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

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*Reserved on: 01.02.2023
Pronounced on: 25.04.2023*

+ **RFA 112/2022, C.M. Nos. 15794/2022, 4792/2023 & 4793/2023**

SARITA PARWANDA

..... Appellant

Through: Mr. Akshay Makhija, Senior Advocate with Mr. Adarsh Chamoli, Advocates.

versus

GUNJAN KUMAR & ANR.

..... Respondents

Through: Mr. Arvind Sharma, Mr. M.K. Jha, Advocates for R-1.
Mr. Manish Makhija, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The Appellant in the present Appeal is impugning the judgment dated 05.01.2022 ("**Impugned judgment**") in CS DJ No. 209865/2016 passed by the Court of Ms. Geetanjali: ADJ-05, South East District, Saket Courts, Delhi titled as '**Smt. Gunjan Kumar v. Shri Vipin Kumar Parwanda & Anr.**' Vide the Impugned Judgment, the learned Trial Court was pleased to allow the Suit for Injunction and Possession filed by Respondent No.1.

FACTS GERMANE FOR THE ADJUDICATION OF THE PRESENT WRIT PETITION ARE AS FOLLOWS:

2. It is the case of Respondent No.1 (Original Plaintiff in the Civil Suit) that the Appellant (Original Defendant No.2 in the Civil Suit) and Respondent No.2 (Original Defendant No.1 in the Civil Suit) are wife and husband and they purchased a property i.e., plot bearing No. 139, Block A, Kalkaji Extension Scheme, New Delhi admeasuring 160 sq. meters from one Shri Prabhu Singh *vide* Agreement to sell and General Power of Attorney (GPA) both dated 24.04.1992. Further, the said property was converted from leasehold to freehold by the Appellant and Respondent No.2 *vide* Conveyance deed dated 11.07.1994. Over the said land, the Appellant and Respondent No. 2 constructed a residential house, comprising of Basement, Ground Floor, First Floor and Second Floor.
3. It is further the case of the Respondent No.1 that *vide* a General Power of Attorney dated 04.04.1995, Appellant authorized Respondent No.2 to sell the aforesaid property and receive such sale consideration.
4. Pursuant to that, the Appellant and Respondent No.2 expressed their interest to sell the ground floor of the aforesaid property and thereupon discussions were held with regard to that. On 01.11.2009, Respondent No.2 entered into an agreement to sell with Mr. Ashwani Kumar/husband of Respondent No.1 with respect to the ground floor of the property i.e., plot bearing No. 139, Block A, Kalkaji Extension Scheme, New Delhi (*suit*

property”), whereunder Respondent No.2 agreed to sell the suit property to Mr. Ashwani Kumar/husband of Respondent No.1 for a sale consideration of Rs. 22,50,000/- (Twenty-Two Lacs Fifty Thousand Only). Respondent No.1 claims that on the same day, a sum of Rs. 12,50,000/- (Twelve Lacs Fifty Thousand Only) was paid in cash as part of payment/advance, to Respondent No.2 against the total sale consideration of Rs. 22,50,000/-. Further, the balance sum of Rs. 10,00,00/- (Ten Lacs Only) was also received by the Appellant and Respondent No.2 *vide* cheque bearing No. 884511 dated 15.01.2010. Respondent No.1 further claims that as per one of the clauses of the Agreement to Sell dated 01.11.2009, the sale deed was to be registered either in the name of Mr. Ashwani Kumar/husband of Respondent No.1 or that of his nominee. Subsequently, the sale deed dated 15.01.2010 with respect to the suit property was registered in the name of Respondent No.1 on 22.01.2010.

5. Further, It is the case of Respondent No.1 that at the time of executing the sale deed, though it was recorded in the document that actual physical possession of the suit property had been handed over by the Appellant and Respondent No.2 to Respondent No.1, but the Appellant and Respondent No.2 had expressed some difficulty in handing over possession on account of the their daughter’s final school examinations and they had promised respondent No. 1 that they would hand over vacant peaceful possession to her immediately after their daughter's examinations were over. However, when the Appellant and

Respondent No.2 continued occupying the suit property and failed to hand over peaceful possession thereof to Respondent No.1, she was compelled to institute the suit in December, 2010. Pertinently, Respondent No.1 and her husband also came to know that the Appellant and Respondent No.2 entered into various agreements to sale with various other persons and one of those alleged purchaser namely Shri Sanjeev Malhotra had also filed an FIR against the Appellant and Respondent No. 2.

6. Both Appellant and Respondent No. 2 filed separate written statement to the suit. In the written statement filed by the Appellant, it was stated that she did not execute the General Power of Attorney dated 04.04.1995 in favor of Respondent No 2. Further, the next objection raised by the Appellant and Respondent No.2 was that the suit filed by Respondent No.1 is without any cause of action as she has already admitted that the suit property has not been handed over to her and further it has also been admitted by her that she has requested several times to vacate the suit property but the same has been declined by the Appellant and Respondent No. 2. Lastly, Appellant stated that she never went to any authority in order to execute any document in favor of Respondent No.1, therefore the false arraying of Appellant results in mis-joinder of parties. One of the objections raised by the Appellant was that Respondent No.2 never executed any Power of Attorney in favor of Appellant and the same is forged and fabricated.

7. Further, it was also stressed upon by the Appellant, that she along with her son Abhinav and daughter Sonia Grover had instituted a suit bearing No. CS (OS) No. 953/2008 against Respondent No.2, for the dissolution of Hindu Undivided Family (“**HUF**”) and partition of the properties since all parties to the suit were residing under HUF. In the course of proceedings, the matter got settled by Memorandum of Settlement (“**MOS**”) dated 23.10.2009. Pursuant to the settlement, this Court decreed the Suit *vide* its order dated 11.12.2009 and held the HUF non-binding upon the parties. As per the terms of the Settlement, the Appellant, Respondent No.2 and their daughter Sonia were entitled to 20% share each and the son of the Appellant and Respondent No.2 was entitled to a share of 40%. Further, it was stated by Respondent No.2 that as Mr. Ashwani Kumar the husband of Respondent No.1 was a friend of Respondent No. 2, he was well aware of the MOS. Furthermore, it was also stated by Respondent No.2 that the Appellant had taken a loan of Rs. 10,00,000/- from the husband of Respondent No.1 Mr.Ashwani Kumar against the mortgage of the suit property, however, the sale deed was executed in the name of Respondent No. 1/Gunjan Kumar. Respondent No.2 also stated that Respondent No.1 is a total stranger to her and no relation exists between both of them and the consideration amount as claimed by Respondent No.1 of Rs. 12,50,000/- through cash and Rs. 10,00,000/- by cheque has not been received by Respondent No.2 and Respondent No.1 has not placed on record any receipt with regard to the said claim. On

the other hand, Respondent No.2 stated that he took a loan of Rs. 10,00,000/- from Mr.Ashwani Kumar/husband of Respondent No.1 against mortgage of the suit property but the sale deed was executed in the name of Respondent No.1 on his assurance being given as a friend. Further, Mr.Ashwani Kumar/husband of Respondent No.1 made him sign on some blank papers which he did in good faith and even visited the office of concerned Registrar. Resultantly, he received the said amount of Rs.10,00,000/- through cheque from the husband of Respondent No. 1.

