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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 29th November, 2023

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RFA 3/2020 & CM APPL. 123/2020 & 125/2020**RAMESH CHAND**

..... Appellant

Through: Ms. Sonali Malhotra, Advocate

versus

SATYA BHUSHAN & ANR

..... Respondents

Through: Ms. Shalini Kapoor, Advocate with
Ms. Promil Mago, Mr. K.V.S. Gupta, Mr. N.K.
Bambri, Mr. Karana Bambri, Ms. Sukriti Singh
and Ms. Divyanshi Saxena, Advocates for R-1.
Mr. Naveen Raheja and Mr. Saurabh Kumar
Dixit, Advocates for R-2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. This appeal has been preferred under Section 96 CPC challenging the impugned judgment and decree dated 05.09.2019 passed by the learned Additional District Judge in suit bearing CS No.75294/2016 titled *Ramesh Chand v. Satya Bhushan and Another*, whereby the suit has been dismissed. Appellant was the Plaintiff before the Trial Court while Respondents No.1 and 2 were the Defendants and parties are hereinafter referred to by their litigating status before the Trial Court.
2. Plaintiff and Respondent No.1 herein/Defendant No.1 are real brothers. A suit for partition, rendition of accounts and injunction was filed by the Plaintiff against Defendant No.1. Subsequently, DDA was



impleaded as Defendant No.2 on 06.08.2009 and an additional relief of declaration and cancellation of Conveyance Deed was added by amendment of the plaint. Case of the Plaintiff was that one Kuldeep Rai was the original allottee and in possession of Plot No.326, B-Block, CPWD, Government Servant Co-operative House Building Society Ltd., Pitampura, Delhi (hereinafter referred to as the "Suit Property"). It was claimed that on 22.08.1985, vide an Agreement to Sell, GPA, Will, etc., Kuldeep Rai sold the property for a consideration of Rs.47,000/-, which was paid equally by Plaintiff and Defendant No.1 and whereas Agreement to Sell, Will and other documents were executed in favour of Defendant No.1 but Power of Attorneys (GPA and SPA) were executed in favour of Plaintiff and the latter were registered at NOIDA on 09.12.1985 and all original documents of the suit property were kept by Defendant No.1.

3. It was claimed that subsequently a single storey house was constructed on the plot with equal contribution by both brothers. An application was made by the Plaintiff in August, 1986 to DESU for installation of a new electricity connection at the suit property and another application was preferred in October 1986, for a gas connection. Fiat car purchased by the Plaintiff in 1990 always remained parked in a portion of the suit property and these facts are pointers of possession and part-ownership of the Plaintiff. Plaintiff also averred that there were two more brothers of the parties but no one except the Plaintiff was residing with the parents and looking after them and since the parents did not want to shift to the suit property, Plaintiff continued to reside with them at House No.611/38, Tri Nagar, Delhi. Suit filed by Defendant No.1 for possession qua Tri Nagar property against the Plaintiff was dismissed by the concerned Court.



4. It is averred that when Defendant No.1 refused to partition the suit property, notice dated 01.07.2004 was sent to him by the Plaintiff and in reply dated 09.08.2004, Defendant No.1 claimed that he had got the suit property converted into freehold from DDA but no details were furnished. Getting no favourable response from Defendant No. 1, Plaintiff filed the suit, from which the present appeal arises.

5. Contentions of the Plaintiff before the Trial Court were that: (a) Plaintiff was the registered Power of Attorney Holder of the seller Kuldeep Rai and thus any Conveyance Deed procured from DDA by Defendant No. 1 was a forged and fabricated document and could not affect the rights of the Plaintiff, who had never executed any document in support of conversion of the property from leasehold to freehold; (b) Agreement to Sell produced by Defendant No.1 in Court was also forged and the name of Defendant No.1 was included in the Agreement after forging the signatures of Kuldeep Rai on the third page and getting the same witnessed by another set of witnesses, different from the initial ones; (c) the act of submitting the Agreement to Sell to the Collector of Stamps in 1994 by Defendant No.1, without any cause or occasion, was only to support his false case that the property had been sold to him; and (d) the two Power of Attorneys executed by Kuldeep Rai in favour of the Plaintiff were not produced by Defendant No.1 and the GPA relied upon for getting the property freehold from DDA was forged.

6. Defendant No.1 contested the suit claiming that: (a) Plaintiff had no right, title or interest in the suit property, which is exclusively owned by Defendant No.1 as its sole owner; (b) Plaintiff was never in possession of any portion of the suit property; (c) the suit was undervalued as the market value of the property was Rs.70 to Rs.80 lakhs; (d) Plaintiff, his wife or any



other member of family never disclosed the address of the suit property to their respective employers which shows that Plaintiff was not in occupation of the suit property or any portion thereof; (e) Defendant No.1 exclusively purchased the suit property under documents dated 22.08.1985 such as GPA/Will/ Agreement to Sell/Affidavits etc. and no document executed in favour of the Plaintiff evidences transfer of ownership/title of the suit property; (f) vacant physical possession of the property was given to Defendant No.1 only, who got the building plan sanctioned in 1986 and exclusively constructed the property in 1986-87 and also paid property tax and applied for conversion to freehold and paid the conversion charges; (g) Kuldeep Rai expired on 04.02.2001 and even assuming there were Power of Attorneys in favour of the Plaintiff, upon death of Kuldeep Rai, the GPA/SPA stood automatically revoked; (h) registration of GPA/SPA at NOIDA was wholly illegal; and (i) Plaintiff at times did park the car in the suit property but that was only for safety purposes whenever Plaintiff travelled out of town.

7. Defendant No.2/DDA claimed that the suit property was allotted to Kuldeep Rai on 09.12.1985 under a perpetual lease deed and subsequently Defendant No.1 applied for conversion. On completion of formalities by Defendant No.1, conversion was allowed and as per procedure, Conveyance Deed was executed in favour of Defendant No.1. If any fraud has been allegedly played by Defendant No.1 on Plaintiff and is so proved, Defendant No.2 shall take appropriate action.

8. In response to the contentions of Defendant No. 1, Plaintiff reiterated the averments in the plaint and pleaded that he and his wife were salary earners and used to keep all their savings with the father of the Plaintiff. On 20.08.1985, Plaintiff took back Rs.25,000/- from his father by way of a



self/bearer cheque from the father's account maintained with PNB, Lawrence Road, Delhi and this money was Plaintiff's contribution towards part sale consideration for purchase of the suit property. Defendant No.1 used to collect contribution of property tax from the Plaintiff till the relationships were cordial and deposit the same with the authorities. Therefore, as per the Plaintiff, the suit property was jointly owned by Plaintiff and Defendant No.1 and he was thus entitled to half the share in the same.

