

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

% *Judgment Reserved on: 30.11.2017*
Judgment Pronounced on: 14.03.2018

+ **RFA 865/2016 & CM 40971/2016**

JATINDER KHANDUJA Appellant
Through: Mr. Anil Kumar & Mr. Rajbir
Bansal, Advs.

versus

JAGDISH KHANDUJA Respondent
Through: Ms. Kamlesh Mahajan Advocate
along with respondent in person.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. Challenge in this appeal is the impugned judgment and decree dated 29.08.2016 passed by the Court of learned Additional District Judge-03, (Central), Tis Hazari Courts, Delhi (in short 'learned ADJ') in Civil Suit No. 16493/2016 (Old civil suit no.63/2016) by which the suit of the respondent/plaintiff for possession of 3rd Floor of property No. 29/152, West Patel Nagar, New Delhi (as shown in red colour in the site plan Ex.PW-1/3) was decreed against his real brother who is the appellant/defendant. The learned ADJ has also restrained the appellant/defendant by a decree of permanent injunction from

creating third party interest or parting with the possession of the suit premises in any manner.

2. The brief facts of the case are that the respondent/plaintiff claimed to be the owner of the entire property bearing no.29/152, West Patel Nagar, New Delhi by virtue of a Gift Deed dated 10.10.1997 executed in his favour by his father late Nand Lal Khanduja, which was duly registered with the office of Sub-Registrar, Delhi. Admittedly, the suit property is consisting of ground floor, first floor, second floor and third floor. The respondent/plaintiff has also applied for mutation of the property and he was informed by the Land & Development Office by letter dated 25.03.2003 about the mutation. It is alleged by the respondent/plaintiff that at the time of construction, he had spent substantial amount towards construction of the house from his funds along with his father. He further alleged that after execution of the said Gift Deed, his father was of the opinion that the respondent/plaintiff should not throw out any of his brothers from the said property during his lifetime and for that reason he allowed his brothers to stay in the property. It is further alleged that in the year 1998, the appellant/defendant, having come to know about the execution of the said Gift Deed, started harassing and creating unnecessary tension in the family, colluding with his other brothers and filing false complaints before the police authorities

in order to pressurize their father late Nand Lal Khanduja to gift the third floor of the said property to the appellant/defendant.

3. The respondent/plaintiff sent a legal notice dated 08.09.2004 to the appellant/defendant asking him to handover the physical and vacant possession of the property under his occupancy failing which the appellant/defendant shall be liable to pay the damages and misuse charges w.e.f. 01.10.2004. The respondent/plaintiff received a reply dated 27.09.2004 from the appellant/defendant.
4. The respondent/plaintiff also alleged that the appellant/defendant had filed a suit for partition and another suit for cancellation of the said Gift Deed, which are pending before the court of Additional District Judge, Delhi.
5. The respondent/plaintiff has claimed a decree of possession of 3rd floor of the said property apart from damages/mesne profits @ Rs.7,500/- per month till the appellant/defendant handover the vacant and physical possession of the suit premises in his occupancy. The respondent/plaintiff has valued the suit for possession and damages at Rs.3,15,000/- and for decree of possession at Rs.3,07,500/- and paid the court fees accordingly.
6. In his written statement, the appellant/defendant has pleaded that the respondent/plaintiff has no locus standi to file the suit as he has no right, title or interest in the third floor of the said property, which is owned and possessed by him; the respondent/plaintiff has committed the offence of perjury and forgery and is liable to be tried under Section 340 of the Code

of Criminal Procedure, 1973; and suit has not been properly valued for the purpose of court fees and jurisdiction and that the value of the third floor is not less than Rs.10,00,000/- and ad valorem court fees should have been paid at least on Rs.10,00,000/-.

