*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+   RSA 268/2017

<u>Judgment reserved on: 04.12.2018</u>
<u>Date of decision : 29.07.2021</u>

SWAMI NATH ..... Plaintiff
Through: Mr. Pushit Gupta, Advocate

versus

KAMLA DEVI AND ORS. ..... Defendants
Through: None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

<u>JUDGMENT</u>

<u>ANU MALHOTRA, J.</u>

1. This judgement shall dispose of the regular second appeal filed by the appellant against the impugned judgement dated 26.09.2016 of the learned ADJ-02 Shahdara/KKD Courts/Delhi and decree dated 30.06.2015 of the learned trial Court whereby the suit of the appellant filed under Order 34 of the CPC, 1908 (as amended) for foreclosure, sale and redemption of mortgage of the first floor of house number C-1/306, Nand Nagri, Delhi along with a prayer for permanent injunction against alienation of the first floor of the said premises by the defendants nos.1 to 3 which was dismissed, was upheld.

2. Notice of the appeal was issued to the respondents who chose not to put in appearance despite service and were in fact ex parte even

before the learned trial Court and did not choose to put in appearance even before the first Appellate Court.

3. The appellant urges the following contended substantial questions of law submitting to the effect that they arise from the facts and circumstances of the instant case:

> *"i) Section 58 (f) of the Transfer of property Act, contemplates and provide that since the original allotment slip of the property No. C-1/306 Nand Nagri Delhi, was handed over to the appellant by the respondents along with Ext PW1/2 dated 22.2.2007, therefore, the respondents have created simple mortgage and registration of Ext PW1/2 was not mandatory, under section 59 of the Transfer of Property Act, and under Section 17 of the Registration Act.*
>
> *ii) Section 58(b) of the Transfer of property Act, contemplate and provide that if the mortgage is simple mortgage it was not mandatory for the appellant to remain in possession of the first floor of House No. C-1/306 Nand Nagri Delhi.*
>
> *iii} Section 18 of the Limitation Act, contemplates and provide that since the appellant and respondents have accepted and acknowledged the fresh terms and conditions in connection with the loan agreement dated 21.7.2005, and a fresh mortgage deed dated 22.2.2007, Ext PW1/2, was executed between the parties in respect to loan agreement dated 21.7.2005, therefore, the fresh period of limitation for filing the suit for redemption of mortgage is to be started w. e. f. 22.2.2007 and limitation for filing the suit for redemption of mortgage is not to be started w. e. f 21.7.2005, i.e. from the date of the execution of the loan agreement, and in fact the suit for redemption of mortgage was not filed on the basis of the loan agreement dated 21.7.2005.*

iv) Part V of the Limitation Act, suits relating immoveable property (61 by mortgagor)
b) To recover possession of immovable property mortgaged and afterwards transferred by the mortgagee for a valuable consideration.
Twelve years when the transfer becomes known to the plaintiff.
62 To enforce payment of money secured by a mortgage or otherwise charged upon immovable property.
Twelve years when the money sued for becomes due
63(b) For possession of immovable property mortgaged Twelve years when the mortgagee becomes entitled to possession.
c) Section 58 to 100 of the Transfer of property Act, does not contemplate and provide that a licensee/allottee can not mortgaged his property and the said provisions of the Act, does not clarify the position that only the free hold properties can be mortgaged.
d) Section 59 of the Transfer of property Act, contemplates and provide that where the original documents of title of the property are not handed over by the mortgagor to the mortgagee, in such situation registration of the mortgage deed is
mandatory under Section 59 and U/S 17 of the Registration Act, but where the original documents of title of the property are handed over by the mortgagor to the mortgagee, mortgage is simple mortgage U/S 58(f), 96 and 100 of the Transfer of property Act, and if the mortgage is simple mortgage, registration U/S 59 of the Transfer of property Act, and U/S 17 of the Registration Act, is not mandatory.
e) Since the original allotment slip issued to the respondents by the DDA, regarding property No. C-1/306 Nand Nagri Delhi, is the only document of title of the suit property, in favor of the respondents,

and since the original allotment slip has been handed over to the appellant by the respondents the mortgage deed Ext PW1/2 was the simple mortgage U/S 58(f), 96 and 100 of the Transfer of Property Act, and therefore, registration of Ext PW1/2 U/S 59 of the Transfer of Property Act, and under Section 17 of the Registration Act, was not mandatory.

