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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on 2nd April, 2018
Date of decision : 4th July, 2018

\+ **RFA 892/2016 & CM Nos. 42294/2016 & 37579/2017**

ARBINDER SINGH KOHLI & ANR. ..... Appellant
Through: Shri Harish Malhotra, Senior Advocate with Shri Mohit Jolly and Shri Vikas Malhotra, Advocates.

versus

GOBIND KAUR KOHLI ..... Respondent
Through: Shri P.S. Bindra with Ms. Rishika Arora, Ms. Ashmita, Shri Bhuvneshwar and Ms. Savi Abbot, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. Mrs. Gobind Kaur Kohli – Respondent/Plaintiff (*hereinafter*, '*Plaintiff'*) filed a suit for mandatory injunction against her son and daughter-in-law, Shri Arbinder Singh Kohli and Mrs. Rabinder Kaur Kohli – Appellants/Defendants (*hereinafter, 'Defendants'*).

2. The Plaintiff claimed ownership rights in suit property bearing No.E-32-A, Neb Valley, Neb Sarai, New Delhi-110068 admeasuring 500 square yards falling in Khasra No.234/2, 234/3 and 234/2/1 in the Revenue Estate of Village Neb Sarai, Tehsil Hauz Khas, New Delhi (*hereinafter, 'suit property*'). She claimed that she had acquired ownership vide Agreement to Sell dated 17th May, 2002. Upon purchase of the property she, along with her husband, her son and daughter-in-law along with their children moved into the suit property. She claimed that she had permitted the Defendants to

reside in the first floor and also used half portion of the garage of the ground floor as an office.

3. According to the Plaintiff, the Defendants carried out changes in the property in 2006 when she and her husband were on vacation. She was forced to lodge a police complaint on 16th August, 2006 and upon the intervention of the police, the Defendants agreed to restore the premises to its original shape. However, despite agreeing, the Defendants did not abide by their assurances. In July, 2009, again while the Plaintiff and her husband were visiting USA, the Defendants applied and obtained an electricity connection from BSES which was supplying electricity to Sainik Farms. This was done on the basis of a Power of Attorney dated 17th May, 2002 which was executed in favour of the daughter-in-law at the time when the Agreement to Sell was executed. Realizing that the Defendants may have some oblique motives, the Plaintiff and her husband contacted Shri Gautam Kapoor who had executed the Power of Attorney in favour of Defendant No.2. The said Shri Gautam Kapoor cancelled the said Power of Attorney and the said cancellation was registered with the Sub-Registrar on 10th December, 2009. After cancelling the Power of Attorney executed in favour of Defendant No.2, a fresh Power of Attorney was executed by Shri Gautam Kapoor in favour of the Plaintiff's husband. In view of the misbehavior of the Defendants and their children towards the Plaintiff and her husband and use of abuses and derogatory language, the Plaintiff called upon the Defendants to vacate the suit property by notice dated 29th August, 2010 (inadvertently mentioned as 29th October, 2010).

4. The Defendants replied vide letter dated 9th October, 2010 and refused to comply with the requisitions of the Plaintiff. In the said reply, the

plea was taken by Defendant No.1 that he had contributed equal funds for acquiring the suit property and hence the Plaintiff does not have sole ownership. The Plaintiff then filed the present subject suit seeking the following reliefs:

> *"(i) Pass a decree of mandatory injunction in favour of the Plaintiff and against the Defendants directing the Defendants to remove themselves and their belongings from the suit property.*
>
> *AND/OR*
>
> *IN THE ALTERNATIVE*
>
> *Decree of possession in favour of the Plaintiff and against the Defendants, directing the Defendants to delivery over vacant and peaceful possession of the suit property to the Plaintiff.*
>
> *(ii) A decree of injunction restraining the Defendants, their agents, servants, employees, representatives and / or anybody claiming through them or on their behalf from in any manner whatsoever from re-entering in any portion of the suit property.*
>
> *(iii) Mesne Profit / damages for Defendants unauthorisedly using the suit property equivalent to market rate of rent of suit property."*

