

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

Reserved on: 11th October, 2019

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Decided on: 7th April, 2021

+ **I.A.'s 14245/2018,14449/2017,2483/2018 in CS(OS) 654/2017**

HEMANT VERMA

..... Plaintiffs

Represented by: Mr. Tanmay Mehta, Mr. Ravi
Kapoor, Advs.

versus

MITHILESH RANI & ORS

..... Defendants

Represented by: Mr. Jai Sahay Endlaw, Ms. Saloni
Choudhary, Advs. For D-1 to D-4,
Mr. Preetpal Singh, Adv. For D-5,
Mr. Ruchir Mishra, Mr. Sanjeev Kr.
Saxena, Mr. M.K Tiwari, Advs. for
D-6/L&DO.

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

I.A. 14245/2018 (u/O VII R 11 CPC on behalf of Defendant No.1 seeking dismissal of the plaint)

1. By this application under Order VII Rule 11 CPC defendants seeks rejection of the plaint.
2. Case of the plaintiff is that he is the owner of the property bearing No. F-9, Kalkaji, New Delhi (in short suit property) which initially belonged to one K.L. Luthra who passed away on 10th March 1966 and was survived by his widow Smt. Karmawali and mother Smt. Ishwar Devi, who became the joint owners of 50% share in the suit property being the two class-I legal heirs. Smt. Ishwar Devi vide her last Will and testament dated 24th

November 1968 bequeathed all her rights in favor of her son B.R. Luthra. She passed away on 27th January 1971 and as per the Will her 50% share bequeathed upon B.R. Luthra. After the death of Smt. Karmawali on 11th December 1997, B.R. Luthra claimed to be the sole owner of the suit property. Consequently, B.R. Luthra and plaintiff entered into various documents inter alia an Agreement to Sell dated 2nd July 2007, last Will and testament dated 9th October 2007, Memorandum of Understanding dated 9th October 2007, General Power of Attorney dated 9th October 2007, Special Power of Attorney dated 22nd April 2008 and other documents with respect of payments, by virtue of which plaintiff claims to have become the owner of the suit property. B.R. Luthra passed away in the year 2012 and thus, the property devolved upon the plaintiff. It is further claimed that various occupants of different portions of the suit property entered into settlement agreements with the plaintiff thereby assigning/surrendering all their rights, title and interest in the suit property in favour of the plaintiff. Thus, since the year 2010, the plaintiff was in exclusive and sole possession of substantial portion of the suit property.

3. According to the plaint in the year 2016 the plaintiff learnt about the proceedings instituted on behalf of Late Sh. B.R. Luthra and Late Smt. Karmawali, one of which was Suit No. 1885/1987 titled as “Sh. B.R. Luthra v. Smt. Karmawali & Ors” wherein Sh. B.R. Luthra inter-alia sought relief of partition. Further in terms of Will dated 2^{0th} May 1990 of Smt. Karmawali, Smt. Mithilesh Rani (Defendant No. 1 herein) filed a probate proceeding claiming to be successor in interest to the estate of Smt. Karmawali. According to Smt. Mithilesh Rani by virtue of the Will of the deceased K.L. Luthra, Smt. Karmawali was the absolute owner of the suit

property. The suit for partition filed by Sh. B.R Luthra was adjourned sine die because of the pendency of the probate proceedings instituted by Defendant No. 1. Subsequently, the probate of the Will of Lt. Smt. Karmawali was granted in favour of Smt. Mithilesh Rani.

4. Summons in the suit were issued to the defendants. Case of the defendant No.1 is that the instant suit filed by the plaintiff is liable to be rejected inter alia for the reasons that plaint does not disclose any cause of action, the suit of the plaintiff is barred by the law of limitation and not maintainable and the reliefs claimed are undervalued. Further, the instant suit is filed by the plaintiff through his alleged Power of Attorney holder, Ms. Kavita Gaba who has no personal knowledge about the facts pleaded.

5. Learned counsel for the defendant No.1 submitted that no cause of action can accrue to the plaintiff to sue for declaration of his title on basis of the documents being unregistered Agreement to Sell dated 2nd July 2007, unregistered Power of Attorney dated 9th October 2007, Memorandum of Understanding 9th October 2007 and registered Will dated 9th October 2007 executed in favor of plaintiff. Reliance is placed upon the decision of the Supreme Court in Civil Appeal No. 8003/2019 titled Shiv Kumar & Anr v. Union of India & Anr. wherein it was held that purchase of immovable property through such documents does not confer title on the purchaser and the execution of such document does not create any right or interest of purchaser in the said property. Further the Agreement to Sell records that the document was executed for a consideration of Rs. 1.25 Cr. of which only a sum of Rs.13,00,000/- stood paid. The plaintiff relied upon the photocopies of cheque filed by him to show that the remaining amount stood paid, but same does not constitute proof of actual payment of sale consideration by

the plaintiff to Sh. B.R. Luthra. As per the terms of agreement, the balance amount was to be paid at the time of the registration of the sale deed. However, no sale deed was executed between the parties. The stand of the plaintiff is contrary to his own pleadings and documents from which it is evident that during his lifetime Sh. B.R. Luthra instituted a suit for partition against Smt. Karmawali claiming only 50% share therein. After the death of Smt. Karmawali, Defendant No. 1 was impleaded as a necessary party on the basis of Will dated 20th May 1990. B.R. Luthra, not only failed to amend his plaint in suit for partition instituted by him, but also the said suit stood abated on his demise. Therefore, as the question with respect to the share of Sh. B.R. Luthra in the suit property was directly in issue in previous proceedings, a contrary stand cannot be adopted in present proceeding by the plaintiff who claims to be the successor-in-interest of late B.R.Luthra. The plaintiff further admitted the knowledge and existence of the probate proceedings instituted by Defendant No. 1 with respect to the last Will of Smt. Karmawali wherein it was held that the suit property was validly bequeathed upon the Defendant No. 1. Thus, it is evident that the present suit is only an illusion of the cause of action to embroil the suit property in litigation.

