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

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*Date of decision: 05.05.2021*

+ RSA 27/2021

RAJ KAUR

..... Appellant

Through: Mr. S.K. Balain & Mr. Harshit  
Chopra, Advocates

versus

MITLESH & ORS.

..... Respondents

Through Mr. Divya Prakash Pande,  
Standing Counsel for North DMC

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**JYOTI SINGH, J. (ORAL)**

**CM APPL. 9350/2021 (condonation of delay)**

1. The present application has been filed by the Appellant under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 179 days in filing the accompanying appeal. It is averred in the application that the limitation period for filing the appeal expired on 07.04.2020 but on account of the nationwide lockdown imposed on 22.03.2020 due to the Pandemic Covid-19, the appeal could not be filed within the limitation period of 90 days. The limitation was subsequently extended by the Supreme Court in a *suo motu* petition bearing **SUO MOTU WRIT (CIVIL) NO.3 of 2020**. As the position eased out, the appeal was filed on 08.10.2020. The delay in filing is *bonafide* and beyond the control of the Appellant.

2. I have gone through the reasons set out in the application and find that the Appellant has made out sufficient cause for condonation of delay in filing the appeal.

3. For the reasons stated in the application, the same is allowed and the delay of 179 days in filing the appeal is condoned.

4. Application stands disposed of.

**RSA 27/2021 & CM APPL. 9348/2021 (Stay) & CM APPL. 9349/2021 (U/O XLI Rule 27 CPC)**

1. Present Regular Second Appeal has been filed assailing the judgement dated 08.01.2020 of the First Appellate Court in RCA No. 60854/2016 whereby the appeal preferred by the Appellant against the impugned judgement and decree of the Trial Court dated 15.01.2016 was dismissed. Appellant herein was Defendant No. 2 in the suit while Respondent No. 1 herein was the Plaintiff. Respondent No. 2 was Defendant No. 1 and Respondents No. 3 to 6 herein were Defendants No. 4 to 7 respectively before the Trial Court. Parties are being referred as per their litigating status before this Court.

2. Vide judgement dated 15.01.2016, the learned Trial Court in CS No. 13/2009 decreed the suit of the Respondent No. 1 seeking permanent and mandatory injunction, declaration and possession, in respect of Plot measuring 101-1/3 sq. Yards, forming part of Khasra No. 1329, Nangloi, Prem Nagar, Delhi (hereinafter referred to as '**Suit Property**') in her favour. Trial Court passed a decree declaring Respondent No.1 to be the owner of the Suit Property as also a declaration that the documents filed by Appellant to substantiate her ownership are null and void. Appellant,

Respondent No. 2 as well as their son were restrained from raising illegal construction on the Suit Property and Respondent Nos. 3 and 4/Defendant Nos. 4 and 5 were directed to remove the illegal constructions. Trial Court also passed a decree of possession in favour of the Respondent No.1 directing the Appellant, Respondent No. 2 to hand over vacant and peaceful possession of the Suit Property within a month of the judgement. First Appellate Court dismissed the appeal filed by the Appellant, leading to filing of the present Regular Second Appeal.

3. From a reading of the impugned judgements and the pleadings of the parties, the facts brought forth are as follows:

- a. Respondent No. 1 filed a suit pleading therein that she had purchased the Suit Property from Smt. Bimla Devi for a consideration of Rs. 40,000/-. Smt. Bimla Devi executed sale documents dated 21.02.1994 being GPA, Agreement to Sell, Receipt, Affidavit and Will, duly registered with the office of the Sub-Registrar, Delhi.
- b. It was pleaded that Smt. Bimla Devi had purchased the said plot of land by a duly registered Sale Deed dated 20.06.1984, a copy of which was also handed over by her to Respondent No. 1 at the time of selling the plot and handing over the possession of the same.
- c. It was further pleaded in the Plaint that Respondent No. 1 was in continuous exclusive and lawful possession of the Suit Property from the date of purchase. On 19.10.2003, when Respondent No. 1 along with her husband and one Shri Ravi Shankar Dubey were raising construction on the plot, Appellant and Respondent No. 2 along with their son and two other persons came to the plot and

forcefully took away the entire building material claiming that the plot had been purchased by Shri Mahavir Singh/Respondent No. 2. On raising an objection, Respondent No. 1 and her husband were beaten mercilessly, upon which a Police complaint was made and a Kalandra was drawn up against both parties.