In the judgment reported as State of Haryana and others vs. Navir Singh and another and State of Punjab and ors vs. Pargo Foods Ltd and ors Manu SC/1036/2013 the Hon'ble Apex court has held that if the mortgage is simple mortgage by handing over the documents of title of the property by the mortgagor to the mortgagee, the mortgage is simple mortgage U/S 58(f) of the Transfer of Property and simple mortgage does not require Registration U/S 59 of the Transfer of Property Act, and under Section 17 of the Registration Act."

4. As per the record, the plaintiff i.e. the appellant herein had contended that in the year 2005, the defendants were in financial hardship and approached him for a loan of Rs.1,03,000/- which the plaintiff advanced to the defendants in two instalments of Rs.76,000 and Rs.27,000 and the defendants are alleged to have executed an agreement in favour of the plaintiff on 21.07.2005 that they would return the loan within 11 months and that if the defendants failed to return the loan within 11 months to the plaintiff as per the terms and conditions of the agreement dated 21.07.2005, it had been agreed between the plaintiff and defendants that the agreement dated 21.07.2005 would be destroyed and that defendant no.1 would mortgage the first floor of the house no.C-1/306, Nand Nagri, Delhi in favour of the plaintiff for a sum of Rs.1,03,000/- in as much as the

house had been allotted by the DDA in the name of her late husband and father of the defendant nos.2 & 3 and that on 31.01.2005, defendant nos.2 and 3 executed a relinquishment Deed in favour of defendant no.1 of house No.C-1/306, Nand Nagri, Delhi consisting of the Ground Floor, First Floor and 2nd Floor and the Relinquishment Deed dated 31.01.2005 executed by the defendant nos.2 and 3 in favour of defendant no.1 was registered on 22.02.2005 at the Office of the Sub- Registrar of Delhi and Serial No.1094, Document No.3765 at at Pages 135 to 136 and thus the defendant no.1 became the owner of that house and was fully competent to mortgage the First Floor of the house in favour of the plaintiff Shri Rakesh Kumar, son of the defendant no.1 is stated to have already expired at the time of the impugned judgment of the learned trial Court.

5. It was claimed through the plaint that the defendant no.1 on 22.02.2007 executed the mortgage deed of the first floor of house No. C-1/306, Nand Nagri, Delhi in favour of the plaintiff and handed over the original Relinquishment Deed dated 22.02.2005 to the plaintiff along with the original Mortgage Deed dated 22.02.2007.

6. It was further averred through the plaint that as per the terms and conditions of the mortgage deed dated 22.02.2007 executed between the plaintiff and the defendant no.1, if the defendant failed to return the sum of Rs.103,000/- to the plaintiff within a period of 11 months w.e.f. 22.02.2007 that is the date from the execution of the mortgage deed regarding the 1st Floor in favour of the plaintiff, the plaintiff would have the right to file a suit for foreclosure, sale and redemption of the 1st Floor of the house bearing No.C-1/306, Nand

Nagri, Delhi and to recover the sum of Rs.1,0,3000/- from the defendants through the sale of the 1st floor of the house in question and that is why the plaintiff has instituted the suit for foreclosure, sale and redemption regarding the suit property.

7. It was claimed further through the plaint that the suit for foreclosure, sale and redemption of mortgage with effect from 22.02.2007 that is from the date of the execution of the Deed of Mortgage by the defendant no.1 in favour of the plaintiff was being filed within the period of 12 years and as such the suit was within the period of limitation, in terms of Article 61 (a) Part-V of the Limitation Act, 1963 which provides a period of 30 years to redeem or recover possession of immovable property mortgaged that had been mortgaged from the date when the right to redeem or to recover possession accrues.

8. The plaintiff further submitted through the plaint that he apprehended that after 22.02.2007 the defendant no.1 had transferred the first floor of the said house to some stranger without the consent and permission of the plaintiff and that the defendant no.1 was not ready and willing to return the sum of Rs.1,03,000/- to the plaintiff nor was the defendant no.1 ready and willing to hand over possession of the first floor of the house to the plaintiff. The plaintiff thus submitted that inasmuch as the defendants were trying to sublet and part with possession of the first floor of the house to some stranger the defendants were liable to be restrained by means of a decree for permanent injunction.

9. The plaintiff had further submitted to the effect that in para 11 of the mortgage deed dated 22.02.2007 it had clearly been mentioned that the original allotment slip of the property issued to the husband of the defendant no.1 was handed over to the plaintiff by the defendants but that the original allotment slip had been misplaced from the plaintiff. The plaintiff contended that the mortgage of the first floor of the house was a simple mortgage under section 58(b) of the Transfer of Property Act, 1882 as the original allotment slip of the property was handed over to the plaintiff by the defendant no.1 at the time of execution of the mortgage deed dated 22.02.2007.