6. Learned counsel for the defendant No.1 further submits that the present suit is barred by limitation. Since Sh. B.R. Luthra never challenged the order dated 18th September 1979 passed by the settlement commissioner of L&DO whereby the objection of Sh. B.R Luthra were dismissed pertaining to his claim of ownership in the suit property, therefore, same has attained finality. Thereafter, in 1987 Lt. Sh. B.R. Luthra instituted a suit for partition against Karmawali claiming 50% of the share. The said suit got

abated vide order dated 29th November 2012 upon the demise of Sh. B.R. Luthra. In the said suit, Karamwali took the stand that she was the absolute owner of the suit property by way of Will of her late husband Sh. K.L. Luthra. Further on the death of Smt. Karamwali, defendant No.1 was substituted who claimed ownership by virtue of the Will of Karamwali dated 20th May, 1990. Sh. B.R Luthra had purportedly sold the suit property to the Plaintiff in 2007 and the plaintiff did not even bother to implead himself in place of B.R Luthra in the suit for partition filed by B.R.Luthra upon his demise, rather the plaintiff filed the present suit. The order dated 14th December 2009 granting probate in favour of Defendant No. 1 has also attained finality as the same was never challenged either by Sh. B.R Luthra or the plaintiff. Therefore, plaintiff and prior to that his predecessor-in-interest namely Sh. B.R. Luthra were aware, since the time Defendant No. 1 was impleaded in the suit for partition, that she is disputing B.R Luthra's right and interest in the suit property and therefore they ought to have sought declaration within three years from such knowledge or at least sought probate of the Will of Smt. Ishwar Devi within three years from the date of such knowledge. Sh. B.R. Luthra failed to do this and instead entered into an agreement to sell the property to the plaintiff. Moreover, the plaintiff concealed the fact that the plaintiff got the suit property mutated in his name after Sh. B.R. Luthra executed the documents purportedly transferring the property in his favor. However, when the order dated 14th December 2009 granting probate in favour of Smt. Karmawali was brought to the notice of L&DO, the mutation in favour of Plaintiff was cancelled and withdrawn vide letter dated 12th July 2010. Even the said order was never challenged or carried forward in appeal. Therefore, the cause of action for Plaintiff to sue

for declaration of his title arose, if it all, in 2010 and the limitation to file the same expired in 2013.

7. Learned counsel for the defendant No.1 further contends that the plaintiff is seeking declaration that the lease deed and subsequent conveyance deed executed in her favour be declared as null and void. Plaintiff is also seeking the consequential relief of possession of the property, admitting that as on date of filing of the suit he was not in possession of the suit property. Reliance is placed upon the decision reported as 2010 (12) SCC 112 Suhrid Singh @ Sardool v. Randhir Singh on the aspect of Court Fee to be paid in a Suit for Declaration and Cancellation. In the present suit, the plaintiff has sought declaration in respect of the document, of which he is not the executant, therefore, the plaintiff is required to pay ad valorem court fee as provided under Section 7 (iv) (c) of the Court Fee Act based on the value of the suit property. The plaintiff has erroneously paid fixed court fee on the relief of declaration sought in prayers (ii), (iii) and (iv) in the plaint.

8. Learned counsel for the defendant No. 1 further stated that the plaint is also liable to be rejected on the ground that it has been filed by a person who admittedly does not have personal knowledge of the facts pleaded in the present suit. Reliance is placed upon the decisions reported as 1983 (3) GLR 1849 V.H. Mehta v. D.A.V. New High School and (2015) 217 DLT 614 Asha Khanna v. Pankaj Khanna. Further the plaintiff failed to disclose his address of Dubai where the alleged Power of Attorney was executed. Plaintiff has also failed to provide the reason for executing the same in favor of Ms. Kavita Gaba. Moreover the purported GPA is not registered.

9. Rebutting the arguments on behalf of the defendant No.1, learned counsel for plaintiff submitted that there is no requirement that the attorney should have personal knowledge of the pleadings in the suit. Major part of the suit is derived from the records and that the plaint is not solely on the basis of personal knowledge. Reliance is placed on the decision of Supreme Court reported as AIR 2005 SC 439 Janki Vashdeo Bhojwani and Ors. v. Indusind Bank Ltd. & Ors. whereby it was held that the question of knowledge of Power of Attorney comes at the stage of deposition and no rejection under order VII Rule 11 CPC can be sought on this count. The facts in the present case are derived from records as major part of the plaint is based on facts and averments from the year 1970 to 1980. Reliance is also placed on the decision reported as (2006) 3 SCC 100 Mayar (H.K.) Ltd. & Others vs. Owners and Parties, Vessel M.V. Fortune Express and Others. For rejection of the plaint under Order VII Rule 11 CPC, averments in the plaint have to be looked into by way of demurrer and nothing more. He further submitted that the plaint cannot be rejected merely because the case of the plaintiff is weak. Thus the contention on behalf of the defendant that the power of attorney has no personal knowledge cannot be looked into at this stage. Learned counsel for the plaintiff further submitted that the defendant has nowhere in his written submission or in his application taken the ground that the power of attorney is not having personal knowledge of the pleadings in the suit. Further, it is a matter to be decided after trial and not on an application under Order VII Rule 11 CPC.