- d. It was further pleaded that when no action was taken, Respondent No. 1 and her husband again lodged a Complaint on 03.11.2003 and finally with the intervention of the Police, the matter was compromised and Respondent No. 2 assured that they will not interfere in the peaceful possession of the plot. However, on 16.05.2004, when Respondent No. 1 along with her husband visited the plot, Respondent No. 2 and the Appellant were already present there and started beating Respondent No. 1 and her husband mercilessly. On a Complaint lodged with the Police, an assurance was given by the Police that action will be taken. On account of the said incident, husband of Respondent No.1 suffered heart attack and on the very next day i.e. 17.05.2004, he passed away.
- e. It was pleaded that on 27.08.2005, Respondent No. 1 again visited the Suit Property but was threatened by the Appellant, her son and brother that if she ever visited the plot, they would murder her. A complaint was again lodged with the Police but to no avail and the threats continued. Having no other remedy, Respondent No.1 approached the Court.
- f. Written Statement was filed by the Appellant and Respondent No.2 wherein it was pleaded that the suit was not maintainable as

Appellant was the exclusive owner and in possession of the suit property. Plot bearing No. 15, Gali No. 3, measuring 200 sq. yards in Khasra No. 1329, was purchased by the Appellant from Shri Daljeet Singh, through duly executed GPA, Agreement to Sell etc. Respondent No.1 wrongly claimed ownership of the plot measuring 101-1/3 sq. yards, which is a part of the 200 sq. Yards, purchased by the Appellant.

- g. An application was filed by the Appellant for amendment of the plaint incorporating a prayer for declaration of the said documents dated 30.10.2003 as null and void, which was allowed vide order dated 13.10.2010 and be it noted that no amended written statement was filed.
- h. Written statement was also filed by the Municipal Corporation of Delhi stating that the suit was barred under Sections 477/478 of the Delhi Municipal Corporation Act, 1957 for want of Statutory Notice and non-joinder of SDM as the land according to them was agricultural.
- i. After the pleadings were complete, Trial Court framed the following issues:

“Issue No. 1:- Whether the suit is not maintainable against the MCD for grant of statutory notice U/s 478 of DMC Act? OPD

Issue No.2:- Whether the SDM concerned is a necessary party to the present suit, if so, its effect? OPD

Issue No. 3:- Whether the plaintiff or the defendant no.2 is the owner of the suit property” Onus on the parties

Issue No. 4:- Whether the defendants are unauthorised occupants of the suit property? OPP

Issue No. 5:- Whether the defendants have raised unauthorised construction in the suit property in violation of Building Bye-Laws and without sanctioned plan? OPP

Issue No. 6:- Whether the plaintiff is entitled to a decree of permanent injunction, as prayed in the prayer clause(a)? OPP

Issue No.7:- Whether the plaintiff is entitled to a declaration that she is lawful owner of the suit property? OPP

Issue No. 8:- Whether the plaintiff is entitled to a decree of mandatory injunction as prayed in prayer clause (c), (d) and (e)? OPP

Issue No. 9:- Whether the plaintiff is entitled to a decree of possession in respect of suit property? OPP

Issue No. 10:- Whether the plaintiff is entitled to a declaration that registered General Power of Attorney, Will, Agreement to Sell, Receipt and possession letter dated 30.10.2003 executed by Sh. Daljit Singh in favour of defendant no. 2 as null and void as well as a decree of cancellation of the said documents? OPP

Issue No. 11:- Relief.”

