

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

% **Date of decision: 1st February, 2019**

+ **CS(OS) 356/2016 & IAs No.8562/2016 (u/S 151 CPC) & 6676/2018**
(u/O XIV R-5 CPC)

MS BHAVNA KHANNA **..... Plaintiff**

Through: Mr. Pradeep Narula, Advs.

versus

SUBIR TARA SINGH **..... Defendant**

Through: Ms. Nandita Rao, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for possession of ground floor of E-236, East of Kailash, New Delhi along with *pendente lite* and future interest and for recovery of arrears of rent of Rs.9.60 lacs with effect from 24th December, 2014 till the date of filing of the suit and for future rent till the time of delivery of possession, pleading that; (i) Dr. Rachna Khanna, sister of the plaintiff was married to the defendant on 27th April, 1999; (ii) a Sale Deed dated 16th December, 2003 with respect to entire ground floor consisting of three bed rooms with attached bath rooms, drawing-cum-dining, kitchen, front balcony and rear open space of property No.E-236, East of Kailash, New Delhi constructed over land ad-measuring 200 sq. yds. was executed in favour of Dr. Rachna Khanna, sister of the plaintiff; (iii) however, the entire consideration for purchase of the subject property was provided for by the father of the plaintiff and the said Dr. Rachna Khanna; (iv) the defendant and Dr. Rachna Khanna were however not residing on the said property and were residing elsewhere and the said property was let out at Rs.80,000/- per month; (v) in May, 2014 Dr. Rachna Khanna learnt of the

defendant having an affair with another woman; (vi) the defendant, on the pretext of improving his relationship with Dr. Rachna Khanna, prevailed upon the father of the plaintiff and Dr. Rachna Khanna to allow the defendant, Dr. Rachna Khanna and their daughter to reside in the said property and which the father of the plaintiff allowed; (vii) since the said property was purchased by the father of the plaintiff and Dr. Rachna Khanna in the name of Dr. Rachna Khanna as security for Dr. Rachna Khanna, it was agreed between the family members that the said property would be gifted by Dr. Rachna Khanna to the plaintiff; (viii) the plaintiff's sister, Dr. Rachna Khanna in pursuance to the aforesaid, vide registered Gift Deed dated 24th December, 2014 gifted the property to the plaintiff, making the plaintiff absolute owner thereof; (ix) the sister of the plaintiff Dr. Rachna Khanna however on account of relationship with the plaintiff continued to reside on the property; (x) the defendant is using the property of the plaintiff for his extra-marital relationships; (xi) the plaintiff called upon the defendant to pay monthly rent of Rs.60,000/- to the plaintiff; and, (xii) the defendant however neither paid any amount nor vacated the property of the plaintiff.

2. The suit was entertained and summons thereof issued to the defendant.

3. The defendant has filed a written statement, pleading that (a) this suit for "possession and for *mesne profits*" is liable to be dismissed being barred as the defendant is the co-owner of the property and the plaintiff is a stranger to the property, having no right therein; (b) the Gift Deed dated 24th December, 2014 is a sham transaction and there has been no genuine transfer of the property from Dr. Rachna Khanna, being the wife of the defendant, in favour of the plaintiff; (c) the records of the Municipal Corporation of Delhi

as on 27th January, 2016 indicated the property to be registered in the name of Dr. Rachna Khanna; (d) Dr. Rachna Khanna even otherwise has been conducting herself as the owner of the property and the present suit has been filed by the plaintiff in collusion with Dr. Rachna Khanna; (e) the plaintiff is merely a front for wife of the defendant; (f) the property was purchased by the defendant and was registered in the exclusive name of Dr. Rachna Khanna wife of the defendant, out of the defendant's love to secure his wife and further as less stamp duty was payable for the property registered in the name of a woman; the rest was paid in cash; (g) the wife of the defendant Dr. Rachna Khanna had no right to gift the property to the plaintiff without the consent and knowledge of the defendant; (h) the Gift Deed dated 24th December, 2014 is therefore null and void; (i) the fact that the Gift Deed is sham is also evident from the fact that Dr. Rachna Khanna wife of the defendant continues to take all decisions pertaining to the property and the defendant has been paying property tax of the property; (j) Dr. Rachna Khanna and her parents treated the defendant with cruelty and the defendant had filed "a suit for divorce on 26.08.2014" against his wife Dr. Rachna Khanna on the grounds of cruelty and adultery; (k) this suit has been filed as a counterblast to the divorce case and to the case filed by the grandmother of the defendant for eviction of the defendant and Dr. Rachna Khanna from the property of the grandmother; (l) only Rs.15.5 lacs out of the total purchase consideration of Rs.55 lacs of the subject property was paid from the account of Dr. Rachna Khanna and the balance amount was paid by the defendant in cash; (m) Dr. Rachna Khanna wife of the defendant has been indulging in various adulterous relationships; (n) the defendant and Dr. Rachna Khanna had agreed to dissolve their marriage by mutual consent and it was further