7. On merits, the appellant/defendant has denied that the respondent/plaintiff is the owner of the entire property No.29/152, West Patel Nagar, New Delhi consisting of three floors. It is denied that the property was devolved upon the respondent/plaintiff by late Nand Lal Khanduja by Gift Deed or that the respondent/plaintiff has spent substantial amount from his funds towards construction of the said property along with his father.
8. The appellant/defendant pleaded that he has inherited 1/4th share in the suit property and he has been in exclusive occupancy of the 3rd floor as co-owner. He pleaded that the parties are real brothers and they have been in physical possession of the property no. 29/152, West Patel Nagar, New Delhi along with other two brothers. It is also pleaded that the said property was allotted to late Nand Lal Khanduja by the President of India and that the Lease Deed and the Conveyance Deed were executed and registered in his favour on 29.07.1966 and 28.07.1966 respectively. He pleaded that their father late Nand Lal Khanduja had died on 20.07.2000 and their mother had predeceased him on 28.04.1992.

9. The appellant/defendant has also pleaded that during his life-time late Nand Lal Khanduja and parties to the suit were living in the said property and as there was paucity of accommodation, their father allowed the parties to the suit and his two other sons to construct a four storeyed building on the plot of the land after demolishing the old construction. It is further pleaded that in order to avoid any controversy, their father settled the portion/floor falling to the share of each of the party to the suit and his two other brothers and at the time of construction of the building, their father reduced the oral family settlement into writing allocating and settling one floor to each of his sons and made it clear that the floors allocated and settled to the share of his sons will be constructed by him from his own source and finance. It is also pleaded by the appellant/defendant that as per the deed of family settlement executed by late Nand Lal Khanduja, ground floor portion was settled in favour of the respondent/plaintiff, first floor portion in favour of Mr.Surjeet Khanduja, second floor portion in favour of other brother and third floor to him. It is pleaded that in the family settlement deed, it was made clear by the settler late Nand Lal Khanduja that each of his sons will contribute to the construction of the floor falling to their respective share and the respective floors so constructed shall be owned by each of his sons.
10. The appellant/defendant pleaded that pursuant to the family settlement, the parties to the suit contributed towards the

construction of the floor falling to their respective share and are in occupancy of the same as per their shares in their absolute rights and ownership. After the death of their father in the year 2000, the appellant/defendant requested the respondent/plaintiff and other brothers to execute a proper partition deed and registration thereof in order to avoid any controversy at a later stage but the respondent/plaintiff was ignoring and putting off the matter on one pretext or the other. The appellant/defendant also pleaded that even otherwise after the death of their father, all his sons have inherited the said property in equal shares of 1/4th each. It is pleaded that Sh. Surjeet Khanduja along with another brother filed a suit for partition against the respondent/plaintiff and another brother, which is pending before the court of Additional District Judge, Delhi. It is also pleaded that Sh. Surjeet Khanduja also filed a suit for cancellation of the said Gift Deed, which is also pending between the parties. The appellant/defendant alleged that the alleged Gift Deed is forged and fabricated.

11. On the pleadings of the parties, learned ADJ framed the following issues on 25.04.2008: -

“(1) Whether suit has not been valued properly for the purpose of court fee and jurisdiction? OPD

(2) Whether Sh. Nand Lal Khanduja had executed a valid Gift Deed in respect of property No.29/152, West Patel Nagar, in favour of plaintiff? OPP

(3) Whether defendant is in occupation of the IIIrd floor of the property in his own rights as an exclusive owner in terms of family settlement arrived at? OPD

(4) Depending upon findings of the above issues, whether plaintiff is entitled to decree of possession in respect of IIIrd floor of the property?

(5) Whether plaintiff is entitled to decree of damages/mesne profits at the rate of 7,500/- per month or any other rate and for what period? OPP

(6) Whether plaintiff is entitled to decree of permanent injunction as prayed for? OPP

(7) Relief.”

12. In support of his case, the respondent/plaintiff examined himself as PW-1. He also examined Sh. Pradeep Suri, LDC from the office of Sub-Registrar-II, Janakpuri, New Delhi as PW-2 and an attesting witness of the Gift Deed Sh. Manoj Kumar as PW-3. On the other hand, the appellant/defendant examined himself as DW-1. He also examined DW-2 Sh. Rajiv Khanduja, DW-3 Sh. Prem Malik, DW-4 Smt. Kamla Verma and DW-5 Sh. Rakesh Sharma.

