

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

Reserved on: 17.03.2021

Date of Decision : 01.06.2021

+ **RFA 1075/2019 & CMs 54485/2019, 20749/2020**

MADAN MOHAN DASS & ANR Appellants

Through Mr.Sunil Dalal, Mr.Pradeep
Singh & Ms.Surbhi Mehta,
Advs.

versus

BRIGADIER YELLEPEDDY S RAO (RETIRED) & ORS

..... Respondents

Through Mr.Mohit Gupta and
Ms.Meenakshi Garg, Advs.
alongwith R1 & R2 (through
VC

+ **RFA 1083/2019 & CM 54786/2019**

DASS PROPERTIES & CONSTRUCTIONS (P) LTD & ANR

..... Appellants

Through Mr.Sunil Dalal, Mr.Pradeep
Singh & Ms.Surbhi Mehta,
Advs.

versus

BRIGADIER YELLEPEDDY S RAO (RETIRED) & ORS

..... Respondents

Through Mr.Mohit Gupta and
Ms.Meenakshi Garg, Advs.
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CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. These appeals have been filed challenging the common judgment and order dated 27.07.2019 passed by the learned Additional District Judge-03, South-West District, in Civil Suit No. 15870/2016 titled ***Brigadier Yellepeddy S. Rao (Retired) & Anr. vs. Sh. Madan Mohan Das & Ors.***, and in Civil Suit No. 15859/16 titled ***Brigadier Yellepeddy S. Rao (Retired) & Anr. vs. M/s Dass Properties and Constructions Pvt. Ltd. & Ors.***

2. The first of the Suits, being Civil Suit No.15870/2016, was filed by the respondent no. 1 on 16.09.2011, in relation to portion of land measuring 60' x 45' i.e. 300 Sq. yds. on the extreme western side of a larger side measuring 1067 sq. yds. in Khasra No. 27/5/2 i.e. one Bhiga and 1-1/3 biswas approx. in village Mirzapur (Palam), Delhi, presently known as H.No.H-4/108/A, Mahavir Enclave, Part-I, New Delhi – 110045, (hereinafter referred to as 'Suit Land') claiming as under:-

"a. That a land measuring 15 Bhigas 10 biswas bearing mustatil No. 16 Killa No. 26/03 (0-5). Mustatil No. 27, Killa No.6 (4-9), 5/2(3-12) and Mustatil No.28, Killa No. 1(4-16), 10/2(2-8)situated at Village Mirzapur, Delhi, was allotted to one Smt. Phullo, D/o Smt. Ghogari, R/o Village Palam, Delhi. That Smt. Phullo, during the lifetime of her mother, had been declared as "BHUMIDAR" of the said land under the Delhi Land Reforms Act, 1954-55.

b. That abovesaid Smt. Phullo had sold the abovesaid land vide sale deed dated 22/11/1973, sale deed bearing No. 4032 at Sub-Registrar II, Delhi to one Major General Harkesh Chander Gahlaut, S/o Sh. Ranjit Singh residing at D-I/2, Paschim Puri, New Delhi-63.

- c. That thereafter Major General Harkesh Chander Gahlaut sold the abovesaid land to one Sh. Mohar Singh S/o Sh. Chander Singh, R/o B-80, Ganesh Nagar, New Delhi - 110008, by virtue of a sale deed executed at Sub-Registrar II, Delhi.
- d. That on 08/06/1981 a sale deed was executed by one Sh. Mohar Singh S/o Sh. Chander Singh, R/o B-80, Ganesh Nagar, New Delhi- 110008, in respect to 1067sq. yds. i.e. one Bhiga and 1-1/3 biswas approx. in Khasra No.27/5/2 out of the total agriculture land of 15 bhigas 10 biswas in favour of Sh. B.K. Garudachar, S/o Sh. B.V. Krishna lyengar and Smt. B.G. Lakshmi, W/o Sh. B.K. Garudachar, both residing at A-83, Defence Colony for a total consideration of Rs. 16,000/-. A copy of sale deed dated 08/06/1981 is marked and annexed herewith as Annexure P-2.
- e. That thereafter on 19/07/1987 an agreement of sale was entered between the Plaintiff and Sh. B.K. Garudachar and Smt. B.G. Lakshmi for a consideration amount of Rs. 40,000/- in respect to the suit property i.e. portion of land measuring 60' x 45' i.e. 300 Sq. yds. on the extreme western side of a larger side measuring 1067 sq. yds. in Khasra No. 27/5/2 i.e. one Bhiga and 1-1/3 biswas approx. in village Mirzapur (Palam), Delhi presently known as Mahavir Enclave. That the said consideration amount was paid by the Plaintiff on the date of execution of the agreement of sale and the plaintiff was handed over the physical possession of the suit property. A copy of the agreement of sale dated 19/07/1987 is marked and annexed herewith as ANNEXURE P-3. A copy of the receipt for an amount of Rs.40,000/- is marked and annexed herewith as ANNEXURE P-4.
- f. That thereafter confirming the above said agreement of sale, a registered a general power of attorney bearing No.144/87.88 dated 05/08/1987 was executed by Sh. B.K. Garudachar and Smt. B.G. Lakshmi in favour of the Plaintiff in respect to a portion of land measuring 60' x 45' i.e. 300 Sq. yds. on the extreme western side of a larger side measuring 1067sq. yds. in Khasra No.27/5/2 i.e. one Bhiga and 1-1/3 biswas approx. in village Mirzapur (Palam), Delhi which is the suit property of the present suit. A copy of general power of attorney dated 05/08/1987 bearing No. 144/87.88 is marked and annexed herewith as Annexure P-5.
- g. That soon after the execution of the general power of attorney, the plaintiff got busy in Bombay (Mumbai) Post-retirement from army, busy executing some assignment in Mazagon Dock Limited. That as the plaintiff was busy, he asked one of his friends Sh.V.Sridhara Sastry

to get a boundary wall constructed demarcating the area of the suit property i.e. 300 Sq. yds. on the extreme western side of a larger side measuring 1067 sq. yds. in Khasra No. 27/5/2 i.e. one Bhiga and 1-1/3 biswas approx. in village Mirzapur (Palam), Delhi presently known as H4/108/A Mahavir Enclave, Part I, New Delhi 110045. That the said construction was got done by Sh. V. Sridhara Sastry through one Mr. G. Ekambara Sarma. That some letters were also written by the said persons to the plaintiff. A copy of the letters dated 20/07/1987, 27/07/1987 and 22/05/1989 are marked and annexed herewith as ANNEXURE P-6(Colly)

- h. That thereafter the plaintiff used to make visits at the suit property once in a while and was taking care of the suit property through his friends. The plaintiff frequently got the suit property cleaned and was enjoying the peaceful possession of the property. That in 1996 the plaintiff got free from his assignment in Mumbai and was more frequent in visiting suit property. That during the period of 1989-2011 various buildings/houses were constructed near and adjacent to the suit property and all of the said buildings came up in front of the plaintiff only. Though the plaintiff also got various offers to sell off the suit property, but the plaintiff was not interested and wanted to retain the suit property. That since the date of being handing over the physical possession of the property, the plaintiff was in sole possession of the suit property, till 22/01/2011 i.e. the last date when the plaintiff visited the property. That on the said date also the boundary wall of the suit property was intact, though various buildings/houses had come up in adjacent plots/lands.*
- i. That thereafter when the plaintiff visited the suit property on 07th February 2011, the plaintiff was shocked to see that the boundary wall of the suit property had been broken and some brick work was being done in the suit property and the plaintiff saw some trespassers/labors on the said property, that when the plaintiff told them that the said property belongs to the plaintiff and for whom the said persons are carrying construction, they just told the plaintiff that they were casual labors and stated that they will call their contractor and left the suit property and the plaintiff kept on waiting till evening, but no one appeared. That thereafter the complainant left for his home.*
- j. That on the next day 8/02/2011 the plaintiff again visited the suit property, but no one was present at the suit property and no construction was being carried on. That the plaintiff tried to enquire from the neighbors as to who are the trespassers and the persons getting the construction done at the suit property, but the neighbors and the nearby people had no information in respect to them. That the*

plaintiff also told the neighbors to give information if any construction is initiated.

