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

Reserved on: 16th December, 2025
Pronounced on: 27th March, 2026

\+ RFA 545/2016

RAJEEV MIGLANI .....Appellant
Through: Mr. Ashim Vachher, Sr. Adv. with Ms. Saiba. M. Rajpal, Advocate (M:9910946849)

versus

URMIL GUJRAL & Anr. .....Respondents
Through: Mr. Rajat Wadhwa, Mr. Gurpreet Singh, Ms. Anshika Juneja, Advocates for R-1 (M:9877135434)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGEMENT

MINI PUSHKARNA, J.

Introduction:

1. The present appeal has been filed under Section 96 of the Code of Civil Procedure, 1908 **("CPC")**, against the judgment and decree dated 02nd March, 2016 **("impugned judgment")**, passed by the Court of Additional District Judge **("ADJ")** – 09, Tis Hazari Courts, Delhi in *Suit No. 258/14* (Old *Suit No. 179/06*), titled as *"Smt. Urmal Gujral Versus Sh. Som Nath & Ors."*.

2. The aforesaid suit was instituted under Section 31 of the Specific Relief Act, 1963 **("Specific Relief Act")** by the plaintiff/respondent no. 1 herein, i.e., Smt. Urmil Gujral, *inter alia*, seeking a declaration that the

Agreement to Sell dated 18th August, 2006 executed by the defendant no. 1/respondent no. 2, i.e., Shri Som Nath in favour of the defendant no. 2/appellant, i.e., Shri Rajeev Miglani, as null and void, and seeking cancellation of the same. There was further prayer seeking a decree of permanent injunction, restraining the appellant and respondent no. 2 from entering into any transaction in respect of the property, admeasuring 100 sq. yards, and *bearing No. 10/64, Tihar-I, Subhash Nagar, New Delhi– 110027* **("suit property")**, on the basis of the Agreement to Sell dated 18th August, 2006 and the Substitution Letter dated 08th August, 2006.

3. The Trial Court, *vide* the impugned judgment, decreed the suit and passed a decree of declaration in favour of the respondent no. 1 and against the appellant to the effect that the Agreement to Sell dated 18th August, 2006 executed by respondent no. 2 in favour of the appellant, is null and void. The Trial Court also passed a decree of permanent injunction in favour of the respondent no. 1, thereby, restraining the appellant and respondent no. 2 from entering into any transaction of any nature in respect of the suit property, on the basis of the Agreement to Sell dated 18th August, 2006, or on the basis of Substitution Letter dated 08th August, 2006.

4. Before adverting to the facts of the present appeal, it is noted that this Court, *vide* order dated 05th August, 2016, while issuing notice in the appeal, had also directed the parties to maintain *status quo* with regard to the right, title, interest and possession of the suit property. The said interim order had subsequently been made absolute on 02nd August, 2018.

5. By way of the order dated 01st February, 2017, this Court had recorded that respondent no. 2 had expired. Subsequently, the Legal Representatives **("LRs")** of the respondent no. 2 were brought on record on 17th July, 2018.

6. However, it is to be noted that though the LRs of respondent no. 2 were brought on record, there has been no appearance on behalf of the LRs of respondent no. 2 in the present proceedings. Thus, this Court, by way of the order dated 08th September, 2025, recorded that the respondent no. 2 was proceeded *ex-parte* even before the Trial Court, and accordingly, the Court proceeded in the present matter in absence of the LRs of respondent no. 2.

Relevant Facts:

7. The facts, relevant for adjudication of the present appeal, as culled out from the pleadings and documents on record, are as follows:

Pre-Filing of Suit:

7.1. The present dispute pertains to the suit property, allotted to the father of the respondent no. 2, i.e., Shri Kanshi Ram, in the capacity of a lessee, by the Land and Development Office **("L&DO")**.

7.2. Pursuant to the death of Shri Kanshi Ram in the year 1977, respondent no. 2 and his mother, i.e., Smt. Bassi Devi, the legal heirs of Shri Kanshi Ram, got their names substituted in the records of the L&DO *vide* an Office Letter bearing *No. L&DO/PS/III/370*, dated 15th March, 1988.

7.3. Smt. Bassi Devi and respondent no. 2 entered into negotiations with the respondent no. 1 for the sale of the suit property. In consequence thereof, the respondent no. 2 effected a total payment of Rs. 48,000/- by way of two cheques, in the following manner:

i. Cheque bearing *No. 954326* dated 03rd January, 1988, amounting to Rs. 20,000/-.

ii. Cheque bearing *No. 623679/521/88* dated 22nd March, 1988, amounting to Rs. 28,000/-.

7.4. In *lieu* of the above payments, Smt. Bassi Devi and respondent no. 2 issued a receipt dated 07th April, 1988 *(Ex. PW4/C)*, acknowledging the payments received from respondent no. 1.

7.5. Subsequently, Smt. Bassi Devi and the respondent no. 2 executed the Agreement to Sell dated 07th April, 1988 *(Ex. PW4/A)* in favour of the respondent no. 1, and their respective Wills *(Ex. PW-1, Marks B and A)*, both dated 07th April, 1988, in favour of the respondent no. 1. Further, Smt. Bassi Devi and the respondent no. 2 also executed a General Power of Attorney **("GPA")** of the even date *(Ex. PW-2/A)*, in favour of the husband of respondent no. 1, i.e., Shri Iqbal Singh. In addition to this, Smt. Bassi Devi and the respondent no. 2 had also executed an Affidavit *(Ex. PW-4/B)*, in January 1988 stating that they had sold the suit property to Shri Iqbal Singh, and appointed Shri Girish Kumar as the care taker of the suit property. The two Wills as well as the GPA dated 07th April, 1988 were duly registered with the office of Sub – Registrar, Kashmere Gate.

7.6. In 1995, Smt. Bassi Devi demised, leaving behind her son Shri Som Nath, i.e., respondent no. 2 as her only legal heir. Thereafter, respondent no. 2, by way of a letter dated 18th July, 2006, applied to the L&DO seeking substitution of his name with respect to the suit property. The said substitution in favour of respondent no. 2 was granted by the L&DO *vide* Substitution Letter dated 08th August, 2006.

7.7. Thereafter, respondent no. 2 entered into negotiations with the appellant for the sale of the suit property and consequently, respondent no. 2 executed a registered Agreement to Sell, along with a GPA, Special Power of Attorney **("SPA")**, and Will, all dated 18th August, 2006, in favour of the appellant herein, upon the appellant making a payment of Rs. 4.9 Lacs, in

cash. Respondent no. 2 also executed an undated Affidavit and a receipt in favour of the appellant.

7.8. The husband of respondent no. 1 issued a letter dated 14th August, 2006 to the L&DO on the ground that he had information that respondent no. 2 had applied for conversion of the suit property as freehold, despite having sold the suit property to the respondent no. 1 in the year 1988.

7.9. On receipt of the aforesaid letter, the L&DO issued a letter dated 19th September, 2006 to respondent no. 2, to explain the reasons for applying for substitution of the suit property in his name, despite having executed the Agreement to Sell dated 07th April, 1988 in favour of the respondent no. 1. However, the said letter returned undelivered on 27th September, 2006.

7.10. In the meantime, the L&DO also received a letter dated 07th September, 2006 from the appellant, stating that he had purchased the suit property from respondent no. 2 on 18th August, 2006 and that he would be applying for conversion of the suit property to freehold.

7.11. Thereafter, a letter dated 18th September, 2006 was addressed by Shri Iqbal Singh to the L&DO requesting for cancellation of the Substitution Letter dated 08th August, 2006.

7.12. The appellant applied to the L&DO for conversion of the suit property, by way an application dated 25th September, 2006.

7.13. The L&DO, *vide* its letter dated 28th December, 2006, cancelled the substitution carried out on 08th August, 2006 in favour of the respondent no. 2 with respect to the suit property, on the ground that a fraud was being played by respondent no. 2 by executing two different Agreements to Sell and GPAs in respect of the suit property. Further, the conversion application filed by the appellant was also rejected by the L&DO on 28th December,

2006 on account of the fact that title of the property was disputed and the matter was *sub-judice*.

7.14. The husband of the respondent no. 1 also issued a legal notice dated 22nd September, 2006 to the appellant and respondent no. 2, along with the attesting witnesses of the Agreement to Sell, and GPA dated 18th August, 2006, namely, Shri Suresh Singh and Shri Sanjay Kumar, calling upon them to get the Agreement to Sell dated 18th August, 2006, as well as the Substitution Letter dated 08th August, 2006 cancelled, since the respondent no. 1 is the legal owner of the suit property. However, no reply was received by respondent no. 1 to the said notice.

7.15. Aggrieved thereby, the respondent no. 1 filed the *Suit No. 258/14* (Old *Suit No. 179/06*) before the Trial Court.

Post-Filing of Suit:

7.16. The Trial Court, by way of the order dated 07th February, 2007 deleted defendant no. 3, i.e., the L&DO from the array of parties, since the Substitution Letter dated 08th August, 2006 already stood cancelled, thereby, rendering prayer no. (ii) of the suit against defendant no. 3, as infructuous.

7.17. The Trial Court framed the following issues *vide* order dated 06th March, 2007:

> *"xxx xxx xxx*
>
> *1. Whether the General Power of Attorney, agreement to sale and Will dated 07/4/88 are forged documents? OPD1*
>
> *2. Whether the suit is without cause of action? OPD1*
>
> *3. Whether the agreement to sale dated 18/8/06 is a null and void document? OPP*
>
> *4. Whether the plaintiff is entitled to the decree of declaration as prayed for? OPP*

5. Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP

6. Relief.
xxx xxx xxx"

7.18. The Trial Court recorded by way of the order dated 12th October, 2007 that defendant no. 1, i.e., respondent no. 2 herein shall be proceeded *ex-parte* and the right of respondent no. 2 to cross-examine was also closed.

7.19. The Trial Court recorded the statement of the respondent no. 1 herein in the order dated 04th May, 2010 that the appellant herein had also filed a *Suit bearing No. 366/09* with respect to the suit property and for cancellation of documents relied upon, in the present suit. Further, the plaintiff had sought time to move an appropriate application for consolidation of the two suits to avoid conflicting judgments by different Courts.

7.20. The suit filed by the appellant herein, being *CS No. 119/16 (11842/16)*, titled as *"Rajeev Miglani Versus Smt. Urmil Gujral and Another"*, was dismissed by ADJ-01 (West), Tis Hazari Courts, Delhi *vide* judgment dated 23rd November, 2016, as being barred by *res judicata*.

7.21. The Trial Court passed the impugned judgment and decree dated 02nd March, 2016, whereby, the suit was decreed in favour of respondent no. 1 to the effect that the Agreement to Sell dated 18th August, 2006 executed by respondent no. 2 in favour of the appellant herein, is null and void. Thus, the present appeal has been filed by the appellant/defendant no. 2, seeking to set aside the impugned judgment and decree.

Submissions of the Parties:

8. Before this Court, the appellant has raised the following contentions for seeking setting aside of the impugned judgment:

8.1. The suit filed before the Trial Court was not maintainable as cancellation of the Agreement to Sell dated 18th August, 2006, could not have been sought by a non-executant/third-party to said document under Section 31 of the Specific Relief Act. It is a well settled proposition of law that for seeking declaration of a document as null and void, the non-executant can approach the Court only under Section 34 of the Specific Relief Act.

8.2. Had the suit been filed under Section 34 of Specific Relief Act, it would still not be maintainable, as a suit is maintainable under Section 34 of Specific Relief Act only when the person has an interest in the property. However, as the claim of the respondent no. 1 to the suit property is only based upon an unregistered Agreement to Sell dated 07th April, 1988, there is no interest of the respondent no. 1 with respect to the suit property.

8.3. A suit under Section 34 of Specific Relief Act would also not be maintainable without seeking a relief of specific performance. In the present case, the respondent no. 1 was aware that the remedy to seek specific performance of the unregistered Agreement to Sell dated 07th April, 1988, was already barred by limitation. To avoid the bar of limitation, respondent no. 1 is alleging ownership by virtue of an unregistered Agreement to Sell, which cannot be allowed.

