar during his lifetime never questioned the transfer of rights in the suit property to Sh. Santosh

Kumar in terms of the documentation dated 07.09.1992. As already stated above, authenticity of these documents dated 07.09.1992 cannot be disputed because out of the entire set of documents, two documents, being the Power of Attorney and the Will, are registered before the concerned Sub-Registrar, and therefore, such documents did exist as on 07.09.1992. As on 07.09.1992, the provision of Section 53-A of the Transfer of Property Act, 1882 was not amended to require stamping and registration of an Agreement to Sell in the nature of part performance and the amendment has been made to Section 53-A of the Transfer of Property Act only by Act 48 of 2001 w.e.f 24.9.2001. I have considered this aspect in detail in the judgment in the case of **Ramesh Chand v. Suresh Chand and Anr., 188 (2012) DLT 538**, the relevant paras of this judgment are paras 1 to 3, and these paras read as under:-

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

Bench judgment in the case of *Asha M. Jain (supra)*, and which judgment was over ruled the Supreme Court in the case of *Suraj Lamps & Industries Pvt. Ltd. (supra)*, the matter was therefore remanded back to this Court.

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

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

Scope of Power of Attorney

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

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

shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

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

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

Scope of Will

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

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized as a valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred

only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.”
(emphasis added)

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

8. It is therefore held that the appellants/defendants, who are the legal heirs of Sh. Om Singh Kanwar, cannot question the documentation dated 07.09.1992 executed by the father, Sh. Om Singh Kanwar, in favour of Sh. Santosh Kumar transferring rights in the suit land to Sh. Santosh Kumar, and this all the more so because such documentation was never challenged by Sh. Om Singh Kanwar in his lifetime.

9. At this stage, it may be noted that total area of Khasra no.122 of village Babarpur is an area of 1 bigha and 3 biswas i.e about

1150 sq yds and by the documentation dated 07.09.1992, Sh. Om Singh Kanwar, who was a co-owner to the extent of half of Khasra no. 122, and had transferred only 500 sq yds out of Khasra no.122 to Sh. Santosh Kumar. Admittedly, Sh. Om Singh Kanwar was the half owner of the property situated in entire Khasra number in terms of the order passed by the revenue authorities, and therefore, Sh. Om Singh Kanwar was definitely entitled to sell his 50% share, or lesser part thereof, of Khasra no. 122, even if the proceedings before the revenue authorities were pending. Only if the proceedings before the revenue authorities were against Sh. Om Singh Kanwar. If it was declared that Sh. Om Singh Kanwar was not the co-owner of the suit property situated in Khasra no.122, only then the appellants/defendants could have claimed that the respondent/plaintiff and his predecessor-in-interest never became owners of the suit property. It may also be noted that the proceedings before the revenue authorities were with respect to total lands in different Khasra numbers, and Khasra no.122 measuring 1 bigha and 3 biswas was only a part of the total land. The total land which was the subject matter of the revenue proceedings was of Khasra no.121(0-9), 122(1-3), 415/154(1-7), 416/154(1-10),

350(2-8) and 351 min (0-3). Since Sh. Om Singh Kanwar was admittedly the co-owner of half share in the aforesaid lands, which included land in khasra no.122, a part of which measuring 500 sq yds was sold by Sh. Om Singh Kanwar to the predecessor-in-interest of the respondent/plaintiff Sh. Santosh Kumar, the transfer by Sh. Om Singh Kanwar in favour of Sh. Santosh Kumar vide documentation dated 07.09.1992 cannot be successfully challenged by the appellants/defendants who are the sons of Sh. Om Singh Kanwar. It may be noted that other co-owners of the suit property have not questioned that Sh. Om Singh Kanwar was not the owner of the suit property measuring 500 sq yds which he sold to Sh. Santosh Kumar and thereafter Sh. Santosh Kumar transferred rights to the respondent/plaintiff. Thus, it has to be held that the appellants/defendants, or for that matter their father Sh. Om Singh Kanwar, were no longer owners of the suit property inasmuch as the suit property was transferred in terms of the documentation dated 07.09.1992 to Sh. Santosh Kumar.

10(i) The next argument which is urged on behalf of the appellants/defendants is that the documentation dated 20.11.2001 is

admittedly executed after amendment of Section 53-A of the Transfer of Property Act by Act 49 of 2001 w.e.f 24.9.2001, and therefore, the ratio of the judgment of the Supreme Court in the case of ***Suraj Lamps & Industries Pvt. Ltd. (supra)*** applies and the respondent/plaintiff cannot become an owner of the suit property.

(ii) Prima facie, the argument urged on behalf of the appellants/defendants appears to be appealing, however, the fact of the matter is that the respondent/plaintiff can be said to have filed the subject suit for possession as an attorney holder, for and on behalf of, Sh. Santosh Kumar. Admittedly, Sh. Santosh Kumar became the owner of the suit property in terms of the documentation dated 07.09.1992 and Sh. Santosh Kumar is not disputing the entitlement of the respondent/plaintiff to take possession of the suit property as Sh. Santosh Kumar had executed a Power of Attorney in favour of the respondent/plaintiff. The Respondent/plaintiff, therefore, has a better entitlement to be in possession of the suit property, once neither appellants/defendants nor their father Sh. Om Singh Kanwar were the owners of the suit property as Sh. Om Singh Kanwar had sold rights in the suit property to Sh. Santosh Kumar in terms of the documentation

dated 07.09.1992. Therefore, even if the documents dated 20.11.2001 did not confer rights qua the suit land with the respondent/plaintiff, in the nature of part performance under Section 53-A of the Transfer of Property Act, yet the respondent/plaintiff can be deemed to have a better entitlement to possession. Thus, he indubitably became owner of the suit property in terms of the documentation dated 7.9.1992, in light of him being the power of attorney holder of Sh. Santosh Kumar.

12. It is therefore clear that the appellants/defendants were rank trespassers in the suit property. They had no defence worth the name for claiming rights in the suit land and once their father Sh. Om Singh Kanwar had sold his rights in the suit property to Sh. Santosh Kumar vide documentation dated 07.09.1992. The appellants/defendants, therefore, illegally trespassed into the suit property and against them trial court has rightly passed a decree for possession and injunction. In fact, the appellants/defendants are lucky that the respondent/plaintiff did not sue for *mesne* profits and if the *mesne* profits would have been asked for, the appellants/defendants in fact would have been liable to pay substantial amounts of *mesne* profits. It is therefore seen that the defence taken by the appellants/defendants in

the suit as also this present appeal is an abuse of process of law, as the appellants/defendants are persons who have illegally trespassed into the suit property and said property was sold by their father during his lifetime to Sh. Santosh Kumar and the father, Sh. Om Singh Kanwar, never questioned the transfer of rights in the suit property to Sh. Santosh Kumar during his lifetime.

13. This appeal therefore being filed by the land grabbers is dismissed with costs of Rs.2 lacs, and the said costs shall be paid by the appellants/defendants with the Chief Minister Distress Relief Fund of State of Kerala within four weeks from today and the receipt be filed in this Court within two weeks thereafter, failing which Registry will list this matter in the Court for initiating proceedings against the appellants/defendants.

SEPTEMBER 11, 2018
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VALMIKI J. MEHTA, J