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

Reserved on : 22nd February, 2019
Date of decision :12th March, 2019

\+ **CS (OS) 1789/2014 & I.A. 11271/2014 (stay)**

SURAJ BHAN BANSAL AND ANOTHER ..... Plaintiffs
Through: Mr. Ashish Aggarwal and Ms. Shafali Kishore, Advocates. (M:9810077771)

versus

RAKESH BANSAL AND OTHERS ..... Defendants
Through: Mr. S. C. Singhal, Advocate for D-1 & 2 (M:9810061558)

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

I.A. 23589/2015 (u/O XII Rule 6 CPC)

1. Shri Suraj Bhan Bansal – Plaintiff No.1 (*hereinafter, 'Plaintiff No.1'*) and M/s. Rakesh Trading Company (HUF) – Plaintiff No.2 (*hereinafter, 'Plaintiff No.2'*) have filed the present suit against Mr. Rakesh Bansal – Defendant No.1 (*hereinafter, 'Defendant No.1'*) - who is son of Plaintiff No.1, Defendant No.2 - Mrs. Anupama Bansal (*hereinafter, 'Defendant No.2'*) - wife of Shri Rakesh Bansal, and Defendant No.3 - M/s. R. G. Associates (*hereinafter, 'Defendant No.3'*) - who was a tenant in the premises. It is the case of the Plaintiffs that Plaintiff No.1 is the *karta* of Plaintiff No.2 HUF. Plaintiff No.2 is the owner of a farm house consisting of agricultural land measuring 21 bighas 16 biswas comprised in Khasra Nos.50/23 min (0-07), 21 (4-16), 22 (3-16), 58/3 (0-09), 1(4-12), 2 (5-12), 10 (2-00), 26 (0-04) situated in revenue estate of Village Bakoli, Tehsil Alipur, District North, Delhi, and known as Suraj Vatika, G.T. Road, on

Palla Bakhtawar Pur Road, Near Lavanya, Delhi (*hereinafter 'suit property'*). Defendant No.1 is the son of Plaintiff No.1 and Defendant No.2 is his daughter-in-law. Plaintiff No.1 had executed a General Power of Attorney (*hereinafter 'GPA'*) dated 19th March, 1998 in favour of Defendant No.1, his son, in order to enable his son to carry out certain acts on his behalf. Defendant No.1, by virtue of the said GPA, started handling bank accounts of Plaintiff Nos.1 & 2, as well. The Plaintiffs came to know in January, 2013 that some properties belonging to the Plaintiffs have been sold by Defendant No.1 and that he had utilized various amounts from the bank accounts, without the consent of the Plaintiffs. Under these circumstances, Plaintiff No.1 revoked the GPA dated 19th March, 1998 by executing cancellation deed dated 17th May, 2013.

2. Thereafter, the Plaintiffs came to know that Defendant No.1 had executed a sale deed dated 24th July, 2013 transferring the suit property in favour of his wife, Defendant No.2. The said sale deed was registered and on the basis of said sale deed, the property also got mutated in favour of Defendant No.2. The Plaintiffs, thereafter, examined the bank accounts and realized that even the amount of approximately Rs.2.4 crores, which was shown as the sale consideration paid by Defendant No.2 to Defendant No.1, were returned back by Defendant No.1 to Defendant No.2. In this manner, by utilising a cancelled GPA, the title in the suit property has been usurped by Defendants No. 1 and 2.