5. In the written statement, the Defendants took the plea that the property is a joint family property belonging to the parents and the Defendants. Since the Plaintiff is only one member of the joint family, she has no right to call upon the Defendants to leave the suit property. It was also claimed that the property was purchased from the funds of the joint family. Defendant No.1 claimed that he was the adopted son of the Plaintiff

and her husband, being the biological son of Shri Jagmohan Singh Kohli (real brother of Plaintiff's husband). He then claimed that there was a joint family comprising of the three brothers including his real and adoptive father, who were the sons of late Shri Jagat Singh who were carrying on business of auto parts and export of buffalo meat. It was pleaded that there were various properties in Mumbai and in Hyderabad, which were split between the brothers, and a house was purchased in Defence Colony, out of the funds. The said Defence Colony house was sold and the suit property was purchased along with another property in DLF Gurgaon, which was thereafter sold by the Plaintiff's husband. It was further pleaded by the Defendants that the Plaintiff's husband i.e. the father misappropriated huge sums which led to distance/strained relations between the family. According to the defendants a Power of Attorney had been executed in favour of Defendant No.2 and hence they were the co-owners of the suit property.

6. The following issues were framed in the suit: -

> *"(i) Whether the plaintiff does not have locus standi to file the present suit? OPD*
>
> *(ii) Whether the suit property E-32A, Neb Valley, Neb Sarai, New Delhi - 110 068 is a joint family property belonging to plaintiff, her husband-defendant no.2 and defendant no.2? OPD*
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> *(iii) Whether the suit of the plaintiff has been properly valued for the relief of possession and court fees in accordance with law affixed on the plaintiff? If not, to what effect? OPP*
>
> *(iv) Whether the plaintiff is entitled to any mesne profit/damages? If so, at what rate and for what period? OPP*
>
> *(v) Whether the plaintiff is entitled to a decree*

of mandatory injunction or in the alternative decree of possession against the defendants? OPP

(vi) Whether the plaintiff has no locus standi to file the present suit as alleged by the defendant? OPD

(vii) Relief."

7. The Plaintiff appeared as PW-1 and her husband deposed as PW-2. The following were the other witnesses produced by the Plaintiff: -

(i) PW-3, Shri S.P. Samariya, Police Station Mehrauli, New Delhi;

(ii) PW-4, Ms. Veena Verma, who retired from police service in 2011;

(iii) PW-5, Shri Mukesh Kumar Verma, official from office of Sub Registrar-V, Mehrauli, New Delhi;

(iv) PW-6, Mrs. Sonia Jain, official from Sub Registrar-VII, Vikas Sadan, INA, New Delhi;

(v) PW-8, Shri Manoj Sagar, official working in the office of Sub Registrar III, Asaf Ali Road, New Delhi;

(vi) PW-9, Shri Mukesh Verma, official working in the office of Sub Registrar V, Mehrauli, New Delhi;

(vii) PW-10, Shri Karam Singh, Clerk, MCD, South Zone, Delhi;

8. Defendant No.1, Shri Arbinder Singh Kohli, appeared as DW-1. The evidence was recorded by a Local Commissioner. The Trial Court after perusing the evidence, decreed the suit in the following terms:-

"*In view of my findings on issues no. 3 and 4, the suit is decree. The defendants are directed to remove themselves and their belongings from the property bearing no. E-32-A, Neb Valley Neb Sarah New Delhi-110068, admeasuring 500 square yards falling* *in Khasra no. 234/2, 234/3 and 234/2/1 in the Revenue Estate of Village Neb Sarai, Tehsil Hauz Khas, New Delhi and put the plaintiff into the possession thereof within two months from today. Keeping in view the relation of the parties, the damages awarded to the plaintiff are restricted to Rs.5000/- per month from the date of institution of suit till the date of handing over possession. Costs of the suit is also awarded in favour of the plaintiff and against the defendants. Decree-sheet would be prepared accordingly.*"

9. In the present appeal, the matter was initially adjourned to enable parties to negotiate a settlement and thereafter, parties were heard.

