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

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Date of Decision: 02.08.2021

+ **RSA 22/2021 & CM APPL. 7598/2021 (stay)**

SMT. RANJANA MITRA

..... Appellant

Through: **Mr. Peeyoosh Kalra, Mr. Sudhindra
Tripathi and Mr. Ashok Nagrath,
Advocates**

versus

SH. ASHOK KUMAR MAZUMDAR & ORS.

..... Respondents

Through **Mr. P.C. Sharma & Mr. Manish
Kumar Sharma, Advocate for R-1.
Mr. Aayush Agarwal, Advocate for
R-2 to 5.**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. Present Regular Second Appeal has been filed by the Appellant impugning the judgement and order dated 23.01.2021 passed by the First Appellate Court in RCA No. 133/2019 whereby the Appeal of the Appellant herein has been dismissed and the judgement and decree dated 01.10.2019 passed by the learned Trial Court in Civil Suit No. 50607/2016 has been upheld and affirmed. Appellant herein was Defendant No. 1 in the Suit and Respondent No. 1 herein was the Plaintiff. Respondents No. 2 to 5 herein were Defendants No. 2 to 5 before the Trial Court. The parties are being referred to by their litigating status before this Court, hereinafter, for the sake of convenience.

2. Respondent No. 1/ Shri Ashok Kumar Mazumdar, being the legal heir of the alleged landlord, Late Shri Rohini Kumar Mazumdar, filed a Suit against the Appellant, alleged tenant and Respondents No. 2 to 5, other legal heirs of the alleged landlord, seeking three reliefs viz: (a) decree of possession of the tenanted premises bearing No. A-80, Chitranjan Park, New Delhi (hereinafter referred to as 'premises'); (b) recovery of arrears of rent amounting to Rs. 36,000/- along with interest @ 18% per annum and (c) recovery of *mesne* profits/damages @ Rs. 25,000/- per month w.e.f. 01.02.2015 along with interest @ 18% per annum.

3. The case of Respondent No. 1, as set out in the plaint, was that Late Shri R.K. Mazumdar was allotted the land underlying the premises by the Ministry of Rehabilitation, Government of India, vide registered Lease Agreement dated 24.11.1969. Late Shri Mazumdar constructed a house over the said land in the year 1991 by raising a loan from LIC through DDA against mortgage of the property with DDA. During his lifetime, Shri Mazumdar had inducted the Appellant as a tenant with respect to the entire premises, except for one store room, marked and shown separately in the site plan, initially vide Tenancy Agreement dated 22.11.1992 and later vide Tenancy Agreement dated 31.01.1995 for a period of two years ending on 31.12.1996. Vide the latter Agreement, the agreed rate of rent was Rs. 6,000/- per month. However, on account of friendly relationships between Late Shri Mazumdar and Shri B.K. Mitra, husband (now deceased) of the Appellant, it was verbally agreed that out of the said monthly rent, Appellant would deposit Rs. 5,457.30/- with DDA to discharge the loan liability and pay the balance to Late Shri Mazumdar. Appellant was paying

the rent in accordance with the agreed terms during the lifetime of Late Shri Mazumdar.

4. It was further averred by Respondent No. 1 that after the death of Late Shri Mazumdar on 05.12.1998, Appellant changed her stand and started making claims of being the purchaser of the premises and also stopped paying the rent. On 08.11.2014, when Respondent No. 1 and his wife tried to enter the portion of the premises in their possession and sought arrears of rent, they were denied entry and were threatened with dire consequences by the Appellant. This conduct of the Appellant compelled Respondent No. 1 to send a legal notice dated 22.11.2014 to the Appellant, determining the month-to-month tenancy, which even otherwise had come to an end by efflux of time under the Tenancy Agreement dated 31.01.1995. Failure on the part of the Appellant to vacate the premises led to the filing of the Suit by Respondent No. 1 seeking possession, arrears of rent and *mesne* profits/damages.

5. Appellant contested the suit and filed the Written Statement. Primarily the case of the Appellant was that no landlord-tenant relationship existed between the parties and the Appellant was the owner of the premises. The narrative of facts set out in the written statement was that the Appellant was the owner of first floor of House No. A-79, Chitranjan Park, New Delhi, adjoining the premises. Late Shri Mazumdar had approached the husband of the Appellant with an offer to sell the roof rights of the premises. The offer appealed to the Appellant's husband but he did not readily have the funds to purchase the roof rights. It was agreed that the funds shall be arranged by the Appellant and her husband by selling their first floor and in the meantime Appellant and her family shall move to the ground floor of the premises and

pay monthly rent. The ground floor was not in a habitable condition and thus, it was further agreed that the husband of the Appellant would carry out the repairs and the expenditure incurred would be deducted from the sale price of the roof rights of the premises. Shri B.K. Mitra, husband of the Appellant spent Rs. 1,90,000/- on the said repairs and the family shifted to the ground floor.

6. It was averred that thereafter Late Shri Mazumdar offered to sell the entire house to the Appellant and her son for a sum of Rs. 9 Lakhs, after adjusting Rs. 1,90,000/- spent on repairs of the ground floor and Rs. 1,40,000/- paid towards the rent. A sum of Rs. 5,65,000/- was immediately paid by the Appellant and her son to Late Shri Mazumdar and in respect of balance sale consideration of Rs. 3,35,000/-, it was agreed that the same would be paid after Late Shri Mazumdar obtained the relevant documents from DDA and discharged his loan liability. It was also agreed that in case Late Shri Mazumdar did not discharge his liability, the appellant would pay the outstanding loan amount directly to DDA. An Agreement to Sell was executed by Late Shri Mazumdar on 22.11.1994 in favour of the Appellant and her son along with an irrevocable General Power of Attorney in favour of the husband of the Appellant. The property was thus sold to the Appellant and her son and they became owners thereof and thereafter, no rent was ever demanded from the Appellant. Late Shri Mazumdar failed to discharge the loan liability and the Appellant started paying instalments to the DDA towards the balance sale consideration of Rs. 3,50,000/-. It was also the case of the Appellant that Tenancy Agreement dated 30.01.1995 is a forged and fabricated document as no such Agreement was executed between the parties. It was denied that possession of any part of the premises

was retained by Late Shri Mazumdar, as alleged in the plaint. Appellant prayed that the suit deserved to be dismissed as the Appellant and her son were the lawful owners of the premises by virtue of the Agreement to sell.

7. Respondents No. 2 to 5 filed a separate Written Statement, *inter alia*, pleading that being the legal heirs of Late Shri Mazumdar they also had share in the house. Prayer was made for transposing them as Plaintiffs in the Suit and thereafter if and when the Suit was decreed, the benefits and fruits of the decree should be shared with them by Respondent No.1.

