

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

+ **RFA No.1059/2017**

% **Reserved on: 15th January, 2018**
Pronounced on: 22nd January, 2018

SUNITA GANGWAL Appellant
Through: Ms.Kadambari Puri, Ms.Sarika,
Mr. Lokesh Malik, Advocates.

versus

CHOTTEY LAL Respondent
Through: Ms.Gita Dhingra, Advocate.

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

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J

1. This Regular First Appeal under Section 96 of the Civil Procedure Code, 1908 (CPC) is filed by the defendant in the suit impugning the judgment of the trial court dated 13.02.2015 whereby trial court has decreed the suit of the respondent/plaintiff filed seeking possession of the suit property being the entire ground floor of House No. I-2/182/183, Madangir, New Delhi as shown in red and green colour in the site plan Ex.PW1/6. Damages/*mesne* profits were also

granted at Rs.2,000/- per month *pendente lite* and future till handing over possession of the suit property.

2. The facts of the case are that the respondent/plaintiff filed the subject suit for possession and *mesne* profits with respect to the suit property pleading that he was owner of the suit property in terms of the usual documentation being the agreement to sell, power of attorney, receipt etc dated 20.06.1981 (Ex.PW-1/1 to Ex.PW-1/4). In the plaint, it was pleaded that the appellant/defendant persuaded her husband, being the son of the respondent/plaintiff, to separate from his parents and that one house of the respondent/plaintiff should be transferred in the name of the appellant/defendant. On account of the aforesaid fight on 03.02.2004, intervention took place of the members of the community and after controlling the situation, the Panchayat of the community decided that the son of the respondent/plaintiff viz the husband of the appellant/defendant should live separately from the respondent/plaintiff. Accordingly, the appellant/defendant on the same day i.e 03.02.2004 left with her parents to their house along with all her possessions being jewellery, clothes etc. The son of the respondent/plaintiff namely Sh. Sanjay also started living separately in

a rented accommodation. Respondent/plaintiff on account of mental torture caused by the appellant/defendant disowned his son Sh. Sanjay from the properties of the respondent/plaintiff in terms of the publication in the newspaper 'Rashtriya Sahara' on 14.04.2004. It is further pleaded in the plaint that the appellant/defendant joined the company of her husband in the rented house on 17.04.2004 but on account of her not being able to adjust with her husband, she once again left the company of the son of the respondent/plaintiff on 24.07.2004. Appellant/defendant is pleaded to have filed false complaints against the respondent/plaintiff and his family members before the Crime Against Women (CAW) Cell. Before the CAW Cell, the son of the respondent/plaintiff gave in writing that the appellant/defendant can join his company in the rented house and the matter was adjourned to 24.10.2006, but on 22.10.2006, the appellant/defendant along with her family members broke open and forcibly entered into the ground floor of the suit property. PCR was called and proceedings under Section 107/151 of the Code of Criminal Procedure, 1973 (Cr.P.C.) were initiated. Plaint thereafter makes reference to various other criminal complaints including a complaint

filed by the respondent/plaintiff under Sections 452/324/427/448/506/120-B/34 of the Indian Penal Code, 1860 (IPC) before the concerned Metropolitan Magistrate at New Delhi where the appellant/defendant along with her associates are facing trial. For the sake of security, it is pleaded in the plaint, that the respondent/plaintiff and his family members shifted to another house belonging to the respondent/plaintiff at I-2/205, Madangir, New Delhi on a plot admeasuring 25 sq. yards. In view of the aforesaid facts, respondent/plaintiff served a legal notice dated 29.12.2012 upon the appellant/defendant for vacating the ground floor of the suit property in unauthorized occupation of the appellant/defendant, but since the same failed to yield the desirable result, hence the subject suit was filed.

3. Appellant/defendant contested the suit by pleading that all the properties including the suit property were Joint Hindu Family properties. It was further pleaded in the written statement by the appellant/defendant that the respondent/plaintiff and his sons are well off earning handsome amounts. It was pleaded that out of the common pool, various properties were purchased including in the native village

in Rajasthan. It was further pleaded that the suit property was the matrimonial home of the appellant/defendant and she was entitled to live in the same in view of the provisions of Protection of Women from Domestic Violence Act, 2005. Suit was therefore prayed to be dismissed.