Submissions of the Appellants/Defendants

10. Shri Harish Malhotra, Senior Advocate appearing on behalf of the Defendants submitted that the suit property was purchased from the funds of the joint business conducted by the three sons of Late Shri Jagat Singh. The father of Defendant No.1, being one of the brothers, had acquired funds from the joint family business. The family owned joint property in Pedder Road in Mumbai and two flats in Hyderabad. All the three brothers were living in Mumbai. When the house at Pedder Road was sold, a property was purchased in Defence Colony. When the property in Defence Colony was sold, two properties, one in DLF and the suit property were purchased. The DLF property was again jointly in the name of his mother and his wife. Similarly, the suit property is also jointly owned by his mother and wife, according to him.

11. Shri Malhotra further urged that the Agreement to Sell does not confer any title upon the Plaintiff. The consideration was paid from the joint

family funds as admittedly, the Plaintiff did not have any source of income. He relied on the cross-examination of the Plaintiff to the effect that she had no source of income. He further submitted that along with the Agreement to Sell, which was executed by Shri Suresh Chand Kapoor in favour of the Plaintiff, on 17th May, 2002, a Power of Attorney was executed by Shri Gautam Kapoor in favour of Defendant No.2, the daughter-in-law. In the said Power of Attorney, it is recorded that possession is also being given to the daughter-in-law. Though the said Power of Attorney has been subsequently cancelled, the Defendants also have a Power of Attorney from the original owners, i.e. the the Balharas, who were the original Bhumidars of the suit property. He submits that a mere Agreement to Sell which is not registered, cannot confer any title on the Plaintiff in view of the judgment of the Supreme Court in ***Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana (2012) 1 SCC 656*** *(hereinafter, 'Suraj Lamps')*.

12. In the absence of registration, the Plaintiff is not entitled to any rights in the suit property, in view of Section 17 and 17(1-A) of the Registration Act and Section 53A of the Transfer of Property Act. He further submits that Power of Attorney which is registered transfers the title in favour of the daughter-in-law as it also has the right to sell in her favour. He further submits that the Agreement to Sell merely permits the Plaintiff to seek specific performance and nothing more.

Submissions of the Plaintiff

13. On the other hand, Shri Pawan Bindra appearing for the Plaintiff submits that the Defendants have been taking contradictory stands. Initially it was claimed in the reply to the legal notice that the son had contributed to

the purchase of the property but thereafter, in the written statement, it was pleaded that the property was purchased from joint family funds. These two pleas are self defeating and mutually destructive. He further submits that there is nothing unusual about the sale transactions. Sainik Farms being an unauthorised colony, no sale deeds are registered for properties in Sainik Farms. He submits that as was the practice prevalent in 2002, a full set of documents were executed including an Agreement to Sell, Will, Receipt, possession letter and General Power of Attorney. While all the former were executed in favour of the Plaintiff, the General Power of Attorney was executed in favour of Defendant No.2 as she was the daughter-in-law whom the Plaintiff trusted. The purpose of the General Power of Attorney was merely to enable the execution of a sale deed, at a later point of time, if and when the sale deeds for the suit properties became registrable.

14. He further submits that the entire sale consideration for the suit property went from the bank account of the Plaintiff. The Plaintiff's husband was not part of any HUF, as the businesses were run by various companies, firms, in which third parties also had a share. He cites the example of the buffalo meat business in which one Shri Ramesh Kashyap who was a third party, was also a Director.

