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

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Reserved on: 27.02.2023
Pronounced on: 02.05.2023

+ **RFA 240/2015**

BIMLA CHOPRA & ANR Appellants
Through: Mr. Shekhar Dasi and Mr.
Ayush Dassi, Advocates.
versus

KULDEEP Respondent
Through: Mr. Yogesh Kumar,
Advocate.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present Regular First Appeal under Section 96 of Civil Procedure Code, 1908 ('CPC') arises out of the Judgment and Decree dated 14.01.2015 ('**Impugned Judgment**') passed by the Additional District Judge, North East District, Karkardooma Courts, Delhi in CS No. 73/2014 titled as '*Smt. Bimla Chopra & Anr. Vs Sh. Kuldeep.*' Vide the Impugned Judgment, the learned Trial Court had dismissed the Suit of the Appellants (original Plaintiffs), consequently, the Appellants have sought for setting aside and reversal of the Impugned Judgment in the present Appeal and for the consequent relief of decreeing the Suit of Appellants.

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2. During the pendency of present Appeal, the unfortunate demise of Appellant No. 1 took place. Appellant No. 2 moved an Application under Order XXII Rule 2 CPC claiming herself to be the sole surviving legal heir of Appellant No. 1 and further claiming that the right to sue still survives in her favour. The said Application was allowed by this Court and the memo of parties in the present Appeal was amended accordingly.

FACTS GERMANE FOR ADJUDICATION OF THE PRESENT APPEAL

3. The Appellants had filed the Suit bearing No. CS No. 73/2014 seeking recovery of possession of the property bearing No. 1/10042, Steet No. 3J, West Gorakh Park, Shahdara, Delhi-110032 (**'Suit Property'**) admeasuring 42 sq. yards. The Appellants also sought for permanent injunction against the Respondent (original Defendant) and mesne profits @ Rs. 5,000/- per month from 01.12.2012 till the handing over of possession of the Suit Property to the Appellants.
4. It is the case of the Appellants that Appellant No. 1 was the rightful owner of the Suit Property. She was residing at the ground floor of the Suit Property. It is alleged that she used to treat the Respondent as his son and therefore, she gave him permission to occupy one room, kitchen and combined latrine on the first floor and one room with combined bathroom on second floor of the Suit Property (**'said portion'**) without paying any user charges.

5. Appellant No. 1 sent a legal notice dated 02.09.2009 to the Respondent due to unruly behavior of Respondent and his wife with her, wherein she demanded possession of the said portion of Suit Property. Since, the possession was not handed over to Appellant No. 1, she filed an eviction petition dated 20.11.2009 against the Respondent on the ground of non-payment of rent since March, 2007. In reply to the said eviction petition, the Respondent claimed himself to be an adopted son of husband of Appellant No. 1, late Sh. Om Prakash Chopra. The Respondent claimed that he was residing in the said portion of the Suit Property as a licensee and not as a tenant. In the eviction proceedings, Appellant No. 1 was not able to prove the landlord-tenant relationship between Appellant No. 1 and the Respondent and thus, the eviction proceedings were dismissed.
6. Pursuant to dismissal of the eviction proceedings, Appellant No. 1 issued another legal notice dated 10.11.2012 whereby she revoked the license of the Respondent for staying in the said portion of Suit Property and demanded vacant and peaceful possession of the same. However, despite receipt of the said legal notice, the Respondent had failed to vacate the said portion of the suit property. In view of the same, Appellant No. 1, through her GPA holder Appellant No. 2, preferred the Suit for recovery of possession, mesne profits/damages and injunction.
7. The Respondent had filed his written statement before the learned Trial Court in which he disputed the title of Appellant No.1 qua the suit property. It is the case of the Respondent that

the Suit Property falls in Khasra No. 348 which is a Government land/ custodial land. The Respondent further alleged that he had gained a possessory title in the said portion of the Suit Property since he has been in adverse possession of the same for more than 15 years. Based on these grounds, the Respondent prayed for the dismissal of the suit filed by the Appellants.

8. After consideration of the pleadings of both the parties, the learned Trial Court framed the following issues for adjudication vide its Order dated 30.08.2013:

- “1. Whether the plaintiff is entitled to decree for possession of the suit property? OPP*
- 2. Whether the plaintiff is entitled to recovery of damages/mesne profits @ Rs. 5000/- per month w.e.f. 01.12.2012 till date of recovery of possession of the suit premises? OPP*
- 3. Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP*
- 4. Whether the defendant is the legally adopted son of the plaintiff and her late husband Sh. Om Parkash Chopra? OPD*
- 5. Whether the suit of the plaintiff is not maintainable by virtue of the law of estoppel as provided for under Section 115 of the Indian Evidence Act? OPD*
- 6. Whether the present suit is barred in view of law of limitation? OPD*
- 7. Whether the defendant has perfected his title in the suit property by way of adverse possession? OPD*
- 8. Relief.”*