8. The Trial Court framed the following issues on 08.09.2017:-

"1. Whether the plaintiff is entitled to the possession of premises no. A-80, C. R. Park, New Delhi-90 as shown in the site plan? OPP

2. Whether the plaintiff is entitled to arrears of rent to the tune of Rs. 36000/- besides interest as prayed for against defendant no. 1? OPP

3. Whether the plaintiff is entitled to mesne profits of Rs. 25,000/- per month against defendant no. 1 since 01.02.2015 as prayed for besides interest? OPP

4. Whether the plaintiff is entitled to cost of suit as prayed for? OPP"

9. During the trial, Respondent No. 1 examined three witnesses while the Appellant examined two witnesses. On the basis of the pleadings and evidence led by the parties as well as the arguments canvassed by the respective counsels, Trial Court decided all the aforementioned Issues in favour of Respondent No. 1 and decreed the Suit.

10. With respect to the first Issue, Trial Court observed that the Appellant had raised the defence of her entitlement to the benefit of protection under

Section 53A of the Transfer of Property Act, 1882 (hereinafter referred to as 'TPA'), for the first time only during the final arguments on 16.09.2019 and 21.09.2019. Appellant had nowhere pleaded in the Written Statement that she was entitled to the benefit of the said provision, as she had upon execution of the Agreement to Sell, taken possession of the premises, in part performance of the Agreement and consequently even evidence was not led to that effect. Instead, Appellant had pleaded that upon execution of the Agreement to Sell and GPA, both dated 22.11.1994, her son and the Appellant had become owners of the premises. Trial Court relied on the judgement of the Supreme Court in *Shyam Narayan Prasad vs. Krishna Prasad & Ors.*, (2018) 7 SCC 646, wherein the Supreme Court has held that wherever the Defendant intends to avail the benefit of Section 53A of TPA, he must plead that he has taken possession of the property, in part performance of the contract, since pleadings give each side intimation of the each other's case and also enables the Court to determine the real issue for determination. Therefore, in the absence of pleadings, benefit of protection under Section 53A of TPA cannot be granted to the Defendant.

11. The second reason given by the Trial Court for deciding the First Issue in favour of Respondent No. 1 was that even if the plea with regard to the protection under Section 53A of TPA could be entertained by the Trial Court, the evidence led by the Appellant did not pass the muster of law laid down by the Supreme Court in the case of *H.K. Sharma vs. Ram Lal*, (2019) 4 SCC 153. In the said judgement, the Supreme Court has held that the question, whether the jural relationship between the lessor and the lessee in relation to the tenanted premises comes to an end upon the lessor and lessee entering into an agreement for sale or purchase of the said premises,

would have to be decided keeping in view the provisions of Section 111 of TPA. The Agreement to Sell executed between the parties must evidence and provide the fate of the tenancy and the intent to surrender the tenancy rights as contemplated in Clause (e) or (f) of Section 111 of TPA, at the time of entering into the said Agreement. Relying on the said judgement, Trial Court concluded that the Agreement to Sell dated 22.11.1994 was completely silent regarding the fate of the undisputed tenancy. Trial Court's conclusion, as evident from the judgement, was also based on its observation that neither in the pleadings in the written statement nor during the evidence, the Appellant had claimed that she was willing to perform her balance part of the Agreement to Sell i.e. payment of balance sale consideration of Rs. 3,35,000/-, which remained unpaid and that the benefit of Section 53A of TPA can only be granted to an agreement purchaser who has performed or is willing to perform his or her part of the obligations under the Agreement to Sell.

12. Learned Trial Court further held that the plea of the Appellant that upon execution of the Agreement to Sell and GPA, her son and the Appellant had become owners of the premises, was legally untenable on account of the law laid down by this Court in ***Saroj Aggarwal vs. Mehar Singh, 2018 SCC OnLine Del 12022*** and ***Jiwan Dass Rawal vs. Narain Dass & Ors., AIR 1981 Del 291***. In ***Saroj Aggarwal (supra)***, this Court did not accept the contention of the Appellant/Plaintiff therein that the judgement of the Supreme Court in ***Suraj Lamp & Industries Private Limited vs. State of Haryana & Anr., (2012) 1 SCC 656*** has a prospective effect. In ***Jiwan Dass Rawal (supra)***, this Court held that an Agreement of Sale does not create an equitable estate in the purchaser in view of Section

54 of TPA and that such a document only creates a right to obtain another document in the form of Sale Deed. Trial Court, therefore, held that there cannot be a transfer of title/ownership through Agreement to Sell, Power of Attorney etc. And that the said documents do not confer any right, title or interest upon the agreement purchaser, except the right to seek specific performance of the Agreement to Sell.

13. Learned Trial Court also held that the undisputed position that emerged was that denial of second Tenancy Agreement was of no consequence as even if the Appellant was not re-inducted as a tenant vide Tenancy Agreement dated 30.01.1995, she had continued to be a tenant of Late Shri Mazumdar on the basis of the tenancy emanating from the Agreement dated 22.11.1992 and the Appellant had not expressly denied service of legal notice dated 22.11.2014, whereby the tenancy was determined and terminated by Respondent No. 1.

14. In view of the aforesaid findings on Issue No. 1 in favour of Respondent No. 1, Trial Court decided Issue No. 2 partly in favour of Respondent No. 1 and held him entitled to a sum of Rs. 27,000/- in respect of arrears of rent for the period 01.08.2014 to 30.01.2015, along with interest @ 12% per annum and consequently decided Issue No. 3 in favour of Respondent No. 1 awarding *mesne* profits/damages at different rates for different periods. Trial Court also awarded costs as permissible under the Delhi High Court Rules and Orders.

15. The judgement and decree of the Trial Court was challenged by the Appellant before the First Appellate Court and the Court dismissed the Appeal, recording its general agreement with all the findings rendered and

conclusion arrived at by the Trial Court. This led to the filing of the present Regular Second Appeal by the Appellant before this Court.

16. At the outset, learned counsel for the Appellant contended that without going into the merits or any other questions of law raised before the First Appellate Court, this Court should first consider if the impugned judgement and order of the First Appellate Court is sustainable, being unreasoned and cryptic and bereft of independent findings or even discussion on the contentions raised by the Appellant before it. The first substantial question of law raised by the Appellant, on which substantial arguments were canvassed by all parties, is as follows:-

(a) Whether the First Appellate Court in terms of Section 96 CPC was required to record its independent findings duly supported by reasons on all Issues arising before it and the contentions put forth and pressed by the parties?

17. Mr. Peeyoosh Kalra, learned counsel for the Appellant strenuously argued that perusal of the impugned order of the First Appellate Court would show that the judgement contains selective reproduction of the contents of the Appeal and the pointed grounds agitated challenging the Trial Court's judgement are not even taken note of and thus there is no discussion on them. Likewise the judgements cited and relied upon by the Appellant are not even mentioned in the impugned judgement, though the Appellant had sent the copies of the judgements by e-mail on 06.11.2020 and hard copies were duly handed over in Court on 07.11.2020. Copy of the said e-mail and the index of the judgements have been filed before this Court to substantiate the stand of the Appellant. Trial Court has selectively and strangely only referred to the judgements cited and relied upon by the

Respondents. It was further argued that the judgement of the First Appellate Court contains only a restatement of the factual narration taken from the order of the Trial Court and the extracts of the reasoning by the Trial Court. It is totally devoid of independent discussion on the contentions put forth, the evidence led and/or with respect to the questions of law raised before it. The First Appellate Court has passed a cryptic and non-reasoned judgement and on a general agreement concluded that the judgement rendered by the Trial Court requires no interference.