agreed that they would sell the subject property and take 50% each of the sale proceeds but Dr. Rachna Khanna subsequently, out of greed changed her mind; and, (o) the property was not purchased with the funds of the father of the plaintiff and Dr. Rachna Khanna and thus the question of any family settlement does not arise.

4. Though the plaintiff has filed replication but the need to advert thereto is not felt.

5. On 5th September, 2017, on the pleadings of the parties, the following issues were framed:

- i. Whether the suit is liable to be dismissed in terms of Order VII Rule 11 of the Code of Civil Procedure, 1908? OPD
- ii. Whether the gift deed dated 24th December, 2014 is a sham transaction and there has been no genuine transfer of property from Ms. Rachna Khanna to plaintiff? OPD
- iii. Whether the plaintiff has any title or interest in the suit property? OPP
- iv. Whether the plaintiff and her sister Ms. Rachna Khanna are acting in collusion to harass the defendant? OPD
- v. Whether the defendant is a co-owner of the said property? OPD
- vi. Whether the plaintiff is entitled to the recovery of possession/ejectment as prayed? OPP
- vii. Whether the plaintiff is entitled to the recovery of damages/mesne profits as prayed, if so at what rate? OPP
- viii. Whether the plaintiff is entitled to any interest on arrears of rent, if so at what rate and for what period? OPP
- ix. Relief.”

6. However recording of evidence has not commenced as yet though affidavit by way of examination-in-chief of the plaintiff has been filed.

7. On 14th May, 2018, IA No.6676/2018 of the plaintiff under Order XIV Rule 5 of the CPC came up before this Court when, though the counsel for the defendant appearing on advance notice stated that she had no objection to the application being allowed but upon going through the file, it appeared that the framing of issues and ordering of trial was misdirected and a decree in this suit can be passed forthwith at least qua the relief of recovery of possession of immovable property, directing an enquiry into *mesne profits*. It was felt that the pleas aforesaid in the written statement of the defendant did not constitute a defence to the suit. It was observed that (i) the defendant, not being the recorded owner of the property, was not entitled to challenge as sham the Gift Deed by the recorded owner of the property in favour of the plaintiff and the right if any to challenge the Gift Deed was of the wife of the defendant namely Dr. Rachna Khanna, who was admittedly not challenging the same; (ii) the defence of the defendant of being the real owner of the property was barred by the provisions of the Prohibition of Benami Property Transactions Act, 1988 particularly as it stood at the time of the transaction and at the time of institution of the suit; and, (iii) it was not the plea of the defendant in the written statement that the defendant had taken any action for challenging the title in favour of his wife. Though the counsels were fully heard on that date but on request of the counsel for the defendant, the hearing was adjourned.

8. The counsels were further heard on 13th December, 2018. It was informed that after the hearing on 14th May, 2018, the defendant had filed a

suit in the Court of the Civil Judge, Delhi qua the Gift Deed. It was contended by the counsel for the plaintiff that the said suit was beyond limitation and an application under Order VII Rule 11 of the CPC for rejection of plaint in that suit had been filed. The counsel for the plaintiff in this context referred to the notice dated 30th January, 2015 got issued by the plaintiff to the defendant and filed by the defendant along with the divorce petition filed by the defendant against his wife Dr. Rachna Khanna. The counsel for the defendant in her rejoinder arguments on 13th December, 2018 contended that the said notice was in fact of 30th January, 2016 and the defendant in the list of documents filed along with the divorce petition had also described the said notice as of 30th January, 2016. This was controverted by the counsel for the plaintiff who contended that the defendant in fact in his cross-examination in the divorce proceedings had admitted the notice to be of 30th January, 2015. Again, on request of the counsel for the defendant, the hearing was adjourned to 17th January, 2019.