13. Under issue no.1, the learned ADJ found that the appellant/defendant has not adduced any evidence that the value of the property was not less than Rs.10,00,000/-and accordingly decided the issue against the appellant/defendant. Under issue no.3, learned ADJ has held that the appellant/defendant has miserably failed to establish the execution of alleged family settlement or that he was in occupancy of the third floor of the said property in his own rights as exclusive owner in terms of

the family settlement. Under issue no.2, learned ADJ has held that late Nand Lal Khanduja has executed a valid Gift Deed in respect of property no. 29/152, West Patel Nagar, New Delhi in favour of the respondent/plaintiff. In view of the findings under issue no.2 and 3, learned ADJ has granted a decree of possession in respect of the third floor of the said property in favour of the respondent/plaintiff and against the appellant/defendant, however, learned ADJ has returned the findings in negative under issue no.5 and did not grant any damages/mesne profits to the respondent/plaintiff. A decree of injunction was also granted in favour of the respondent/plaintiff and against the appellant/defendant.

14. The appellant/defendant has not challenged the findings of the learned ADJ under issue no.1.
15. It is argued by the learned counsel for the appellant/defendant that the impugned judgment and decree are based on conjectures and surmises. He argued that the learned ADJ has ignored the evidence and documents on record. He argued that the Gift Deed has not been proved by the respondent/plaintiff. He emphasised that the father of the parties was an illiterate person; could sign only in Urdu language; did not understand English language; was hard of hearing and understanding and was suffering from various ailments in his old age. He argued that this property in question was allotted in lieu of the ancestral property left in Pakistan under the Displaced Persons

(Compensation and Rehabilitation) Act, 1954 and could not have been gifted without partition.

16. He urged that the learned ADJ has failed to consider that the family settlement was arrived at amongst the parties and their brothers, which was duly signed by their father and witnessed by their brothers-in-law. He lastly argued that the terms and conditions of the Lease Deed were violated as no prior permission was taken from the Government to transfer by gift and as such the Gift Deed was void ab-initio.
17. Per contra, learned counsel for the respondent/plaintiff argued that the impugned judgment and decree is based on appreciation of evidence and supported by relevant law and do not suffer from any perversity or illegality.
18. I have heard the learned counsel for the parties.
19. The points for consideration before this court are as to (i) whether the appellant/defendant has been able to prove his defence under issue no.3 that he has been in occupancy of 3rd floor of the property in question in his own rights as an exclusive owner in terms of the alleged family settlement and (ii) whether the respondent/plaintiff has been able to prove under issue no.2 that his father late Nand Lal Khanduja had executed a valid Gift Deed in respect of property no.29/152, West Patel Nagar, New Delhi in his favour.

POINT NO.1 (ISSUE NO.3):

“whether the appellant/defendant has been able to prove his defence under issue no.3 that he has been in occupancy of 3rd floor of the property in question in his own rights as an exclusive owner in terms of the alleged family settlement?”

20. In his written statement, the appellant/defendant has nowhere pleaded the date, month and year on which the alleged family settlement was reduced to writing. In his cross-examination, the appellant/defendant, while appearing as DW-1, testified that he has no idea as to the date, month and year of the execution of such settlement. He stated that the document was executed on a plain paper and not on the stamp paper. The son of the appellant/defendant Sh. Rajeev Khanduja, who appeared as DW-2 has deposed the facts, which were admittedly beyond pleadings. In his affidavit tendered in evidence, he deposed that the family settlement was executed in the year 1997 but in his cross-examination, he stated that it was prepared on 12.09.1999. He has admitted that he was not present at the time of preparation of the family settlement. He also admitted that such family settlement was never filed before any government authorities like MCD etc. Therefore, the evidence of DW-2, being hearsay evidence & beyond pleadings, does not help the appellant/defendant at all.
21. The appellant/defendant has examined his brother-in-law (sister's husband) Sh. Prem Malik as DW-3 to prove the

execution of the family settlement. The Photostat copy of the family settlement is Mark PW-1/D3. DW-3 Sh. Prem Malik stated that in the year 1997-98 he had prepared a family settlement in his own handwriting on the directions of his father-in-law. He testified that by this family settlement, it was agreed to invest money on construction of all the four respective floors by all his brothers-in-law and that the third floor of the property was allocated to the appellant/defendant, which was constructed by him out of his funds. In his affidavit tendered in evidence, he deposed that the original family settlement was kept by the respondent/plaintiff. He admitted that the family settlement was neither registered nor notarised.

