

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

+ **RFA No. 966/2018**

% **30th November, 2018**

ABHISHEK SHARMA & ANR.

..... Appellants

Through: Mr. Vijay Sharma and Mr. Anuj
Pal, Advocates (Mobile No.
9811368656).

versus

JYOTI MAKHIJA

..... Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 49860/2018 (for exemption)

1. Exemption allowed, subject to just exceptions.

C.M. stands disposed of.

RFA No. 966/2018 and C.M. Appl. No. 49859/2018 (for stay)

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit

impugning the Judgment of the trial court dated 21.08.2018 by which the trial court has decreed the suit for possession, recovery of arrears of rent and permanent injunction filed by the respondent/plaintiff against the appellants/defendants. As per the plaint, the appellant no. 1/defendant no. 1 was a tenant of the respondent/plaintiff and the last paid rate of rent was Rs. 6,000/- per month taking the premises outside the protection of the Delhi Rent Control Act, 1958.

3. The facts of the case are that appellant no. 2/defendant no. 2 was the original owner of the suit property being LIG Flat No. 13-B (GF), Block DB situated at G-8 area, Rajouri Garden, Delhi. The appellant no. 2/defendant no. 2 sold the suit property to the respondent/plaintiff for a consideration of Rs. 4,25,000/- in terms of the usual Documentation dated 08.08.2000, and this documentation consists of the agreement to sell, power of attorney, will, receipt, etc. Out of the various documents executed on 08.08.2000 by the appellant no. 2/defendant no. 2 in favour of the respondent/plaintiff, two documents being the Power of Attorney and the Will are duly registered with the Sub-Registrar. The respondent/plaintiff in terms of the Documentation dated 08.08.2000 received actual, physical and

vacant possession of the suit property. Later on 13.10.2000, the appellant no. 1/defendant no. 1, who is the son of appellant no. 2/defendant no. 2, asked the respondent/plaintiff for a tenancy of the suit property in his favour at Rs. 3,500/- per month. Accordingly, a Rent Agreement, Ex.PW1/5, was executed by the appellant no. 1/defendant no. 1 in favour of the respondent/plaintiff. Rentals were paid till 15.02.2001 and rent receipts were also issued by the respondent/plaintiff in favour of the appellant no. 1/defendant no. 1, and these rent receipts are duly counter signed by the appellant no. 1/defendant no. 1. Rent in March, 2004 was increased to Rs. 6,000/- per month when an additional room in the front of the suit property was also let out to the appellant no. 1/defendant no. 1. The enhanced rent at Rs. 6,000/- per month was paid from April, 2004 to August, 2004 and thereafter the appellants/defendants stopped paying the rent. A Legal Demand Notice was issued on 23.08.2007, whereafter the appellant no. 1/defendant no. 1 handed over a cheque bearing no. 159032 dated 15.09.2007 drawn on Syndicate Bank for a sum of Rs. 2,16,000/- towards the arrears of rent but this cheque was dishonoured with the remarks of no balance and signatures differing. Another

Notice dated 10.01.2008 was served upon the appellant no. 1/defendant no. 1 and the appellant no.1/defendant no. 1 issued another cheque bearing no. 848606 dated 06.02.2008 for a sum of Rs. 2,46,000/- drawn on ICICI bank for rental arrears upto 15.12.2007. This cheque was also returned dishonoured with the endorsement of insufficient funds. Accordingly, the subject suit for possession, decree for recovery of arrears of rent and for *mesne* profits was filed.

4. The appellants/defendants filed their written statement. It was denied that there existed a relationship of landlord and tenant between respondent/plaintiff and appellant no. 1/defendant no. 1. It was pleaded that the appellants/defendants were the owners of the property and continued to be the owners and in possession of the suit property. In the written statement it was denied that the ownership of the suit property was transferred to the respondent/plaintiff by Documentation dated 08.08.2000 for a consideration of Rs. 4,25,000/-. Issuing of the cheques by the appellant no. 1/defendant no. 1 in favour of the respondent/plaintiff was denied.