8.4. Further, the suit was not maintainable as respondent no. 1 should have sought title to the suit property, as well as possession of the entire suit property, in order to claim the consequential relief of specific performance. Respondent no. 1 does not have any *locus standi* to challenge the Agreement to Sell dated 18th August, 2006, and the only relief, if any, that respondent

no. 1 could have sought was with respect to specific performance, on the basis of the Agreement to Sell dated 07th April, 1988.

8.5. A suit will not be maintainable under Section 34 of Specific Relief Act since relief of possession has not been sought by the respondent no. 1. Mere reliance on the unregistered Agreement to Sell dated 07th April, 1988 is insufficient to prove possession of the plaintiff, particularly when, the plaintiff/respondent no. 1 herein has admitted in her cross-examination that the suit property was in possession of the tenants.

8.6. In the absence of seeking relief of declaration of title, the suit seeking cancellation of documents was not maintainable, since respondent no. 1 is not the owner of the suit property. This is on account of absence of any Sale Deed in favour of respondent no. 1 and the absence of any intention on part of respondent no. 2 to sell the suit property to respondent no. 1.

8.7. The respondent no. 1 has not produced any document on record showing acknowledgement of the two cheques by way of which, the alleged payment of Rs. 48,000/- was made from her account. Respondent no. 1, i.e., *PW-4*, has admitted in her testimony that she had no knowledge of the bank accounts of Smt. Bassi Devi and Shri Som Nath. Also, no confirmation has been put forth showing encashment of those cheques in their account.

8.8. All the documents dated 07th April, 1988 are forged. The Trial Court erred in clubbing the issue nos. 1 to 5 together, even though, issue no. 1, which dealt with forgery of the documents dated 07th April, 1988 was an independent issue.

8.9. The documents dated 07th April, 1988 were never intended to sell the suit property and were therefore, never acted upon. The Trial Court erred in not considering that Smt. Bassi Devi was a maid servant of respondent no. 1.

Smt. Bassi Devi was given a loan by respondent no. 1, and some papers were executed in the form of security. However, the said security was not executed with the intent to sell the suit property. Further, the said security papers are not papers having the same content as Exhibits, i.e., *Ex. PW-4/A*, *Ex. PW2/A*, *Ex. PW5/1*, *Ex. PW5/2* and *Ex. PW1/B*, respectively.

8.10. The Trial Court has erred in not considering the forged aspects of the documents of the year 1988 and has proceeded by assuming that the said documents are genuine.

8.11. The documents of the year 1988, are not only inconsistent to each other, but are also not capable of execution with respect to the content, as mentioned therein. The Agreement to Sell dated 07th April, 1988, does not bear the signatures of *PW-5*, i.e., Shri Shiv Chander Talwar. Further, in his cross-examination, *PW-5* admits that he only signed the GPA dated 07th April, 1988 and thus, his signatures which appear on both the Wills dated 07th April, 1988, as well as the receipt of the same date, are forged.

8.12. The documents of the year 1988, although were executed on the same date, differ in terms of their content. While the Agreement to Sell dated 07th April, 1988, shows Shri Girish Gujral as a tenant in the suit property, the Affidavit dated 07th April, 1988 shows Shri Girish Gujral to be a care taker of the suit property. Moreover, the GPA dated 07th April, 1988 incorrectly records the address of respondent no. 2 as being *51/8, Ramesh Nagar, New Delhi*.

8.13. Once there were discrepancies found in the documents dated 07th April, 1988, the *onus* to explain the same ought to have been on respondent no. 1. However, there was no explanation by respondent no. 1 with regard thereto.

8.14. The respondent no. 1 failed to prove possession of the suit property. Respondent no. 1 has admitted that she was residing in the adjoining property, i.e., *10/128, Tihar – I, Subash Nagar, New Delhi – 110027*, and thereafter, shifted to another property bearing *No. F-73, Rajouri Garden, New Delhi*. Therefore, respondent no. 1 never occupied the suit property herself.

8.15. The Trial Court failed to consider the testimony of *PW-4*, i.e., respondent no. 1, wherein, she claimed possession of the suit property only through her son, i.e., Shri Girish Gujral, who was 19 years of age at that time, and was shown as a tenant, while he was living with respondent no. 1. Therefore, the respondent no. 1 has failed to prove any material showing that she acquired the possession of the suit property.

8.16. It is an admitted fact that Shri Girish Gujral was in occupation of a single room and not the entire suit property. Therefore, the question of respondent no. 1 being in possession of the entire suit property does not arise. Further, neither any possession letter nor any rent agreement has been brought forth as proof of possession of Shri Girish Gujral, the alleged tenant, nor any receipt showing the tenancy at Rs. 150/- has been put forth. There is no deposition on record as to when the possession was taken away from Shri Girish Gujral and when he had vacated the suit property.

8.17. Respondent no. 1 in her cross-examination has also stated that apart from the room allegedly in occupation of Shri Girish Gujral, the rest of the property was occupied by other tenants. However, respondent no. 1 failed to bring forward any tenant to show that the occupants acknowledged respondent no. 1 as a landlady.

8.18. The testimony of *PW-4*, i.e., respondent no. 1 was materially contradicted in her cross-examination with respect to possession of the suit property.

8.19. The possessory rights are the essence of the set of document called the GPA. Since the GPA does not indicate that the possession of the suit property was delivered to respondent no. 1, and in addition to this, the respondent no. 1 has admitted to never having occupied the suit property from 07th April, 1988 till the disposal of the suit property, therefore, the Trial Court failed to appreciate that respondent no. 1 was unable to prove possession of the suit property.

8.20. In the absence of any possessory rights being proved by the respondent no. 1, the Trial Court had no occasion to consider that the document dated 07th April, 1988 conferred title in favour of respondent no. 1.

8.21. The Trial Court erred in observing that the appellant failed to prove his possession over the suit property as it is an admitted case of the parties that the suit property was under the occupation of the tenants and the appellant has produced two Ration Cards dated 05th February, 2007 and 06th March, 2007, in favour of the two tenants in the suit property.

8.22. The appellant conducted due diligence before purchasing the suit property, and is thus a *bona fide* purchaser of the suit property, protected under Section 53-A of the Transfer of Property Act, 1882 **("TP Act")** and Section 19(1) of Specific Relief Act.

8.23. Respondent no. 1 failed to inform the L&DO about the alleged transactions dated 07th April, 1988 and have failed to provide any reason for it. Respondent no. 1 has also not carried out the exercise of mutation in the

L&DO records, till date. Since the documents dated 07th April, 1988 are sham and void, respondent no. 1 never presented these documents for mutation before the authorities.

8.24. The house tax records have not been mutated in favour of respondent no. 1 from the year 1988 till date, and the suit property continues to be under the name of Smt. Bassi Devi and Shri Som Nath. Respondent no. 1 has claimed to have paid the property tax for the suit property on behalf of Shri Som Nath only for the last 3-4 years. The fact remains that Smt. Bassi Devi and Shri Som Nath have been paying the house tax from the year 1988 till the year 2004.

8.25. The Agreement to Sell dated 18th August, 2006 was a registered document and the receipt of the consideration of Rs. 4.9 Lacs in cash was never disputed by respondent no. 2. The documents dated 18th August, 2006 were executed only after due mutation of the suit property in favour of respondent no. 2. This shows that since all the ingredients of Sale Deed exist in the document dated 18th August, 2006, therefore, even though the document is titled as an Agreement to Sell, it is in substance a Sale Deed itself.

8.26. Even if the respondent no. 1 has any other material document, the same stands barred by Section 19 of the Specific Relief Act, which clearly lays down that any previous transaction, including, Agreement to Sell, will not come in the way of a *bona fide* purchaser for consideration. This aspect of the matter was specifically argued and pleaded but has not been considered by the Trial Court.

8.27. The Trial Court failed to consider that the respondent no. 1 relied upon the Agreement to Sell and GPA dated 07th April, 1988 before the

L&DO, however, in the suit, the respondent no. 1 has eventually relied upon the documents, which also contain the two registered Wills dated 07th April, 1988, as well as an Affidavit of January, 1988 and a receipt dated 07th April, 1988 to show the ownership.

8.28. It is a settled position of law, that unregistered documents cannot form the basis for transfer of title and the same cannot be read in evidence except for collateral purpose.

8.29. The Trial Court has observed that the appellant did not place on record the proof of payment of Rs. 4.9 Lacs, whereas, the respondent no. 1 has proved the payment of Rs. 48,000/- by way of submitting two cheques. However, perusal of the record proves the contrary. The appellant during the course of cross-examination on 13th October, 2009 has brought on record that the amount of Rs. 4.9 Lacs was withdrawn from the Oriental Bank of Commerce having branch at *Pushpanjali Enclave, New Delhi- 110034*. The original copy of the Passbook was produced on the next date of hearing. Even otherwise, the payment of Rs. 4.9 Lacs stood acknowledged by respondent no. 2 in his written statement, already on record.

8.30. The reliance placed by the respondent no. 1 on Section 202 of the Indian Contract Act, 1872 **("Contract Act")** is misplaced. The registered GPA dated 07th April, 1988 in favour of Shri Iqbal Singh, husband of the respondent no. 1, does not create any interest which cannot be revoked in terms of Section 202 of the Contract Act. The GPA dated 07th April, 1988 is silent with respect to the Agreement to Sell dated 07th April, 1988, as well as the alleged sale consideration of Rs. 48,000/-. The said GPA has been executed in favour of Shri Iqbal Singh, while the Agreement to Sell is in favour of respondent no. 1. Thus, the GPA only grants the right to Shri Iqbal

Singh to execute a Sale Deed on behalf of Smt. Bassi Devi and Shri Som Nath, which was admittedly never done. Hence, Section 202 of the Contract Act has no application to the present case.

8.31. The registered Wills dated 07th April, 1988 do not convey any title in favour of respondent no. 1 since respondent no. 2 was still alive when the suit was filed. Additionally, the Wills dated 07th April, 1988 have also not been proved as per the provisions of Indian Succession Act, 1925 **("Succession Act")**.

9. *Per contra*, the submissions put forth by respondent no. 1 are as follows:

9.1. It is the case of the respondent no. 1 that she became the owner of the suit property, having purchased the same from respondent no. 2, i.e., Shri Som Nath and his mother, Smt. Bassi Devi on 07th April, 1988, through a registered Agreement to Sell, GPA, two Wills and Affidavit of the year 1988.

9.2. The respondent no. 1 claims that the possession of the suit property was already with her son, i.e., Shri Girish Gujral, at the time of execution of the documents on 07th April, 1988.

9.3. After the demise of Smt. Bassi Devi in the year 1995, respondent no. 2 dishonestly got his name substituted in the records of the L&DO and executed false documents for selling the suit property in favour of the appellant, even though, respondent no. 2 had no right or title over the suit property after the sale of the suit property on 07th April, 1988.

9.4. Respondent no. 2 was proceeded *ex-parte* before the Trial Court. Therefore, the witnesses were cross-examined only by counsel of the appellant. The appellant was neither a party, nor a witness, to the documents relied upon by respondent no. 1 in support of her claim of ownership over the suit property.

9.5. The respondent no. 2 failed to appear in the witness box or lead any evidence to prove that the documents dated 07th April, 1988 were forged and thus, the said documents, duly proved by respondent no. 1, remain uncontroverted.

9.6. The appellant, in his cross-examination, has stated that he cannot say as to why respondent no. 2 executed the documents dated 07th April, 1988 in favour of respondent no. 1. In saying so, the appellant has admitted to the execution of these documents. Once these documents had been proved and admitted, Sections 91 and 92 of the Indian Evidence Act, 1872 **("Evidence Act")** also come into play and no oral evidence could have been led to controvert the contents of such documents.

9.7. The Trial Court, upon appreciation of the pleadings and the evidence, rightly came to the conclusion that the registered documents dated 07th April, 1988 executed by the respondent no. 2 and Smt. Bassi Devi in favour of respondent no. 1, stood duly proved and the appellant and respondent no. 2 failed to discharge the *onus* which was put upon them, as the respondent no. 2 failed to enter the witness box or lead any other evidence.

9.8. The respondent no. 1 has also become owner of the suit property by virtue of the registered Wills dated 07th April, 1988, as during the pendency of the present appeal, Shri Som Nath had also left for his heavenly abode. The Wills dated 07th April, 1988 of Shri Som Nath and Late Smt. Bassi Devi, have thus become fully operational after their death and the suit property has accordingly devolved upon respondent no. 1 on that count too.