15. Insofar as the DLF property is concerned, he submits that Defendant No.2 paid Rs.5,00,000/- for the said property as both the Plaintiff and Defendant No.2 had 50:50 share in the said property. The three sons of late Shri Jagat Singh have never expressed their intention to establish or run an HUF business with them as the coparceners. In the law as prevalent in 2002, women could not have been coparceners, and hence the purchase was not as part of a joint Hindu family. He further submits that the Plaintiff is

not seeking any benefit under 53A of the TPA or seeking specific performance. The Plaintiff is merely seeking to remove the Defendants who were allowed to stay in her property, and the permission having being revoked, they become unauthorised occupants.

16. Shri Bindra further urges that a General Power of Attorney does not require registration and hence it could be cancelled even by an unregistered document. He submits that the second Power of Attorney executed in favour of Defendant No.2, allegedly by the Balharas, has not been pleaded in the written statement, and hence cannot be relied upon. He submits in conclusion that the Plaintiff having paid the consideration to the owners, and having various documents executed in her favour, his client is the rightful owner of the suit property and the Defendants have no right to stay in the suit property.

Details of Documents Executed

17. In 1988, an Agreement to Sell was entered into between Shri Deep Chand and Shri Kishan Chand, Shri Tek Chand, who sold the property vide Agreement to Sell and purchase in favour of Mrs. Vimla Malhotra, and her husband Shri Baldev Raj Malhotra, in whose favour the Power of Attorney was also executed. The sellers are loosely described as the Balharas, and were the original Bhumidars of the suit property. On 20th November, 1992, Mrs. Vimla Malhotra/Shri Baldev Raj Malhotra, entered into an Agreement to Sell and Power of Attorney, in favour of Mrs. Veena Malhotra and Shri Subhash Kundal Lal Malik.

18. On 18th August, 1993, a similar transaction was entered into by Mrs. Veena Malhotra and Shri Subhash Kundal Lal Malik in favour of the

three members of the Ghate family.

19. On 24th May, 1996, the Ghate family entered into an Agreement to Sell with Shri J.P. Gupta and Power of Attorney was executed in favour of Vikas Jain (Nephew of Shri J.P. Gupta).

20. On 23rd September, 1998, Shri J.P. Gupta entered into a similar transaction with Shri Suresh Chand Kapoor and his son Shri Gautam Kapoor.

21. On 17th May, 2002, the following documents were executed: -

- **Exhibit PW1/1 -** Agreement to Sell by Shri Suresh Chand Kapoor in favour of Mrs. Gobind Kohli – This Agreement records the previous history of transactions and also records the payment by cheque of Rs.9,00,000/- which is the sale consideration. The Agreement to Sell provides that the Plaintiff "*Shall hereinafter become the absolute owner/bhumidar of the aforesaid land and shall enjoy all rights of the ownership, possession, privileges, easements and appurtenances, whatsoever of the said land.*" The Agreement also records that the actual vacant, physical possession has been delivered to the Plaintiff and the Plaintiff is in actual physical possession of the aforesaid land. The Plaintiff was also given the right to receive the entire compensation if the suit property gets acquired by the Government. She also was given full right to get the property mutated in her name, and/or in her nominee's name in the revenue records. The Agreement interestingly records that possession was given before signing of the Agreement. The Agreement to Sell is witnessed by Shri Gautam Kapoor and Shri Pramod K. Dang.

- Receipt for a sum of Rs.9,00,000/- duly signed with revenue stamp. This receipt is also witnessed by the same witnesses.
- Possession letter signed by Shri Suresh Chand Kapoor, Plaintiff and the 2 witnesses given in favour of the Plaintiff.
- **Exhibit PW1/2 -** General Power of Attorney is executed by Shri Gautam Kapoor in favour of Mrs. Rabinder Kaur Kohli, Defendant No.2, wife of Defendant No.1 i.e., daughter in law of the Plaintiff.
- **Exhibit PW1/3 -** A Will dated 17th May, 2002 was executed by Shri Suresh Chand Kapoor in favour of Mrs. Gobind Kaur Kohli. The same is a registered Will and is duly witnessed by Shri Vineet Anand and Shri S.S. Sahni.

