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

Reserved on : 17th January, 2018
Date of decision :8th May, 2018

\+ **RFA 1017/2016 & CM APPL.47525/2016 (Stay)**

MANMOHAN DUTTA ..... Appellant
Through: Mr. Anunaya Mehta, Mr. A.N. Tiwari, Mr. Akshay Deep Singhal, Advocates (9899834055)

versus

SHIKHA SEN & ORS ..... Respondents
Through: Mr. Sanjiv Bahl, Mr. Eklavya Bahl, Mr. Apoorva Bahl, Mr. Pawas Agarwal, Mr. Vinayak Batta, Ms. Vandhna Khurana, Advocates for Respondent No. 1 to 4 (8447810160)

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. Late Col. S. R. Sen, with the hope of acquiring a property in the South Delhi colony of Chittaranjan Park approached Shri Ratan Dass a local property dealer in December 2000 to find a suitable house property. Shri Ratan Dass identified G-1397, Chitranjan Park, New Delhi-19 (*hereinafter the 'suit property'*) owned by Shri Partho Biswas, Shri Prithwis Biswas, Shri Prathano Biswas and Shri Uma Shankar Khan (*hereinafter referred to as 'owners'*), who were legal heirs of the original owner late Smt. Kamalini Biswas. She had expired on 20th February, 1990 and her property devolved upon her four legal heirs impleaded as Defendant Nos.1 to 4 in the suit.

2. When the property was identified for purchase by Col. Sen, the mutation in the name of the owners had not yet been effected. Col. Sen had agreed that he would bear the expenses for getting the property mutated in favour of the owners from the L&DO. Accordingly, Shri Ratan Dass applied on behalf of Col. Sen to the L&DO for mutation of the property. The charges for the mutation and towards unearned increase, to the tune of Rs.6,16,016/-, were paid by Col. Sen by cheque dated 18th May, 2001 (Mark A). The L&DO issued the mutation letter dated 18th September, 2001 (Ex PW5/4) evidencing the mutation done in favour of the owners. Shri Ratan Dass was acting on behalf of Col. Sen in respect of the suit property. All the original documents of the suit property were in the custody of Shri Ratan Dass who also held a General Power of Attorney (*hereinafter 'GPA'*) dated 9th November, 2001 from the owners (EX PW 6/3).

3. On 26th December, 2001 (EX PW 7/1) after the mutation was done in favour of the owners, an agreement to sell was entered into between the owners and Col. Sen. The said agreement to sell was signed by Col. Sen as the purchaser and by Shri Prithwis Biswas (*'Defendant No.2'*), who held a Power of Attorney on behalf of other owners. The witnesses to this agreement were Shri. Ratan Dass and Shri. Atul Wig. The said agreement to sell was registered with the Sub Registrar-V near the INA market as document no.10563, Book No.I, Vol.2641 at pages 93 to 102. The stamp duty for the said agreement to the tune of Rs.86,400/- was also paid.

4. As per the agreement to sell, the total consideration payable was Rs.12,00,000/- out of which Rs.6,16,336/- and Rs.2,91,833/- were paid to the L&DO. and the owners respectively. The former amount was paid to the L&DO by Col. Sen on behalf of the owners and the latter amount was paid

by cheque to the four owners. Thus, out of sum of Rs.12,00,000/- a total of Rs.9,08,169/- stood paid which constituted more than 75% of the sale consideration. At the time of the execution of the agreement to sell, the original registered GPA held by Shri Ratan Dass was surrendered by him to Col. Sen. Even the GPA held by Shri Prithwis Biswas dated 14th December, 2001 on behalf of other owners was surrendered in original by Shri Ratan Dass to Col. Sen after execution of the agreement. Upon the request by Shri Ratan Dass on 9th August, 2003, the original GPA in favour of Shri Ratan Dass was handed back to him as he claimed that the same was required in order to prepare a fresh Power of Attorney to deal with the L&DO. Col. Sen, believing the representation of Shri Ratan Dass, handed over the GPA on 9th August, 2003 on the condition that it would be returned to him within a week's time i.e. by 15th August, 2003. This is clear from a reading of the 'Receipt' Ex. PW6/4 which reads as under:

"Receipt

Received General Power of Attorney in original pertaining to (1) Partho Biswas (2) Pratanu Biswas (3) Uma Shankar Khan appointing Prithwis Biswas as true and lawful general attorney from Col Sudhir Raja Sen of F-1119, C.R. Park (1st Floor) by me i.e. Sh. Ratan Dass of 1780, Chittaranjan Park, ND-1 on 9th August 03 which would be returned in original as soon as he comes back from Calcutta next week i.e. 15th Aug 03.

Sd/-
Signed by
Sh. Ratan Das
Of 1-1780, C.R. Park
New Delhi - 19

Dated
9 Aug 03"

However, the original GPA was not returned.

5. The owners and Col. Sen intended to execute the final sale deed in favour of Col. Sen and repeated requests were made to the L&DO for permission to sell, after converting the property from leasehold to freehold. All along, Shri Ratan Dass was dealing with the L&DO. On 8th April, 2003 the application for conversion of the property from leasehold to freehold was made to the L&DO and even the conversion fee for this purpose was deposited by Col. Sen.

6. In the meantime, Col. Sen applied to the MCD for sanctioning of the building plans to start construction on the plot. A possession letter was also handed over to Col. Sen on 23rd October, 2003 (EX PW 6/5). Unfortunately, Col. Sen passed away on 3rd November, 2003. He was survived by his legal heirs, i.e. Smt. Shikha Sen (*wife*), two daughters Smt. Sangeeta Sen and Smt. Swarupa Sen and his Son Mr. Somit Sen (*hereinafter 'Plaintiffs'*). The factum of Col. Sen's demise was also informed to the L&DO and an electricity meter was also installed at the suit property for which payments were made by the Plaintiffs.