18. In a nut-shell, the contention of the Appellant was that the First Appellate Court has merely reproduced the judgement of the Trial Court mechanically and has failed to discharge the duty cast upon it under Section 96 and Order XLI Rule 31 CPC and on this sole ground, the matter deserves to be remanded back for proper application of mind, after deliberating on the issues and contentions raised and giving reasons for the findings and conclusion. The judgement, according to the learned counsel, is silent and bereft of 'reasons' which are the heart and soul of a judicial order.

19. Learned counsel relied on the judgement of the Supreme Court in **C. Venkata Swamy vs. H.N. Shivanna (Dead) by L.R. & Anr., (2018) 1 SCC 604**, wherein the Supreme Court had set aside the impugned judgement and decree of the High Court and remanded the Regular First Appeal for fresh disposal after noticing that the judgement under Appeal was cryptic and none of the relevant aspects had been noticed. The Supreme Court had, in turn, relied on an earlier judgement in **B.V. Nagesh vs. H.V. Sreenivasa Murthy, (2010) 13 SCC 530**, wherein the principles relating to disposal of appeals by Appellate Courts, were reiterated.

20. Without prejudice to the above contentions, it was submitted that the Trial Court has rendered two significant findings in favour of the Appellant i.e. (a) Agreement to Sell and GPA, both dated 22.11.1994, are genuine documents and (b) Tenancy Agreement dated 31.01.1995 is an unreliable document and does not bear genuine signatures of Late Shri Mazumdar and the Appellant. Despite the said findings, the Trial Court decreed the suit against the Appellant on two counts viz. (a) there was no pleading that the Appellant was entitled to the benefit of Section 53A of TPA and (b) the Agreement to Sell is silent about the fate of tenancy and there is no evidence of intent to surrender the tenancy. Mr. Kalra contended that the First Appellate Court ought to have taken into account these crucial findings and the fact that in the absence of challenge to the documents by the Respondents in terms of Section 31 of the Specific Relief Act, the finding that the Agreement to Sell and GPA are genuine, has attained finality qua the Respondents.

21. It was contended that all along the Appellant's defence was that she was entitled to defend her possession by virtue of the Agreement to Sell and GPA executed by Late Shri Mazumdar. Parties went to trial knowing each other's stands and evidence was led accordingly. Appellant was not required to state in the pleadings that she was ready and willing to perform her part of the contract or point out the law as she was only defending her possession and not seeking specific performance and secondly, transaction of sale qua Late Shri Mazumdar stood concluded upon execution of both the documents, including passing of the rights to the Appellant to perfect her title and further create third party rights. In order to perfect her title, all that the Appellant was required to do was to pay the balance installments to

DDA to clear the loan liability and take steps to get the Conveyance Deed executed in her name. In any case, it was the duty of the Court to see the letter and spirit of the pleadings and not to throw out a genuine claim on mere technicalities.

22. Learned counsel placed reliance on the judgment of this Court in ***Hardip Kaur vs. Kailash & Anr., 2012 SCC OnLine Del 2937*** to argue that the Appellant may not be a classical owner of the property but has a 'better right' of possession and is protected under Section 53A of TPA. It was also argued that as per Sections 91 and 92 of the Evidence Act, once there is a written document of transaction, it cannot be contradicted by oral evidence.

23. Learned counsel further argued that the reliance of the Trial Court on the judgement of the Supreme Court in ***H.K. Sharma (supra)*** to hold that the Agreement to Sell is silent on the fate of tenancy, is misplaced. Trial Court erroneously did not take into consideration the GPA which categorically records the fact of the Appellant's acquiring possession and doing all acts in relation to the property including the right to sell. Trial Court failed to appreciate that it is a settled law that if a transaction is contained in more than one document between the same parties, they must be read and interpreted together and have the same legal effect for all purposes, as if they are one document. Learned counsel placed reliance on the judgement of the Supreme Court in ***R. Kanthimathi & Anr. vs. Beatrice Xavier, (2000) 9 SCC 339***, more particularly paragraphs 7 and 8, where the Supreme Court relying on an earlier judgement in ***Arjunlal Bhatt Mall Gothani vs. Girish Chandra Dutta, (1973) 2 SCC 197***, held that once there is an Agreement to Sell between a landlord and a tenant, the old relationship comes to an end and even if the Agreement is cancelled, the status of the

tenant is not restored and from the date of execution of the document, the earlier status changes into a new status of a purchaser and a seller. It was urged that the Trial Court wrongly relied on *H.K. Sharma (supra)* wherein the Petitioner had relied upon the judgement in *R. Kanthimathi (supra)*. In the said case, the Supreme Court distinguished the judgement by holding that in *R. Kanthimathi's case (supra)*, the Agreement of Sale recorded that the demised property had already been surrendered and possession given, which indicated the intention of the parties to surrender the tenancy rights and end the landlord-tenant relationship. Thus, the Trial Court overlooked that the law in *R. Kanthimathi (supra)* was upheld but distinguished on facts in *H.K. Sharma (supra)*. Despite the findings of the Trial Court being erroneous, the First Appellate Court concurred with the judgement and that too without even discussing the contentions raised and giving reasons to disagree on the points raised, assailing the judgement.

24. Arguing for Respondent No. 1 and defending the impugned judgement, Mr. P.C. Sharma, learned counsel contended that the First Appellate Court has concurred with all the findings of fact and law recorded by the Trial Court and thus, there was no necessity of giving detailed reasons. The expression of general agreement with the reasons recorded by the Trial Court was sufficient and it cannot be urged by the Appellant that the judgement is cryptic or unreasoned. The First Appellate Court has rightly appreciated all the grounds raised by the Appellant in letter and spirit and has given its findings relying on the judgements cited by the parties and the arguments canvassed before the Court. The First Appellate Court has considered and tested the reasons given by the Trial Court and found no reason or ground to reverse its findings.

25. It was further argued that the findings of the Trial Court are based on the evidence on record, both oral and documentary and settled legal position, with which the First Appellate Court concurred and no case for remand is made out by the Appellant. It was further contended that the Appellant has failed to raise any substantial question of law as required under Section 100 CPC and in the absence of the same the present appeal deserves to be dismissed. The Trial Court as well as the First Appellate Court have relied on the judgements where the law on the points raised by the Appellant stands settled by the Supreme Court and no question of law arises, which requires any debate or argument. Trial Court has given a reasoned judgement on the interpretation of Section 53A of the TPA, relying on the judgement of the Supreme Court in *Shyam Narayan Prasad (supra)*, which is binding on both the Courts below. The Supreme Court has held therein that in order to avail the benefit of Section 53A of TPA, a party is required to plead that he or she has taken possession of the property, in part performance of the contract, so as to apprise the other party of the case set up and also enable the Court to determine the real issue between the parties. Thus, no relief could have been granted to the Appellant, in the absence of pleadings to that effect and there is no infirmity in the judgement impugned.

