

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 309/2016**

Judgment reserved on : 06.12.2018

Date of decision : 13.12.2018

BHARAT MAL @ BHARAT KUMAR Appellant

Through: Mr.L.B.Rai and Mr.Mohit
Kumar, Advocates

versus

RAM AVTAR

..... Respondents

Through: Mr. Yogesh Aggarwal and
Mr.Vireshwar Tyagi,Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant vide the present Regular Second Appeal No. 309/2016 assails the impugned judgment dated 29.8.2016 of the First Appellate Court of the District & Sessions Judge-East, Karkardooma in RCA No. 257/2016 whereby the appeal filed by the appellant herein Bharat Mal @ Bharat Kumar against the impugned judgment dated 28.3.2016 of the Senior Civil Judge-East, Karkardooma, Delhi in suit No. 6588/2016 was dismissed.

2. Vide judgment dated 28.3.2016 of the learned Trial Court in suit No. 6588/16, the suit filed by the plaintiff herein arrayed as the respondent to the present appeal seeking the grant of a decree of possession, recovery, permanent injunction and damages against the defendant (arrayed as the respondent herein) was decreed to the effect that the plaintiff, i.e., the respondent herein was held entitled for the suit property against the defendant/i.e., the appellant herein, in the capacity of better sub-licensee than the defendant/ i.e., the appellant herein

restraining the defendant/ i.e., the appellant herein and his agents, successors, and attorney from creating any third party interest or selling or parting with the suit property to any other person than the plaintiff/i.e., the respondent herein, though the prayer made by the plaintiff, i.e. the respondent herein, seeking the recovery of an amount of Rs.30,000/- towards the arrears of rent and the prayer made by the plaintiff i.e. respondent herein seeking the damages against the defendant, i.e., the appellant herein were declined.

3. The facts brought forth on a perusal of the records of the present RSA No. 309/2016 and the impugned judgment of the learned Trial Court and the learned First Appellate Court and the Trial Court Record and the Appellate Court Record which have been received on requisitioning, are:

- i. The suit property comprises of one room (front side on the ground floor) and one room (back side on the first floor) of property No. 17/182 Trilok Puri, Delhi;
- ii. The plot/property No.17/182 Trilok Puri was allotted on licence to Sh.Ramji Lal s/o Hira Lal by the Delhi Development Authority in Jhuggi Removal Scheme as indicated by the EX.PW-1/6, the receipt bearing No. 245447 dated 22.12.1977 which indicates that the licence fee for the period 1.2.77 to 30.9.77 was thereby paid by Ramji Lal to the Delhi Development Authority;
- iii. That Ramji Lal s/o Hira Lal was the original allottee of the said plot No.17/182, Trilok Puri as per receipt No.245447 Ex.PW-1/6 is not disputed by the parties to the *lis*;

- iv. The said Ramji Lal transferred all his rights pertaining to the property aforementioned in favour of the plaintiff/i.e.respondent herein by execution of documents on 6.4.2009 and received valuable consideration from the plaintiff/ i.e. the respondent herein;
- v. and vide the agreement to sell dated 6.4.2009 between Ramji Lal and the respondent herein, Ram Avtar S/oRich pal agreed to sell the suit property for a sum of Rs.2,55,000/- to Ram Avtar S/o Richpal, and vide a possession letter dated 6.4.2009, Ramji Lal stated that he had delivered the said suit property to the purchaser Ram Avtar, i.e., the respondent herein;
- vi. By the said General Power of Attorney dated 6.4.2009, the allottee of the suit property appointed the respondent herein as his lawful attorney and vide EX.PW-1/7 (colly) stated that he had sold one built up DDA plot/property No.17/182, Trilok Puri, Delhi measuring about 25 sq. yards to Sh. Ram Avtar s/o Richpal, arrayed as respondent to the present appeal, and also stated that he had received full and final cost of the said property from Sh.Ram Avtar and had delivered the actual physical vacant possession, ownership, permanent possession of the suit property to the purchaser;.
- vii. Ramji Lal on being examined as PW-2 before the learned Trial Court affirmed the execution of his affidavit EX.PW-2/A and the aforementioned documents in favour of the respondent herein. Ramji Lal through his affidavit EX.PW-2/A stated that the defendant to the suit i.e., the present appellant being his relative,

occasionally used to visit Ramji Lal at the said suit property. The plaintiff Ram Avtar, i.e. the respondent herein, was residing since 1980 as a tenant under the Ramji Lal.