10. It is further contended that though the plaintiff has claimed sole and absolute ownership of the suit property, however, the court is empowered to grant limited relief such as declaring the plaintiff to be the owner to the

extent of 50% share in the suit property in case the court finally comes to the conclusion that Sh.B.R.Luthra was entitled to only 50% share in the suit property.

11. Plaintiff's possession is admitted by defendant no. 1 which can also be proved by plaintiff's telephone and electricity bills. There are photographs filed to show that the plaintiff was running his shop and two FIRs were also lodged by Plaintiff of theft from the said shop. It is further submitted that as per the registered Will of Lt. Sh. B.R. Luthra, the rights of B.R. Luthra in the property bequeathed in favor of plaintiff, therefore the plaintiff was not required to seek the relief of specific performance. Probate was granted to Defendant No. 1 with respect to the Will of Lt. Smt. Karmawali, however the same does not decide title in the suit property. Further, Mithilesh Rani in her probate case deposed that she could not file the Will of K.L. Luthra. The conveyance deed was executed in August 2017 in favour of Mitilesh Rani, therefore the suit is within limitation as the suit seeking cancellation of the conveyance deed was filed in November 2017. In the written submission filed before the L&DO, Smt. Mitilesh Rani stated that Smt. Karmawali was the sole legal heir of Sh. K.L. Luthra which was a false assertion. Defendant No. 1 in her reply to application under Order XXXIX Rule 1 and 2 stated that the Defendant No. 5 on being threatened of criminal actions vacated the portion of the suit property which the plaintiff illegally trespassed. Hence, the possession of the plaintiff in a portion of the suit property is admitted by the defendant No.1.

12. Further, rebutting the argument on behalf of the defendant No.1 on the point of undervaluation of the present suit, learned counsel for the plaintiff submitted that the valuation is a question of law and fact and that an

issue can be framed in this respect. The plaint cannot be rejected on the said ground, as the defect if any can be rectified.

13. Learned counsel for the defendant No.1 in his rejoinder submitted that the plaintiff has admitted that he was only an agreement purchaser and had no registered document conferring title in his favour. B.R Luthra, predecessor-in-interest of plaintiff filed suit for partition claiming 50% share in the suit property. He did not amend his plaint when Defendant No. 1 was impleaded in the suit claiming herself to be the absolute owner of the suit property on the basis of the Will of Smt. Karmawali. Sh. B.R Luthra did not file for the probate of alleged Will of Smt. Ishwar Devi. The partition suit filed by Sh. B.R Luthra stood abated in the year 2012 and Defendant No. 1 was granted probate of the Will dated 2^{0th} May 1990. The plaintiff was further not in possession of the suit property at least since immediately prior to filing of the present suit. Therefore, plaintiff cannot maintain suit for declaration of sole ownership of suit property.

14. Rebutting the contention of learned counsel for the plaintiff that this Court can grant part relief qua 50% share in the suit property, learned counsel for the defendant submits that in a suit for declaration, the plaintiff is either entitled to declaration or not and no other relief can be sought.

15. The plaintiff has sought declaration of absolute ownership with respect the suit property, the authenticity of such allegation and also to make the deponent responsible for such allegation, the verification is required to enable the court to find out whether it will be safe to act on such affidavit evidence. Reliance is placed on the decision of Supreme Court reported as AIR 1970 SC 652 A.K.K Nambiar v. Union of India. This Court has already examined the attorney holder of the plaintiff under Order X of CPC and if

the court is satisfied that the deponent/attorney holder of plaintiff is not aware of facts and circumstances of the case, this court is inherently empowered to reject the plaint on this ground alone. Learned counsel for the defendant No.1 also submitted that the plaintiff has argued that insufficiency of knowledge is not a ground for rejection of plaint but if the plaintiff's argument is taken to its logical conclusion, it would result in a situation which would enable any person to sign and verify pleadings and institute suit without being personally aware about the facts. This would defeat the purpose of examination of parties under Order X of CPC. The defect in a supporting affidavit maybe a curable one but the insufficiency of knowledge of a person instituting this suit is a question that goes to the root of the matter and the court is empowered to limit such suits at the preliminary stage by examining the parties and deciding whether a trial is required.

16. Heard learned counsels for the plaintiff and defendant No.1.

17. Based on the pleadings in the suit and the documents filed therewith it is evident that in the present suit plaintiff claims the rights if any from late B.R. Luthra and thus would be bound by the pleadings of B.R.Luthra in the earlier suit and petition which form part of the documents filed by the plaintiff along with the present suit.