- k. That again the plaintiff visited the suit property on 10/02/2011, but no construction was being done and no one was in the suit property. That thereafter again the plaintiff visited the suit property after a week and the status of the suit property was same and the plaintiff thought that the same was being done by some local mischievous persons and the same has stopped so neither did the complainant made any complaint nor took any action in respect to the same.*
- l. That thereafter shockingly on 17/03/2011, in afternoon the plaintiff got a call from one of the neighbors near the suit property, who intimated the plaintiff about the construction and selling off the suit property. That the plaintiff was shocked to hear the same and informed the neighbor, that the plaintiff has not let out or sold the property and has not authorized any person to carry on construction at the said building. That the said neighbor was not having the details of the person who was carrying on construction activity. That having no other option the plaintiff reached the site of the suit property and was shocked to see that construction was going on certain area of the suit property marked in red in the site plan annexed. That further the plaintiff was shocked to see that construction was being done at quite a fast pace. That when the applicant told the various laborers working there to stop construction as plaintiff was the owner of the said property, they did not listen and told the plaintiff that they are casual labors and they do not know who is getting the building constructed. That they further said that their boss/contractor will come at 7:00 PM, and the plaintiff can seek further details from him. That the plaintiff waited till 8:00 PM, but nobody came. That having no option the plaintiff returned back to his home.*
- m. That again the plaintiff again came to the suit property on the very next date i.e. 18/03/2011, that same laborers were working and again the plaintiff was told to wait as the local contractor will be coming in few hours. That again the plaintiff having no other option waited till evening, but again no body appeared. That shockingly the laborers and the staff working there were not even giving any telephone numbers either of the defendants or any contractors.*
- n. That thereafter the plaintiff tried to gather information about the defendants, but was not able to get any information qua the defendants. The plaintiff having no other option prepared a police complaint in respect to the said act of the defendants on 19/03/2011. That though the complaint was prepared, but on advice of some friends the same was not filed and the plaintiff waited and tried*

gathering information in respect to the defendants, but again the plaintiff was not able to gather any information, that in the mean while the work at the suit property was going on. That thereafter as there was no information of any of the defendants, the plaintiff finally filed the police complaint on 01/04/2011. A copy of the complaint dated 01/04/2011 is marked and annexed herewith as ANNEXURE P-7.

- o. That the plaintiff kept on waiting that the local police will take some action, but surprisingly no action was taken by the local police till May 2011. That thereafter the plaintiff sought legal advice and the complainant was informed that as the matter was not under the purview of the police and the same is of civil nature the police will not interfere and the plaintiff will have to withdraw the police complaint to take appropriate action. That for the same reason the plaintiff withdrew the police complaint to initiate appropriate remedy*
- p. That the plaintiff was constantly visiting the suit premises and in the first week of June 2011 when the plaintiff visited the premises a board had been erected at the said premises by the name of M/s DASS TIMBER STORE, RZ H 4 108 A Bengali Colony, Mahavir Enclave, New Delhi 110045 and nu besides which no other details were given. That a week later when the plaintiff visited the suit property, name and mobile no of defendant no.2 was mentioned. That the plaintiff immediately telephonically contacted the defendant no.2 who told the plaintiff that he is a supervisor and has been instructed by the defendant no.1 builder to look after the construction of the suit property. That the plaintiff told the defendant no.2 that he is the owner of the property and the said construction is illegal and asked the defendant no.2 to show the papers of the said property, that rather showing his willingness to show the papers the defendant no.2 told the plaintiff that papers would only be shown if the plaintiff gives the defendant no.2 Rs.10,00,000/-. That thereafter again the plaintiff contacted the defendant no.2 to seek information about defendant no. 1, but surprisingly no information was given in respect to defendant no.1. That the construction was continuously being done at the suit property and the plaintiff was continuously being harassed. That this was for the first time the plaintiff got any information in respect to the defendants. That thereafter when the plaintiff contacted the defendant no.2 he gave the name and mobile number of the defendant no.3 as the concerned person dealing with the selling and purchase of suit property. That when defendant no.3 was contacted by the plaintiff he told the plaintiff that he has been assigned to sell off the built up area of suit property and if the plaintiff is interested he can purchase the*

same for an amount of Rs.20,00,000/-. That when the plaintiff asked for papers the defendant no.3 replied that the same will be shown if the plaintiff comes up with some money. That then the plaintiff told him that he is the real owner and he will initiate action against the defendants, to this defendant no.3 threatened that the defendants will get the, plaintiff killed if he does or say anything as the defendants are the land mafia of the said area and nobody can do anything against them and threatened of dire consequences if the plaintiff ever comes to suit property. That the plaintiff got scared and kept quiet for a month. A copy of the recent photographs of the suit property are marked and annexed herewith as ANNEXURE P-8(ColIy).

- q. That thereafter in 2nd week of July the plaintiff again approached the defendant no.2, to help out the plaintiff, and told the defendant that the plaintiff is a retired brigadier from the armed forces and a senior citizen and had purchased the said property investing all his savings, that though the defendant no.2 agreed to help out the plaintiff in some manner but the defendant no.2 kept on lingering the matter and did not help out the plaintiff in any manner whatsoever.
- r. That recently when in the first week of August when the plaintiff approached the defendant no.2, the defendant no.2 bluntly said that the defendant cannot in any manner help out the plaintiff and also told the plaintiff to stay away from the property as the defendants are the land mafia in the area and has good contacts with police and muscle men and the plaintiff being an old man should stay away from the property and the plaintiffs interference in any way by litigating or informing police will just worsen the life of the plaintiff and the defendants will be least affected.”

3. The respondent no. 1 claimed the following reliefs in the Suit:-

“a) Pass a decree of Possession in favour of the Plaintiff and against the Defendant, thereby directing the defendant to, handover the peaceful, actual and physical possession of the suit property marked as 60' x 45' i.e. 300 Sq. yds. on the extreme western side of a larger side measuring 1067sq. yds. in Khasra No.27/5/2 i.e. one Bhiga and 1-1/3 biswas approx. in village Mirzapur (Palam), Delhi presently known as property bearing No. H4/108/E Mahavir Enclave, Part 1, New Delhi

110045. The suit property has been specifically shown in Red and yellow colour in the site plan attached with the plaint.

b) Pass a decree of the recovery of the damages and illegal construction raised by the defendants and further direct, the Defendants to pay all the dues like electricity bill and water bill as per his usages and maintenance charges the date of handing over the possession of the suit premises by the Defendants to the Plaintiff.

d) Pass a decree of permanent injunction against the defendant and in favour of the plaintiff, agents, servants, attorneys, associates, etc. from creating any third party interest in the suit premises.

e) Pass a decree of permanent injunction against the defendant and in favour of the plaintiff, agents, servants, attorneys, associates, etc. from carrying on any construction in the suit property.”