9. On the pleadings of the parties, following issues were settled by the Trial Court:-

"1. Whether the defendant no.1 is not the sole owner of the property no. B-326, Lok Vihar, Pitam Pura, Delhi? (OPP)

2. Whether the plaint has not been properly valued for the purposes of Court fee and jurisdiction? (OPD-1)

3. Whether the plaintiff is entitled to claim partition of the suit property as also a decree of rendition of accounts? (OPP)

4. Whether the plaintiff is entitled to get a decree of cancellation of the Conveyance Deed executed by defendant no.2 in favour of defendant no.1? (OPP)

5. Relief."

10. To substantiate his case, Plaintiff examined himself as PW-1 by tendering his affidavit in evidence Ex.PW-1/A and reiterated the averments in the pleadings. Plaintiff exhibited a large number of documents in evidence as Ex.PW-1/1 to Ex.PW-1/20, however, some of the documents were only photocopies and were de-exhibited on 26.09.2014, the details of which are as follows:-

<i>Exhibit Number / Mark</i>	<i>Description of Document</i>
<i>Ex.PW1/1 & 2</i>	<i>Site plan of suit property</i>
<i>Ex.PW1/3 (Ex.P1)</i>	<i>Perpetual lease dated. 09.12.1985 in favour of Kuldeep Rai by DDA (D2)</i>
<i>Ex.PW1/4 (De-exhibited and given Mark A)</i>	<i>Photocopy of bank account statement of father of parties.</i>



Ex.PW1/5	Building Sanction Plan of suit property
Ex.PW1/6 (De-exhibited and given Mark B)	Photocopy of DESU Cash receipt dated. 05.08.1986
Ex.PW1/7 (De-exhibited and given Mark C)	Photocopy of DESU application for electricity meter dated. 05.08.1986.
Ex.PW1/8	Electricity Bill for the period February-April 2002 in the name of plaintiff
Ex.PW1/9	Gas connection receipt in the name of plaintiff
Ex.PW1/10 (De-exhibited and given Mark D/ Mark 1/10)	Acknowledgment Slip for registration cum demand note dated 28.09.1990.
Ex.PW1/11 (De-exhibited and given Mark E)	RC of Car dated. 01.05.1989
Ex.PW1/12	Car Insurance Policy
Ex.PW1/13	Certified Copy of suit filed by defendant against the plaintiff and WS filed by the plaintiff qua another property.
Ex.PW1/14 & 15	Legal Notice dated. 01.07.2004 by plaintiff to defendant with its postal receipts
Ex.PW1/16	Reply dated. 09.08.2004 by the defendant to the notice of plaintiff
Ex.PW1/17	Certified copy of GPA dated. 22.08.1985 executed by Kuldeep Rai in favour of the plaintiff.
Ex.PW1/18	Certified copy of SPA dated. 22.08.1985 executed by Kuldeep Rai in favour of the plaintiff.
Ex.PW1/19	Notice U/O 12 Rule 8 CPC dated. 22.11.2013 by the plaintiff to the defendant seeking production of documents mentioned therein.
Ex.PW1/20 (de-exhibited and given Mark F)	Photocopy of complaint case lodged by the plaintiff against the defendant in November 2004.

11. On the other hand, Defendant No.1 examined himself as DW-1 by tendering his affidavit in evidence as Ex.D1 and relied upon documents Ex.DW-1/1 to 1/17. Plaintiff objected to the mode of proof of these documents and the objection was deferred for decision at the final stage. Documents exhibited by DW-1 are Ex.DW-1/1 i.e. original Agreement to Sell dated 22.08.1985 bearing signature of Defendant No.1 and Kuldeep



Rai; Ex.DW-1/2, Will dated 22.08.1985 executed by Kuldeep Rai in favour of Defendant No.1, which is a registered document; Ex.DW-1/3, original receipt dated 22.08.1985 signed by Kuldeep Rai, which is also a registered document; Ex.DW-1/4, affidavit dated 22.08.1985 signed by Kuldeep Rai; Ex.DW-1/5 & 1/6, applications for transfer of membership and change of address, written to the Secretary of the Society by Kuldeep Rai; Ex.DW-1/7, 1/8 & 1/9, attested certified true copies issued by MCD for House Tax, addressed to Defendant No.1; Ex.DW-1/10, conveyance deed in favour of Defendant No.1 executed by Defendant No.2 in original; Ex.DW-1/11, communication dated 10.05.1999 sent by Defendant No.2 to Defendant No.1 in original; Ex.DW-1/12, authority letter issued by Kuldeep Rai in favour of Defendant No.1, bearing signatures of Defendant No.1 in original; Ex.DW-1/13, electricity bill for the period October to December, 2005; Ex.DW-1/14, water bill for the period January to June, 2012 in original; Ex.DW-1/15 to 1/17, copies of ration card, election I-card and bank slip dated 20.08.1985 qua pay order for consideration of sale amount in favour of Kuldeep Rai from Defendant No.1, the originals of which were seen and returned on 27.11.2017, as noted by the Trial Court.

12. In cross-examination, Plaintiff denied the suggestion of Defendant No. 1 that documents Ex.PW-1/17 & 1/18 were forged and fabricated. It was denied that when the suit was filed, he was not living in the suit property but also stated that he was residing at Tri Nagar, since 1962 and shifted to suit property for sometime in 1985. Plaintiff deposed that suit property was constructed for Rs.2.25 lacs, out of which Rs.1.12 lacs was paid by him and the money was taken as loan from his Father-in-law and Father. On the other hand, Defendant No.1 maintained the stand that Plaintiff had never accompanied him to meet the seller or at the time of



preparation of title documents. There was no denial to a different set of witnesses in the Agreement to Sell and the bill and receipt or that his name was handwritten on the third page of the Agreement to Sell but denied the suggestion that Ex.DW-1/1 was a forged document. Defendant No.1 also denied the suggestion that the Agreement to Sell was a different one from the actually executed document. Receipt of a self-cheque of Rs.25,000/- on 20.08.1985 was denied when suggested by the Plaintiff. Defendant No.1 deposed that the original GPA on which conversion was sought from DDA was lying with the DDA and he had never sought its return, which fact was denied by Defendant No. 2 and therefore, GPA being a photocopy was only taken on record as Mark-Z. In cross-examination, Defendant No. 1 admitted the gas connection in the name of the Plaintiff but added that it was only for a temporary period.

13. DW-2 Ram Chander from DDA proved Ex.DW-2/1 comprising of 31 pages pertaining to conversion of the property into freehold including copy of GPA executed by Kuldeep Rai in favour of Defendant No.1 with the date of execution being 22.08.1985. He denied having personal knowledge of the procedure adopted for conversion. DW-3 Shivajeet Yadav proved registration of receipt dated 22.08.1985 between Kuldeep Rai and Defendant No.1 as registered in Sub-Registrar's office being Ex.DW-3/1. DW-4 N.K. Maurya from Property Tax Department of MCD proved Ex.DW-1/7 to 1/9, which were attested certified copies of fixation of rateable value of the property, assessment proceedings, etc. DW-5 Anup Singh proved registration of the Will in favour of Defendant No.1 executed by Kuldeep Rai on 22.08.1985 and registered on that day as Ex.DW-5/1.