5. After pleadings were complete, the trial court framed issues and parties led evidence, and these aspects are recorded in paras 10 to 12 of the impugned judgment, and these paras read as under:-

“10. Issues, framed on 16.05.2008 are as follows: -

1. Whether the plaintiff is entitled to decree of possession in respect of the suit property No. LIG Flat, 13-B, with additional room in block DB (GF) at G-8, Area Rajouri Garden, New Delhi? OPP

2. Whether the plaintiff is entitled to the decree of Rs. 2,46,000/- as claimed? OPP

3. Whether the plaintiff is entitled to decree of injunction as prayed for? OPP

4. Whether the plaintiff is entitled to a decree for damages/*mesne* profits @ Rs. 12,000/- PM for illegal and unauthorized use of the suit property from Feb. 08 till the time of realization of the possession of the suit property? OPP

5. Whether defendants continue to owner of the suit premises and whether the suit is liable to be dismissed for this reason? OPD {framed in terms of Order dt. 16.03.2009 of Delhi High Court in *Abhishek Sharma & Anr. vs. Jyoti Makhija, CC(M) 1111/2008*}

6. Relief.

11. In plaintiff's evidence, six witnesses were examined. They are as follows: - (a) PW1 Vipin Kumar (plaintiff's husband). (b) PW2 Om Prakash, UDC, Sub-Registrar-II, Janak Puri, Delhi. He appeared with the registered General Power of Attorney Ex. PW1/3 and the registered Will (both dt. 08.08.2008) executed by defendant no.2 in plaintiff's favour qua the suit property. (c) PW3 Smt. Poonam Anand, Assistant Finance Officer. She deposed that the electricity connection in the suit property was installed in the name of Kuldeep Chander and which was later transferred to the name of Sh. S.K. Sharma. She further deposed about several complaints of plaintiff's husband alleging illegal transfer of the connection to the name of S.K. Sharma. (d) PW4 Head Constable Raj Singh. He exhibited on record about several complaints lodged by plaintiff's husband against the defendants. He also exhibited a complaint dt. 26.05.2005 of defendant no.2 as Ex. PW4/E and its entry in the NCR

register as Ex. PW4/D. (e) PW5 Kamal Kant Khandelwal, Handwriting and Fingerprint expert. He exhibited his report as Ex. PW5/36. (f) PW6 O.P. Chaudhary, Notary Public. He deposed that he had signed on documents Ex. PW1/3 to Ex. PW1/11.

12. In defendants' evidence following two witnesses were examined: (a) DW1 Abhishek Sharma (defendant no.1), and (b) DW2 Anil Kumar Singh, LDC, Sub-Registrar-VII, Delhi.”

6(i). The trial court in my opinion has rightly decreed the suit by holding that in terms of the Documentation dated 08.08.2000, including the registered Power of Attorney and Will proved as Ex.PW1/3 and PW1/4, the respondent/plaintiff had purchased the suit property from the appellant no. 2/defendant no. 2. The trial court has rightly referred to the fact that not only the registered documents bear the photographs of the appellant no. 2/defendant no. 2, but the presence of appellant no. 2/defendant no. 2 before the Sub-Registrar is also shown in various signatures which have been put by the appellant no. 2/defendant no. 2 before the Sub-Registrar at the time of registration of the Power of Attorney and the Will dated 08.08.2000. The factum of registration of the Power of Attorney and Will was proved by summoning the officials from the Sub-Registrar's office, PW2/Sh. Om Prakash, UDC. Sh. Vipin Kumar who was the husband of the respondent/plaintiff, and who was also her attorney for the suit

proceedings, is a witness to the Documentation dated 08.08.2000. The trial court also notes that on the photographs of the appellant no. 2/defendant no. 2 as affixed on the registered documents, there is the seal of the Sub-Registrar. The trial court therefore has rightly held that once the documents being the Power of Attorney and Will Ex.PW1/3 and Ex.PW1/4 are found to be duly registered before the Sub-Registrar, hence these documents cannot be forged and fabricated documents as argued by the appellants/defendants. The trial court has rightly reasoned that a convenient police complaint made by the appellants/defendants on 25.05.2005, much later than the execution and registration of the documents on 08.08.2000, that the appellant no. 2/defendant no. 2 had misplaced her plastic bag containing the original property papers, cannot in any manner help the appellants/defendants that the suit property was not transferred by the appellant no. 2/defendant no. 2 to the respondent/plaintiff. The appellant no. 1/defendant no. 1 in his cross-examination had also conceded that the documents do bear the signatures of his mother being the appellant no. 2/defendant no. 2 and that no suit was at all filed by the appellants/defendants for cancellation of the Documents dated