9.9. The Trial Court correctly applied the rule of *preponderance of probabilities* and came to the conclusion that respondent no. 1 had acquired rights over the suit property by virtue of registered documents executed in

the year 1988, and that after execution of the said documents, respondent no. 2 had no authority to execute the documents dated 18th August, 2006 in favour of the appellant. The conclusions derived by the Trial Court are based on correct appreciation of facts and law, and hence, no fault can be found with the impugned judgment dated 02nd March, 2016.

Findings and Analysis:

10. I have heard learned counsels for the parties, and perused the documents and evidence on record.

11. The Trial Court has decreed the suit in favour of respondent no. 1 by holding that the Agreement to Sell dated 18th August, 2006, executed by respondent no. 2 in favour of the appellant, is null and void. The right of respondent no. 1 in the suit property has been recognized on the basis of the documents and possession of the suit property in favour of respondent no. 1.

12. In the present appeal, the appellant has primarily contended that no right, title, or interest passed in favour of the respondent no. 1 based on the set of the documents dated 07th April, 1988. The appellant has asserted right over the suit property on the basis of subsequent documents executed in his favour. Thus, in essence, the moot question before this Court is as to who has right and interest over the suit property.

13. Both the appellant as well as respondent no. 1, have Agreements to Sell in their favour, and it is an admitted and undisputed position that there exists no registered Sale Deed in favour of either the appellant or the respondent no. 1. In the present case, the respondent no. 2, had earlier executed a set of documents dated 07th April, 1988 in favour of respondent no. 1, along with the other co-owner, i.e., his mother, Late Smt. Bassi Devi.

Subsequently, after the death of his mother, the respondent no. 2 executed another set of documents dated 18th August, 2006 in favour of the appellant.

14. It is to be noted that respondent no. 2 was proceeded *ex-parte* in the suit proceedings. The LRs of the respondent no. 2, though impleaded before this Court, never entered appearance and noting said fact, as well as the fact that the respondent no. 2 had been proceeded *ex-parte* even in the Trial Court, this Court proceeded to hear the present matter in the absence of respondent no. 2.

Maintainability of the Suit:

15. At the outset, this Court shall deal with the contention of the appellant that the suit filed by respondent no. 1, as plaintiff, was not maintainable on the ground that the respondent no. 1, being a non-executant to the Agreement to Sell dated 18th August, 2006, could not have filed a suit seeking cancellation thereof under Section 31 of the Specific Relief Act.

16. It is to be noted that the respondent no. 1 had filed the suit under Section 31 of the Specific Relief Act, *inter alia*, seeking a declaration that the Agreement to Sell dated 18th August, 2006, executed by respondent no. 2 in favour of the appellant, was null and void, and thereby, sought its cancellation.

17. In this regard, it would be fruitful to refer to Section 31 of the Specific Relief Act, which reads as under:

> *"xxx xxx xxx*
>
> ***31. When cancellation may be ordered.—***
> *(1)* ***Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled****.*

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

xxx xxx xxx"

(Emphasis Supplied)

18. Reading of the aforesaid Section clearly demonstrates that a suit under Section 31 of the Specific Relief Act can be filed by any person with respect to a written instrument, against whom the instrument is void or voidable, and who has reasonable apprehension that if such instrument is left outstanding, the same may cause serious injury to such person.

19. The purport of Section 31 of the Specific Relief Act is that a person can resort to legal proceedings to have a written instrument declared as void or voidable against him, if such written instrument, if left pending, can cause adverse implications to the rights of such person.

20. The underlying principle behind Section 31 of the Specific Relief Act is that an instrument, if left outstanding and unresolved, may be a source of potential mischief, and operate as adversarial to the right of a person. Thus, the jurisdiction under Section 31 of the Specific Relief Act is a protective or preventive one.

21. A mere reading of the provision makes it abundantly clear that the relief under Section 31 of the Specific Relief Act is not restricted to only cases of fraud, mistake, or undue influence on the executant. The scope of Section 31 of the Specific Relief Act is wide enough to incorporate within its import a challenge to an instrument for being adversarial to the interest of a party against whom it may operate, in different circumstances.

22. The question raised before this Court by the appellant is as to the

locus of a person who can file a suit under Section 31 of the Specific Relief Act.

23. In this regard, it is apposite to refer to the decision of the Supreme Court in the case of ***Md. Noorul Hoda Versus Bibi Raifunnisa and Others, (1996) 7 SCC 767***, wherein, the Supreme Court held that the words *"any person"* in Section 31 of the Specific Relief Act would include a person seeking derivative title from his seller, in the following manner:

> *"xxx xxx xxx*
>
> ***6.*** *The question, therefore, is as to whether Article 59 or Article 113 of the Schedule to the Act is applicable to the facts in this case. Article 59 of the Schedule to the Limitation Act, 1908 had provided inter alia for suits to set aside decree obtained by fraud. There was no specific article to set aside a decree on any other ground. In such a case, the residuary Article 120 in Schedule III was attracted. The present Article 59 of the Schedule to the Act will govern any suit to set aside a decree either on fraud or any other ground. Therefore, Article 59 would be applicable to any suit to set aside a decree either on fraud or any other ground. It is true that Article 59 would be applicable if a person affected is a party to a decree or an instrument or a contract. There is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether Article 59 gets attracted? As stated earlier, Article 59 is a general provision. In a suit to set aside or cancel an instrument, a contract or a decree on the ground of fraud, Article 59 is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded.* ***Section 31 of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and***

> ***the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in Section 31 of the Specific Relief Act is wide enough to encompass a person seeking derivative title from his seller.*** *It would, therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first became known to him.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

24. While elucidating the concept of *"any person"* under Section 31 of the Specific Relief Act, the Supreme Court in the case of ***Deccan Paper Mills Company Limited Versus Regency Mahavir Properties and Others, (2021) 4 SCC 786,*** has held as follows:

> *"xxx xxx xxx*
>
> ***21.*** *A reading of the aforesaid judgment [Muppudathi Pillai v. Krishaswami Pillai, 1959 SCC OnLine Mad 314 : (1959) 72 LW 543] of the Full Bench would make the position in law crystal clear.* ***The expression "any person" does not include a third party, but is restricted to a party to the written instrument or any person who can bind such party. Importantly, relief under Section 39 of the Specific Relief Act, 1877 would be granted only in respect of an instrument likely to affect the title of the plaintiff, and not of an instrument executed by a stranger to that title. The expression "any person" in this section has been held by this Court to include a person seeking derivative title from his seller*** *[see Mohd. Noorul Hoda v. Bibi Raifunnisa [Mohd. Noorul Hoda v. Bibi Raifunnisa, (1996) 7 SCC 767] , at p. 771].* ***The principle behind the section is to protect a party or a person having a derivative title to property from such party from a prospective misuse of an instrument against him.*** *A reading of Section 31(1) then shows that when a written instrument is adjudged void or voidable, the Court may then order it to be delivered up to the plaintiff and cancelled—in exactly the same way as a suit for rescission of a contract under Section 29.* ***Thus far, it is clear that the action under Section 31(1) is strictly an action inter partes or by persons who obtained derivative title from the parties, and is thus in personam****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

25. Thus, from a perusal of the provision, as well as both the judgments referred hereinabove, it is evident that the language of Section 31 of the Specific Relief Act is clear and unambiguous, and has a wider connotation. The words *"any person"* cannot be given a restricted interpretation, to only include an executant of the instrument. *"Any person"* who can file a suit under Section 31 of the Specific Relief Act would include not only the executant of the instrument, but also a person who can bind a party to such instrument, i.e., the executants of the instrument, with respect to the subject matter of the instrument. A party can file a suit under the said provision when his right is affected by the instrument sought to be cancelled, and he has the capacity to bind the parties to such instrument, on account of right asserted by such person over the subject matter of the instrument.

26. Thus, the term *"any person"* includes every person whose right is affected by the instrument, and is not a third party or a stranger, who apprehends that serious injury would be caused to him, if the instrument is left outstanding and unresolved. Further, such person has the capacity to bind the parties to the instrument in question, which is sought to be challenged/ cancelled.

27. The only limitation under Section 31 of the Specific Relief Act is that no person can seek cancellation of a document executed by a complete stranger to his title. Therefore, a person can seek cancellation of an instrument, to which he is not a party, provided the instrument is executed by a person who is not a complete stranger to his title. In the present case, the executant of the instrument in question, i.e., respondent no. 2, who executed the subsequent Agreement to Sell in favour of the appellant, cannot

be said to be a stranger to the title asserted by respondent no. 1 in the subject matter of the instrument. This is for the reason that the respondent no. 1 has asserted his right over the suit property on the basis of a previous instrument executed by respondent no. 2 and seeks cancellation of a subsequent instrument executed by respondent no. 2 in favour of appellant, pertaining to the same property, i.e., the suit property.

28. Thus, the expression *"any person"* in this Section would include a person seeking derivative title from his seller. For instance, a party obtains a derivative title from his seller with respect to a property. Subsequently, the seller executes another instrument with respect to the same title, in favour of a third party. In such a scenario, the former party can file a suit under Section 31 of the Specific Relief Act, to seek cancellation of the subsequent instrument, though not an executant to the same. This is exactly what has transpired in the present case.

29. In the present facts and circumstances, the subsequent instrument, i.e., Agreement to Sell of the year 2006 in favour of appellant, if left outstanding, would cause prejudice to the title of the former party, i.e., the respondent no. 1, since the former party, i.e., the respondent no. 1 and the appellant, in whose favour the subsequent instrument was executed, derive their interest from the same seller, i.e., respondent no. 2 in the present case. In such circumstances, a party, though not an executant of the instrument in question, may approach Court under Section 31 of the Specific Relief Act, seeking a *quia timet action* for cancellation of the said instrument.

30. In the present case, the respondent no. 2 and his mother, i.e., Smt. Bassi Devi, being the co-owners of the suit property, executed a set of documents dated 07th April, 1988 in favour of the respondent no. 1 and her

husband, i.e., Shri Iqbal Singh. This includes an unregistered Agreement to Sell, two registered Wills executed by respondent no. 2 and his mother respectively, registered GPA, and a receipt dated 07th April, 1988 towards consideration for purchase of the property, along with an Affidavit of January, 1988, executed by respondent no. 2 and his mother.

31. Respondent no. 1 is a person deriving interest/right in the suit property from the sellers, i.e., respondent no. 2 and his mother, namely, Smt. Bassi Devi. The subsequent Agreement to Sell dated 18th August, 2006, has been executed by one of the sellers, i.e., the respondent no. 2, in favour of appellant with respect to the same property. Thus, the Agreement to Sell dated 18th August, 2006, if left outstanding, would prejudice the interest of the respondent no. 1, as both the appellant and the respondent no. 1 derive their interest from the same seller.

32. Therefore, the respondent no. 1 would be encompassed within the meaning of the words *"any person"*, as appearing in Section 31 of the Specific Relief Act.

33. Thus, the suit filed by the respondent no. 1 under Section 31 of the Specific Relief Act to seek cancellation of the Agreement to Sell dated 18th August, 2006 executed by the respondent no. 2 in favour of the appellant, with respect to the same property, to protect her right/interest in the suit property, would be maintainable.

34. The appellant has relied upon the judgment in the case of ***Deccan Paper Mills (Supra)***, in order to contend that only an executant of a document can seek declaration of the said document as null and void under Section 31 of the Specific Relief Act, and since the respondent no. 1 had not executed the Agreement to Sell dated 18th August, 2006 in favour of the

appellant, the cancellation of the same could not be sought by the respondent no. 1. The said contention raised by the appellant is totally misplaced, as the aforesaid judgment has been misunderstood and misconstrued by the appellant.