- j. Respondent No. 1 examined 10 witnesses including herself as PW-  
1. Respondent No. 2 filed his evidence by way of Affidavit and

was partly cross-examined but did not make himself available for remaining cross-examination.

- k. Trial Court decided Issues No. 3 and 7 jointly. As per the Trial Court both Appellant and Respondent No. 1 were required to prove their ownership qua the Suit Property. Respondent No. 1 in order to prove her ownership examined Smt. Bimla Devi, the erstwhile owner of the property, who proved (a) registered Sale Deed executed in her favour by one Shri Zile Singh; (b) execution of GPA, Agreement to Sell etc. by her in favour of Respondent No. 1. Attesting witness of the said documents was also examined and he proved his signatures. Record Keeper from the Sub-Registrar's office when examined proved the registration of the Sale Deed in favour of Smt. Bimla Devi. On the contrary, Appellant and Respondent No. 2 filed only copies of GPA and Agreement to Sell and failed to prove them, besides being unable to even name the erstwhile owners of the property. Trial Court held that though no Sale Deed was executed in favour of Respondent No. 1 by Smt. Bimla Devi but it was established from record that GPA etc. were executed for consideration and the transaction being of year 1994, was saved from the rigours of registration. Thus the issue of ownership was decided in favour of Respondent No.1 and consequently decree of declaration, possession and injunction was passed in her favour.
- l. Before the First Appellate Court, Appellant filed a joint application under Section 151 CPC for taking on record additional grounds as well as permission to produce additional evidence under Order XLI

Rule 27 CPC on 03.07.2017. Another joint application dated 26.07.2018 was filed for taking additional grounds in support of the appeal followed by a third application dated 09.05.2019 under Order XLI Rule 27 CPC. The applications were sought to be filed in view of the observations made by the Trial Court that the Appellant had failed to bring evidence pertaining to the title of the alleged erstwhile owners.

- m. As the order indicates, examining the judgements on the scope of Order XLI Rule 27 CPC and applying the principles laid therein, First Appellate Court dismissed the applications. Application for leading evidence of DW-1 and DW-2 was dismissed on the ground that from 13.03.2013 to 13.09.2015, despite sufficient opportunities and the official witnesses being present, Appellant failed to lead evidence and ultimately the evidence was closed on 13.09.2015, fixing the case for arguments. No steps were taken to reopen the evidence. Appellant had sufficient opportunity to prove the existence of the alleged title deed in favour of Shri Daljeet Singh, which she failed to do and could not be permitted to fill in lacunae before the Trial Court.
- n. Application to lead additional evidence by placing the original sale deed allegedly executed by Zile Singh in favour of Shri Daljeet Singh, purportedly stolen from the house of the Appellant, was dismissed on the ground that in the written statement no such plea of loss of original Sale Deed was taken and no attempt was made to even summon the certified copy of the Sale Deed. If the photocopy of the Sale Deed was in possession of the Appellant, as claimed,

steps should have been taken to prove the same by secondary evidence, which was not done.

- o. On merits, First Appellate Court, after examining the evidence led before the Trial Court and relying on the judgement of this Court in Ramesh Chand vs. Suresh Chand in **RFA No. 358/2000** dated 9.4.2012, upheld the judgement of the Trial Court on the ground that Respondent No. 1 had a better title in respect of the suit property.