22. In his cross-examination, he has changed the stand about keeping of the original document of family settlement and stated that it was left by him with the family in the presence of all the members. When confronted with this contradiction about keeping of the family settlement as mentioned in the affidavit and in his cross-examination, DW-3 stated that the respondent/plaintiff, being the *Karta*, all things are kept by him. When he was further cross-examined as to how the respondent/plaintiff was the *Karta* when his father-in-law and his eldest son i.e. appellant/defendant were alive in the family, he explained that he called the respondent/plaintiff as *Karta* being educated without explaining the qualification of executants and his other brothers in law. He stated that the

photocopy of the family settlement was neither prepared nor distributed among his brothers-in-law in his presence. He stated that he did not remember the day, date and the month on which the said family settlement was executed. He even could not tell the range of the year during which the family settlement was recorded. He deposed that late Nand Lal Khanduja not used to talk to him much as he was not open and frank with him.

23. It is noticed that in his written statement it is nowhere pleaded by the appellant/defendant that the original document of family settlement was in possession of the respondent/plaintiff. Learned ADJ has observed that the photocopy of the family settlement Mark PW-1/D3 is an undated document, written on a blank paper, unregistered and even not notarised and original thereof was never produced. It is settled law that evidence which is beyond pleadings cannot be looked into and the relief not found on such pleadings cannot be looked into and granted. In this regard, para No.77 and 78 of the Judgment of **Hon'ble Supreme Court in Union of India Vs. Ibrahim Uddin & Anr. (2012) 8 SCC 148** reads as under:-

“77. This Court while dealing with an issue in *Kalyan Singh Chouhan v. C.P. Joshi* [(2011) 11 SCC 786], after placing reliance on a very large number of its earlier judgments including *Trojan & Co. v. Nagappa Chettiar*, AIR 1953 SC 235, *Om Prakash Gupta v. Ranbir B. Goyal*, (2002) 2 SCC 256, *Ishwar Dutt v. Collector (LA)* [(2005) 7 SCC 190] and *State of Maharashtra v. Hindustan Construction Co. Ltd.*, (2010) 4 SCC 518 held that *relief not founded on the pleadings* cannot be granted. A decision of a case cannot

be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in the absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon.

78. In *Bachhaj Nahar v. Nilima Mandal*, (2008) 17 SCC 491, this Court held that a case not specifically pleaded can not be considered by the court unless the pleadings in substance contain the necessary averments to make out a particular case and issue has been framed on the point. In the absence of pleadings, the court cannot make out a case not pleaded, suo motu.”

24. Therefore, by way of testimony of DW-1, DW-2 and DW-3 and inadmissible and contradictory evidence on the point of date of execution of the family settlement, undated Photostat document Mark PW-1/D4, the appellant/defendant has failed to prove the execution of the family settlement. Admittedly when the father-in-law of DW-3 did not use to talk to him openly and frankly, it really creates a doubt as to how the deceased Nand Lal Khanduja opted DW-3 to prepare the alleged family settlement. Even otherwise, by the alleged family settlement Mark PW-1/D3, there was a transfer of interest in the immovable property worth more than Rs.100/- which requires compulsory registration under Section 17 of the Registration Act, 1908 therefore it is inadmissible in evidence.