4. The above Suit was filed by the respondent no. 1 initially only against Shri Madan Mohan Das (appellant no. 1), Mr. Arun Sharma (respondent no. 3) and Mr. Bindoria (respondent no. 4). Later, Ms. Y. Parvati Rao (respondent no. 2) and M/s Dass Properties and Constructions Pvt. Ltd. (appellant no. 2) were impleaded in the Suit as plaintiff no. 2 and defendant no. 4 respectively.

5. The appellant no. 1 (Sh. Madan Mohan Das) and respondent no. 3 (Mr. Arun Sharma) filed a joint written statement to the Suit claiming that the appellant no. 1 had purchased the Suit Land from Sh. Devender Kumar (respondent no. 3 in RFA 1083/2019) vide a registered Sale Deed dated 04.02.2011. The said Sh. Devender Kumar

had earlier purchased the Suit Land vide a registered Sale Deed dated 26.11.2010 executed by Sh. Ambuj Srivastava (respondent no. 4 in RFA 1083/2019) as a Power of Attorney holder of the erstwhile owners, Sh. B.K. Garudachar and his wife Smt. B.G. Lakshmi, who had executed the Power of Attorney dated 04.02.1991 in favour of Sh. Ambuj Srivastava.

6. The respondent nos. 1 and 2 thereafter filed the second Suit, being Civil Suit No.15859/2016, impleading M/s Dass Properties and Constructions Pvt. Ltd. (appellant no. 2), Sh. Madan Mohan Das (appellant no. 2 in RFA 1083/2019), Sh. Devender Kumar (respondent no. 3 in RFA 1083/2019), Sh. Ambuj Srivastava (respondent no. 4 in RFA 1083/2019) and Smt. B.G. Lakshmi (respondent no. 5 in RFA 1083/2019) as defendants to the Suit.

7. In the above-mentioned second Suit, the respondent no. 1 and 2 prayed for the following reliefs:-

“a) Pass an order canceling the sale deed being, sale deed bearing certificate no. IN-DL0420785045626I in respect of property bearing no. KH.NO.27/5/2 Village Mirzapur Colony known as Mahavir Enclave-I New Delhi executed by defendant no.4 in the name of defendant no.3 and

b) pass an order canceling the sale deed bearing certificate no. INDL04615218610928J in respect to property bearing no. H-4/108A Mahavir Enclave, New Delhi executed by Defendant no.3 in the name of defendant no.1 through Defendant No.2.

c) pass an order canceling the alleged general power of attorney dated 04.02.1991 executed

*by Late Sh. B.K. Garudachar & defendant no.5
in the name of defendant no.4.”*

8. In the said second Suit, the appellants filed their written statement reiterating their claim of title to the Suit Land.

9. Written statement was also filed by Smt. B.G. Lakshmi stating that her husband Sh. B.K. Garudachar had expired on 23.03.2010; affirming the execution of the Agreement to Sell dated 19.07.1987 in favour of the respondent nos. 1 and 2; affirming the receipt dated 19.07.1987 admitting the receipt of consideration of Rs.40,000/- from the respondent nos. 1 and 2; affirming the execution of the General Power of Attorney dated 05.08.1987 in favour of the respondent nos. 1 and 2; stating that the said Power of Attorney had not been revoked; that no other General of Power Attorney registered/unregistered has ever been executed by herself or by her late husband in the name of any other person; and that she has no knowledge of any Sale Deeds in favour of the appellant or Sh. Devender Kumar (respondent no.3 in RFA 1083/2019) nor has any knowledge of any such persons. She specifically denied execution of any General Power of Attorney dated 04.02.1991 in favour of Mr. Ambuj Srivastava.

10. At this stage, it is also relevant to note that the learned Trial Court has observed that no written statement was filed by Sh. Devender Kumar, defendant no.3 in the Suit. The learned senior counsel for the appellants has submitted that this observation of the learned Trial Court is incorrect inasmuch as Sh. Devender Kumar had

filed a written statement to the second Suit, a certified copy of which has been placed on record in the present appeals. In the said written statement Sh. Devender Kumar, apart from objecting to the maintainability of the Suit, had affirmed that he has purchased the Suit Land from Sh. Ambuj Srivastava vide a registered Sale Deed for consideration, with knowledge and the belief that Sh. Ambuj Srivastava was authorized by the erstwhile owners of the Suit Land, namely Smt. B.G. Lakshmi and her husband late Sh. B.K. Garudachar, by way of a General Power of Attorney executed by them in favour of Sh. Ambuj Srivastava to sell the Suit Land.

11. In CS (OS) No.15870/16, on 19.09.2011, an *ex parte* order of injunction was passed in favour of the respondent nos. 1 and 2, which was confirmed on 26.02.2014. However, the appellants claim to have made major construction of a building on the Suit Land till that date.

12. On 26.02.2014, consolidating the two Suits for purposes of trial and decision, the following issues were settled in both the Suits:-

- i) *Whether Mrs. B. G. Lakshmi and her husband Mr. B. K. Garudachar had in the year 1987 agreed to sell the suit property to Brdg. Yellepeddy and his daughter against receipt of entire sale consideration and in part performance of the said Agreement to Sell put the said Brdg. Yellepeddy and his daughter into possession of the property? OPP*
- ii) *Whether the said Mrs. B. G. Lakshmi and her husband Mr. B. K. Garudachar had appointed Mr. Ambuj Srivastava as their attorney and the said Mr. Ambuj Srivastava under the said attorney was*

entitled to sell the said property of Mrs. B. G. Lakshmi and her husband Mr. B. K. Garudachar? OPD-1.

- iii) *If the above Issues are decided in favour of the plaintiffs and against the defendant No.1, whether the plaintiffs are entitled to any mesne profits/damages for use and occupation and if so, at what rate and for what period? OPP*
- iv) *If the above issues is decided in favour of the plaintiffs, whether the plaintiffs are entitled to any interest on arrears of mesne profits and if so, at what rate and for what period? OPP.*
- v) *Relief."*

13. In paragraph 34 of the said order, the following direction/clarification was also given by the High Court, where the said Suits were pending adjudication at that stage before being transferred to the District Court on account of increase in pecuniary jurisdiction:-

"It is made clear that no issue on the relief claimed in CS(OS)No. 499/2012 of cancellation of documents is framed since, if the defendant No.1 fails to prove power of attorney in favour of Mr.Ambuj Srivastava, the sale deed executed by Mr. Ambuj Srivastava in favour of the defendant No. 3 and the sale executed by the defendant No.3 in favour of the defendant No.1 would axiomatically be unauthorized and of no avail."

14. The respondent nos. 1 and 2 examined the respondent no. 1- Brigadier Yellepeddy S. Rao (Retired) as PW-1 and Sh. Joginder Singh, Kanungo, Office of SDM Dwarka, Najafgarh and Sh. Satish Kumar Rawat, Tehsildar, SDM Office Complex, Tura Mandi, Najafgarh, New Delhi, as PW-2 and PW-3 respectively.