18. Suit No. 2180/1986 was filed by B.R. Luthra impleading Karmawali as defendant No.1 before the Additional District Judge *inter alia* seeking a decree of partition and possession, which was returned by the learned Additional District Judge vide order dated 25th April, 1987 on the ground that it had no pecuniary jurisdiction to try the suit. Sh. B.R. Luthra than instituted a suit impleading Smt.Karmawali, the wife of his deceased brother

as defendant No.1 and other family members as the defendants being Suit No. 1885/1987 before this Court *inter alia* seeking a decree of partition of the two properties bearing H.No. F-9 and A-561 Kalkaji by metes and bounds falling to the share of B.R.Luthra, besides rendition of accounts. The present suit relates only to the property i.e. H.No.F-9, Kalkaji and thus the pleadings and documents in regard thereto only are being considered. In Suit No. 1885/1987, B.R. Luthra claimed that property No. F-9 Kalkaji, the suit property herein was allotted to Kishan Lal Luthra (K.L. Luthra) husband of Karmawali and brother of B.R.Luthra. It was stated that after receiving the full sale consideration of the suit property, the conveyance deed was executed in the name of K.L. Luthra on 26th July, 1965. K.L. Luthra died on 10th March, 1966 and after his death the suit property was succeeded by Smt. Karmawali, wife of K.L. Luthra and Smt. Ishwar Devi, the mother of plaintiff and deceased K.L. Luthra. Smt. Ishwar Devi died on 27th January, 1971. Before her death, Smt. Ishwar Devi executed a Will dated 24th November, 1968 in respect of properties owned by her in favour of B.R. Luthra and thus B.R. Luthra claimed 50% share in the suit property and the partition in terms thereof besides rendition of accounts in Suit No. 1885/1987. B.R. Luthra in para 13 of the said plaint admitted that Karmawali was in exclusive possession of the suit property and was enjoying the income thereof to the exclusion of B.R. Luthra.

19. A written statement was filed to Suit No. 1885/1987 by Smt. Karmawali being the defendant No.1 therein claiming that her late husband K.L. Luthra had executed a Will dated 28th September, 1965 in her favour being the widow, which was found by her in the diary of her husband. It was further claimed that the said Will had been executed by K.L. Luthra in

full command of his senses in presence of witnesses and being the genuine and last Will of the deceased K.L.Luthra, the same had to be acted upon. According to the written statement, under the terms of the said Will, Karmawali had the legacy of all the properties of her husband Shri K.L. Luthra to the exclusion of all others. Karmawali reiterated that she was in possession of F-9 Kalkaji since 1951 along with her husband and even after her husband's death on 10th March, 1966 she was in exclusive possession of the suit property. Thus her possession all through has been continuous, open and hostile to all others including B.R. Luthra. Karmawali also stated that late Ishwar Devi never asserted herself as the legal heir and successor of K.L. Luthra during her life time.

20. In the replication filed by Sh. B.R.Luthra, to the written statement of Smt. Karamwali on 24th August, 1990, B.R. Luthra denied the execution of any Will dated 28th September, 1965 by K.L. Luthra in favour of Karmawali. B.R. Luthra stated that the case was pending before the Trial Court and Appellate Court for want of pecuniary jurisdiction and since the suit was returned, Suit No.1885/1987 was filed before the High Court and it is for the first time that Karmawali had stated about the Will of late B.R.Luthra and claimed that the Will if any was bogus. CS(OS) 1885/1987 which was pending before this Court was transferred to the District Court vide order of the Joint Registrar dated 25th September, 2003 due to the enhancement of the pecuniary jurisdiction of the District Court and as the claim in the suit was less than 20 lakhs. After transfer of the suit the same was numbered as Suit No. 297/03/87. The said suit was dismissed in default on 19th April, 2006 however on an application filed by B.R. Luthra, the same was restored on 25th January, 2007. B.R. Luthra also filed an application

under Order XXIII Rule 1 CPC abandoning the claim in the suit against defendant Nos. 2 to 14 therein on 19th March, 1996.

21. In the meantime Karmawali died on 11th December, 1997. I.A. 10597/1998 was filed by Mithilesh Rani, the defendant No.1 herein, in Suit No. 297/03/87 under Order I Rule 10 CPC seeking substitution in place of Karmawali based on the Will dated 25th May, 1990 of Karamwali. Thus Mithilesh Rani was impleaded as defendant No.1 in Suit No. 293/03/87 vide order dated 12th December, 1998. Therefore, Mithilesh Rani, the defendant No.1 herein substituted herself in place of Karamwali claiming to be the owner of the property based on the Will executed by Karmawali. On 12th March, 2007 Suit No. 297/03/87 was adjourned *sine die* as learned counsel appearing on behalf of Ms. Mithilesh Rani pointed out that a probate petition had been filed in relation to the Will executed by Karmawali in favour of Mithilesh Rani. B.R. Luthra challenged the Will of Karmawali in the probate petition filed by Mithilesh Rani. The Court thus held that no decree of partition could be passed till adjudication by the Probate Court.

22. From the written statement of Karmawali, it was known to B.R. Luthra that a Will dated 28th September, 1965 had been executed by K.L. Luthra in favour of Karmawali, however the plaint was not amended to challenge the said Will. Though B.R. Luthra sought leave of the Court by I.A. 107/1994 to prove the Will dated 24th November, 1968 of Smt. Ishwar Devi, however he took no further steps in this regard. Further the issue of Ishwar Devi's Will would have come only if the Will of K.L. Luthra could be proved to be forged and fabricated by B.R. Luthra for which also he took no steps. No challenge was laid by B.R. Luthra to the claim of Karamwali qua the Will of

K.L. Luthra and no such prayers were made in the plaint by amendment of the suit.