8. Respondent No.1 had filed replication to the written statement filed by the Appellant and Respondent No.2 reiterating its case set up in the plaint.
9. From the pleading of the parties, learned Trial Court framed the following issues for consideration *vide* its order dated 07.06.2016:

“1. Whether the plaintiff is entitled to a decree of possession of suit property described as Ground Floor comprising of two bed room, drawing, kitchen, toilet and another room located at 139, Block A, Kalkaji Extension, Delhi on the basis of the grounds taken in the plaint? (OPP)

2. Whether the the suit has been filed without any cause of action against the defendants? (OPD)

3. Whether the suit is not properly valued for the purposes of court fees? (OPD)

4. Whether the suit for possession is not maintainable in the present form as per the provisions of Specific Relief Act? (OPD)

5. Relief.”

10. Respondent No.1 in order to prove her case, examined four witnesses, whereas the Appellant examined eleven witnesses. Appellant examined herself and tendered her evidence by way of Affidavit.
11. Learned Trial Court *vide* the Impugned judgment was pleased to allow the Suit for Injunction and Possession filed by Respondent No.1.
12. Aggrieved by the same, the Appellant preferred the present Regular First Appeal No. 112 of 2022, challenging the Impugned judgment. At this juncture, it is also relevant to note that a separate Regular First Appeal has also been filed by Respondent No.2 before this Court against the Impugned judgment as ***Vipen Kumar Parwanda v. Mrs. Gunjan Kumar & Anr.*** in RFA No. 125 of 2022 which has jointly been heard before this court. This Court *vide* its order dated 30.03.2022 issued notice in RFA No. 112 of 2022 and on 31.05.2022 notice was issued in RFA No. 125 of 2022.

SUBMISSIONS OF APPELLANT

13. Learned senior counsel for the Appellant, Mr. Akshay Makhija, initiated its arguments by submitting that the Impugned Judgment passed by the learned Trial Court is bad, illegal and malafide.
14. *Firstly*, it is the submission of the learned senior counsel for the Appellant that Respondent No.1 is a total stranger to the Appellant and it was only Respondent No.1's husband who was a friend of the Appellant's husband i.e., Respondent No.2. He

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further submitted that it was only after filing of the Civil Suit, the Appellant got to know Respondent No.1 and about the alleged transaction. He further submitted that the Appellant has never executed any General Power of Attorney in favor of Respondent No.2 with respect to the suit property and the same has been forged and fabricated by Respondent No.1.

15.Learned senior counsel for the Appellant submitted that Respondent No.2 specifically stated in its written statement that because Respondent No.2 was in dire need of funds, the husband of Respondent No.1 Mr. Ashwani Kumar/PW2 suggested Respondent No.2 to enter into a mortgage deed with respect to the Suit Property and PW2 will pay him an amount of Rs.10,00,000/-. The husband of Respondent No.1 made him sign some blank papers for the purpose of executing a mortgage deed which Respondent No.2 did in good faith. Hence, the transaction between Respondent No.2 and Respondent No.1 was merely a mortgage of the suit property and was not a sale transaction.

16.Learned senior counsel argued that pertinently Respondent No.1 or any of its witnesses failed to produce the Agreement to Sell dated 01.11.2009, which is a necessary document for establishing the chain of the events leading to the execution of the Sale deed dated 15.01.2010. Further, the General Power of Attorney dated 04.04.1995 (**Mark PW4/A**) filed with the Plaint is glaringly different from the certified copy of the GPA produced by PW4 during his cross examination on 15.11.2018 and subsequently

filed on 23.09.2019 (**Ex.PW4/X1**). Following are the differences in the two versions of the GPA:

- (a) In the first page both versions of the document have a stamp affixed near the photograph of Respondent No.2. Pertinently, the aforesaid stamp is empty in both the versions of the document and the details such as the registration fee, receipt number and the date of registration is missing in the aforesaid stamp.
- (b) There is a noticeable difference in signatures of the Sub-Registrar in both the versions of the document.
- (c) The certified copy of the document i.e., **Ex. PW4/X1** does not bear any date along with the Registrar's signatures, whereas the document filed by Respondent No 1 along with the Plaint mentions a date near the signatures.

17. Further it was his contention that the Sale Deed dated 15.01.2010 filed by Respondent No.1 was different from the certified copy of the Sale deed dated 15.01.2010 produced by PW2/husband of Respondent No. 1:

- (a) Certified copy of the Sale deed dated 15.01.2010 does not even bear the signatures of the witnesses whereas the Sale deed filed by Respondent No.1 had signatures of the witnesses.
- (b) Copy of the Possession letter was annexed with the certified copy of the sale deed dated 15.01.2010, whereas no copy of the Possession letter was filed by Respondent No.1 along with the Sale deed dated 15.01.2010.

(c) Copy of the Possession Letter annexed with the certified copy of the Sale deed did not bear the signatures of Respondent No.2/Defendant No.1.

18. One of the arguments raised by the learned senior counsel was that the Appellant was peacefully residing in the suit property with her son and daughter and had not even handed symbolic possession of the suit property to Respondent No.1. He further submitted that the husband of Respondent No.1 used to visit the residence of Appellant, but he never raised any fact with regard to buying the suit property. It was his contention that Respondent No.1 along with her husband/Mr. Ashwani Kumar started playing fraud with the Appellant and Respondent No.2 when they were sent to judicial custody upon the false complaints filed against them, Respondent No.1 grabbed this opportunity to create false documents with the intention to usurp the property of the Appellant and Respondent No.2. Further, it was averred by him that as contended by Respondent No.1 that possession of the suit property was declined by the Appellant and Respondent No. 2. However, it is interesting to note that no legal notice written representation, complaint was ever made with regard to the claim of Respondent No. 1.