7. Despite repeated follow-ups with Shri Ratan Dass, the Plaintiffs were not informed about the progress of the matter with the L&DO. Finally on 8th July, 2005, Smt. Sangita Sen, one of the Plaintiffs visited the L&DO office and she was informed that the conveyance deed for conversion of the property was executed on 10th March, 2005 and given to Shri Ratan Dass. However, this fact was not informed by Shri. Ratan Dass to any of the Plaintiffs. On 10th July 2005 when one of the Plaintiffs visited the suit property, it was seen that demolition was taking place on the site and a

complaint was filed with the police station. It was, thereafter, revealed to the Plaintiffs that the conveyance deed for conversion of the suit property was registered at the office of Sub-Registrar on 16th March, 2005 and a sale deed had been executed by Shri Ratan Dass in favour of Shri Vikas Chanana (*Defendant No.6*) dated 15th April, 2005 (EX DW 6/7) and thereafter from Shri Vikas Chanana to Shri Manmohan Dutta (*Defendant No.7 & Appellant herein*) dated 13th June, 2005 *(EX DW 7/2)*.

8. The subject suit was then instituted on 16th July 2005 and an interim order was passed to the following effect:

> "*Suit has been received by assignment it be checked and registered.*
>
> *In view of the documents filed and circumstances explained, the defendants, their agents, servants and representatives are restrained from creating any third party interest and further demolition of the suit property bearing No.G-1397, Chitraranjan Park, New Delhi-110019, till further orders. Compliance of Order 39 Rule 3 CPC be done within 24 hours. Plaintiff may take help of the local police for the purpose of stopping demolition, if the need so arises.*
>
> *The summons of the suit, notice of the application U/o 39 Rule 1 and 2 be issued against respondents/defendants by 3 modes. Put up on 01.8.05.*"

9. In the suit that an application was filed by Shri Manmohan Dutta who also sought vacation of the injunction. The application moved by Shri Manmohan Dutta revealed a startling story. The Appellant claimed that he was the owner of the suit property by virtue of a registered sale deed dated 13th June, 2005 which was traced back to an agreement to sell which was

initially entered into by Shri Ratan Dass and Shri Vikas Chanana. The said agreement was executed by Shri Ratan Dass on behalf of the owners by using the GPA which he had already surrendered to Col. Sen and taken back from him in a mischievous manner. Shri Vikas Chanana, thereafter, executed various documents including the Sale Deed as a Power of Attorney holder of Shri Ratan Dass in favour of Shri Manmohan Dutta Appellant. The final sale deed signed by Shri Vikas Chanana in favour of Shri Manmohan Dutta dated 13th June, 2005 was registered with the Sub-Registrar's office and on this basis the title to the suit property was claimed. The Owners in the plaint as originally filed was against the Owners who were arrayed as Defendant Nos.1 to 4 and Shri Ratan Dass as Defendant no.5. An amendment was thereafter made and Shri Vikas Chanana and Shri Manmohan Dutta were added as Defendant Nos.6 & 7. The Owners chose not to appear despite service and they were proceeded ex- parte.

10. The following issues were struck in the suit on 5th October, 2006.

> "*1. Whether defendant No.5 purchased suit property at any point of time? If so its effect? OPD*
> *2. Whether defendant no.5 had any right or title of ownership over the suit property and has right to sell the same? OPD*
> *3. Whether the suit filed by the plaintiff is barred by law of limitation? OPD*
> *4. Whether the suit is bad for misjoinder of necessary defendant no.6? OPD6*
> *5. Whether this court has no pecuniary jurisdiction to entertain the present suit? OPD6*
> *6. Whether the plaintiffs are entitled for a decree of permanent injunction against the defendants prayed for? OPP*

7. Whether the plaintiffs are entitled for a decree of specific performance of agreement to sell dated 26.12.2001 against the defendants? OPP
8. Whether the plaintiffs are entitled to a decree of declaration as prayed in prayer clause? OPP
9. Whether the plaintiffs are entitled for decree of possession with regard to suit property as prayed for against the defendants? OPP
10. Relief."

11. The Plaintiffs produced the following witnesses.

- PW-1 – Mr. Anindya Banerjee, Assistant Manager (Legal), HDFC Bank Ltd., Munirka Branch, New Delhi.
- PW-2 – Mr. Vinay Goenka, Executive, UTI Bank Ltd. to produce the statement of account of Col. Sen's bank account for 13th March, 2001 to 12th July, 2005 to show various payments made by Col. Sen.
- PW-3 – Shri Krishan Kaushik, record keeper, Central Zone, MCD, Lajpat Nagar to show the sanction plan, which was issued in the name of the Owners.
- PW-4 – Shri P. K. Dhingra, Officer, United bank of India, Chitranjan Park, New Delhi.
- PW-5 – Shri R. C. Patni, UDC, office of L&DO produced the records of the L&DO;
- PW-6 – Ms. Shikha Sen, d/o of Col. Sen
- PW-7 – Shri Sher Singh, UDC, Sub-Registrar office, Mehrauli to prove the registration of agreement to sell dated 26th December, 2001;

- PW-8 – Shri Rajesh Kumar Mishra, PS Chitranjan Park, confirming the complaint by Col. Sen's family.
- PW-9 – Shri Rakesh Chander, computer operator, UCO Bank, Janak Puri to produce the bank account of Col. Sen for the period from 31st December 2000 to 25th February, 2004.
- PW-10 – Shri Satyawarth Bhardwaj, PS Chitranjan Park to produce the copy of the FIR 275/06 dated 16th June, 2006;
- PW-11 – Mr. Atul Wig s/o Mr. I. N. Vig to recognise the signatures of Col. Sen.