35. The Supreme Court in the aforesaid case of ***Deccan Paper Mills (Supra)*** dealt with the question of whether proceedings under Section 31 of the Specific Relief Act, are in *rem* or in *personam*. The Supreme Court in the aforesaid judgment, while citing the decision in the case of ***Muppudathi Pillai Versus Krishnaswami Pillai and Others, 1959 SCC Online Mad 314***, held that proceedings under Section 31 of the Specific Relief Act are proceedings in *personam*, in the following manner:

> *"xxx xxx xxx*
>
> ***18. In an extremely important paragraph, the Full Bench [Muppudathi Pillai v. Krishaswami Pillai, 1959 SCC OnLine Mad 314: (1959) 72 LW 543] then set out the principle behind Section 39(1) of the Specific Relief Act, 1877 as follows:*** *(Muppudathi Pillai case [Muppudathi Pillai v. Krishaswami Pillai, 1959 SCC OnLine Mad 314 : (1959) 72 LW 543] , SCC OnLine Mad para 12)*
>
> > *"12.* ***The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of potential mischief. The jurisdiction under Section 39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence, etc. and as it has been stated it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated.*** *A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared.* ***Section 39 embodies the principle by which he is allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in quia timet actions.*** *"*
> >
> > *(emphasis supplied)*

19. *The Court then continued its discussion as follows: (Muppudathi Pillai case [Muppudathi Pillai v. Krishaswami Pillai, 1959 SCC OnLine Mad 314 : (1959) 72 LW 543] , SCC OnLine Mad paras 13-16)*

> *"13. ...* ***The provisions of Section 39 make it clear that three conditions are requisite for the exercise of the jurisdiction to cancel an instrument : (1) the instrument is void or voidable against the plaintiff; (2) plaintiff may reasonably apprehend serious injury by the instrument being left outstanding; (3) in the circumstances of the case the court considers it proper to grant this relief of preventive justice.*** *On the third aspect of the question the English and American authorities hold that where the document is void on its face the court would not exercise its jurisdiction while it would if it were not so apparent. In India it is a matter entirely for the discretion of the court.*
>
> *14. The question that has to be considered depends on the first and second conditions set out above.* ***As the principle is one of potential mischief, by the document remaining outstanding, it stands to reason the executant of the document should be either the plaintiff or a person who can in certain circumstances bind him. It is only then it could be said that the instrument is voidable by or void against him. The second aspect of the matter emphasises that principle. For there can be no apprehension if a mere third party asserting a hostile title creates a document. Thus relief under Section 39 would be granted only in respect of an instrument likely to affect the title of the plaintiff and not of an instrument executed by a stranger to that title.***
>
> *15. Let us take an example of a trespasser purporting to convey the property in his own right and not in the right of the owner. In such a case a mere cancellation of the document would not remove the cloud occasioned by the assertion of a hostile title, as such a document even if cancelled would not remove the assertion of the hostile title. In that case it would be the title that has got to be judicially adjudicated and declared, and a mere cancellation of an instrument would not achieve the object. Section 42 of the Specific Relief Act would apply to such a case.* ***The remedy under Section 39 is to remove a cloud upon the title, by removing a potential danger but it does not envisage an adjudication between competing titles. That can relate only to instruments executed or***

purported to be executed by a party or by any person who can bind him in certain circumstances. It is only in such cases that it can be said there is a cloud on his title and an apprehension that if the instrument is left outstanding it may be a source of danger. *Such cases may arise in the following circumstances : A party executing the document, or a principal in respect of a document executed by his agent, or a minor in respect of a document executed by his guardian de jure or de facto, a reversioner in respect of a document executed by the holder of the anterior limited estate, a real owner in respect of a document executed by the benamidar, etc. This right has also been recognised in respect of forged instruments which could be cancelled by a party on whose behalf it is purported to be executed****. In all these cases there is no question of a document by a stranger to the title. The title is the same. But in the case of a person asserting hostile title, the source or claim of title is different.*** *It cannot be said to be void against the plaintiff as the term void or voidable implies that but for the vitiating factor it would be binding on him, that is, he was a party to the contract.*

16. There is one other reason for this conclusion. Section 39 empowers the court after adjudicating the instrument to be void to order the instrument to be delivered up and cancelled. If the sale deed is or purported to have been executed by a party, the instrument on cancellation could be directed to be delivered over to the plaintiff. If on the other hand such an instrument is executed by a trespasser or a person claiming adversely to the plaintiff it is not possible to conceive the instrument being delivered over not to the executant but his rival, the plaintiff."

xxx xxx xxx

21. A reading of the aforesaid judgment [Muppudathi Pillai v. Krishaswami Pillai, 1959 SCC OnLine Mad 314 : (1959) 72 LW 543] of the Full Bench would make the position in law crystal clear. The expression "any person" does not include a third party, but is restricted to a party to the written instrument or any person who can bind such party. Importantly, relief under Section 39 of the Specific Relief Act, 1877 would be granted only in respect of an instrument likely to affect the title of the plaintiff, and not of an instrument executed by a stranger to that title. The expression "any person" in this section has been held by this Court to include a person seeking derivative title from his seller *[see Mohd. Noorul Hoda v. Bibi Raifunnisa [Mohd. Noorul Hoda v. Bibi Raifunnisa,*

> *(1996) 7 SCC 767] , at p. 771]. The principle behind the section is to protect a party or a person having a derivative title to property from such party from a prospective misuse of an instrument against him. A reading of Section 31(1) then shows that when a written instrument is adjudged void or voidable, the Court may then order it to be delivered up to the plaintiff and cancelled—in exactly the same way as a suit for rescission of a contract under Section 29.* ***Thus far, it is clear that the action under Section 31(1) is strictly an action inter partes or by persons who obtained derivative title from the parties, and is thus in personam.***
>
> *xxx xxx xxx*
>
> ***27.*** *Judged by these authorities, it is clear that* ***the proceeding under Section 31 is with reference to specific persons and not with reference to all who may be concerned with the property underlying the instrument, or "all the world".*** *Clearly, the cancellation of the instrument under Section 31 is as between the parties to the action and their privies and not against all persons generally, as the instrument that is cancelled is to be delivered to the plaintiff in the cancellation suit. A judgment delivered under Section 31 does not bind all persons claiming an interest in the property inconsistent with the judgment, even though pronounced in their absence.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

36. Thus, perusal of the aforesaid judgment makes it apparent that the Supreme Court, by affirming the decision of the Madras High Court in the case of ***Muppudathi Pillai (Supra)***, held that proceedings under Section 31 of the Specific Relief Act are in *personam*, and *"any person"* mentioned in Section 31 of the Specific Relief Act is either a party to the written instrument or any person who can bind a party to the instrument. Thus, *"any person"* under Section 31 of the Specific Relief Act, would include a non-executant to an instrument, who can bind a party to the instrument in question, and would also include a person seeking derivative title from his seller, who is party to such instrument.

37. Furthermore, the embargo to file a suit under Section 31 of the Specific Relief Act, is only limited to a person seeking cancellation of an

instrument executed by a complete stranger or trespasser, asserting a hostile title. In such scenarios, the stranger or trespasser is asserting the same title, however, the source or claim of title is different.

38. Thus, where the original seller first executes an instrument in favour a person 'A', and subsequently, the original seller executes a second instrument in favour of a person 'B' with respect to the same right. In such cases, when 'A' seeks cancellation of the second instrument executed by the original seller, it cannot be said that the said second instrument was executed by a stranger to the title of 'A'. Thus, person 'A' would be within his right to file a suit for cancellation of the second instrument under Section 31 of the Specific Relief Act.

39. It is also to be noted that when the Supreme Court noted in the case of ***Deccan Paper Mills (Supra)*** that an executant of an instrument has to file a suit under Section 31 of the Specific Relief Act and a non-executant has to file a suit under Section 34 of the Specific Relief Act, the reference was in the context of an instrument executed by a stranger to the title of the executant. Law is settled that no suit can be filed under Section 31 of the Specific Relief Act, seeking cancellation of an instrument executed by a "third party" who is a complete stranger to the right or title of the plaintiff. However, the same is not the position in the present case, in view of the detailed discussion hereinabove.

40. It is also to be noted that the aforesaid finding in the case of ***Deccan Paper Mills (Supra)*** with regard to filing of respective suits by executant and non-executant of an instrument, was given by relying upon the judgment in the case of ***Suhrid Singh Versus Randhir Singh and Others, (2010) 12 SCC 112***. It is pertinent to note that the judgment of Supreme Court in the

case of ***Suhrid Singh (Supra)*** was given in the context of Court Fees Act, 1870 **("Court Fees Act")**, as regards the right of an executant and non-executant, wherein, the Supreme Court, held as follows:

> *"xxx xxx xxx*
>
> *7.* ***Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him.*** *The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different.* ***If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

41. It is further to be noted that the appellant has relied upon the case of ***Muppudathi Pillai (Supra)*** to contend that the respondent no. 1, being a non-executant, cannot seek cancellation of an instrument executed by third parties, i.e., the Agreement to Sell dated 18th August, 2006 as executed

between the respondent no. 2 and the appellant. However, the appellant has again misunderstood and misconstrued the import of the said case.

42. The judgment in the case of ***Muppudathi Pillai (Supra)*** holds that a suit under Section 39 of the Specific Relief Act, 1877 ("**Earlier Act**") which is *pari materia* to Section 31 of Specific Relief Act, can be filed *qua* an instrument which is likely to affect the title of the plaintiff. Further, while referring to Section 39 of the Earlier Act, it was held as follows:

> *"xxx xxx xxx*
>
> ***The provisions of S. 39 make it clear that three conditions are requisite for the exercise of the jurisdiction to cancel an instrument : (1) the instrument is void or voidable against the plaintiff; (2) plaintiff may reasonably apprehend serious injury by the instrument being left outstanding; (3) in the circumstances of the case the Court considers it proper to grant this relief of preventive justice.*** *On the third aspect of the question the English and American authorities held that where the document is void on its face the Court would not exercise its jurisdiction while it would if it were not so apparent. In India it is a matter entirely for the discretion of the Court.*
>
> *The question that has to be considered depends on the first and second conditions set out above.* ***As the principle is one of potential mischief, by the document remaining outstanding, it stands to reason the executant of the document should be either the plaintiff or a person who can in certain circumstances bind him. It is only then it could be said that the instrument is voidable by or void against him****. The second aspect of the matter emphasises that principle.* ***For there can be no apprehension if a mere third party, asserting a hostile title creates a document. Thus relief under S. 39 would be granted only in respect of an instrument likely to affect the title of the plaintiff and not of an instrument executed by a stranger to that title****.*
>
> *Let us take an example a trespasser purporting to convey the property in his own right and not in the right of the owner. In such a case a mere cancellation of the document would not remove the cloud occasioned by the assertion of a hostile title, as such a document even if cancelled would not remove the assertion of the hostile title. In that case it would be the title that has got to be judicially adjudicated and declared, and a mere cancellation of an instrument would not achieve the object. S. 42 of the Specific Relief Act would apply to such a case.*

The remedy under S. 39 is to remove a cloud upon the title, by removing a potential danger but it does not envisage an adjudication between competing titles. That can relate only to instruments executed or purported to be executed by a party or by any person who can bind him in certain circumstances. It is only in such cases that it can be said there is a cloud on his title and an apprehension that if the instrument is left out-standing it may be a source of danger*. Such cases may arise in the following circumstances : A party executing the document, or a principal in respect of a document executed by his agent, or a minor in respect of a document executed by his guardian de jure or de facto, a reversioner in respect of a document executed by the holder of the anterior limited estate, a real owner in respect of a document executed by the benamidar etc. This right has also been recognised in respect of forged instruments which could be cancelled by a party on whose behalf it is purported to be executed. In all these cases there is no question of a document by a stranger to the title. The title is the same. But in the case of a person asserting hostile title, the source or claim of title is different. It cannot be said to be void against the plaintiff as the term void or voidable implies that but for the vitiating factor it would be binding on him, that is, he was a party to the contract.*

xxx xxx xxx

In Ammani Ammal v. Ramaswami Naidu , Napier J. after referring to the provisions of Ss. 39 and 41 of the Specific Relief Act observed at page 121:

> *"To my mind it is clear that there is no necessity to have this document cancelled. The illustration to S. 39 indicates that it is only where a party cannot get his legal remedy without first having the document set aside that he comes within the section. This is a suit by the true owner to recover possession of the property.* ***The title adverse to him is not one procured from him or from any one under whom he claims or from anyone who purported to convey an interest of his****. It seems to me therefore that there can be no necessity for him to apply to have the document cancelled and further that the Court would have no jurisdiction to do so."*