08.08.2000 including the registered Power of Attorney and Will Ex.PW1/3 and PW1/4. The trial court has also referred to the evidence of PW6/Sh. O.P Chaudhary who was the Notary Public and who states that he had signed the documents executed in favour of the respondent/plaintiff on 08.08.2000. The Notary Public identified his signatures at Point A on the Documentation dated 08.08.2000 with the indemnity bond which was attested by the Notary Public being proved and exhibited as Ex.PW6/1 and the possession letter exhibited as Ex.PW6/2. The trial court has also rightly referred to the report of the handwriting expert of the respondent/plaintiff, PW5/Sh. Kamal Kant Khandelwal whose report was proved as Ex.PW5/36. The photographs of the report and rent receipts were proved as Ex.PW5/1 to Ex.PW5/3 and the report and rent receipts being themselves proved as Ex.PW1/6 to Ex.PW1/9.

6(ii). I may note that the trial court has also rightly concluded that the rent agreement Ex.PW1/5 was executed by the appellant no. 1/defendant no. 1 in favour of the respondent/plaintiff and the rent receipts were proved as Ex.PW1/6 to PW1/9, and which are duly signed by the appellant no. 1/defendant no. 1. The trial court has also

rightly reasoned that the convenient denial by appellant no. 1/defendant no. 1 of having issued two cheques dated 15.09.2007 for Rs. 2,16,000/- and 06.02.2008 for Rs. 2,46,000/- is only an illegal and convenient denial because appellant no.1/defendant no.1 has only made a bald averment that he had not issued any cheques which were returned dishonoured. The trial court has rightly reasoned that appellants/defendants have failed to give any explanation as to how the cheques landed in the hands of the respondent/plaintiff. On account of the bald and vague denial, the trial court has rightly held that the two cheques which were dishonoured were issued by the appellant no. 1/defendant no. 1 towards arrears of rent.

7. I do not find any illegality or perversity in the aforesaid reasoning and conclusion of the trial court and therefore it is held that the trial court has rightly held the respondent/plaintiff to be the owner of the suit property in terms of the Documentation dated 08.08.2000.

8. Once the respondent/plaintiff was the owner of the suit property, therefore, the suit for possession and *mesne* profits has rightly been decreed including by holding that appellant no.

1/defendant no. 1 was therefore only a tenant and that appellant no.2/defendant no. 2 was not the owner of the suit property.

9. Learned counsel for the appellants/defendants firstly argued before this Court that the Documentation dated 08.08.2000 executed in favour of the respondent/plaintiff by the appellant no.2/defendant no.2 are illegal documents as the same are hit by the ratio of the judgment of the Supreme Court in the case of ***Suraj Lamps & Industries (P.) Ltd. v. State of Haryana and Anr. (2012) 1 SCC 656***. The trial court has rightly rejected this argument in para 26 of the impugned judgment by referring to the judgment passed by this Court in the case of ***Ramesh Chand v. Suresh Chand and Anr., (2012) 188 DLT 538***. In ***Ramesh Chand's case (supra)*** this court has referred to the relevant observations of the trial court in ***Suraj Lamps (supra)*** that the said judgment of the Hon'ble Supreme Court did not prevent creation of rights under Section 53A of the Transfer of Property Act, 1882 or under an irrevocable power of attorney issued under Section 202 of the Indian Contract Act, 1872. In the present case, the documentation executed by the appellant no.2/defendant no.2 in favour of the respondent/plaintiff is dated 08.08.2000 i.e. prior to

coming into force of amended Section 53A of the Transfer of Property Act alongwith the related provisions by Act 48 of 2001 with effect from 24.09.2001. Therefore, it is only after 24.09.2001 that an agreement to sell falling under Section 53A of the Transfer Property Act was required to be stamped and registered whereas in the present case the documentation executed in favour of the respondent/plaintiff is dated 08.08.2000 being prior to the amendment brought about by Act 48 of 2001. The relevant paras of the judgment in the case of **Ramesh Chand's case (supra)** are paras 1 to 3, and these paras read as under:-