25. DW-3 has stated that the original family settlement was kept with the respondent/plaintiff. However, this has not been so pleaded by the appellant/defendant in his written statement. The appellant/defendant has admittedly not issued any notice to the respondent/plaintiff under Section 65 of the Indian Evidence Act requiring the respondent/plaintiff to produce the original to make the secondary evidence of such document in question admissible in evidence. It has come only in the testimony of DW-3 that the original family settlement was kept with the respondent/plaintiff and it is already observed in the preceding para that the testimony of DW-3 has been contradictory. Moreover, the plea of handing over of the original document to the respondent/plaintiff being beyond the pleadings cannot be looked into.
26. Admittedly, a suit for partition of the said property on the basis of family settlement Mark PW-1/D3 bearing no. 321/03 was filed by Sh.Surjeet Khanduja and Mr.Jatinder Khanduja (appellant/defendant) against the respondent/plaintiff and other brothers and sisters, which was dismissed in default by the court of learned Additional District Judge on 09.03.2007 for non-prosecution and no steps were taken by Mr.Surjeet Khundeja or the appellant/defendant to revive the suit. In the said suit also only a photocopy of the family settlement, which is undated one, was filed.

27. The appellant/defendant has also not pleaded in his written statement regarding the amount allegedly spent by him on the construction of the third floor of the said property as per the alleged family settlement. He has also not pleaded in his written statement as to when he had raised the construction of 3rd floor. He also did not plead as to when the other floors of the property in question were constructed.
28. In these circumstances, the appellant/defendant has failed to establish the execution of the family settlement and prove that he was in occupancy of third floor of the property in question in his own rights as exclusive owner in terms of the family settlement allegedly arrived at between the parties, their brothers and father late Nand Lal Khanduja. The trial court has rightly decided the issue against the appellant/defendant and in favour of the respondent/plaintiff.

POINT NO.2 (ISSUE NO.2): -

“whether the respondent/plaintiff has been able to prove under issue no.2 that his father late Nand Lal Khanduja had executed a valid Gift Deed in respect of property no.29/152, West Patel Nagar, New Delhi in his favour?”

29. It is the case of the respondent/plaintiff that his father late Nand Lal Khanduja had executed a Gift Deed dated 10.10.1997 Ex.PW-2/1A (also Ex.PW-3/1) in his favour with respect to the entire property bearing no.29/152, West Patel Nagar, New Delhi and got it registered with the Sub-Registrar, Delhi. To prove his

case, the respondent/plaintiff has examined himself as PW-1 and testified that his father had executed a Gift Deed dated 10.10.1997 in his favour in respect of the said property, which was duly registered and thereafter vide letter dated 25.03.2003, he was informed by the Land & Development Office about the mutation. The respondent/plaintiff also examined one Mr.Gaurav Kumar, an official from the office of Sub-Registrar, Delhi as PW-2, who has proved the registration of the Gift Deed Ex. PW2/1A vide registration no. 8181, additional book no.1, volume 8896 at pages 131 to 136 on 28.10.1997. The respondent/plaintiff also examined one of the two attesting witnesses of the Gift Deed Sh.Manoj Kumar as PW-3 to prove its execution and registration. PW3 testified that he reached the office of the Sub-Registrar, Janak Puri, Delhi, where Sh. Nand Lal had executed a Gift Deed Ex.PW-3/1 in the office of the Sub-Registrar. He testified that the Gift Deed consisting of six pages was duly drafted/typed by one Sh. H.K. Babbar, Advocate on the instructions of the executant Sh. Nand Lal in his presence and its contents were duly read over to Sh.Nand Lal by him and thereafter the deceased Nand Lal had put his thumb impressions and signed the same. He identified the signatures of the executant on the Gift Deed at points A1 to A5. He stated that Sh.Nand Lal had put his thumb impressions and signatures in order at the end of the left side of the page and thereafter he had appended his signatures on the Gift Deed at

points A, B and C and thereafter Sh.H.K. Babbar, Advocate appended his signatures on the Gift Deed. He deposed that Sh.Nand Lal appeared before the Sub-Registrar, Janak Puri, Delhi. In his cross-examination, he has denied that at the time of execution of the Gift Deed, late Nand Lal was hard of hearing or having acute loss of sight and not able to talk or suffering from several ailments due to old age or having lack of understanding. He has also denied the suggestion that the contents of the Gift Deed were not read over to late Nand Lal at the time of execution.