26. Learned counsel for Respondent No. 1 also argued that it is a settled law that execution of documents such as Agreement to Sell, GPAs, Wills etc. do not constitute/complete a transaction of transfer/sale/conveyance of immovable property. These documents do not confer Title and are not recognised as valid modes of transfer of immovable properties, as clearly held by the Supreme Court in *Suraj Lamp (supra)* and thus the Agreement to Sell set up by the Appellant conferred no right or Title on the Appellant

and she continued to be a tenant till the subsistence of the Tenancy Agreement. Trial Court has also rightly held that Appellant cannot be granted the benefit and protection under the provisions of Section 53A of TPA, as in her written statement there was no pleading that she was willing to perform her balance part of the Agreement to Sell dated 22.11.1994 and admittedly, the balance consideration of Rs. 3,35,000/- was never paid. This finding is clearly recorded in para 19 of the judgement of the Trial Court and rightly upheld by the First Appellate Court.

27. It was contended that Trial Court has rendered a clear finding that the Appellant was a tenant of Late Shri Mazumdar under the Tenancy Agreement dated 22.11.1992 and that the tenancy was terminated by serving a legal notice dated 22.11.2014, the receipt of which was not denied either in the pleadings or during the evidence by the Appellant. It was also contended that even otherwise, the premises was under legal encumbrance because of the restriction to sell the same under Clause (xi) of the Lease Deed/Agreement (Exh. PW-3/A), under which the land was leased to the father of Respondent No. 1 by the Ministry of Labour, Employment and Rehabilitation. The father being a Lessee was not legally authorised to sell the property, by whatever mode.

28. Learned counsel for Respondent No. 1 had also urged that while the GPA and other documents relied upon by the Appellant do not confer Title and transfer the property, in any event the documents are forged and fabricated and in any event no Sale Deed was ever executed in favour of the Appellant. It was submitted that Section 17 of the Registration Act, 1908 was amended and sub-Section (1A) was inserted by Amendment Act 48 of 2001 effective from 24.09.2001. After the Amendment, the documents

containing contracts to transfer for consideration, any immoveable property, for the purpose of Section 53A of TPA, shall be registered, if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not so registered, they shall have no effect for the purposes of Section 53A of TPA. Counsel relied on the judgement of the Supreme Court in **H.K. Sharma** (*supra*) wherein according to him, the judgment of the Supreme Court in **R. Kanthimathi** (*supra*) relied upon by the Appellant has been distinguished. It was argued that in **H.K. Sharma** (*supra*), the Supreme Court, faced with an identical question, laid down the test that the Court must ascertain whether the terms of the Agreement to Sell set up by the Tenant evidence any intention to abandon the existing landlord-tenant relationship and only on being satisfied that such intention exists, the old relationship will come to an end and the Agreement to Sell would confer protection to the tenant under Section 53A of TPA.

29. Learned counsel appearing for Respondent No. 3 and Respondents No. 2, 4 and 5, who are daughters of Late Shri Mazumdar, argued in support of the impugned judgements and submitted that if and when the present decree is executed, the rights of the daughters be protected and they be given their shares as legal heirs of Late Shri Mazumdar.

30. It was argued that the Trial Court has given a comprehensive judgement after considering all facts, documents and evidence. The Appellant cannot argue that there is any hard and fast rule as to the manner in which a judgement is required to be delivered by an Appellate Court and the Supreme Court has, in fact, held that there is nothing wrong with the First Appellate Court simply recording a general agreement with the

judgement impugned before it. Reliance was placed on the judgement of the Supreme Court in *Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary, (1967) 1 SCR 93*.

31. It was further contended that the sole question, in fact, for consideration before this Court is the effect and/or relevance of the Agreement to Sell and GPA dated 22.11.1994, in view of the admitted position that Appellant was inducted as a tenant at least under the Agreement dated 22.11.1992 and a consequential question whether these documents entitle the Appellant to resist the suit for possession. Elaborating on the arguments, it was submitted that a defence on the basis of an Agreement to Sell and GPA can take three forms viz. (a) it could be alleged that Appellant is entitled to part performance under Section 53A of TPA i.e. a right based on part performance; (b) it could be alleged that by virtue of these documents, the Appellant has become the owner i.e. right based on ownership, and (c) it could be alleged that Appellant, though not a classical owner, has acquired some rights in the property so as to resist eviction i.e. residual rights argument. In the present case, Appellant has only pleaded ownership as is evident from the written statement filed before the Trial Court and cannot at this stage go beyond the pleadings and set up a plea of part performance under Section 53A of TPA. This is clearly held by the Supreme Court in *Bachhaj Nahar vs. Nilima Mandal & Anr., (2008) 17 SCC 491*. In order to set up the plea of part performance, Appellant ought to have pleaded that she had taken some steps in furtherance of the Agreement and is in possession of the premises. She also ought to have pleaded that she was ready and willing to perform her part of the Agreement in accordance with the provisions Section 53A of the TPA, which are clear and require no

interpretation. Part performance argument cannot simply flow out of an ownership argument, as in the former, one concedes that he has only an Agreement to Sell in his favour and protection from dispossession is sought on the strength of the fact that he has acted in furtherance of the Agreement and remains willing to comply with the balance terms, while in the latter case, one asserts that the Agreement to Sell is by itself proof of ownership and as a corollary nothing further is required to be done. The Appellant has clearly chosen the latter course as is evident from para 4 of the written statement.

32. Learned counsel relies on a recent judgement of the Supreme Court in ***H.K. Sharma (supra)*** which according to him clinches the issue in favour of the Respondents. It is submitted that the Supreme Court faced with an identical question held that the Court must try and ascertain whether the terms of the Agreement to Sell, set up by the tenant reveal an intention to abandon the existing landlord-tenant relationship and only where such an intention is clear, protection under Section 53A of the TPA can be granted. The Trial Court has, after relying on the said judgement, clearly rendered a finding that the present Agreement to Sell does not evince any such intention and this Court in a Second Appeal should not interfere with a finding of fact. In any event, even assuming for the sake of completeness that the GPA which has been set up to demonstrate such an intention is merely an authority letter and is not valid in view of Article 48(f) of the Stamp Act as applicable to Delhi and reliance was placed on the judgement of this Court in ***Wg. Cdr. (Retd.) Yeshvir Singh Tomar vs. Dr. O.P. Kohli & Ors., 2015 SCC OnLine Del 10834.***

33. It was also contended that the Supreme Court in *H.K. Sharma (supra)* has clarified that it is a misconception that the judgement of the Supreme Court in *Suraj Lamp (supra)* mandating a registered conveyance deed for ascertaining title is prospective in nature. It is clearly a settled law that documents such as Agreement to Sell, GPAs etc. do not confer title or complete the transaction of transfer of immoveable property. At best, the only right that a person, in whose favour such documents have been executed, acquires is a right to file a suit for specific performance.