14. After examining the evidence and hearing the parties, learned Trial Court decided Issue No.2 by holding that Plaintiff was liable to pay



ad-valorem Court fee on the market value of the property i.e. Rs.40 lacs as he was unable to establish that he was in possession of the suit property. Plaintiff was directed to deposit the court fee within 15 days of the judgment. Regarding the relief of cancellation of Conveyance Deed and injunction, it was held that since Plaintiff was not party to the execution of Conveyance Deed, he was not liable to pay the Court fee on the market value of the property or the value in the Conveyance Deed and requisite Court fee was paid on the relief of injunction. Qua the relief of rendition of accounts, it was held that the amount would depend upon the relief granted. Issue Nos.1, 3 and 4 were decided in favour of Defendant No.1 and against the Plaintiff and suit was dismissed.

15. The findings of learned Trial Court while dismissing the suit can be crystallized as: (a) Plaintiff did not mention the exact amount of contribution or the manner and mode of payment of an amount alleged to be paid as part of consideration out of a total sum of Rs.47,000/-, in the plaint; (b) on denial of payment by the Plaintiff by Defendant No.1 in the written statement, for the first time in the replication, it was stated that Plaintiff contributed Rs.25,000/- from the savings money kept with his father out of the salaries of the Plaintiff and his wife, which was withdrawn on 20.08.1985 through a self/bearer cheque from the father's account; (c) factum of payment of Rs.25,000/- was sought to be proved through photocopy of father's Statement of Account, however, the document was de-exhibited by the Court and given mark 'A' and moreover, Ex.DW-1/P1 evidences that no such account in the name of the father was found at PNB, Lawrence Road; (d) the next best way of proving the fact of contribution was by examining his father, however, no efforts were made by the Plaintiff to examine him even under Order X CPC; (e) Plaintiff admitted in



cross-examination that he did not disclose the factum of purchase of the property in his office, which he was bound to do being a Government servant not only with respect to purchase but also construction; (f) the stand that Plaintiff paid half of the construction amount of Rs.1,12,000/- and the money was arranged by taking a loan from his father-in-law and father, was not fortified by any document showing that intimation or permission of loan was given or taken from the Government Department as per the applicable Rules for the purpose. Neither father-in-law nor father were examined to prove this fact and no document evidencing loan was filed; (g) as against this, Defendant No.1 proved Ex.DW-1/17 which was a pay-in-slip dated 20.08.1985 qua the pay order of Rs.47,000/- in favour of Kuldeep Rai and drawn from the account of Defendant No.1; (h) in support of the next best case of the Plaintiff that GPA/SPA was executed by Kuldeep Rai in his favour, no witness was called by the Plaintiff from the office of Sub-Registrar, NOIDA to prove registration of GPA/SPA in favour of the Plaintiff and Ex.PW-1/17 and 1/18, which are certified copies of the so-called registrations, were obtained sometime in June, 1998 as the date on the back side of the stamp papers reflected the said date; (i) assuming these documents were genuinely executed and registered, GPA does not confer any title on the Plaintiff in law, besides the fact that there is no mention in the documents of any consideration passing from the Plaintiff to Kuldeep Rai nor does it indicate anything which shows that Plaintiff was purportedly the co-owner with Defendant No.1 in the suit property while Ex.DW-1/4 executed by Kuldeep Rai in favour of Defendant No.1 reflected that the Agreement to Sell was executed in favour of Defendant No.1 against consideration received and possession was handed over to him; (j) Plaintiff failed to examine witnesses which



could have disproved the execution of documents in favour of Defendant No.1 and insofar as the Agreement to Sell being unregistered was concerned, at that time, law did not mandate registration of the said document; and (k) even if the gas, electricity and landline connection in the suit property existed in favour of the Plaintiff, the documents do not confer title of the suit property and neither does the parking of the car confer either possession or prove ownership.

16. Significantly, Defendant No.1 had also raised an objection that the suit of the Plaintiff was barred by law under the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as the 'Benami Act') being filed in contravention of Section 4 of the said Act. Plaintiff had countered the argument by urging that the suit property was purchased prior to the passing of the Benami Act i.e. in 1985 and the said Act did not have retrospective operation. The Trial Court, after relying on certain judgments on this issue, held in favour of Defendant No. 1 that the suit was barred by law under the Benami Act.

17. Learned counsel for the Plaintiff contended that the learned Trial Court has committed various errors in fact and law while passing the impugned judgment and decree, which therefore deserve to be set aside. Broadly understood, the contentions are: (a) at the time of sale of the suit property, several documents were executed by Kuldeep Rai, partly in favour of both the parties. GPA and SPA were executed in favour of the Plaintiff, authorizing the Plaintiff to sell the property and receive consideration as well as to execute and register all documents for the same which was for the reason that Plaintiff was recognized as a co-owner of the property; (b) Defendant No.1 committed forgery and cheating by changing pages of the Agreement to Sell, contrary to the records of the case, which is



evident from the fact that on all documents executed when property was purchased on 22.08.1985, the attesting witnesses are the same but only in the Agreement to Sell the two witnesses are different; (d) Plaintiff had categorically stated that he had contributed towards sale consideration and half of the construction amount by withdrawing the amount from his father's bank account which was evident from the Statement of Account of his father *albeit* the bank witnesses falsely stated that there was no such account in the bank despite furnishing the Account Number as CC-41; (e) in the evidence Plaintiff had clearly stated that he had spent half the amount on construction but there was no effective cross-examination, save and except, a single question that whether Plaintiff being a Government employee had disclosed this in the service record, which stand was erroneous since Plaintiff's wife was also in service and both had contributed in cash; (f) Trial Court overlooked that electricity/telephone/gas connections were in the name of the Plaintiff in the records of the respective authorities and it was the Plaintiff who was paying all the charges at the relevant time. Even the Registration Certificate of the Fiat car owned by the Plaintiff was on the address of the suit property including the insurance; (g) Defendant No.1 produced a forged and fabricated Power of Attorney allegedly executed by Kuldeep Rai since the latter had already executed one in favour of the Plaintiff and did not even place on record the said Power of Attorney at the initial stage and produced it only subsequently when the DDA official came to depose and this conduct was fraudulent; (h) Plaintiff filed an application under Section 45 of the Indian Evidence Act, 1872 for sending the Power of Attorney to CFSL pursuant to which an official from DDA was summoned to produce the original Power of Attorney on record. However, DDA's stand was that no such Power of



Attorney existed in their records and Defendant No.1 did not produce the original and the learned Trial Court dismissed the application which was an illegality; (i) an important fact was glossed over that late Sh. Wazir Chand, father of the Plaintiff lived with him and the suit filed by Defendant No.1 for mandatory injunction to take over possession of the Tri Nagar property was dismissed vide judgment and decree dated 07.11.2014; (j) Trial Court illegally came to a conclusion that the suit was hit by provisions of 1988 Act overlooking firstly, that no such plea was raised in the entire pleadings or even during the evidence and secondly, the judgment of the Supreme Court in ***R. Rajagopal Reddy (Dead) by LRs. and Others v. Padmini Chandrasekharan (Dead) by LRs., (1995) 2 SCC 630***, where it was held that passing of the 1988 Act will not effect pending proceedings i.e. the said Act will not apply when a suit has already been filed taking a plea that property was held benami or when the defences of the property being benami were taken up before passing of the Act.