9. On 17th January, 2019, the counsels were further heard and the proceedings adjourned to 18th January, 2019 directing the personal presence of Dr. Rachna Khanna.

10. On 18th January, 2019 Dr. Rachna Khanna identified by the counsel for the plaintiff and whose identity was not disputed by the counsel for the defendant appeared and it was enquired from her whether she had executed the Gift Deed in favour of the plaintiff. The counsel for the defendant objected. Subject to the said objection, the reply in affirmative of Dr. Rachna Khanna to the said question was recorded in the order dated 18th January, 2019 and the hearing adjourned to today.

11. Today, the counsel for the defendant has handed over in the Court a document comprising of two pages titled “Objections by the defendant, to disposal of the suit, without granting him an opportunity to lead evidence, on the issues of fact and mixed questions of fact and law, framed vide order dated 5.9.2017” along with copies of judgments viz. *Alka Gupta Vs. Narender Kumar Gupta* AIR 2011 SC 9, *Major S.S. Khanna Vs. Brig. F.J. Dillon* AIR 1964 SC 497, *Kapil Corepacks Pvt. Ltd. Vs. Harbans Lal* (2010) 8 SCC 452, *Yogita Dasgupta Vs. Kaustav Dasgupta* 232 (2016) DLT 460 (DB) and *Devi Das Vs. Mohan Lal* AIR 1982 SC 1213.

12. The controversy on account whereof hearing was adjourned on 13th December, 2018 i.e. whether the notice bearing the date 30th January, 2015 was in fact of 30th January, 2016 is not germane to the present adjudication and the relevance thereof is only qua the suit subsequently filed by the defendant against Dr. Rachna Khanna (plaintiff herein does not appear to be a party to the suit) for declaration that the defendant herein is the real owner of the property aforesaid and for permanent injunction restraining Dr. Rachna Khanna, wife of the defendant from dealing with the property, is not germane to the present controversy and there is no need to deal therewith.

13. The only questions for adjudication, are (i) whether this suit is befitting of trial; and, (ii) whether framing of issues on 5th September, 2017 prevents this Court from, if were to find the trial to be unnecessary, so adjudicating with the suit.

14. Code of Civil Procedure, after completion of pleadings, vide Order XIV Rule 1 of the CPC requires issues to be framed in the suit. Rule 1(1) of Order XIV provides that issues arise when a material proposition of fact or

law is affirmed by one party and denied by the other. Rule 1(2) provides that material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Thereafter Rule 1(6) provides that nothing in Rule 1 would require the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence. Rule 1 of Order XV also provides that where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment. Reference in this context, with benefit, can be made to *Ramchandra Vs. Mandakini* MANU/MH/0596/1993, *Kawal Sachdeva Vs. Madhu Bala Rana* 2013 SCC OnLine Del 14022, *Adarsh Kumar Puniyani v. Lajwanti Piplani* 2015 SCC OnLine Del 14022 and *Abbott Healthcare Pvt. Ltd. Vs. Raj Kumar Prasad* (2018) 249 DLT 220.

15. On 14th May, 2018, it was felt for the reasons recorded that the defendant though had filed a written statement but the said written statement did not disclose the defendant as making any defence and the denial by the defendant of the material propositions of law and fact on the basis whereof the plaintiff had sought the relief of recovery of possession was no denial in law and thus no issue arises and judgment, as far as the claim for recovery of possession is concerned, can be pronounced forthwith.

16. The material proposition of law and fact pleading which the plaintiff has sought the relief of possession is (i) the plaintiff being the owner of the property vide registered Gift Deed executed in favour of the plaintiff by Dr. Rachna Khanna in whose favour a registered Sale Deed with respect to the property existed; and, (ii) the defendant had no right to reside in the property.

17. The pleaded defence of the defendant to the aforesaid material propositions is that (i) he is the joint owner of the property along with Dr. Rachna Khanna for the reason of having contributed the sale consideration of Rs.39.5 lacs in cash out of the sale consideration of Rs.55 lacs, though reflected in the Sale Deed in favour of Dr. Rachna Khanna as of Rs.15.5 lacs; (ii) since he is the joint owner of the property, Dr. Rachna Khanna could not have gifted the entire property to the plaintiff; (iii) the Gift Deed by Dr. Rachna Khanna in favour of the plaintiff is void for the reason of Dr. Rachna Khanna being not entitled to gift the entire property and sham for the reason of Dr. Rachna Khanna even after the execution of the Gift Deed, dealing with the property as owner thereof.