34. I have heard the learned counsels for the respective parties and considered their rival submissions.

35. As aforementioned, the parties have addressed arguments on the question of remand of the matter to the First Appellate Court as also on the merits and other questions of law raised before the First Appellate Court. However, in view of the substantial question of law raised by the Appellant seeking a remand of the matter on the ground that the First Appellate Court has passed a mechanical judgement which is unreasoned and cryptic and does not deal with the issues and contentions raised, it becomes necessary to first consider the law on the said question.

36. Before proceeding to deal with the said substantial question of law, two provisions of the Code of Civil Procedure, 1908, need a reference and are as follows:

“96. Appeal from original decree.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.”

“Order XLI

Appeals from Original Decrees

31. Contents, date and signature of judgment.—*The judgment of the Appellate Court shall be in writing and shall state—*

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

37. In **C. Venkata Swamy (supra)**, the Supreme Court held that right to First Appeal against a decree under Section 96 CPC is a valuable legal right of the litigant. The jurisdiction of the First Appellate Court is very wide and all findings of fact and/or law can be assailed by the Appellant. It is the duty of the First Appellate Court to appreciate the entire evidence and arrive at its own independent conclusion, for reasons assigned, either of affirmance or difference. Relevant paras are as follows:

“11. It is a settled principle of law that a right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the litigant. The jurisdiction of the first Appellate court while hearing the first appeal is very wide like that of the trial court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the

first Appellate court to appreciate the entire evidence and arrive at its own independent conclusion, for reasons assigned, either of affirmance or difference.

12. Similarly, the powers of the first Appellate court while deciding the first appeal are indeed well defined by various judicial pronouncements of this Court and are, therefore, no more res integra. It is apposite to take note of the law on this issue.

13. As far back as in 1969, the learned Judge V.R. Krishna Iyer, J. (as his Lordship then was the Judge of Kerala High Court) while deciding the first appeal under Section 96 of the Code in Kurian Chacko v. Varkey Ouseph [Kurian Chacko v. Varkey Ouseph, 1968 SCC OnLine Ker 101 : AIR 1969 Ker 316] reminded the first Appellate court of its duty to decide the first appeal. In his distinctive style of writing with subtle power of expression, the learned Judge held as under: (SCC OnLine Ker paras 1-3)

“1. The plaintiff, unsuccessful in two courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of possession. The defendant disputed the plaintiff's title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.

2. An Appellate court is the final court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the Appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an Appellate court.

3. Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation. ...”

(emphasis supplied)

14. This Court also in various cases reiterated the aforesaid principle and laid down the powers of the Appellate court under Section 96 of the Code while deciding the first appeal. We consider it apposite to refer to some of the decisions.

15. In Santosh Hazari v. Purushottam Tiwari, this Court held as under: (SCC pp. 188-89, para 15)

“15. ... The Appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the Appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the Appellate court. ... while reversing a finding of fact the Appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first Appellate court had discharged the duty expected of it. ...”

16. The above view was followed by a three-Judge Bench decision of this Court in Madhukar v. Sangram, wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

17. In H.K.N. Swami v. Irshad Basith, this Court stated as under: (SCC p. 244, para 3)

“3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first Appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first Appellate court it was the duty of the High Court to deal with all the issues and the evidence

led by the parties before recording the finding regarding title.”

18. Again in *Jagannath v. Arulappa*, while considering the scope of Section 96 of the Code, this Court observed as follows: (SCC p. 303, para 2)

“2. A court of first appeal can reappreciate the entire evidence and come to a different conclusion. ...”

19. Again in *B.V. Nagesh v. H.V. Sreenivasa Murthy* [*B.V. Nagesh v. H.V. Sreenivasa Murthy*, (2010) 13 SCC 530 : (2010) 4 SCC (Civ) 808] , this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words: (SCC pp. 530-31, paras 3-5)

“3. How the regular first appeal is to be disposed of by the Appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the Appellate court shall state:

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. *The Appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the Appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the Appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts*

and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari at p. 188, para 15 and Madhukar v. Sangram at p. 758, para 5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first Appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law.””

38. Provisions of Order XLI Rule 31 CPC extracted hereinabove mandate that the Appellate Court shall state the points for determination and the ‘reasons’ for the decision. It has been held in several judgements that it is the bounden statutory duty of the First Appellate Court to give reasons for the decision, which form the soul of the judgement. In the process of adjudication, it is implicit that reasons are clearly spelt out as the term ‘adjudicate’ is not an abstract term and while deciding the issues arising for determination, the judgement must reflect the mind of the Court and the factors that weighed as well as the law applied, in order to come to a conclusion that it does. Without any discussion or reasons in the Appellate order, the Appellant would never know why the Court disagreed with his contentions and concurred with the judgement impugned. Reasons would

also enable the Superior Court to have a better insight into the judgement and facilitate testing its legality.

39. I may, at this stage, usefully allude to two passages from the judgement of the Bombay High Court in *Union of India vs. Kanwar Vilas Nath & Ors.*, 2018 SCC OnLine Bom 1499, wherein the High Court has formulated three-fold objects behind the repeated affirmation that reasons must be given by the Appellate Court while testing a judgement before it and these are as follows:

“41. The object of mandating the “giving of reasons” in the Judgment is three fold. Firstly, reading of the reasons given in the Judgment enables both the parties to know why the decision has gone against them or in favour of them. It thus satisfies the test of justice, not only being done but also appears to have been done. It helps to remove any lurking feeling of injustice in the mind of the party, who has lost its case, as he knows that he has lost it for the reasons stated in the Judgment. Secondly, giving of reasons in the Judgment avoids the arbitrary exercise of the powers by the Appellate Court. It helps to remove even the impression that the decision was given in arbitrary manner. It guarantee transparency. Thirdly and equally importantly, the Appellate Court, before which the Judgment is impugned, can also get the opportunity to test the validity of the Judgment impugned, on the basis of the reasons given therein, exactly to judge whether those reasons are based on proper appreciation of evidence and sound legal position.

42. Hence, it is no exaggeration to say that, without the “reasons”, the Judgment cannot be called as a Judgment at all. It is no “Judgment” in the eyes of the law. Especially, as mandated by Rule 31 of Order 41 of the Code of Civil Procedure, 1908, the first Appellate Court, being the final Court of fact finding and, to that extent, on the question of law also, the Judgment of the first Appellate Court must contain the reasons. That is why it is said that, the First Appeal is a valuable right of the parties, as, unless restricted by law, the

whole case therein is open for re-hearing, both, on the questions of fact and law.”