10. The learned trial court vide the impugned judgment dated 30.06.2015 had observed to the effect:

> *m) Plaintiff has relied upon the documents i.e. relinquishment deed dated 31.01.2005 executed by defendants no.2 and 3 in favour of defendant no.1 and registered on 22.02.2005 Ex. PW-1/1, original mortgage deed dated 22.07.2007 executed by defendant no.1 in favour of the plaintiff is Ex. PW-1/2, notice of demand dated 10.03.2014 sent to the defendants by the plaintiff is Ex. PW-1/3, postal receipts are Ex. PW-1/4 to Ex. PW-1/7 and site plain is Ex. PW-1/8."*

11. The learned trial Court vide the impugned judgment dated 30.06.2015 gave its finding on an analysis of the plaintiff's evidence to the effect:

> ***"3. a) From the perusal of the pleadings as well as evidence, it is seen that the plaintiff has claimed that on the request of the defendants, he agreed to advance a loan of Rs.1,03,000/- to the defendants, which was paid in two installments of Rs.76,000/- and Rs.27,000/-.***

A perusal of the mortgage deed Ex.PW-1/2 shows that initially the defendant no.l Kamla asked and took a loan of Rs.76,000/- from the plaintiff and got an agreement executed on 21.07,2005. It was during the continuous of the said agreement that the defendant no. 1 asked for an additional loan of Rs.27,000/-.

Thus, the pleadings and evidence of the plaintiff is contradictory in the sense that the plaintiff agreed to advance a loan of Rs.1,03,000/- to the defendants paid in two installments.

b) The agreement dated 21.07.2005 was never filed in the court.

c) As per the deed of mortgage Ex.PW-1/2 the defendant no.l approached the plaintiff for a loan of Rs.76,000/- along with the proposal to mortgage the suit property. The terms of agreement were agreed to by the plaintiff and the mortgage of suit property bearing no.C-1/306, Nand Nagri, Delhi was executed. Moreover, the documents of the said property was also handed over to the plaintiff in terms of the said agreement dated 21.07.2005. Thus, the mortgage was effected on or before 21.07.2005. This implies that the entire pleadings and evidence regarding the mortgage deed being of 22.02.2007 is a null deed.

d) It is also important to understand what kind of mortgage, if any was created by the parties. The plaintiff claims it is the mortgage deed of 22.02.2007, which is the basis of filing of the suit. As discussed earlier, the said mortgage deed itself acknowledges mortgage to have been effected when the allegedly of Rs.76,000/- was given by the plaintiff defendant no.1 for which agreement was executed on 21.07.2005.

Even assuming, as per the best case of plaintiff, that the mortgage was created on 22.02.2007 even then as per para no.15 of the evidence of the plaintiff, a simple mortgage was created. The said mortgage deed, which is alleged to be, simple mortgage is not valid because u/s.59 of the Transfer of Property Act, a *mortgage (other than mortgage by deposit of title-deeds can be effected only by registered instrument signed by the mortgagor and attested by atleast two witnesses and the mortgage deed dated 22.02.2007 is not registered.*

e) Even if we look at the mortgage as being by deposit of title deeds, the situation does not change. The said mortgage deed states that at the time of execution of agreement dated 21.07.2005, the defendant no.1 had handed over the documents to the plaintiff. The said property documents have not been filed by the plaintiff in the court to show the ownership of the defendants in the said property or the claim of the defendants that it was handed over to them.

However, the plaintiff's contention is that the mortgage was created on 22.02.2007, which cannot be so in view of the above discussions. Moreover, the plaintiff claims in his evidence that after 22.02.2007, the original allotment slip of the property issued to the husband of defendant no.1 DDA was handed over to the plaintiff by defendants but the same allotment slip has been misplaced. It is important to mention this because the mortgage deed never uses the word "the original allotment slip of the property". The mortgage deed mentions the property documents. The said documents as stated earlier have never been produced or proved by the plaintiff. It also creates doubt because allotment slips are not documents to show or to prove ownership of the property but are issued to licencee in general. The licencee never has the right to sell or mortgage the property, which is owned by somebody else.