23. After the suit was adjourned *sine die* on 12th March, 2007 an application under Section 151 CPC for revival of the suit was filed by Mithilesh Rani claiming that she had filed the probate of the Will left by Smt. Karmawali impleading B.R. Luthra therein and vide the judgment dated 14th December, 2009 in P.C. No. 366/06/98 the Will in favour of Mithilesh Rani has been probated. The learned Probate Court dismissed all the objections of B.R. Luthra in relation to the Will of Karmawali and probated the Will dated 20th May, 1990 in favour of Mithilesh Rani vide order dated 14th December, 2009. The suit filed by B.R. Luthra was revived by the learned ADJ vide order dated 23rd July, 2012. Vide order dated 29th November, 2012 it was noted that as per the report of process server dated 2nd April, 2012, Shri Kamal Luthra, S/o B.R. Luthra informed that B.R. Luthra has expired. Thus on the prayer on behalf of Mithilesh Rani that the suit stands abated, learned ADJ noted that abatement takes place by operation of law and no formal order was to be passed by the Court.

24. The plaintiff's claims in the present suit that F-9 Kalkaji was bequeathed in favour of the plaintiff by B.R. Luthra by the Will dated 9th October, 2007 besides executing an agreement to sell, are thus required to be examined, in the light of the fact that B.R. Luthra was made aware of the Will of K.L. Luthra dated 28th September, 1965 in favour of Karmawali and no challenge to the said Will was laid by B.R. Luthra and the suit for partition filed by B.R. Luthra stood abated.

25. The prayers in the present suit are:

- “i. Pass a judgment and decree in favour of the Plaintiff, thereby declaring that he is the sole and absolute owner of the suit property being F-9, Kalkaji, New Delhi*
- ii. Pass a judgment and decree thereby declaring the Perpetual Lease Deed in regard to the suit property being F-9, Kalkaji, New Delhi; executed by the Defendant No. 6 in favour of the Defendant No. 1, is illegal, non-est, null and void.*
- iii. Pass a judgment and decree thereby declaring the Conveyance Deed in regard to the suit property being F-9, Kalkaji, New Delhi; executed by the Defendant No. 6 in favour of the Defendant No. 1, is illegal, non-est, null and void.*
- iv. Pass a judgment and decree in favour of the Plaintiff and against the Defendant No. 1-5, declaring all agreements entered into by and between the Defendant No. 1-5, inter-se or with any third party, to be null and void.*
- v. Pass a judgment and decree for permanent injunction in favour of the Plaintiff and against the Defendant No. 1-5, thereby restraining the Defendants and their employees, agents, servants, heirs, and representatives from selling leasing, constructing or otherwise creating any third party interest or otherwise dealing with the suit property, (being the property bearing No. F-9, Kalkaji, New Delhi –admeasuring 200 Sq. yards)*
- vi. Pass a judgment and decree for mandatory injunction in favour of the Plaintiff thereby directing the Defendant No. 1-5, to repair/reconstruct and restore the suit property to its original form in terms of the construction - existing prior to the illegal dispossession of the plaintiff.*
- vii. Pass a judgment and decree in favour of the Plaintiff thereby directing the Defendants to restore possession of the suit property (of the portion marked in red in the site plan), being the property bearing No. F-9, Kalkaji, New Delhi - admeasuring 200 Sq. yards); to the Plaintiff.*
- viii. Award costs to the Plaintiff;*
- ix. Grant such other reliefs or pass such other orders as this Hon'ble court deems fit and proper in the circumstances of the case and to meet the ends of justice.”*

26. Plaintiff in the present suit claiming rights in the suit property based on the unregistered agreement to sell dated 2nd July, 2007, unregistered power of attorney dated 9th October, 2007, memorandum of understanding dated 9th October, 2007 and registered Will dated 9th October, 2007, ought to have impleaded himself as the successor in interest of B.R. Luthra in the suit filed by B.R. Luthra seeking partition of the property and rendition of accounts against Karmawali wherein Mithilesh Rani was substituted. Further, the documents as noted above i.e. unregistered agreement to sell dated 2nd July, 2007, unregistered power of attorney dated 9th October, 2007 and registered memorandum of understanding dated 9th October, 2007 executed in favour of the plaintiff cannot confer any title on the plaintiff as the agreement to sell had yet to fructify into a sale deed. Moreover, as per the documents filed by the plaintiff along with the plaint, since B.R. Luthra himself did not have a clear title to the suit property, the documents executed by B.R.Luthra cannot confer a better title on the plaintiff than what B.R.Luthra had.

27. Supreme Court in (2009) 7 SCC 363, (2012) 1 SCC 656 Suraj Lamp & Industries P.Ltd. vs.State of Haryana clearly held that an Agreement to Sell/General Power of Attorney/ Will transaction does not convey any title nor creates any interest in an immovable property. One of the contentions often raised in respect of the decision rendered in Suraj Lamp (supra) is that the said decision cannot have any application retrospectively to the documents executed prior to the said decision. This Court in (2018) 172 DRJ 420 Bishan Chand vs. Ved Prakash (Since Deceased)Thr Lrs & Anr. clarified the misconception and held that the judgment in Suraj Lamp does

not lay down any new law or principle and only reiterated the well settled legal position as has always been understood in the past that a Special Power of Attorney/General Power of Attorney/Agreement to Sell and Will transaction does not confer a title. This Court held:

"13. There appears to be a prevalent misconception that Suraj Lamp & Industries P. Ltd. supra is only prospective and not retrospective. The following paragraphs of the said judgment as reported in (2012) 1 SCC 656 are relevant:—

"23. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in Asha M. Jain v. Canara Bank, that the "concept of power-of-attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/WILL transfers" do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot

be recognized as deeds of title, except to the limited extent of Section 53-A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

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

26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not “transfers” or “sales” and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. The said “SA/GPA/WILL transactions” may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by development authorities. We make it clear that if the documents relating to “SA/GPA/WILL transactions” has been accepted acted/upon by DDA or other developmental authorities or by the Municipal or revenue

authorities to effect mutation, they need not be disturbed, merely on account of this decision.