12. The Defendants produced the following witnesses.

- DW-7 – Shri Hemant Verma, Power of Attorney holder of Shri Manmohan Dutta and Shri Ratan Dass.
- DW-8 – Shri Ratan Dass.

13. Shri Vikas Chanana had filed his affidavit of evidence. He chose not to appear and was proceeded ex-parte.

Findings of the Trial Court

14. The Trial Court held that the various payments made by Col. Sen to the L&DO clearly show his intention to purchase the property. Further, Shri Ratan Dass ought to have handed back the original GPA to Col. Sen by 15th August, 2003, which he did not do. Even part possession of the property had been given by Shri Ratan Dass on behalf of the Owners to Col. Sen on 23rd October, 2003 (Ex PW 6/5). Though the initial agreement was of 2001, due to the various formalities that were to be completed with the L&DO, no time limit was fixed for execution of the final sale deed. Thus, the Trial Court held that the suit is within limitation especially because as late as in 2003,

Col. Sen was dealing with Shri Ratan Dass for various formalities to be completed, the suit was filed on 16th July, 2005.

15. The Trial Court, thereafter, examined as to whether Shri Ratan Dass had actually purchased the property and on this issue the Trial Court concluded that there was no document on record to show that the ownership vested with Shri Ratan Dass at any point and that Shri Ratan Dass had no right or authority to sell the suit property. On the question of specific performance, the Trial Court noticed that more than 75% of the consideration stood paid and by their conduct Col. Sen and his family had demonstrated time and again that they were ready and willing to pay the consideration. The Trial Court, thereafter, granted the declaration that the sale deed dated 13th June, 2005 in favour of Shri Manmohan Dutta was null and void and injunction was granted, as prayed for. The operative portion of the Trial Court judgment is set out as below:

> "*In view of my findings on the above said issues, suit of the plaintiff is hereby decreed and a decree of specific performance of agreement to sell dt. 26.12.2001 is hereby passed in favour of plaintiff and against the defendants directing the defendant no. 1 to 4 to execute sale deed in respect of suit property no. G-1397, Chitaranjan Park, New Delhi upon receipt of remaining amount of sale consideration of Rs.2,91,833/- from plaintiff. Plaintiff is also entitled to possession, defendants are directed to hand over the vacant and peaceful possession of the suit property to plaintiffs at the time of execution of sale deed. Plaintiff is also entitled for decree of declaration and sale deed dt. 23.06.2005 is hereby declared to be null and void.*

However, it is being made clear that decree sheet will be prepared and will be executable as per law only upon depositing of requisite court fee as directed above.

Plaintiff is further entitled to the decree of permanent injunction and defendants are hereby restrained not to deal with the property in question in any manner. Decree sheet be prepared accordingly. File be consigned to record room after due compliance."

Appeal proceedings

16. The present appeal has been filed impugning the final judgment and decree dated 11th July, 2016. On 30th January, 2017 the following interim order was passed in the appeal.

"................

6. Operation of the impugned judgment and decree is stayed, subject to the appellant maintaining status quo with regard to the title, possession and construction of the suit premises. DASTI"

17. The matter was finally heard on 17th January, 2018 on behalf of Appellant and on behalf of the Plaintiffs and Col. Sen's family. The Owners did not enter appearance and neither did Mr. Dass or Mr. Vikas Chanana. The following order was passed on 17th January, 2018.

"*With the consent of the parties, the appeal itself has been taken up for hearing. Both counsels have addressed arguments. Arguments have been heard on behalf of the appellant and on behalf of the Respondents No.1 to 4, the original plaintiffs who are the contesting respondents.*

Respondent nos 5 to 8 - the original owners of the property bearing No. H-1556, Chitaranjan Park, New Delhi-110019 have not entered appearance in this Court nor were they present before the trial court. Counsel for the appellant submits that Respondent No. 9 was not a contesting respondent in this appeal as the said respondent has sold the property. Respondent No. 10 is the purchaser from whom the appellant claims to have purchase the property and was also proceeded ex parte in the trial court. In any event, he is also not a contesting respondent as per the appellant.

Arguments heard. Judgment reserved.

Both parties are permitted to file list of authorities within 2 days."

The Appellant filed a bundle of authorities on 24th January, 2018.

Appellant's Submissions

18. It is submitted that the Appellant is in possession of the suit property. It is the contention of learned counsel for Appellant that the suit is barred by limitation and that under Article 54 of the Schedule to the Limitation Act, in a contract for Specific Performance the suit has to be filed within three years from the date fixed for performance. It is submitted that the Trial Court relies upon the various surrounding and attending situations, to hold that the suit is within limitation. According to learned counsel for the Appellant, the said circumstances cannot be considered as the agreement to sell is a registered document. The date for completion of the transaction cannot be altered. The Trial Court's finding, that the date for execution of the sale deed was extended by conduct, is contrary to law. Reliance is placed on the following judgments.