18. Learned counsel for Defendant No.1, on the other hand, reiterated the submissions made before the learned Trial Court and contended: (a) the suit is barred by the provisions of 1988 Act and has been rightly dismissed by the Trial Court; (b) Plaintiff has no right, title or interest in the suit property which was exclusively bought and is owned by Defendant No.1; (c) Plaintiff was never in possession of any portion of the suit property as the possession has been exclusively of Defendant No.1; (d) property was purchased in 1985 by Defendant No.1 from its owner Kuldeep Rai through valid transfer documents such as Agreement to Sell/Registered Will/receipt of payment of sale price/GPA, etc.; (e) entire sale consideration was paid by Defendant No.1 vide bank Pay Order dated 20.08.1985 drawn on PNB, Lawrence Road for a sum of Rs.47,000/- upon which possession was



delivered; (f) building plans were sanctioned on the request of Defendant No.1 and cost of construction was also incurred by him after which property was assessed to Property Tax by MCD in 1987-88 in the name of Defendant No.1 and till date, he is receiving the tax bills and paying them; (g) in 1999, Defendant No.1 applied for conversion of leasehold rights into freehold rights with DDA against payment of conversion charges and outstanding dues to the extent of Rs.35,314/-; (h) DDA executed the Conveyance Deed dated 27.05.1999 as all dues were cleared and there was no objection from the Plaintiff and/or the original lessor; (i) no Power of Attorney or any other document or deed was executed by Kuldeep Rai in favour of the Plaintiff and the documents put forth by him are clearly forged and fabricated; (j) there is no forgery in the original Agreement to Sell as the name of Defendant No.1 as purchaser was already mentioned therein and was witnessed by the witnesses. However, Defendant No.1 paid additional stamp duty of Rs.5,610/- with conversion charges of about Rs.27,000/- when Conveyance Deed was executed; (k) suit property was not jointly purchased by Plaintiff and Defendant No.1 and since no money was contributed by the Plaintiff either towards sale consideration of the suit property or construction thereof, the relief of rendition of accounts or injunction and/or declaration cannot be granted and the suit is liable to be dismissed.

19. I have heard the learned counsels for the parties and examined their rival contentions.

20. It is undisputed that initially, Plaintiff had filed a suit for partition, rendition of accounts and injunction wherein only Defendant No.1 was impleaded. It is equally undisputed that Plaintiff and Defendant No.1 are real brothers. Subsequently, on becoming aware of the fact that a



Conveyance Deed had been executed in favour of Defendant No.1 by DDA, plaint was amended to include the relief of declaring the Conveyance Deed dated 27.05.1999 as illegal and invalid and seeking its cancellation and DDA was impleaded as Defendant No.2. Plaintiff has predicated his case on two Power of Attorneys i.e. GPA and SPA, both dated 22.08.1985, allegedly executed by the original owner of the suit property, namely, Kuldeep Rai in his favour, electricity and gas connections in his name and claim of possession is additionally premised on the basis of Registration Certificate of his car, dated 01.05.1989 and a plea that the car was often parked outside the suit property. Bank account statement of the father of the parties was exhibited as PW1/4 but was subsequently de-exhibited being a photocopy and given Mark 'A'. Similarly, photocopies of the cash receipt and application with DESU and the RC of the car were also marked as mark 'B', 'C' and 'E', respectively, after they were de-exhibited.

21. *Per contra*, Defendant No.1 contested the suit claiming title and ownership of the suit property as an exclusive owner, premised on Agreement to Sell dated 22.08.1985, Will dated 22.08.1985 and a receipt bearing the same date as well as an affidavit, all executed and signed by Kuldeep Rai as well as applications for transfer of membership addressed to the society signed by Kuldeep Rai, house tax assessment documents of MCD and the Conveyance Deed executed by DDA. Defendant No.1 also relied on electricity and water bills, ration card and a bank slip dated 20.08.1985 qua pay order towards consideration of the sale amount of Rs.47,000/- in favour of Kuldeep Rai. Originals of the said documents were seen and returned on 27.11.2017 and as recorded by the Trial Court, were proved in accordance with law. It is to be noted that the Will and the



original receipt were registered documents.

22. Issue No.2 as decided by the Trial Court need not detain this Court as no arguments were canvassed by the parties on this. Coming to Issue Nos.1, 3 and 4, the onus of proving that Defendant No.1 was not the sole owner of the suit property; whether the Plaintiff is entitled to claim partition and seek a decree of rendition of accounts and cancellation of Conveyance Deed, was on the Plaintiff. As rightly noted by the Trial Court, when the suit was initially filed, Plaintiff had only pleaded that Kuldeep Rai had transferred all his rights, title and interest in the suit property by executing documents and Plaintiff and Defendant No.1 had paid Rs.47,000/- in equal contribution and had thus become joint owners. The exact amount contributed or the manner and mode of contribution was not mentioned. After the written statement was filed by Defendant No.1 denying the factum of payment by the Plaintiff towards sale consideration, for the first time in the replication, it was mentioned that Plaintiff contributed Rs.25,000/-. It was averred that Plaintiff and his wife used to keep their savings with the father of the Plaintiff and on 20.08.1985, through a self/bearer cheque, the said sum was withdrawn from father's account. To prove the alleged payment of Rs.25,000/- as part sale consideration, Plaintiff produced photocopy of the statement of account of his father, which as aforementioned, was de-exhibited and therefore, the payment was not proved as required under law, as noted by the Trial Court and rightly so and cannot be read in evidence. It is a settled principle of law that photocopy of a document is inadmissible in evidence, in the absence of the original and unless proved in accordance with the provisions of Sections 62, 63 and 65 of the Indian Evidence Act as held in several judgments and for ready reference, I may refer to a judgment of the