22. Thereafter, on 10th December, 2009, Shri Gautam Kapoor cancelled the Power of Attorney executed in favour of Defendant No.2. The Said cancellation was duly registered with the Sub-Registrar (**Exhibit PW1/9**), and a fresh Power of Attorney was executed in favour of Shri Rajender Singh Kohli, husband of the Plaintiff. The said Power of Attorney (**Exhibit PW1/10**) is witnessed by S.S. Sahni, Shri Gulratan Singh Kohli and Shri Vineet Anand. Two of the witnesses were the same as in the Will dated 17th May, 2002.

23. Apart from the above mentioned documents, the other documents relied upon by the Plaintiff are: -

(i) **Exhibits PW1/5 and Exhibit PW1/9** respectively - Complaints dated 15th August, 2006 and 19th August, 2006, given by the Plaintiff's husband to the police;

(ii) **Exhibit PW1/21 -** Sale deed dated 21st August, 1970 in respect of Flat bearing No.29, 4th Floor, Mount Unique, Peddar Road, Mumbai;

(iii) **Exhibit PW1/23 -** Sale deed dated 28th August, 1995 in respect of purchase of prop C-320, Defence Colony by Plaintiff;

(iv) **Exhibits PW1/24 to PW1/27 -** Sale deed dated 7th October, 2002 and sale deeds executed by different vendees by the Plaintiff on various portions of C-320, Defence Colony;

(v) **Exhibit PW1/28 -** Copy of lease deed dated 11th October, 2010 along with the bank statements showing leasing of the Sainik Farm property bearing No.433-B at Forest Lane, Sainik Farms, Neb Sarai, New Delhi along with the bank statement showing the payment of monthly lease rent of Rs.63,000/-;

(vi) **Exhibit PW1/9 -** Letter written by Plaintiff to BSES asking for an electricity connection.

(vii) **Exhibit PW1/19 (colly) and Exhibit PW1/20 (colly) -** Receipt showing payment of property tax by the Plaintiff dated 23rd June, 2011 to the MCD, along with the bank statement.

24. None of the documents filed by the Plaintiff are disputed by the Defendants. The Defendants, however, relied on only one document i.e. copy of a Power of Attorney dated 23rd July, 2002 purportedly executed by Balharas in favour of Defendant No.2 (**Mark-A**).

Summary of the Evidence given by the Witnesses

25. PW-1 - the Plaintiff and her husband, PW-2 - primarily exhibited

all the relevant documents. PW-1 in her evidence submitted that her husband and his brothers had started business under the name and style of 'Kohli Brothers'. They were in auto part business, however, thereafter, they moved to the business of export of buffalo meat. She stated that there was a split between the brothers, and her husband thereafter continued the buffalo meat business with Defendant No.1, her son. She confirmed that the Mumbai flat was sold in 1995, and thereafter a flat was purchased in Defence Colony. After selling the property in Defence Colony, a property was purchased in DLF Gurgaon and the suit property was also purchased. She admitted that DLF property was purchased jointly in her name and in the name of daughter-in-law i.e. Defendant No.2. She confirmed that the suit property was purchased from Shri Suresh Chand Kapoor and her son Shri Gautam Kapoor. She also confirmed that the original owners were the Balharas. She stated that at the time when the suit property was purchased, the whole family resided together with the Plaintiff with a common kitchen till 2004. She stated that the businesses were always separate though the brothers used to visit each other regularly. She confirmed that she was always a house wife and did not carry out any business or job. She also confirmed that the buffalo meat business was in the name of 'Linkers International Export Pvt. Ltd'. Even in the cold storage business called Prem Raj Cold Storage there were other shareholders. She submitted that the Mumbai flat was in the joint name of herself and her sister-in-law, Mrs. Surjit Kaur Kohli and when it was sold, she got 50% of the consideration.