3. The suit property is being used regularly for commercial purposes, however, despite orders of this Court, Defendant Nos. 1 and 2 have refused to render accounts in respect of the same. Under these circumstances, the present suit has been filed seeking declaration, possession, rendition of

accounts and injunction. Reliefs sought in the suit are as under:

> "*(a) pass a decree of declaration in favour of the Plaintiffs and against the defendants Nos.l and 2 that Plaintiff No.2 thereby declaring that Plaintiff No.2 is the owner of Farm House consisting of Agricultural land measuring 21 Bighas, 16 Biswas, comprised in Khasra Nos.50/23 min (0-07), 21 (4-16), 22 (3-16), 58/3 (0-09), 1(4-12), 2 (5-12), 10 (2-00), 26 (0-04) situated in revenue estate of Village Bakoli, Tehsil Alipur, District North, Delhi, and known as Suraj Vatika, G.T. Road, on Palla Bakhtawar Pur Road, Near Lavanya, Delhi;*
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> *(b) pass a decree of possession in favour of the Plaintiff and against the defendants thereby directing the defendants to hand over the possession of suit property Farm House consisting of Agricultural land measuring 21 Bighas, 16 Biswas, comprised in Khasra Nos.50/23 min (0-07), 21 (4-16), 22 (3-16), 58/3 (0-09), 1 (4-12), 2 (5-12), 10 (2-00), 26 (0-04) situated in revenue estate of Village Bakoli, Tehsil Alipur, District North, Delhi, and known as Suraj Vatika, G.T. Road, on Palla Bakhtawar Pur Road, Near Lavanya, Delhi to Plaintiff No.2;*
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> *(c) pass a decree of declaration against the Defendants Nos.1 and 2 and in favour of the Plaintiffs thereby declaring the sale deed dated 24.07.2013 registered in the office of Sub-registrar-VI-A, Pitam Pura, District North West, Delhi with Registration no.3928, in Book No.1, Volume No.3103 on pages 92 to 96 in respect of the suit property being Farm House consisting of Agricultural land measuring 21 Bighas, 16 Biswas, comprised in Khasra Nos. 50/23 min (0-07), 21 (4-16), 22 (3-16), 58/3 (0-09), 1 (4-12), 2 (5-12), 10 (2-00), 26 (0-04) situated in revenue estate of Village Bakoli, Tehsil Alipur, District North, Delhi, and known as Suraj Vatika, G.T. Road, on Palla Bakhtawar Pur Road, Near Lavanya, Delhi, entered into by defendant No.1 with defendant No.2 as sham, collusive, and*

camouflage; direct an order for delivery of the said sale deed; and upon delivery thereof to cancel the said sale deed dated 24.07.2013; and send an intimation of the cancellation of these documents to the Registrar of Assurances, Sub Registrar VI B, Alipur, Delhi where the said document has been registered;

(d) pass a decree of rendition of accounts in favour of the Plaintiffs and against the defendants thereby directing defendants to render true and correct accounts and provide the details of the benefits received by way of rent, license fees and other profits of any nature whatsoever received by them from the properties of the Plaintiffs including suit property i.e. Farm House consisting of Agricultural land measuring 21 Bighas, 16 Biswas, comprised in Khasra Nos. 50/23 min (0-07), 21 (4-16), 22 (3-16), 58/3 (0-09), 1 (4-12), 2 (5-12), 10 (2-00), 26 (0-04) situated in revenue estate of Village Bakoli, Tehsil Alipur, District North, Delhi, and known as Suraj Vatika, G.T. Road, on Palla Bakhtawar Pur Road, Near Lavanya, Delhi and to hand over and transfer the benefit so received to and in favour of the Plaintiff and a Local Commissioner be appointed to go into the accounts and a decree be passed for the amount found payable to the respective parties;

(e) pass a decree of permanent injunction in favour of the Plaintiffs and against defendants thereby restraining said defendants, their successors, legal heirs, attorneys, representatives, assignees, and/or nominees from selling, alienating, transferring, parting with possession and/ or creating third party interest in the suit property i.e. Farm House consisting of Agricultural land measuring 21 Bighas, 16 Biswas, comprised in Khasra Nos. 50/23 min (0-07), 21 (4-16), 22 (3-16), 58/3 (0-09), 1 (4-12), 2 (5-12), 10 (2-00), 26 (0-04) situated in revenue estate of Village Bakoli, Tehsil Alipur, District North, Delhi, and known as Suraj Vatika, G.T. Road, on Palla Bakhtawar Pur