30. Learned counsel for the appellant/defendant has argued that late Nand Lal Khanduja was not physically or mentally fit to understand the contents and implications of the Gift Deed due to his old age and several ailments. This plea was never taken by the appellant/defendant in his written statement and hence the plea in this regard cannot be looked into in view of the settled proposition of law. By his deposition as PW-1 and officials from the office of Sub-Registrar as PW-2 and the attesting witness Mr.Manoj Kumar as PW-3, the respondent/plaintiff has been able to prove the execution and registration of the said Gift Deed dated 10.10.1998 in his favour by his father late Nand Lal Khanduja.
31. It is also worthwhile to note that the brother of the respondent/plaintiff namely Sh.Surjeet Khanduja, Mr.Ajeet Khanduja and the appellant/defendant Jatinder Khanduja had

filed a civil suit No.134/2003 (312/2003) on 21.04.2003 for cancellation of the said Gift Deed in the court of Additional District & Sessions Judge, Delhi, which was dismissed in default for non-prosecution on 09.03.2007 and admittedly the plaintiffs in the said suit did not take any step to get the said suit restored.

32. It is a well settled preposition of law that a presumption of due execution of a registered document is *prima facie* attached thereto unless it is rebutted by the other party who challenged its valid execution and registration. In this regard, it would not be out of place to refer a judgment of **Hon'ble Supreme Court** in the case of **Prem Singh and Others Vs. Birbal and Others, (2006) 5 SCC 353**, and para no. 27 of the said judgment reads as under: -

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus to proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent no.1 has not been able to rebut the said presumption.”

33. The appellant/defendant has not adduced any evidence in support of his allegation in the written statement that the Gift Deed is invalid, illegal or fraudulent. Even in support of his allegations which were put to PW-3 in his cross-examination that the executant of the said Gift Deed late Nand Lal Khanduja was suffering from acute loss of sight or not able to walk or suffering from various ailments due to old age and having lack

of understanding, the appellant/defendant has not adduced any evidence when admittedly the appellant/defendant has been residing in the same property with his father. Rather, DW-3 Sh. Prem Malik, the brother-in-law of the parties, has answered in his cross-examination that late Nand Lal Khanduja was not much active physically but his mental condition was alright in the year 1997-98, his eye sight was alright but he used to read and write through spectacles. Therefore, the appellant/defendant has not been able to rebut the presumption of due execution and registration of the Gift Deed by late Nand Lal Khanduja in favour of the respondent/plaintiff.

34. Learned counsel for the appellant/defendant argued that late Nand Lal Khanduja was not the absolute and exclusive owner of the said property and has no legal capacity to execute the Gift Deed of his lease hold rights in favour of the respondent/plaintiff. In his written statement, the appellant/defendant has admitted while replying Para No. 1 and 2 of the plaint on merits that late father of the parties to the suit namely late Nand Lal Khanduja was the absolute and exclusive owner of the property no. 29/152, West Patel Nagar, New Delhi. Even in the suit no. 134/2003 (312/2003), it is pleaded by the appellant/defendant that late Nand Lal Khanduja was the absolute and exclusive owner of the said property. Similarly, in another civil suit no.321/2003, it is pleaded by the appellant/defendant that the deceased Nand Lal Khanduja was

the owner of the property. It is noticed that during the course of the evidence all the defendant witnesses have admitted that the father of the parties namely late Nand Lal Khanduja was the absolute owner of the said property. Even in the Photostat copy of the document alleged to be a family settlement Mark PW1/D3, it is recited that late Nand Lal Khanduja was the absolute and exclusive owner of the property in question.