9. Both the parties led their respective evidence for adjudication of these issues. Appellant No. 1 examined herself as PW-1 and she produced the following documentary evidence, *inter alia*, in support of her case:

- i. *“Certified copy of General Power of Attorney dated 27.3.1992 as Ex.PW-1/1 (OSR)*
- ii. *Certified copy of deed of agreement to sell dated 27.3.1992 as Ex.PW-1/2 (OSR)*
- iii. *Certified copy of receipt dated 27.3.1992 as Ex.PW-1/3 (OSR)*
- iv. *Certified copy of affidavit of Saria Rani dated 27.3.1992 as Ex.PW-1/4 (OSR)*
- v. *Copy of deed of Will of Sarla Rani dated 27.3.1992 as Ex.PW-1/5 (OSR)*
- vi. *Certified copy of the eviction petition filed before ARC as Ex.PW-1/11*
- vii. *Certified copy of the written statement before ARC as Ex.PW-1/12*
- viii. *Certified copy of the order passed by the ARC as Ex.PW-1/13”*

10. On the other hand, the Respondent examined himself as DW-1.

He also examined DW-2, Tehsildar from SDM office, Shahdara, Delhi, who produced on record Khasra Girdawari and Jama Bandi of Khasra No. 348, Village/ Mauja- Babarpur, Delhi, which were exhibited as Ex. DW-2/1 and DW-2/2 respectively.

11. Learned Trial Court, decided Issue Nos. 4, 5, 6 and 7 together.

The onus to prove these issues was upon the Respondent. Learned Trial Court decided all these issues against the Respondent. The learned Trial Court held that the Respondent failed to prove that Appellant No.1's husband late Sh. Om Prakash Chopra adopted him as per the provisions of Hindu Adoption and Maintenance Act, 1956 and thus, decided Issue No. 4 against the Respondent. Learned Trial Court decided Issue No. 5 against the Respondent as it was observed that the tenant and landlord relationship between the parties was not proved and

therefore, law of estoppel as provided under Section 115 of Indian Evidence Act, 1872 was not applicable. Lastly, the learned Trial Court also decided Issue No. 6 and 7 against the Respondent as it held that the Respondent failed to prove that he was in adverse possession of the said portion of the Suit Property. It was further observed by learned Trial Court that Respondent was in permissive possession of the said portion of the Suit Property and failed to prove when the possession became adverse.

12. Thereafter, the learned Trial Court jointly decided Issue Nos. 1, 2 and 3 against the Appellants. The onus to prove these issues were upon the Appellants. It is the view of the learned Trial Court that since the ownership of Appellant No. 1 with respect to the Suit Property had been questioned by the Respondent, Appellant No. 1 had to prove her ownership but she failed to prove the documents in support of her ownership. She also failed to prove her possession in the Suit Property since the year 1992 as claimed by her. Learned Trial Court was of the view that Appellant No. 1 had claimed her ownership merely on the basis of an agreement to sell executed by one Smt. Sarla Rani in her favour in 1992 which was also not registered. It was observed by learned Trial Court that on the contrary, the Respondent had proved that the Suit Property falls in Khasra No. 348 which is government land and belongs to the custodian through Sitara Singh. Learned Trial Court further observed that Appellant No. 1 had not been able to prove any registered sale deed executed in

her favour with respect to the Suit Property, which is a legally necessary document for transfer of title, right and interests in immovable properties. On the basis of these observations, the learned Trial Court dismissed the Suit of the Appellants.

13. Being aggrieved by the Impugned Judgment, the Appellant preferred the present Appeal.

SUBMISSIONS ADVANCED ON BEHALF OF THE APPELLANTS

14. Mr. Shekhar Dasi, learned counsel appearing on behalf of the Appellants has submitted that the learned Trial Court has observed in the Impugned Judgment that the Respondent was in permissive possession of the said portion of Suit Property and not in adverse possession. It is his submission that once learned Trial Court had observed that Respondent was in permissive possession, then in accordance with the provisions of Section 116 of Indian Evidence Act, 1872, it should have decreed the Suit in favour of the Appellants as Section 116 does not allow a licensee to challenge the ownership of the person through whom licensee came into possession.
15. It was also the contention of Mr. Shekhar Dasi that the learned Trial Court was barred by *Res Judicata* from deciding the issue of title of the Appellant No. 1 over the Suit Property as the said issue had already been decided in the eviction petition which was filed by Appellant No. 1 against the Respondent prior to instituting the Suit in present Appeal. Mr. Shekhar Dasi has stated that it was held in the eviction petition that Appellant No.

I was the rightful owner of the Suit Property and thus, there was no need for the learned Trial Court to decide the said issue in view of the principle of *Res Judicata* as provided under Section 11 of CPC. He submits that the Impugned Judgment is liable to be set aside on this ground alone.