- viii. As per the affidavit Ex.PW-2/A of Sh.Ramji Lal, the defendant i.e., the appellant herein, started residing in the said property as a licensee under permissive possession in the year 1990 and in the year 2001, the defendant, i.e., the appellant herein, left the premises and went to his native village though some of the articles were left in the room and the defendant, i.e., the appellant herein used to occasionally visit the said room;
- ix. As per EX.PW1/6, the family settlement, i.e., **Samjhautanama**, Sh. Ramji Lal came to Delhi in the year 1969 and started residing in the jhuggi from 1976 which was allotted to him by the DDA;
- x. The appellant/i.e. defendant before the learned Trial Court and as appellant before the First Appellate Court contends that the suit property fell to him pursuant to a family settlement EX.DW-1/C dated 29.12.2011 executed by Sh. Ramji Lal pursuant to which Ramji Lal gave his half portion of the plot No. 17/182, i.e., front portion to his chacha (paternal uncle), i.e., Bharat Mal @ Bharat Kumar, i.e., to the appellant herein arrayed as defendant to the suit before the Trial Court;
- xi. That as per the family settlement called Samjhautanama EX.DW-1/C, dated 29.12.2011, the remaining half share of the property No. 17/182 Trilok Puri, Delhi was given by Ramji Lal to the plaintiff/respondent herein Ram Avtar (his cousin brother);

xii. The defendant/i.e.appellant herein through his written statement before the learned Trial Court submitted that he was in possession of the property since 1976 as it had been given by its allottee to him to reside permanently therein and that the same was constructed by him i.e., the appellant herein and he had been residing in the same since 1976 till date and thus acquired possessory ownership right over the same and that there was no due rent or damages made out against him and in favour of the plaintiff/ i.e. the respondent herein.

xiii. The appellant herein through his written statement before the learned Trial Court stated that after the separate portion of the suit property was given to him by Sh. Ramji Lal to reside/live permanently, both , he and Ram Avtar, the respondent herein, constructed their half portion i.e. half portion in front side having been constructed by him, i.e. the defendant/i.e.the appellant herein and half portion in back side by Ram Avtar, the respondent herein and thereafter they started living peacefully in the same.

4. Through the contentions that have been sought to be raised on behalf of the appellant it is submitted that the plaintiff i.e., the respondent to the present petition, had no legal right whatsoever to claim possession of the suit property at all in as much as he had sought to seek his rights on the basis of GPA dated 6.4.2009 executed by Ramji Lal who being the licensee of the plot No.17/182, Trilok Puri, Delhi, or under the aegis of the Delhi Development Authority, had no *locus standi* whatsoever to alternate and sell the said plot No.17/182, Trilok Puri, Delhi or to induct the plaintiff i.e., the respondent to the present

petition, as a tenant in the said property. It was also submitted on behalf of the respondent that in terms of Section 35 of the Indian Stamp Act, 1899, the said General Power of Attorney not having been duly stamped was thus inadmissible in evidence and could not have been relied upon neither by the learned Trial Court nor by the First Appellate Court. It was also submitted on behalf of the appellant whilst placing reliance on the verdict of the Hon'ble Supreme Court in ***Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and Ors.***; 2011XAD(SC) 365 placing reliance on the observations in paragraphs 15 and 16 of the said verdict, which read to the effect:

"15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in [Asha M. Jain v. Canara Bank](#) - 94 (2001) DLT 841, that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

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 or valid mode of transfer of immoveable 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 TP 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.”

to submit that the General Power of Attorney and the agreement to sell based on the same was not a valid mode of transfer of an immoveable property and the learned Trial Court and the First Appellate Court could not have held that there was any concluded transfer of title from Ramji Lal to the plaintiff i.e., the respondent to the present petition.