18. What is required to be seen is, whether the pleaded defence of the defendant, in law, entitles the defendant to defeat the claim of the plaintiff. If it does not, it will not constitute a material proposition of fact or law for an issue to be framed thereon, though without regard to the said position, issues have indeed been framed in the suit.

19. I will first take up the defence of the defendant of being the joint-owner of the property along with Dr. Rachna Khanna on account of the defendant having contributed Rs.39.5 lacs towards purchase consideration of the property and Dr. Rachna Khanna having contributed only Rs.15.5 lacs.

20. As aforesaid, the Sale Deed of the property in favour of Dr. Rachna Khanna records the sale consideration thereof to be Rs.15.5 lacs only. Sale of immovable property for such consideration is required to be compulsorily registered. Section 91 of the Evidence Act, 1872 lays down that where the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any

matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself. By virtue thereof, it is only the Sale Deed, execution whereof is not denied by the defendant, is to be seen. Section 92 of the Evidence Act provides that where the terms of any such contract, grant or other disposition of the property have been proved by the document itself, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to or subtracting from its term. The defendant, who claims to be a joint purchaser under the Sale Deed and consequently a party thereto, by pleading the sale consideration to be Rs.55 lacs instead of Rs.15.5 lacs is wanting this Court to record evidence which contradicts and / or varies the terms of the registered Sale Deed and which is barred by Section 92 of the Evidence Act. The issues framed aforesaid on aspects on which evidence is barred thus serve no purpose inasmuch as even if evidence is to be led, the same can still not be read and will serve only the purpose of delaying the disposal of the suit.

21. The defendant, inspite of the plaintiff having instituted this suit for recovery of possession of the property from the defendant, has not taken any step to have his title to the property declared. The defendant, though after the hearing before this Court on 14th May, 2018 has instituted a suit but it is the contention of the counsel for the plaintiff herein that the same is beyond limitation. Be that as it may, owing to the defendant having filed such a suit, in the absence of any interim order therein, the present suit cannot be

permitted to be languished. Moreover, the plaintiff is not even party to that suit.

22. The claim of the defendant of payment of Rs.39.5 lacs in cash to the earlier owner of the property, even otherwise reeks of illegality and the Courts should not allow their process to be used for asserting rights which are steeped in illegality. The defendant, save for making a bare averment that he paid Rs.39.5 lacs in cash, has not disclosed the source of such large sums of money held by him in cash and has also not pleaded that the said amount was reflected in his income returns. No documents also in this regard have been filed. In the absence of any plea and document, inference can safely be drawn of the said money, even if paid by the defendant, being what has come to be known as “black money” and on which taxes to the authorities concerned are avoided. If the Courts were to start protecting rights claimed to be acquired with such money, the Courts will become privy to the illegalities which such litigants have indulged in and which cannot be permitted.

23. Be that as it may, the Benami Transactions (Prohibition) Act, 1988 which came into force on 5th September, 1998 i.e. much prior to the Sale Deed dated 16th December, 2003, defined a benami transaction as a transaction in which property is transferred to one person for a consideration paid or provided by another person. Section 3 thereof barred all persons from entering into benami transaction. Section 4 of the said Act barred any defence in any suit, claim or action based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person. The claim of the defendant that out of the total sale consideration of Rs.55 lacs, Rs.39.5 lacs was contributed

by him but the Sale Deed of the property obtained in the exclusive name of his wife Dr. Rachna Khanna falls within the definition of a benami transaction and which transaction was barred on the date of the Sale Deed and the defendant is also barred from defending this suit on the plea of being the benami joint owner of the property. The said Act was, vide amendment of the year 2016, renamed as the Prohibition of Benami Property Transactions Act, 1988 and though there has been an overhaul of all the provisions of the earlier statute but the effect remains the same. Section 2(8) of the Act as stands now defines “benami property” as any property which is subject matter of a benami transaction and Section 2(9) defines a “benami transaction” as a transaction or arrangement where a property is transferred to or is held by a person and the consideration for such property has been provided or paid by another person. Section 3 again prohibits a benami transaction and Section 4 bars a defence in respect of any property held benami. The defence of the defendant in the present suit is thus barred by the said law and once the defence is barred, again permitting evidence to be led would be only at the cost of the valuable time of this Court and the Court ultimately after the recording of evidence also will be bound to decide in accordance with law. It is for this reason that I say that the defence of the defendant of joint ownership does not raise any material proposition of fact or law for an issue to have been framed thereon.