16. Further, Mr. Shekhar Dasi, learned counsel for the Appellants has submitted that learned Trial Court wrongly relied upon the decision of *Suraj Lamp & Industries Pvt. Ltd. Vs State of Haryana & Anr.*, reported as *(2012) 1 SCC 656*, while observing that the Agreement to Sell, GPA, Receipt, Affidavit and Will are not valid documents for transfer of immovable property. It is his submission that learned Trial Court failed to observe that the said Judgment of Hon'ble Supreme Court came into effect prospectively and not retrospectively and thus, the same would not be applicable to the title of the Suit Property in the present case. Mr. Shekhar Dasi has stated that agreement to sell, GPA, Will, etc. are valid documents for transfer of title of immovable property as per Section 3 of the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorized Colonies) Act, 2019. Therefore, it is his contention that Impugned Judgment may be set aside on this ground.

17. Mr. Shekhar Dasi also submits that even if the Appellants were not able to prove the absolute title of ownership over the Suit Property before the learned Trial Court, but still she was able to prove a better title over the Suit Property than the Respondent. It

is his argument that in a suit for recovery of possession once a plaintiff proves a better title than a defendant, the suit must be decreed in favour of the Plaintiff. In order to support his averment, he placed reliance upon the decision of Delhi High Court in *Ashish Kumar Vs Hari Kishan*, reported as **2015 SCC OnLine Del 14059**.

18. Mr. Shekhar Dasi also relied upon the decisions of this Court in *Komal & Ors. Vs Panchi Devi* reported as **(2018) 168 DRJ 244**; and *Arbinder Singh Kohli & Anr. Vs Gobind Kaur Kohli* reported as **2018 SCC OnLine Del 9663**.

19. With these submissions, learned counsel for the Appellants prayed for setting aside of the impugned Judgement.

SUBMISSIONS ADVANCED ON BEHALF OF THE RESPONDENT

20. Mr. Yogesh Kumar, learned counsel appearing on behalf of the Respondent has submitted that the learned Trial Court has rightly dismissed the Suit of the Appellants as the Appellant No. 1 failed to prove that she was the owner of the Suit Property.

21. Mr. Yogesh Kumar has submitted that Appellant No. 1 failed to prove the title documents which were produced by her before the learned Trial Court in order to prove her ownership.

22. In response to the submission of the Appellants that the Impugned Judgment was passed by the learned Trial Court by solely relying upon the judgment of Supreme Court in *Suraj Lamp (supra)*, Mr. Kumar has submitted that the Impugned Judgment was passed on various other findings of learned Trial

Court and only a portion of the Impugned Judgment was passed while relying upon the decision in *Suraj Lamp (supra)*. He further submits that it was the view of the learned Trial Court that since there is no registered sale deed in favour of Appellant No. 1, there is no valid sale of Suit Property in favour of Appellant No. 1 as per the provisions of Transfer of Property Act, 1882.

23. Mr. Yogesh Kumar has averred that contrary to the claim of ownership by Appellants, the Respondent has proved before the learned Trial Court by the testimony of DW-2, that the Suit Property is a custodian land and is owned by government and not by Appellant No. 1. He further submits that Appellant No. 1 even admitted in her cross-examination that Suit Property was custodian land, owned by government.
24. It is further the contention of Mr. Kumar, learned counsel for the Respondent that the title documents which were produced before the learned Trial Court by Appellant No. 1 were not even registered but notarized. Appellant No. 1 even failed to call the notary officials to the witness box in order to prove the execution of the title documents in her favour.
25. Mr. Kumar, learned counsel for the Respondent has also argued that no question was put to the Respondent during his cross-examination about the permissive possession. Further, no question was also put to the Respondent with respect to the allegation that Suit Property was custodian land.

26. Mr. Kumar, learned counsel for the Respondent states that in view of these grounds, the present Appeal filed by the Appellants should be dismissed by this Hon'ble Court.

LEGAL ANALYSIS

27. This Court has heard the arguments advanced by both the parties and examined the Trial Court Record and the Judgments relied upon by the parties.

28. The Appellants had filed a registered Sale Deed dated 12.02.2015 along with the Appeal, which has been executed by Appellant No. 1 in favour of Appellant No. 2 transferring the right, title and ownership of Suit Property. A perusal of the record shows that the said Sale Deed was not a part of the Trial Court Record and it was executed by Appellant No. 1 in favour of Appellant No. 2 subsequent to the passing of the Impugned Judgment. No appropriate application has been moved by the Appellants in order to bring on record the said additional document i.e. Sale Deed dated 12.02.2015 and it has been annexed along with the Appeal without seeking any permission from this Court. Further, no permission has been sought to prove the said sale deed dated 12.02.2015 in accordance with law. In the absence of any appropriate application, this Court cannot take the said Sale Deed on record and therefore, it will not be considered while deciding the present Appeal. Even though, if an appropriate application would have been moved by the Appellants, then also the Sale Deed could not have been considered by this Court since the same has been executed after

passing of the Impugned Judgment. It creates a new cause of action for Appellant No. 2 to initiate appropriate proceedings against the Respondent.

