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

Reserved on :20th February, 2018

Date of decision : 1st June, 2018

+ **RFA 517/2017 & CM APPL.19179/2017**

ABDUL WAQAR & ANR. Appellants

Through: Mr. Shamim Ahmad Khan, Advocate.
(M:9810249560)

versus

ABDUL GAFFAR Respondent

Through: Mr. Sanjay Agnihotri and Mr.
Jitender Kumar, Advocates.
(M:9871880147)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. Vide the impugned judgment and decree dated 3rd November, 2016, the suit for possession filed by Sh. Abdul Gaffar (*hereinafter* "Plaintiff") has been decreed by the Trial Court. The present appeal impugns the same.

2. Sh. Abdul Gaffar filed a suit seeking decree of possession and damages/mesne profits in respect of First Floor of property bearing no. D-53/3A, Gali No.18, Chauhan Bangar, Seelampur, Delhi-110053 (*hereinafter* 'suit property') against his brothers Sh. Abdul Waqar and Sh. Nawab Ahmed. It is the case of the Plaintiff that he purchased the entire property of 150 sq. yards from the previous owner on 12th September, 1979. It is pleaded that both the brothers are living in the First Floor of the property as licensees. He terminated the license vide notice dated 17th July, 2009, but since the Defendants refused to vacate the premises, he filed the suit for possession. In the plaint it was averred that the Defendants had earlier filed

two suits for injunction being 123/2009 which was dismissed on 13th May, 2009 and 191/2009 in 13th July, 2009.

3. In the Written Statement, the Defendants averred that the Plaintiff is not a resident of the suit property, but is a resident of H.No.1270, Gali no. 2, Nurani Masjid, Chauhan Banger, Seelampur, Delhi, 110053. It is further averred that the Defendants are living in the First Floor but also have possession of the Ground Floor. The Defendants pleaded that the suit property was purchased by the parents, though in the name of the Plaintiff, and it was meant for the benefit of whole of the family. The factory which was running on the Ground Floor belonged to the entire family and various properties were purchased from the same, however, the Plaintiff has grabbed the same to their exclusion. It was further claimed that on 28th June, 2008, Defendant No.1 - Sh. Abdul Waqar purchased the Ground Floor of the property from Sh. Abdul Gaffar for a consideration of Rs.12 lakhs. It was also averred that the entire First Floor was also purchased by the Defendants, and GPA, Will, Agreement to Sell, Possession Letter and Receipt were executed by the Plaintiff. The Trial Court framed issues on 6th April, 2011. An interim injunction was also granted restraining the Defendants from creating any third-party interest by way of sale or parting with possession of the suit property. Issues framed in the suit are as under:-

*“(a) Whether the plaintiff is entitled to decree for possession of property bearing no. D-53/3A, Gali No. 18, Chauhan Bangar, Seelampur, Delhi-110053? OPP
(b) Whether the plaintiff is entitled to decree for recovery of damages/mesne profits at the rate of Rs. 20,000/- per month for use occupation of property bearing no. D-53/3A, Gali No.18, Chauhan Bangar, Seelampur, Delhi-110053 till recovery of possession*

*w.e.f. August, 2009 till the date of delivery of possession? OPP
(c) Relief”*

4. The Plaintiff tendered his evidence and exhibited the site plan, legal notice, postal receipts and AD card thereof. Interestingly, no other document was filed by the Plaintiff. Both the Defendants tendered their evidence as DW-1 and DW-2. In support of the Defendants’ evidence, their cousin brother Sh. Arafeen Khan deposed as DW-3.

5. The Trial Court, after recording of evidence, decreed the suit in favour of the Plaintiff and also granted mesne profits @ Rs.10,000/- per month. Operative portion of the Trial Court’s judgment is set out below:

“30. In view of the aforesaid discussions and findings, this court is of the considered opinion that plaintiff has proved his case and therefore, he is entitled for the following relief:-

(i) Decree of possession is passed in favour of the plaintiff and against the defendants regarding suit property i.e. property No.D-53/3A, First Floor, Gali No.8, Chauhan Banger, Seelampur, Delhi-53 as shown in red colour in the site plan attached with the plaint Ex. PW1/1.