We accept this statement of the law. We already referred to a passage in the judgement of Viswanatha Sastri J. in Venkama Naidu v. Sayed Vilijan Chisty . ***There the learned Judge referred to the fact that illustrations (b) and (c) to S. 39 refer to cases where the person seeking cancellation need not himself be a party to the instrument. But it may be noticed that in the cases referred to in those illustrations the title is the same.*** *Illustration (b) refers to a case of forged instrument. That would be a case where the instrument is*

purported to be executed on behalf of the plaintiff, and if that instrument were kept outstanding, it may be a case of danger to his title. ***Illustration (c) is again a case where the vendor after parting with the property grants a lease. In such a case the purchaser would be entitled to have the lease cancelled, Those cases are only illustrations of the proposition that the Court has the power to cancel the sale deed executed or purported to be executed by the plaintiff or persons who could otherwise bind him****. The decision in Venkama Naidu v. Sayed Vilijan Chisty , is a case where the sale was executed by a de facto guardian of a Muhammadan minor. Such a conveyance would be void in law. But nevertheless the de facto guardian purported to act on his behalf, and the deed if left outstanding could cast a cloud upon the title of the plaintiff. The case would obviously come under S. 39. The learned Judges in that case have exhaustively referred to the various cases on the subject in support of their conclusion. It is unnecessary to deal with them here beyond stating that all those cases were cases of documents executed either by the minor alleging himself to be a major or by his guardian, de jure or de facto, but always purporting to act on his behalf. That case would be entirely different from a case of sale by a person asserting a title hostile to that of the plaintiff, as in the cases referred to above, namely, Nathu v. Balwantraoand Ammani Ammal v. Ramaswami Naidu.* ***It is true that S. 39 may apply to persons other than the actual party to the instrument, for instance, to the case of an agent selling without authority, or a case where the person commits forgery purporting to sell on behalf of the plaintiff. It is even possible to conceive that a creditor can in certain circumstances impugn the document created by his debtor. In all those cases as pointed out already the title which is sought to be protected is the title of the plaintiff, and not an adjudication as against any rival claimant.*** *Venkama Naidu v. Sayed Vilijan Chisty, relates to a case where a document was executed purporting to bind the plaintiff. Ammani Ammal v. Ramaswami Naidu, is a case of the latter category, that is, where a document is executed by a person claiming hostile title. That would not be comprehended by S. 39. There is, therefore, no conflict between the decision in Ammani Ammal v. Ramaswami Naidu, and that in Venkama Naidu v. Sayed Vilijan Chisty.*

xxx xxx xxx"

(Emphasis Supplied)

43. Perusal of the aforesaid shows that the said judgment of the Madras High Court holds that since the principle under Section 39 of the Earlier Act,

which is *pari materia* to Section 31 of Specific Relief Act, is one of potential mischief by the instrument remaining outstanding, the plaintiff can be either executant of the instrument or a person who can, in certain circumstances, bind the plaintiff. It is in this context, that the Court held that relief under Section 39 of the Earlier Act would be granted only in respect of an instrument likely to affect the title of the plaintiff, and not of an instrument executed by a stranger to that title.

44. In the present case, the instrument sought to be cancelled has not been executed by a stranger to the title as asserted by the plaintiff. Further, the plaintiff/respondent no. 1 herein, on account of Agreement to Sell executed in her favour by a party to the instrument, can bind such party to the instrument by asserting right on the basis of a prior instrument executed by such party in her favour. Thus, the interpretation of the judgment of the Madras High Court as given by the appellant, is totally flawed, and does not help the case of the appellant in any manner.

45. The Madras High Court gave the example of a trespasser purporting to convey the title in his own right, and not in the right of the true owner. By using the said example, the Court held that a mere cancellation of the document would not remove the cloud occasioned by the assertion of a hostile title, and the title would have to be judicially adjudicated under Section 42 of the Earlier Act.

46. Thus, the Madras High Court in ***Muppudathi Pillai (Supra)*** observed that a person cannot file a suit under Section 31 of the Specific Relief Act seeking cancellation of an instrument executed by a "third party" who is a complete stranger to the right or title of the plaintiff, for instance, a trespasser asserting a hostile title. However, as explained in the preceding

paragraphs, the plaintiff/respondent no. 1 in the present case derived her title from respondent no. 2 herein, a party to the instrument, which was sought to be cancelled. Further, on account of a previous document executed in her favour by a party to the instrument in question, the plaintiff/respondent no. 1 could bind such party to the instrument by asserting her right on the basis of a previous document executed by such party to the instrument.

47. In the present case, the respondent no. 1 is claiming her right in the suit property from respondent no. 2, and is therefore a person seeking derivative interest from the seller/respondent no. 2. Since the respondent no. 2 has executed the subsequent Agreement to Sell dated 18th August, 2006 in favour of the appellant, the respondent no. 1 by asserting her right on the basis of a previous instrument executed in her favour by respondent no. 2, can bind respondent no. 2, who is a party to the said instrument. Thus, respondent no. 1/plaintiff in the suit, had every right and authority to file suit under Section 31 of the Specific Relief Act. The judgments relied by the appellant, have been misread and misapplied by the appellant. The said judgments relied by the appellant, do not support the contentions raised by the appellant.

48. Reading of the aforesaid judgments clearly demonstrates that there is no bar as such that a suit under Section 31 of the Specific Relief Act, for cancellation of an instrument cannot be filed by a person, who is not signatory/executant to the said instrument. In the present context, the respondent no. 1 sought to derive the title from the seller/owner of the suit property, i.e., respondent no. 2 herein. Thus, clearly, the suit filed by respondent no. 1 under Section 31 of the Specific Relief Act is maintainable.

49. Therefore, the submissions made by the appellant with regard to non-maintainability of the present suit, cannot be accepted.

50. Furthermore, it is pertinent to note that no such objection, as regards the suit not being maintainable under Section 31 of the Specific Relief Act, was taken by either the appellant or respondent no. 2 in the Trial Court. This objection has been taken for the first time by the appellant, only before this Court.

51. In this regard, decision of the Supreme Court in the case of ***Bachhaj Nahar Versus Nilima Mandal and Another, (2008) 17 SCC 491***, may be referred to, wherein, the Supreme Court has held that:

> *"xxx xxx xxx*
>
> *10. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:*
>
> *(i) **No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an issue, cannot be decided by the court.***
> ***(ii) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.***
> *(iii) A factual issue cannot be raised or considered for the first time in a second appeal.*
>
> *11. The Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so elaborate that many a time, fulfilment of the procedural requirements of the Code may itself contribute to delay. But any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of civil procedure. Be*

that as it may. We will briefly set out the reasons for the aforesaid conclusions.

12.The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. *As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted.* ***The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice.*** *Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.*

xxx xxx xxx

17. ***It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance,***

<u>though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise.</u> *The principles laid down in Bhagwati Prasad [AIR 1966 SC 735] and Ram Sarup Gupta [(1987) 2 SCC 555 : AIR 1987 SC 1242] referred to above and several other decisions of this Court following the same cannot be construed as diluting* ***<u>the well-settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo motu.</u>***

xxx xxx xxx

23 It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. ***<u>In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil</u>***

suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.

24. In the absence of a claim by the plaintiffs based on an easementary right, the first defendant did not have an opportunity to demonstrate that the plaintiffs had no easementary right. ***In the absence of pleadings and an opportunity to the first defendant to deny such claim, the High Court could not have converted a suit for title into a suit for enforcement of an easementary right.*** *The first appellate court had recorded a finding of fact that the plaintiffs had not made out title. The High Court in second appeal did not disturb the said finding. As no question of law arose for consideration, the High Court ought to have dismissed the second appeal. Even if the High Court felt that a case for easement was made out, at best liberty could have been reserved to the plaintiffs to file a separate suit for easement. But the High Court could not, in a second appeal, while rejecting the plea of the plaintiffs that they were owners of the suit property, grant the relief of injunction in regard to an easementary right by assuming that they had an easementary right to use the schedule property as a passage.*
xxx xxx xxx"

(Emphasis Supplied)

52. Reference may also be made to the decision in the case of ***A. Kanthamani Versus Nasreen Ahmed, (2017) 4 SCC 654***, wherein the Supreme Court held that it is a well-settled principle of law that the plea regarding the maintainability of suit is required to be raised in the first instance in the pleading, and then only such plea can be adjudicated by the Trial Court. Further, once a finding is rendered on the plea, the same can then be examined by the first or/and second Appellate Court. Relevant paragraph of the said decision passed by the Supreme Court, in this regard, is reproduced as under:

"xxx xxx xxx

30.3. ***Third, it is a well-settled principle of law that the plea regarding the maintainability of suit is required to be raised in the***

> ***first instance in the pleading (written statement) then only such plea can be adjudicated by the trial court on its merits as a preliminary issue under Order 14 Rule 2 CPC. Once a finding is rendered on the plea, the same can then be examined by the first or/and second appellate court.*** *It is only in appropriate cases, where the court prima facie finds by mere perusal of plaint allegations that the suit is barred by any express provision of law or is not legally maintainable due to any legal provision; a judicial notice can be taken to avoid abuse of judicial process in prosecuting such suit. Such is, however, not the case here.*
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

53. Therefore, considering the detailed discussion hereinabove, this Court is of the view that the suit filed by the respondent no. 1 under Section 31 of the Specific Relief Act was maintainable, in the facts and circumstances of the present case.

54. Furthermore, whether or not the respondent no. 1/plaintiff had a good case in order to entitle a decree in her favour on the basis of the set of documents of the year 1988 executed in her favour, was a subject matter of merits in the suit proceedings. However, it cannot be said that the suit filed by respondent no. 1 itself, was not maintainable on the basis of the question of any adequacy or inadequacy of the set of documents of the year 1988.

Validity of the Agreements to Sell of the Years 1988 and 2006:

55. The next question which needs adjudication by this Court is regarding as to who has the right and interest in the suit property.

56. In this regard, it is not disputed that the original owner/lessee of the suit property was Shri Kanshi Ram, and upon his demise, the suit property devolved upon Smt. Bassi Devi and her son, i.e., Shri Som Nath, who is respondent no. 2 herein, as co-owners. Smt. Bassi Devi died in the year 1995. It is pertinent to note that the respondent no. 2 never asserted his right

over the suit property in any manner whatsoever, before the Trial Court. He did not enter into the witness box and no evidence has been led on his behalf.

57. The respondent no. 2 was proceeded *ex-parte* in the Trial Court. Even before this Court, the LRs of the respondent no. 2 did not cause appearance and this Court has proceeded with the present matter in the absence of any representation on behalf of LRs of the respondent no. 2.

58. It is further to be noted that no question/issue has been raised before this Court as to the right of respondent no. 2 in the suit property, as one of the original owners of the suit property. No right was ever claimed in the suit property by respondent no. 2 in the present suit proceedings. Therefore, this Court is only required to adjudicate on the respective claims of the appellant and respondent no. 1 as regards their right over the suit property, on the basis of documents and evidence on record.

59. The appellant seeks his right in the suit property on the basis of the Agreement to Sell, GPA, SPA, etc., all dated 18th August, 2006, executed in his favour by respondent no. 2. He also places reliance on an undated affidavit and receipt to prove payment of consideration of Rs. 4.9 Lacs to respondent no. 2.

60. On the other hand, respondent no. 1 contends to have purchased the suit property on the basis of Agreement to Sell, Will executed by Smt. Bassi Devi, and Will executed by Shri Som Nath in favour of respondent no. 1. Respondent no. 1 also relies upon the GPA and an Affidavit , in favour of her husband, all dated 07th April, 1988. The respondent no. 1 paid a consideration of Rs. 48,000/-, and receipt towards the same has been exhibited as *Ex. PW-4/C*.

61. It is in this context, the appellant herein raised objections in the suit proceedings that the instruments in favour of the respondent no. 1 were forged documents, and that the respondent no. 1 had no cause of action. On the other hand, the respondent no. 1 sought to establish before the Trial Court that the Agreement to Sell dated 18th August, 2006, executed by respondent no. 2 in favour of the appellant, was null and void, and that the respondent no. 1 was entitled to a decree of permanent injunction, as prayed for.

62. Admittedly, it is the case of both the parties, that there exists no registered Sale Deed in favour of either of the parties, i.e., the appellant and the respondent no. 1.