Road, Near Lavanya, Delhi;
(f) pass a decree of permanent injunction in favour of the Plaintiffs and against defendant No.1 thereby restraining said defendant No.1, his successors, legal heirs, attorneys, representatives, assignees, and/or nominees from acting for and on behalf of the Plaintiff No.1 on the basis of power of attorney dated 19.03.1998;
(g) pass a decree of permanent injunction in favour of the Plaintiffs and against defendants thereby restraining the defendant No.3 to .pay the rent of the suit property to the defendants Nos.1 and 2 and/ or to hand over the possession of the suit premises to the defendants Nos. l and 2 or to any other person upon termination of the tenancy;
(h) pass a decree of mandatory injunction in favour of the Plaintiffs and against the defendants thereby directing the defendant No.3 to pay the rent of the suit premises to the Plaintiff No.2;
(i) pass a decree of mandatory injunction in favour of the Plaintiffs and against the defendants thereby directing the defendant No.3 that in case of termination of tenancy of the suit property, to hand over the possession of the suit premises to the Plaintiff No.2 and not to any body else;
(j) pass a decree of mandatory injunction in favour of the Plaintiffs and against defendants thereby directing the defendants to hand over and deliver the lease deeds/ rent agreements executed by the said defendants in respect of the suit property;
(k) Award costs of suit in favour of plaintiff and against defendants;"

4. In the written statement, the case of Defendant Nos. 1 and 2 is that the suit does not disclose any cause of action. Defendant Nos. 1 and 2 further plead that Plaintiff No.1 took *sanyas* in 1998, in view of which he gave a GPA to his son i.e. Defendant No.1. Thus, by virtue of the GPA, Defendant

No.1 became the *karta* of the HUF - M/s. Rakesh Trading Company as well. It is further averred that the cancellation of the GPA dated 17th May, 2013 was never informed to Defendant Nos. 1 and 2 and thus, the cancellation cannot come into effect as per Section 208 of the Indian Contract Act, 1872. Defendant No.1 claims that he is also a member of the HUF and without dissolution of the HUF, the suit for possession is not maintainable.

5. In the replication, the Plaintiffs averred that cancellation of the GPA was duly notified to Defendant Nos. 1 and 2 vide letter dated 17th May, 2013 as also public notice dated 7th June, 2013, which were both prior to the sale deed dated 24th July, 2013, which was entered into between Defendant Nos.1 & 2. It is further submitted that the GPA does not authorize Defendant No.1 to become the *karta* of Plaintiff No.2.

6. The suit was originally listed on 30th May, 2014 on which date Ld. Single Judge of this Court had passed the following orders.

> "*I have heard counsel for the plaintiff and perused the plaint, application and the supporting documents. I am satisfied that this is a fit case for grant of ex parte ad interim injunction and in case ex parte ad interim injunction is not granted, plaintiff is likely to suffer irreparable loss. Accordingly, till the next date of hearing, defendant no.2 is restrained from selling, alienating, transferring or parting with possession of the suit property bearing agricultural land measuring 21 Bighas, 16 biswas, comprised in Khasra Nos.50/23 min (0-07), 21 (4-16), 22 (3-16), 58/3 (0-09), 1 (4-12), 2 (5-12), 10 (2-00), 26 (0-04) situated in revenue estate of Village Bakoli, Tehsil Alipur, District North, Delhi and known as Suraj Vatika, G.T. Road, on Palla Bakhtawar Pur Road, Near Lavanya, Delhi.*
>
> *Defendant no.2 is also directed to deposit rents which are being received from the suit property with*

the Registrar General of this court within two weeks from the date of receipt of the order. Defendant no.2 is further directed to maintain a record in case the property is given on lease, rent licence for a short period and file details of persons to whom the property is leased and the amounts received, along with the written statement. Defendant no.l is further restrained from acting in any manner through the Power of Attorney dated 19.3.1998, which stands cancelled by the plaintiff no.l.