19. *Secondly*, the next argument raised by the learned senior counsel for the Appellant was with regard to the share of Respondent No.2 being only 20% as per the MOS. It is his submission that only share has been declared but the suit property is not divided and still has not been partitioned by metes and bounds. Further,

as per the MOS dated 23.10.2009 w.e.f 21.10.2009, the Appellant, Respondent No.2 and their daughter Sonia were entitled to 20% share each and the son of the Appellant and Respondent No.2 was entitled to a share of 40% in the whole property situated at plot bearing No. 139, Block A, Kalkaji Extension Scheme, New Delhi. Hence, Respondent No.2 cannot sell the suit property as he only had 20% joint ownership in suit property.

20.Thirdly, Mr. Makhija averred that the contention of the learned counsel for the Appellant that a sum of Rs. 22,50,000/- was paid in consideration of the Suit property, wherein Rs. 12,50,000/- was paid in cash and Rs. 10,00,000/- was paid through cheque is false. He argued that Respondent No.1 has failed to place on record any receipt with regard to her claim. It was contended by the learned senior counsel for the Appellant that neither any cheque has been encashed by the Appellant nor any receipt with regard to the earnest money of Rs. 12,50,000/- has been executed. With regard to the above argument, the learned senior counsel made a verbose submission which are as follows:

- (a) He submitted that the onus to prove the cash payments is to be discharged only by the person claiming to have made the cash payments and the person who allegedly received the same is not required to disprove it.
- (b) It was his submission that Respondent No.1 in her cross-examination admitted that she has seen the cash receipt of Rs. 12,50,000/-. Further, even Mr. Ashwani Kumar the husband

of Respondent No. 1/PW2 admitted to the execution of the cash receipt made as part consideration of the suit property. However, both the husband and wife failed to produce the same either by way of evidence Affidavit or during their cross examinations.

- (c) He submitted that there were contradictory stands taken by both Respondent No.1 and her husband, Mr.Ashwani Kumar during their cross-examinations as to the source of the income of the cash payment of Rs. 12,50,000/-, wherein Respondent No.1 stated that the cash payment was made from the sources of the income of her husband/Mr. Ashwani Kumar/PW2, whereas the husband/PW2 stated that the cash payment was made jointly from his as well as the income of Respondent No.1's income.
- (d) Both Respondent No.1 and the husband of Respondent No. 1/PW2 were not able to prove the payment of cash in favor of Respondent No.2 with the help of his and Respondent No.1's Income Tax Returns **Ex. P/D1 (colly)** for the relevant period i.e. 2010-2011. He also referred to the judgment of the Hon'ble Supreme Court in the matter of ***Kewal Krishan v. Rajesh Kumar & Ors.*** reported as ***2011 SCC OnLine SC 1097*** and submitted that payment of price forms an essential part of a sale deed as mandated by Section 54 of the Transfer of Property Act, 1882. He further submitted that if a sale deed has been executed without the payment of price, such a sale deed will have no legal effect.

(e) With respect to the reliance placed by the learned Trial Court on the judgment of *Karan Madan & Ors. v. Nageshwar Pandey* reported as (2014) 209 DLT 241, he submitted that the payment of money with respect to the property was an admitted fact and only the nature of transaction was to be established between the parties. Hence, the reliance of the learned Trial Court on the aforesaid judgment of *Karan Madan (supra)* is misplaced.

21. *Fourthly*, it is the contention of Mr. Makhija with respect to Sections 91 and 92 of the Evidence Act, the learned Trial Court wrongly applied both the aforesaid sections of the Evidence Act, Respondent No.2 has denied the execution of the Sale Deed dated 15.01.2010, let alone the existence of the terms thereof. He further submitted that it is Respondent No.1's own case that possession of the suit property was not handed over at the time of the execution of the purported Sale Deed dated 15.10.2010, whereas the purported sale deed dated 15.01.2010 records that the peaceful possession of the Suit property has been handed over to Respondent No.1. Hence, the contents of the purported Sale deed dated 15.10.2010 were in contradiction to the case set up by Respondent No.1 in her plaint.

SUBMISSIONS OF RESPONDENT NO.2

22. Mr. Manish Makhija, learned counsel for Respondent No.2 while reiterating the submissions made by the learned senior counsel for the Appellant submitted that the transaction between

Respondent No.1 and the Appellant and Respondent No.2 was merely a loan from the husband of Respondent No.1 and to secure the said loan, the husband of Respondent No.1 made him sign various documents including the disputed sale deed which was actually meant/signed as a deed of mortgage.

23. Further, he submitted that reliance of the learned Trial Court on Sections 91 and 92 of the Indian Evidence Act, 1872 and the judgment of *Karan Madaan* (*supra*) is misplaced. Further, he submitted that the learned Trial Court ought to have discussed the entire oral and documentary evidence which was placed on record which clearly proves that no sale was ever intended by any of the parties and no sale consideration (cash payment of Rs.12,50,000/-) as alleged by Respondent No.1 and her husband was ever paid to or received by Respondent No.2.
24. With regard to the aforementioned submissions, the learned counsel for Respondent No.2 relied on the judgment of the Hon'ble Supreme Court in the matter of *Kewal Krishan* (*supra*), *Smt. Gangabai v. Smt. Chhabubai* reported as AIR 1982 SC 20, *Roop Kumar v. Mohan Thedani* reported as (2003) 6 SCC 595, *Kaliaperumal v. Rajgopal* reported as (2009) 4 SCC 193, *Janak Dulari Devi v. Kapildeo Rai* reported as 2011 (4) RCR (Civil) 708, by the Madras High Court in *G. Arumugham v. M. Palani* reported as S.A No. 314 of 2010 decided on 11.02.2011 and *P. Veerasamy v. V. Soundarajan* reported as S.A No. 315 of 2010 decided on 09.01.2014.