4. After pleadings were completed, issues were framed and parties led evidence including documentary evidence. These aspects are noted in paras 4 to 10 of the impugned judgment and these paras read as under:-

4. From the **pleadings of the parties**, following **issues** were framed on **02.06.2014** :-

- (1) Whether the property is joint Hindu family properties? OPD.
- (2) Whether the plaintiff is entitled for the decree of possession as prayed for? OPP.
- (3) Whether the plaintiff is entitled the mesne profit? OPP.
- (4) Whether the plaintiff is entitled for the decree of permanent injunction? OPP.
- (5) Relief.

5. **Plaintiff examined himself as PW-1** who filed his affidavit in his examination-in-chief reiterating the content of the plaint and relied upon following documents :-

Sl.No.	Documents	Exhibit No.	Inference/remarks
1.	Agreement to sell, GPA, affidavit and receipt, all dated 20.06.1981 of property No. I-II/182-183 executed by Ram Chand Verma in favour of plaintiff (Suit property)	PW1/1 to PW1/4	Purchased for Rs.13,860/- when his son i.e. husband of defendant was around 3 years of age. As per documents, when this property was purchased it was a plot with some malba/ superstructure on it.

2.	GPA, receipt and affidavit dt. 15.12.1986 of property No.I-II/205, Madangir, New Delhi measuring 25 sq. yds. executed by Sh. Mool Chand in favour of plaintiff	PW1/5	Purchased for Rs.22,000/- when his son i.e. husband of defendant was around 8 years of age. The purchase of second property after 5 years for Rs.22,000/- in the year 1986 shows that the plaintiff was having sufficient earnings and therefore, he would have definitely raised construction upon the property I-II/182-183 before the purchases of I-II/205 as in these documents the defendant is shown the residence of I-II/182-183.
3.	Site plan of suit property	PW1/6	
4.	ID card of plaintiff and his wife	PW1/7 & PW1/8	Showing their age of 55 and 59 years as on 01.01.2008 (Irrelevant)
5.	Water and Electricity bills of suit property	PW1/9 Colly	In the name of plaintiff.
6.	Copy of application written to Chowki Incharge by father of defendant on 03.02.2004.	PW1/11	It is a letter signed by the defendant, her father and the plaintiff also in the form of settlement, wherein the father of the defendant is mentioning that he is taking his daughter i.e. defendant with him. No cross-examination was done on this document.
7.	Medical record of wife of plaintiff of Safdarjung Hospital dt. 23.10.2006 with the history of assault on abdomen and chest at 9 a.m.	PW1/12	This document was proved in order to prove the incident of 22.10.2006 when defendant allegedly forcibly entered into the suit property. No cross examination was done on this document.
8.	Copies of complaint lodged by the plaintiff dated 22.10.06 made to SHO PS Ambedkar Nagar	PW1/13	It mentions about the incident of 22.10.2006 when defendant and his brother Virender allegedly entered forcibly into the suit property.
9.	Copies of complaint lodged by the plaintiff dated	PW1/14	It mentions that because of defendant's quarrel some nature,

	23.10.06 made to SHO PS Ambedkar Nagar and DCP		the biradhari had separated them and they started living separately on first, second 262 Madangir on rent. It also mentioned about the incident of 22.10.2006 when she allegedly forcibly entered into the suit property.
10.	Certified copy of summoning order of defendant in complaint case filed by the plaintiff	PW1/15	
11.	Copy of Complaint dt.31.10.2006 made to SHO PS Ambedkar Nagar	PW1/16	It mentions about the incident of 22.10.2006 when defendant and his brother Virender entered forcibly into the suit property. It is signed by 30 neighbours.
12.	Copy of interim protection of Ld. ASJ, New Delhi	PW1/17	
13.	Copy of discharged summary medical record of plaintiff of Batra Hospital dt.08.11.2012 i.e. after 2 days of his admission.	PW1/18	Irrelevant
14.	Copy of Newspaper dated 14.04.2014 "Rashtriya Sahara"	PW1/19	Vide which the plaintiff disowned his son Sanjay and his wife Sunita i.e. defendant from his estates
15.	Copy of divorce petition pending between defendant and son of plaintiff	PW1/20	Irrelevant
16.	Copy of legal notice dt. 29.12.2012 along with postal receipts, courier receipt and AD card	PW1/21 to PW1/24	
17.	Copies of complaints made to SHO and Commissioner of Police by plaintiff on 28.04.2008 against defendants.	PW1/25 colly	It is about the incident of 27.04.2008