Provisions of Order 39 Rule 3 CPC be complied with, within 7 days."

7. Thus, while protecting the status quo in the property, the Court had directed that the rents being received from the suit property ought to be deposited in the Court. Defendant No. 2 was also directed to maintain a complete list of persons to whom the property is being leased as also amounts received from them. Defendant No.1 was restrained from acting on the basis of the GPA. The Court had also directed parties to explore mediation. Admission/denial of the documents was concluded on 18th September, 2015. Defendant Nos. 1 and 2 admitted the sale deed dated 24th July, 2013, which is exhibited as **Exhibit P1**. The Plaintiffs, thereafter, moved an application under Order XII Rule 6 CPC being I.A. No.23589/2015. On 8th August, 2016 in an application under Order XI Rules 12 to 14 CPC, Defendant Nos. 1 and 2 were directed to produce on record the original rent deed entered into with Defendant No.3. On 25th October, 2018, this Court had directed the presence of the parties, as also Defendant No.3. On 10th December, 2018, shockingly, it was disclosed to the Court that the tenant, Defendant No.3, had vacated the property in December, 2014 itself. On the said date, the statement of the tenant and Defendant No.1 were

recorded, which read as under:

> "***Statement of Mr. Ravi Wadhwa, S/o Mr. Atam Prakash Wadhwa. R/o A-26, Swarn Singh Road. Adarsh Nagar. Delhi-110033, Mob.No.9811295217***
> *On S.A.*
> *M/s R.G. Associates was the tenant in the suit property. It is a partnership firm of myself and Mr. Gajendra Gupta. We were tenants in the said property till December, 2014. After the order dated 30th May, 2014, we have deposited the rent for six months i.e. from June, 2014 to December, 2014 in this Court. After that we have vacated the property. We did not inform the Court as we were not called in Court after October, 2014.*
>
> ***Statement of Mr. Rakesh Bansal S/o Mr. Suraj Bhan Bansal. R/o G-88. Phase-I, Ashok Vihar. Delhi. Mob.No.9811139205***
> *On S.A.*
> *I have been taking care of this property since the time my father took Sannyas in 1998. There is a farm house located at the property and we are using it for commercial purposes. The property is rented out for holding functions and parties since the last ten years. We had given the property on rent to M/s R.G. Associates - Defendant No.3. From 1st January, 2015, they had vacated the property and have returned the property to us. We are using the property for commercial use on our own. On an annual basis approximately 40 events take place at this property. After taking care of the day to day expenses and other expenditure, we earn about Rs.60,000/- to Rs.70,000/- per month out of this property. I am aware of the order which has been passed by this Court that the rent shall be deposited. However, since the property is not on rent anymore, we did not deposit the rent. We did not inform the Court that the tenant had vacated the property. Currently, the property is being given by us*

to various customers on per day basis. We are not into catering business. We have created a Pandal in the property and we give the same to the customers."

8. Thereafter, arguments were heard on the application under Order XII Rule 6 CPC on 22nd February, 2019.

9. The orders passed by this Court initially on 30th May, 2014 show that Defendant No.2 was directed to deposit the rent, which was received from the suit property with the Registrar General of this Court within two weeks. Further, records were also to be maintained in case the property is given on lease. This order, though having been passed on 30th May, 2014, a sum of Rs.1.62 lakhs was deposited, which is kept in FDR. Thereafter, a further sum of Rs.81,000/- was deposited. Last deposit was made in December, 2014, subsequent to which no amount has been deposited by the Defendants. The statements recorded above reveal that the property is being used for commercial purposes and a complete list of persons to whom the property was given and the amounts received were to be filed. This order has not been complied with. A perusal of the statement given on 10th December, 2018 by one of the partners of the tenanted firm M/s. R. G. Associates shows that the tenant merely deposited the rent for the period of six months i.e. June to December and then the property was vacated. Thereafter, Defendant Nos.1 & 2 took no steps to inform the Court that Defendant No.3 had vacated the suit property. No steps were being taken by Defendant No.2 to deposit the rent that was being earned from letting out the premises. A perusal of the statement of Mr. Rakesh Bansal shows that Defendant Nos.1 & 2 have been earning an admitted a sum of Rs.60,000/- to Rs.70,000/- per month from this property. From January, 2015 for more than three years,