“1. This Regular First Appeal was dismissed by a detailed judgment on 28.2.2011. A Special Leave Petition was filed in the Supreme Court against the judgment dated 28.2.2011 and the Supreme Court has remanded the matter back for a fresh decision by its order dated 31.10.2011. The order of the Supreme Court dated 31.10.2011 is based on the issue of the Supreme Court passing the judgment in the case of **Suraj Lamps & Industries Pvt. Ltd. Vs. State of Haryana and Anr. 183 (2011) DLT 1 (SC)**, and as per which judgment the Supreme Court overruled the Division Bench judgment of this Court in the case of **Asha M. Jain Vs. Canara Bank 94 (2001) DLT 841**. Since the judgment of this Court dated 28.2.2011 had relied upon the Division Bench judgment in the case of **Asha M. Jain (supra)**, and which judgment was over ruled the Supreme Court in the case of **Suraj Lamps & Industries Pvt. Ltd. (supra)**, the matter was therefore remanded back to this Court.

2. Before I proceed to dispose of the appeal, and which would turn substantially on the judgment in the case of **Suraj Lamps & Industries Pvt. Ltd. (supra)**, it is necessary to reproduce certain paras of this judgment of the Supreme Court, and which paras are paras 12, 13, 14 and 16, and which read as under:-

“12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property (**except to the limited right granted under Section 53A of Transfer of Property Act**). According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

Scope of Power of Attorney

13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time **unless it is made irrevocable in a manner known to law**. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In *State of Rajasthan v. Basant Nehata* MANU/SC/0547/2005 : 2005 (12) SCC 77 this Court held:

“A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favor of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of-Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. **Except in cases where power of attorney is coupled with interest**, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.”

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

Scope of Will

14. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivo. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not worth the paper on which it is written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (see Sections 69 and 70 of Indian Succession Act, 1925). Registration of a will does not make it any more effective.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.”

(emphasis added)

3. A reference to the aforesaid paras shows that unless there is a proper registered sale deed, title of an immovable property does not pass. The Supreme Court has however reiterated that rights which are created pursuant to Section 53A of the Transfer of Property Act, 1882 dealing with the doctrine of *part performance* (para 12), an irrevocable right of a person holding a power of attorney given for consideration coupled with interest as per Section 202 of the Contract Act, 1872 (para 13) and devolution of interest pursuant to a Will (para 14). Therefore, no doubt, a person strictly may not have complete ownership rights unless there is a duly registered sale deed, however, certain rights can exist in an immovable property pursuant to the provisions of Section 53A of the

Transfer of Property Act, 1882, Section 202 of the Contract Act, 1872. There also takes place devolution of interest after the death of the testator in terms of a Will.”

10. This Court, therefore rejects the argument urged on behalf of the appellants/defendants that the ratio of the judgment of the Hon’ble Supreme Court in the case of *Suraj Lamps (supra)* in any manner prohibits the entitlement of the respondent/plaintiff to the suit property in terms of the Documentation dated 08.08.2000.

11(i). Learned counsel for the appellants/defendants then argued that the evidence led on behalf of the respondent/plaintiff is not valid evidence because the respondent/plaintiff has not stepped into the witness box and the evidence led on behalf of the respondent/plaintiff is by her attorney, and therefore the evidence of an attorney cannot be looked into. Reliance in this regard is placed upon the judgment of the Hon’ble Supreme Court in the case of *Janki Vashdeo Bhojwani and Another v. Indusind Bank Ltd. and Others, 2005 (2) SCC 7*.