29. It is also pertinent to note here that the Appellants had taken some additional grounds at the time of arguments. The first additional ground is the ground of *res judicata*. It has been argued that issue of ownership of Suit Property between the parties was already decided in the eviction petition and therefore, the same could not have been adjudicated herein again due to the bar of *res judicata* provided under Section 11 of CPC. Another additional ground taken by Mr. Dasi, learned counsel for the Appellants during the course of arguments is that the ownership of a property on the basis of title documents like GPA, Agreement to sell, Will, etc. is recognized under Section 3 of the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorized Colonies) Act, 2019. Since the plea raised by the Appellants are of legal nature, this Court deems it appropriate to examine these legal issues. Furthermore, the Respondents were given sufficient opportunity to rebut these additional grounds.

30. At the outset itself, this Court considers it expedient to test the arguments advanced by the parties with respect to these additional grounds. It is the case of the Appellants that the present suit is barred by *res judicata* as the issue of ownership of suit property between the parties has already been decided in the eviction petition. It is a well settled principle of law that the

question of title of the property is not germane for decision of the eviction suit. In a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the said eviction suit is very much limited. In a suit for eviction based on such a relationship, the Court has only to decide whether the defendant is the tenant of the plaintiff or not. Even though the question of title is disputed, the Court can examine the said question only to determine the main question about the relationship between the litigating parties (*LIC Vs India Automobiles & Co* reported as **1990 (4) SCC 286** & *Dr. Ranbir Singh Vs Ashrafi Lal* reported as **1995 (6) SCC 580**). Hence, in an eviction proceeding, the title of the suit property cannot be determined. Therefore, the findings of the learned ARC regarding the title of the suit property are *prima facie* in nature and cannot act as *res judicata* for an appropriate proceeding before the Civil Court in which the title is to be determined. Therefore, this Court is of the considered view that the findings of the learned ARC in the eviction proceedings cannot act as *res judicata* qua the present proceedings.

31. The second objection raised by the Appellant is that the ownership of a property on the basis of title documents like GPA, Agreement to sell, Will, etc. is recognized under Section 3 of the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorized Colonies) Act, 2019. There is no quarrel with the said proposition of law. As

per the said Act, any resident of an unauthorized colony shall be eligible for right of ownership of an immovable property based on registered or un-registered or notarized Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration by paying the necessary charges as fixed by the Central Government in this regard. In the present case, it is not the case of the Appellants that Appellant No.1 perfected her title qua the suit property by deposit of the requisite charges as per the said Act. Hence, this Act has no application in the present case.

32. During the course of arguments, Mr. Shekhar Dasi, learned counsel for Appellants has submitted that he is aggrieved by the findings of the learned Trial Court with respect to Issue Nos. 1, 2 and 3 only. Therefore, this Court is only concerned with the findings of learned Trial Court on these Issues.
33. The relevant findings of the learned Trial Court with respect to Issue Nos. 1, 2 and 3 in the Impugned Judgment are extracted hereinbelow:

“17. In view of this legal position of the Evidence Act, it is clear that it is for the plaintiff to prove that plaintiff No. 1 is the owner of the suit property and inducted the defendant as a licensee. The pleadings of the parties and evidence on record reveals that there is dispute regarding the title of the plaintiff No. 1 whereas the defendant contended that the suit property belongs to the government. The plaintiff No. 1 has claimed the ownership of the suit property merely on the basis of one agreement to sell executed by one Smt. Sarala Rani in 1992. It is noted that there is, no admission of the defendant regarding the ownership of the plaintiff or Smt. Sarala

Rani. The agreement to sell relied by the plaintiffs in support of contention is merely photocopy. From the testimony of the DW2 and the documents Ex. DW2/2 it is also proved that Khasra No. 348 belongs to the custodian through Sitara Singh S/o Pal Singh. The plaintiff even not proved anything as to whether Smt. Sarla Rani has right to execute any document in favour of plaintiff No. 1 in respect of suit property. Moreover, by virtue of agreement to sell Ex. PW1/1 the plaintiff by no stretch of imagination can be considered as the owner of the suit property. It is reiterated that none of the documents relied by the plaintiff in support of her ownership are either registered or proved in accordance with law. None of the previous documents to show any title of Smt. Sarala Rani is also proved or produced in support of her contentions. Moreover, the testimony of the plaintiff totally shattered during her cross-examination regarding the purchase of the suit property or her possession since, 1992 as claimed in the plaint.

19. As held in AIR 1969 SC 1316, the documents of which registration is necessary under the transfer of Property Act (such as under Section 54 of the TP Act) but not under the Registration Act fall within the scope of Section 49 of the Registration Act and if not registered are not admissible as evidence of any transaction of acting any immovable property comprise therein and do not affect any such immovable property.