Rajiv Khanna v. M/s Sunrise Freight Forwarders Pvt. Ltd. & Anr. 2016 (158) DRJ 334, Subhas Chander Kathuria v. Umed Singh & Anr 127 (2006) DLT 292, Ravinder Nath Sahni v. Poddar Construction Co. Private Ltd. & Anr. 2014 (211) DLT 561, N.P. Thirugnanam(dead) by Lrs. V. Dr.R. Jagan Mohan Rao & Ors. (1995) 5 SCC 115 and ***R.V.E Venkatachala Gounder v. Arulmigu Viswesarswami & V.P. Temple & Anr.(2003) 8 SCC 752***

Plaintiffs' Submissions

19. On the other hand, learned counsels for Plaintiffs submit that under the agreement to sell, Rs.2.91 Lakhs were to be paid when all the four Owners come before the Sub-Registrar office for which no date was fixed. It was further submitted that the Owners had to get all the necessary permissions and registration of the formal sale deed by 31st January, 2002, which in fact did not happen. It is submitted that the application for sale permission to the L&DO was itself preferred on 25th June, 2002 and the intending purchaser was shown as Col. Sen. This application was moved by all the four Owners themselves. The conversion charges were submitted on behalf of Col. Sen by Shri Ratan Das as late as 8th April, 2003 (Ex PW-5/2) for an amount of Rs.77,412/-. This payment was made by Col. Sen. It is further submitted that the GPA in favour of Shri Ratan Dass, (Ex.PW-6/4) was to be returned by 15th August, 2003 but with dishonest intentions the same was not returned and was, in fact, used to execute the sale deed firstly in favour of Shri Vikas Chanana and thereafter in favour of Shri Manmohan Dutta. It is the submission of the LR's of Col. Sen that Shri Ratan Dass was always in the know of the entire transaction with Col. Sen and the

subsequent transactions with Shri Vikas Chanana and Shri Manmohan Dutta were illegal and contrary to law. Col. Sen having made all the payments to the L&DO and having in effect paid 75% of the sale consideration, now represented by his legal heirs, was entitled to specific performance and declaration as prayed. The Plaintiffs relied upon the GPA dated 19th April, 2005 (Ex DW 7/5) issued by Shri Ratan Dass in favour of Shri Vikas Chanana to argue that the recital in the said GPA dated 12th August, 2003 in turn referred to a General Attorney of Mr. Prithwis Biswas on 14th December, 2001. The said GPA dated 12th August 2003 has not been placed on the Trial Court record and hence the entire transaction is vitiated. Learned counsel for Respondents submitted that there was complete silence about the transaction with Col. Sen in this document. The Respondents relied upon the judgment in ***S. Brahmanand and Ors v. K.R. Muthugopal (Dead) and Ors. AIR 2006 SC 40.*** It is, thus, submitted that Shri Ratan Dass, who had complete knowledge of the agreement with Col. Sen had acted in a fraudulent manner and conspired with Shri Vikas Chanana and Shri Manmohan Dutta to deprive the Plaintiffs of their legitimate rights in the suit property.

Analysis and Findings

20. The present case reveals a sordid story of how real estate transactions are carried out in a city like Delhi. Properties are sold multiple times illegally, leading to long pending disputes. A perusal of the trial court record in this case reveals that the person Shri Ratan Dass, who is at the core of the transactions, was firstly instrumental in introducing the Plaintiffs to the Owners, thereafter, misused the information that the property had been

converted to freehold and in order to have financial gains, misused the Power of Attorney issued by the Owners in his favour, to again sell the property to Shri Vikas Chanana, who thereafter, sold it to the Appellant Manmohan Dutta. All along Shri Ratan Das was well aware that the property had already been sold to Col. Sen. In his cross-examination, he admits his signatures on the agreement to sell dated 26th December, 2001(Ex.PW-7/1) executed with Col. Sen to which he was a witness. He also admits that Ex.PW-6/4 and Ex.PW 6/5 i.e., the receipt wherein he agreed to return the GPA to Col. Sen by 15th August, 2003 and the part possession letter were in his handwriting. He further admitted that he was on friendly terms with Col. Sen. He proudly volunteers that *"I am a witness in all the documents relating to the suit property."* He further deposed that in the year 2002, the L&DO was not accepting conversion charges in view of the prevalent policy of the Government of India at that time. He then admitted that Ex.PW-5/2 i.e. challan showing the payment of Rs.77,412/- bears his signatures. This challan, in fact, shows that the demand draft for Rs.77,412/- is in favour of the L&DO was issued by UTI bank Ltd., Greater Kailash-I where Col. Sen had his bank account. In his cross-examination, he asserted that he paid the money from his own bank account but when asked in which bank he had his account, he mentioned United Bank of India and not UTI Bank Ltd. He admitted that Col. Sen's family had also utilized his services to purchase another property i.e. Second Floor with Terrance Rights in I-1764, Chitranjan Park. Thus Col. Sen's family had trust in him, which he clearly had betrayed. He was also aware that Col. Sen's family had taken a housing loan from HDFC dated 1st June 2004 (Ex PW 1/2) for purchasing the second property. He claimed in his affidavit that the Plaintiffs had no locus to challenge the documents executed in favour of the Appellant. The deposition of Shri Ratan Dass, in fact, establishes the case of the Plaintiffs beyond any doubt. He admits most of the documents executed in favour of the Col. Sen, but simply insists that Col. Sen never demanded implementation of the agreement to sell in his favour.