6. During his cross examination, he admitted that he does not have the registered sale deeds of the suit properties. He deposed that he purchased the property on the basis of GPA, Agreement to Sell, Will etc. He admitted that both the properties belong to MCD Slum Department

and they are not capable of being sold. He stated that defendant after marriage came to the suit property. He is admitted that all his family members are having a common counsel in the criminal case including his son Sanjay. He deposed that he did not sent any communication to Sanjay and his wife regarding disowning. He volunteered that he orally informed both of them as they were residing 4-5 houses away from his residence. He deposed that he does not have any document to show that the suit properties were constructed by him. He volunteered that he had constructed them in piecemeal and still some part is not complete. He admitted that he has not filed any document in the present case to show that the defendant took all her belongings in the year 2004.

7. Sh. Ashok Kumar, son of plaintiff was examined as PW-2 who filed his affidavit in his examination-in-chief stating that it was his father Chottey Lal who is exclusive owner of the suit property and it was him who purchased the suit property and constructed the same. During his cross examined he remained stick to his stand and denied that suit property was purchased from the common funds of the family.

8. **Thereafter PE was closed.**

9. **In Defence Evidence, defendant examined herself as DW-1** who filed her affidavit in her examination-in-chief reiterating the contents of the WS and relied upon copies of proceedings of petition filed U/Sec. 12 DV Act as EX.DW1/A (colly) and copies of proceedings of Criminal Court as EX.DW1/B (colly) initiated by the plaintiff against her. It is pertinent to mention here that in EX.DW1/B, there is a statement of plaintiff recorded in Pre Charge Evidence wherein a suggestion was put to him by the counsel for the accused (defendant herein) which is reproduced as follows:-

Q. I put it to you who told you or informed you that accused Sunita had left the abovesaid house I-II/262, Madangir, New Delhi and had gone to reside with the parents?

Ans. Nobody told me about the abovesaid development. It was after 2-2 ½ years when Sunita came to our house and quarrelled with us that I came to know that she had come from her parents house. I had not given any complaints to the police against Sunita or her parents before 22.10.2006. It is correct that on 19.10.2006 I had attended the office of Women Cell, Amar Colony as I was summoned on the complaint of Sunita.....

It is correct that accused Sunita after getting married with my son Sanjay had come to reside in our house at H. No.I-II/182, Madangir, New Delhi and till date she is residing there as my daughter-in-law.

10. **During her cross examination** she stated that **her husband told her** that all of them had contributed money for the construction of the house. She stated that she is living in portion shown in red and green color as shown in the site plan. She admitted that she had filed a complaint dt. 19.09.2006 before CAW Cell against plaintiff and

his family members and copy of the same was proved as EX.DW1/XP-1.”

5. The first issue to be decided by the trial court was as to whether the suit property was an Hindu Undivided Family (HUF) property, and in this regard trial court has held that the suit property was not an HUF property inasmuch as respondent/plaintiff had succeeded in proving by means of documents (Ex. PW1/1 to Ex.PW1/4) that the suit property was purchased by him. Trial court further notes that the birth of the husband of the appellant/defendant is of the year 1978 and therefore since the suit property was purchased in the year 1981 when the husband of the appellant/defendant was only three years of age therefore appellant/defendant cannot successfully argue that her husband had paid monies towards purchase and construction of the suit property. Trial court notes that no evidence has been led on record to show that any contribution was made by the appellant/defendant's husband towards construction of the suit property and as per the evidence, the suit property appears to have been constructed before the majority age of the husband of the appellant/defendant. Trial court further notes that the appellant/defendant admits the financial status of the

respondent/plaintiff for purchase of the property and for construction thereon. For all the aforesaid reasons, the trial court held, and rightly so, that the suit property is not an HUF property. The relevant discussion in this regard in the judgment of the trial court reads as under:-

"18. ISSUE NO. 1: Whether the property is joint Hindu family properties? OPD.