As mentioned, the plaintiff claimed to be the owner of the suit property which is denied by the defendant. Since there is no registered sale deed executed in favour of the plaintiff in respect of the suit property in accordance with provisions of Transfer of Property Act, 1882, the plaintiff is not the owner of the suit premises, and not entitled for the relief as prayed in the suit. In fact the plaintiff has not produced any of the documents nor proved the same in support of contentions regarding the ownership. Merely, the oral averments is not sufficient to prove the case of the plaintiff and contentions regarding the ownership. As observed from the testimony of PW1 itself, the witness has

not produced any of the documents not proved the same in accordance with provisions of law. In fact the testimony of PW1 was totally shattered during his-cross-examination and this court has no hesitation in holding that the plaintiff categorically failed to prove the ownership or right, title or interest in the suit property.

20. This court is guided in view of the judgment of Hon'ble Supreme Court in Suraj Lamps & Industries Pvt Limited versus State of Haryana & Another reported as 183 (2011) DLT 1 (SC) in this respect as held, the documents of title relied upon by the defendant such as Ex. PW 1/ 1 to Ex. PW1/4 i.e. GPA, Agreement to Sell, Will and receipt would not confer ownership rights in respect of immovable property in her favour. Hon'ble Supreme court vide order dt. 15.05.09 reported as Suraj Lamps & Industries V/s State of Haryana, 2009 (7) SCC (366) referred ill-affects of GPA sells or sell agreement/ GPA/ will transfer holding that there cannot be sell by execution of power of attorney nor there can be transfer by execution on agreement to sell and power of attorney and will.

21. Section 27 of Indian Stamp Act, 1899 casts upon the party, liable to pay stamp duty, an obligation to set forth in the instrument all facts and circumstances which affects the chargeability of duty on that instrument. Section 17 of the Registration Act, 1908 makes deed of conveyance compulsorily registrable. The transfer of an immovable property can only be by a deed of conveyance and in the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. With regard to the legal validity of such documents i.e. agreement to sell, GPA, Will and receipt, the Hon'ble Supreme Court in the case of Suraj Lamps and Industries Pvt. Ltd. Vs. State of Haryana reported in AIR 2009 SC 3077 has held that such documents cannot create any right in respect of immovable property. The only way a contract of sale can create title to immovable property is by way of a deed of conveyance as defined under Section 54 of the Transfer of Property Act and registered in pursuance of the provisions of Section 17 of The Registration Act, 1908. No such

document has been executed in favour of the plaintiff No. 1. The judgments relied by the Ld. Counsel for the plaintiffs is not applicable in the facts and circumstances of this case.

22. The plaintiff No. 1 claimed to have purchased right in the suit property by virtue of un-registered agreement to sell from Smt. Sarla Rani. Section 53 A of the Transfer of Property Act, 1882 was amended w.e.f. 24.09.01. The amendment was brought about by the registration and other related laws (Amendment) Act 2001. As a result of the amendment, an agreement to sell cannot be relied upon to claim part performance and entitlement to possession unless the agreement to sell is registered and stamped at 90% of the value of the sale deed. Since the plaintiff cannot claim any right on the basis of the unregistered agreement to sell which is the only basis of this suit, the plaintiff have no right in the suit property. This court is further guided in this respect in view of the Judgment of Hon'ble Delhi High Court in CRP No. 19/2014.

24. The plaintiff No. 1 allegedly derived the title through documents executed by Smt. Sarla Rani. By no stretch of imagination, the plaintiffs can be considered as the owner of the suit property having right, title or interest. In view of the aforesaid discussions and referred law as well as examining the case of the plaintiff on the basis of preponderance of probabilities, this Court is of the considered view that the plaintiff cannot be considered to be the owner of the suit property. The plaintiffs are therefore not entitled for the decree of the possession, injunction and recovery of mesne profits/damages as prayed in the suit. Issue No. 1, 2 and 3 are decided against the plaintiffs and in favour of the defendant. The suit of the plaintiffs is therefore liable to be dismissed.”

34. It is the contention of Mr. Shekhar Dasi, learned counsel for the Appellants that the learned Trial Court has wrongly relied upon the decision of Hon'ble Supreme Court in ***Suraj Lamp (supra)***

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as the same is not applicable in the present case. It is his submission that Appellant No. 1 is the rightful owner of the Suit Property in terms of the documents executed by Smt. Sarla Rani in favour of Appellant No. 1 i.e. General Power of Attorney (Ex. PW-1/1), Agreement to Sell (Ex. PW-1/2), Receipt (Ex. PW-1/3), Affidavit (Ex. PW-1/4) and Will (Ex. PW-1/5). He submits that Appellant No. 1 has been able to prove a better title than the Respondent to the Suit Property and therefore, she is entitled to the reliefs sought for in the Suit. He states that in view of the decision of this Court in *Komal Vs Panchi Devi (supra)*; and *Arbinder Singh Kohli Vs Gobind Kaur Kohli (supra)*, the learned Trial Court committed a grave error while dismissing the Suit of the Appellants.