24. Yet another aspect may be noted. The pleaded defence of the defendant is that though he had contributed Rs.39.5 lacs in cash towards purchase of the property but the Sale Deed was registered in the exclusive name of his wife Dr. Rachna Khanna “out of his love to secure his wife and further as less stamp duty was payable for property registered in the name of

woman”. Once the defendant had got the Sale Deed executed in the exclusive name of his wife Dr. Rachna Khanna out of the love and desire of the defendant to secure his wife, the defendant cannot now be heard to call the Sale Deed a sham. Further, the defendant having taken advantage of payment of less stamp duty if the Sale Deed was executed in the exclusive name of his wife Dr. Rachna Khanna, cannot later on turn around and claim any right to the property. Law does not permit such turn around after availing benefit of a stand taken earlier.

25. Once it is found that the defendant has no claims of ownership or joint ownership over the property, the defendant has no locus to challenge the dealings of the absolute owner of the property i.e. his wife Dr. Rachna Khanna with the property. A person who has no right, title, interest or share in a property has no locus in law to challenge the title claimed by another to the property. The claim of the defendant of ownership / joint-ownership of the property having been found to be but a mere bogey, it has but to be held that the possession of the defendant of the property is permissive i.e. as a mere licensee and the defendant as a licensee is estopped from challenging the title of the owner of the property and / or of another who has derived title from the owner of the property when the owner of the property confirms the assignment of title. Thus, the defendant has no locus to say that the Gift Deed is a sham and that his wife Dr. Rachna Khanna continues to be the owner of the property.

26. That leaves the defence of the defendant of his wife Dr. Rachna Khanna even after the date of the Gift Deed continuing to represent herself as the owner of the property. The counsel for the defendant has argued that such evidence should be allowed to be led to show that the Gift Deed is a

sham. It was also the contention of the counsel for the defendant on 17th January, 2018 though not urged today that even the Gift Deed had not been proved and that Dr. Rachna Khanna had not confirmed that she had executed the Gift Deed. It was for this reason only that the presence of Dr. Rachna Khanna wife of the defendant was directed for 18th January, 2019. On 18th January, 2019, Dr. Rachna Khanna appeared and on enquiry by this Court admitted that the Gift Deed was executed by her. The counsel for the defendant however objected contending that such enquiry could not be made from Dr. Rachna Khanna without giving to the counsel for the defendant an opportunity to cross-examine. The taking of the original Gift Deed on record was also objected to and it was contended that only the Registrar of Documents with whom the said Gift Deed was registered could prove the same to be registered.

27. No merit was / is however found in the said contentions. The Courts, as aforesaid, cannot be mere spectators and allow their process to be used for as long as a litigant may desire. The Courts have enough power to examine any person. Order X Rule 2(1)(b) and (2) of the CPC empowers the Court to orally examine any person in a position to answer any material question relevant to the suit. Section 165 of the Evidence Act is also to the same effect. Moreover, the defendant in his written statement has admitted the execution of the Gift Deed and rather called it a sham and a result of collusion between his wife Dr. Rachna Khanna and the plaintiff. The executant of the Gift Deed viz. Dr. Rachna Khanna as aforesaid has confirmed execution thereof and has not disputed the Gift Deed.

28. Once it is so, the conduct even if any of Dr. Rachna Khanna proved by the defendant in evidence for which opportunity is sought, will not whittle

away the title held by the plaintiff under the Gift Deed in the property and would not affect the ownership of the property. Thus, the plea of the defendant of the Gift Deed being a sham for the reason of Dr. Rachna Khanna even after execution thereof dealing with the property as owner thereof is also not such which if proved would shake the title of the plaintiff to the property. The same also thus does not constitute a material proposition of law and fact.