4. Learned counsel for the Appellant assailing the impugned orders contends that (a) Appellant had filed a photocopy of the Sale Deed executed by Shri Zile Singh in favour of Shri Daljeet Singh on 20.06.1984, before the First Appellate Court, by which the chain of title documents was complete and the application under Order XLI Rule 27 CPC ought to have been allowed; (b) Sale Deed would have established that Appellant is the rightful and the legal owner of the plot of 200 sq. yards, over a part of which Respondent No. 1 illegally claimed ownership and possession (c) both Courts failed to appreciate that Appellant had purchased the plot from one Shri Daljeet Singh, who, as brought out before the Courts below, had been in possession for a period over 19 years i.e. from 20.06.1984 to 30.10.2003; (d) Respondent No. 1 only had notarized documents such as GPA, Agreement to Sell etc. which did not confer any title and did not prove the chain of documents through which the ownership flowed in her favour; (e) Appellant had filed GPA and Will etc. duly registered in the office of Sub-Registrar, Janak Puri, New Delhi to substantiate ownership.

5. It may be noted at this stage that while the present appeal was filed in October, 2020 but was not listed till 08.03.2021. Appellant subsequently filed an application being CM Appl. 9349/2021 under Order XLI Rule 27 CPC seeking permission to lead additional evidence. By way of the said application, Appellant seeks permission to place on record certain documents alleged to have been procured on 25.02.2021 and the argument of learned counsel for the Appellant, in support of the appeal, hinges on the pleas raised in the said application. It is argued that the documents reveal that Smt. Bimla Devi had sold the entire plot of 400 sq. Yards, owned by her, to one Shri Ishwar Singh on 01.01.1987, who in turn sold the same to his son Shri Kaptan Singh on 08.05.1989 and Shri Kaptan Singh subsequently, sold the same to one Shri Deepak on 16.08.2020. The Suit Property is a part of this 400 sq. yards plot and if Smt. Bimla Devi, who owned no other property, had sold the entire plot in 1987, no sale could have taken place in favour of Respondent No. 1, on 21.02.1994 as alleged. Thus the documents relied upon before the Trial Court by Respondent No.1, are fake and fabricated and the decree, obtained by fraud on the Court, is a nullity.

6. I have heard learned counsels for the Appellant and perused the documents and evidence led before the trial court, filed along with the appeal.

7. After examining the judgements impugned before this Court, it is evident that both the Courts have rendered a concurrent finding that Respondent No. 1 had a better title over the suit property than the Appellant. Before proceeding to examine and appreciate the contentions of the Appellant, reference be made to the judicial pronouncements in this

regard. The Supreme Court in Swadesh Ranjan Sinha vs. Haradeb Banerjee **1992 AIR 1590**, though in the context of eviction proceedings under the West Bengal Tenancy Act, 1956, explained the concept of ownership as under:

*“Ownership denotes the relation between a person and an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons’. (Salmond on Jurisprudence, 12th ed., Ch. 8, p. 246 et. seq.). There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. Such a right may be indeterminate in duration and residuary in character. A person has a right to possess the thing which he owns, even when he is not in possession, but only retains a reversionary interest, i.e., a right to repossess the thing on the termination of a certain period or on the happening of a certain event.”*

*All that a plaintiff needs to prove is that he has a better title than the defendant. He has no burden to show that he has the best of all possible titles. His ownership is good against all the world except the true owner. The rights of an owner are seldom absolute, and often are in many respects controlled and regulated by statute. The question, however, is whether he has a superior right or interest vis-a-vis the person challenging it.”*

8. In Ramesh Chand (supra), a Coordinate Bench of this Court held as under:

*“12 ..... A right to possession of an immovable property arises not only from a complete ownership right in the property but having a better title or a better entitlement/right to the possession of the property than qua the person who is in actual physical possession thereof.....”*

9. The conclusion as aforesaid was after considering the binding dicta of the Supreme Court in Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Ors. (2012) 1 SCC 656, wherein the Supreme Court held as under:

*“19. 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 the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.*

***Scope of power of attorney***

**20.** *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 authorises 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 1-A 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.*

**21.** *In State of Rajasthan v. Basant Nahata [(2005) 12 SCC 77] this Court held: (SCC pp. 90 & 101, paras 13 & 52)*

*“13. 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 favour 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.*

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*52. 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***