Supreme Court in *United India Insurance Co. Ltd. v. Anbari and Others*, (2000) 10 SCC 523 and of this Court in *Ms. Arati Bhargava v. Kavi Kumar Bhargava (deceased) through LRs*, 1999 SCC OnLine Del 304 as well as the judgments of High Court of Madhya Pradesh in *Anandram and Others v. Gauri Bai and Others*, 2023 SCC OnLine MP 3514 and *Narendra Kumar v. Deepchand and Others*, 2023 SCC OnLine MP 3152. Being a photocopy, the statement of account was required to be proved in accordance with Section 65 of the Indian Evidence Act and the Plaintiff was further required to examine the person, who took the photocopy of the original. Thus, Plaintiff was unable to prove the alleged payment of Rs.25,000/- towards part sale consideration, the statement of account being inadmissible in evidence and this has to be seen in the light of another crucial document Ex.DW-1/P-1. This is a letter dated 26.11.2017 produced by the summoned witness from the Bank wherein it was stated that no account of the father of the Plaintiff existed in the said Bank. In view of this communication, the next best way in which Plaintiff could have proved that Plaintiff used to keep his savings in his father's account and that a sum of Rs.25,000/- was given to him by his father for the purpose of sale consideration, was by examining his father. Despite averments in the plaint that father of the parties was alive and fit to walk, no efforts were made to examine his father, even under Order X CPC, to clinch this controversy. Thus, no evidence came on record to support the case of the Plaintiff that he had paid part sale consideration.

23. The matter can be seen from another angle. Admittedly, Plaintiff was a Government servant and as per applicable Rules, was required to disclose to the employer about purchase of any immovable property and/or any construction therein. During cross-examination, Plaintiff admitted that he



had not disclosed in his office about the purchase of the suit property and consequently, there was no document on record to evidence so. Similarly, while the Plaintiff claimed that he had paid half the construction amount of Rs.1,12,000/- by taking loan from his father and father-in-law, no document was filed and nor was it pleaded that permission was taken prior to taking the loan or that any subsequent intimation was given of taking the loan. Interestingly and significantly, neither the father nor the father-in-law were examined to establish this plea and therefore, the stand of the Plaintiff that construction money was paid by taking the loan could not be substantiated and established by evidence.

24. The defence of joint contribution towards purchase of the suit property and construction was therefore rightly rejected by the Trial Court. Regarding construction, Plaintiff had urged that neither the Plaintiff nor Defendant No.1 proved any document and therefore, it cannot be said that Plaintiff did not contribute or that Defendant No.1 alone constructed it. The Trial Court found the argument to be fallacious and rightly so, observing that the burden of proof was on the Plaintiff. It was the Plaintiff's suit which had to fail if neither side proves the cost of construction undertaken. This observation is in consonance with the provisions of Section 102 of the Indian Evidence Act, whereby if both parties fail to adduce evidence, the suit must fail. In this context, I may allude to a recent judgment of the Supreme Court in *Smriti Debbarma (Dead) Through Legal Representative v. Prabha Ranjan Debbarma and Others*, 2023 SCC OnLine SC 9, wherein the Supreme Court observed that the weakness of the defence cannot be a justification to decree the suit. In terms of Section 102 if both parties fail to adduce evidence, the suit must fail and the burden cannot be shifted to the Defendant unless the Plaintiff creates a high degree



of probability to shift the onus. Therefore, if the Plaintiff is unable to discharge the burden, the suit cannot succeed on a plea that Defendant No.1 was unable to establish his contribution towards construction.

25. As against this, Defendant No.1 proved the pay-in-slip dated 20.08.1985 qua the pay order for a sum of Rs.47,000/- in favour of Kuldeep Rai and drawn on the account of Defendant No.1. Defendant No.1 deposed that the suit property was exclusively owned and possessed by him and was not joint and Plaintiff was never in possession. He stated that the suit property was purchased in the year 1985 from its owner Kuldeep Rai and various documents such as Agreement to Sell, Registered Will and receipt of payment of sale price, GPA, affidavit, etc. all dated 22.08.1985 were executed by Kuldeep Rai in his favour. DW-3 proved registration of receipt as Ex.DW-3/1 while DW-5 Anup Singh proved registration of the Will executed by Kuldeep Rai in favour of Defendant No.1 as Ex.DW-5/1. A letter of transfer of membership in the concerned society from Kuldeep Rai to the Secretary of the society was also proved. The entire sale consideration was stated to be paid through a Bank Pay Order dated 20.08.1985 for a sum of Rs.47,000/-, which was exhibited as Ex.DW-1/17. It was stated that the building plan was got sanctioned from the concerned authorities and subsequently construction was carried out by Defendant No.1 out of his own money. After completion of construction, property was assessed to property tax by the MCD in the year 1987-88 in the name of Defendant No.1 and he alone was paying the entire property tax. DW-4 Sh. N.K. Maurya from Property Tax Department of MCD proved the assessment record and the documents were exhibited as Ex.DW-1/7 to Ex.DW-1/9. It was deposed that in the year 1999 when Kuldeep Rai was alive, Defendant No.1 applied for conversion of the suit property from



leasehold to freehold with the DDA, against payment of conversion charges and other outstanding dues, totalling to a sum of Rs.35,314/- and the charges were paid by a Bank Draft bearing No.652902 dated 27.03.1999 drawn on Allahabad Bank, Delhi. DDA executed and registered the Conveyance Deed dated 27.05.1999. Original Conveyance Deed and letter dated 10.05.1999 from DDA were exhibited as Ex.DW-1/10 and Ex.DW-1/11. It was also stated that no document or Power of Attorney was executed in favour of the Plaintiff and thus the documents relied on are forged, fabricated and fraudulent. It was also deposed that as a Power of Attorney holder one is only an agent of the principal and not owner of the property. Kuldeep Rai never appointed the Plaintiff as his Attorney and assuming that he did, the same stood revoked with the death of Kuldeep Rai on 04.02.2001. The original GPA executed by Kuldeep Rai in favour of Defendant No.1 was stated to have been in possession of the DDA, which was submitted when Defendant No.1 had applied for conversion to freehold and execution of the Conveyance Deed. In cross-examination, Defendant No.1 reiterated his stand and denied the suggestion that he had received money from the Plaintiff as part sale consideration or that the property was jointly purchased. The suggestion that Plaintiff had paid half the money towards construction of the plot was also denied. Therefore, Defendant No.1 established the payment of sale consideration to Kuldeep Rai and execution of documents in his favour by him and on the contrary, Plaintiff was unable to establish payment of part sale consideration or contribution towards construction.

26. Coming to the issue of documents, which formed the basis of the defence of Defendant No.1, it is significant to note that Plaintiff did not deny the execution of the documents such as Agreement to Sell, Will,



receipt, etc. in favour of Defendant No.1 and in fact, admitted in the pleadings and in the examination-in-chief that the property was purchased jointly by the parties wherein Agreement to Sell, Will, etc. were executed in favour of Defendant No.1 while two Power of Attorneys were executed in favour of the Plaintiff, which were registered in NOIDA, U.P. *albeit* later he took a stand that the Agreement to Sell produced by Defendant No.1 in the List of Documents was not the initial agreement and was fabricated, which issue I shall advert to later. Therefore, the only question is as to what is the effect of the Power of Attorneys (GPA and SPA) allegedly executed in favour of the Plaintiff.