Defendant Nos.1 & 2 have been in complete non-compliance of the orders of this Court. The suit property is a large chunk of land, which is being utilized for commercial purposes and hosting of parties, on a daily basis. It is an admitted fact is that the property is being put to commercial use and a *pandal* has been created for giving to the customers on a per day basis. Despite earning huge sums of money from the suit property, Defendant Nos. 1 and 2 had not cared to comply with the orders.

10. Further, a perusal of **Exhibit P1**, which is the sale deed, shows that it has following recitals.

> *"This Sale Deed is made and executed at Delhi on this 24th day of July, 2013 by <u>Rakesh Trading Company HUF, through its Authorised person Shri Rakesh Bansal, Son of Shri Suraj Bhan Bansal Authorised by its Karta Shri Suraj Bhan Bansal</u> Son of Shri Kedar Nath, resident of C-25, Cottage Road, Adarsh Nagar, Delhi, vide regd. GPA as document No.7606 in Addl. Book No.IV, Volume No. 4752, on pages 47 to 50, dt 19/03/1998 duly regd. in the office of Sub-Registrar No.1, Delhi, hereinafter called the VENDOR.*
>
> *>>>>IN FAVOUR OF<<<<*
>
> *Smt. Anupama Bansal, wife of Shri Rakesh Bansal, resident of C-25, Cottage Road, Adarsh Nagar, Delhi – 110033, hereinafter called the Vendee*
>
> *The ……. of the VENDOR and the VENDEE shall mean and include the parties, their legal heirs, executors, successors, representatives and assigns.*
>
> *WHEREAS the Vendor is the absolute owner, occupier and in peaceful physical possession of the Agricultural Land measuring 21 Bighas, 16 Biswas, comprised in Khasra Nos. 50/23 min (0-07), 21 (4-16), 22 (3-16), 58/3 (0-09), 1 (4-12), 2 (5-12), 10 (2-00), 26 (0-04) situated in revenue estate of Village Bakoli, Tehsil Alipur, District North, Delhi, as per revenue*

records, Delhi (hereinafter called the Land)

AND WHEREAS, due to bonafide requirements and needs of money the Vendor has agreed to sell the above said land to the Vendee for a sum of Rs.2,40,71,000/- (Rupees two crore forty lac seventy one thousand only) and the Vendee has also agreed to purchase the same. the entire sale consideration amount to Rs.2,40,71,000/- (Rupees two crore forty lac seventy one thousand only) has already been received by the Vendor from the Vendee and the detail of payment if as under:-

- *i) Rs.1,00,00,000/- vide Cheque No. 290961 dt 22/04/2013*
- *ii) Rs.1,00,00,000/- vide Cheque No. 290962 dt. 22/07/2013*
- *iii) Rs.40,71,000/- vide Cheque No. 290962 dt. 22/07/2013*

All drawn on Syndicate Bank, Naya Bazaar……… Delhi,

Which the Vendor admits the prior receipt of the entire sale consideration amount from the Vendee before the Sub-Registrar Concerned, Delhi

NOW THIS SALE DEED WITNESSETH AS UNDER

1. That in the consideration of the said amount the Vendor doth hereby sells, conveys, transfers and assigns the aforesaid land and its rights, titles, interest, privileges, easements and appurtenances, thereto the Vendee and the Vendee will hold, use and enjoy the same without any hindrances, claims or titles or others.

2. That the Vendor has handed over actual, physical and peaceful vacant possession of the said land under sale to the Vendee and the Vendee has also occupied the same at the spot.

…………………………..