35. *Per contra*, Mr. Yogesh Kumar, learned counsel for the Respondent has argued that there is no irregularity in the Impugned Judgment and therefore, there is no need for this Court to interfere with it. He has argued that the learned Trial Court has rightly observed that Appellant No. 1 has failed to prove her ownership over the Suit Property. She has failed to produce any sale deed in her favour with respect to the Suit Property which is a valid document for transfer of ownership of immovable property as per the decision of Supreme Court in *Suraj Lamp (supra)*. It is his further contention that the Respondent had successfully proved before the learned Trial Court that the Suit Property is a government land in custody of Sitara Singh as per Ex. DW-2/1 and Ex. DW-2/2. Lastly, Mr.

Yogesh Kumar, learned counsel for the Respondent has culminated his arguments by averring that the title documents have not been proved by Appellant No. 1 as she failed to even call the notary official to the witness box so as to prove the fact that Smt. Sarla Rani had executed those documents in favour of Appellant No. 1.

36. At this juncture, it would be apt to examine the law regarding the ownership of the suit property based on unregistered documents. Extracted hereinbelow is the relevant portion of the Judgment of this Court in ***Komal Vs Panchi Devi (supra)***, relied upon by the Appellants:

“11. To prove these issues the respondent/plaintiff testified that she is the owner of the said property. She stated that she had purchased the suit property on 04.11.1980 from the original owner Sh. Zile Singh and its number in the revenue record was plot No. 34 measuring 100 square yards which is now 60 square yards and falls in Khasra No. 51/19/3 and 20/3, Raj Nagar, Palam Colony, New Delhi. She had also filed copies of General Power of Attorney, Deed of Agreement, Affidavit, Receipt Ex.PW1/A collectively executed on 04.11.1980 by which Zile Singh who had sold the said property to the respondent/plaintiff for a sum of Rs. 3100/-. Entire sale consideration was paid to the vendor and possession of the property was given to the respondent/plaintiff. Copies of complaints lodged by the respondent/plaintiff against the appellants/defendants dated 01.05.2010 & 07.07.2010 are placed on record as Ex.PW1/C & Ex.PW1/C1 respectively to the effect that the appellants/defendants are in illegal occupation of the suit property. The respondent/plaintiff had also issued a notice, copy of which is Ex.PW1/D. She had also testified that the appellant/defendant No. 1 used to pick up quarrel even on trivial matters and that she (respondent/plaintiff) was thrown out by the appellant/defendant no. 1 from her

house by giving severe beatings on 20.12.2001. She also stated that she had requested the appellants/defendants several times to vacate the house but in vain.

13. Learned counsel for the appellants/defendants have relied upon the judgment of Hon'ble Supreme Court in Suraj Lamp Industries Pvt. Ltd. v. State of Haryana, (2012) 1 SCC 656, and submitted that documents like General Power of Attorney, Agreement to sell & Receipt, etc. placed on record by the respondent/plaintiff do not create any title in favour of the respondent/plaintiff. It is to be noted that these documents of sale i.e. GPA, Affidavit, Deed of Agreement, Property Tax Receipt, etc. were executed on 04.11.1980, however, this judgment has a prospective effect only.

14. A single Bench of this Court in Hardip Kaur v. Kailash 193 (2012) DLT 168 after considering the judgment of Suraj Lamp (supra) of the Hon'ble Supreme Court has held that though a purchaser of immovable property by power of attorney may not be a classical owner as would be an owner under registered sale deed but still he would have better rights/entitlement of possession than the person who is in actual physical possession."

37. The relevant portion of the Judgment in *Arbinder Singh Kohli Vs Gobind Kaur Kohli (supra)* is extracted hereinbelow:

"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).

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.

43. Thus, the judgment and decree of the Trial Court does not call for any interference. The Defendants are given four weeks time to vacate the suit premises, and remove their belongings and articles from the suit property.”

38. Furthermore, Mr. Dasi, learned counsel for the Appellants also relied upon the decision of this Court in **Ashish Kumar Vs Hari Kishan (supra)**, wherein it was held as follows:

“13. As between the plaintiff and the defendants, it is clear that the respondent/plaintiff had a better title to the suit property than the defendant. The title claimed by the plaintiff not being absolute, the plaintiff may not be able to defend his claim to the suit property set up by a third party, who may show a better title. However, inter parties, it is clear that the evidence led by the plaintiff shows that the plaintiff had a better title to the suit property than the defendants. Moreover, it is evident that Sh. Shyam Singh came into occupation of the suit property through the plaintiff. It was the plaintiff who obtained the possessory title from the owner Sh. Shiv Charan. It is not the defendants case that Sh. Shyam Singh came into possession directly through the owner or through some

other person. Therefore, neither he, nor his heirs can deny the claim of the plaintiff to the suit property.

14. For all the aforesaid reasons, I am of the view that the First Appellate Court has correctly decreed the suit of the respondent/plaintiff. Accordingly, the appeal is dismissed leaving the parties to bear their respective costs."