21. The Appellant relies upon the GPA dated 9th November, 2001 (Ex PW 6/3) issued by the Owners in favour of Shri Ratan Dass. It is the Appellant's contention that Shri Ratan Dass had a right to appoint an attorney to sell the property as per the powers given in the said GPA which reads as under:

> "*12. To sign and execute the Agreement to sell and/or proper sale deed in respect of the 'SAID PROPERTY' in the favour of the purchaser(s), to submit the same for registration with the Sub-Registrar, New Delhi/concerned, to admit the execution thereof, and to get the same registered. To apply for Sale Permission to the concerned authority.*
> *13………..*
> *14……….*
> *AND GENERALLY to do all legal, correct and acts, deeds and things as per records which in opinion of the said attorney. Thought to be done, executed or performed for the management, control and supervision of the affairs of the 'SAID PROPERTY' even if they are not specifically mentioned herein above, as effectively as we would have done if personally to do so and the attorney is also authorized to appoint and to conclude any person as general attorney and as special attorney for construction, improvement or lease, tenancy or sale of 'SAID PROPERTY.'* "

22. The Appellants further relied upon the GPA executed by Shri Ratan Dass in favour of Shri Vikas Chanana, who thereafter registered the sale deed in favour of the Appellant. What is, however, completely missed is the fact that this GPA in favour of Shri Vikas Chanana relies upon a Power of Attorney issued by Mr. Prithwis Biswas dated 12th August, 2003, which has not been produced on record. The recital in this GPA is extracted hereinbelow:

> "*Know all men by these presents that I, Ratan Das son of Shri. P.B. Das resident of I-1780, Chittaranjan Park, New Delhi 110 019, as General Attorney of Shri. Prithwis biwas, son of late Shri. Ranjit Kumar Biswas, vide General Power of Attorney registered as document No. 00382 in Addl. Book No. IV Volume No. 10 on pages 125 to 133* ***dated 12.08.2003****, in the Officer of the Sub-Registrar Kolkata, who is acting Self and also General Attorney of (1) Shri. Partho Biswas (2) Shri Pratanu Biswas both the sons of Late Shri. Ranjit Kumar Biswas and (3) Shri Uma Shankar Khan son of late Shri. Baidya Nath Khan, vide General Power of attorney duly registered as document No. 338 in Addl. Book No. IV Volume No. 6 on Pages 191 to 196 dated 19.12.2001, in the officer of the Sub-Registrar, Kolkata, do hereby further appoint, nominate, constitute and authorize Shri. Vikaas Chandra son of Shri. Satish Chandra resident of 40/152, Chittaranjan Park, New Delhi 110 019, as true, legal and lawful General Attorney of my principal in respect of Freehold Property bearing No. G-1397, measuring 160 sq.yds., situated at Chittaranjan park, New Delhi 110 019 (hereinafter called the said property) and I do hereby empower the said General Attorney to do the following acts, deeds and things in the name*

and on behalf of my principal, in respect of the said property, under his own signatures):-"

23. Thus, the root document on the basis of which title is claimed by the Appellant is itself missing i.e., the so called GPA dated 12th August, 2003 by Mr. Prithwis Biswas in favour of Shri Ratan Dass. On the other hand, the flow of title in favour of the Plaintiffs is crystal clear. It flows from the agreement to sell by Pritwis Biswas to Col. Sen, duly witnessed by Shri Ratan Dass, then the deposits made by Col. Sen to the L&DO, application seeking permission to sell made by all four owners to the L&DO in favour of Col. Sen, finally the deposit made by Col. Sen for conversion charges. This flow of title and repeated reiteration is in stark contrast to the GPA used by Shri Ratan Dass behind Col.Sen's back, to transfer title to Shri.Vikas Chanana and thereafter to Shri. Manmohan Dutta.

24. The agreement to sell dated 26th December, 2001 is executed by Shri Prithwis Biswas who held a Power of Attorney on behalf of the other three Owners in favour of Col. Sen. In this agreement to sell, Shri Ratan Dass was a witness. The clauses of this agreement to sell are important and are extracted hereinbelow:

"

1. *THAT in consideration of a sum of Rs. 12,00,000/- (Rupees Twelve lakhs only) to be paid as per the terms of this AGREEMENT, the FIRST PARTY agrees to sell, transfer and convey all their rights, title and interests in the property bearing no. G-1397, Chittaranjan Park, New Delhi-110 019 along with the whole of the existing building, services, fittings, fixtures, easement and privileges (hereinafter referred to as the*

'SAID PROPERTY') to and in favour of the SECOND PARTY or his nominees.

2. *THAT the SECOND PARTY has already paid a total of Rs. 6,16,336/-(Rupees Six Lakhs Sixteen Thousand Three Hundred and Thirty Six only) as part sale consideration to the order of the FIRST PARTY the receipt of which the FIRST PARTY hereby acknowledges and confirms as per the following details:*

Draft No.	Date	Bank	Amount	In Favor of
a) 21179	*18.05.2001*	*UTI Bank Ltd 61,Greater Kailash -1, New Delhi-110018*	*Rs.6,16,016*	*L&DO*
b) Cost of the above			*Rs. 320*	
Total			*Rs.6,16,336*	

The above payment to L&DO has been made on behalf of the FIRST PARTY as unearned increase for substitution of the leasehold rights in respect of the SAIDPROPERTY in favour of the FIRST PARTY.

3. THAT and additional sum of Rs.2,91,833/- (Rupees Two Lakhs Ninty One Thousand Eight hundred and Thirty Three only) is being paid by the SECOND PARTY to the FIRST PARTY at the time of the execution of the present AGREEMENT TO SELL in the following manner:

Draft No.	Date	Bank	Amount	In favour of
(a) 413	*12.12.2001*	*UTI Bank Ltd. Greater Kailash-I New Delhi-110048*	*Rs.48.639/-*	*Partho Biswas*

b) 412 12.12.2001 UTI Bank Ltd E-64
Rs.48,639/- Pratanu Biswas
Greater Kailash-I New
Delhi-110048
c) 411 12.12.2001 UTI Bank Ltd E-64
Rs.48.639/- Prithwis Biswas
Greater Kailash-I New
Delhi-110048
d) 410 12.12.2001 UTI Bank Ltd E-64
Rs.48.639/- Uma Shank Khan
Greater Kailash-I New
Delhi-110048

the receipt of which the FIRST PARTY hereby acknowledges and confirms.