15. That the Vendor hereby assures to the Vendee that the power of attorney referred above is still, stand and

> *enforced and has not been revoked or cancelled by the executant of GPA and he is alive till today.*
> *16. That the documents have been prepared under the instructions of the Vendor and the Vendee with their free will and wish and the contents of this document have been read and explained to them in Hindi and have understood the meaning, implications and contents upon being satisfied in all respects."*

11. A perusal of the above document shows that the same has been executed by Defendant No.1, acting as the *karta* of the HUF in favour of his own wife, Defendant No.2. The seller is the HUF and the signature on the sale deed is of Defendant No.1. The recital in the sale deed relies upon the registered GPA executed by Plaintiff No.1 in favour of his son dated 19th March, 1998. One of the representations in the sale deed is that GPA is valid and in force. From the sale deed, it is clear that :

a) The ownership of the property in the HUF, Plaintiff No.2 stands admitted.
b) Execution of GPA dated 19th March, 1998 by the father Plaintiff no.1 in favour of his son Defendant no.1 stands admitted.
c) The Sale deed dated 24th July 2013 was executed by Defendant no.1, in favour of his wife Defendant no.2, on the basis of the said GPA.
d) The sale has been made by Defendant No.1, acting in the name of HUF - Plaintiff No.2, to his own wife.
e) Plaintiff No.1 is *karta* of Plaintiff No.2 HUF.

12. Ld. counsel for Plaintiff submits that the sale deed being admitted, it is clear that the same was executed on the strength of the GPA dated 19th

March, 1998, which, however, stood revoked as on 17th May, 2013, prior to the execution of the sale deed.

13. The main defence raised by the Defendants to the order application under Order XII Rule 6 CPC, as submitted by Mr. Singhal, is that since Plaintiff No.1 had taken *sanyas*, the sale deed is validly executed. Further, it is submitted that the cancellation of the GPA was not notified to the Defendants.

14. A perusal of the documents on record shows that the cancellation deed is a registered document, though it is denied by Defendant Nos. 1 and 2. Cancellation deed being a registered document and the certified copy of the same having been placed on record, the same being a public document can be read in evidence.

15. The GPA is an admitted document. The sale deed is an admitted document. The certified copy of the cancellation deed being a public document under Section 74 of the Indian Evidence Act, 1872, it can be read in evidence. Speed post receipts showing despatch of letter dated 17th May, 2013 placed in original on record, along with the pleadings of the parties, show that Defendant Nos. 1 and 2 had notice of the cancellation of the GPA. In case of original speed post receipt, once the document has been sent by the speed post, it is deemed to have been served on the recipient, under Section 27 of the General Clauses Act. Original newspaper publication of the notice cancelling the GPA is also placed on record, though the same is denied.

16. Bare denials are not denials in the eyes of law. Registered cancellation deed dated 17th May, 2013, can be accepted in evidence without any oral evidence being required in respect of the same. This is the settled legal

position under Sections 74 read with Section 78 of the Indian Evidence Act. The certified copy of the cancellation deed has been placed on record.

17. Defendant No.1, in the sale deed, which is **Ex.P1**, admits that Shri Suraj Bhan Bansal is the *karta* of the HUF. Once this admission exists, nothing further is required to be seen, as the ownership of the land in the name of Plaintiff No.2 - HUF is not in dispute.

18. The son and daughter-in-law of Plaintiff No.1 have, completely deprived the Plaintiffs from the enjoyment of the suit property and are also in complete non-compliance of the orders of this Court. They have jointly conspired and taken away valuable property belonging to their father/his HUF on the strength of a cancelled GPA. Their conduct is completely malafide and illegal. The notice of the cancellation was issued by Speed Post and the same was published in a newspaper. This is sufficient notice. Vide order dated 10th December, 2018, Defendant Nos. 1 and 2 were directed to file affidavits disclosing revenue earned by Defendant Nos. 1 and 2. In response thereof, the affidavit of Defendant Nos.1 & 2 have been filed along with income tax returns. The two affidavits read as under:

"***Affidavit of Shri Rakesh Bansal***

I, Rakesh Bansal S/o Shri Suraj Bhan Bansal, aged about 46 years, R/o G-88, Phase-I, Ashok Vihar, New Delhi, do hereby solemnly affirm and declare as under:

1. That the suit property is owned by the defendant no.2 who is the wife of the deponent.

2. That the defendant no.2 herself is the owner of the portion of the said property of 19 biswas which is in front and she purchased suit property Rakesh Trading Co., HUF for consideration.