5. Another contention raised on behalf of the appellant was that as per Section 53A of the Transfer of Property Act, 1882 after 2001, if any person seeks to derive any benefit of the said provision, cannot do so if the document of sale or purchase is not registered. Section 53A of the Transfer of Property Act, 1882 (as amended) w.e.f. 24.9.2001 reads to the effect:

“[53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the

transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

*then, notwithstanding that 2[***] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]”*

in as much as the words at 2[***] ‘**the contract though required to be registered has not been registered,** or’ as have been omitted w.e.f. 24.9.2001 thus necessarily requiring the registration of the document of transfer of rights in immoveable property.

6. The other contention raised on behalf of the appellant was that Ramji Lal examined as PW-2 before the learned Trial Court had not disputed his signatures on the family settlement EX.DW-1/C and thus the said family settlement essentially had to be held to hold sway and the plaintiff i.e., the respondent to the present petition, could not claim any relief in relation to the plot No.17/182, Trilok Puri, Delhi other than that formed part of the family settlement document. The appellant

further contended that the said family settlement had been signed by at least 10 persons of the village as witnesses in whose presence the settlement had taken place.

7. Reliance in relation thereto was placed on behalf of the appellant on the verdict of the Hon'ble Supreme Court in ***Kale and Ors. V. Deputy Director of Consolidation and Ors.*** AIR 1976 SC 807 to contend to similar effect whilst placing reliance on the observations in para 24 of the said verdict which read to the effect:

“This Court has also clearly laid down that a family arrangement being binding on the parties to the arrangement clearly operates as an estoppel so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same. We shall deal with this point a little later when we consider the arguments of the respondents on the question of the estoppel. In the light of the decisions indicated above, we shall now try to apply the principles laid down by this Court and the other Courts to the facts of the present case.”

8. Another contention raised on behalf of the appellant was to the effect that as the appellant had through his written statement disputed the plaintiff's, i.e., respondent herein, title qua possession, a suit simplicitor for possession is insufficient and not maintainable without a prayer having been made for the grant of a decree of declaration of title of the respondent/plaintiff in the suit property. Reliance was thus placed on behalf of the appellant on the verdict of the Supreme Court in ***Anathula Sudhakar v. P.Buchi Reddy (Dead) by LRs. And Ors.*** AIR 2008 SC 2033, placing reliance on the observations in para 12 of the said verdict which read to the effect:

“12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.”

9. Reliance was also placed on behalf of the appellant on the verdict of this Court in ***Ashok Indoria v. Vidhawati AIR 2005 Del.5, Ripu Daman haryal Vs. Ms.Geeta Chopra;,2011 ILR Del.406 Shiv Kumar v. Sumit Gulati: 2015 Vol.225 DLT 591*** to contend that the agreement

to sell and GPA and possession letter do not create any right in favour of the plaintiff if the documents are unstamped and unregistered. To similar effect through the written submissions that had been submitted on behalf of the appellant it was submitted inter alia to the effect that the following substantial questions of law arise for consideration in the matter:

“A. Whether the Respondent has obtained any legal right in respect of the premises in question on the basis of the documents of sale and purchase executed between the parties on the basis of judgment of Hon’ble Supreme Court reported as Suraj Lamp & Industries Vs. State of Haryana 86 Anr. 183(2011) DLT 1 (SC).

B. Whether a party can acquire any legal right in an immovable property without complying with the provisions of the Section 54 of the Transfer of Property Act.

C. Whether the First Appellate Court has not committed a gross illegality and perversity in dismissing the appeal of the appellant/defendant despite the fact that the civil suit for possession, recovery, permanent injunction and damages is not maintainable since the present matter is under the purview of The Delhi Rent Control Act, 1958 and any order for eviction can only be passed under the Delhi Rent Control Act, 1958.

D. Whether the First Appellate Court has committed a gross illegality and perversity in dismissing the appeal of the appellant/defendant without giving due weightage to the family settlement agreement

dated 29/12/2011 executed by Sh. Ramji Lal in furtherance of which the Appellant and the Respondent came into possession of their respective shares of the suit property and hence the same was enforceable in a court of law.”