SUBMISSIONS OF RESPONDENT NO.1

25. *Per Contra*, Mr. Arvind Sharma, learned counsel for Respondent No.1 while relying on the Impugned judgment submitted that the Impugned judgment passed by the learned Trial Court is legal, well-reasoned and does not need interference of this Hon'ble Court.
26. With regard to the contention of the learned counsel for the Appellant that transaction between Respondent No.2 and Respondent No.1 was merely a mortgage of the suit property and was never an intended sale transaction, learned counsel for Respondent No.1 submitted that Respondent No. 2 in his written statement has admitted the signing of the Sale Deed dated 15.01.2010 and even visiting the concerned Registry for the registration of the Sale Deed dated 15.01.2010 and as such, has also admitted to receive the full consideration amount from Respondent No. 1.
27. He further contended that Respondent No.2 in its written statement on one hand denies the execution of the Sale deed dated 15.01.2010 with regard to the suit property. However, on the other hand, he admits that it was only executed for mortgaging the suit property for obtaining loan from the money lender who was known to the husband of Respondent No.1.
28. Further, it is also contended that no demand was ever made with regard to suit property. The Appellant and Respondent No.2 also argued that if the sale deed dated 15.10.2010 was executed in favor of Respondent No.1, why no legal notice/ written

representation/ complaint was ever made with regard to the claim of Respondent No. 1. With regard to that, learned counsel for Respondent No.1 submitted that the Appellant in its written statement has admitted that Respondent No.1 had requested several times to vacate the suit property, however, the same was declined by the Appellant and Respondent No.2.

29. With regard to the submission of the Appellant and Respondent No.2 that the Appellant has never executed any GPA dated 04.04.1995 in favor of Respondent No.2, he submitted that the said defence of the Appellant gets demolished from the following facts:

- (a) Respondent No.1 has admitted the execution of the sale deed before the learned Trial Court.
- (b) **PW4**, Sh. Parveen Kumar Rana, officer from the office of Sub Registrar- I, Kashmiri Gate was summoned in the court together with the records pertaining to the registered GPA dated 04.04.1995 executed by the Appellant. The very witness was also summoned by the Appellant as well with the same GPA dated 04.04.1995 bearing registration no. 9149 and the photocopy of the same after comparing with the original record has been taken on record and exhibited as Ex. **PW4/X1**.
- (c) **Ex. DW1/X2**, Agreement dated 07.09.2011 has been filed and relied by both the Appellant and Respondent No.2. The said Agreement has been entered between the Appellant and Respondent No.2 as First party and Sh. Rajesh Bindra, who is

the brother of the Appellant as Second party and Mr. Manoj Kumar and Mr. Ashish Uppal as Third party. *Vide* the said Agreement dated 07.09.2011, both the Appellant and Respondent No.2 admitted that they had sold the first floor of the plot bearing No. 139, Block A, Kalkaji Extension Scheme, New Delhi *vide* sale deed dated 26.09.2007 which is duly executed and registered by Respondent No.2. In the certified copy of the sale deed dated 26.09.2007 (**Mark B**), it is provided in specific terms that Smt. Sarita Parwanda/Appellant had appointed Respondent No.2 as General power of Attorney *vide* registered document No. 9149 in Additional Book No. 4, Vol. No. 3402, pages 42-43 dated 04.04.1995, in the office of Sub-Registrar, Kashmere Gate, Delhi.

(d) Another sale deed dated 16.02.2009 has been executed by Respondent No.2 in favor of his Daughter Sonia Grover based on the same General power of Attorney *vide* registered document No. 9149 in Additional Book No. 4, Vol. No. 3402, pages 42-43 dated 04.04.1995, in the office of Sub-Registrar.

30. With regard to the Sale deed dated 15.01.2010, the learned counsel for Respondent No.1 relied on the evidence of the DW1/5 Sh. Dheeraj Kumar, record keeper, Sub-Registrar V, Mehrauli, New Delhi-30, wherein he stated that “*as per the office record no sale deed is found registered on 15.01.2010 in favor of the Plaintiff/Respondent No.1*”. Learned counsel for Respondent

No.1 further clarified by relying on the evidence of DW-1/6, Statement of Sh. Sanjay Goswami, Office Assistant, Sub Registrar-V, Mehrauli, New Delhi and submitted that even though the sale deed with respect to the suit property was dated 15.01.2010, however, the certified copy of the same sale deed was registered on 22.01.2010 which was executed by Respondent No.2 in favor of Respondent No.1.

31.Further with regard to the sale deed dated 15.01.2010, learned counsel for Respondent No.1 submitted that the Appellant and Respondent No.2 have produced the certified copy of the Sale deed as filed by Respondent No.1 before the learned Trial Court which is again exhibited as Ex. DW-1/6/A, wherein he pointed out the signature of Respondent No.2 on the left side and the signature of Respondent No.1 on the right side. He further also pointed out the sale consideration amount of Rs. 22,50,000/- which is clearly mentioned in the said document.

32.Further, learned counsel for Respondent No.1, relied on the cross-examination of D2W1/Statement of Mrs. Sarita Parwanda, wife of Sh. Vipin Parwanda, and rebutted the contention of the Appellant that she is not aware of the Agreement to Sell dated 01.11.2009 which has been executed by her husband in favor of Respondent No.1. In the said cross-examination, D2W1 admitted that her husband had executed an agreement to sell in favor of Respondent No.1.

33.Further, it is argued that Respondent No.1 along with her husband/Mr. Ashwani Kumar started playing fraud with the

defendants when they were sent to judicial custody upon the false complaints filed against them. The defendants also argued that Respondent No.1 grabbed this opportunity to create false documents with the intention to usurp the property of the defendants. The above said contentions of the defendants were dismissed by Respondent No.1 by again relying on the statement of D2W1, Mrs. Sarita Parwanda, wherein she specifically stated that she has not filed any complaint against Respondent No.1 or husband of the Plaintiff/Mr.Ashwani Kumar but has filed it against her husband and some unknown persons. Learned counsel for Respondent No.1 further pointed out from the statement of D2W1 that she went to jail after filing the said complaint. She further stated that she had filed two complaints dated 03.02.2010 and 11.06.2010 and thereafter she went to jail on 19.06.2010. However, what is pertinent to note here is that the sale deed was registered in the name of Respondent No.1 on 15.01.2010. Furthermore, she also deposed that she had not filed any case/suit for the cancellation of the sale deed dated 15.01.2010 before any court or authority.