(ii) The plaintiff is entitled for the decree of damages/mesne profits against the defendants @ Rs.10,000/- per month from the date of filing of the suit till handing over the possession of the suit property alongwith interest @ 8% per annum.

(iii) The plaintiff is also entitled for cost of the suit.”

6. In the present appeal, on 22nd May, 2017, this court had stayed the execution of the impugned judgment subject to deposit of the decretal amount. However, the decretal amount was not deposited and execution proceedings were filed. However, the same were adjourned by the executing

court awaiting decision in this appeal.

Analysis and findings

7. A perusal of the plaint in this case shows that the Plaintiff has simply pleaded that he is the owner of the property and that the Defendants were licensees. During the course of cross-examination of the Plaintiff, he was confronted with a large number of documents that were filed by the Defendants. Interestingly, not a single document was filed by the Plaintiff except the documents of 1979.

8. A perusal of the documents filed on record reveals that there are three sets of documents.

(i) 1st set of documents – (DW-1/P-3) Agreement to Sell for property no. D-53/3A, Chauhan Banger, Brahampuri, Seelampur from Smt. Kamrunn Nishan and Smt. Mohd. Haneef. Receipt dated 12th September, 1979 of the same day along with GPA, exhibited as DW-1/P-4, and DW-1/P-5. The General Power of Attorney is registered with the Sub-Registrar and these three documents represent the ownership of Sh. Abdul Gaffar to the suit property.

(ii) 2nd set of documents – EX-P1/X-3-Agreement to Sell, PW-1/X-4-Receipt. These two documents are executed between Sh. Abdul Gaffar and Sh. Abdul Waqar his brother showing that the First Floor of the property has been sold to Sh. Abdul Waqar. EX-P1/X1—General Power of Attorney and a Will of the same date EX-PW1/X2 by which Sh. Abdul Gaffar has purportedly given the First Floor to his brother Sh. Abdul Waqar. These two documents are registered, however, the signatures on PW1/X3 and PW1/X4 are disputed by Sh. Abdul Gaffar.

(iii) 3rd set of documents –EX-DW1/X6 and DW1/X7 are cancellation of the General Power of Attorney and Will i.e. EX-PW1/X1 and PW1/X2 by Sh. Abdul Gaffar.

9. The Plaintiff merely filed the first set of documents dated back to 1979 coupled with the legal notice and postal receipt/AD card. The Plaintiff is completely silent as to both the second and third set of documents.

10. The Plaintiff in his cross-examination admits various facts which are relevant to the adjudication of this dispute. Firstly, he admits that he is not residing in the suit property. He thereafter admits that from the Ground Floor of the suit property, he is manufacturing and assembling products. He relies upon the electricity bill for the Ground Floor of the property. He further admits that he had executed two documents, namely, General Power of Attorney, Will and Agreement to Sell i.e., PW1/X-1, PW1/X-2 and PW1/X-3, in respect of the First Floor of the property. He claimed that though he had executed these three documents, he had taken the property back from his brother- Sh. Abdul Waqar. He also admitted that when the suit property was purchased, it was a plot and prior to purchase of this plot, the whole family used to live at Farashkhana which had a huge construction. He admitted that his father had a small factory in a rented premise at Ambe Wali Gali, Farashkhana where he was manufacturing silver foils which are covered on sweets. He denies that he received a consideration of Rs.2,85,000/- on 20th October, 1998. Interestingly, in his cross-examination, he confirms the following:

“I never assisted my father in his business of manufacturer of silver foil for sweets. Vol. I never knew the said work. At the time my father was manufacturing silver foil and I was engaged dye

fitting my father and me were living together. I was not receiving any payment as I was being trained in dye fitting. I started earning from the age of 16-17 years when I started my own work of dye fitting in Lal Kuan. When I started earning I was still residing with my father. I used to contribute half of my income of my father and kept the remaining half with me. My father was looking after the affairs in our house. It is incorrect to suggest that the property D-53/3A which was only a piece of land was purchased from the joint funds of the family and the construction of ground floor and first floor was raised by the joint funds of the family. It is incorrect to suggest that the said property was purchased in my name for the benefit of whole of the family as I was the eldest son of my father. It is incorrect to suggest that just to set at rest the dispute in the property the defendant no.1 had paid me the consideration amount and I had sold the first floor which is the suit property to defendant no.1 while actually I was not entitled to receive the said amount as it was a joint family property.”

11. He thereafter admits that when the suit property was purchased, it was an open plot. He claimed that he had made the construction of the First Floor. He further admitted as under:

“It is correct that the defendant no.1 was eating with me and my family alongwith my parents and there was only one kitchen. I separated my kitchen from that of the rest of the family, 2-3 years after my marriage. It is incorrect to suggest that I did not throw out the defendant no.1 from my factory. It is incorrect to suggest that the defendant no.2 was also working in my factory with the defendant no.1. cross examination deferred due to lunch hour.”

12. He denied that the Defendants were in possession of the Ground Floor. He admits his signatures on the GPA dated 22nd October, 1998 (EX.PW1/X-1), executed in favour of his brother. He also admitted his signatures on the Will executed in favour of his brother. On the Agreement to Sell (EX.PW1/X-3), he states that his signature at point A “*maybe of mine or not of mine*”, but at point B it is not his signature. He also denies the signature on the Receipt PW1/X-4 for a sum of Rs.2,85,000/-. What is mysterious is also the fact that even in respect of his signature on the *vakalatnama* (PW1/X5), he states that the signature “*appears of mine.*” He admitted that his grandmother had moved from Farashkhana to the suit property and she passed away in the suit property.

13. DW-1 admits that the factory is on the Ground Floor of the suit property. He denies that the Plaintiff is the owner of the factory. He admits to the business having been run by his father in the past. He further admits that as per the first set of documents of 1979, his brother is the owner of the property, but further states as under:

“It is correct that as per Ex. DW 1/P-3 to Ex. DW1/P-5, the plaintiff is the owner of the suit property. I have not placed on record any documents to show that the consideration amount for purchasing the suit property was given by my father. It is wrong to suggest that my father has not paid any amount for purchasing the suit property as he was unemployed when the same was purchased; he has no income and total consideration was paid by plaintiff only.”

14. He states that he had paid Rs.12 lakhs to his brother but was unable to provide any documents thereof. He denied that there was any forgery or fabrication in PW1/X-3 and X-4. He admits that the GPA and Will were

cancelled vide a third set of documents, namely, DW1/X-6 and X-7.

15. Defendant No.2 deposed that he was running a factory from the property in question. He placed on record Mark A which is a registration certificate of M/s S. K. lights showing himself to be the proprietor of the same. He admits that he was residing in the First Floor of the suit property. Insofar as second set of documents dated 22nd October, 1998 was concerned, he deposed as under:

The agreement to sell Ex. PW-PX-3, GPA, EX. PW-1/X-1, Will Ex. PW-1/X-2 and receipt Ex PW-1/4 were executed on 22.10.1998. At the time of execution of the documents, I alongwith Abdul Waquar, Arifeen Khan and Abdul Gafar and one Mr. Shashi Bhushan, Advocate / consultant were present.