11(ii). Even this argument urged on behalf of the appellants/defendants is misconceived and is liable to be rejected for the reason that an attorney who is aware of the facts of the case can

well depose, and the attorney in the present case, (who is none other than husband of the respondent/plaintiff) has specifically stated in his affidavit by way of evidence that he is deposing because he is conversant with the facts of the case. Though the counsel for the appellants/defendants first argued that there is no deposition by Sh. Vipin Kumar, PW1, husband of the respondent/plaintiff, that he was aware of the facts of the case, but when the attention of the counsel for the appellants/defendants was drawn to para 1 of the affidavit of Sh. Vipin Kumar, wherein it is specifically stated that Sh. Vipin Kumar is competent to depose because he is fully conversant with the facts of the case, counsel for the appellants/defendants had no option but to concede that the attorney and husband of the respondent/plaintiff had deposed as a witness because he was aware of the facts of the case. In any case, attorney and husband of the respondent/plaintiff is a witness to the Documentation dated 08.08.2000 being the registered Power of Attorney and the Will Ex.PW 1/3 and Ex.PW 1/4, and once that is so, Sh. Vipin Kumar was duly conversant with the facts of the case, and therefore, he was entitled to depose with respect to the facts of the present case. This argument of the appellants/defendants is therefore

rejected that Sh. Vipin Kumar has not validly deposed for the respondent/plaintiff.

12. Learned counsel for the appellants/defendants then argued that the trial court has erred in giving the benefit of Section 116 of the Indian Evidence Act, 1872 to the respondent/plaintiff that appellants/defendants could not deny the title of the respondent/plaintiff, and though *prima facie* this argument appeared to be correct, however in the present case, the title of the respondent/plaintiff has not been found to be correct only because of Section 116 of the Evidence Act inasmuch as the trial court has held the respondent/plaintiff to be the owner by holding that the respondent/plaintiff was transferred the suit property by the appellant no.2/defendant no.2 in terms of the Documentation dated 08.08.2000. This argument of the appellants/defendants that the trial court ought not to have placed reliance on Section 116 of the Evidence Act, is also therefore a futile argument, and is therefore rejected.

13(i). Learned counsel for the appellants/defendants then placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by Lrs and*

Others, (2008) 4 SCC 594 to argue that the respondent/plaintiff could not succeed unless the respondent/plaintiff had sought the relief of declaration and got cancelled the Conveyance Deed dated 03.05.2008 (registered on 14.05.2008) executed by the DDA in favour of the appellant no.2/defendant no.2 with respect to the suit property.

13(ii). To buttress this aforesaid argument the counsel for the appellants/defendants also placed reliance upon the Judgment dated 12.02.2014 passed by the court of Ld. ADJ, Delhi which rejected the plaint filed by the respondent/plaintiff under Order VII Rule 11 CPC as barred by limitation, and in which plaint the respondent/plaintiff had challenged the Conveyance Deed dated 03.05.2008 of the suit property by DDA in favour of the appellant no.2/defendant no.2, with the further fact that the judgment was upheld by a Single Judge of this Court in his Order dated 14.07.2014 in ***RFA No. 173/2014***. It was also argued that the respondent/plaintiff had filed a writ petition being ***W.P.(C) No.1489/2015*** against the DDA and which was dismissed by the High Court on 07.07.2015. It was therefore argued that cumulative effect of the suit plaint being rejected by the civil court in which challenge was laid to the Conveyance Deed dated 03.05.2008 and the

writ petition filed by the respondent/plaintiff also having failed and dismissed on 07.07.2015, therefore the Conveyance Deed in favour of the appellant no.2/defendant no.2 has become final and hence the subject suit had to be dismissed.

13(iii). This argument urged on behalf of the appellants/defendants carries no weight for various reasons. Firstly, the principle of law contained in Section 48 of the Transfer of Property Act is that earlier documents executed for a property prevail over subsequently executed documents for the same property, and once the appellant no.2/defendant no.2 had transferred the rights in the suit property to the respondent/plaintiff in terms of the Documentation dated 08.08.2000, then subsequently, merely because the DDA had executed a Conveyance Deed in favour of the appellant no.2/defendant no.2, would not mean that the appellant no.2/defendant no.2 had not sold rights in the suit property to the respondent/plaintiff in terms of the Documentation dated 08.08.2000. Also, the Conveyance Deed was executed by the appellant no.2/defendant no.2 from the DDA during the pendency of the subject suit as the Conveyance Deed was executed on 03.05.2008 whereas the subject suit was filed on

12.03.2008. An illegal action by the appellant no.2/defendant no.2 of having a Conveyance Deed executed in her favour is of no effect as the Conveyance Deed dated 03.05.2008 is null and void on the principles of priority and validity contained in Section 48 of the Transfer of Property Act. Obviously, the Conveyance Deed cannot give title to the appellant no.2/defendant no.2, when the appellant no.2/defendant no.2 had already transferred rights much earlier on 08.08.2000 in the suit property to the respondent/plaintiff.