34. With regard to the contention of the learned senior counsel for the Appellant that the share of Respondent No.2 was only 20% as per the MOS dated 23.10.2009. Hence, he couldn't have sold the suit property to Respondent No.1 as it was not divided by metes and bound. Learned counsel for Respondent No.1 submitted that the son and daughter of the Appellant and Respondent No. 2, had preferred an application and sought impleadment in CS (OS)

2509/2010 titled as *Gunjan Kumar v. Vipin Parwanda and Anr.* on the purported ground that they have their independent share in the suit property by virtue of the MOS. The learned Joint Registrar *vide* its order dated 02.09.2014 was pleased to reject the said application primarily on the ground that in the instant suit between Respondent No.1 and the defendants for injunction/eviction and possession, they cannot be impleaded. Further, even as per Clause 3 of the MOS, the parties have agreed to the sale of the property and the sale proceeds to be divided between the parties. Against the said order dated 02.09.2014, the son and daughter of the Appellant and Respondent No. 2, have preferred a Chamber Appeal being O.A No. 252/2014 before this Hon'ble Court which was also dismissed *vide* order dated 21.04.2015. It was held that the son and daughter have independent rights, however, only against their parents i.e. defendants.

35. Learned counsel for Respondent No.1 bolstered his submissions by relying on the judgment of the Hon'ble Supreme Court in the matter of *Mohinder Singh v. Jaswant Kaur (D) Thr. L.RS.* reported as AIR 2019 SC 5760, this Hon'ble Court in *Karan Madaan (supra)*, *Tara Sikand Atwal v. Viraj Sikand and Ors.* reported as 2019 (175) DRJ 346, *Parmila Singh and Anr. v. Ashok Saluja* reported as MANU/DE/3436/2018, *Nageshwar Pandey v. Karan Madaan & Ors.* reported as MANU/DE/0312/2016.

LEGAL ANALYSIS

- 36.I have heard the rival contentions of both the parties and perused the documents placed on record.
- 37.It is the claim of the Appellant that the transaction between Respondent No.2 and Respondent No.1 was merely a mortgage of the suit property and was not an intended sale transaction. Further, the contention of the both the defendants is based on the premise that as Respondent No.2 was in dire need of funds, the husband of Respondent No. 1/Mr. Ashwani Kumar suggested Respondent No.2 to enter into a mortgage deed with respect to the suit property and the husband of Respondent No.1 will pay him an amount of Rs.10,00,000/- (Ten Lakhs Only) as loan. The husband of Respondent No.1 made him sign some blank papers for the purpose of executing a mortgage deed which Respondent No.2 did in good faith. Learned counsel for the defendants further stressed that Respondent No.1 along with her husband/Mr. Ashwani Kumar started playing “fraud” with the defendants when they were sent to judicial custody upon the false complaints filed against them, Respondent No.1 grabbed this opportunity to create false documents with the intention to usurp the property of the defendants.
- 38.A clear reading of the written statement filed by Respondent No.2 wherein he has specifically stated that the husband of Respondent No.1/Mr. Ashwani Kumar agreed to give him loan for a sum of Rs. 10,00,000/- on the condition that he will execute documents like sale deed in favor of his wife i.e. Respondent

No.1/Plaintiff. It is no exaggeration to mention here that Respondent No.2 in its written statement has admitted to executing the sale deed dated 15.01.2010. Relevant part of the written statement filed by Respondent No.2 is reproduced hereunder:

“11. That the contents of para No.11 of the plaint are wrong and denied. It is absolutely denied that the sale deed with regard to the ground floor would be executed in favour of the plaintiff, but true fact is that it was only executed for mortgage the property with regard to obtain loan from the money lender who was the known person of the husband of the plaintiff.”

Further, he also admitted in his written statement regarding visiting the office of the Sub-Registrar and doing the whole act as per wish of the money lender and husband of Respondent No.1/Plaintiff.

39.It is seen that the defence set up by the defendants is that of a loan transaction between the parties. However, no document in support of the said defence has been produced by them. Further, the defendants have claimed that the sale deed dated 15.01.2010 which was registered on 22.01.2010 was executed by Respondent No.2 in favour of Respondent No.1 with a view to secure the so called loan taken by Respondent No.2 from the husband of Respondent No.1. The question which would arise here is whether the defence set up by the defendants is tenable in law or not under Sections 91 & 92 of the Evidence Act, 1872 in the face of the registered instrument of sale, admittedly executed by Respondent No.2 in favour of Respondent No.1.

40. At this juncture, it is apposite to set out herein below Sections 91 and 92 of the Evidence Act:

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document

When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

... ”

“92. Exclusion of evidence of oral agreement

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for purpose of contradicting, varying, adding to, or subtracting from, its terms;

Proviso (1) - Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law.

... ”

41. It is also profitable at this juncture to refer to the reasoning given by the learned Trial Court with regard to Sections 91 and 92 of the Evidence Act, 1872 which this Court after careful reading is very much in consonance with.

"14. Section 91, inter alia, stipulates that where the terms of contract or of a grant or any other disposition of property have been reduced to a form of written document - as in the present case the sale deed dated 15.01.2010 has been registered on 22.01.2010, no evidence shall be given in proof of the terms of such a contract, grant or other disposition of property, except the document itself. Therefore, if there is a sale deed executed and registered in respect of an immovable property –registration whereof is compulsory under the law, neither party can claim that the terms of the sale-such as the consideration, or the nature of transaction/disposition is, in fact, different from that contained in the document itself. The sale deed in question does not contain any term that the consideration recorded to have passed from the plaintiff to defendants of Rs.22,50,000/- was in respect of a loan transaction. In fact, the sale deed records that the amount of Rs.22,50,000/- is the consideration for sale of the suit property by the defendants to the plaintiff. The recital in the sale deed reads as follows:-

"and whereas the Vendor for his bona-fide needs and legal requirements, in his sound & disposing mind without any pressure, force, compulsion or coercion has agreed to sell and transfer i.e. Entire Ground Floor without roof rights of Freehold Built-up property bearing No. 139, Block A, Pkt.-A-8, situated at Kalkaji Extn., New Delhi (hereinafter called the PROPERTY) alongwith proportionate undivided, indivisible and impartable share; of ownership right in the land underneath, unto the VENDEE for a sum of Rs.22, 50,000 (Rupees Twenty-Two Lac Fifty Thousand Only) for which the VENDEE after scrutinize the status of the land and also satisfied

regarding the title of the VENDOR has agreed to purchase the same of the said consideration."

15. The sale deed also recorded that the entire sale consideration amount of Rs.22,50,000/- (Rupees Twenty-Two Lac Fifty Thousand Only) has been received by the VENDOR from the VENDEE prior to the execution of this Sale deed the receipt of which is hereby admitted and acknowledged by the VENDOR " The said sale deed further records that "that the VENDOR hereby Sell, Convey, Transfer and Assign the above mentioned property_ i.e Entire Ground Floor without roof rights, alongwith proportionate rights of the land underneath, absolutely and forever with all rights, title, interest of the same, unto the VENDEE who shall hereafter be the absolute owner of the same and enjoy the rights of ownership etc."