15. The appellants examined the appellant no. 1- Sh. Madan Mohan Das as DW-1.

16. Though an affidavit of evidence was filed by Smt. B.G. Lakshmi, the same could not be tendered in evidence as the learned Trial Court was informed that she being an old lady residing in Bangalore, could not travel to Delhi. However, on an application filed on her behalf, Sh. Manju Nath from the office of the Sub-Registrar, Jaya Nagar, Bangalore was examined as D5W1.

17. None of the other defendants in the suits filed their affidavit of evidence or entered into the witness box or led any other evidence.

18. Considering the evidence led by the parties and the submissions made, the learned Trial Court by its Impugned Judgment and Decree had decided the issue no. 1 in favour of the respondent nos. 1 and 2, observing as under:-

***Finding:-** Agreement of sale and receipt dated 19.07.1987 and GPA dated 05.08.1987 have been proved as Ex.PW1/3, Ex.PW1/4 and Ex. PW1/5 respectively whereas certified copy of GPA obtained from the office of Sub-Registrar, Bangalore in the year 2001 has been proved as Ex. PW1/X. The suggestions put to plaintiff by ld. counsel for defendants*

*M/s Dass Properties and Construction Pvt. Ltd. were emphatically denied by plaintiff (PW-1) Brig. Yellepeddy S. Rao (Retd.) who has also disputed the alleged undertaking dated 03.12.2010 put to him during cross examination as Mark PW1/D2. Defendant No.5 Smt. B.G. Lakshmi having failed to enter the witness box and depose in favour of plaintiff has nonetheless examined official witness Sh. Manju Nath (D5W1) who has proved certified copy of GPA executed by Sh. B. K. Garudachar and Smt. B. G. Lakshmi in favour of Brig. Yellepeddy S. Rao (Retd.) as Ex. D5W1/1 and has explained the endorsements made by officials at points 'B1', 'C1', 'D1' and 'E1' and signature of Sub-Registrar on the last page of the document with remarks at point 'Z' after verifying the contents and correction. **Issue No.1 is therefore decided in favour of plaintiff."***

19. Issue no. 2 was also decided against the appellants, holding that there was no evidence led on record to prove that Smt. B.G. Lakshmi and her husband, late Sh. B.K. Garudachar had appointed Sh. Ambuj Srivastava as their Attorney. Emphasis was laid by the learned Trial Court on the fact that neither Sh. Devender Kumar nor Sh. Ambuj Srivastava appeared as witnesses in the Suit nor were they summoned or examined by the appellants to prove the alleged General Power of Attorney dated 04.02.1991 stated to have been executed by Smt. B.G. Lakshmi and her husband, late Sh. B.K. Garudachar, in favour of Sh. Ambuj Srivastava.

20. As far as the issue no. 3 is concerned, the learned Trial Court observed that while no evidence has been led by the respondent nos. 1 and 2 on record qua damages for any unauthorized use and occupation

of the Suit Land, Brigadier Yellepeddy S. Rao (Retired) being a senior citizen had suffered harassment after he was illegally dispossessed from the suit property and was, therefore, entitled to damages assessed at Rs.2,00,000/-.

21. The learned Trial Court has also awarded *pendent lite* interest at the rate of 10% per annum with effect from 16.09.2011 till 27.07.2019, and future interest at the rate of 6% per annum till the date of actual payment, in favour of the respondent nos. 1 and 2.

22. The following relief has been granted in favour of the respondent nos. 1 and 2 by the Impugned Judgment and Decree:-

*“49. **RELIEF:** Plaintiff's suit is therefore decreed and defendant No.1 Sh. Madan Mohan Dass and defendant No. 4 M/s Dass Properties & Constructions Pvt. Ltd. are directed to handover peaceful, actual and physical possession of suit property after demolishing the unauthorized construction raised by defendants and pay a lump sum amount of Rs.2,00,000/- as damages for mental harassment and agony suffered by plaintiff for nine long years along with pendente lite interest @ 10% p.a. and future interest @ 6% p.a. together with the cost of suit.”*

23. Aggrieved of the above Judgment and Decree, the appellants have filed the present appeals.

24. The learned senior counsel for the appellants (who at the time of hearing the arguments had not been designated) has submitted that the respondent nos. 1 and 2 were not entitled to any relief in the Suit

inasmuch as they could not claim ownership of the Suit Land based on the alleged Agreement to Sell and the General Power of Attorney alleged to have been executed by Smt. B.G. Lakshmi and her husband, late Sh. B.K. Garudachar in their favour. In support of his submission, he places reliance on the judgments of the Supreme Court in ***Suraj Lamp & Industries Pvt. Ltd. Thr. Director vs. State of Haryana & Anr.***, AIR 2012 SC 206; and of the Punjab and Haryana High Court in ***Kuldeep Singh vs. Smt. Ram Pyari & Ors.***, 2016 SCC OnLine P&H 10515.

25. The learned senior counsel for the appellants further submits that in any case, the execution of the Agreement to Sell and the General Power of Attorney could only be proved by the executants of the said documents, however, as the executants of the said documents were not produced as witnesses, the said documents remained unproved and could not have been relied upon by the learned Trial Court. He submits, that in this manner, the respondent nos. 1 and 2 also failed to discharge the burden of proof placed on them in terms of Section 101 and 102 of the Indian Evidence Act, 1872. In this regard he places reliance on ***Narbada Devi Gupta vs. Birendra Kumar Jaiswal & Anr.***, (2003) 8 SCC 745.

26. He further submits that even otherwise, the said documents cannot be used by the respondent nos. 1 and 2 to claim possession over the Suit Land. He submits that the Agreement to Sell was, even as per the respondent nos. 1 and 2, executed at Bangalore. It does not reflect in what manner the possession of the Suit Land was given to

the respondent nos. 1 and 2. The receipt in fact, does not even name the respondent nos. 1 and 2 as the persons paying the money to the previous owners. As far as the General Power of Attorney is concerned, it does not divest the erstwhile owners of their ownership rights nor makes any reference to the alleged Agreement to Sell; it does not even give a power to sell the Suit Land to the respondent nos. 1 and 2; in fact, the respondent nos. 1 and 2 are made to give accounts to the owners for any action taken by them with respect to the Suit Land. He further submits that the General Power of Attorney is not even executed in favour of the respondent no. 2.

27. He submits that no effort was made by the respondent nos. 1 and 2 to produce Smt. B.G. Lakshmi as a witness. Her written statement could not be treated as evidence by the learned Trial Court. As Smt. B.G. Lakshmi neither examined herself as a witness nor was summoned for the said purpose by the respondent nos. 1 and 2, an adverse inference has to be drawn against the respondent nos. 1 and 2. He places reliance on the judgments of the Supreme Court in *Vidhyadhar vs. Manikrao & Anr.*, AIR 1999 SC 1441; and of this Court in *Harbhajan Singh vs. Kuldeep Singh & Ors.*, 2016 SCC OnLine (Del) 6513.