13(iv). Further, the judgment of the Hon'ble Supreme Court in the case of *Anathula Sudhakar (supra)* will not apply to the facts of the present case because by the nature of cause of action in the suit as also the reliefs claimed, the respondent/plaintiff could have succeeded and has only succeeded by getting as per the impugned judgment a declaration in her favour of the ownership of the suit property in terms of the Documentation dated 08.08.2000. Once the respondent/plaintiff is declared to be the owner of the suit property in terms of the Documentation dated 08.08.2000, and because the appellant no.2/defendant no.2 by this Documentation dated 08.08.2000 had transferred rights in the suit property in favour of the

respondent/plaintiff, hence the Conveyance Deed dated 03.05.2008 was illegally executed by the appellant no.2/defendant no.2 in her favour from DDA, and thus is a null and void document. The rejection of the plaint under Order VII Rule 11 CPC does not operate as a bar of *res judicata* and therefore, the Judgment of the Ld. ADJ dated 12.02.2014 and as confirmed by a Ld. Single Judge of this Court vide his Order dated 14.07.2014 does not have the effect of divesting the ownership title of the respondent/plaintiff in the suit property and which was purchased in terms of the Documentation dated 08.08.2000 executed by the appellant no.2/defendant no.2 in favour of the respondent/plaintiff. In any case, as already discussed above, even if the Conveyance Deed dated 03.05.2008 stands in favour of the appellant no. 2/defendant no. 2, yet the said document is null and void and of no legal effect in view of the principle of law contained in Section 48 of the Transfer of Property Act.

13(v). So far as the dismissal of the writ petition being ***W.P.(C) No. 1489/2015*** filed by the respondent/plaintiff against the DDA is concerned, it is seen that the said dismissal is by a very short order and this short order does not in any manner decide the validity or

invalidity of the Documentation dated 08.08.2000 executed in favour of the respondent/plaintiff by the appellants/defendants. This order reads as under:-

“Present writ petition has been filed seeking cancellation of registration of Sale Deed/Conveyance Deed that was executed in favour of Ms. Roseline Sharma for LIG Flat No. 13-B in Block-DB(GF), situated at G Area, Hari Nagar, Rajouri Garden, New Delhi.

Today, also the husband of the petitioner seeks an adjournment for engaging a counsel.

Already two adjournments have been granted on the same ground. Consequently, no further adjournment can be granted.

On a perusal of the paper book, this Court finds that the present petitioner had filed a suit for declaration, mandatory and permanent injunction praying for an identical relief. The said suit has been dismissed under Order VII Rule 11 CPC on the ground of limitation.

Since the suit on the same cause of action has been dismissed, this Court is of the view that the present contempt petition is also barred by laches.

In any event, this Court is of the view that as petitioner has already availed of an alternative remedy, present writ petition is not maintainable. Consequently, present writ petition is dismissed.”

13(vi). Therefore, the judgment passed in the civil suit rejecting the plaint under Order VII Rule 11 CPC or the short Order passed in the Writ Petition dated 07.07.2015 in no manner has the effect of divesting the title of the respondent/plaintiff in the suit property which she received in terms of the prior Documentation dated

08.08.2000 and with the further fact that the subsequent Conveyance Deed was executed illegally by the appellant no.2/defendant no.2 in her favour during the pendency of the suit, cannot in any manner create any title in favour of the appellant no.2/defendant no.2 on the principles as contained in Section 48 of the Transfer of Property Act.

13(vii). I therefore reject the argument urged on behalf of the appellants/defendants that the respondent's/plaintiff's suit had to be dismissed in view of the Judgment passed in the civil suit on 12.02.2014 and the dismissal of the writ petition of the respondent/plaintiff by the Order dated 07.07.2015 and that DDA has executed a Conveyance Deed dated 03.05.2008 of the suit property in favour of the appellant no.2/defendant no.2.

14. In view of the aforesaid discussion, I do not find any merit in the appeal, and the same is hereby dismissed.

NOVEMBER 30, 2018

VALMIKI J. MEHTA, J