27. On this issue, Trial Court has rendered two separate findings, one on fact and the other in law. On the factual aspect, Trial Court has noted that the certified copies of GPA and SPA, exhibited as Ex.PW-1/17 and Ex.PW-1/18 respectively, are executed on stamp papers bearing the date of purchase by Kuldeep Rai as 18.06.1998, on the back side of the stamp papers and there is no date of execution of the documents as the relevant columns on the third and last page were blank. However, the documents contain handwritten endorsement that they were registered on 22.08.1985. Trial Court also notes that no officials from the Sub-Registrar's Office, NOIDA, where the two documents were allegedly registered, were examined by the Plaintiff. In this backdrop, the authenticity and genuineness of the two documents came in question. Nothing has been argued even today before this Court to explain the discrepancy in the dates and the fact that the stamp papers bear a date of purchase subsequent to the registrations of the Power of Attorneys, does dent the case of the Plaintiff.



28. Even assuming that the said documents were actually executed and are genuine, even on the legal score, in my view, Plaintiff cannot succeed in claiming title/ownership to the suit property. Power of Attorney, by its very nature, is a document which authorizes the holder to act as an agent on behalf of the person executing the document and it is no longer *res integra* that as a standalone document it does not vest title or ownership in the holder of the document. It is equally settled that before a General Power of Attorney can create rights in an immovable property and can be termed as irrevocable, it must be executed for consideration, in terms of Section 202 of the Indian Contract Act, 1872. In this context, I may allude to the judgment of the Supreme Court in ***State of Rajasthan and Others v. Basant Nahata, (2005) 12 SCC 77***, relevant paragraph of which is extracted hereunder for ready reference:-

“52. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.”

29. It would be useful to refer to a judgment of this Court in ***Smt. Gurmeet Kaur v. Shri Harbhajan Singh and Anr., 2017 SCC OnLine Del 8529***, wherein the Court observed as under:-

“12. (ii) In fact the courts below have completely ignored the law and caused a gross illegality and perversity in accepting the general power of attorney Ex.DW-3/1 executed by the erstwhile owner Sh. Pawan Kumar in favour of the respondent no. 1/defendant no. 1 as conferring title of the suit property to the respondent no. 1/defendant no. 1 inasmuch as a general power of attorney before the same can create rights in an immovable property must be executed for consideration in terms of Section 202 of the Indian Contract Act. It is only a general power of attorney which is supported by consideration which has the effect of being irrevocable and conferring rights in an immovable property. It was never the case of the respondent no. 1/defendant no. 1 that the general power of attorney Ex.DW-3/1 was executed for consideration paid by the respondent no. 1/defendant no. 1/Sh. Harbhajan Singh to the erstwhile



owner Sh. Pawan Kumar. In fact, as already stated above, consideration was paid by the plaintiff Sh. Sarwan Singh to Sh. Pawan Kumar as duly recorded in the receipt Ex.PW 1/3, and a sum of Rs. 2.50 lacs out of the total consideration of Rs. 3 lacs was paid by a bank draft to Sh. Pawan Kumar by Sh. Sarwan Singh. Therefore the general power of attorney Ex.DW-3/1 cannot be a basis for claim of any ownership in the suit property by the respondent no. 1/defendant no. 1 and therefore the courts below have committed complete illegality and perversity in dismissing the suit for possession and damages.

(iii) At this stage the different logics of execution of a general power of attorney which is accompanying an agreement to sell is required to be noticed. In the first type of cases by a general power of attorney, the general power of attorney holder acts for and on behalf of the original owner and therefore it is a practice in Delhi that sometimes a general power of attorney is executed in favour of a third person and in whose name the agreement to sell is not executed, and this is done so as to enable the third person to act as an independent person on behalf of the executant of the general power of attorney for the subsequent execution of the sale deed of the property in favour of the buyer under the agreement to sell and also for taking further steps with respect to the property transferred. In second type of cases a general power of attorney is not executed in favour of a third person but is directly executed in favour of the transferee under the agreement to sell, and who then acts in two capacities i.e. one as a transferee of the immovable property having the benefit of the doctrine of part performance and another as the irrevocable attorney holder of the original owner and having rights under Section 202 of the Indian Contract Act. In the third type of cases, two general power of attorneys are executed by the transferor of an immovable property; one being in favour of the transferee and another being in favour of a third person; and which last/third position is the factual position in the present case. This third position has the advantages of both the first and second positions as stated above. In any case, and as stated above, any general power of attorney executed in favour of the respondent no. 1/defendant no. 1/Sh. Harbhajan Singh being Ex.DW-3/1 will not give any rights in the suit property to the respondent no. 1/defendant no. 1 inasmuch as rights which are created are created in a transferee under an agreement to sell and which was the plaintiff Sh. Sarwan Singh, with the fact that as regards a general power of attorney it is only a general power of attorney given for consideration which is irrevocable under Section 202 of the Indian Contract Act and in the facts of this case admittedly no consideration is pleaded or proved to have been passed from respondent no. 1/defendant no. 1 to the erstwhile owner Sh. Pawan Kumar. Hence, no rights in the suit property were ever transferred or created by the erstwhile owner Sh. Pawan Kumar in favor of the respondent no. 1/defendant no. 1."

30. To the same effect is the judgment of this Court in **Hardip Kaur v. Kailash & Anr., 2012 SCC OnLine Del 2937**, relevant paragraphs of



which are as follows:-

“18.

(i) *In Harbans Singh v. Shanti Devi, 1977 RLR 487, the seller had executed an agreement to sell in favour of the purchaser and the General Power of Attorney in favour of her husband. The General Power of Attorney was stated to be irrevocable and it authorized the attorney to further sell the subject property. The seller later cancelled the agreement to sell and all other documents including the General Power of Attorney. The Trial Court held the General Power of Attorney to be irrevocable which was challenged in appeal before this Court. The Division Bench of this Court held that the General Power of Attorney was executed for a valuable consideration and the agent had an interest in the property and, therefore, the General Power of Attorney was irrevocable.*

This Court negated the seller's contention that a contract of sale 'of itself' does not create any interest in or charge on immovable property under Section 54 of the Transfer of Property Act, 1988 and, therefore, the purchaser cannot be said to have an interest within the meaning of Section 202 of the Contract Act. It was held that the purchaser had an interest in the immovable property for the purposes of Section 202 of the Contract Act, if not for the purposes of Transfer of Property Act and Registration Act.....

25.