The burden of proving this issue was upon the defendant. It is argued on behalf of defendant that the joint nature of the family is to be assumed and the burden was upon the plaintiff to show that he had acquired the suit property from his personal funds and he never had any intention to blend the same into the joint family property in view of the judgment of Kavita Gambhir Vs. Hari Chand Gambhir. Though, in reply it is argued on behalf of plaintiff that the suit property was purchased in the year 1981 i.e. around 34 years back from his personal funds. It is submitted that the date of birth of husband of the defendant is of the year 1978 and it cannot be assumed that at the time of purchase of the property in the year 1981 when he was around 3 years old he would have contributed anything towards the purchase of the same. Therefore, it can be safely assumed that property was purchased by the plaintiff. It is also an admitted fact that defendant got married to the son of the plaintiff in the year 2002 and at that time the property was fully constructed as it is today and the age of her husband was around 24 years and their entire family was living in the said property. The defendant has not led any evidence with respect to the year of construction, though, it can be assumed that property was constructed during the childhood of husband of defendant as there is no evidence that property was constructed when the defendant's husband had attained majority i.e. in the year 1996 and afterward. The plaintiff has successfully proved the documents through which he purchased the property in question and which has not been challenged in his cross examination by the defendant. Rather the case of the defendant is that all the family members including the husband of defendant contributed towards the construction of the suit property, hence the property should be treated as joint Hindu family property. It is also an admitted position that plaintiff's family is residing in the suit property on different floors and the documents proved by him clearly shows that when these properties were purchased the age of

the children of the plaintiff were too small that it cannot be assumed that they would have contributed anything towards its consideration. There is no evidence on record to show that defendant's husband contributed anything towards the construction of the suit property anything and most likely as per the facts of the case the property would have been constructed prior to the date of attaining majority of the husband of the defendant. As the financial status of the plaintiff was sound as per the own submissions of the defendant and the same can also be assessed from the facts that he purchased two properties within a span of five years that to in early 80s. Needless to say that no evidence has been led on behalf of defendant to show that suit property is a Joint Hindu property and the allegations of the defendant in this regard proved to be only bald allegations and could not be substantiated by cogent evidence. Hence this issue is decided against the defendant.”

6. As regards issue nos. 2 to 4 of entitlement of the respondent/plaintiff to the decree of possession etc, the trial court has held that the appellant/defendant had left the residence/possession of the suit property, as is proved from the document Ex.PW-1/11 being the letter to the Chowki Incharge, Police Station Madangir which bears the signatures of the appellant/defendant and her father admitting to the *factum* of the appellant/defendant leaving the suit property, and that there was no cross-examination of the respondent/plaintiff that this document does not state the correct facts. In fact, trial court has further rightly relied upon the document filed by the appellant/defendant herself Ex.DW-1/XP-1 being a complaint dated 19.09.2006 given by the appellant/defendant to the ACP, CAW

Cell, Amar Colony wherein appellant/defendant gave her address not of the suit property but the address of house No.B-181, Gali No.18, Amrit Puri, Garhi, East of Kailash, New Delhi and which was the address of the appellant/defendant's father. Accordingly the trial court has held, and rightly so, that the appellant/defendant had left the suit property but thereafter had forcibly entered the suit property which was in the possession of the respondent/plaintiff. Accordingly, trial court has in the opinion of this Court rightly held that possession of the appellant/defendant was that of a trespasser and she was therefore liable to vacate the suit property by possession of the same being handed over to the respondent/plaintiff.

7 (i). Though the trial court has not so held, but really the reliance by the trial court for arriving at the conclusion of entitlement of respondent/plaintiff to possession of the suit property is upon the oft cited judgment of the Supreme Court in the case of ***S.R. Batra & Another vs. (Smt.) Taruna Batra (2007) 3 SCC 169*** wherein the Supreme Court held that a daughter-in-law has no right to the property which is exclusively owned by her parents-in-law and which property of the parents-in-law is not a shared household under the Protection of

Women from Domestic Violence Act. I may note that a Division Bench of this Court in the case of *Navneet Arora vs. Surender Kaur & Ors. 2014 (213) DLT 611* distinguished the judgment in *S.R. Batra* case (*supra*) by observing that in *S.R. Batra* case (*supra*) the wife had left the matrimonial home and therefore was not entitled to again re-enter the matrimonial home, whereas in *Navneet Arora* case (*supra*) decided by the Division Bench of this Court the wife had never left the matrimonial home and which was therefore held to be a shared household entitling the wife of the son i.e the daughter-in-law to continue to remain in possession of the property owned by her parents-in-law.