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

14. However, as would be clear from the aforesaid paragraphs, the judgment does not lay down any new law or principle and is not pathbreaking and merely reiterates the well settled legal position as always understood in the past as well. Even on request to make the judgment applicable prospectively, it was clarified that SPA/GPA/Will transactions effected prior to the said judgment, could not be treated as completed transfers or conveyances and could be treated as existing agreements of sale on basis of which conveyance deeds to perfect title could be obtained or specific performance sought or defence of Section 53A of Transfer of Property Act, 1882 taken or registration from development authorities sought. It was further clarified that where on basis of SPA/GPA/Will transactions, mutations had already been effected, such mutations will also

not be disturbed on account of the judgment. Supreme Court nowhere said that SPA/GPA/Will transactions of a date prior to the judgement will constitute a title. Rather, it was held, they would not. The appellant/plaintiff thus cannot claim that he has title to the property as agreement purchaser and the courts cannot declare the appellant/plaintiff to be having title to the property."

28. Plaintiff claims right which were in favour of B.R. Luthra in the suit property by virtue of the agreement to sell dated 2nd July, 2007, registered memorandum of understanding dated 9th October, 2007, general power of attorney dated 9th October, 2007, registered special power of attorney dated 22nd April, 2008 and the receipts in relation to the payments made. Even according to the plaintiff the suit property was agreed to be purchased for a total sale consideration of ₹1.25 crores out of which only ₹13 lakhs odd payment has been made. Thus the plaintiff even as per his own case has paid only 1/10th of total sale consideration and not the complete sale consideration. Though plaintiff claims to have paid further amount, however, there is no material in regard to the fact that B.R.Luthra had received full consideration. Further, without seeking the relief of specific performance of the agreement to sell dated 2nd July, 2007, the relief of declaration of ownership of the suit property as sought by the plaintiff is not maintainable.

29. As noted above in the written statement filed, Karmawali claimed that her late husband had executed a Will in her favour. In view of the Will set up by Karmawali in her favour, B.R. Luthra was required to take necessary steps including by way of amendment of the plaint filed by him. However, despite this written statement having been filed on 21st November, 1988 B.R. Luthra did not challenge the claim of Karamwali within three years of

the knowledge thereof. B.R. Luthra continued prosecuting the suit without taking appropriate remedies including amendment of the suit and hence any claim contrary to the said plea of Karmawali that she was bequeathed the suit property by her late husband by way of the Will dated 28th September, 1965 is barred by limitation.

30. Further, the suit filed by B.R. Luthra having abated on 29th November, 2012 the same would amount to dismissal of the suit and thus based on the claim of B.R. Luthra, the plaintiff on the strength of the documents as noted above, cannot seek a declaratory relief in the present suit. In the decision reported as AIR 2010 SC 3043 Balwant Singh (Dead) Vs. Jagdish Singh and Ors. it was held:

“7. The counsel appearing for the applicant, while relying upon the judgment of this Court in the case of Ram Sumiran v. D.D.C. MANU/SC/0013/1984 : (1985) 1 SCC431; Mithailal Dalsangar Singh v. Annabai Devram Kini MANU/SC/0722/2003 :(2003) 10 SCC 691 and Ganeshprasad Badrinarayan Lahoti v. Sanjeevprasad Jamnaprasad Chourasiya MANU/SC/0632/2004 : (2004) 7 SCC 482 argued that this Court should take a liberal view and should condone the delay, irrespective of the above facts and in all these judgments the delay has been condoned by the Court. As per contra, the submission of the counsel for the non-applicants is that the appeal has abated and no cause, much less sufficient, has been shown for setting aside the abatement. A right accrues in favour of the respondents in appeal and it will be unfair and unjust to take away their vested right on such flimsy and baseless grounds. It is a settled position of law that a suit or an appeal abates automatically if the legal representatives, particularly of the sole plaintiff or appellant, are not brought on record within the stipulated period. Rule 1 of Order 22, CPC mandates that the death of a defendant or a plaintiff shall not cause the suit to abate if the right to sue survives. In other

words, in the event of death of a party, where the right to sue does not survive, the suit shall abate and come to an end. In the event the right to sue survives, the concerned party is expected to take steps in accordance with provisions of this Order. Order 22 Rule 3, CPC therefore, prescribes that where the plaintiff dies and the right to sue has survived, then an application could be filed to bring the legal representatives of the deceased plaintiff/appellant on record within the time specified (90 days). Once the proceedings have abated, the suit essentially has to come to an end, except when the abatement is set aside and the legal representatives are ordered to be brought on record by the Court of Competent jurisdiction in terms of Order 22 Rule 9(3), CPC. Order 22 Rule 9(3) of the CPC contemplates that provisions of Section 5 of the Indian Limitation Act, 1963 shall apply to an application filed under Sub-rule 2 of Rule 9 of Order 22, CPC. In other words, an application for setting aside the abatement has to be treated at par and the principles enunciated for condonation of delay under Section 5 of the Limitation Act are to apply *pari materia*.

8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the

legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic approach in such cases is not called for.