29. I have to next deal with the question whether framing of issues disentitles this Court from, inspite of finding as aforesaid, adjudicating the suit and to necessarily allow the time of this Court to be wasted in trial which is to serve no purpose. The position in this regard is no longer *res integra*. As far back as in *Azhar Hussain Vs. Rajiv Gandhi* 1986 Supp SCC 315 and *Samar Singh Vs. Kedar Nath* 1987 Supp SCC 663 reiterated in *I.T.C. Ltd. Vs. Debts Recovery Appellate Tribunal* (1998) 2 SCC 70, the argument that the Court must proceed with the trial, record the evidence and only after the trial is concluded can the Court appropriately deal with the respective contention, was rejected though in the context of Order VII Rule 11 of the CPC. It was held that the litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court. Mention in this respect may also be made of *Parivar Seva Sansthan Vs. Veena Kalra* 2000 (54) DRJ (DB), *Meera Gupta Vs. Dinesh Chand* 2002 (63) DRJ 264 (DB), *Charanjit Lal Mehra Vs. Kamal Saroj Mahajan* (2005) 11 SCC 279, *State Trading Corporation of India Ltd. Vs. Nirmal Gupta* 2012 SCC OnLine 3556 (DB) and *Sanjay Sharma Vs. Madan Mohan Sharma* 2013 SCC OnLine Del 2434.

30. That brings me to the written objections handed over by the counsel for the defendant today to disposal of this suit without granting to the defendant an opportunity to lead evidence. In *Alka Gupta* supra this Court had dismissed the suit for rendition of account summarily on account of a partnership holding the partnership to be illegal and unenforceable as the plaintiff was a teacher in a government school. It was while setting aside the said reasoning that it was observed that civil suits have to be decided after framing of issues and trial permitting parties to lead evidence. The said judgment cannot be read as a precedent for the proposition that even where the defence is barred by law, the suit still has to go through the rigmarole of trial. All that was held in *Major S.S. Khanna* supra was that an issue of fact can be disposed of after trial. However here, I have held that no issue of fact arises as no material proposition of fact or law is contained in the written statement of the defendant. *Kapil Corepacks Pvt. Ltd.* supra also is not applicable because it has been held hereinabove that the defendant is barred by benami law from claiming ownership and without being the owner has no locus to challenge the Gift Deed by his wife Dr. Rachna Khanna in favour of the plaintiff. The enquiry from Dr. Rachna Khanna on 18th January, 2019 was made only on the argument of the counsel for the defendant that it was not known whether Dr. Rachna Khanna stood by the Gift Deed.

31. As far as reliance on *Yogita Dasgupta* supra is concerned, though the Benami Act provides an exception where the property is held in the name of the spouse and the consideration for such property has been provided or paid out of the known sources of the individual, the defendant herein has neither pleaded that the consideration of Rs.39.5 lacs claimed to be paid by him in cash was paid out of the known sources of the income of the defendant nor

does the registered Sale Deed reflect the said payment. The consideration mentioned in the Sale Deed is of Rs.15.5 lacs only and which according to the defendant also flowed from his wife Dr. Rachna Khanna. The benefit of the said judgment is thus not available.

32. *Devi Das* supra was a case of eviction under the rent laws and thereafter it has been held in *Tej Bhan Madan Vs. II Additional District Judge* (1988) 3 SCC 137, *Subhash Chandra Vs. Mohammed Sharif* (1990) 1 SCC 252, *Pal Singh Vs. Sunder Singh* (1989) 1 SCC 444, *Joginder Singh Vs. Jogindero* (1996) 7 SCC 555 and *Sheela Vs. Firm Prahlad Rai Prem Prakash* (2002) 3 SCC 355 that a tenant is not entitled to challenge the title of the landlord or of the purchaser from the landlord. Here the recorded owner admits assignment. Also, *Devi Das*, in *V.M Salim Vs. Fathima Muhammed* (2011)15 SCC 756, was held to be rendered on its own facts.

33. Thus no merit is found in the objections of the counsel for the defendant to the disposal of the suit.

34. The plaintiff is therefore entitled to a decree for possession forthwith.

35. The counsel for the plaintiff states that the plaintiff will not press the relief of recovery of *mesne profits* if the defendant does not delay the delivery of possession. It is stated that if the defendant delays delivery of possession, liberty may be given to the plaintiff to apply to this Court for issuance of a commission to enquire into the *mesne profits*.

36. A decree is accordingly passed in favour of the plaintiff and against the defendant, of recovery of possession of ground floor of property No. E-236, East of Kailash, New Delhi. The plaintiff is also found entitled to costs of this suit. Counsel's fee assessed at Rs.1 lac.

37. Liberty is granted to the plaintiff to, if the defendant delays delivery of possession, apply for issuance of a commission to enquire into the *mesne profits*.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 01, 2019

‘gsr’