3. That the tenant R.G. Associates vacated the property in December-2014, thereafter the defendant nos.1 and 2 are managing the said property themselves by *organizing the parties or events for individuals and income generated is duly reflects in the income tax record of defendant no.2. In the instant case, income for the assessment year 2016-2017, 2017-2018 and 2018-19 is Rs.4,08,000/-, Rs.5,10,000/- and Rs.6,15,000/- respectively.*

…………………

<u>Affidavit of Mrs. Anupama Bansal</u>

I, Anupma Bansal @ Anupma Gupta wife of Shri Rakesh Bansal, aged about 43 years, R/o G-88, Phase-I, Ashok Vihar, New Delhi, do hereby solemnly affirm and declare as under:

1. That the suit property is owned by the defendant no.2 who is the wife of the defendant no.1.

2. That the defendant no.2 herself is the owner of the portion of the said property of 19 biswas which is in front and she purchased suit property Rakesh Trading., HUF for consideration.

3. That the tenant R.G. Associates vacated the property in December-2014, thereafter the defendant nos.1 and 2 are managing the said property themselves by organizing the parties or events for individuals and income generated is duly reflects in the income tax record of defendant no.2. In the instant case, income for the assessment year 2016-2017, 2017-2018 and 2018-19 is Rs.4,08,000/-, Rs.5,10,000/- and Rs.6,15,000/- respectively. Copies of income tax returns are being filed along with all this affidavit."

19. Along with the affidavits, the income tax returns for the assessment year 2016-17, 2017-18 and 2018-19 have been filed which show that Defendant No.2 is earning rental income and other income. The suit property is being used as *`Suraj Vatika Farm House'* and the total income from organising functions is shown to be as under:

Total Income earned by Defendant Nos. 1 and 2

Amount	Period
Rs.48,90,000/-	for year ending 31st March, 2016
Rs.50,70,000/-	for year ending 31st March, 2017
Rs.52,61,000/-	for year ending 31st March, 2018

Thus, in the last three years, as per Defendant Nos. 1 and 2 own affidavits dated 7th January, 2019, the Defendants have generated a revenue of Rs.1,52,21,000/- from the farm house.

20. All the documents, except the cancellation of GPA and notice of such cancellation, being admitted documents and the said cancellation document being a registered document, certified copy of which is on record, no oral evidence is required in this matter as there are no disputed facts. Mere denial by the Defendant Nos. 1 and 2 of the existence of the cancellation of the GPA is no denial in the eyes of law. Clearly, Defendant Nos.1 and 2 have usurped the property of Plaintiff No.1 and the HUF – Plaintiff No.2. Plaintiff No.1 being alive, Defendant No.1 cannot become the *karta* of the HUF. The ownership of the land vests with Plaintiff No.2 of which Plaintiff No.1 is *karta*. The entire sale transaction is illegal and contrary to law having been executed after the cancellation of the GPA.

21. Property belonging to a HUF can only be sold or altered by the *karta*, for the benefit of the family, a pious obligation, or in distress. Mayne's Treatise on Hindu Law and Usage[1] opines as under:

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[1] Dr. Virender Kumar (Ed), *Mayne's Treatise on Hindu Law and Usage,* 17th Edn., 2017 (Bharat Law House, New Delhi), at page 964.