*22. 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 lifetime 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 the Succession Act, 1925.) Registration of a will does not make it any more effective.*

### ***Conclusion***

*23. Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in Asha M. Jain v. Canara Bank [(2001) 94 DLT 841], that the “concept of power-of-attorney sales has been recognised as a mode of transaction” when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.*

*24. 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 recognised or valid mode of transfer of immovable 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 recognised as deeds of title, except to the limited extent of Section 53-A of the TP 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.”*

10. In Sh. Bidhan Chand Biswas (since deceased) through LRs vs. Sh. Prakash Chand Bansal & Ors. in **RSA 131/2014** decided on 20.05.2014, it was held that the rights of a Plaintiff *qua* ownership were good against the entire world except the true owner. The Court held that taking into account the factum that the original allottee of the plot had admittedly executed the document in relation to the Suit Property, in favour of the Plaintiff therein, it was only the original owner of the Property, which in that case was the DDA, could assert any rights against the Plaintiffs.

11. Applying the principles of law enunciated in the aforesaid judgements, the evidence led before the Trial Court reflects that Respondent No.1 proved the execution of GPA, Agreement to Sell, Receipt, Will and Affidavit dated 21.02.1994 by Smt. Bimla Devi in her favour. Respondent No. 1 deposed in support of the stand taken in the

Plaint and also proved the Police complaints made from time to time and the son of Respondent No. 1 corroborated her testimony. PW-7/Shri Shiv Shankar Dubey was a summoned witness and he testified that he had signed as attesting witness on all documents such as GPA etc. (Exh. PW-1/1 to Exh. PW-1/4). He also testified that the sale and purchase took place in his presence and a consideration of Rs. 40,000/- was paid by Respondent No.1 to Smt. Bimla Devi in his presence. In cross-examination, he denied the suggestion that the documents were forged. Significantly, Smt. Bimla Devi stepped into the witness box as PW-9 and proved the Sale Deed executed by Shri Zile Singh in her favour and the execution of the GPA etc. in favour of Respondent No.1. PW-10 was a summoned witness from the office of Sub-Registrar, Delhi, who proved registration of Sale Deed executed by Shri Zile Singh in favour of Smt. Bimla Devi.

12. On the contrary, Appellant examined only Respondent No. 2 herein/Defendant No. 1, who filed his affidavit by way of evidence and was partly cross-examined as he did not come forward for remaining cross-examination. Based on the evidence, the Trial Court decided the issue of ownership of the Suit Property in favour of Respondent No. 1. The First Appellate Court upheld the judgement and the relevant paras thereof are as follows:

*“27. Testimony of plaintiff and witnesses examined on behalf of plaintiff would reflect that plaintiff has proved documentation dated 21.02.1994 executed in favour of plaintiff. Plaintiff had also examined the attesting witness in respect of General Power of Attorney vide Ex PW-1/1 and furthermore plaintiff examined Bimla Devi erstwhile owner of the suit property, who proved that Sale Deed was executed*

*in her favour. Pertinently, in the examination chief, none of the documents as relied by PW-1/Plaintiff was challenged and in the cross examination of PW-1, nothing much has been elicited, except repeated suggestion that documents are forged without specifying the nature of forgery and it was also not indicated as to which document was forged and fabricated and not much probe was made and furthermore PW-1 had satisfactorily answered all questions put on behalf of defendant. Credibility of various documents were not impeached on behalf of defendant. PW-4, PW-5 and PW-6 had proved various complaints as relied by the plaintiff and these complaints establish that plaintiff had reported about the state of affairs as prevailing in the suit property and corroborates the testimony of plaintiff with regard to the assertion that complaint were made to the police and these contemporaneous complaints establish that defendants have disturbed the peaceful possession of the plaintiff over the suit property and repeated complaint were made to the police and establish that plaintiff was dispossessed from suit property by defendant No. 1 and 3.*