(ii) The relevant observations of the Supreme Court in the *S.R. Batra* case (*supra*) are paras 21 to 30 and these paras read as under:-

“21. It may be noticed that the finding of the learned Senior Civil Judge that in fact Smt. Taruna Batra as not residing in the premises in question is a finding of fact which cannot be interfered with either under Article 226 or 227 of the Constitution. Hence, Smt. Taruna Batra cannot claim any injunction restraining the appellants from dispossessing her from the property in question for the simple reason that she was not in possession at all of the said property and hence the question of dispossession does not arise.

22. Apart from the above, we are of the opinion that the house in question cannot be said to be a 'shared household' within the meaning of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act'). Section 2(s) states:

“2(s) ‘Shared household’ means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a

household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

23. Learned Counsel for the respondent Smt. Taruna Batra has relied upon Sections 17 and 19(1) of the aforesaid Act, which state:

17. (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

xxxx

19(1) While disposing of an application under Sub-section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under Clause (b) shall be passed against any person who is a woman.

24. Learned Counsel for the respondent Smt. Taruna Batra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household.

25. We cannot agree with this submission.

26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned Counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

27. It is well settled that any interpretation which leads to absurdity should not be accepted.

28. Learned Counsel for the respondent Smt. Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives.

29. As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member, it is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a 'shared household'.

30. No doubt, the definition of 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society.”

(iii) In *Navneet Arora* case (*supra*), benefit was granted to the daughter-in-law to stay in the property owned by the father-in-law on the ground of the same being a shared household only on the ground that the daughter-in-law had never left the matrimonial home. These

observations are contained in paras 11 to 17 and 119 and which paras read as under:-

“11. Pithily stated, the question arising for the consideration of this Court revolves around the interpretation of the term ‘shared household’ as envisaged under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 and if the present case stands squarely covered by the authoritative pronouncement of the Supreme Court of India reported as (2007) 3 SCC 169 S.R Batra & Anr. v. Taruna Batra (Smt.).”

12. Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 reads as under:-

“2 (s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

13. Learned Counsel for Ms.Surinder Kaur had contended that in view of the decision of the Supreme Court in Taruna Batra’s case (Supra), a daughter-in-law, as the present appellant before us, is precluded under the scheme of Protection of Women from Domestic Violence Act, 2005 to claim a ‘right of residence’ in a premises exclusively owned by her mother-in-law even though she has admittedly resided therein with her husband and his family members in a domestic relationship. He would thus submit that the impugned order passed by the learned Single Judge suffers from no impropriety and is not liable to be interfered with in the present proceedings.

14. Since Ms.Surinder Kaur has planked her submissions on the decision of the Supreme Court in Taruna Batra’s case (Supra) and we find that the conclusion expressed by the learned Single Judge in the impugned order is also essentially premised on the said decision, it would therefore be incumbent upon us to carefully examine the dictum in Taruna Batra’s case (Supra) with a view to ascertain the factual conspectus and the issues which fell for consideration of the Supreme Court, in order to appreciate the observations contained in the said judgment.

15. A microscopic analysis of the said decision would reveal that Ms.Taruna Batra was married to the son of S.R.Batra and his wife on April 14, 2000. After the marriage the couple started residing together as

husband and wife at second floor, B-135, Ashok Vihar, Phase-I, Delhi. It was not in dispute that the said property exclusively belonged to S.R.Batra's wife i.e. the mother-in-law of Taruna Batra. It would be pertinent to note that S.R.Batra and his wife resided separately on the ground floor of the said property. It was an admitted position that Ms.Taruna Batra had shifted to the residence of her parents owing to matrimonial acrimony with her husband. It was only much later that she sought to re-enter the suit property only to find a lock at the main entrance. In wake of such attending circumstances, she filed a suit seeking mandatory injunction to enable her to enter the house. It was the case of S.R.Batra and his wife before the Supreme Court and the Courts below that before any order came to be passed in the said suit, Ms.Taruna Batra along with her parents forcibly broke open the locks of the suit property. It was also contended by S.R.Batra and his wife that their son – Amit Batra, the husband of Taruna Batra, had shifted to his own flat at Mohan Nagar, Ghaziabad before the litigation between the parties had ensued.