40. The Supreme Court in the landmark decision of ***Santosh Hazari vs. Purushottam Tiwari (Deceased) by L.Rs., (2001) 3 SCC 179*** held that the judgement of an Appellate Court must reflect its conscious application of mind and record the findings supported by the reasons on all the issues arising along with the contentions put forth and pressed by the parties for decision of the Appellate Court. Relevant paras are as follows:

*“15. A perusal of the judgment of the trial court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first Appellate court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The Appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the Appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the Appellate court. The task of an Appellate court affirming the findings of the trial court is an easier one. The Appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini Devi v. Bijendra Narain Choudhary* [AIR 1967 SC 1124]). We would, however, like to sound a note of*

caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the Appellate court for shirking the duty cast on it. While writing a judgment of reversal the Appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the Appellate court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the Appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the Appellate court is entitled to interfere with the finding of fact. (See Madhusudan Das v. Narayanibai [(1983) 1 SCC 35 : AIR 1983 SC 114]) The rule is — and it is nothing more than a rule of practice — that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lie, the Appellate court should not interfere with the finding of the trial Judge on a question of fact. (See Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh [AIR 1951 SC 120]) Secondly, while reversing a finding of fact the Appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first Appellate court had discharged the duty expected of it. We need only remind the first Appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first Appellate court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first Appellate court is also a

final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first Appellate court even on questions of law unless such question of law be a substantial one.”

41. The position of law propounded in the aforesaid judgement was reaffirmed by the Supreme Court in **Madhukar v. Sangram, (2001) 4 SCC 756** and **B.V. Nagesh (supra)**. The Supreme Court in the case of **B.V. Nagesh (supra)**, emphasizing the provisions of Order XLI Rule 31 CPC, held that sitting as a Court of Appeal, it is the duty of the First Appellate Court to deal with all the issues and the evidence led by the parties, before recording its findings.

42. At this stage, it is also crucial and relevant to note that the scope of a Second Appeal is extremely limited and narrow and the Court cannot enter into disputes of facts or even questions of law, unless they are ‘substantial’ questions of law. The Supreme Court in the judgment of **Santosh Hazari (supra)** has delineated what a ‘substantial question of law’ is and this need not therefore detain this Court. Suffice would it be to refer to paragraphs 12 and 14 of the said judgment as under:-

“12. The phrase “substantial question of law”, as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying “question of law”, means — of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with — technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words “of general importance” as has been done in many other provisions such as

Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. T. Ram Ditta [AIR 1928 PC 172 : 55 IA 235] , the phrase “substantial question of law” as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case as between the parties. In Sir Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd. [AIR 1962 SC 1314 : 1962 Supp (3) SCR 549] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju [ILR 1952 Mad 264 : AIR 1951 Mad 969] :

“[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law.”

and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls

for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

x x x

14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be “substantial” a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law “involving in the case” there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis.”

43. Reference to the aforesaid passages is only with a purpose to highlight and emphasize that the scope of Second Appeal under Section 100 CPC is considerably circumscribed and also to stress on the point that on account of this limited jurisdiction of the Second Appellate Court, the burden and responsibility on the First Appellate Court becomes much higher, as it is this Court which alone has jurisdiction to consider not only issues on facts but

also questions of law involved in the case before it. The First Appellate Court has the jurisdiction and power to re-appreciate the evidence led by the parties before the Trial Court and there can hardly be a debate that the First Appellate Court is the last and final Court of fact finding and re-hearing on questions of law. In fact, it would not be an exaggeration to state that the First Appellate Court is final Court of law since its decision on the question of law, even if erroneous, may not be open to challenge before the High Court in a Second Appeal, as the jurisdiction in a Second Appeal is not available to correct errors of law, unless the questions of law are 'substantial'. First Appeal is, therefore, a valuable right of the parties and thus a reciprocal obligation is cast on the Court to deliberate on the issues raised before it with complete and conscious application of mind, which in turn necessitates that the judgment would contain clear findings, duly supported with reasons, on all issues and contentions put forth and pressed by the parties. It is for this reason that the Supreme Court has from time to time affirmed and re-affirmed the dictum that the First Appellate Court should not shirk from its duty of recording reasons while delivering the judgments and the valuable right of first appeal should not be frustrated by rendering a cryptic judgment, bereft and devoid of reasons.

44. At this stage, I may deal with the contention of the learned counsels for the Respondents that the First Appellate Court has affirmed the findings of the Trial Court and expressed its general agreement with the reasoning given and in such a situation, it was not necessary for the First Appellate Court to re-state the effect of evidence or reiterate the reasons given by the Trial Court and/or record its separate findings or reasons. In order to deal

with this contention, it would be useful to allude to the observation of the Supreme Court in the case of *Santosh Hazari (supra)*, which is as under:-

“The First Appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for re-hearing both on questions of fact and law.”

45. No doubt, that the Supreme Court also observed that the task of an Appellate Court affirming the findings of the Trial Court is an easier one and expression of general agreement with reasons given by the Trial Court would ordinarily suffice, but one cannot overlook the ‘note of caution’ annotated by the Supreme Court in the following words:-

“We would, however, like to sound a note of caution that the expression of general agreement with the findings recorded in the Judgment under Appeal should not be a device or camouflage adopted by the Appellate Court for shirking the duty cast on it.”

46. There is no gainsaying that the dictum of law that the First Appellate Courts must record reasons in the judgments is applicable not only when the First Appellate Court reverses any finding or sets aside the judgment of the Trial Court, but would equally apply when the judgment of the Trial Court is confirmed and concurred with. It bears repetition to state that the Supreme Court has clearly held that even when the First Appellate Court agrees with the judgment of the Trial Court, it should not be a device or camouflage adopted by it to shirk the duty cast on it, i.e. to re-appreciate the entire evidence on record, re-consider the case keeping in mind the position in law, frame the issues for determination and answer the same by annotating ‘reasons’. There is thus no merit in the contention of the Respondents that

while delivering a judgment, the First Appellate Court is not required to give reasons in case there is a general agreement with the findings of the Trial Court and the judgment is not interfered with.