(iv) *... It is only in law that the attorney became an agent of the plaintiff. But this agency was only with a view to serve the purpose of the purchaser. His interest in this transaction was the same as that of the purchaser. It was, therefore, the interest of the attorney that the property which was the subject-matter of the agency should be conveyed by the plaintiff to the purchaser.*

(vi) *The agreement to sell, General Power of Attorney, receipt, affidavit, will and indemnity bond executed contemporaneously constitute one transaction and they have to be read and interpreted together as if they are one document.....”*

31. Trial Court has relied on another judgment of this Court and rightly so in the case of ***Arbinder Singh Kohli & Anr. v. Gobind Kaur Kohli, 2018 SCC OnLine Del 9663***, which was a case similar on facts to this case where none of the documents filed by the Plaintiff were disputed by the Defendants regarding the Agreement to Sell, etc. and the only plea was that Power of Attorney had been executed in favour of Defendant No.2. Sale consideration was shown to be paid only from the Bank account of the



Plaintiff and there was nothing on record to show that Defendant No.1 had contributed to the purchase of the suit property. Defence of joint contribution was rejected by observing as follows:-

“35. A Power of Attorney merely permits the holder to act as the agent of the person executing the attorney. This Power of Attorney on a standalone basis is merely an agency and cannot vest a title in an immovable property. The execution of the Power of Attorney without any consideration thereof, on a standalone basis merely constitutes an agency and nothing more. Even though the Power of Attorney can be termed as being irrevocable, the nature of the documents cannot be changed. This General Power of Attorney has to be tested as against the entire set of documents executed in favour of the Plaintiff. The pattern which clearly emerges is that the Plaintiff purchased the suit property from Shri Suresh Chand Kapoor and the Power of Attorney was executed in favour of her daughter-in-law by the son of the vendor only to enable the registration of the sale deed at a future point of time. The General Power of Attorney, without the remaining set of documents, does not constitute a transfer of title.

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38. Thus, the irrevocable General Power of Attorney in favour of Defendant No. 2 does not have the effect of transferring any title in favour of Defendant No. 2. The Plaintiff can in fact use the Agreement to Sell and the General Power of Attorney executed in favour of her husband to get the conveyance deed executed in her favour as held in Suraj Lamps, if and when the same becomes possible or permissible.

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40. The Plaintiff herein, is not seeking protection of her possession under Section 53A of the TPA in the present case. She, having purchased the property through various documents namely, Agreement to Sell, Will, letter of possession and receipt, is seeking to evict her son and daughter-in-law who she had permitted to stay with her in the suit property. The Plaintiff only needs to establish a better title than the Defendants and not an absolute title. Suraj Lamps (Supra) clearly holds that though sales by Agreement to Sell, Will, etc, are not legally valid modes of transfer, they are permitted to get the transactions already entered into, regularised. Thus to this extent, Suraj Lamps (Supra), completely protects the Plaintiff's rights. The Plaintiff has taken steps to get the General Power of Attorney in favour of Defendant No. 2 cancelled and get a new Power of Attorney executed in favour of her husband. The parties who have purchased properties by means of Agreement to Sell/Will are entitled to obtain and seek specific performance. Suraj Lamps (Supra) also recognises that on the basis of such documents, even mutations made by the municipal or revenue authorities need not to be disturbed. A General Power of Attorney given amongst family members is also recognised by



Suraj Lamps (Supra).

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42. As observed by this Court, in *Sachin v. Jhabbu Lal*, AIR 2017 Del 1, the Plaintiff has established a better right and title to the suit property than her son and daughter-in-law, who were permitted to live in the suit property by her.”

32. In the present case, from the evidence, both oral and documentary, it is clear that Plaintiff was unable to show that any consideration was paid by him to Kuldeep Rai at the time of execution of the GPA and SPA and none is mentioned in the documents. Kuldeep Rai was not examined by the Plaintiff, who may have shed some light on the receipt of consideration as part payment towards purchase of the property. Hence, in view of the judgments on the subject, the documents, even if genuine, cannot be treated as documents conferring title or ownership on the Plaintiff and were only documents delegating the power to do certain acts on behalf of Kuldeep Rai and were revocable SPA/GPA and stood revoked on the death of Kuldeep Rai on 04.02.2001.

33. It is a settled law that Plaintiff in a suit for title and possession can succeed only by making out his title and entitlement to possession and not on any alleged weaknesses in the title or possession of the Defendant. **[Ref.: T.K. Mohammed Abubucker (Dead) Through LR.s. and Others v. P.S.M. Ahamed Abdul Khader and Others, (2009) 14 SCC 224].** Therefore, once Plaintiff has been unable to establish his joint ownership to the suit property, no infirmity can be found with the impugned judgment dismissing the suit. Be that as it may, Defendant No.1 was able to establish execution of Agreement to Sell, Registered Will and receipt, affidavit, etc. by Kuldeep Rai on receipt of Rs.47,000/- as sale consideration. From the contemporaneous documents proved by Defendant No.1, it is clear that his case was in the second type of cases delineated by this Court in *Smt.*



Gurmeet Kaur (supra), in paragraph 12(iii) extracted above. The Court observed that there are different logics of execution of GPA which accompanies an Agreement to Sell. Carving out three categories, the Court observed that the second type of cases are where the GPA is executed not in favour of a third person but directly in favour of the transferee and who then acts in two capacities i.e. one, as a transferee of the immovable property having the benefit of doctrine of part performance and another, as the irrevocable attorney holder of the original owner having rights under Section 202 of the Indian Contract Act. This irrevocable Power of Attorney coupled with the Agreement to Sell gives a better title to Defendant No.1 and he can acquire an absolute title by execution of a Conveyance Deed in his favour, which in this case has already been executed by the DDA on 27.05.1999. It is an admitted position in the present case that the Agreement to Sell in favour of Defendant No.1 was not registered while the Will and the receipt of payment are registered documents. The receipt of payment evidences consideration having been passed from Defendant No.1 to Kuldeep Rai towards purchase of the property and Will is the testament of the Testator. Both the documents being registered, *prima facie* authenticity is to be attached to their execution and genuineness and moreover, Plaintiff did not claim that the documents were not executed by Kuldeep Rai. Insofar as the Agreement to Sell is concerned, it may be noted that the same was executed on 22.08.1985 and compulsory registration of the Agreement to Sell came through amendment by Act 48 of 2001 w.e.f. 24.09.2001 when Section 53-A of the Transfer of Property Act, 1882 and other related provisions of other Statutes including Indian Stamp Act, 1899, etc. were amended. Though classically, unregistered Agreement to Sell may not give complete ownership rights as a Registered



Sale Deed executed under Section 54 of Transfer of Property Act, 1882, however, in this context, judgment of the Supreme Court in ***Suraj Lamp and Industries Private Limited (2) Through Director v. State of Haryana and Another, (2012) 1 SCC 656***, is significant and relevant paragraphs are as follows:-

“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 regularise 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 regularisation of allotments/leases by development authorities. We make it clear that if the documents relating to “SA/GPA/will transactions” have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision.