16. Perusal of the judgment further reveals that the learned Trial Judge vide order dated March 04, 2003, had held that Ms.Taruna Batra was in possession of the suit property and consequently granted temporary injunction in her favour. The said order of the learned Trial Judge was assailed in appeal before the learned Senior Civil Judge, Delhi, who vide order dated September 17, 2004 held that Ms.Taruna Batra was not residing in the second floor of the suit premises and also observed that her husband –

Amit Batra was not living in the suit property, therefore, the matrimonial home could not be said to be a place where only the wife was residing. Laying a challenge to the order of the Appellate Court, Ms.Taruna Batra invoked the supervisory jurisdiction of this Court by filing a petition under Article 227 of Constitution of India. The learned Single Judge of this Court was pleased to hold that the second floor of the suit property was the matrimonial home of Ms.Taruna Batra and the fact that her husband shifted to Ghaziabad later would not make Ghaziabad the matrimonial home.

17. The Supreme Court after taking into consideration the factual matrix highlighted above, was pleased to observe in paragraph 21 of its judgment that this Court fell in error by interfering with the findings of the learned Senior Civil Judge who had categorically held that Ms.Taruna Batra was not residing in the suit premises. The Supreme Court was of the considered view that findings of fact rendered by Courts below could not be upset in exercise of jurisdiction under Article 226 and 227 of the Constitution.

XXXXX

XXXXX

XXXXX

119. Reverting back to the facts of the instant case, before Navneet Arora married Gurpreet Singh, he was living as one family with his parents Harpal Singh and Surinder Kaur. His brother Raman Pal Singh and

his sister Sherry were also residing in the same house. The kitchen was one. The two sons and their father were joint in business and the kitchen used to be run from the income of the joint business. They were all living on the ground floor. Sherry got married and left the house. Navneet married Gurpreet. Raman Pal married Neetu. The two daughter-in-laws joined the company not only of their husbands but even of their in-laws in the same joint family house i.e. the ground floor of B-44, Vishal Enclave, Rajouri Garden, New Delhi. All lived in commensality. Navneet never left the joint family house. She was residing in the house when her husband died. She continued to reside there even till today. Under the circumstances her right to residence in the suit property cannot be denied, and as regards issues of title, we have already observed that the right of residence under the Protection of Women from Domestic Violence Act, 2005, the same would have no bearing. She may enforce it in civil proceedings. But her right of residence in the shared household cannot be negated.”

8. As already observed above, with reference to the findings of the trial court on issue nos. 2 to 4, trial court has held that the appellant/defendant had in fact left the matrimonial home and for which purpose reference has been made to the document Ex.PW1/11 as also Ex.DW1/XP-1. Accordingly, the judgment of the Supreme Court in the case of *S.R. Batra (supra)* squarely applies to the present case and the judgment in the case of *Navneet Arora (supra)* is distinguishable. In fact, I would like to add that if conduct of the appellant/defendant as found in this case is permitted then there will be lawlessness and anarchy because a daughter-in-law by using force will be held to be forcibly entitled to enter into premises belonging to the parents-in-law and this Court would not like to allow such a

situation to be called a legal entitlement of a daughter-in-law in a shared household as defined under the Protection of Women from Domestic Violence Act.

9.(i) Learned counsel for the appellant/defendant firstly argued that the documents which have been proved by the respondent/plaintiff as Ex.PW1/1 to EX.PW1/4 cannot confer ownership rights because these documents cannot be taken to be a sale deed, and to buttress this argument reliance is placed by learned counsel for the appellant/defendant upon the judgment of the Supreme Court in the case of *Suraj Lamp and Industries Private Limited Vs. State of Haryana and Another (2012) 1 SCC 656*.

(ii) In my opinion this argument urged on behalf of the appellant/defendant is misconceived because rights as arising from the doctrine of part performance under Section 53A of the Transfer of Property Act, 1882, cannot come to existence under an unregistered agreement to sell etc only if the unregistered agreement to sell etc is entered into after 24.9.2001 when by Act 48 of 2001 Section 53A of the Transfer of Property Act was amended requiring that for taking benefit of the doctrine of part performance under Section 53A of the