26. PW-2 stated in his evidence that he used to do business jointly with his brothers of auto parts, but later on the business was moved into partnership firms. He stated that one third party by the name Shri Raj Kumar

Jaisinghani had started the meat export business. He confirmed that none of the women had any independent source of income. PW-2 was confronted with Mark-A i.e. certified copy of Power of Attorney dated 23rd July, 2002 purportedly executed by Balharas in favour of Defendant No.2. To this, he replied that he could only confirm the same, after seeing the original. PW-2 stated that the Balharas had also executed an affidavit in favour of the Plaintiff and also a Will in favour of the Plaintiff. Apart from this, the entire cross-examination proceeded only in respect to the businesses of PW-2 with his brothers. PW-2, in his affidavit, relied upon a lease deed of a neighbouring property in Sainik Farms to establish the monthly rental of Rs. 63,000/-.

27. PW-4 confirmed the police complaint dated 19th August, 2006 which was given by the Plaintiff's husband to the Police Station, Hauz Khas. PW-5 confirmed that PW-1/9 is a registered document i.e. the deed of cancellation. PW-6 confirmed that PW-1/4, PW-1/3, are both registered documents. PW-8 confirmed that PW-1/23 is a registered document. PW-9 confirmed that PW-1/24, PW-1/25, PW-1/26 and PW-1/27 are all registered documents. PW-10 from the MCD office confirmed all the challans placed as PW-1/19 (Colly).

28. DW-1 stated in his evidence that the property is a joint family property purchased out of the funds generated out of the joint family business. He further stated that the suit property is a joint family property of the Plaintiff, her husband and both the Defendants. He further stated that the money paid for purchase of the property was joint family money, in which his contribution was equal. In his cross-examination, he denied most of the suggestions put to him. He admitted that the DLF property was purchased

out of a loan sanctioned by HDFC Bank. He admitted that in Prem Raj Cold Storage, one Shri Ramesh Kashyap had shareholding, and this dispute had even been adjudicated in the Company Law Board. On a specific question, if in the Income Tax Returns whether he had claimed that he had a part of an HUF, the witness answered as under: -

> "*Q. In any of your income tax returns have you ever disclosed that you are part of HUF or have share in joint family as you have alleged in your written statement and evidence by way of affidavit that there were joint family properties and businesses in which you have a share.*
>
> *Ans. Since I do not have the income tax return at this point of time, hence I am unable to answer the said question.*
>
> *It is incorrect to suggest that I have not filed my income tax return because there is no reference of HUF or joint family business in the said returns and I have falsely stated so in my written statement and my evidence by way of affidavit.*"

Analysis and Findings

29. From an analysis of the documents and oral evidence on record, it is clear that almost all the documents in this case are admitted between the parties. Mark-A being a Power of Attorney purportedly executed by the Balharas in favour of Defendant No.2 has not been proved in accordance with law and cannot be read into evidence. The said document has neither been pleaded nor proved.

30. A perusal of the documents reveals that all the sale transactions, historically, in respect of the suit property have been by means of an

Agreement to Sell coupled with a General Power of Attorney in favour of one of the family members of the purchaser. The reasons for this pattern of sale/purchase of this property located in Sainik Farms may be many but this Court is not concerned with the same. Sufficient to say that this appears to have been the general practice. The sale consideration for the suit property has been paid only from the bank account of the Plaintiff.

31. The Defendants have not placed on record a single document to establish that the Plaintiff's husband ever had an HUF with his brothers. The Defendants have also not placed on record any document to show that there exists an HUF between the Plaintiff's husband and Defendant No.1. In the absence of any document to prove the existence of an HUF, the Defendants' claim that there was an HUF in existence, of which Defendant No.1 was a part, seems a far cry. The existence of an HUF has to be proved in some manner and the intention to establish an HUF by the coparceners has also to be established. The same cannot be asserted without any evidence. The manner in which the Defendants have tried to argue that the funds were from a joint family HUF business is completely farfetched inasmuch as not a single witness has been produced by them to show that there was any intention to establish an HUF or that it had been in existence. There is no doubt that a large number of businesses were carried on by the family of the Plaintiff's husband, however, that itself would not lead to an inference of an HUF.