It is wrong to suggest that on 22.10.1998 only two documents i.e. registered GPA and registered will, were executed and not four documents as stated by me. It is correct that the witness to the document Ex PW-1/X-3 and EX. PW-1/X-4 are not common as the witness to the document EX. PW-1/X-2 and EX. PW-1/X-1. Vol. I have signed as a witness to all the four documents. It is wrong to suggest that the signatures of the plaintiff was forged on Ex PW-1/X- 3 and EX. PW-1/X-4 by the defendants and therefore these documents were not attested on 22.10.1998. It is correct that the plaintiff had canceled the will and GPA Ex. PW-1/X-2 and Ex. PW-1/X-1. I have not filed any case in any court against the cancellation of the document EX. PW- 1/X-2 and EX.PW-1/X-1 by the plaintiff. I have not filed any document to show that on 22.10.1999 I had Rs. 2.85lakhs with me to pay the plaintiff. Vol. Rs. 2.85 lakhs was lying in cash as savings with Abdul Waquar. ”

He admits that neither of the Defendants contributed any amounts for the purchase of the suit property in 1979 and he stated that the Plaintiff was involved in the business with the father at that time. Sh. Arafeen Khan- DW-3, who is the cousin of all the three brothers, stated that he went to the court for registration of second set of documents on 22nd October, 1998.

16. From an examination of the documents and oral evidence, there is no doubt that the Plaintiff has suppressed and held back several material facts in this case. The Plaintiff did not disclose either the second or third set of documents. The admission by the Plaintiff during cross-examination of his signatures on various documents executed in favour of the Defendant No.1 is a complete revelation inasmuch as he admitted signatures on two documents and disputed the signatures on two documents. All the documents appeared to have been executed on the same date. Whereas in respect of the General Power of Attorney and Will, he executed a cancellation, it appears that since there was no cancellation for the Agreement to Sell and Receipt. He raised a false plea that his signatures were forged. His credibility comes into question because of his evasive answers even in respect of his signatures in the *vakalatnama* authorising his counsel. His evasive reply in identifying his signatures on the *vakalatnama* shows that he is not coming clean with the court. Moreover, from his deposition it is clear that during the lifetime of the father, the entire family stayed together in the suit property and had a common kitchen. His grandmother also lived in the same property and passed away from there. He was barely 20 years old at the time when the suit property was purchased. The conduct of a father to register the property in the name of his son who was doing business with him is not unusual and is protected under the

Benami Transactions (Prohibition) Act, 1988.

17. The execution of the second set of documents in respect of First Floor of the property is not in dispute as all the three Defendants' witnesses have established the same beyond any doubt. Even the Plaintiff himself admits to his signatures in two of the documents. These documents being contracts in respect of immovable property, duly signed by parties, attested by the witnesses, the same cannot be unilaterally withdrawn by executing deeds of cancellation. Two documents i.e. the GPA and Will are in fact registered. A mere unilateral cancellation cannot take away the rights of the Defendants to possession. The Defendants are clearly protected under Section 53A of the Transfer of Property Act 1882. The property may have been purchased by the father as the Plaintiff had no income levels to purchase a plot of 150 sq. yds. As per his deposition, he started working at the age of 17 and going by his age, he may have been only 20 years old. He is only 6th class pass in *Urdu* and was being trained in dye fitting. The Plaintiff admitted that he was not receiving any payment at that time, as he was being trained in dye fitting. Thus, though the Plaintiff claims that he was contributing half of his income to his father, the same appears to be not very substantial. The various admissions of the Plaintiff and the oral evidence of the Defendants' witnesses clearly shows that the entire family was living together in the suit property and the suit property was a property belonging to the whole family. Though, the Plaintiff may have resided for some time in the suit property, he had admittedly shifted to another property and no longer lived with his brothers. The cousin who deposed as DW-3 clearly admitted that he had accompanied the parties when the documents dated 22nd October, 1998 were signed. All these facts go to show that the property belonged to the joint

family. In any event, since the property stood in the name of the Plaintiff, which the Defendants candidly admits in their deposition, a transaction was entered into on 22nd October, 1998 by which the First Floor was sold to the Defendants. Thus, this transaction could not have been nullified by merely executing cancellation deeds. As held in ***Vimla Devi v. Puspa Devi* 241 (2017) DLT 568** by a Ld. Single Judge of this court that the cancellation would be of no legal effect. It was observed in the said judgment as under:

*“7. In my opinion, the courts below have rightly held that the cancellation of the documents dated 11.2.1998 by the appellant/plaintiff by the documentation dated 6.4.1998 is of no legal effect. It is required to be noted that transfer of rights in an immovable property is by a contract i.e the same is a bilateral act, and such bilateral contract cannot be cancelled unilaterally i.e by unilateral cancellation of documents by which rights in immovable property are transferred by the transferor to the transferee. The courts below have also rightly placed reliance upon the Section 202 of the Indian Contract Act as also the judgment delivered by this Court in the case of **Shri Ramesh Chand Vs. Suresh Chand and Anr., 188 (2012) DLT 538** and which holds that documents which are in accordance with the amended Section 53A of the Transfer of Property Act, 1882 and executed prior to 24.9.2001 when by Act 48 of 2001 Section 53A of the Transfer of Property Act was amended to require compulsory stamping and registration of an agreement to sell, then such documents prior to 24.9.2001 are valid documents because the amendment to Section 53A of the Transfer of Property Act is prospective in nature. Also, this aspect is clearly stated by the Supreme Court in the judgment in the case of **Suraj Lamps and Industries Pvt. Ltd. Vs. State of Haryana and Anr., 183 (2011) DLT 1 (SC)** wherein the Supreme Court has held that those agreements to sell, power of*

attorneys and Wills, which are in accordance with Section 53A of the Transfer of Property Act, Section 202 of the Indian Contract Act and the relevant provisions of the Indian Succession Act, the same will continue to be valid i.e documents executed prior to 24.9.2001 being in accordance with the then existing Section 53A of the Transfer of Property Act which did not require stamping and registration of the agreement to sell would be valid documents. The courts below, in my opinion, have also rightly held that the fact that possession was given to the respondent no.1/defendant no. 1 by the appellant/plaintiff in terms of the documents dated 11.2.1998 shows that the appellant/plaintiff had received the entire sale consideration. I also adopt the other reasoning as given by the courts below showing that complete sale consideration has been duly received by the appellant/plaintiff.”

18. A sale by GPA/Agreement to Sell/Will as has been entered into in the present case stands protected as the same was executed prior to the rendering of the decision in ***Suraj Lamps and Industries Pvt. Ltd. Vs. State of Haryana and Anr., 183 (2011) DLT 1 (SC)***. As held in ***Maya Devi v. Lalta Prasad AIR 2014 SC 1356***, genuine transactions were not affected by ***Suraj Lamps (supra)***. In ***Maya Devi (supra)***, Justice V. Sen while concurring with the main judgment, observed that the ***Suraj Lamps (supra)*** judgment was ‘*poignantly prospective*’.

19. The conduct of the Plaintiff is far from bona fide in this case. The Plaintiff has been clever by completely concealing all the relevant documents including the cancellation deeds. The Plaintiff ought to have disclosed the documents by which he had transferred the First Floor to the Defendants and also disclosed the cancellation deeds for whatever effect.

However, by not doing so, it is clear that the Plaintiff wanted to play hide and seek with the Court.

20. The Plaintiff has also tried to take the advantage of the fact that during his father's lifetime, the suit property was registered in his name, from the earlier owner. The plaint does not have any details about the entire family living in the suit property. Plaintiff has merely relied upon the two suits filed by his brothers for injunction in order to contend that he has a case for seeking possession. In the said two suits, the Defendants sought an injunction against dispossession. The dismissal of the said suits, does not automatically mean that the Plaintiff is entitled to possession in this suit. The orders dated 13th May, 2009 and 13th July, 2009 which dismissed the two suits filed by the Defendants were primarily on the basis of Section 41(h) of the Specific Relief Act 1963. Both these orders in fact recognised the rights of the Defendants to seek specific performance or partition. The said order dated 13th May, 2009 reads as under:

“So far the bar of section 41 (h) of Specific Relief Act is concerned, it is the admitted fact of the plaintiff that he is entitled to get equal right in the property as mentioned in para 9 of the plaint itself and if he has right to get partition in the suit property, then he has equal efficacious remedy available to him to get partition in the property and to prove his share by the way of suit partition. If the plaintiff has efficacious remedy, then relief of permanent injunction cannot be granted and suit is barred U/s 41 (h) of Specific Relief Act.