Transfer of Property Act the agreement to sell must be stamped and registered. In the present case, agreement to sell is pre-enforcement of Act 48 of 2001 with effect from 24.9.2001 and therefore it cannot be argued on behalf of the appellant/defendant that the documents being Ex.PW1/1 to Ex.PW1/4 do not create rights in the nature of ownership in favour of the respondent/plaintiff in view of the legal position emanating from Section 53A of the Transfer of Property Act. This aspect has been considered in detail by this Court in the judgment in the case of *Shri Ramesh Chand Vs. Suresh Chand and Anr., 188 (2012) DLT 538* wherein this Court has referred to the observations of the Supreme Court in the case of *Suraj Lamp and Industries Private Limited (supra)* that the observations of the Supreme Court in the case of *Suraj Lamp and Industries Private Limited (supra)* in fact support rights under an agreement to sell, General Power of Attorney and Will, once these documents otherwise satisfy the requirement of relevant provisions of law being Section 53A of the Transfer of Property Act and Section 202 of the Indian Contract Act, 1872 and which aspects are satisfied in the facts of the present case as there is no breach of Section 53A of the Transfer of Property Act, inasmuch as

the documents Ex.PW1/1 to PW1/4 are dated 20.6.1981 i.e prior to 24.9.2001 when there was no requirement of an agreement to sell in the nature of Section 53A of the Transfer of Property Act to be stamped and registered. The relevant observations of this Court in the case of *Shri Ramesh Chand (supra)* are contained in paras 1 to 3 and the same 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 immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

Scope of Power of Attorney

13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time **unless it is made irrevocable in a manner known to law**. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In State of Rajasthan 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 vivos. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the life time of the testator. It is said that so long as the testator is alive, a will is not 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.”

(iii) I, therefore, reject the argument urged on behalf of the appellant/defendant that the respondent/plaintiff could not be held as the owner of the suit property.

10. The next argument which was urged on behalf of the appellant/defendant was that appellant/defendant was in settled possession and therefore could not be dispossessed in terms of the subject suit, but I have found this argument very strange and liable to be rejected because the doctrine of settled possession applies for unlawful dispossession by a person and this doctrine will not apply when dispossession of a trespasser is sought to be lawfully made through a suit filed for possession by an owner. Accordingly, in my opinion this argument urged on behalf of the appellant/defendant does not have any substance whatsoever and is therefore rejected.

11. Learned counsel for the appellant/defendant then argued that appellant/defendant had never vacated the suit property and therefore the ratio of the Division Bench judgment of this Court in the case of *Navneet Arora (supra)* will apply, however, I cannot agree with this argument in view of the finding of the trial court by reference to documents Ex.PW1/11 and Ex.DW1/XP-1, and which documents shows that appellant/defendant had left the suit property and was in fact residing as on 19.9.2006 with her parents at the house of the parents in House No.B-181, Gali No.18, Amrit Puri, Garhi, East of

Kailash, New Delhi, and that since a civil case is decided on balance of probabilities hence this Court would not like to interfere with the categorical and clear finding of the trial court of the appellant/defendant having left possession of the suit property noting that the findings of the trial court are in no way perverse. Accordingly, I reject this argument urged on behalf of the appellant/defendant.

12. It was then argued on behalf of the appellant/defendant that the son of the respondent/plaintiff Sh. Sanjay, and husband of the appellant/defendant, was not living separately in any rented accommodation, and therefore appellant/defendant cannot be asked to vacate the suit property. This argument urged on behalf of the appellant/defendant however is misconceived because in terms of the ratio of the judgment of the Supreme Court in the case of *S.R. Batra (supra)* a daughter-in-law has no right to the property of the parents-in-law and it is the duty of the husband to provide for and give residence to the wife. The ratio of the judgment of the Division Bench of this Court in the case of *Navneet Arora (supra)* will also not apply to support the appellant/defendant as the appellant/defendant is found

to have herself left the suit premises. This argument of the appellant/defendant is also therefore rejected.

13. For the self-same reasons given in para 12 above another argument urged on behalf of the appellant/defendant that the suit property is a shared household is also rejected by reference to the ratio of the judgment of the Supreme Court in the case of *S.R. Batra (supra)* and the ratio of the Division Bench in the case of *Navneet Arora (supra)* being not applicable to the facts of the present case.

14. In view of the aforesaid reasons, I do not find any merit in the appeal and therefore the same is dismissed, leaving the parties to bear their own costs.

JANUARY 22, 2018

AK/pk

VALMIKI J. MEHTA, J