32. None of the members of the so called HUF have staked any claim to the suit property, or claimed any funds of the HUF were used by the Plaintiff to acquire the suit property. In the absence of such evidence, it cannot be held that the suit property was purchased out of HUF funds.

33. Coming to the issue of joint family, Defendant No.1 has not filed a single bank statement from any of his accounts to show that he had contributed to the purchase of the suit property. In the reply to the legal notice (PW1/17), the Defendant initially claimed that he had equally contributed in the purchase of the property, and in the said reply there was no plea in respect of existence of an HUF of his father. Thus, the plea of contribution ought to have been made good in some form or the other, which is conspicuously lacking. The defence of joint contribution to the purchase is, therefore, rejected.

34. Coming to the issue of the documents which were executed for the purchase of the suit property. A perusal of all the documents clearly shows that at the time of the execution of the Agreement to Sell, various other documents including, the Will, receipt, the possession letter were executed in favour of the Plaintiff by Shri Suresh Chand Kapoor. His title to the suit property is not disputed by the Defendants. The only plea of the Defendants is that Mr. Gautam Kapoor, who was the son of Shri Suresh Chand Kapoor, executed a General Power of Attorney in favour of Defendant No.2. The question, therefore, is what is the effect of the said Power of Attorney in favour of Defendant No.2?

35. A Power of Attorney merely permits the holder to act as the agent of the person executing the attorney. This Power of Attorney on a standalone basis is merely an agency and cannot vest a title in an immovable property. The execution of the Power of Attorney without any consideration thereof, on a standalone basis merely constitutes an agency and nothing more. Even though the Power of Attorney can be termed as being irrevocable, the nature of the documents cannot be changed. This General Power of Attorney has to

be tested as against the entire set of documents executed in favour of the Plaintiff. The pattern which clearly emerges is that the Plaintiff purchased the suit property from Shri Suresh Chand Kapoor and the Power of Attorney was executed in favour of her daughter-in-law by the son of the vendor only to enable the registration of the sale deed at a future point of time. The General Power of Attorney, without the remaining set of documents, does not constitute a transfer of title.

36. Mr. Malhotra relies on ***State of Rajasthan v. Basant Nahata AIR 2005 SC 3401*** *(hereinafter, 'Basant Nahata')* to argue that a Power of Attorney once granted cannot be revoked. It is relevant to note that this judgment clearly observes as under:

> "*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.*"

37. The Power of Attorney being a document appurtenant to the Agreement to Sell, Will and letter of possession, the minute the Defendant no.2 acts contrary to the interest of the person who is the actual purchaser, she breaches the trust of the donor of the Power of Attorney. Thus Shri Suresh Chand Kapoor cancelled the Power of Attorney. In ***Suraj Lamps (supra)***, the Supreme Court clearly holds -

> "*25. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is*

likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

26. We have merely drawn attention to and reiterated the well- settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under Section 53A of Transfer of Property Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, sons, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing *apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in land relating to apartments in favor of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bonafide/genuine transactions.*"

38. Thus, the irrevocable General Power of Attorney in favour of Defendant No.2 does not have the effect of transferring any title in favour of Defendant No.2. The Plaintiff can in fact use the Agreement to Sell and the General Power of Attorney executed in favour of her husband to get the conveyance deed executed in her favour as held in ***Suraj Lamps***, if and when the same becomes possible or permissible.

39. Moreover the General Power of Attorney in favour of defendant no.2 having now been cancelled by a registered cancellation deed, it no longer holds good. The new Power of Attorney holder being the Plaintiff's husband, he now enjoys the trust of the owner for execution of the sale deed. ***Basant Nahata (supra)*** clearly holds that the attorney holder acts in a fiduciary capacity. Once the trust reposed in the attorney is lost, exercise of the rights by the attorney can no longer be done. ***Suraj Lamps (Supra)*** holds that the attorney holder can execute a deed of conveyance and convey title on behalf of the granter, but for that the Power of Attorney has to be in existence.