f) Creation of mortgage and deposit of title-deeds have to be done contemporaneously. The plaintiff himself is not sure when the mortgage was created. He claims that the mortgage was created in 2007 but the documents of the property were already with him at that time. Thus, the mortgage deed and handing

over the documents were done at different stage/ different times.

g) Interestingly the mortgage deed dated 22.2.2007 claims that till the time loan of Rs.1,03,000/- is handed back to the plaintiff by defendants, till then the entire first floor portion of the suit property shall remain in possession of the plaintiff. However, the defendants appear to be in possession of the property as shown by the memo of parties filed by the plaintiff himself. Thus, it appears that deed of mortgage executed on 22.02.2007 was also in any case not acted upon.

h) The plaintiff claims that the suit is within limitation as it is within 12 years from the date of execution of mortgage deed dated 22.02.2007. As discussed in detail in aforesaid paragraphs, the entire transaction of mortgage is suspect and the pleadings and evidence are not in conformity with the alleged mortgage deed itself.

Since the alleged loan was advanced in the year 2005, even then the recovery suit for the said amount will not be within limitation period as the suit was filed on 04.04.2014.

i) Regarding the prayer of the plaintiff for restraining by way of permanent injunction, the defendants to sublet, assign, part with possession or create third party interest in the suit property, it cannot be allowed. The ownership of the plaintiff or even the defendants in the suit property has not been established and proved, hence the question of permanent injunction will not lie.

12. The learned trial Court vide its impugned judgment had thus held that the evidence that had been led by the plaintiff was contrary to the pleadings of the case in as much as whereas according to the claims of the plaintiff, the plaintiff had acceded to the request of the defendant no.1 and had agreed to advance a loan of Rs.1,03,000/- to

the defendant no.1 which was to be paid in two instalments of Rs.76,000/- and Rs.27,000/- but the mortgage deed dated 22.02.2007 rather showed that whereas as per the averments in para 3 of the plaint, it had been averred that the plaintiff while advancing the loan of Rs.1,0,3000/- to the defendants on 21.7.2005, the defendant no.1 executed an agreement in favor of the plaintiff for the return of the sum of Rs.1,03,000/- to the plaintiff within eleven months, as per the testimony of Swaminath, the plaintiff i.e. the present appellant, the amount of Rs.1,03,000/- was given in two instalments of Rs.76,000/- and Rs.27,000/- during the alleged continuance of the stated agreement made on 21.07.2005..

13. The analysis of the pleadings and the evidence on the record of the learned trial Court by the learned trial Court vide the impugned judgment dated 30.06.2015 brings forth that the documents of the property allegedly handed over by **the defendant no.1 on 21.07.2005 to the plaintiff, were not even specified in the mortgage deed dated 22.02.2007** and were never produced nor proved by the plaintiff. Furthermore, the original allotment slip stated to have been given by the defendant no.1 to the plaintiff at the time of execution of the alleged mortgage deed dated 22.02.2007 has also not been produced and is stated to have been misplaced.

14. The mortgage deed dated 22.02.2007, Ex.PW1/2 reads to the effect:

> *"And whereas all above three sons and daughters of late Durga Prasad (Dwarka Prasad) executed a relinquishment deed in respect of said property in favor of their mother i.e. second party Smt. Kamla Devi. They*

all releasers relinquished their all rights title and over the said property in favor of their mother Smt. Kamla Devi which executed on 31.1.2015 which was duly registered before the SR IV vide Sr. No. 1094, book No. 3765 page No. 135-136, dated 1.2.2005 since then the second party is the absolute owner and in possession of the said property

And whereas the second party was in urgent need of money therefore, he thought to mortgage the said property with the first party

And whereas second party approached to the first party and demanded a sum of Rs. 76,000/- from the first party and made proposal to mortgage the said property with him

And whereas the first party agreed with the second party and consequently first party gave a sum of Rs. 76000 (Rs. Seventy six thousand only) to the second party by mortgaging the entire first floor portion of the said property bearing No. C-1/306 Nand Nagri Delhi-94 for eleven months.

And whereas the second party assured the first party that said amount borrowed by her from the first party shall be returned within 11 months which begins from 21.7.2005. In this connection an agreement was also executed between the parties on 21.7.2005 which was duly signed by both the parties in presence of the witnesses later on was duly notarized in which the second party assured the first party that she will returned the said loan amount of Rs. 76,000/- to the first party within 11 months.