63. Nevertheless, in the peculiar facts and circumstances of the present case, where neither of the parties claiming right over the suit property, have a registered Sale Deed in their favour, this Court would proceed on the basis of the evidence and documents on record to adjudicate the issues before it, as regards the claims of the respective parties.

64. Though respondent no. 2, i.e., Shri Som Nath, filed a written statement as defendant no. 1 before the Trial Court to the effect that the documents of the year 1988, had been executed for repayment of a loan with no intention to sell the suit property, he did not enter into the witness box to establish any such facts as averred in the written statement.

65. Thus, the fact remains that the respondent no. 2 did not deny execution of the documents dated 07th April, 1988, in favour of respondent no. 1, though he sought to justify the circumstances under which the said documents were executed in favour of respondent no. 1, in the written statement filed before the Trial Court. Therefore, in the absence of any

evidence to the contrary, the fact of execution of the documents of the year 1988 in favour of the respondent no. 1 stands established.

66. This Court also notes that during the course of the appellant's cross-examination, appearing as *DW-1* before the Trial Court, he stated that he did not know why respondent no. 2 and his family executed the documents of the year 1988 in favour of respondent no. 1. The deposition of the appellant in this regard, is reproduced as under:

> *"xxx xxx xxx*
> *Som Nath made a complaint to L&DO as well as Central Vigilence Commission.* ***I do not know why Som Nath and his family executed the documents i.e. Agreement to sell, GPA, Will and power of attorney in favour of Smt. Urmil Gujral. Only Som Nath can tell about the fact as to why he executed these documents in favour of Urmil Gujral****...*
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

67. Thus, perusal of the aforesaid deposition makes it evident that the appellant has admitted to the execution of documents of the year 1988 in favour of respondent no. 1, though he has stated that he has no knowledge as to why those documents were executed by respondent no. 2 in favour of respondent no. 1.

68. The respondent no. 1 had also examined Shri S. K. Verma, UDC, office of Sub Registrar – II, Kashmere Gate, Delhi, as *PW-1*. The said witness produced the records pertaining to the Wills dated 07th April, 1988 executed by Smt. Bassi Devi and Shri Som Nath. The originals of the said Wills were also before the Court as confirmed by *PW-1*.

69. The respondent no. 1 also examined Shri S. S. Panwar, Head Clerk, from the office of Sub-Registrar, Kashmere Gate, Delhi who produced the GPA dated 07th April, 1988, executed by Smt. Bassi Devi and Shri Som

Nath. The original of the said GPA was also before the Court and marked as *Ex. PW-2/A.*

70. Perusal of the Wills dated 07th April, 1988 executed by Smt. Bassi Devi and Shri Som Nath shows that there were two attesting witnesses to the said Wills, namely, Shri Chander Talwar and Shri Fakir Chand.

71. This Court further notes that in order to prove the execution of the GPA, two Wills and receipt dated 07th April, 1988, the respondent no. 1 produced one of the attesting witness as *PW-5*, i.e., Shri Chander Talwar. In his Evidence Affidavit, i.e., *Ex. P-5*, he deposed as under:

IN THE COURT OF SHRI A.K. PATHAK, ADJ, DELHI

SUIT NO.179 OF 2006

IN THE MATTER OF :

SMT. URMAL GUJRAL ....PLAINTIFF

V E R S U S

SHRI SOM NATH AND OTHERS ....DEFENDANTS

Ex P 5

EVIDENCE BY WAY OF AFFIDAVIT ON BEHALF OF THE PLAINTIFF AS PW-5

AFFIDAVIT OF SHRI SHIV CHANDER TALWAR S/O SHRI MANGAL SEN TALWAR, R/O V-1/59, RAJOURI GARDEN, NEW DELHI - 110027.

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That I know the plaintiff Smt. Urmal Gujral for the last more than 40 years as earlier I was residing at 10/78, Subhash Nagar, New Delhi, near house of the plaintiff.

That the plaintiff purchased the property bearing No.10/64, Subhash Nagar, New Delhi, from Smt. Bassi Devi and Shri Som Nath and I accompanied the plaintiff to the office of the Sub Registrar, Kashmere Gate, Delhi on 7th April, 1988. I signed as a witness on the General Power of Attorney executed by Smt. Bassi Devi and Shri Som Nath in favour of Shri Iqbal Singh the husband of the plaintiff which is already Ex.PW2/A. The same bears my signature at Point A to A1 and my thumb impression at Point A2 to . The same was signed by Shri Som Nath who signed at Point B to B1 and Smt. Bassi Devi put her thumb impression on the same at Point C to C3.

3. That I also signed as an attesting witness on the Will dated 7th April, 1988 executed by Smt. Bassi Devi in favour of the plaintiff which is Ex.PW1/2 and bears my signature at Point A and the ~~signature and~~ thumb impression of the Testator at Point B to B2.

4. That I also signed as an attesting witness on the Will dated 7th April, 1988 executed by Shri Som Nath in favour of the plaintiff which is Ex.PW1/3 and bears my signature at Point A and the thumb impression of the Testator at Point B to B2. Smt. Bassi Devi and Shri Som Nath put their thumb impressions and signatures on the Ex.PW1/1 to Ex.PW1/2 in my presence.

5. That I also signed as a witness to receipt dated 7th April, 1988 executed by Smt. Bassi Devi and Shri Som Nath which is Ex.PW1/6. It bears my signature at Point A. Signature of Shri Som nath at Point B & B1 and thumb impression of Shri Som Nath at Point B2 and thumb impression of Smt. Bassi Devi at Point B1 & B2

xxx xxx xxx

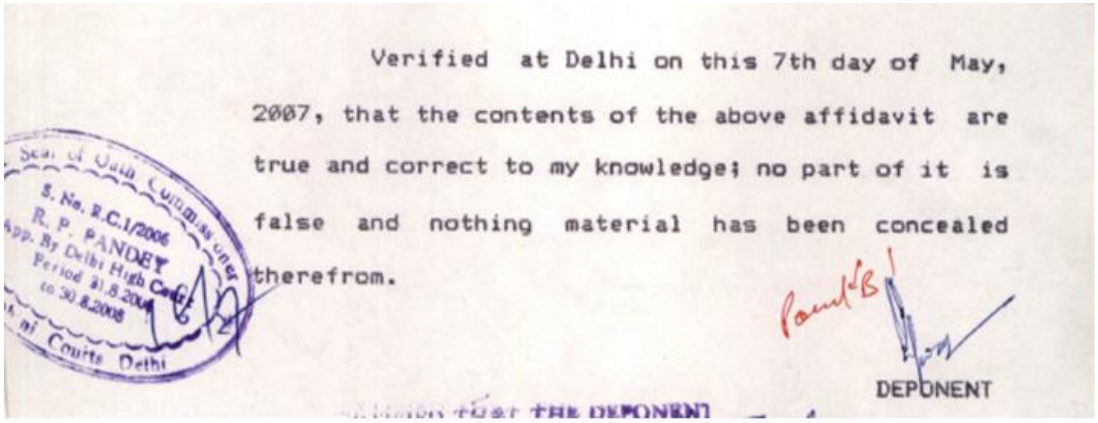
5.A) That the possession of the suit property has been with the plaintiff ever since the same was purchased by the plaintiff from Smt. Bassi Devi and Shri Som Nath.

Point A

DEPONENT

I identified the deponent who has signed in my presence.

VERIFICATION


Verified at Delhi on this 7th day of May, 2007, that the contents of the above affidavit are true and correct to my knowledge; no part of it is false and nothing material has been concealed therefrom.

DEPONENT

"

72. Perusal of the aforesaid shows that *PW-5* has admitted to his signature, as well as the thumb impression of Smt. Bassi Devi on the Will dated 07th April, 1988. Further, *PW-5* has admitted to his signature, as well as the thumb impression of Shri Som Nath on the Will dated 07th April, 1988.

73. In his cross-examination, *PW-5* has categorically deposed that Smt. Bassi Devi had put her thumb impression on *Ex. PW-1/2*, i.e., the Will dated 07th April, 1988 and Shri Som Nath had put his thumb impression on *Ex. PW1/3*, i.e., the Will dated 07th April, 1988, in his presence.

74. While this Court notes that there is no specific averment by *PW-5* to the effect that he had seen the other attesting witness, i.e., Shri Fakir Chand sign the Wills in the presence of the testators, *PW-5* had stated that the persons who were present in the office of the Sub-Registrar on 07th April, 1988, included Shri Fakir Chand. This statement by *PW-5*, by implication and inference, will have to be held as proving the required attestation by Shri Fakir Chand as the other attesting witness to the Wills dated 07th April, 1988. Further, the Wills dated 07th April, 1988 executed by Smt. Bassi Devi and Shri Som Nath respectively are registered documents, and have not been disputed, either by respondent no. 2 or by the appellant. Looking at the

totality of the circumstances, it is evident that the Wills dated 07th April, 1988 executed by Smt. Bassi Devi and Shri Som Nath, have been duly proved.

75. In this regard, it would be apposite to refer to the decision in the case of ***M.B. Ramesh Versus K.M. Veeraje Urs and Others, (2013) 7 SCC 490***, wherein, the Supreme Court, while dealing with the issue of validity of the Will, observed that the Court must satisfy its conscience having regard to the totality of circumstances, in the following manner:

> *"xxx xxx xxx*
>
> *25. The issue of validity of the will in the present case will have to be considered in the context of these facts.* ***It is true that in the case at hand, there is no specific statement by PW 2 that he had seen the other attesting witness sign the will in the presence of the testatrix, but he has stated that the other witness had also signed the document. He has proved his signature, and on the top of it he has also stated in the cross-examination that the other witness (Mr Mallaraje Urs), Smt Nagammani, himself and one Sampat Iyanger and the writer of the will were all present while writing the will on 24-10-1943 which was registered on the very next day. This statement by implication and inference will have to be held as proving the required attestation by the other witness.*** *This statement along with the attendant circumstances placed on record would certainly constitute proving of the will by other evidence as permitted by Section 71 of the Evidence Act.*
>
> *xxx xxx xxx*
>
> *28. As stated by this Court also in H. Venkatachala Iyengar [H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443 : 1959 Supp (1) SCR 426] and Jaswant Kaur [Jaswant Kaur v. Amrit Kaur, (1977) 1 SCC 369 : AIR 1977 SC 74] ,* ***while arriving at the finding as to whether the will was duly executed, the Court must satisfy its conscience having regard to the totality of circumstances. The Court's role in matters concerning wills is limited to examining whether the instrument propounded as the last will of the deceased is or is not that by the testator, and whether it is the product of the free and sound disposing mind [as observed by this Court in para 77 of Gurdev Kaur v. Kaki [(2007) 1 SCC 546]]. In the present matter, there is no dispute about these factors.***

xxx xxx xxx"

(Emphasis Supplied)

76. In his cross-examination, the *PW-5* clearly deposed regarding signing of the said documents dated 07th April, 1988 in favour of respondent no. 1 and her husband.

77. Perusal of the Evidence Affidavit as well as cross-examination of *PW-5* makes it evident that *PW-5* clearly deposed to the signing of the GPA, two Wills and the receipt dated 07th April, 1988 in favour of respondent no. 1 and her husband, as a witness.

78. He further deposed that in the office of the Sub-Registrar, he signed only the Power of Attorney **("POA")**. However, the deposition as aforesaid does not detract from the clear deposition of *PW-5* that he had signed the two Wills and the receipt in favour of respondent no. 1, as a witness. The said witness has clearly admitted his signatures on the documents of the year 1988, executed in favour of respondent no. 1 and her husband.

79. Therefore, this Court finds no infirmity in the finding of the Trial Court that the testimony of *PW-5* remained unshaken during his entire cross-examination.

80. The contention of the appellant that the respondent no. 1 failed to prove the Wills of Smt. Bassi Devi and Shri Som Nath, is devoid of any merits. Reading of the cross-examination of *PW-5*, one of the attesting witnesses of the Wills of Smt. Bassi Devi and Shri Som Nath, clearly demonstrates that *PW-5* categorically stated that he has executed the POA, two Wills and the receipt. The fact that he deposed that he remained in the Sub-Registrar's office only for five to six minutes, and signed only POA during those five to six minutes, only goes to show that the said witness

signed only the POA in the office of Sub-Registrar. The deposition of the said witness is very clear and has remained steadfast to the effect that the said witness signed the Wills of Smt. Bassi Devi and Shri Som Nath as one of the attesting witnesses, as also the receipt dated 07th April, 1988.