28. The learned senior counsel for the appellants has further submitted that in the present case, a suit for cancellation of the Sale Deed that has been executed in favour of the appellants could not have been filed by the respondent nos.1 and 2 as the respondent nos.1 and 2 are not the executants thereof. He submits that under Section 31 of the

Specific Relief Act, 1963, a suit for cancellation can be filed only by the executants of the document. The remedy of the respondent nos.1 and 2, if any, would have been in a suit for declaration under Section 34 of the Specific Relief Act, 1963, which was not prayed by the respondent nos.1 and 2. In absence of such declaration of title and admittedly being without possession as on the date of filing of the Suit, he submits that the suits were liable to be dismissed. In support of his submission, he places reliance on the judgments of the Supreme Court in *Anathula Sudhakar vs. P. Buchi Reddy (Dead) By LRs. & Ors.*, AIR 2008 SC 2033; *Deccan Paper Mills Co. Ltd. vs. Regency Mahavir Properties & Ors.*, 2020 SCC OnLine SC 655; *Union of India & Ors. vs. Vasavi Cooperative Housing Society Ltd. & Ors.*, (2014) 2 SCC 269; and *Jagdish Prasad Patel (Dead) Thr. LRs. & Anr. vs. Shivnath & Ors.*, (2019) 6 SCC 82.

29. The learned senior counsel for the appellants lastly submits that the learned Trial Court has, while giving the benefit of Section 85 of the Indian Evidence Act, 1872 to the respondent nos.1 and 2 with respect to the General Power of Attorney dated 05.08.1987 allegedly executed by Smt. B.G. Lakshmi and her husband, late Sh. B.K. Garudachar, in favour of the respondent no.1, has refused to draw the same presumption in favour of the General Power of Attorney dated 04.02.1991 executed by the same Smt. B.G. Lakshmi and her husband, late Sh. B.K. Garudachar, in favour of Sh. Ambuj Srivastava, which was also duly Notarized. He submits that the doubt created by the respondent no.1 and 2 on the due notarization of the said General

Power of Attorney cannot be sustained in absence of any cogent evidence having been led by them in form of production of the Notary Public, in the proceedings before the learned Trial Court.

30. On the other hand, the learned counsel for the respondent nos.1 and 2, refuting the submission of the appellants, submits that the defendant no. 5, Smt. B.G. Lakshmi, in her Written Statement had duly admitted the execution of the Agreement to Sell, receipt and the General Power of Attorney in favour of the respondent nos.1 and 2. She had also denied the execution of any Power of Attorney in favour of any other person, much less Sh. Ambuj Srivastava. The onus of proof of issue no.2, that is, of the execution of the Power of Attorney in favour of Sh. Ambuj Srivastava was placed on the appellants, however, no attempt was made by them for proving the same. He submits that the appellants did not even make any attempt to prove the due notarization of the alleged Power of Attorney in favour of Sh. Ambuj Srivastava, therefore, the presumption under Section 85 of the Indian Evidence Act, 1872, could not have been drawn in their favour.

31. Placing reliance on the judgment of the Supreme Court in **Anil Rishi vs. Gurbaksh Singh**, (2006) 5 SCC 558, he submits that the burden of proving the power of attorney in favour of Sh. Ambuj Srivastava was on the appellants, which they failed to discharge. As far as the respondent nos.1 and 2 are concerned, they had duly proved the documents in their favour which remained un-rebutted by the appellants.

32. As far as the reliance of the appellants on the judgment of the Supreme Court in ***Suraj Lamp*** (supra), he submits that the said judgment could not have any effect on the claim of respondent nos.1 and 2 inasmuch as the documents in favour of the appellants have been executed prior to the said judgment, which has been held to be prospective in nature. He places reliance on the decisions in ***Maya Devi vs. Lalta Prasad***, (2015) 5 SCC 588; ***Abdul Waqar & Anr. vs. Abdul Gaffar***, 2018 SCC OnLine (Del) 9467; ***Vimla Devi v. Pushpa Devi & Anr.***, 2017 SCC OnLine (Del) 8694; ***Vikas Wadhwa vs. Pardeep Kumar & Ors.***, 2018 SCC OnLine (Del) 13056; and judgment dated 24.07.2017 passed in Ex.F.A.No.18/2017, titled ***Vinay Gugnani vs. Panna Lal Rathore and Anr.***

33. He further submits that in any case, in the present suits, the question of title was not relevant as the respondent nos.1 and 2 have been illegally dispossessed from the same. In this regard, he places reliance on the following judgments:-

- i) ***Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors.***, (2010) 12 SCC 112;
- ii) ***L.M. Walter (since deceased) through LRs. vs. Sh.Onkar Giri (now deceased) through LRs & Ors.***, 2016 SCC OnLine Del 5216;
- iii) ***Smt.Gurmeet Kaur vs. Shri Harbhajan Singh and Anr.***, 2016 SCC OnLine Del 5575;

iv) ***Jagmal (Deceased) Thr. LRs vs. MCD***, 2008 SCC OnLine Del 445; and

v) ***Sri Niwas Gupta vs. Surender Kumar***, 2016 SCC OnLine Del 5618.

34. He submits that as both the parties were alleging their respective title to the Suit Land, the suit cannot be decided merely on the basis of their claim to title. In this regard, he places reliance on the judgment dated 09.11.2019 passed by the Supreme Court in ***M. Siddiq (Dead) through LRs (Ram Janmabhumi Temple Case) v. Mahant Suresh Das & Ors.***, (2020) 1 SCC 1.

35. I have considered the submissions made by the learned counsels for the parties.

36. In ***Suraj Lamp*** (supra), the Supreme Court examined the validity and legality of Sale Agreement/General Power of Attorney/Will transactions to transfer title or create interest in an immovable property, and concluded as under:-

“23. Therefore, a 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 have been recognized 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 recognized or accepted mode of transfer and that it can be a

valid substitute for a sale deed. Such decisions to the extent they recognize 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 recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 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.

25. It has been submitted that making declaration that GPA sales and SA/GPA/will transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/will transactions are not “transfers” or “sales” and that such transactions cannot

be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. The said "SA/GPA/will transactions" may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to "SA/GPA/will transactions" have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision.

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding "SA/GPA/will transactions" are not intended to apply to such bona fide/genuine transactions."

37. In ***Maya Devi*** (supra), the Supreme Court considered the effect of the judgment of ***Suraj Lamp*** (supra) on a Power of Attorney executed prior to the date of the said judgment in a genuine transaction of sale and held that the observations of the Supreme Court in ***Suraj Lamp*** (supra) are not intended to in any way affect the validity of sale agreements and Powers of Attorney executed in genuine transactions prior thereto. Justice Vikramajit Sen, in the concurring judgment, further held that the judgment in ***Suraj Lamp*** (supra) was “*pointedly and poignantly prospective*”.

38. In ***Vimla Devi*** (supra), this Court has also held that documents executed prior to 24.09.2001 in accordance with the then-existing Section 53A of the Transfer of Property Act, 1882, which was amended by the Act 48 of 2001 to require compulsory stamping and registration of an agreement to sell, are valid documents.

39. In ***Abdul Waqar*** (supra), this Court again held that a sale by GPA/Agreement to Sell/Will executed prior to the rendering of the decision in ***Suraj Lamp*** (supra) is protected as a genuine transaction executed prior thereto and not affected by the said judgment.

40. In the present case, the documents, that is the Agreement to Sell dated 19.07.1987 and the registered General Power of Attorney dated 05.08.1987, have been executed by the admitted owners of the Suit Land, Smt. B.G. Lakshmi and late Shri B.K. Garudachar, prior to the judgment of the Supreme Court in ***Suraj Lamp*** (supra). Smt. B.G.