4. <u>THAT the balance sale consideration amounting to Rs.2,91,831/- (Rupees Two Lakhs Ninty One Thousand Eight Hundred and Thirty One only) shall be paid at the time of execution and registration of the Sale-Deed by all four owners personally before the Sub-Registrar, New Delhi.</u>

5. THAT the FIRST PARTY has assured the SECOND PARTY that the SAID PROPERTY is free from all sorts of encumbrances including but not limited to prior sale, mortgage, gift, lease, charge, lien, court cases, court injunction attachment, disputes, will, notices etc.

6. <u>THAT the FIRST PARTY has further assured the SECOND PARTY that the FIRST PARTY are jointly the absolute and exclusive owners of the SAID PROPERTY. No other person has any right, title or interest in the SAID PROPERTY. There is no legal impediment, in the FIRST PARTY transferring the SAID PROPERTY in favour of the SECOND PARTY</u>.

7. THAT the FIRST PARTY further assured that SECOND PARTY that neither the FIRST PARTY for anyone claiming through or under them or their representative agent shall do any such act after the execution of these presents that shall *have the effect of defeating any of the rights of the SECOND PARTY under these presents or obstruct the subsequent use and enjoyment of the SAID PROPERTY after the completion of the sale transaction.*

8. THAT if any of the aforesaid assurances given by the FIRST PARTY are later discovered to be false the FIRST PARTY undertakes to indemnify the SECOND PARTY and keep them indemnified and harmless against all losses, damages and expenses resulting from such assurances being false. The FIRST PARTY further undertakes to indemnify the SECOND PARTY for all losses and damages suffered or expenses incurred by the SECOND PARTY FOR as a result of the breach of any one of the conditions of this AGREEMENT by the FIRST PARTY.

9. THAT in case of this AGREEMENT to SELL cannot be performed for any reason whatsoever and the SAID PROPERTY cannot be transferred in favour of the SECOND PARTY or the SECOND PARTY loses the SAID PROPERTY due to any defect in title of the FIRST PARTY, any impediment in sale of the SAID PROPERTY or any action of the FIRST PARTY or their agent, the FIRST PARTY undertakes to purchase a property similar in size and circumstances to the SAID PROPERTY and situated in Chittaranjan Park, New Delhi at their own cost and transfer the same in favour of the FIRST PART in lieu of the SAID PROPERTY in consideration of having received substantial part of the sale consideration and subject to the tender of balance sale consideration by the FIRST PART without making an demands over and above the agreed sale consideration.

10. THAT the FIRST PARTY shall clear all municipal, DVB and other governmental dues like electricity bills, house tax, water bills, telephone *bills, ground rent etc. up to the date of handing over of the possession of the SAID PROPERTY and thereafter it shall be the responsibility of the SECOND PARTY.*

11. THAT the FIRST PARTY shall hand over vacant and peaceful possession (both de-facto and de-jure possession) of the SAID PROPERTY to the SECOND PARTY at the time of execution of the formal Sale Deed. The following original shall also be handed over to the SECOND PARTY at the same time.

a) Original Agreement to Sell in favour of late Kamalini Biswas.

b) Original Lease Deed in favour of late Kamalini Biswas.

c) Original registered Will of late Kamalin Biswas.

d) Original imitation letter issued by L&DO in favour of Sh. Partho Biswas, Sh. Prithwis Biswas, Sh. Pratanu Biswas and Sh. Uma Shankar Khan

e) House Tax assessment orders and receipts showing payment of house-tax up to date.

f) Payment receipts of the electricity Bills up to date.

g) Payment receipts of the water bills up to date.

h) Payment receipts of the ground rent.

i) Original Relinquishment deeds of the heirs of late Sh. Ranjit Kumar Biswas and late Sh. Mrityunjay Khan.

12. ***THAT the FIRST PARTY shall obtain all the necessary permissions for the execution and registration of a formal Sale-deed in favour of the SECOND PARTY by the 31st January 2002****.*

13. THAT in case of the failure of the FIRST PARTY to complete the sale in favour of the SECOND PARTY within the period prescribed herein above the SECOND PARTY shall be free to get the sale completed by recourse to law at the *risk and cost of the FIRST PARTY. The FIRST PARTY shall also be liable to interest @ 2% per mensem on the amount of sale consideration already paid for the period of delay."*

25. From the above clauses it is clear that there was no fixed date for execution of the sale deed. All the permissions for execution and registration of the formal sale deed were to be obtained by 31st January, 2002. Even thereafter Col. Sen himself and Shri Ratan Dass as Power of Attorney holder of the Owners continued to deal with the L&DO to deposit the conversion charges. It is a known fact that a sale deed cannot be executed of a leasehold property until and unless a conveyance deed is issued by the L&DO in favour of the Owners. Thus, application for sale permission in favour of Col. Sen was made on 25th June, 02 which is after 31st January, 2002. Even the deposit of the conversion charges was made on 8th April, 2003. The suit filed on 16th July, 2005 was thus well within the period of limitation of three years. The judgements cited by the Appellant are clearly distinguishable on facts. In ***S.Brahmanand (supra)***, the Supreme Court has, after discussing the entire law on the subject held –

> *"34. Thus, this was a situation where the original agreement of 10.3.1989 had a "fixed date" for performance, but by the subsequent letter of 18.6.1992 the Defendants made a request for postponing the performance to a future date without fixing any further date for performance. This was accepted by the Plaintiffs by their act of forbearance and not insisting on performance forthwith. There is nothing strange in time for performance being extended, even though originally the agreement had a fixed date. Section 63 of the Indian Contract Act, 1872 provides that every promise may extend time for the performance of the*

contract. Such an agreement to extend time need not necessarily be reduced to writing, but may be proved by oral evidence or in some cases, even by evidence of conduct including forbearance on the part of the other party."