16. Therefore, the terms of the sale deed clearly shows that the nature of the transaction that the said instrument records is an absolute conveyance of property i.e. the sale of the suit property. By no stretch of reasoning it can be described as a transaction of loan, coupled with a transaction to create a security for repayment of loan with interest and costs and subsequent retransfer of the suit property by the plaintiff to the defendants.

16.1 The terms of which the suit property was conveyed by the defendants to the plaintiff having been set out in the sale deed itself, in view of the bar contained in section 91, it is not open to the defendants to claim that the conveyance was made only by way of security. The terms of instrument of sale completely rule out the so-called understanding between the parties, that the suit property was to remain a security for repayment of the so-called loan, and was to be re-conveyed to the defendants upon repayment of the so-called loan of Rs.22,50,000/- with interest and other charges. In fact, the sale deed contains the terms authorizing the plaintiff/vendee to get the suit property mutated in her own name.

17. Section 92 of the Evidence Act, inter alia, provides that where the terms of a grant or other disposition of property have been proved according to section 91 -and in this case the execution and registration of the instrument of sale is not disputed by the defendants, no evidence of any oral agreement, or statement shall be admitted, as between the parties to such instrument., for the purpose of contracting, varying, adding to or subtracting from its terms.

18. By setting up the defence as noticed hereinabove, the defendant is seeking to do precisely this. The defendant is setting up a defence/case which clearly contradicts and varies the terms of the duly executed and registered instrument of sale. The defendant is seeking to urge that the amount of Rs.22,50,000/- received by him was by way of loan, and not by way of consideration for the sale of the suit property to the plaintiff. This is completely contradictory to, and at variance with the above extracted recital and clauses of the sale deed.

42. Further, it is settled law that written instruments are entitled to a much higher degree of credit than parole evidence. When the parties deliberately put their agreement into writing, it is conclusively presumed between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory. *Ergo*, the Court can only look at the writing alone in order to construe what the terms of the contract are and what the intention/objective/purpose of the instrument. In the present case, the sale deed dated 15.01.2010 does not by any stretch of imagination through any of the recitals show that the instrument was only executed to secure a loan. *Arguendo*, even if assuming

without conceding that the sale deed dated 15.01.2010 was to secure a loan, Respondent No.2 could have executed a mortgage deed instead of executing a sale deed, which has already been registered as well. Hence, the contention of the learned counsel for the defendants that the whole transaction was a loan transaction and not an intended sale does not find any sustenance.

43. This Court is in full agreement with the reasoning given by the learned Trial Court with regard to the applicability of Sections 91 and 92 of the Indian Evidence Act, 1872. Both the sections would be attracted in the present case as opposed to the contention of the learned counsel for the defendants. At the cost of being repetitive, this Court is of the opinion that the defendants have already admitted the execution of the sale deed dated 15.01.2010 which has also been registered on 22.01.2010. Therefore, denying the sale consideration amount of Rs.22,50,000/- which is clearly mentioned in the instrument itself, without any ambiguity and describing the whole transaction as loan is unacceptable. Hence, no evidence of any oral agreement or statement shall be admitted, as between the parties to such instrument, for the purpose of contracting, varying, adding to or subtracting from its terms.

44. Further, as regards the verbose submission of the counsel for the defendants that Respondent No.1 has not been able to produce the Agreement to Sell dated 01.11.2009 or other instruments to show Rs. 12,50,000/- was paid in cash out of the total sale consideration of Rs. 22,50,000/-, hence this is suggestive of the

factum that the amount of Rs. 10,00,000/- was given as loan and not towards sale consideration. This Court is strongly of the opinion that mere non-production by Respondent No.1 of the written agreement to sell or other instruments to show that the amounts were paid towards purchase of the said property, is neither here nor there, since the instrument of sale itself records the factum of the amounts being received by the defendants towards sale consideration. Pertinently, the defendants have not produced any document to show that the amounts were received by them only by way of loan, as alleged by them.

45. Further, on a plain reading of Section 92 of the Indian Evidence Act, 1872 and on going through the principles governing disposition of property, there cannot be an iota of doubt that consideration for a contract or disposition of property is 'term' of the contract, for no contract would be valid without consideration. The Hon'ble Madras High Court in the matter of ***K.M. Rajendran v. Arul Parkasam and another*** reported as ***1998 SCC OnLine Mad 170*** had held that even though under the Proviso (1) to Section 92, it is open to the party to the agreement to lead evidence to vary he or she is precluded from varying the consideration amount either less or more than what is specified in that agreement.

“20. Regarding variation of consideration mentioned in Ex. A-1 a Division Bench of this Court in a decision reported in K.S. Narasimhachari v. Indo Commercial Bank, AIR 1965 Mad. 147 has observed thus:-

“Proviso (1) to Section 92 of the Evidence Act says that any fact may be proved which would invalidate any document or which would show want or failure of consideration. It is well recognised that under the terms of the proviso while it will be competent to the party to a contract to adduce evidence to prove want of consideration or failure of consideration or a difference in kind of consideration specified in the document, it will not be competent for him to prove a variation of the consideration recited in the document. Consideration specified in a document will be one of the terms of the contract evidenced by it. Thus, where consideration although specified to be of a particular kind; e.g. cash can and will be shown to be for different kind or it can be shown that it is false and that there was really no consideration. But this is different from a case where a party admits the passing of consideration specified in the document, but attempts to show that the consideration was either less or more than what is specified. This, the party is not allowed to do.”

It makes the position clear that even though under the Proviso (1) to Section 92, it is open to the party to the agreement to lead evidence to vary he or she is precluded from varying the consideration amount either less or more than what is specified in that agreement.”

46. Further, one of the contentions of the learned counsel for the defendants is that if the sale deed was executed and registered, why the actual physical possession was not delivered to Respondent No.1. While Respondent No.1 claims that it was not so delivered on account of examination of the defendant's daughter, and the assurance given by Respondent No.2 that he would deliver possession later; the defendants claims that as the

transaction was not an intended sale, the possession was never liable to be delivered. Be that as it may, even if it were to be accepted that possession was never delivered to Respondent No.1, that fact would not deprive Respondent No.1 to claim ownership on the basis of their title derived from the sale deed, and to claim possession of the suit property from the defendants.