Lakshmi, in her Written Statement filed to the second suit of the respondent nos. 1 and 2, has not only admitted to the execution of the said documents in favour of the respondent nos.1 and 2, but also to their genuineness and as having divested her and her late husband of any title to the Suit Land. The relevant extracts from her Written Statement are as under:-

“That the defendant no.5 is an 80 years old lady and a USA-Green Card Holder, presently residing at in Qatar. That the defendant is suffering from various ailments and is planning to settle permanently in United States of America with her children and grand children. That the husband of the defendant no. 5 had expired on 23rd March 2010. That further without prejudice to her rights the defendant no. 5 would like to submit that on 08th of June 1981 a sale deed was executed by one Sh. Mohar Singh S/o Sh. Chander Singh, R/o B-80, Ganesh Nagar, New Delhi-8, in respect to 1067 Square Yards, i.e. one Bhiga and 1-1/3 Biswas approx. in Khasra No. 27/5/2 out of the total agriculture land of 15 Bhigas and 10 Biswas at Mustatil No. 16 Killa No. 26/03 (0-5). Mustatil No. 27, Killa No. 6 (4-9), 5/2 (3-12) and Mustatil No. 28, Killa No. 1(4-16), 10/2(2-8) situated at Village Mirzapur, Delhi in favour of Defendant no.5 and her husband Late Sh. B.K. Garudachar, for an amount of Rs.16,000/-. That out of the said land, on 19/07/1987, an agreement of sale, in respect to portion of land measuring 60'x45' i.e. 300 Square Yards on the extreme western side of a larger side measuring 1067 Square Yards in Khasra No. 27/5/2 i.e. one Bhiga and 1-1/3 Biswas approx. in village

Mirzapur (Palam), Delhi presently known as Mahavir Enclave, was entered between Defendant no.5 and her deceased husband, and the Plaintiffs. That the same was for a monetary consideration of Rs. 40,000/-. The said amount was paid by the plaintiffs and received by the defendants and a receipt in respect to the same was also issued by the defendant no. 5 and her deceased husband. That thereafter confirming the said agreement of sale, a registered general power of attorney bearing No.144/87.88 dated 05/08/1987 was executed by defendant no.5 and Late Sh.B.K. Garudachar in favour of the Plaintiffs in respect to the suit property herein. That neither was the above said registered general power of attorney ever revoked, nor was any other general power of attorney registered/unregistered ever issued by the defendant no.5 and her husband in the name of the any other person. That the plaintiffs were made the complete owners of the suit property by the defendant no.5 and her husband. That further the defendant no.5 is not a necessary party to the present suit and the name of the defendant no.5 ought to be deleted from the array of parties as no relief has been sought against the defendant no.5”

41. In view of the above stand of the admitted owner of the Suit Land in her Written Statement, there was no necessity for the respondent no. 1 and 2 to insist on her appearance as a witness in the suit and equally, the appellants cannot challenge the right and title of the respondent nos. 1 and 2 over the Suit Land, unless they are able to show a better title thereto.

42. In *Vinay Gugnani* (supra), this Court had held that even if no title passed under the Agreement to Sell for the document not being registered or a registered Sale Deed not having been executed, the beneficiary of the Agreement to Sell, in such circumstances, would undoubtedly have a right on behalf of the erstwhile owner to take possession of the suit property and therefore, it cannot be said that such person has no *locus standi* to file a suit for possession against a trespasser.

43. The submission of the learned senior counsel for the appellants that as Smt. B.G. Lakshmi had not appeared as a witness nor was she summoned by the respondent nos. 1 and 2, her written statement should be discarded, cannot be accepted. Smt. B.G. Lakshmi had accepted the claim of the respondent nos. 1 and 2 in the Suit. She had, in fact, denied the claim of the appellants. There was, therefore, no dispute between the respondent nos. 1 and 2 and Smt. B.G. Lakshmi in the Suit for which the respondent nos. 1 and 2 required the attendance of Smt. B.G. Lakshmi as a witness insofar as their *locus standi* to file the suits was concerned.

44. The same, however, does not hold good for the Written Statement filed by Shri Devender Kumar. The Written Statement of Shri Devender Kumar was adverse to the interest of the respondent no. 1 and 2 and therefore, could not have been relied upon without Shri Devender Kumar entering into the witness box. The observation of the learned Trial Court that the Written Statement of Shri Devender Kumar was not on record, even if incorrect, would not make any

difference to the outcome as the same even otherwise not worthy of any reliance.

45. Equally, the submission of the learned senior counsel for the appellants that the Agreement to Sell, Receipt and the General Power of Attorney in favour of the respondent nos. 1 and 2 could not be proved without examining the executants of these documents, is also ill-founded. As noted above, Smt. B.G. Lakshmi in her Written Statement has admitted the execution of these documents. It is not for the appellants to challenge the documents. In *Narbada Devi Gupta* (supra) on which reliance was placed by the learned senior counsel for the appellants, the Supreme Court held that while the execution of the document has to be proved by admissible evidence of those persons who can vouchsafe for the truth of the facts in issue, the situation is different where the documents are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the Court.

46. The submission of the learned senior counsel for the appellants that the Agreement to Sell having been executed in Bangalore, the respondents failed to prove how the possession of the land was handed over to them at Delhi, deserves only to be stated as rejected. The Suit Land had not been constructed upon. However, it has come in the evidence of the respondent no. 1, as PW-1, that he got a boundary wall constructed to protect the Suit Land. In any case, Smt. B.G. Lakshmi, on whose ownership both the appellants and the respondent nos. 1 and

2 make their claim, admitted to have handed over the possession of the said land to the respondent nos. 1 and 2.

47. Other minor discrepancies in the receipt, in form of not mentioning the name of the respondent nos. 1 and 2 from whom sale consideration has been received, and/or the General Power of Attorney not mentioning the Agreement to Sell, shall also be of no avail to the appellants. These documents form one chain and are to be read together as complementing each other and not in such hyper-technical manner as the learned senior counsel for the appellants would like this Court to read.

48. Coming to the own claim of the appellants, as noted above, the Sale Deed in their favour admits the ownership of Suit Land in Smt. B.G. Lakshmi and late Shri B.K. Garudachar. It is however, claimed that the said Smt. B.G. Lakshmi and late Shri B.K. Garudachar had executed a General Power of Attorney dated 04.02.1991 in favour of Mr. Ambuj Srivastava on which basis Mr. Ambuj Srivastava transferred the Suit Land to Mr. Devender Kumar, who in turn transferred it to the appellants. Therefore, the alleged General Power of Attorney dated 04.02.1991 was the foundation of the case of the appellants. This was also highlighted in the order dated 26.02.2014 passed by this learned High Court, the relevant portion of which has been reproduced herein above.

49. Smt. B.G. Lakshmi denied having executed the alleged GPA in favour of Mr. Ambuj Srivastava. Though, Mr. Ambuj Srivastava and Mr. Devender Kumar were parties to the suit, neither appeared as a

witness. The fact that Mr. Devender Kumar filed his Written Statement to the Suit can be of no avail to the appellants as his interest was adverse to the respondent nos. 1 and 2 and without appearing as a witness, his Written Statement was of no value.