Keeping in view the facts and circumstances of the case, I am of the considered opinion that the suit of the plaintiff is not maintainable in view of the above said discussion. The suit is hereby dismissed. Decree sheet be prepared accordingly. File be consigned to the

record room.”

Order dated 13th July, 2009 reads as under:

*“I have heard the arguments and perused the record. Perusal of the record shows that in the plaint itself, the plaintiff has alleged that he is the brother of the defendant and having the share in the suit property as suit property has been purchased by the funds made available by the plaintiff. It is further alleged that the plaintiff has right to get the equal share in the suit property. It is further alleged in para 14 of the plaint that the plaintiff has paid a sum of Rs. 12 lacs against which the receipt is already on record, but the defendant has failed to execute the documents of the transfer of the suit property. One document which is in fact power of attorney has been placed on record, but remaining documents have not been filed on record by the plaintiff. As per the allegations of the plaintiff leveled in the plaint, it is clear that the plaintiff is making two-fold claims. On the one hand, he is claiming to have share in the suit property, on the other hand, he is claiming to purchase the suit property. The power of attorney is not giving him any title in the suit property. The judgement relied upon by the counsel for the defendant titled *Rajendra Kumar Vs. Mahendra Kumar Mittal*, AIR 1992 Allahabad 35 is relevant to be considered which has clearly held that “the suit for injunction restraining opposite party from alienating property which has been allegedly purchased by the plaintiff under agreement then efficacious remedy is available to the plaintiff is suit for specific performance of the contract and the injunction cannot be granted”. In view of this preposition, it is clear that the plaintiff has efficacious remedy to get the relief of specific performance or partition if he has the share in the suit property or has purchased the suit property, but the suit for permanent injunction is not maintainable. If the suit is barred U/s 41 (h) of Specific Relief Act, then suit is liable to be rejected U/o 7 rule 11 (d) CPC, hence the suit is hereby rejected. Decree sheet be prepared accordingly. File be consigned to the record room.”*

The dismissal of the suit for injunction under Section 41(h) cannot result in the Plaintiff being entitled to possession in the present suit. Recently in ***Vinod Kumar Dhall v. Dharampal Dhall (deceased) through his Lrs. & Ors. Civil Appeal Nos. 4534-4535 of 2018 dated 16th April 2018***, the Supreme Court has held as under:

17. After hearing learned counsel for the parties, considering the aforesaid legal position, we are of the considered opinion that the appeals deserve to be allowed. Firstly, the plaintiff has not come up with the case that the property was acquired in the name of Kumari Sneh Lata in the year 1963 and it was she who had spent the money for getting the land allotted from DDA and in the construction of the house. No case has been set up in the plaint to show that Kumari Sneh Lata had spent the money in the construction of the house. He has suppressed the fact of allotment in the name of Kumari Sneh Lata. On the contrary, it had been admitted in the plaint itself that family started residing in the premises right from the beginning. In paragraphs 4 and 5, following is the pleading made by the plaintiff:

“4. That on completion of the house all family member including defendant started living in the aforesaid house, the marriage of plaintiff as well as the defendant and all sister were solemnized from the house in dispute.

5. That the relation between the defendant No. 2 and her husband became strain consequently she was been given shelter in the premises in dispute by the plaintiff.”