47.It is further also pertinent to mention that the non-delivery of possession by the defendants to Respondent No.1 does not by itself, or cumulatively with the other factors pointed out by the defendants, lead to the conclusion that the transaction between the parties was not an intended sale of the suit property, but was a mere loan transaction.

48.A similar situation arose before this Court in *Karan Madaan (supra)* wherein the defence set by the defendants was that of 'fraud' on the premise, that the plaintiffs are seeking to exploit the instrument of sale, contrary to the understanding of the parties that the sale deed was only to be used as a security for repayment of loan, interest and other charges. This Hon'ble Court held that fraud, intimidation, illegality, etc referred to in proviso 1 to Section 92 of the Indian Evidence Act, 1872 relates to the execution of the instrument/document. It was further held that the spirit and purpose of enacting Sections 91 and 92 of the Indian Evidence Act, 1872 is to render the written contract, grant or other disposition the sole repository of the terms contained therein. If the intention of the parties was, as is claimed by the defendant, then that intention/objective/purpose should have been

so spelled out in the instrument. Unfortunately, in the present case as well for the defendants, that is not the case. Relevant portion of the said judgment is as under:-

“30. The defence/case set up by learned counsel for the defendant in his arguments is of 'fraud', on the premise, that the plaintiffs are seeking to exploit the instrument of sale, contrary to the understanding of the parties that the sale deed was only to be used as a security for repayment of loan, interest and other charges. Pertinently, the written statement or the counter claim do not whisper about a "fraud", though the defendant repeatedly states that the plaintiffs are greedy, have turned dishonest, and are of a criminal mind. A mere mention of "fraud" in a pleading is not sufficient. A party pleading fraud is obliged, under Order VI Rule 4 CPC, to give particulars of the pleaded fraud-with dates and items, in the pleading. The pleadings of the defendant, in the written statement/counter claim do not even make out a case of fraud. In any event, the fraud, intimidation, illegality, etc referred to in proviso 1 to Section 92 relates to the execution of the instrument/document. It is not the defendant's case that when he executed the sale deed, he did not know that it is a sale deed that he was executing. It is not the defendant's case that he is unlettered or illiterate or that he did not read, or could not read the instrument in question. He does not claim that the sale deed was executed in an intoxicated or unsound state, or under duress or coercion exercised by the plaintiffs, or anyone else. The defendant knew the fact that he was executing an instrument of sale. When he has executed the sale deed in question, it is not open to the defendant to claim that the instrument of sale is hit by fraud, because, according to the defendant, the intention or understanding of the parties was to create a security in favour of the plaintiffs for the alleged loan granted to the defendant. The spirit and purpose of enacting Section 91 and 92 of the Indian Evidence Act, 1872 is to render the written contract, grant or other disposition the sole repository of the terms contained therein. If the intention of the parties was, as is claimed by the defendant, then that intention/objective/purpose should have

been so spelled out in the instrument. Unfortunately for the defendant, that is not the case.”

49. Moving further, the next contention of the defendants is that the Appellant has never executed any General Power of Attorney dated 04.04.1995 in favour of Respondent No.2. Further, the defendants have also vehemently argued that the GPA dated 04.04.1995 (**PW4/X1**) on the basis of which the sale deed dated 15.01.2010 is executed is a false and fabricated document which has been prepared by Respondent No.1 and her husband to grab the suit property.

50. The onus of proving that the documents *vide* which Respondent No.1 claimed title i.e. sale deed or GPA was forged, was on the defendants. However, the defendants have not produced a single document worthy of contradicting the Sale deed as well as the GPA. It is also pertinent to note here that the defendants have never sought to produce any handwriting expert to challenge the genuineness of the GPA. Further, the officials from the Sub-Registrar's office were also cross-examined thoroughly and nothing came out in favour of the defendants. It is also interesting to note that the Appellant has not filed any proceedings challenging the GPA stated to have been executed by her in favour of her husband/Respondent No.1 until 2019.

51. A close look at Ex. **DW1/X2**, Agreement dated 07.09.2011 which is filed and relied by both the Appellant and Respondent No.2 shows that the both the defendants have sold the first floor of the plot bearing No. 139, Block A, Kalkaji Extension Scheme,

New Delhi *vide* sale deed dated 26.09.2007 which is duly executed and registered by Respondent No.2. Further, it is also seen in the certified copy of the sale deed dated 26.09.2007 (**Mark B**) that it has been executed based on the same GPA dated 04.04.1995, which is an admitted document by the defendants. It is crystal clear from this document (**Mark B**) that the Appellant had appointed Respondent No.2 as General power of Attorney *vide* registered document No. 9149 in Additional Book No. 4, Vol. No. 3402, pages 42-43 dated 04.04.1995, in the office of Sub-Registrar, Kashmere Gate, Delhi.

52.This Court is of the opinion that the defendants have sold other properties to different people relying on the same GPA dated 04.04.1995 bearing registration no. 9149 in Additional Book No. 4, Vol. No. 3402, pages 42-43 in the office of Sub-Registrar, Kashmere Gate, Delhi. Hence, the denial of the defendants with respect to the suit property that the GPA dated 04.04.1995 is forged and fabricated is unbelievable and without any merit.

53.Further, it has been argued by the learned counsel for the Appellant that Respondent No.1 has been unsuccessful in producing the original copy of the Sale deed dated 15.01.2010. Further, the certified copy of the Sale deed dated 15.01.2010 produced by Respondent No.1 does not bear any signatures of the witnesses, and hence cannot be considered as original document.

54.With regard to the above contention, it is seen that the witness **DW-1/6**, Mr. Sanjay Goswami from the office of Sub Registrar- V Mehrauli, New Delhi has produced the certified copy of the

sale deed dated 15.01.2010 wherein the signatures of both Respondent No.2 and Respondent No.1 are clearly visible. It is relevant to note that, **DW-1/6** further deposed that he has also brought the office copy/original of the sale deed which was seen, compared and returned and the certified copy was exhibited as **Ex. DW1/6/A**. Further, the certified copy of the sale deed dated 15.01.2010 (**Ex. DW-1/6/A**) clearly mentions the signature of both Respondent No.1 as well as Respondent No.2. Furthermore, it is also relevant to mention that the certified copy is prepared in the same process as the original document and once it is signed by both the parties, it assumes the character of the original document. Hence, the claim of the defendants that the certified copy of the sale deed dated 15.01.2010 cannot be considered original, cannot be accepted. The statement of DW1/6 has been reproduced hereinbelow:

“DW-1/6 Statement of Sh. Sanjay Goswami, Office Assistant, Sub Registrar-V Mehrauli, New Delhi.