9. In the case of Mithailal Dalsangar Singh (supra), a Bench of this Court had occasion to deal with the provisions of Order 22 Rule 9, CPC and while enunciating the principles controlling the application of and exercising of discretion under these provisions, the Court reiterated the principle that the abatement is automatic and not even a specific order is required to be passed by the Court in that behalf. It would be useful to reproduce paragraph 8 of the said judgment which has a bearing on the matter in controversy before us: ”

31. The other document relied upon by the plaintiff is the registered Will and testament dated 9th October, 2007 by B.R. Luthra in favour of the plaintiff in respect of the suit property. The said document has not been probated till date and no petition for seeking probate of the said Will has been filed by the plaintiff till date. In the absence of any probate, the plaintiff cannot claim the Will to be valid, therefore, the declaratory reliefs based on the Will, as sought in the present suit, are also not maintainable. It is well settled that the plaintiff in the present suit even based on the documents in its favour cannot claim a better right and title than what was in favour of B.R. Luthra. In the suit filed by B.R. Luthra being CS(OS) 1885/1987, B.R. Luthra only sought 50% share in the suit property basing his claim on the Will of his late mother Smt. Ishwar Devi dated 24th November, 1968. Therefore, even as per B.R. Luthra he was at best entitled to 50% share in the suit property based on the Will of Smt. Ishwar Devi. However, the said Will of Smt. Ishwar Devi was not probated and the factum that Smt. Ishwar Devi could execute a valid Will is also disputed for

the reason B.R. Luthra claimed that Kishan Lal Luthra, the husband of Karmawali died intestate, whereas Karmawali in the said suit had set up the defence that her late husband had executed a Will in her favour. B.R. Luthra did not amend the suit so as to challenge the validity of the Will left by Kishan Lal Luthra nor did he seek probate of Ishwar Devi's Will. Hence the claim of B.R. Luthra even to the 50% property cannot be upheld for the reason no declaration of the title based on a Will can be granted without the validity of the Will of Late Ishwar Devi having been established. Further the claim in respect of the remaining 50% is on the basis that Karmawali died intestate. However, the Will of Karmawali has been probated in favour of Mithilesh Kumari. Probate of the Will of Karmawali having been granted, the challenge in the present suit to the documents consequential to the Will of Karmawali is not only barred by limitation but is also not maintainable.

32. In the decision reported as 2002 (64) DRJ 293 Manmohan Singh and Ors. Vs. Joginder Kaur and Ors. this Court held:

“43. As to the objection that where there is a specific remedy provided and in the case Section 276 of the Indian Succession Act provides for probate the implicate suit for declaration is not maintainable. Ms. Deepika Marwah learned counsel for the plaintiff contended with vehemence that Section 276 is not a prohibitory Section nor does it place any embargo upon the legacy to claim and establish the right of the legacy by filing a suit for declaration under Section 34 of the Specific Relief Act.

44. However this argument stems from the law that the probate court cannot confer title of the property to any one nor the grant of probate establishes more than the valid execution of the Will and appointment of the executor and the title has to be established in a civil Court.

51. As is apparent from the aforesaid provisions of the Indian Succession Act there is no provision under this Act entitling a person to file the suit for declaration except in the three eventualities viz. firstly where the party who has been evicted from the possession; secondly a person must possess a letter of administration before filing any suit and thirdly where there is a contention that proceedings shall take as nearly as may be a form regular suit. None of the aforesaid three condition exists in the instant case. Apart from this, suit for declaration is also barred by the provisions of Section 34 of the Specific Relief Act, as such a suit is not maintainable on the basis of a unregistered. Will in respect of which no probate has been obtained nor letters of administration have been obtained. If the plaintiff is allowed to maintain such a suit it will be an unending process as even after obtaining a declaratory decree the plaintiff shall not have any consequential relief nor would be plaintiff be in a position to take back the possession from those who are in possession of the premises.

58. Further since Section 276 of the Indian Succession Act specifically provides for petition for probate any other remedy is forbidden. However to say that the probate is not necessary in Delhi and, Therefore, the plaintiff has an alternative remedy by way of filing the suit is wholly untenable as the issue in the case is whether the suit for declaration is maintainable or not. In the absence of any Explanation as to why the plaintiff did not seek a probate or letter of administration on the basis of Will when the law specifically provides such a remedy the plaintiff cannot maintain the implicate suit for declaration ...

59. It is beyond the pale of controversy that suit under Section 208, 214 and 295 can be filed only for obtaining a specific relief just like against dispossession but not in a suit for declaration by way of substitute to a probate petition.”

33. The plaintiff also seeks the relief of possession based on the admission of Mithilesh Rani and the two FIRs lodged by him stating that in CS(OS) 366/2015 titled as Mithilesh Rani Vs. Hemant & Anr., Mithilesh Rani in para 9 stated that by taking wrongful advantage of the proceedings

pending in the Probate Court certain professional property grabbers on the strength of their brute force with the backing of the local Police had jumped in and had come into wrongful possession of the portion shown in red in the plan Thus the case of Mithilesh Rani was that the plaintiff herein had come into wrongful possession of a portion of the suit property despite resistance by Mithilesh Rani.