81. On the other hand, the appellant has placed reliance on a registered Agreement to Sell dated 18th August, 2006. In this regard, the respondent no. 1 had examined the Shri Yashpal, LDC, Sub-Registrar's office. Janak Puri, Delhi, who produced the registered Agreement to Sell dated 18th August, 2006.

82. The appellant has also placed reliance on the Will, GPA, SPA all dated 18th August, 2006, as well as undated affidavit and receipt. However, the appellant has not examined either the officers from the office of the Sub-Registrar or the attesting witnesses to these documents.

83. Thus, it is apparent that both the appellant and respondent no. 1, seek to derive their interest in the suit property on the basis of a set of documents, which do not include a registered Sale Deed. The law in this regard, as per Section 54 of TP Act, is very clear that only a Sale Deed, which is duly stamped and registered as required by law, amounts to a conveyance to confer proprietary rights and create an interest or charge in a property.

84. Holding that Section 54 of the TP Act expressly declares that a contract of sale, i.e., an Agreement to Sell, as well as a GPA does not, of itself, create any interest in or charge on a property, the Supreme Court in the seminal case of ***Suraj Lamp and Industries Private Limited Versus State of Haryana and Another, (2012) 1 SCC 656***, held as follows:

"xxx xxx xxx

***16. <u>Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property</u>**. This Court in Narandas Karsondas v. S.A. Kamtam [(1977) 3 SCC 247] observed: (SCC pp. 254-55, paras 32-33 & 37)*

> *"32. **<u>A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act</u>**. (See Ram Baran Prasad v. Ram Mohit Hazra [AIR 1967 SC 744 : (1967) 1 SCR 293] .) The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.*
>
> *33. In India, the word 'transfer' is defined with reference to the word 'convey'. ... The word 'conveys' in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.*
>
> * * *
>
> *37. ... that only on execution of conveyance, ownership passes from one party to another...."*

xxx xxx xxx

***19. <u>Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter</u>**.*

Scope of power of attorney

***20. <u>A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property.</u>** The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-*

A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. ***Even an irrevocable attorney does not have the effect of transferring title to the grantee.***

xxx xxx xxx

Scope of will

22*.* ***A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death. It is not a transfer inter vivos. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator and is revocable at any time during the lifetime of the testator. It is said that so long as the testator is alive, a will is not worth the paper on which it is written, as the testator can at any time revoke it.*** *If the testator, who is not married, marries after making the will, by operation of law, the will stands revoked. (See Sections 69 and 70 of the Succession Act, 1925.) Registration of a will does not make it any more effective.*

Conclusion

23. ***Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property.*** *The observations by the Delhi High Court in Asha M. Jain v. Canara Bank [(2001) 94 DLT 841] , that the "concept of power-of-attorney sales has been recognised as a mode of transaction" when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.*

xxx xxx xxx"

(Emphasis Supplied)

85. Likewise, the Supreme Court in the case ***Ramesh Chand Versus Suresh Chand and Another, 2025 SCC OnLine SC 1879*** has reiterated that Section 54 of the TP Act, in its definition of sale, does not include an Agreement to Sell as it neither confers any proprietary rights in favour of the transferee nor by itself create any interest or charge in the property. Further,

a GPA does not confer a valid title over a property. The relevant paragraphs, in this regard, have been reproduced as under:

> *"xxx xxx xxx*
>
> *15.* ***There is a difference between a sale deed and an agreement for sale, or a contract for sale. A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. While a sale is a transfer of ownership; a contract for sale is merely a document creating a right to obtain another document, namely a registered sale deed to complete the transaction of sale of an immovable property. Section 54 in its definition of sale does not include an agreement of sale and neither confers any proprietary rights in favour of the transferee nor by itself create any interest or charge in the property****. ...*
>
> *xxx xxx xxx*
>
> ***18. A power of attorney is a creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him.*** *It is revocable or terminable at any time unless it is made irrevocable in a manner known to law****. A General Power of Attorney does not ipso facto constitute an instrument of transfer of an immovable property even where some clauses are introduced in it, holding it to be irrevocable or authorizing the attorney holder to effect sale of the immovable property on behalf of the grantor. It would not ipso facto change the character of the document transforming it into a conveyance deed.***[4] *[Dr. Poonam Pradhan Saxena, Property Law, Third Edition, 2017 (Lexis Nexis), p. 66]*
>
> ***19. A power of attorney is not a sale. A sale involves transfer of all the rights in the property in favour of the transferee but a power of attorney simply authorises the grantee to do certain acts with respect to the property including if the grantor permits to do certain acts with respect to the property including an authority to sell the property.***[5] *[Dr. Poonam Pradhan Saxena, Property Law, Third Edition, 2017 (Lexis Nexis), p. 301]*
>
> *xxx xxx xxx*
>
> ***22.*** *Having discussed the position of law, it is essential to peruse the recitals of the General Power of Attorney, which is on record and pressed into service by plaintiff. The said GPA merely authorises the grantee to manage the affairs of the suit property, which includes the power to let out the property on rent, and create a mortgage of the same, etc. However, it is silent on the aspect of conveyance. Be that as it may. The recitals of the power of attorney would indicate the intent of the grantor*

is to limit the powers of the grantee to only manage the suit property, and not to create any interest in his favour, which is inconsonance with the settled position of law as discussed above that a power of attorney is an agency by which the agent derives the authority or the right to enter into transactions on behalf of the principal. ***Even if we accept the validity of the Power of Attorney in favour of the plaintiff, still it does not confer a valid title on him with respect to the suit property.***

xxx xxx xxx"

(Emphasis Supplied)

86. However, in the peculiar facts and circumstances of the present case, when the original owner has not asserted any right before the Court during the trial, the Court would decide upon the issue of right asserted by the appellant and respondent no. 1, on the basis of the documents in their favour executed by the original owner(s).

87. From the record, it is apparent that the respondent no. 1 relies on two registered Wills dated 07th April, 1988, i.e., the Will executed by Smt. Bassi Devi in favuor of respondent no. 1, and the Will executed by respondent no. 2 in favour of respondent no. 1. As noted above, the aforesaid two registered Wills in favour of respondent no. 1, have been proved during the course of trial.

88. On the other hand, the appellant has also contended that respondent no. 2, has executed a Will in his favour. However, as discussed in the subsequent paragraphs, the said Will was neither produced by the appellant before the Trial Court, nor its execution ever proved.

89. At this juncture, this Court takes note of the admitted position that Smt. Bassi Devi died in the year 1995, and respondent no. 2 demised during the proceedings before the Trial Court.

90. In regard to the demise of Smt. Bassi Devi in the year 1995, the execution of the Will dated 07th April, 1988 by Smt. Bassi Devi in favour of

respondent no. 1 was admitted by respondent no. 2, in his written statement as well as by the appellant in his Evidence Affidavit, before the Trial Court. The registration of the said Will was also proved by the respondent no. 1 by examination of *PW-1*. Even otherwise, the execution of the said Will executed by Smt. Bassi Devi in favour of respondent no. 1, was proved by respondent no. 1, by leading evidence of the attesting witness, i.e., *PW-5*.

91. Further, it is not the case of any party before this Court that the said Will dated 07th April, 1988 executed by Smt. Bassi Devi in favour of respondent no. 1, was ever revoked or cancelled.

92. This Court also notes that it is not the case of the appellant that the said Will was not genuine, since he did not challenge the validity or subsistence of the Will. Accordingly, no issue was framed by the Trial Court as to the validity or genuineness of the said Will.

93. Accordingly, upon the demise of Smt. Bassi Devi in the year 1995, the Will dated 07th April, 1988, in favour of respondent no. 1 came into effect, with respect to her share of 50% in the suit property.

94. Likewise, as noted above, the registered Will dated 07th April, 1988 executed by respondent no. 2, as well as the registered GPA executed by respondent no. 2 and his mother, were duly proved during the course of trial.

95. It is to be noted that although the appellant has sought to place reliance on an alleged Will executed by respondent no. 2 in his favour, the said Will is not on record before this Court.

96. In this regard, this Court takes note of the fact that by way of the order dated 16th May, 2011, the cross-examination of the appellant was deferred as the appellant had not brought the original documents. The said order passed by the Trial Court in the suit has been reproduced as under:

"xxx xxx xxx

It is correct that no sale deed has been executed till date, in my favour, in respect of the suit property. I am in possession of the original of documents marked as exhibit.

At this stage remaining cross examination of the witness

293 447

is deferred as the witness has not brought the original documents, which have been mentioned in his affidavit Ex.DW1/1, as various exhibits.

RO&AC

BRIJESH KUMAR GARG
ADJ, CENTRAL-08
DELHI/ 16.05.2011

"

97. However, on the next date of the cross-examination, i.e., 06th July, 2012, the appellant has only brought forth the originals of Agreement to Sell, GPA and SPA of the year 2006, and a receipt. It is manifest that the appellant failed to bring before the Trial Court the Will purported to have been executed by respondent no. 2 in his favour. The relevant extract of the order dated 06th July, 2012, is reproduced as under:

"

CS No. 78/2010

06.07.2012

PW1: Sh. Rajiv Miglani, recalled for further cross examination.

ON S.A.

X X X X XX by Sh. O.P. Wadhwa, Adv. for the plaintiff.

I have only placed the photocopy of the original on the file and original I have not placed so far. I do not intend to place the original on record. I have brought the same today. Exhibit has been mentioned only on the photocopies and not the original was on the file on that day. (vol. The originals are with me and I have brought the same today). It is correct that 18.08.2006 is in ink and not type written. (vol. It was written at the time of execution). It is correct that money was not paid before the Sub-registrar. It is correct that in the GPA also the date 18.08.2006 is written in ink. It is correct that no date is mentioned on the receipt. (Vol. The date of attestation is there on the receipt). It is correct that on the GPA on the last page photographs of the second party is not there. I have brought original registered agreement to sale, GPA, receipt and SPA (special Power of Attorney). It is correct that Special Power of Attorney also does not bear the date . (Vol. It is attested by Notary Public on 18.08.2006). Sanjay Kumar and Suresh Singh the witnesses to the agreement to sale are alive and they are the witness of all the documents. Deepak Kumar is still residing in the property in question. At the time of preparing the written statement, all the facts mentioned in the affidavit as told by me to my counsel at the time of preparation of the written statement. At the time of written statement I told to my

CS No. 78/2010 1

xxx xxx xxx"

98. Further, neither any evidence, nor any attesting witness has been

produced by the appellant to prove any Will executed by respondent no. 2 in his favour.

99. Therefore, this Court in substance agrees with the finding of the Trial Court that upon demise of Smt. Bassi Devi in the year 1995, the Will dated 07th April, 1988, in favour of respondent no. 1 came into operation, and Smt. Bassi Devi's 50% share in the suit property, devolved upon the respondent no. 1.

100. Consequently, the respondent no. 2 had no legal authority to execute any document in favour of the appellant in the year 2006 for the whole of the suit property. Accordingly, the execution of documents in the year 2006 in favour of appellant by respondent no. 2, are not valid, as the same were without any legal, or valid authority.

101. In this regard, it would be apposite to refer to the decision in the case of ***Umadevi Nambiar Versus Thamarasseri Roman Catholic Diocese, (2022) 7 SCC 90***, where the Supreme Court held that no one can transfer a better title than what one possesses, in the following manner:

> *"xxx xxx xxx*
>
> ***19. It is a fundamental principle of the law of transfer of property that "no one can confer a better title than what he himself has" (nemo dat quod non habet).*** *The appellant's sister did not have the power to sell the property to the vendors of the respondent. Therefore, the vendors of the respondent could not have derived any valid title to the property.* ***If the vendors of the respondent themselves did not have any title, they had nothing to convey to the respondent, except perhaps the litigation.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

102. Thus, although neither the appellant nor respondent no. 1 have a

registered Sale Deed in their favour, in view of the peculiar facts and circumstance of the present case, the Will dated 07th April, 1988 executed by Smt. Bassi Devi in favour of respondent no. 1 with respect to her 50% share in the suit property, came into effect. The documents dated 18th August, 2006, executed by respondent no. 2 in favour of the appellant with respect to the whole of the suit property, was without authority, and therefore, null and void.