*28. Pertinent to mention that on behalf of defendant only one witness was examined i.e. Defendant No. 1 and cross examination of Defendant No. 1 could not be completed as defendant evidence was closed and therefore evidence of DW-1 was not taken into consideration by Ld Trial Court. Even for the sake of arguments, if one peruse the testimony of DW-1, it also does not establish the case of defendant for the reason that DW-1 relied upon Registered General Power of Attorney dated 30.10.2003 and other chain of documents. DW-1 was not the executant nor signatory of the documents and it was deposed that Daljeet Singh was the owner of the suit property but he failed to satisfactorily answer on what basis he came to the conclusion that Daljeet Singh was the owner of the suit property and it was stated that after verification from certain persons such as Naresh, Ramu etc. DW-1 i.e. Mahavir Singh on that basis came to the conclusion that Daljeet Singh was the owner of the suit property. On a specific question put on behalf of the plaintiff*

*to defendant whether he has filed any documents to show that Daljeet Singh was the owner of the suit property and for the first time in his cross examination, it was stated by DW-1 that documents were lost and upon perusal of the record, it was revealed that no such document pertaining to the loss of document exist on record. It is relevant to note and mention that at no stage of trial, any attempt was made to bring into record previous chain of documents or to prove the existence of such documents. Further during cross examination of DW1, DW-1 was put to the statement DW1/P-1 made by him in cross examination in a suit in which present defendant was also defendant in respect of matter pending in the court of Ld ADJ, Delhi by Counsel for plaintiff pertaining to other part of the suit party and if one takes into account the said cross examination in favour of Appellant/Defendant which is in line with the cross examination made in the present case, same also does not help the cause of defendant/appellant in any manner, even if one ignores that DW-1 did not offer himself for the cross examination.*

*29. Chain of documentation dated 2.2.1994 relied by the plaintiff precedes the documents relied by Defendant in support of its case and plaintiff proved its entitlement in respect of suit property so much so by proving the existence of sale deed in respect of the suit property. Thus, on the scales of probability, evidence both oral and documentary, as lead on behalf of plaintiff are weighty and is of better quality in comparison to defendants.”*

13. In view of the evidence on record and the judgements referred to above, this Court finds no infirmity with the conclusion arrived at by both the Courts that Respondent No.1 had purchased the property for valuable consideration from Smt. Bimla Devi, who in turn had a Sale Deed in her favour and thus had a better title over the Suit Property. Thus, no substantial question of law arises in the present appeal.

14. Since no substantial question of law arises on the better title and right of Respondent No. 1, her right to claim possession from the Appellant and consequential right for mandatory and permanent injunction accrues from the said title.

15. Insofar as the contention of the Appellant that the First Appellate Court erred in not entertaining the applications under Order XLI Rule 27 CPC permitting the Appellant to place on record additional evidence/documents, is concerned, there is no merit in the said contention. The Appellant by way of the said applications sought permission to examine two witnesses as DW-1 and DW-2 as also to place on record the alleged original Sale Deed, purportedly executed by Shri Zile Singh in favour of Shri Daljeet Singh. First Appellate Court declined to entertain the applications on the ground that no plea of loss of original Sale Deed was taken in the written statement and no attempt was even made by the Appellant to summon the certified copy of the alleged Sale Deed. The photocopy of the Sale Deed was in possession of the Appellant and yet no steps were taken to prove the same by secondary evidence. Insofar as the evidence of DW-1/DW-2 is concerned, the First Appellate Court held that the evidence of Plaintiff was closed on 08.01.2013 and the case was listed for Defendant's evidence on 13.03.2013. From 13.03.2013 to 13.09.2015 despite sufficient opportunities and official witnesses being present, Defendant failed to lead evidence and the same was closed on 13.09.2015. Even thereafter, no steps were taken to reopen the evidence and thus Appellant cannot be permitted to lead additional evidence to fill up the lacunae before the Trial Court.