50. The burden of proving the due execution of the alleged General Power of Attorney dated 04.02.1991 was clearly on the appellants, not only by the order dated 26.02.2014 framing the issues, but even under Section 101 and 102 of the Indian Evidence Act, 1872. The appellants, however, took no steps to prove the same. They made no effort to summon Smt. B.G. Lakshmi, who had denied executing the said GPA, or Mr. Ambuj Srivastava, or any of the alleged witnesses to the alleged GPA, as witnesses in the Suit. The appellants had therefore, clearly failed to discharge the burden placed on them to prove the alleged GPA. In absence thereof, the whole foundation of the case of the appellants vanishes and their case falls like a pack of cards.

51. At this stage, it is also relevant to note that apart from the alleged GPA, no other document, such as an Agreement to Sell, Will or Receipt allegedly executed by the said Smt. B.G. Lakshmi and late Shri B.K. Garudachar in favour of Mr. Ambuj Srivastava, was placed on record by the appellants. Shri Madan Mohan Dass (DW-1) in his cross-examination recorded on 19.03.2018 stated as under:-

"I do not know if Ambuj Srivastava was relative or family friend or otherwise known friend of Mr. B K Garudachar and Smt. B.G. Lakshmi or not. Ambuj Srivastava was in possession of agreement of sale, receipt of consideration for the sale of suit property to

him by Sh. B K Garudachar and Smt. B G Lakshmi. I am in possession of the said documents. However, I do not know if the same have been filed in the present case or not. I do not remember the date of the said documents. I cannot tell if the said documents are prior to or of the same date that of power of attorney dated 04.02.1991. It is wrong to suggest that I am making a false statement about the existence of the said documents. It is wrong to suggest that neither Mr. B K Garudachar nor Smt. B G Lakshmi ever executed any agreement to sale or receipt in favour of Sh. Ambuj Srivastava.

I cannot tell the amount of consideration for which Ambuj Srivastava entered into agreement with Sh. B K Garudachar and Smt. B G Lakshmi for the purchase of the suit property. I cannot tell if I am in possession of any other document executed by Sh. B K Garudachar and Smt. B G Lakshmi in favour of Sh. Ambuj Srivastava without looking to my records.”

52. Reliance of the learned senior counsel for the appellants on Section 85 of the Indian Evidence Act, 1872, is also ill-founded. The appellants made no effort to prove the due Notarisation of the alleged GPA either. Though not very relevant, the respondent nos. 1 and 2 had confronted the appellant, Sh. Madan Mohan Dass (DW-1) in his cross examination with the reply received by them under the Right to Information Act, 2005, showing that no such Notary or Stamp Vendor named on the alleged GPA exists. In spite of the same, the appellants made no effort to prove the due notarisation of the alleged GPA. The relevant extracts from the cross examination of Sh. Madan Mohan Dass (DW-1) recorded on 19.03.2018 is as under:-

"I have not tried to check if Mukesh Kumar is stamp agent or having his licence no. 250 and having seat at Kashmiri Gate or not which details are mentioned on rear portion of stamp paper of the denomination of Rs. 10/- on which GPA has been shown to have been executed. I have also not tried to contract Mahavir Singh if he is notary public or not and where he sits since his rubber stamp is affixed on the said GPA as well as I have also not tried to contact him to show as he has attested the said GPA or not on 04.02.1991. It is wrong to suggest that the said GPA Ex.DW1/4 is forged and fabricated. It is wrong to suggest that there is no Mukesh Kumar, stamp agent having his licence no. 250 at Kashmiri Gate, Delhi.

I cannot say if the licence no. 250 has been issued in the name of HS Kohli, a stamp vendor by the Revenue Department (HQ), Govt. of NCT of Delhi and said stamp vendor is having his vending place at Raghbir Nagar, District West, Delhi and the said licence was issued on 16.07.1985. The letter issued by Sh. PR Kaushik, SDM (HQ-1)/COS affirming the aforesaid facts is Ex.DW1/PX3."

53. The submission of the learned senior counsel for the appellants that in absence of Smt. B.G. Lakshmi entering the witness box, her denial of execution of the GPA in favour of Mr. Ambuj Srivastava could not be accepted and that an adverse inference was to be drawn against her, also cannot be accepted. It was the case of the appellants that Smt. B.G. Lakshmi had executed the said GPA in favour of Mr. Ambuj Srivastava, who was also a party to the Suit. Mr. Ambuj Srivastava never entered the witness box, in fact, he did not even file his written statement to the Suit. Therefore, adverse inference had to be drawn against Mr. Ambuj Srivastava.

54. The reliance of the appellants on the judgments in *Vidhyadhar* (supra) and *Harbhajan Singh* (supra) also cannot come to the avail of the appellants.

55. In *Vidhyadhar* (supra), the defendant no. 1 therein had admitted the execution of the sale deed in favour of the plaintiff but had claimed the same to be fictitious and as a bogus transaction. As defendant no. 1 did not enter the witness box, the Supreme Court held that a presumption would arise that the case set up by him is not correct.

56. In *Harbhajan Singh* (supra) again, the plea taken by the plaintiff therein was that the Sale Deed therein had been executed in a fraudulent manner. However, the plaintiff therein never entered the witness box. The Court, therefore, held that a presumption shall arise that the case set up by him was not correct.

57. In the present case, however, the very execution of the GPA had been denied by Smt. B.G. Lakshmi. It was for the appellants, who were relying upon the said GPA, to prove the due execution of the said GPA by Smt. B.G. Lakshmi and late Shri B.K. Garudachar. The initial onus to prove the same was on the appellants. The appellants, however, miserably failed to discharge the same. The outcome would have been different, had the appellants discharged the burden of proof placed on them and thereafter, had Smt. B.G. Lakshmi not entered the witness box, in which case an adverse presumption would perhaps be drawn against Smt. B.G. Lakshmi and consequently, against the

respondent nos. 1 and 2. However, this situation never came about as the onus never shifted.

58. From the above, it is concluded that while the respondent nos. 1 and 2 were able to prove their interest, if not title, to the Suit Land, the appellants failed to do so. The finding of the learned Trial Court in this regard, therefore, cannot be faulted.

59. The submission of the learned senior counsel for the appellants that the respondent nos. 1 and 2 were not entitled to the grant of possession of the Suit Land only for the weakness of the case set up by the defendants, though sounds attractive, however, is not germane to the facts of the present case. As held above, the respondent nos. 1 and 2 had proved their interest in the Suit Land and their entitlement to the possession thereof. Therefore, it is not just the failure of the appellants to prove their case that haunts the appellants or has helped the respondent nos. 1 and 2 to seek possession of the Suit Land.

60. The judgment of the Supreme Court in *Vasavi Cooperative Housing Society Ltd.* (supra) and in *Jagdish Prasad Patel* (supra), therefore, cannot come to the aid of the appellants.

61. In *M. Siddiq* (supra), the Supreme Court examined the import of Section 110 of the Indian Evidence Act and has held as under:-

1193. *Section 110 of the Evidence Act, 1872 provides thus:*

“110. Burden of proof as to ownership.— *When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.*”

Section 110 deals with the burden of proof. Where the provision applies, the burden of proving that another person who is in possession is not the owner lies on the person who affirms against the ownership of that other person. But, for Section 110 to be attracted, there must be a question as to whether any person is the owner of anything and the ownership claimed must be that of which he is shown to be in possession. Section 110 is based on the principle that title follows possession. That is why the provision postulates that where a person is shown to be in possession, and a question arises as to whether that person is the owner, the law casts the burden of disproving ownership on the individual who affirms that the person in possession is not the owner.