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



34. In the aforementioned judgment, the Supreme Court held that Agreement to Sell/GPA/Will transactions are not ‘transfers’ or ‘sales’ and cannot be treated as completed transfers or conveyances. However, it was further held that if they were entered into before the date of the decision, they may be relied upon to apply for regularization of allotments/leases by developmental authorities. It was further made clear if the documents relating to ‘SA/GPA/Will transactions’ had been accepted and 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. In the present case, Defendant No.1 had applied for conversion of the property to freehold as also for execution of the Conveyance Deed. Defendant No.1 has placed on record the Conveyance Deed dated 27.05.1999 executed by DDA as Ex.DW-1/10. DW-2 Ram Chander was summoned from DDA, who produced the entire record relating to conversion of the property into freehold as Ex.DW-2/1, stated that he was the custodian of the record and had no personal knowledge of the record produced by him but the documents were in order as per record. Insofar as the Conveyance Deed is concerned, the stand of the Plaintiff was that it was executed on the basis of forged and fabricated documents and was liable to be cancelled. The onus on the Plaintiff to prove forgery and fabrication was not discharged as no evidence was led, oral or documentary, to establish the alleged forgery. It was not DDA’s case that the Conveyance Deed was not an authentic or genuine document or that it was not executed by DDA. In a recent judgment in *Smriti Debbarma (supra)*, the Supreme Court held that whichever party asserts the existence of a particular state of things to claim relief, must so establish. This is the mandate of Section 101 of the India Evidence Act, which states



that burden on proving the fact rests with the party who substantially asserts in the affirmative and not on the party which denies it. Plaintiff has failed on all parameters to discharge the burden that the Conveyance Deed was executed on the basis of forged documents. Therefore, in light of the judgment of the Supreme Court in *Suraj Lamp (supra)*, once the Conveyance Deed was executed by the DDA in favour of Defendant No.1, it cannot be urged by the Plaintiff that no title/ownership was conferred on Defendant No.1.

35. Another ancillary argument raised on behalf of the Plaintiff, though subtly pressed, was that the Agreement to Sell dated 22.08.1985 produced before the Court was not the initial agreement executed by Kuldeep Rai. It was urged that 3rd page of the agreement was changed by Defendant No.1 and which is why it had the signatures of another set of witnesses, namely, Inderjeet and Rajeev and not the signatures of Darshan Singh and B.K. Vashisht. In my view, the Trial Court rightly rejected the argument on the ground that the best way of proving this alleged change of 3rd page of the agreement was either by examining Kuldeep Rai and if he was not available for any reason, by examining someone from his family or a person acquainted with the signatures of Kuldeep Rai. The Trial Court has rendered a finding after closely examining the agreement that the 1st page indeed bears the name of Defendant No.1 as the sole purchaser of the property and significantly, the Plaintiff himself admitted that an Agreement to Sell was indeed executed by Kuldeep Rai in favour of Defendant No.1. Plaintiff could have examined Darshan Singh and B.K. Vashisht who were witnesses to the Will and receipt and they could have thrown some light whether the agreement was original or any page thereof was changed. This Court finds no reason to interfere with this finding of the Trial Court when



the Plaintiff failed to discharge the onus of establishing the alleged change in the Agreement to Sell.

36. Much was argued by the Plaintiff that electricity and gas connections were initially in the name of the Plaintiff and continued to be so for a long time till they were transferred in the name of Defendant No.1. To my mind, documents relating to electricity and gas connection cannot be taken as documents bestowing title to a property in the absence of any further evidence of ownership recognized in law. In *Sanjana v. BSES Yamuna Power Ltd., 2021 SCC OnLine Del 4156*, this Court and in *Man Prakash Projects Pvt. Ltd. v. Harish Chopra and Others, 2018 SCC OnLine Cal 12406*, the Calcutta High Court have held that mere grant of electricity connection cannot be proof of title to the property so as to make the occupant a lawful occupant unless one is able to establish independent right, title and interest in the property based on documents, which in law confer title and ownership.

37. Before drawing the curtains, I may also deal with the last objection taken by Defendant No.1 before the Trial Court and reiterated here with respect to the suit being barred by law under the Benami Transactions (Prohibition) Act, 1988 being filed in contravention of Section 4 of the Act. Be it noted that the only objection taken by the Plaintiff to this objection by Defendant No.1 was that the suit property was purchased prior to the passing of this Act in 1988 and therefore the Act could not have retrospective application. To so urge, Plaintiff relied on the case of *Mithilesh Kumari and Another v. Prem Behari Khare, (1989) 2 SCC 95*. Defendant No.1, on the other hand, relied upon the judgment of this Court in *Manoj Gupta v. Mrs. Manju Rani & Others, 2011 SCC OnLine Del 1447*, as also in *Aparna Sharma & Ors. v. Sidhartha Sharma & Anr.,*



2018 SCC OnLine Del 7758, and other judgments. In my view, the Trial Court rightly negated the contention of the Plaintiff in view of the judgment of the Supreme Court in **R. Rajagopal Reddy (supra)**, wherein a three Judges Bench of the Supreme Court held that passing of the Act will not affect pending proceedings i.e. the Act will not apply where or when a suit has already been filed before the passing of the Act taking the plea that property was held as benami or when the defences of the property being benami, were already taken up before passing of the Act. In **Probodh Chandra Ghosh v. Urmila Dassi and Another, (2000) 6 SCC 526**, the Supreme Court observed that what is to be seen in terms of Section 4 of the Act is whether the party had filed any suit, claim or action subsequent to the coming into operation of the Benami Act or not. If suit, claim or action was pending on the date Benami Act came into force, then it would continue to be adjudicated in accordance with law and bar of Section 4 would not be applicable. In the present case, admittedly the suit was filed on 21.07.2005 i.e. after coming into operation of the Benami Act. The only documents relied upon by the Plaintiff in his favour are the GPA and SPA in which there is no mention of any consideration having passed to Kuldeep Rai and in no manner the documents show any right, title or interest in favour of the Plaintiff qua the suit property. GPA/SPA as standalone documents do not confer title or ownership in law on the holder of the Power of Attorneys and therefore as rightly held by the Trial Court, the suit was barred by the Benami Act. In view of the aforesaid observations made in light of the evidence on record as well as the law on the subject, the impugned judgment and decree of the Trial Court does not warrant any interference.



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38. The appeal is accordingly dismissed along with pending applications, which were not pressed during the course of hearing.

JYOTI SINGH, J

NOVEMBER 29, 2023/kks/shivam

Signature Not Verified

Digitally Signed
By: KAMAL KUMAR
Signing Date: 01.12.2023
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