> *"**384. Mitakshara text discussed**. – The power of a managing member to make an alienation is confined according to the Mitakshara to three purposes: (1) in the time of distress (apatkale); (2) for the sake or benefit of the family (kutumbarthe); and (3) for pious purposes (dharmarthe). The meaning of the terms if explained by the Mitakshara: "Time of distress" refers to a distress which affects the whole family; 'for the sake of the family' means 'for its maintenance; and 'pious purposes' are described as indispensable acts of duty such as the obsequies of the ancestors". According to Patkar, J., "the explanation of the text of Brihaspati by the Mitakshara is by no means to be considered as exhaustive and may be treated as illustrative and interpreted with due regard to the conditions of modern life. The first of the above purposes would be a case of legal necessity. The second would cover both family necessity and benefit. It is fairly clear from the Mitakshara that the term maintenance or support of the family (poshana) would include not only transactions which are absolutely necessary for its bare maintenance but also transactions positively beneficial to the family in the sense that they are clearly calculated to raise its economic level and standard of life."*

22. There is no pleading that Plaintiff Nos.1 & 2 were in any distress at the time when the GPA was given to Defendant No.1. Further, Defendant No.1 even in his assumed role of *karta* of Plaintiff No.2, could not have sold the property to his wife unless it was a sale in distress or for the benefit of the family or for pious purpose. No such case is either pleaded or argued before this Court. Moreover, the sale is in fact meant to exclude the Plaintiffs' enjoyment of the suit property. Such a sale is impermissible in law.

23. The suit is, accordingly, liable to be decreed declaring Plaintiff No.2 as the owner of the suit property and further declaring the sale deed dated 24th July, 2013 as null and void. Permanent injunction is granted restraining Defendant Nos.1 & 2 from alienating, letting out or using the suit property for any commercial or other purpose. Decree of possession is granted in favour of the Plaintiffs directing Defendant Nos.1 & 2 to hand over the vacant and peaceful possession of the suit property to the Plaintiffs within four weeks.

24. Since the accounts have now been rendered by Defendant Nos. 1 and 2 showing the total income of Rs.1,52,21,000/- crores for last three years, the Defendant Nos. 1 and 2 are directed to pay 1/3rd of the amounts earned i.e. a sum of Rs.50,73,666.67/- within a period of four weeks to be credited to the account of Plaintiff No.2. The rental amount lying deposited in Court shall also be released in favour of the Plaintiffs, along with the interest, if any, accrued thereon, after deduction of the TDS.

25. The suit and all pending applications stand disposed of. Decree sheet be drawn in the above terms.

26. There is yet another aspect. Order dated 30th May 2014 was clear and categorical. It required the Defendants to make various compliances which are:

i. Defendant No.2 was restrained from transferring, alienating or creating any third party interest qua the suit property.

ii. Defendant No.2 was also directed to deposit rents, being received by her, with the Registrar General of this Court.

iii. Defendant No.2 was also directed to maintain a record in case the property is given on lease, rent license for a short period, and to file details of the persons to whom the property is leased and amounts received.

iv. Defendant Nos. 1 and 2 were restrained from acting in any manner through Power of Attorney dated 19th March, 1998.

27. Defendant Nos. 1 and 2 are *prima facie*, in serious non-compliance of the said order. Except the deposits by the tenant i.e., Defendant no.3, no other deposits have been made by Defendant Nos. 1 and 2. They have not placed on record the details of the persons to whom the property has been leased or the lease amounts earned from the same. The property is under regular use by the Defendants who have made huge monetary gains. Defendant Nos. 1 and 2 had an obligation to comply with the order dated 30th May 2014 which they have failed to do for over four years. They did not inform the Court that Defendant no.3 had vacated the property as far back as December, 2014. Under these circumstances, show cause notice is issued to Defendant no.1 and 2 as to why contempt action ought not to be initiated against them. Defendant Nos. 1 and 2 shall file their affidavits in response to the show cause notice within four weeks.

28. List on 14th May, 2019 for hearing on the contempt.

PRATHIBA M. SINGH, J.
JUDGE

MARCH 12, 2019/*dk*