47. In the present case, there can be no two opinions that the First Appellate Court has dismissed the first appeal and concurred with the judgment of the Trial Court, both on facts and law. However, going by the dictum of the Supreme Court, the First Appellate Court was required to give its own reasoning on the questions of law raised, based on the facts and circumstances before it. A bare perusal of the appeal filed before the First Appellate Court shows that the Appellant had brought before the First Appellate Court certain disputed facts as well as questions of law and raised various contentions *inter alia*: (a). the alleged Tenancy Agreement dated 31.01.1995 on which the suit was based was a forged and fabricated document and the signatures appearing on the said document of both Late Shri Mazumdar and the Appellant were not genuine; (b). Trial Court had given a categorical finding that the Tenancy Agreement dated 31.01.1995 is an unreliable document and does not bear the genuine signatures; (c). there was no landlord-tenant relationship between the Appellant and Respondent No.1 in as much as the premises stood sold to the Appellant and her son on 22.11.1994 by Agreement to Sell and GPA; (d). on the basis of the said Agreement to Sell, Appellant was put in possession of the premises and was thus entitled to protection under the doctrine and equity of part performance; (e). Trial Court erred in not granting the protection under Section 53A of the TPA, on the erroneous ground that the Appellant had not pleaded in her defence that she was entitled to the benefit of the provisions of Section 53A of the TPA, as she had taken possession of the premises in part performance

of the Agreement to Sell and instead had pleaded that upon execution of the Agreement, she and her son had become owners of the premises; (f). Trial Court erred in holding that the Appellant had not pleaded that she was ready and willing to perform her part of the Agreement to Sell in as much as the Appellant had categorically pleaded that she was in possession of the premises by virtue of the Agreement to Sell executed by the father of Respondent No.1 in her favour; (g). reliance on the judgment of the Supreme Court in *Shyam Narayan Prasad (supra)* by the Trial Court was erroneous as the challenge in the said case was to an unregistered Exchange Deed which was sought to be declared invalid on the ground that the property in question was ancestral property while the defence taken was that the property was not ancestral and in this context the Court held that plea of part performance was required to be taken while in the present case, a specific plea of possession was taken and the Appellant was thus entitled to defend her possession; (h). under the well settled law upon execution of an Agreement to Sell between the tenant and the landlord, the relationship becomes one of seller and purchaser by operation of law and the status of tenant-landlord ceases and even on cancellation of the Agreement to Sell, the status of tenant is not restored; (i). Trial Court had rendered a specific finding in favour of the Appellant that the Agreement to Sell and the GPA both dated 22.11.1994 were genuine documents and yet declined to grant protection to the Appellant and erroneously decreed the suit, even overlooking the fact that Respondents never challenged the said documents in terms of Section 31 of the Specific Relief Act; (j). The case of the Appellant is squarely covered by the judgment of this Court in *Hardeep Kaur (supra)* and therefore, even if the Appellant may not be a classical

owner of the premises but surely had better right of possession and is entitled to protection under Section 53 A of the TPA and defend the possession, and (k). in terms of the Agreement and the GPA, Late Shri Mazumdar had given up all his rights in relation to his premises and the sale was complete insofar as he was concerned and only a formal Conveyance Deed remained to be executed by DDA in favour of the Appellant on payment of balance installments.

48. A perusal of the judgment of the First Appellate Court clearly reflects that the above contentions were, in fact, raised by the Appellant. In this context, I may refer to paragraph 14 of the judgment of the First Appellate Court as follows:-

“After hearing arguments of both the sides, the Ld. Civil Judge passed the impugned *judgment* and decree on 01.10.2019 completely ignoring the facts of the case and settled principles of law. Feeling aggrieved, the appellant has challenged the impugned judgment and decree on the following grounds :

A. *Because the impugned judgment is erroneous both in facts and in law.*

B. *Because the Ld. Trial Court failed to appreciate that there was no landlord-tenant relationship between the appellant and Respondent No.1 in as much as the property in question stood sold to the appellant and her son on 22.11.1994 and the said transaction of sale was to the knowledge of respondent no.1.*

C. *Because the Ld. Trial Court failed to appreciate that the father of the respondents during his lifetime had passed on all his rights, titles and interest in the said property in favour of the appellant and her son.*

D. *Because the Ld. Trial Court failed to appreciate that there was an agreement to sell between the appellant and respondent no.1 to sell and purchase the property and it was in*

pursuance of this agreement that the present appellant was put in possession of the property.

E. Because the finding of the Ld. Trial Court to the effect that the appellant has not pleaded in her defence that she was entitled to protection under section 53A of the Transfer of Property Act, 1882 is wholly perverse and misconceived.

F. Because despite rendering a specific finding that the alleged tenancy agreement dated 31.01.1995 does not appear to have the genuine signatures of Late Sh. R.K. Mazumdar or the appellant, the Ld. Trial Court did not take notice of the fact and took no steps to direct initiation of criminal proceedings against respondent no.1.

G. Because the Ld. Trial Court while passing the impugned judgment committed an error by holding that the appellant has not pleaded in her written statement that she was ready and willing to perform her part of the agreement to sell.

H. Because the Ld. Trial Court failed to appreciate that even if the transferee who is in possession fails to file a suit for specific performance, still in law the contract remains valid and operative enabling him to exert his / her to retain possession over the property in question in exercise of his statutory right conferred by Section 53A of the Transfer of Property Act by way of defence in a suit brought against him / her for recovery of possession.

I. Because the Ld. Civil Judge failed to appreciate that in Shyam Narayan Parsad vs. Krishna Prasad & Ors., the challenge was to an unregistered exchange deed which was sought to be declared invalid on the ground that the property sought to be exchanged were ancestral property to which the defence taken was that the properties exchanged were not ancestral properties.

J. Because the Ld. Civil Judge erroneously arrived at the conclusion that the benefit of section 53A of the Transfer of Property Act cannot be granted to the appellant as she has not pleaded that she is willing to perform her balance obligations

under the agreement to sell dated 22.11.1994 or that the payment of balance sale consideration has not been done.

K. Because the Ld. Civil Judge failed to appreciate that the alleged notice dated 22.11.2014 terminating the tenancy was in relation to the alleged tenancy agreement dated 30.01.1995 and since the said tenancy agreement has been held to be not genuine, the alleged legal notice issued in relation thereto does not serve any purpose and is invalid.

L. Because the reliance upon the alleged legal notice dated 22.11.2014 is misconceived since for determination of tenancy, even filing of the suit is treated as determination as per the law settled by various courts”

49. However, after taking note of the contentions put forth, the First Appellate Court has not dealt with the contentions even cursorily. In paragraph 16, the Court takes note of the fact that reply was filed by the Respondents denying the allegations and extracts the judgments relied upon by Respondent No.1. Paragraphs 17 to 21 are a mere reproduction of the factual narration by the Trial Court. Paras 22 to 27 are reproduction of the reasoning of the Trial Court and finally in para 28, the First Appellate Court concludes that the finding of the Trial Court on Issue no.1 is well founded requiring no interference. As regards Issues no.2 and 3, the First Appellate Court has simply noted the findings of the Trial Court and the conclusions thereof and observed that the findings are well reasoned and require no interference.

50. Therefore, it is crystal clear from a mere reading of the impugned judgement that except for citing the submissions made by the parties, the findings and the conclusions of the Trial Court, the First Appellate Court has not dealt with the contentions raised by the Appellant and has not even given

any 'reasons' for concurring with the findings of fact and law given by the Trial Court as also the reasons why the contentions of the Appellant challenging the judgment of the Trial Court were devoid of merit. I may refer to the relevant paras from the judgment of the First Appellate Court, which would indicate that the same is totally devoid of even any consideration/discussion on the contentions put forth by the parties and bereft of reasons to concur with the Trial Court:-

"28. I have gone through the entire record of the case, arguments rendered by the parties and the judgments cited by both the parties and I am of this considered opinion that the findings of the Ld. Trial court in issue no. 1 in favour of the respondent and against the appellant is well founded and require no interference from this court.