10. On behalf of the respondent i.e., the plaintiff of the suit before the learned Trial Court, it was contended that there were no substantial questions of law that arise and that the appellant had made false and frivolous submissions through the written statement with *mala fide* intentions and ulterior motive just to grab the suit property and that the appellant had been allotted an alternative plot No. 17/181, Trilok Puri Delhi by the Delhi Development Authority, a copy of which was submitted along with the written submissions indicating the said allotment to the appellant on 12.2.1976 and it was submitted on behalf of the respondent that in the said process under the garb of the said allotment, the appellant was trying to grab the suit property bearing No.17/182, Trilok Puri, Delhi-91 which was allotted to Ramji Lal, the original allottee. It was also submitted on behalf of the respondent that the PW-2 in his testimony before the learned Trial Court had categorically admitted the execution of documents in favour of the plaintiff i.e., the respondent to the present petition and there was no challenge to the testimony of PW-2 Ramji Lal in relation thereto on behalf of the appellant. The respondent further submitted that PW-2 Ramji Lal in his cross-examination conducted on behalf of the appellant/defendant had categorically denied having executed any Sumjhota Nama i.e., the family settlement on which the appellant was

placing reliance and rather through his testimony and cross-examination stated that:

*“PW-2 Statement of Shri Ramji tal s/o Shri Heera Lai
r/o Village Maid, Tehsil
Virat Nagai; Distt Jaipur, Rajasthaa (Recalled for
cross examination).
OnS.A.*

*XXXX Shri Hirender Kumar, Ld. Counsel for the
defendant*

*As on date, I have been residing in Trilok Puri, Delhi.
I have given the address of my native village in my
affidavit Ex. PW2/A. I have been residing at Trilok
Puri ever since the day of its existence. I have also
been the resident of Panchkuian, 35 years back. Volt.
Thereafter, after the allotment of the suit property in
my name, I have come to the suit property at Trilok
Puri. It is correct that the residence at Panchkuia was
got vacated by the Government and thereafter, the
suit property was allotted by the government in my
name. It is correct that the suit property was allotted
to me for my residence in place of the residence at
Panchkuian. It is wrong to suggest that I had given
the suit property in equal portions to reside both to
the defendant and the plaintiff. It is wrong to suggest
that I have ever entered into any compromise
regarding the suit property with the defendant. I
complete deny that any compromise deed has been
executed by me. Volt. I deny that I have signed any
compromise deed, rather my signatures and the
signatures of some other persons were taken on blank
paper by the defendant for collection of some funds
for the Mandir. The witness is confronted with a*

document i.e. a compromise dated 29.12.2012 and the witness has admitted his signatures thereon at point X and denied the contents thereof. Volt. The said document was blank when I signed it. The said document is hereby exhibited as Ex. PW2/D1. It is wrong to suggest that in the suit property, the plaintiff and the defendant have been residing in equal portions. I have not given any prior notice to the DDA with regard to the transfer of the suit property. I had not informed the defendants in writing regarding the transfer of the suit property to the plaintiff. Volt. I had informed whereby the defendant regarding the said fact. I had not given any notice to the DDA even after the transfer of the suit property to the plaintiff. The defendant is in possession of one room in the suit property. The defendant never paid any rent to me as he was a licensee under me. It was decided between me and the defendant that he would pay the rent @ Rs.1000/- per month to the plaintiff but which has not been complied with so far by the defendant. The said fact was decided between me and the defendant at the time of the transfer of the suit property by me in favour of the plaintiff. It is wrong to suggest that the defendant has been residing in the suit property for the last 35-36 years. It is wrong to suggest that as on date as well, the defendant is in possession of the suit property.”

11. The respondent thus contended that in the facts and circumstances of the instant case, the respondent, i.e., plaintiff to the suit before the learned Trial Court, had a better title than that of the appellant/defendant and all that the plaintiff i.e., the respondent to the present petition, needed to prove was that he had a better title than that

of the defendant i.e., the appellant to the present petition, and he has no burden to show that he has the best of all possible titles and his ownership is good against all the world except the true owner. Reliance in relation thereto was placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in **Swadesh Ranjan Sinha v. Haradeb Banerjee: 1992 AIR 1590.**

12. Though the said verdict relied upon on behalf of the respondent relates to proceedings under eviction proceedings in the West Bengal Premises Tenancy Act, 1956, nevertheless the observations qua the aspect of ownership are spelt out therein to the effect:

“Ownership denotes the relation between a person and an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons’. (Salmond on Jurisprudence, 12th ed., Ch. 8, p. 246 et. seq.). There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. Such a right may be indeterminate in duration and residuary in character. A person has a right to possess the thing which he owns, even when he is not in possession, but only retains a rever-sionary interest, i.e., a right to repossess the thing on the termination of a certain period or on the happening of a certain event.”