And whereas according to the said agreement, the second party again gave assurances to the first party that if she fails to return the said loan amount within stipulated period then the first party shall have every right to recover his amount by initiating legal action against the second party litigation for which any legal heirs of second party shall have no objection or if any of the party unfortunately die then legal heirs of the both the party shall be fully responsible for the same.

And whereas the second party had handed over the documents of the said property to the first party at the time of execution of said agreement and also assured the first party she will not do any kind of alteration or addition on first floor of the said property and shall also pay the charges of electricity and water.

And whereas in between the second party again demanded Rs.27,000/- (Twenty seven thousand only) from the first party and assured that said amount shall be returned by her with the said previous amount of Rs. 76,000/- to the first party in good faith gave Rs. 27,000/- (Twenty seven thousand only) to the second party in the month of March 2006.

And whereas the said period ended on 20.6.2006 and when the first party approached to the second party and demanded his loan amount then the second party shown her inability to returning the said amount and again sought 11 months more time to return the said amount with seeing the circumstances the first party agreed for the same and again 11 months more time to the second party so that she could return the said amount of Rs. 1,03,000/- (Rs. One lac and three thousand only)

NOW THIS DEED OF MORTGAGE WITNESSETH AS UNDER:

1 That now the second party shall pay a sum of Rs, 1,03,000/- (Rs. One lac and three thousand only) to the first party on or before 19.5.2007, till then the documents of the said property shall remain in possession of the first party and entire first floor's possession of the said property shall in possession of the first party being mortgagor.

2 That the alterations or addition shall be done by the second party over the said property until she return the said amount, till then entire first floor portion of the said property shall in possession of the first party which can be used by the second party.

3 That charges of electricity and water shall be paid by the second party till further commitment.

4 That if the second party again fails to return the said amount to the first party within stipulated period as above mentioned, then the first party shall have a right to recover the said loan amount by selling the said property or by filing civil suit against the second party for which the second party or her any other legal heirs shall have no objection.
5 That the second party shall not execute any agreement to sell/Biyana in respect of the said property with any person or shall not apply for loan from bank or any financial authority until she repay the said amount to the second party.
6 That when the second party return the said loan amount to the first party then the 1st party will hand over the documents of the said property to the second party without any delay or default.
7 This deed of mortgage has been made between the parties in their goods sense and both the parties agreed with all the terms and conditions of this mortgage deed and all the terms and conditions of this deed of mortgage have been read over to both the parties in their vernacular for which they have no objection
In witness whereof both the parties have put their respective hands or thumb impression on this deed of Mortgage on the day, month and year first above mentioned in the presence of marginal witnesses."

15. The said alleged mortgage deed Ex.PW1/2 states to the effect that a sum of Rs.76,000/- was given by the plaintiff to the defendant no.1 on 21.07.2005, which was to be repaid in 11 months and it had been agreed by the defendant no.1 (in whose favour the defendant nos.2 & 3 had executed a registered relinquishment deed in relation to the property bearing no. C-1/306, Nand Nagri, Delhi-94) to mortgage the property with the plaintiff in lieu thereof and the defendant no.1

had also handed over the documents of the properties to the plaintiff at the time of execution of the agreement. As to what those documents were have not been specified in the mortgage deed. As per the said mortgage deed, the defendant no.1 again demanded a sum of Rs.27,000/- from the plaintiff and assured that she would return the amount with the previous amount of Rs.76,000/- and the plaintiff in good faith had given a sum of Rs.27,000/- to the defendant no.1 in the month of March, 2006.

16. As per the averments made in the plaint though it has been mentioned that a sum of Rs.1,03,000/- was given to the defendants as a loan in two instalments of Rs.76,000/- and Rs.27,000/-, it has not been stated in the plaint anywhere that the second instalment was given in the month of March, 2006.

17. In terms of Ex.PW1/2, on 20.06.2006, when the plaintiff approached the defendant no.1 and demanded his loan amount, the defendant no.1 showed her inability in returning the said amount and again sought 11 months' time to return the amount and the plaintiff gave her more time so that she could return the sum of Rs.1,03,000/-. As per clause-1 of Ex.PW1/2, which document is dated 22.02.2007, the defendant no.1 was to pay a sum of Rs.1,03,000/- to the plaintiff on or before 19.05.2007 and till then the documents of the property qua the 1st Floor of the property were given to the plaintiff as the plaintiff was the mortgagor of the property. In terms of Clause-4 of the mortgage deed, if the defendant no.1 failed to return the said amount to the plaintiff within the stipulated period, then the plaintiff would

have a right to recover the said loan amount by selling the suit property or by filing civil suit against the defendant no.1.