35. There is also no force in the arguments of the learned counsel for the appellant/defendant that the executant late Nand Lal Khanduja has migrated from Pakistan to India and in lieu of his ancestral property in Pakistan, the suit property was allotted to him under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and without having partitioned, the said property could not have been transferred by way of a Gift Deed. In this regard the learned counsel for the appellant/defendant has brought to the notice of the court the contents of the Conveyance Deed dated 25.11.1965 wherein it is mentioned that the total consideration for allotment of the demised property to late Nand Lal Khanduja by the Government of India was Rs.2,866/- out of which Rs.300/- was paid in cash and balance amount of Rs.2,566/- stands adjusted against the compensation payable under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 to the purchase. This plea was not taken by the appellant/defendant in his written statement and therefore no indulgence is required to be

given to such plea particularly when the appellant/defendant has not adduced any evidence that the property of the executant of the Gift Deed, which he was having before migrating to India from Pakistan was his ancestral property.

36. There is also no force in the arguments of the learned counsel for the appellant/defendant that no permission was obtained by the executants from the Government of India as he was only a Lessee. He has relied upon the Clause (b) of the Lease Deed Ex.DW-5/1, which reads as under: -

“(b) The Lessee shall before any assignment or transfer of the said premises hereby demised any part thereof obtain from the Lessor approval in writing of the said assignment or transfer and all such assignees and transferees and the heirs of the Lessee shall be bound by all the covenants and conditions herein contained and be answerable in all respects therefor.”

37. It is admitted by the appellant/defendant that on the request of the respondent/plaintiff the mutation was allowed in the name of the respondent/plaintiff, which was communicated to him by the Deputy Land & Development Officer vide letter No. L&DO/P.S.-III/219 dated 25.03.2003. The copy of the sanction of the mutation by letter dated 25.03.2003 has been annexed by the appellant/defendant along with his grounds of appeal, which reads as under: -

“GOVERNMENT OF INDIA
MINISTRY OF URBAL DEVELOPMENT &
POVERTY ALLEVIATION
LAND & DEVELOPMENT OFFICE
NIRMAN BHAWAN, NEW DELHI

No.L&DO/P.S.-III/219

Dt.25/3/03

To

Sh.Jagdish Lal Khanduja,
29/152, West Patel Nagar,
New Delhi.

Sub: Mutation of leasehold rights in respect of property No.29/152, West Patel Nagar, New Delhi.

MEMORANDUM

With reference to his application dated 8.1.03 on the above cited subject Sh.Jagdish Lal Khanduja, informed that in view of the gift deed executed between Sh.Nand Lal Khanduja S/o Shri Jetha Nand and Sh. Jagdish Lal Khanduja S/o Sh. Nand Lal, duly registered with the Sub-Registrar under Registration No.8181 Addl. Book No.1, Vol. No.8896 on Pages 135 to 136 dated 28.10.1997, the mutation in the record has been carried out on the same terms and conditions as laid down in the lease deed executed on 25.11.65 by original lessee.

The property now stands in the names of Sh.Jagdish Lal Khanduja S/o Shri Nand Lal.

According the lease clause 1(IX) he will liable to pay the amount of penalty Rs.100/- for belated intimation for change of transfer.

Sub-division of the property will not be allowed at any stage.

You are liable to pay govt. dues as and when demanded by the government.

However, if it is found subsequently that certain facts have not been brought to the notice of the govt. or the facts have been misrepresented, the govt. reserve the rights to the review the matter suo-motto.

Sd/-
(A.Bhattacharyya)
Dy.Land & Development Officer
For & on Behalf of the President of India”

38. Since the mutation has already been sanctioned in favour of the respondent/plaintiff regarding the execution of the Gift Deed by late Nand Lal Khanduja in respect of the said property, nothing survives in the argument of the learned counsel for the appellant/defendant. Moreover the appellant/defendant, who is not a party to the Gift Deed, has no locus standi to raise this objection, which could have been raised only by the executant of the said Lease Deed and the Conveyance Deed in favour of late Nand Lal Khanduja. In view of this discussion, it is found that the learned ADJ has rightly held that late Nand Lal Khanduja had executed a valid Gift Deed in respect of the said property in favour of the respondent/plaintiff.
39. I do not find any merit in the appeal. The appeal and application being CM No.40971/2016 are accordingly dismissed.

(VINOD GOEL)
JUDGE

MARCH 14th, 2018
“shailendra”