On S.A.

I am working as Office Assistant at the Office of the Sub Registrar-V, Mehrauli, New Delhi and I have been directed to appear before the Court and to produce summoned record by our Sub Registrar. The certified copy of sale deed dated 15.01.2010 registered on 22.01.2010 executed by Sh. Vipin Kumar Parwanda (defendant no. 1) in favour of Smt. Gunjan Kumar (plaintiff). It is the true certified copy of the sale deed prepared from our office record. I have also brought the office copy/original of the original of the said sale deed with me which is seen compared and returned and the certified copy is Ex. DW1/6/A (running into 10 pages including site plan). My statement is correct.

XXXX by Sh. Arvind Sharma, learned counsel for plaintiff

Nil. (Opportunity given)."

55. Further, this Hon'ble Court in the matter of ***Parmila Singh v. Ashok Saluja***, reported as 2018 SCC OnLine Del 11410 has held that:

"22. The argument with respect to proof of the sale deed is in ignorance of the provisions of the Registration Act, 1908 and the Delhi Registration Rules, 1976 prescribing the procedure for registration of documents. Per Section 32 of the Registration Act, presentation of a document for registration has to be by the person executing the document or by representative or assign or agent of such person. Section 32A requires the photographs and finger print of the person/s presenting the document for registration to be affixed thereon. Section 34 requires the Registrar to enquire from the persons presenting the documents, whether the document was executed by them or by the person by whom it purports to be executed and to satisfy himself about the identity of the persons presenting the document and in the event of presentation by an agent, the authority of such agent. Section 51 prescribes the register books to be maintained by the Registrar with Book I being prescribed for entering or filing all documents or memorandums registered under Sections 17, 18 & 89 of the Act and which relate to immoveable property and are not Wills. Section 52 requires the Registrar to have endorsed before himself the signature of every person presenting the document for registration at the time of presentation thereof. Section 58 prescribes the particulars to be endorsed on documents admitted for registration and again provides for signatures to be endorsed on every document admitted for registration, not only of the persons presenting the same but also of persons examined by the Registrar in reference to such document. Section 59 requires the Registrar to affix his own signature to all the endorsement aforesaid. Rule 29 of the Delhi Registration Rules requires the Registrar to paste in Book I carbon copy of the original after comparing the same with the original."

56. Therefore, from the aforesaid procedure, it is clear that what was brought before the Court by the witness from the office of the Sub-Registrar was the carbon copy of the sale deed which was required to be maintained by the Sub-Registrar.

57. One of the contentions on which the defendants strenuously stressed upon was that as per the MOS dated 23.10.2009, Respondent No.2 had only 20% share in the whole property situated at plot bearing No. 139, Block A, Kalkaji Extension Scheme, New Delhi. Hence, Respondent No.2 alone cannot sell the suit property as he only had 20% joint ownership in suit property. It is already seen that Respondent No.2 on the basis of the GPA dated 04.04.1995 has sold other properties on behalf of his wife/Appellant. Further, as per Clause 3 of the MOS, the defendants and both their children (son and daughter) have agreed to the sale of the property and the sale proceeds to be divided between them. Relevant part of the MOS is reproduced hereunder:

“3. That the parties have agreed to sell one of the H.U.F. Property situated at 139 Swapan Kunj, Pocket A-8, Kalkajee Extension, New Delhi 110019. The sale proceeds of the same shall be divided between the parties in the ratio agreed above. However this distribution shall be subject to payment of Rs. Ninety Five Lacs to the J&K Bank Ltd. Connaught Place Branch, New Delhi.”

It is also relevant to reproduce the order dated 21.04.2015 passed in Chamber Appeal being O.A No. 252/2014, wherein impleadment of the daughter of the defendants was dismissed on the ground that permitting her impleadment would change the

nature of the suit drastically and it would be converted from a suit for eviction and possession to a suit for partition and declaration, which is impermissible in law.

“13. In the case at hand, the appellant/intervener does not seek impleadment in the suit on the basis of a contract between the plaintiff and the defendants in respect of the suit premises, which is the foundation of the present suit for eviction and possession instituted by the plaintiff. Instead, the appellant/intervener bases her claim on an independent interest arising out of a Memorandum of Settlement dated 23.10.2009, purportedly executed between her, her brother and the defendants No. 1 and 2. The consequence of permitting the appellant impleadment in the present suit, would be that the nature of the suit will change drastically and it would be converted from a suit for eviction and possession to a suit for partition and declaration, which is impermissible in law. Therefore, no permission can be granted to the appellant for impleadment in the suit, as it would change Its entire character.

14. Apart from the above, on a bare reading of Order I Rule 10(2) of the CPC which refers to "all the questions involved in the suit", it is clear that the controversies raised by the appellant here are entirely different from those required to be examined in the suit instituted by the plaintiff and quite clearly, the said controversies do not involve the plaintiff. Rather, they are confined to the appellant/intervener and the defendants (her parents). Since the appellant is not a party to the sale deed. It cannot be urged that without her presence, the dispute raised in the suit cannot be determined.

15. Resultantly, the question of impleading the appellant/intervener in this suit or entertaining her plea of impleadment based on the purported Memorandum of Family Settlement dated 23.10.2009, executed by her, her brother and the defendants does not arise. Any permission granted by the Court to the appellant/intervener for impleadment would only lead to unnecessarily complicating the litigation, which is far beyond the scope of the suit Instituted by the plaintiff [Refer: Anil Kumar Sinah Vs. Shivnath Mishra. (1995) 3 SCC 147]. It

is therefore held that the appellant is neither a necessary, nor a proper party in the present proceedings; nor Is her presence considered necessary for a complete and final decision on the questions involved in the suit.

16. The Chamber Appeal Is dismissed, while upholding the Impugned order dated 02.09.2014, passed by the Joint Registrar. Needless to state that if the appellant/intervener has a remedy in law, it is for her to seek the same in an Independent proceeding.”

58.As an upshot of the above discussions, this Court is of the considered view that there is no perversity or infirmity in the Impugned judgment. In view thereof, this Court is not inclined to interfere with the Impugned judgment. Hence, the present Regular First Appeal is unmerited and hereby dismissed with costs quantified at Rs.50,000/- to be paid to Respondent No.1 within 4 weeks from today.

59.All pending applications are disposed of accordingly.

GAURANG KANTH, J.

APRIL 25, 2023

PS