18. Vide clause -6 of the mortgage deed, it was stated to the effect that when the defendant no.1 returned the loan amount to the plaintiff, then the plaintiff would hand over the documents of the property to the defendant no.1 without any delay or default.

19. The suit for foreclosure, sale and redemption of the mortgage regarding the 1st Floor of the house bearing no. C-1/306, Nand Nagri, Delhi-94 w.e.f.22.02.2007 i.e. from the date of the execution of the deed of mortgage by the defendant no.1 in favour of the plaintiff is based on the stated mortgage deed dated 22.02.2007.

20. As already observed elsewhere hereinabove, as to what were the documents of the properties allegedly given by the defendant no.1 to the plaintiff at the time of execution of the mortgage deed dated 22.02.2007 is not spelt out in the said mortgage deed. The document i.e. the letter of allotment to the defendant no.1's spouse has also not been produced by the plaintiff despite it having been contended that the same was given to the plaintiff by the defendant no.1 nor is there any mention of the original allotment slip having been given by the defendant no.1 to the plaintiffs in the mortgage deed dated 22.02.2007 as rightly observed by the learned trial Court vide its judgment dated 30.06.2015.

21. In these circumstances, the letter of allotment allegedly given by the defendant no.1 to the plaintiff having not been produced, the contention raised on behalf of the appellant that it was a suit based on a mortgage by deposit of the documents of the house in question

which house not was in possession of the plaintiff, the contention of the plaintiff that an equitable mortgage was created by the deposit of the title document of the property in question i.e. the deposit of the original allotment letter (issued by the DDA) in favour of the husband of the defendant no.1, cannot be accepted as rightly held vide the impugned judgment of the learned trial Court.

22. Likewise, the terms of the mortgage deed dated 22.02.2007 also make it apparent that the said document in the absence of registration does not create any right in favour of the plaintiff as required under Section 59 of the Transfer of Property Act, 1882.

23. The verdict of the First Appellate Court in RCA 21/2016, dated 26.09.2016 observes vide para-6(d) that the documents of the property were handed over to the appellant in terms of the agreement dated 21.07.2005 and thus the mortgage was effected on or before 21.07.2005 and that the entire pleadings and evidence regarding the mortgage deed being of 22.02.2007 is of a null deed.

24. The verdict of the learned ADJ also stipulates that in terms of Section 59 of the Transfer of Property Act, 1882, the mortgage other than the mortgage by deposit of the title deeds could only be effected by a registered document signed by the mortgagor and attested by at least two witnesses. In as much as it was not so registered, apparently no mortgage was created.

25. A bare perusal of the records of the learned trial Court which were requisitioned brings forth apparent discrepancies in the testimonies of the prosecution evidence as against the pleadings on the record. Undoubtedly a simple mortgage can be created by handing

over the documents of the property to the mortgagor but in the instant case, that the original documents of the property were handed over to the plaintiff is not established through the record. As observed hereinabove, the stated mortgage deed dated 22.02.2007 not being registered, does not create any right in favour of the plaintiff i.e. the appellant herein.

26. The available record thus establishes that there is no substantial question of law in terms of Section 100 of the CPC, 1908 (as amended) that arises in the facts and circumstances of the instant case and that there is no infirmity in the judgments of the learned trial Court dated 30.06.2015 nor of the Court of the learned ADJ dated 26.09.2016 in relation to the aspect of creation of any kind of mortgage whatsoever in favour of the plaintiff by the defendant no.1.

27. The reliance placed on behalf of the appellant thus on the verdict relied upon in ***K.J. Nathan Vs. S.V. Maruty Reddy and Others (1964) 6 SCR 727,*** in ***State of Haryana & Others Vs. Navir Singh and Another Manu/SC/1036/2013, Bholanath Sen Vs. Balaram Das and Others AIR 1922 Privy Council 382*** and in ***Pirthipal Singh Vs. Ganesh Din Singh and Another AIR 1922 Privy Council 383*** is wholly misplaced in the facts and circumstances of the instant case where the evidence led by the plaintiff, i.e. the applicant herein during trial is inconsistent with the pleadings and the documents stated to have been deposited with the plaintiff / appellant for creation of the equitable mortgage have not been produced.

28. The appeal RSA 268/2017 is thus dismissed.

29. The records of the learned Trial Court and the Appellate Court be returned.

ANU MALHOTRA, J.

JULY 29, 2021/vm