All that a plaintiff needs to prove is that he has a better title than the defendant. He has no burden to show that he has the best of all possible titles. His

ownership is good against all the world except the true owner. The rights of an owner are seldom absolute, and often are in many respects controlled and regulated by statute. The question, however, is whether he has a superior right or interest vis-a-vis the person challenging it.”

13. Reliance was also placed on behalf of the respondent/plaintiff on the verdict of this Court in ***Shri Ramesh Chand V. Suresh Chand & Anr.***: RFA No. 358/2000, a verdict dated 9.4.2012 wherein it has been observed to the effect:

“A right to possession of an immovable property arises not only from a complete ownership right in the property but having a better title or a better entitlement/right to the possession of the property than qua the person who is in actual physical possession thereof.”

14. The said verdict of this Court takes into account the binding directions of the Hon’ble Supreme Court in paragraph 12 to 16 of the verdict in ***Suraj Lamps & Industries Pvt. Ltd. (supra)*** which read to the effect:

*“ 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 TP 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 TP Act)**. According to [TP Act](#), an agreement of sale, whether with possession or without possession, is not a conveyance. [Section 54](#) of TP 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 vs. Basant Nehata](#) - 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 favour 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

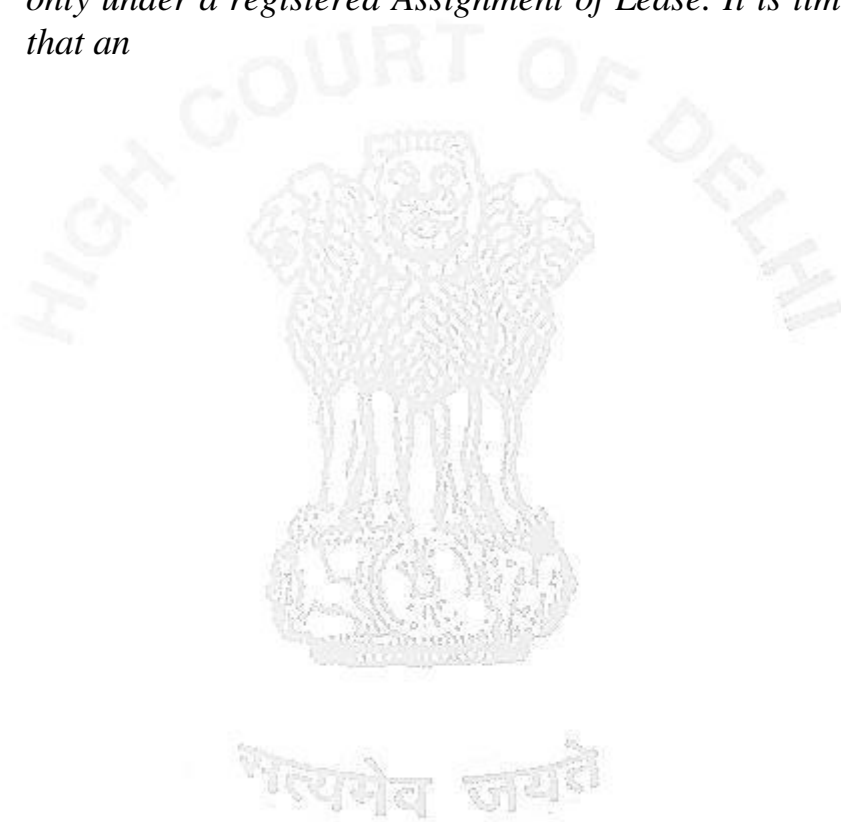
testator. It is said that so long as the testator is alive, a will is not be worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see [sections 69 and 70](#) of Indian Succession Act, 1925). Registration of a will does not make it any more effective.