29. As regards issue no. 2 and 3 are concerned, it has been recorded by the Ld. Trial court that the appellant was a tenant qua the tenanted premises till the determination of her tenancy qua the tenanted premises by service of legal notice dated 22.11.2014 by the appellant and in view of the fact that there is no dispute between the parties qua non payment of rent by the appellant and the last admitted rate of rent is Rs.4500/- per month as per Ex.PW1/8 for the period 01.08.2014 to 31.10.2015 It is held that the respondent is entitled to recover from the appellant, a sum of Rs.27000/- in respect of arrears of rent for the period of 01.08.2014 to 31.01.2018 alongwith interest at the rate of 12% per annum. The findings are well reasoned and require no interference from this court.

30. It has been recorded by the Ld. Trial court that upon the determination of appellant's tenancy by service of legal notice dated 22.11.2014, the respondent had become liable to hand over the possession of the tenanted premises to the respondent w.e.f. 01.02.2015 and in view of the failure of the respondent to lead any evidence regarding grant of mesne profits /damages at the rate of Rs.25000/- this issue is decided as per the law laid down in M.C. Aggarwal HUF V Sahara India & Ors. 183

(2011) DLT 105, State Bank of India V. Dr. Meena Luthra & Ors. 2017 SCC online Del 7776. It is held that the respondent shall be entitled to recover from the appellant mesne profits/ damages at the rate of Rs.5175 per month for the period, 01.02.2015 to 31.01.2016 mesne profits/ damages at the rate of Rs.6828/- per month for the period, 01.02.2017 to 31.01.2018 mesne profits/ damages at the rate of Rs.7852/- per month for the period, 01.02.2018 to 31.01.2019 and mesne profits / damages at the rate of Rs.9029/- per month for the period, 01.02.2019 till the handing over the tenanted premises by the appellant to the respondent alongwith interest at the rate of 12% per annum. I am of this considered opinion that the findings of the Ld. Trial court in this issue is in favour of the respondent and against the appellant is well reasoned and required no interference.

31. On the basis of above, facts and evidence on record, I am of the considered opinion that the judgment dated 01.10.2019 passed by the Ld. ASCJ, South East, Saket Courts, New Delhi is well founded and delivered on the basis of evidence led before the court and I do not find any flaw in the judgment and the same is a reasoned one. Judgment dated 01.10.2019 is hereby upheld and consequently the appeal filed on behalf of appellant is hereby dismissed..”

51. There is also merit in the contention of the learned counsel for the Appellant that a host of judgments were cited on behalf of the Appellant but the First Appellate Court has not even mentioned the same in its judgment, while the judgments relied upon by the Respondents have been taken note of. In order to substantiate the argument, learned counsel has placed on record a copy of an email dated 06.11.2020 forwarding the judgments as also a copy of an index showing the proof of handing over hard copies of the judgments relied upon. Mr. Kalra, learned counsel had strenuously taken up this point during the arguments and there was no rebuttal on behalf of the

Respondents. It is not only surprising but most unfortunate that the First Appellate Court does not even take the trouble of referring to the judgments filed and relied before it by the Appellant, leave alone dealing with them. It was the bounden duty of the First Appellate Court to take note of the law laid down in the judgments and if in its perception the same were not applicable then to have given reasons as to how the judgments did not advance the case of the Appellant and/or were distinguishable. This Court cannot but agree with the learned counsel for the Appellant that under the camouflage of concurring with the reasons given by the Trial Court, the First Appellate Court has, to quote the words from the judgment of the Supreme Court ‘shirked from its statutory duty and not applied its own mind’.

52. As per the settled law and the binding dictum of the Supreme Court, as the ‘First Appellate Court’ it was the duty of the Court to deal with all issues raised, contentions put forth and examine the evidence led by the parties, before coming to a conclusion to reverse or confirm the judgment of the Trial Court. Contrary thereto, the judgment is bereft of discussion and reasons as to why the arguments advanced by the Appellant were untenable in law entailing no interference with the findings of the Trial Court.

53. Following the dictum of the Supreme Court, *sans* any reasons given for agreeing and concurring with the judgment of the Trial Court, in my opinion, the impugned judgment does not fit into the parameters of ‘judgment’ and cannot be termed as ‘adjudication’ of the appeal. Whilst it is a matter of record that the suit in question was instituted by Respondent No.1 in 2015 and remanding the matter back to the First Appellate Court would cause some delay in deciding the disputes between the parties and learned counsels have also argued on the merits of the matter, however, this

Court has no option on account of the limited jurisdiction to entertain and decide only substantial questions of law and given the law that the issues of facts and law can only be tested by the First Appellate Court. The questions raised by the parties, touching upon the merits, would have their foundation in evidence and pleadings, which only the First Appellate Court is competent to adjudicate. This Court cannot re-appreciate the evidence or consider the arguments based on pleadings and questions of law which are not substantial. Moreover, that would deprive the Appellant of valuable right of her case being tested by the First Appellate Court on the anvil of questions of facts and law.

54. In view of the aforesaid, once this Court finds that the judgment of the First Appellate Court is bereft of reasons and does not even deal with the contentions of the Appellant including the fact that the judgments relied upon are not even referred to, this Court has no option but to remand the matter back to the First Appellate Court for hearing and deciding afresh.

55. On perusal of the judgment of the First Appellate Court, in my view, this appeal does give rise to a substantial question of law: ‘whether the appeal deserves to be remanded for fresh hearing, in view of the failure of the Appellate Court to record its independent findings supported by reasons on the issues and contentions put forth as required in terms of Section 96 read with Order XLI Rule 31 CPC?’

56. On hearing the parties and for the aforesaid reasons, the substantial question of law is answered in favour of the Appellant.

57. The Appeal is accordingly allowed. The impugned judgment and decree dated 23.01.2021 passed by the First Appellate Court is set aside. The

case is remanded back to the First Appellate Court for hearing and deciding the First Appeal afresh, in accordance with law.

58. It is made clear that this Court has not expressed any opinion on the merits of the issues and contentions raised by the respective parties. The First Appellate Court shall decide the case on facts and law, uninfluenced by any observations made by this Court, which have been made only with a view to arrive at a decision on the legality of the impugned judgment on the threshold of Section 96 and Order XLI Rule 31 CPC, i.e., the requirement in law to give a reasoned judgment. Contentions of Respondents No. 2 to 5 are also left open.

59. The First Appellate Court is requested to make every endeavour to decide and dispose of the appeal within a time-frame of six months from today.

60. No orders as to costs.

61. Pending application is accordingly disposed of.

AUGUST 2nd, 2021

rd/yg

JYOTI SINGH, J