39. In view of this Court, it is also apposite to refer to the decision of this Court in ***Pyarelal Vs Sheela Devi & Ors.***, reported as ***2014 SCC Online Del 7271***. The observations made therein can be considered as *locus classicus* on the point and the same are extracted hereinbelow:

"10. From the evidence adduced by the appellant coupled with the admissions made by the respondent nos. 1 and 2 in their respective written statements it is clear that appellant was put in possession of the suit property by respondent no. 1 vide General Power of Attorney, Agreement to Sell, Receipt, etc. all dated 2nd February, 1989, against valid consideration. Respondent no. 2 has further admitted in the written statement that originals of such documents were in her possession since original documents were handed over by the appellant to Ms. Rekha. Indubitably, in view of Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana 183 AIR 2012 SC 206, title of the appellant is also not perfect on the basis of documents mentioned hereinabove, but for the purpose of relief of possession, said documents are material so as to disclose a better title in his favour than that of respondent no. 2.

11. In Ramesh Chand v. Suresh Chand 188 (2012) DLT 538, a Single Judge of this Court has held thus: "A right to possession of an immovable property arises not only from a complete ownership right in the property but having a better title or a better entitlement/right to the possession of the property than qua the person who is in actual physical possession thereof". In O.P. Aggarwal v. Akshay Lal 188 (2012) Delhi Law Times 525, a Single Judge of this Court has held thus: "No doubt, documents such as

Agreement to Sell, Power of Attorney, Will etc. do not strictly confer ownership rights as a sale deed, however, such documents create certain rights in an immovable property, though which are strictly not ownership rights but definitely the same can be construed as entitling the persons who have such documents to claim possession of the suit property inasmuch as at least the right to the suit property would stand transferred to the person in whose favour such documents have been executed”.

12. In Suresh Kumar v. Saroj Atal 2012 III AD (Delhi) 718, it has been held thus: “In a suit for possession a plaintiff has to show better title i.e. entitlement than that of the defendant and in the present case, besides the fact that respondent/plaintiff has shown a better entitlement to possession by virtue of the documents dated 25.9.2001 executed in her favour, the appellants/defendants themselves do not have any equities in their favour inasmuch as qua both the flats purchased by them rights have been exercised. Thus, even if the respondent/plaintiff fails to prove the ownership rights stricto sensu to the extent of entitlement of possession, the appellants/defendants cannot defend the suit for possession once no title or interest in the suit property is claimed by them”.

13. To succeed in a suit for possession, appellant has to show better title than the person from whom possession is claimed, that is, respondent no. 2. Even though appellant has failed to prove complete ownership right in the suit property in view of the Suraj Lamp (Supra), however, appellant has established better title in his favour in view of the documents all dated 2nd February, 1989, which have not been disputed by respondent nos. 1 and 2. As regards respondent no. 3, he has already made a statement that he has no right, title or interest in the suit property. He has also not claimed that he is in possession of the suit property.”

40. From the detailed discussion of various case laws herein above,

it is clear that in order to succeed in a suit for possession, the

Plaintiff has to show better title than the person from whom possession is claimed. Based on this legal principle, it will now be apt to look upon the peculiar facts of the case at hand. In the present case, Appellant No.1 is claiming the ownership of the suit property. In order to substantiate her ownership, Appellant No. 1 produced General Power of Attorney (Ex. PW-1/1), Agreement to Sell (Ex. PW-1/2), Receipt (Ex. PW-1/3), Affidavit (Ex. PW-1/4) and Will (Ex. PW-1/5) executed by Smt. Sarla Rani in her favour. It is pertinent to note here that the Respondent is not claiming ownership of the suit property, but is only challenging the ownership of Appellant No. 1. It is the case of the Respondent that the suit Property is government land/ custodian land in custody of Mr. Sitara Singh. Appellant No.1 purchased the suit property from Smt. Sarla Rani, however, there is no document which was produced on record to prove that Smt. Sarla Rani was the owner of the suit property. Further, it is the case of the Respondent that the late husband of Appellant No.1 adopted him and hence, Appellant No.1 authorized him to reside in the said portion of the Suit Property. Hence it is the admitted case of the Respondent that he is a licensee of the said portion of the suit property. The Learned Trial Court categorically held that the Respondent is in permissive possession of the suit property.

41. In this regard, it is important to examine Section 116 of the Indian Evidence Act, 1872. As per the said provision, no licensee can challenge the ownership of the person through

whom licensee came into possession of the suit property. Section 116 of the Indian Evidence Act, reads, inter alia, as follows:

“116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

42. The Hon’ble Supreme Court in ***Kamaljit Singh Vs Sarabjit Singh***, reported as **2014 (16) SCC 472**, examined the ambit of Section 116 of the Indian Evidence Act, and held as follows:

“15. Section 116 of the Evidence Act deals with estoppel against tenants and of licensees or persons in possession. Estoppel under this provision falls in the category of estoppel by contract and is relatively a recent development. The rule embodied in Section 116 simply prevents the tenant in occupation of the premises from denying the title of the landlord who let him into possession, just as it applies to a mortgagor or a mortgagee, vendor or a vendee, bailer or a bailee and licensor or a licensee. The rationale underlying the doctrine of estoppel against the tenant’s denial of title of his landlord was stated by Jessel. M.R. in Re: Stringer’s Estate, LR Ch 9 as under:

“Where a man having no title obtains possession of land under a demise by a man in possession who assumes to give him a title as tenant, he cannot deny his landlord’s title. This is perfectly intelligible doctrine. He took possession under a contract to pay rent so long as he held possession under the landlord, and to give it up at the end of the term to the landlord, and having taken it in that way he is not allowed to say that the man whose title he admits and under whose title he took possession

*has not a title. That is a well-established doctrine.
That is estoppel by contract."*

16. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession of the property cannot deny the title of the landlord. But if he wishes to do so he must first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter's title to the property."

43. Hence, from the settled position of law as discussed herein above, it is evident that so long as a jural relationship exists between the Respondent-licensee and Appellant No.1-licensor and so long as he has not surrendered the possession of the premises in his occupation, the Respondent cannot question the title of Appellant No.1 to the suit property. On applying Section 116 of the Evidence Act to the facts of the present case, it is evident that the Respondent is estopped from challenging the title of Appellant No. 1 qua the Suit Property.
44. Hence, in light of the decisions referred to above, the Appellant No.1 has proved a better title to the Suit Property than the Respondent.
45. In view of the detailed discussion hereinabove, this Court concurs with the finding of the learned Trial Court that the Respondent is in permissive possession of the Suit Property. Since, the Respondent has also not filed any cross objections against the Impugned Judgment assailing these observations, so, the finding of the learned Trial Court that Respondent is in permissive possession of the Suit Property and not in adverse possession becomes final. Under these circumstances, this Court

agrees with the contention of Mr. Dasi that once the Defendant has admitted that he was in permissive possession of the said portion of the Suit Property, then he should be liable to hand over the peaceful possession of the same to the person through whom he came into possession at the first place. The fact that Respondent was in permissive possession of Suit Property also makes it conspicuous that *inter se* the Appellants and the Respondent, Appellant No. 1 has a better claim to the Suit Property than the Respondent.

46. It is also necessary to point out that the learned Trial Court wrongly observed that Appellant No. 1 had claimed the Suit Property solely on the basis of Agreement to Sell (Ex. PW-1/2). It further observed that the Agreement to Sell was also merely a photocopy. However, on examination of the evidence, it is clear that Appellant No. 1 had tendered the Agreement to Sell as an Exhibit after showing to the learned Trial Court original Agreement to Sell.

47. It is the contention of Mr. Yogesh Kumar, learned counsel for the Respondent that Appellant No. 1 has not been able to prove her ownership over the Suit Property but on the contrary, he has proved that the Suit Property is a government land. However, even if the Respondent has successfully proved the same, but even then, in light of the judgments and the findings of this Court hereinabove, Appellant No. 1 has proved a better title to the Suit Property in comparison to the Respondent. Then, it is his contention that even the notary officer, who had notarized

the title documents was not called as a witness by Appellant No. 1 in order to prove the documents. Even if Appellant No. 1 failed to do so, it was neither the case of the Respondent that these documents were never executed by Smt. Sarla Rani in favour of Appellant No. 1 nor that these documents were forged. It was his case that Appellant No. 1 is not the owner of the Suit Property and even Smt. Sarla Rani did not have any power to execute the title documents in favour of Appellant No. 1. Therefore, in view of this Court, even if Appellant No. 1 failed to call the notary official to the witness box, no harm has been caused to her case. She has anyhow proved a better title to the Suit Property than the Respondent. This Court is not convinced with any of the submissions made by learned counsel for the Respondent.

48. In light of the observations made hereinabove, the Impugned Judgment and Decree dated 14.01.2015 is set aside. The Suit of Appellants is decreed for possession. This Court directs the Respondent to vacate and hand over the peaceful and vacant possession of the said portion of Suit Property to Appellant No. 2 within a period of 4 weeks of passing of this Judgment. With respect to the prayer of mesne profits @ Rs. 5,000/- per month w.e.f. 01.12.2012 till the delivery of possession to the Appellants, this Court is of the opinion that a sum of Rs.3,000/- per month is reasonable after considering the size and location of the Suit Property. Hence, the Respondent is directed to pay a sum of Rs. 3,000/- per month towards mesne profits from date of

filing of suit i.e. 01.12.2012 till the delivery of actual physical possession to Appellant No. 2 within a period of 6 weeks of passing of this Judgment. It is trite to state that the Appellants are also entitled to the consequential relief of perpetual injunction against the Respondent.

49. Appellant No. 2 is also directed to pay the deficit court fee, if any, in light of the reliefs granted herein above. After payment of such deficit court fee, a decree sheet be drawn according to this Judgment.
50. Appeal is allowed. No order as to costs. All pending applications stand disposed of.

MAY 02, 2023

GAURANG KANTH, J.