16. In Union of India vs. Ibrahim Uddin & Anr. (2012) 8 SCC 148, the Supreme Court examined the scope of Order XLI Rule 27 CPC and held that the Appellate Court should not travel outside the record of the Lower Court and additional evidence must be permitted in exceptional circumstances. The provision does not apply when on the basis of the evidence on record, the Appellate Court can pronounce a satisfactory judgement. Ordinarily, new evidence should not be allowed to be adduced to enable a party to raise a new point in an appeal. It was further held that the provision does not entitle the Appellate Court to let in fresh evidence only for pronouncing the judgement in a particular way or to supplement the evidence led in the Lower Court to fill up the lacunae. The Supreme Court also held that a party who had ample opportunity to produce certain evidence in the Lower Court but failed to do so or elected not to do so, cannot have it permitted in the appeal. Relevant paras of the judgement are as under:

***“Order 41 Rule 27 CPC***

*36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. (Vide K. Venkataramiah v. A. Seetharama*

*Reddy [AIR 1963 SC 1526], Municipal Corpn. of Greater Bombay v. Lala Pancham [AIR 1965 SC 1008], Soonda Ram v. Rameshwarlal [(1975) 3 SCC 698 : AIR 1975 SC 479] and Syed Abdul Khader v. Rami Reddy [(1979) 2 SCC 601 : AIR 1979 SC 553] .)*

*37. The appellate court should not ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide Haji Mohammed Ishaq v. Mohd. Iqbal and Mohd. Ali and Co. [(1978) 2 SCC 493 : AIR 1978 SC 798] )*

*38. Under Order 41 Rule 27 CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence. (Vide Lala Pancham [AIR 1965 SC 1008] .)*

*39. It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce*

*certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide State of U.P. v. Manbodhan Lal Srivastava [AIR 1957 SC 912] and S. Rajagopal v. C.M. Armugam [AIR 1969 SC 101] .)*

*40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a “substantial cause” within the meaning of this Rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.*

*41. The words “for any other substantial cause” must be read with the word “requires” in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment.”*

17. Applying the above principles from the verdict of the Supreme Court, the First Appellate Court cannot be said to have committed any error in dismissing the applications. Appellant had sufficient opportunities to produce witnesses in defence but chose to produce only Respondent No. 2 herein/Defendant No. 1, who could only be partially cross-examined. No opportunity was sought to produce any other witness. Insofar as the alleged Sale Deed is concerned, the First Appellate Court rightly held that no plea of loss of original Sale Deed, allegedly executed by Shri Zile Singh in favour of Shri Daljeet Singh, was taken in the written statement. In Union of India (supra), the Supreme Court has clearly held that no relief can be granted if it is not founded on pleadings

and no evidence is permissible to be taken on record in the absence of pleadings in that respect. Relevant paras are as under:

*“77. This Court while dealing with an issue in Kalyan Singh Chouhan v. C.P. Joshi [(2011) 11 SCC 786 : (2011) 4 SCC (Civ) 656 : AIR 2011 SC 1127] , after placing reliance on a very large number of its earlier judgments including Trojan & Co. v. Nagappa Chettiar [AIR 1953 SC 235] , Om Prakash Gupta v. Ranbir B. Goyal [(2002) 2 SCC 256 : AIR 2002 SC 665] , Ishwar Dutt v. Collector (LA) [(2005) 7 SCC 190 : AIR 2005 SC 3165] and State of Maharashtra v. Hindustan Construction Co. Ltd. [(2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207 : AIR 2010 SC 1299] , held that relief not founded on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in the absence of the pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon.*

*78. In Bachhaj Nahar v. Nilima Mandal [(2008) 17 SCC 491 : (2009) 5 SCC (Civ) 927 : AIR 2009 SC 1103] this Court held that a case not specifically pleaded can be considered by the court unless the pleadings in substance contain the necessary averments to make out a particular case and issue has been framed on the point. In the absence of pleadings, the court cannot make out a case not pleaded, suo motu.”*