1194. *Several decisions of this Court have interpreted the provisions of Section 110. Section 110 is based on the principle that possession in and of itself may raise a presumption of title. But this applies when the facts disclose no title in either of the disputants in which case, as it is said, possession alone decides. Hence, on the other hand, it is also well settled that the presumption cannot arise when the facts are known.*

1195. *In **Nair Service Society Ltd. v. K.C. Alexander** [AIR 1968 SC 1165] , M. Hidayatullah, J. (as the learned Chief Justice then was) speaking for a three-Judge Bench of this Court held : (AIR p. 1173, para 15)*

“15. ... That possession may prima facie raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title in either party, possession alone decides.”

1196. *In **M.S. Jagadambal v. Southern Indian Education Trust** [1988 Supp SCC 144] , K. Jagannatha Shetty, J. speaking for a two-Judge Bench of this Court held that possession continues with the title-holder unless and until the defendant acquires title by adverse possession : (SCC p. 151, para 18)*

“18. ... The possession continues with the title-holder unless and until the defendant acquires title by adverse possession. There would be no continuance of adverse possession when the land remains submerged and when it is put out of use and enjoyment. In such a case the party having title could claim constructive possession provided the title had not been extinguished by adverse possession before the last submergence. There is no difference in principle between

seasonal submersion and one which continues for a length of time.”

1197. In Chief Conservator of Forests, State of A.P. v. Collector [(2003) 3 SCC 472] , Syed Shah Mohammed Quadri, J. speaking for a two-Judge Bench of this Court held : (SCC p. 484, para 20)

“20. ... presumption, which is rebuttable, is attracted when the possession is prima facie lawful and when the contesting party has no title.”

1198. In State of A.P. v. Star Bone Mill and Fertiliser Co. [(2013) 9 SCC 319 : (2013) 4 SCC (Civ) 444] , this Court held that the object of Section 110 is based on public policy. The object is to prevent persons from committing a breach of peace by taking the law into their own hands however good their title may be over the land in question. This object underlies provisions such as Section 6 of the Specific Relief Act, 1963, Section 145 of the Code of Criminal Procedure, 1973 and Sections 154 and 158 of the Penal Code, 1860. B.S. Chauhan, J. speaking for a two-Judge Bench of this Court explained in the above decision that : (SCC pp. 326-27, para 21)

“21. ... The said presumption is read under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim “possession follows title” is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of wastelands, or where nothing is known about possession one way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. Possession of the plaintiff is not prima facie wrongful, and title of the plaintiff is not proved. It certainly does not mean that because a man has title over some land, he is necessarily in possession of it. It in fact means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment, etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way

of satisfactory evidence, circumstances that favour his version. Even a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof, both forward and backward, can also be raised under Section 110 of the Evidence Act.”

(emphasis supplied)

62. Applying the above test, while it was established that the respondent no. 1 and 2 had interest in the Suit Land, the appellants, apart from claiming to be in possession of the Suit Land, could not even remotely prove any interest therein. The respondent no. 1 and 2 therefore, were able to rebut the presumption under Section 110 of the Indian Evidence Act and were entitled to the possession of the Suit Land.

63. The submission of the learned senior counsel for the appellants that in absence of a relief of declaration of title, the respondent nos. 1 and 2 were not entitled to the relief of possession, also cannot be accepted.

64. As held herein above, the respondent nos. 1 and 2 had been able to establish their interest, if not title, to the Suit Land, while the appellants failed to prove their interest or title to the same, except that they were in possession of the same on the date of filing of the Suits.

65. In **Anathula Sudhakar** (supra), the Supreme Court held that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. However, where the plaintiff has clear title

supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denied the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration. The Supreme Court summarized the position in law as under:-

“21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar (2005) 6 SCC 202). Where the averments regarding title are absent in a plaint and where there is no issue

relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

66. In **Vikas Wadhwa** (supra), this Court reiterated that:-

“11. The trial court has also erred in placing reliance upon the judgment of the Hon’ble Supreme Court in the case of Anathula Sudhakar (supra) because this judgment only applies if the parties are not aware that there is an issue which is required to be decided of title to a property. Once title of a property is very much in issue, the relief of declaration is always implicit, and it is not necessary to separately pray for a specific relief of declaration.”

67. A reading of the above would show that where there are pleadings with respect to title and the parties have gone ahead and led evidence on the same, the Court, even in a case of possession, can record a finding on the title. In the present case, the question of title was not only specifically pleaded but was also made a specific matter of dispute through the second Suit. The issues were framed accordingly and the parties led evidence on the same. Therefore, no fault can be found on the learned Trial Court proceeding to examine the respective claim of title to the Suit Land by the appellants and respondent nos. 1 and 2.

68. The submission of the learned senior counsel for the appellants, relying upon the judgment of the Supreme Court in ***Deccan Paper Mills Co. Ltd.*** (supra), to the effect that the second Suit seeking cancellation of the Sale Deeds in favour of Mr. Devender Kumar and the appellants was not maintainable as such suit can be filed only by the executant of the document, again does not hold much weight.

69. In ***Deccan Paper Mills Co. Ltd.*** (supra), the Supreme Court was considering if an action under Section 31 of the Specific Relief Act, 1963, can be said to be *in rem* and therefore, not arbitrable in nature. In considering the said question, the Supreme Court observed that when it comes to cancellation of a deed by an executant to the document, such person can approach the Court under Section 31 of the Specific Relief Act, but when it comes to cancellation of a deed by a non-executant, the non-executant must approach the Court under Section 34 of the Specific Relief Act, 1963.

70. The above distinction, as highlighted by the Supreme Court in ***Suhrid Singh @ Sardool Singh*** (supra), in a Suit is relevant only for the purpose of determining the court fee payable on the suit. The relevant extract from the judgment is as under:-

“6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at

which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.”

71. In the present case, it is not denied by the appellants that the respondent nos. 1 and 2 have affixed the requisite court fee on their second Suit even treating the Suit to be for seeking a declaration. The parties also appreciated the nature of the suit filed by the respondent nos. 1 and 2 and accordingly, the issues were settled and the parties led their evidence. The nomenclature of the Suit as one of cancellation of the documents therefore, lost all its significance and in any case, no prejudice was caused or has even been alleged to be caused to the appellants by the same. Such a hyper-technical objection of the appellants, therefore, cannot be sustained and is rejected.

72. The submission of the learned senior counsel for the appellants that there was no issue framed on whether the respondent nos. 1 and 2 were entitled to the possession of the Suit Land, is also stated to be rejected. Issue no. (iii) pertained to whether the respondent nos. 1 and 2 were entitled to mesne profits/damages for use and occupation charges from the appellants. Issue no. (v) was for the final relief that the respondent nos. 1 and 2 were entitled to in the suits. The relief of possession was therefore, implicit in these issues.

73. In view of the above, I find no merit in the present appeals. The same are dismissed. The appellants shall pay consolidated costs of Rs. Two Lakhs to the respondent nos. 1 and 2 for the present appeals.

NAVIN CHAWLA, J

**JUNE 01, 2021/rv/vp
A/US.**