Conclusion

15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in [Asha M. Jain v. Canara Bank](#) - 94 (2001) DLT 841, that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

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 or valid mode of transfer of immoveable 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.”

15. Reliance was also placed on behalf of the respondent / plaintiff on the verdict of this Court in ***Sh. BidhanChand Biswas (since deceased) Through LRs. V. Sh. Prakash Chand Bansal & Ors.***; RSA No. 131/2014, a verdict dated 20.5.2014 to contend to similar effect that in the facts and circumstances of the instant case, the rights of the respondent/plaintiff of ownership were good against all the world except the true owner and taking into account the factum that the original allottee of the plot with the structure raised thereon had admittedly executed the document in relation to the property in suit in relation to the respondent, it was only the original owner of the property, the Delhi Development Authority, could assert any rights against the respondent, i.e., the plaintiff to the suit.

16. Reliance was also placed on behalf of the respondent on the verdict of this Court in ***Bharat Singh & Anr v. Ajay Kumar & Anr.***; a verdict dated 27.5.2014 in RSA No. 139/2014 in which it was observed vide paragraph 13 thereof to the effect:

“ 13. The second argument urged is that since as per the allotment letter dated 01.7.2000, the appellant could not transfer the property except with the prior permission of the DDA, therefore, the documents being the receipt (Ex.PW1/1) dated 12.8.2000 and agreement to sell (Ex.PW1/2) dated 22.8.2000 are null and void, is in fact really a very specious argument. Firstly, permission is required from the DDA for selling the property and not at the time of entering into an agreement to sell with respect to the

property. Secondly, as the first appellate court notes that it is not as if the DDA has refused to grant permission, and that therefore the agreement has become void. The first appellate court notes that there is difference between void and voidable agreement till DDA would refuse to grant permission to sell. and in the present case the agreement is voidable and not void agreement. Thirdly, I would like to state that this argument raised before the Court below and this Court is misconceived and fully covered against the appellants in view of the judgment of the Supreme Court in the case of Chandnee Widya Vati Madden vs. Dr. C.L. Katia, AIR 1964 SC 978., and which holds that wherever a suit for specific performance is filed on the basis of the agreement to sell which requires a prior permission of the superior lessor such as the DDA, then, the contract is not a void contract but only a contingent contract as per Section 31 of the Contract Act, 1872. The Supreme Court in the judgment in Chandnee Widya Vati (supra) holds that such suits for specific performance have to be decreed and only after the decree is passed, that issue will come up in execution as to the DDA giving or not giving permission to sell the property. I may note that under Order 21 Rule 32 of CPC, if the defendant refuses to apply for permission to sell from the competent authority such as the DDA, the executing court can appoint a local commissioner to act for and on behalf of the seller/defendant so as to obtain permission from the competent authority. Thus, in my opinion, the second argument urged on behalf of the appellants does not have any merits and is accordingly rejected.”

17. The observations of the *Hon'ble Supreme Court in Chandnee Widya Vati Madden vs. C.L.Katial & Ors.*; AIR 1964 SC 978 in paragraph 5 thereof are to the effect:

“ 5.The main ground of attack on his appeal is that the contract is not enforceable being of a contingent nature and the contingency not having been fulfilled. In our opinion, there is no substance in this contention. So far as the parties to the contract are concerned, they had agreed to bind themselves by the terms of the document executed between them. Under that document it was for the defendant- vendor to make the necessary application for the permission to the Chief Commissioner. She had as a matter of fact made such an application but for reasons of her own decided to withdraw the same. On the findings that the plaintiffs have always been ready and willing to perform their part Of the contract, and that it was the defendant who wilfully refused to perform her part of the contract, and that the time was not of the essence of the contract, the Court has got to enforce the terms of the contract and to enjoin upon the defendant appellant to make the necessary application to the Chief Commissioner. It will be for the Chief Commissioner to decide whether or not to grant the necessary sanction.”

18. In terms of the verdict of this Court in *Bharat Singh & Anr.* (supra) apparently it is only the DDA who could seek any action against Ramji Lal or the original allottee of the property in question or any other person claiming rights under Sh.Ramji Lal.