18. Appellant has filed an application under Order XLI Rule 27 CPC before this Court also, as referred in the earlier part of the judgement, being CM APPL. 9349/2021, seeking permission to lead additional evidence. The cause for filing the application according to the Appellant arose when the son of the Appellant procured documents on 25.02.2021

relating to the plot of 400 sq. yards, initially owned by Smt. Bimla Devi, which reveal that the said plot had been sold by her on 01.01.1987 to one Shri Ishwar Singh vide Agreement to Sell, GPA, Affidavit and Receipt, as detailed in the earlier part of the judgement. It is further averred that the Appellant was not in a position to present the sale documents of the said Plot as she was unable to contact Shri Deepak and had no knowledge of the said transactions. Plea of the decree being a nullity, obtained by fraud is set up by the Appellant. A perusal of the averments in the application reveals that an entirely new plea has been set up by way of the said application. Realising that the Courts below have decreed the suit against the Appellant on the basis of better title in favour of Respondent No. 1, Appellant now seeks to produce documents allegedly showing sale of 400 sq. yards of plot, portion of which is the suit property, by Smt. Bimla Devi on 01.01.1987 to one Shri Ishwar Singh. There are no pleadings to this effect either before the Trial Court or First Appellate Court or even in the appeal before this Court. It is not mentioned as to how on 25.02.2021, the date mentioned in the application, Appellant came in possession of the said documents or why despite diligence, the documents could not be procured earlier. Applying the parameters laid down by the Supreme Court on the scope of the power of Appellate Court to decide an application under Order XLI Rule 27 CPC, this Court finds no merit in the application.

19. Learned counsel for the Appellant relied on the judgement of the Supreme Court in North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (2008) 8 SCC 511 for the proposition that if the stand of the Appellant that the judgement or decree by the First Court is obtained

by fraud, is borne out from the documents seeking to be filed before the Appellate Court as additional evidence, then such additional evidence ought to be taken on record. There cannot be a dispute on the proposition laid by the Supreme Court which is a binding dictum. However, the said judgement cannot be of any avail to the Appellant.

20. As noticed above, while examining an application under Order XLI Rule 27 CPC, the parameters that have to be kept in mind are that (a) the evidence sought to be led before the Appellate Court must relate to the pleadings by the party; (b) First Court has refused to admit evidence which ought to have been admitted; (c) party establishes that notwithstanding exercise of due diligence, the evidence was not within its knowledge or could not be produced when the decree was passed and the Appellate Court requires the documents to enable it to pronounce judgement.

21. In North Eastern Railway Administration, Gorakhpur (supra), the Appellant had specifically pleaded before the High Court in the Second Appeal that the decree was obtained by concealing material facts and the details were mentioned in the appeal. In support of the plea, an application was filed under Order XLI Rule 27 CPC to bring on record copies of the official documents. A bare reading of the judgement would also throw light on the fact that even before the Trial Court, the Appellant had contested the suit on the ground that the suit land had been transferred to him by the Government. Hence no new plea was set up in the Second Appeal. In this background, the Supreme Court remanded the matter back to the High Court to decide the application afresh on the merits of the Second Appeal. It also needs to be highlighted that in the

said case, the High Court did not deal with the application at all, as reflected from para 18 of the judgement of the Supreme Court. At the cost of repetition, this Court notes that the plea now introduced by way of an application under Order XLI Rule 27 CPC is totally extraneous to the case of the Appellant in the Courts below. The application therefore deserves to be rejected and the Appellant cannot be permitted to lead additional evidence as prayed for in the said application.

22. For the aforesaid reasons, the appeal is dismissed along with the pending applications with no order as to costs. Liberty is reserved with the Appellant to resort to remedies, if any, qua the plea of fraud in the appropriate forum.

**JYOTI SINGH, J**

**MAY 5, 2021**

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