34. In the suit filed by B.R. Luthra seeking partition and possession it was the case of B.R. Luthra that Karmawali was in possession of the suit property who bequeathed the same to Ms. Mithilesh Rani. Thus B.R. Luthra never had possession of the property or any part thereof in his favour which possession could have been passed onto the plaintiff herein. In the suit there is no averment as how and when the plaintiff was handed over possession of the suit property by B.R. Luthra who himself had no possession of the suit property. The plaintiff in the suit claims rights only through B.R. Luthra and no other party. The plaintiff was at best a trespasser even as per admission of Mithilesh Rani and for the plea of possession as claimed by the plaintiff in the present suit no full-fledged trial is required as held by the Supreme Court in (2012) 5 SCC 370 Maria Margadia Sequeria Fernandes & Ors. Vs. Erasmo Jack De Sequeria (D) Thus even if the Court has considered *prima facie*, that a party to the suit is not entitled to remain in possession even if assuming it had possession, the same would amount to due process of law. Supreme Court held:

“61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

62. Possession is an incidence of ownership and can be transferred by the owner of an immovable property to another

such as in a mortgage or lease. A licensee holds possession on behalf of the owner.

63. Possession is important when there are no title documents and other relevant records before the court, but, once the documents and records of title come before the court, it is the title which has to be looked at first and due weightage be given to it. Possession cannot be considered in vacuum.

64. There is a presumption that possession of a person, other than the owner, if at all it is to be called possession, is permissive on behalf of the title-holder. Further, possession of the past is one thing, and the right to remain or continue in future is another thing. It is the latter which is usually more in controversy than the former, and it is the latter which has seen much abuse and misuse before the courts.

65. A suit can be filed by the title-holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.

66. A title suit for possession has two parts—first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is

prima facie established, it is for the person who is resisting the title-holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. *The person averring a right to continue in possession shall, as far as possible, give a detailed particularised specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.*

70. *It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:*

(a) who is or are the owner or owners of the property;

(b) title of the property;

(c) who is in possession of the title documents;

(d) identity of the claimant or claimants to possession;

(e) the date of entry into possession;

(f) how he came into possession—whether he purchased the property or inherited or got the same in gift or by any other method;

(g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;

(h) If taken on rent, licence fee or lease—then insist on rent deed, licence deed or lease deed;

(i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc.;

(j) subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and

(k) basis of his claim that not to deliver possession but continue in possession.

71. *Apart from these pleadings, the court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after*

the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the court must carefully and critically examine the pleadings and documents.

72. The court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73. Discovery and production of documents and answers to interrogatories, together with an approach of considering what in the ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

75. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

76. Dr Arun Mohan in his classic treatise on Justice, Courts and Delays has dealt with these fundamental principles of law exhaustively.

77. The court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case.

78. *It is a settled principle of law that no one can take the law in his own hands. Even a trespasser in settled possession cannot be dispossessed without recourse to law. It must be the endeavour of the court that if a suit for mandatory injunction is filed, then it is its bounden duty and obligation to critically examine the pleadings and documents and pass an order of injunction while taking pragmatic realities including prevalent market rent of similar premises in similar localities in consideration. The court's primary concern has to be to do substantial justice. Even if the court in an extraordinary case decides to grant ex parte ad interim injunction in favour of the plaintiff who does not have a clear title, then at least the plaintiff be directed to give an undertaking that in case the suit is ultimately dismissed, then he would be required to pay market rent of the property from the date when an ad interim injunction was obtained by him. It is the duty and the obligation of the court to at least dispose of the application of grant of injunction as expeditiously as possible. It is the demand of equity and justice.*

79. *Due process of law means that nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity to the defendant to file pleadings including written statement and documents before the court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent court.*

81. *False claims and defences are really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our courts. If pragmatic approach is adopted, then this problem can be minimised to a large extent.*

82. *This Court in a recent judgment in Ramrameshwari Devi [(2011) 8 SCC 249 : (2011) 3 SCC (Cri) 481 : (2011) 4 SCC (Civ) 1] aptly observed at p. 266, para 43 that unless*

wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least can be minimised if exemplary costs is imposed for instituting frivolous litigation. The Court observed at pp. 267-68, para 58 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.”

35. In view of the law laid down by the Supreme Court in Maria Margadia (supra), the relief of possession as claimed by the plaintiff in the present suit is also not maintainable as there are no pleadings as to how, when and from whom plaintiff came into lawful possession of the property, and the entitlement of the plaintiff to restoration of possession based on admission of Mithilesh Rani that the plaintiff trespassed into the property can be decided in the present application and no full-fledged trial is required for the same.

36. In the present suit, even as per the plaintiff, B.R. Luthra never put forth a real challenge to the alleged Will of either Kishan Lal Luthra and even to the probate petition filed by Mithilesh Rani. In respect of the Will of Karmawali, B.R. Luthra was a party to the probate petition filed by Mithilesh Rani and he filed objections thereto as well which were dismissed.

Further, the suit filed by B.R. Luthra being Suit No. 1885/1987 seeking partition and possession has abated. The plaintiff in the present suit seeks rights consequential to those claimed by B.R. Luthra, which to the knowledge of B.R. Luthra were not with him. Hence even if B.R. Luthra has executed documents in favour of plaintiff, the same will not bestow any right on the plaintiff which even B.R.Luthra did not have.

37. In view of the discussion aforesaid, the present plaint filed by the plaintiff is not maintainable and is liable to be rejected. Consequently the application under Order VII Rule 11 CPC being I.A. 14245/2018 is disposed of rejecting the plaint.

(CS(OS) 654/2017)

Plaint is rejected.

I.A. 14449/2017 (u/O XXXIX R 1 and 2 CPC)

I.A. 2483/2018 (u/O XXXIX R 4 CPC)

Applications are disposed of as infructuous.

(MUKTA GUPTA)
JUDGE

APRIL 07, 2021