19. On a consideration of the rival submission and the verdicts relied upon on behalf of either side, it is apparent that the learned Trial Court

and the First Appellate Court have rightly concluded to the effect that the plaintiff i.e., the respondent herein had a better title than that of the appellant/respondent in as much as the respondent derived his title from the original allottee PW-2 Ramji Lal who whilst affirming execution of the GPA, agreement to Sell, receipt, affidavit, possession letter, Will, Deed dated 6.4/2009 Ex.PW-1/7 (colly) in favour of the respondent/plaintiff of the suit has categorically denied having executed any family settlement giving half property bearing No. 17/182, Trilok Puri, Delhi to the appellant herein in relation to which testimony there was no cross-examination conducted on behalf of the appellant herein qua transfer of rights by Sh. Ramji Lal in favour of the appellant.

20. Further more, as held by the Hon'ble Supreme Court in ***Masroor Ahmad Khan v. State of Uttarakhand & Ors.***, Civil Appeal Nos. 11761-11762/2018 a verdict dated 3.12.2018 vide paragraph 13 thereof :

*“It is a settled principle of law that in order to prove that the possession of any person in any immovable property is legal, it is necessary for such person to prove prima facie that he is either the owner of such property or is in possession as a lawful tenant or is in its **permissive possession with the express consent of its true owner.**”*

(emphasis supplied)

21. Significantly, the verdict of the Supreme Court in ***Suraj Lamps and Industries Pvt. Ltd.*** (*supra*) recognizes deeds of title through GPA Slaes 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 and they cannot be recognized as deeds of title except to the

limited extent permitted vide Section 53A of the Transfer of Property Act, 1882.

22. Undoubtedly, in terms of the amendment to Section 53 A of the Transfer of Property Act, 1882 w.e.f. 24.9.2001, in view of the documents in question Ex.PW-1/7, having been executed in the year 2009, the benefit of Section 53A of the Transfer of Property Act, 1882 would also not be available to the respondent/plaintiff.

23. Nevertheless, the factum of execution of documents by the original allottee Ramji Lal in favour of the respondent/plaintiff in relation to the suit property for due consideration stands duly proved.

24. PW-2 Ramji Lal has categorically, as already observed herein above, denied the execution of any family settlement "Sumjahuta Nama" in favour of the defendant/appellant herein though he affirmed his signatures on the same but stated that the same was done under a mistaken belief and categorically stated that he had not divided the property in two portions in favour of the respondent and the appellant.

25. In the facts and circumstances of the instant case and in view of the verdict of the Hon'ble Supreme Court in ***Chandnee Widya Vati Madden*** (Supra), the verdict of the Hon'ble Supreme Court in ***Swadesh Ranjan Sinha*** (supra), the verdict of this Court in ***Shri Ramesh Chand*** (supra), ***Sh. Bidhan Chand Biswas (since deceased) Through LRs*** (supra), ***Bharat Singh & Anr.*** (supra), the suit being parties *inter se* and not between the allotting authority, i.e., DDA and its licensee, coupled with the factum that the respondent/plaintiff had purchased the property against a valuable consideration from Ramji Lal and had a better title of

the suit property, it is held that there are no substantial questions of law that arise whatsoever in the matter.

26. In view of the factum that no substantial question of law as sought to be urged on behalf of the appellant arises, in the facts and circumstances of the instant case and as the plaintiff/respondent undoubtedly has a better title and right in the suit property to claim possession from the appellant, the contention raised on behalf of the appellant that the suit was not maintainable in the form filed in as much as the appellant had raised a cloud on the title of the respondent/plaintiff and that thus a suit for declaration needed to be filed, is wholly misplaced taking into account the factum that the rights of the respondent/plaintiff are only in the form of a better title than that of the appellant herein in view of the amendment to Section 53A, Transfer of Property Act, 1882 w.e.f.24.9.2001.

27. In view thereof, the appeal and the accompanying application CMNo. 38156/2016 are dismissed. Nothing stated herein shall however amount to any expression on any rights sought to be agitated by the allotting authority, i.e., the DDA, in relation to the plot and premises in question.

ANU MALHOTRA, J.

DECEMBER 13 , 2018/SV