The suit is thus not barred by limitation, as it was filed within three years after the conversion charges were deposited by Col. Sen with the L&DO, on behalf of the owners. Moreover, in the present case, the Agreement to Sell did not have a specific date for execution of the sale deed. The authorities relied upon by the Appellant are cases where there was a specific date for execution of the sale deed and are hence not applicable. The date of 31st January 2002 is for obtaining permissions and not for execution of the sale deed. In any event, since the permissions were not obtained by 31st January 2002, the sale deed could not have been executed. By applying to the L&DO in June 2002, for seeking permission to sell the property to Col.Sen, the Owners had clearly, by their own conduct, extended the time for execution of the sale deed beyond 31st January 2002. Hence it cannot be said that the suit is barred. The clauses in the Agreement especially clause 9 was so clear that if the Agreement did not go through for any reason, the Owners would have had to purchase an alternative property in the same locality of the same value. Thus, the Owners never intended to rescind from the contract. This clause was well within the knowledge of Sh. Ratan Dass, who thereafter appears to have turned dishonest.

26. Shri Manmohan Dutta got registered the sale deed executed on 13th June, 2005 in his favour. It is neigh possible that the Appellant believed in the documents which were shown to him by Shri Ratan Dass and Sh.Vikas Chanana. The sale deed refers to the same four owners and again refers to

the Power of Attorney dated 12th August, 2003 in favour of Shri Ratan Dass and the Power of Attorney dated 19th April, 2005 in favour of Shri Vikas Chanana. In the recitals of this sale deed there is no reference to the entire transaction with Col. Sen. An agreement to sell dated 31st August, 2000 in favour of Shri Ratan Dass has been relied upon by the Owners which forms the basis of the sale deed. *Shri Ratan Dass having handed over the possession to Col. Sen could not have, thereafter, conveyed any title whatsoever to a property which he did not own or possess.* Interestingly, in the sale deed dated 13th June, 2005 Shri Ratan Dass has neither confirmed the sale deed nor witnessed it. It is completely possible that Manmohan Dutta may have been conned and cheated by Shri Ratan Dass and/or Shri Vikas Chanana. In that event, the remedy of Manmohan Dutta would be against Shri Ratan Dass and Shri Vikas Chanana. This Court is not examining any claim of Manmohan Dutta against the said two parties. All remedies of Shri. Manmohan Dutta in respect of his claims against Shri Ratan Dass and Shri Vikas Chanana are left open.

27. Insofar as readiness and willingness is concerned, it is the admitted position that Col. Sen has paid a sum of Rs. 9,08,169/- out of the total sale consideration. He continued to liaise with the L&DO, paid the charges to the L&DO as late as in 2003, he applied to the MCD for building plans sanction, he obtained possession letter of the property, he was careful even while giving the original GPA to Sh. Ratan Dass. There was never any hesitation demonstrated by him, on the basis of the evidence on record, that he intended to not pay the remaining consideration amount. The total amount due, was only Rs. 2,91,831/- which as per Clause 4 was to be paid at the time of the execution of the Sale deed. Sh. Ratan Dass, either by himself

or the Owners never demanded the remaining consideration amount. In fact Col. Sen proceeded as if he were the owner of the property. His demise appears to have led Shri. Ratan Dass to indulge in impropriety and sell the property to third parties. His admissions during cross examination clearly demonstrate that there was never any doubt in his mind that Col. Sen was not ready and willing to pay the remaining consideration amount. His cross examination is very significant and is extracted below:

> "*… It is correct that Late Col. S.R. Sen was on friendly terms with me and wanted to purchase a land with built up house in Chitaranjan Park. It is correct that for this reason only, a registered agreement to sell dated 26.12.2001 Ex.PW7/1 was got facilitated by me in which I am a witness…*"

The continuous conduct of Col. Sen who paid the initial amount to the L&DO and the conversion charges in 2003 goes to show that he never imagined the transaction not to go through. In fact Shri. Manmohan Dutta, is merely taking advantage of all the procedural formalities completed by Col. Sen, failing which the Sale deed in his could have never been registered.

28. Thus, there can be no doubt whatsoever that there are too many circumstances and facts which point to one conclusion namely that Col. Sen and his LR's are entitled to the reliefs prayed for. It is the admitted position that Smt. Kamalini Biswas was the original owner of the suit property and her LRs are the present Owners. The Owners have executed two documents which incontrovertibly proved that the property was sold to Col. Sen namely the agreement to sell signed by Shri Prithwis Biswas and the application to the L&DO seeking permission to sell, which was signed by all four owners seeking permission from the L&DO to sell the suit property to Col. Sen.

These two documents establish the right of the Plaintiffs beyond a pale of doubt.

29. The Trial Court is, therefore, right in holding that the Plaintiffs are entitled to the reliefs prayed for. The judgment of the Trial Court dated 11th July, 2016 warrants no interference. This Court, in these proceedings cannot adjudicate any issue between Shri. Manmohan Dutta and Shri. Ratan Dass and Shri. Vikas Chanana. In this appeal, this court is only concerned with the rights of the LRs of Col. Sen whose rights stand established. The title of Manmohan Dutta is faulty as compared to that of the LRs of Col. Sen. It is clarified that Shri. Manmohan Dutta's remedies against Shri Ratan Dass and Shri Vikas Chanana are left open.