40. The Plaintiff herein, is not seeking protection of her possession

under Section 53A of the TPA in the present case. She, having purchased the property through various documents namely, Agreement to Sell, Will, letter of possession and receipt, is seeking to evict her son and daughter-in-law who she had permitted to stay with her in the suit property. The Plaintiff only needs to establish a better title than the Defendants and not an absolute title. ***Suraj Lamps (Supra)*** clearly holds that though sales by Agreement to Sell, Will, etc, are not legally valid modes of transfer, they are permitted to get the transactions already entered into, regularised. Thus to this extent, ***Suraj Lamps (Supra)***, completely protects the Plaintiff's rights. The Plaintiff has taken steps to get the General Power of Attorney in favour of Defendant No.2 cancelled and get a new Power of Attorney executed in favour of her husband. The parties who have purchased properties by means of Agreement to Sell/Will are entitled to obtain and seek specific performance. ***Suraj Lamps (Supra)*** also recognises that on the basis of such documents, even mutations made by the municipal or revenue authorities need not to be disturbed. A General Power of Attorney given amongst family members is also recognised by ***Suraj Lamps (Supra)***.

41. The history of transactions in respect of the suit property shows that while the main Agreement to Sell and the accompanying documents like Will, Receipt, Letter of Possession, are executed in favour of one person, the General Power of Attorney is executed in favour of a family member in order to enable the execution of a conveyance deed in future. Thus, the circumstances in the present case clearly show that the Plaintiff got the GPA executed after paying the consideration amount in favour of her daughter-in-law by reposing her trust and faith in her. This is a simple transaction not between the Kapoors and Defendant No.2, but in fact, the Plaintiff allowing

the General Power of Attorney to be executed in favour of her daughter-in-law. The Defendant No.2 had not contributed any amount in the purchase of the property. No member of the family has been able to establish any contribution. The manner in which the Defendants seek to trace out funds from past businesses cannot establish that the amount was from the joint family businesses. The possession letter having been executed in favour of the Plaintiff and the Agreement to Sell clearly recording that the possession was handed over even prior to the execution of the documents on 17th May, 2002, it is clear that the Plaintiff was also in possession even prior to the General Power of Attorney being executed. Thus, the Defendant No.2 did not come into possession due to the execution of the General Power of Attorney, but because the Plaintiff permitted her to be in possession as a member of the family and nothing more. The Plaintiff is thus declared as owner of the suit property by virtue of documents namely; Agreement to Sell dated 17th May, 2002, receipt dated 17th May, 2002, possession letter dated 17th May, 2002, and Will dated 17th May, 2002

42. As observed by this Court, in ***Sachin & Anr. v. Jhabbu Lal & Anr. AIR 2017 Del 1***, the Plaintiff has established a better right and title to the suit property than her son and daughter-in-law, who were permitted to live in the suit property by her.

43. Thus, the judgment and decree of the Trial Court does not call for any interference. The Defendants are given four weeks time to vacate the suit premises, and remove their belongings and articles from the suit property.

44. Insofar as mesne profits are concerned, the Defendants have been in possession of the first floor of the property. PW-2 has placed on record

the documents to show that the monthly rent for such properties is in the range of Rs.63,000/-. Since the Defendants have been in occupation of half of the suit property, the mesne profits are modified from Rs.5000/- per month to Rs.30,000/- per month on the same terms as has been directed by the Trial Court. The payment be made by the Defendants/Appellants within a period of eight weeks.

45. Appeal is dismissed in the above terms. No order as to costs. Miscellaneous applications stand disposed of.

PRATHIBA M. SINGH, J.
Judge

JULY 04, 2018
Rekha

HIGH COURT OF DELHI