18. It is apparent that the entire family was residing in the house in question right from the beginning and the marriages of the plaintiff as well as the defendants and all other sisters were solemnized in the house in

question. It is apparent that Defendant No. 2 was also residing in the house continuously right from the beginning and also the mother and she had also died in the house in question, as per the case set up by the plaintiff in the year 1990. Thereafter, the house remained in occupation of the family members, is also apparent. On the contrary, there is admission made by the plaintiff that he never resided in the house. The following is the relevant portion of the deposition of the plaintiff set out hereunder:

“It is correct that I never remained in the house in dispute since its construction. It is incorrect to say that after completion of the house, my parents and all the four sisters including defendant No. 2 and brother defendant No. 1 not started living with me at the house in dispute.”

19. From the aforesaid statement, it is clear that the plaintiff never resided in the house and was not in possession and enjoyment of the house at any point in time.

20. Apart from that, when we come to the source of money for the purpose of purchase of plot, admittedly, the plaintiff was a student and he was admitted in the year 1961 at IIT, Kharagpur. At the time when the land was allotted in the name of Kumari Sneh Lata, he was still a student and he had no source of income at the relevant time in 1963 or in January 1966, when the allotment was changed in his name owing to the marriage of Kumari Sneh Lata. Thus, obviously, it was Kashmiri Lal who had spent the money in getting the land allotted and also had raised the construction in the year 1965-66. Though the plaintiff has stated that the construction was made sometime in the year 1966, his version cannot be said to be reliable. The plaintiff was silent in the plaint when the construction was raised. The defendant has come up with a specific case that the construction was raised in the year 1965-66

and that is reliable. Apart from that even if construction was made in 1966 the plaintiff had admitted that he obtained employment only in April 1966 and when the house was constructed in 1966, the plaintiff was not having enough earning so as to invest in the house or to purchase the plot in 1963. He was not even in a position to say his salary was Rs. 400 or not. It was obviously owing to the marriage of Kumari Sneh Lata that the plot was transferred in the name of Dharampal, who happens to be the elder son of Kashmiri Lal. Thus, apparently no money was paid by Dharampal for allotment of the land to the DDA and obviously, it was paid in 1963 by Kashmiri Lal. The money was also spent in construction by the father Kashmiri Lal. Occupation and enjoyment of the house were with the entire family right from the beginning and till today the family is residing in the house. Apart from that, the plaintiff has admitted that when he came to Delhi on posting at All India Institute of Medical Sciences, he started living in the rented accommodation, as there was a paucity of accommodation for his stay in the house in question. Thus, all the facts and circumstances indicate that it was a family property and not the exclusive property of the plaintiff - Dharampal. Thus, the Courts below have acted not only perversely but in a most arbitrary and illegal manner, while accepting the ipse dixit of the plaintiff and in decreeing the suit. Such finding of facts which are impermissible and perverse cannot be said to be binding. The legal inferences from admitted facts have not been correctly drawn.”

21. Thus, the dictum of the Supreme Court is that when transfers or purchase of immovable property happens within the family, even if it is registered in the name of one person, such person holds it *‘in trust’*. Even though the property may be standing in the name of one member of the

family, the nature of the property has to be ascertained from the underlying facts and circumstances.

22. On the basis of the pleadings and the evidence which has been adduced, it is clear that the suit property was purchased by the father and that the entire family lived in the suit property. The Plaintiff in fact moved out of the suit property and the Defendants continued to live there. The Defendants are entitled to live in the suit property on the First Floor where they always resided both on the basis of the fact that the property belongs to the entire family as also on the basis of the second set of documents which could not be unilaterally cancelled.

23. The Plaintiff's case that the Defendants are licensees, has not been made out. The Defendants and the Plaintiff are real brothers and lived in the suit property since inception. The credibility of the Plaintiff is under serious question in view of his wavering and evasive replies during cross-examination. The Plaintiff has been unable to discharge his onus and is not entitled to a decree of possession.

24. The appeal is accordingly allowed and the suit filed by the Plaintiff is dismissed. Keeping in view the concealments by the Plaintiff in the plaint and his deposition in the cross-examination, the Defendants are held entitled to costs of Rs.10,000/-. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.
JUDGE

JUNE 01, 2018
Rahul