30. This case highlights a serious flaw in registration of title documents in respect of immovable property in Delhi. The initial Agreement to Sell dated 26th December, 2001 between Col. Sen and the owners was registered with Sub-Registrar-V (Ex. PW 7/1). The second set of documents in respect of same property between Manmohan Dutta and Vikas Chanana were also registered with the same Sub-Registrar-V (Ex. PW 7/2). It is surprising that there is no mechanism in which such a subsequent registration could have been avoided. A simple computerized check relating to the property ought to have revealed that the registered agreement to sell in favour of Col. Sen was already executed and registered. The first set of documents and the second set of documents had no linking person between each other. The second set of documents ought to have begun where the first set of documents ended. There could not have been a vacuum. The purchaser in the first agreement to sell was Col. Sen and the seller in the documents executed in favour of Shri. Manmohan Dutta was Vikas Chanana. The Sub-

Registrar ought to have noticed there was no link established between Col. Sen and Shri Vikas Chanana and ought to have raised some objection before registering the second set of documents. If no link was established between Col. Sen and Shri Vikas Chanana, the second sale ought not to have been registered without such a link being established.

31. Multiple sales of the same property in the manner as it has happened in the present case calls for an overhaul of the mechanism at the level of registration by the Sub-Registrars. The Court has not been shown any existing rules or mechanism to prevent the recurrence of such situations. The Supreme Court in ***Suraj Lamp and Industries Pvt Ltd v. State of Haryana and Ors. (2009) 7 SCC 363 (hereinafter `Suraj Lamps 1')*** observed in respect of sales by GPA/SA/Will as under:

> *".....20. Whatever be the intention, the consequences of SA/GPA/will transactions are disturbing and far-reaching, adversely affecting the economy, civil society and law and order. Firstly, it enables large-scale evasion of income tax, wealth tax, stamp duty and registration fees thereby denying the benefit of such revenue to the Government and the public. Secondly, such transactions enable persons with undisclosed wealth/income to invest their black money and also earn profit/income, thereby encouraging circulation of black money and corruption.*
>
> *21. This kind of transactions have disastrous collateral effects also. For example, when the market value increases, many vendors (who effected power of attorney sales without registration) are tempted to resell the property taking advantage of the fact that there is no registered instrument or record in any public office thereby cheating the purchaser. When the purchaser under such 'power-of-attorney sales' comes to know about the vendor's action, he invariably tries*

to take help of musclemen to 'sort out' the issue and protect his rights. On the other hand, real estate mafia many a time purchase properties which are already subject to power-of-attorney sale' purchasers from asserting their rights. Either way, such power-of-attorney sales indirectly lead to growth of real estate mafia and criminalisation of real estate transactions"

The above observations in ***Suraj Lamps 1 (supra)*** thereafter led to the judgement in ***Suraj Lamp and Industries Private Limited (2) Vs. State of Haryana (2012) 1 SCC 656 (hereinafter Suraj Lamps 2)*** wherein the Supreme Court declared that SA/GPA/Will transactions do not convey any title nor create any interest in an immovable property. In ***Suraj Lamps 2 (supra)*** the Supreme Court further observed in respect of such transactions as under:

"It also makes the title verification and certification of title, which is an integral part of orderly conduct of transactions relating to immovable property, difficult, if not impossible, giving nightmares to bona fide purchasers wanting to own a property with an assurance of good and marketable title.

.....

23. Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property."

However, bonafide/genuine transactions entered into prior to the date of the said judgement were protected. The transaction between Col. Sen and the owners, in the present case is a bonafide/genuine transaction. There was an impediment in registration of sale deed as the property was not yet converted to free-hold. The Agreement to Sell was executed prior to the

Suraj Lamps (2) supra. The same was duly registered and there was no intention to evade stamp duty.

32. As held by the Supreme Court verification and certification of title is an integral part of orderly conduct in transactions relating to immovable property. A mechanism needs to be evolved to ensure that multiple sales for the same property are registered only after proper verification establishing the chain of title. This would ensure reduction in litigation and also save purchasers and sellers of property from dubious transactions. The act of registration is not an empty formality. It is an act which confers rights and could affect the common man immensely if it is not carried out properly. Unscrupulous persons could misuse the system and create rights in favour of multiple persons, as has happened in the present case. Multiple co-existing registrations in respect of the same property ought not to be permitted. The sale of immovable property is supposed to be entered into a data base in the city of Delhi and whenever registration is being done for a property, the data ought to be available as to the last document registered for the same property. If there is a previously registered document for the same property, the subsequent registration ought not to be permitted unless a no-objection is obtained or a link is established. This would ensure that innocent citizens who purchase properties are not deprived of their hard-earned money by being embroiled in litigation. Most of the times it is observed that the persons who sell the properties and receive the consideration amount, do not appear in the litigations and purchasers of the properties are left to litigate between each other.

33. In conclusion, the Appellant is directed to hand over possession of the suit property to the Plaintiffs within 4 weeks. The Owners are directed to

execute the sale deed in favour of the Plaintiffs within 8 weeks from today. At the time of registration of the sale deed the balance sale consideration of Rs.2,91,831/-, if any, shall be paid to the Owners. If the owners do not come forward for execution of the sale deed, Plaintiffs are at liberty to approach the court. The decree of permanent injunction and declaration granted by the Trial Court is upheld. The appeal is disposed of and all pending applications are disposed of. No order as to costs.

34. A copy of this order be sent to the Secretary, Ministry of Urban Development and Govt. of NCT of Delhi in order to create a mechanism for registering transactions in respect of immovable property and to ensure that a proper search is done before a new transaction is registered.

PRATHIBA M. SINGH, J.
Judge

MAY 8, 2018/*dk*