103. Reading of the impugned judgment shows that on the basis of the evidence led before the Trial Court, the Trial Court rightly came to a categorical conclusion that the respondent no. 1, had been able to prove the execution of the documents of the year 1988 in her favour, and that after the execution of such documents, the respondent no. 2 did not have any power or authority to subsequently execute the documents dated 18th August, 2006 in favour of the appellant.

104. This Court also notes that in view of the dispute as regards the suit property, the L&DO *vide* its letter dated 28th December, 2006, cancelled the substitution of the suit property that had earlier been granted in favour of respondent no. 2, i.e., Shri Som Nath *vide* letter dated 08th August, 2006.

Issue of Possession of the Suit Property:

105. It is the case of the appellant that the respondent no. 1 never herself occupied the suit property, and only claims possession of the suit property through her son, i.e., Shri Girish Gujral. It is further contended by the appellant that the respondent no. 1 has failed to prove that the suit property was given by her on rent, as no rent agreement or rent receipts have been brought on record by the respondent no. 1.

106. On the other hand, the respondent no. 1 has contended that the

physical possession of the suit property was already with her son, Shri Girish Gujral, prior to the sale of the suit property in the year 1988. The legal possession of the suit property was transferred to respondent no. 1 upon execution of the documents of the year 1988.

107. As regards the possession of the suit property, the respondent no. 1, in her Evidence Affidavit, *Ex. P-4*, and her cross-examination, has stated that she had been in uninterrupted and peaceful possession of the suit property since 07th April, 1988. Respondent no. 1 further deposed that the suit property comprises of one *pucca* room and one *kutcha* room only.

108. She has stated that her son, Shri Girish Gujral had taken a single room in the suit property on rent, in anticipation of some business proposal. After her son took the single room on rent, talks for sale of the suit property commenced. Once the sale concluded, the legal possession of the suit property had been transferred by respondent no. 1 and his mother, Smt. Bassi Devi, on the basis of the documents of the year 1988, to her. She further stated that the peaceful and vacant physical possession of the suit property was already with her son, Shri Girish Gujral, who was a tenant in the suit property. When she purchased the suit property, the tenancy rights lost significance as they came in possession of the suit property as owners.

109. Respondent no. 1 herein further stated that even the water connection in the suit property was obtained by her, as there was no existing water connection when she purchased the suit property. She has placed reliance on the water bills and the house tax records, to show that the possession of the suit property was with her. Additionally, though the electricity bills for the suit property were in the name of Late Shri Kanshi Ram, the same were being paid by her only.

110. Respondent no. 1 has further deposed that it was only after 5-6 years of taking the vacant possession of the entire suit property, that she inducted one *subziwala*, by the name of Shri Deepak, in the *kutcha* portion of the suit property, while the *pucca* portion of the suit property has remained in her possession. Respondent no. 1 has admitted that she never issued any document to the tenants, nor maintained any account for receipt for such rent. The entire relationship with the tenants was oral, and based on trust.

111. She further stated that she along with her husband, Shri Iqbal Singh, have been residing at another property in *Rajouri Garden*, however, some of their luggage/goods remains in the suit property.

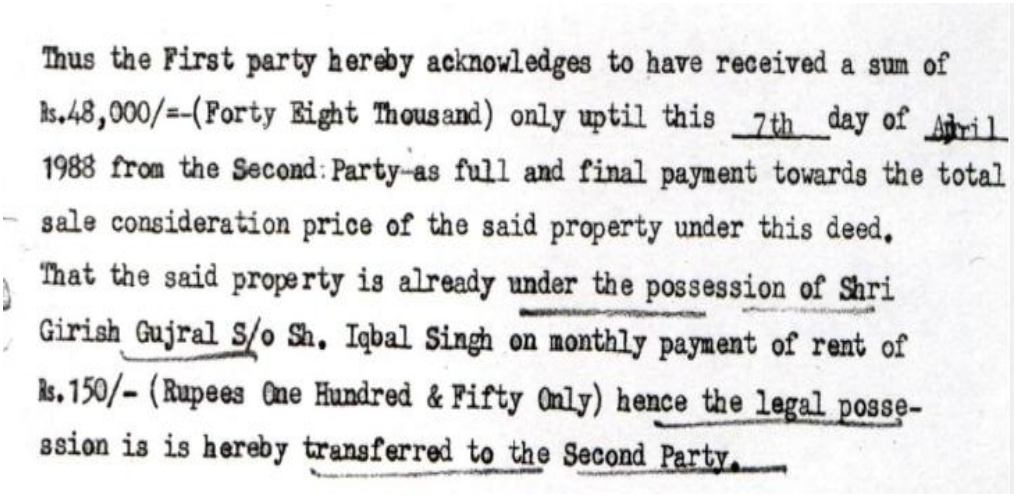
112. This Court further notes that respondent no. 1 was cross-examined by only the appellant, and was never cross-examined by respondent no. 2.

113. It is to be noted that the testimony of the respondent no. 1 is also corroborated by the documents on record. The house tax receipts with respect to the suit property for the years 2004, 2005 and 2006 have been exhibited by the respondent no. 1 as *Exhibit PW 4/D (3), Exhibit PW 4/D (2), Exhibit PW 4/D (1),* respectively, and the same are in the name of the respondent no. 1. Likewise, the water bills dated 21st May, 1988, 10th March, 1999, and 23rd December, 2006, issued by the Delhi Jal Board **("DJB")**, with respect to the suit property, are in the name of respondent no. 1, and have been exhibited as *Ex. PW 4/E (1), Ex. PW 4/E (2),* and *Ex. PW 4/E (3),* respectively.

114. Further, the testimony of the respondent no. 1 that her son was already in possession of the suit property prior to the sale, in the capacity of a tenant and that after the sale, the legal possession of the suit property was transferred to her, is corroborated by the Agreement to Sell dated 07th April,

1988, wherein, it is recorded as follows:

"xxx xxx xxx



Thus the First party hereby acknowledges to have received a sum of Rs.48,000/=-(Forty Eight Thousand) only uptil this 7th day of April 1988 from the Second Party as full and final payment towards the total sale consideration price of the said property under this deed. That the said property is already under the possession of Shri Girish Gujral S/o Sh. Iqbal Singh on monthly payment of rent of Rs.150/- (Rupees One Hundred & Fifty Only) hence the legal possession is is hereby transferred to the Second Party.

xxx xxx xxx"

115. It is also to be noted that *PW-5* had categorically stated in his Evidence Affidavit that the respondent no. 1 had remained in possession of the suit property since its purchase. However, no question in that regard was asked from the said witness during the cross-examination.

116. The respondent no. 1 also produced *PW-6*, i.e., Shri Vijay Nagpal, who resides near the suit property, at the property bearing no. *10/124, Subhash Nagar, New Delhi – 110027*, to establish her possession of the suit property. *PW-6*, in his Evidence Affidavit, deposed that the respondent no. 1 has been in possession of the suit property, since the same was purchased by her from Smt. Bassi Devi and Shri Som Nath in April, 1988.

117. In his cross examination, *PW-6* further affirmed that the *pucca* room was in the occupation of respondent no. 1, and that he had seen Shri Iqbal Singh visiting the *pucca* portion sometimes. He further stated that, most probably, the *pucca* portion remained under lock and key. He further stated that the *kutcha* rooms in the suit property were invariably occupied by

subziwalas. Further, he deposed that it is wrong to suggest that Smt. Bassi Devi never had the intention to sell the suit property to respondent no. 1. Thus, the testimony of *PW-6* remained uncontroverted in his cross-examination by the appellant and clearly established that the suit property was under the possession of the respondent no. 1.

118. Thus, the respondent no. 1 has examined *PW-6* as a neighbour, who is reasonably expected to be aware of the possession of the suit property, as it is logical that a person in possession of any particular immovable property for a long period of time, would be known by other persons in the locality.

119. Accordingly, on the basis of the evidence on record, such as, the water bills and house tax receipts in the name of respondent no. 1, the corroboration of the testimony of the respondent no. 1, the testimony of *PW-6* as being the neighbour residing nearby the suit property, a presumption as to possession is raised in favour of the respondent no. 1.

120. This Court further notes that the appellant failed to produce any evidence on record to controvert the assertion of respondent no. 1 that respondent no. 1 had the possession of the suit property.

121. Pertinently, it is to be noted that the appellant in his cross-examination has stated that at the time of purchase of the suit property, the possession of the suit property was with the tenants. Additionally, the tenants sought time to vacate the suit property, however, he did not give any notice to the tenants to vacate the suit property. He has further deposed that he has not received any rent from the tenants, till date. The relevant portions of the cross-examination of the appellant are reproduced as under:

"xxx xxx xxx

posse[redacted] of the suit property. Vol.it is with the tenants. The tenants were already in possession when I purchased the property and at the time of negotiation tenants sought some time to vacate the property from me. I have not given any notice to tenant to vacate the property. Vol. As I am already in so many litigation for this property only. Till date I have not received any rent from so many tenants. It is wrong to suggest that the tenants were inducted by the plaintiff or

xxx xxx xxx"

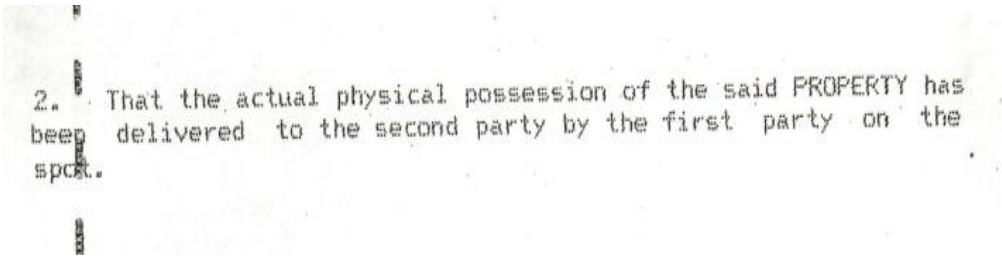
122. From the aforesaid deposition, it is evident that when the appellant himself has admitted that he never received any rents from the tenants in the suit property till date, it cannot be said that he had any constructive possession of the suit property. The appellant has failed to bring on record any evidence or witness to show that the suit property was under his possession or the possession of respondent no. 2.

123. Interestingly, the Agreement to Sell dated 18th August, 2006 in favour of the appellant, does not mention the fact of the suit property being under the possession of any tenants. Rather, the Agreement to Sell in favour of the appellant states that physical possession of the suit property has been handed over to the appellant. The relevant paragraphs of the Agreement to Sell dated 18th August, 2006, in this regard, are as follows:

"xxx xxx xxx

And Whereas, the first party is the sole and absolute owner and in possession of PROPERTY BEARING NO.10/64, AREA MEASURING 100 SQ.YDS., SITUATED AT TIHAR-I, SUBHASH NAGAR, NEW DELHI-110027 with the lease hold rights of the land thereto, BY WAY OF SUBSTITUTION LETTER NO.L&DO/PS3/1697 DATED 08.08.2006.

xxx xxx xxx



2. That the actual physical possession of the said PROPERTY has been delivered to the second party by the first party on the spot.

xxx xxx xxx"

124. Perusal of the aforementioned deposition of the appellant, as well as the Agreement to Sell dated 18th August, 2006, demonstrates that the appellant was aware that the possession of the suit property was with the tenant(s), at the time of execution of Agreement to Sell in his favour. However, the Agreement to Sell in favour of the appellant does not mention the fact of possession of the suit property with the tenant(s), rather it wrongly mentions that physical possession of the suit property has been handed over to the tenant. Thus, the appellant has taken contradictory stand in his cross-examination, which is completely different from the narration given in the Agreement to Sell in his favour. This contradiction itself is a clear pointer to the fact that at the time of execution of Agreement to Sell in favour of the appellant, the possession of the suit property was with the tenant(s), and the appellant was in the knowledge of the same. The Agreement to Sell in favour of the appellant does not mention that the suit property has been handed over to the appellant with possession of the tenant(s). Thus, the admission of the appellant regarding possession of the suit property by the tenant(s) at the time of execution of Agreement to Sell in his favour, and the suppression of said fact in the Agreement to Sell in his favour, clearly establishes that no physical or constructive possession of the suit property was handed over to the appellant at the time of execution of the

Agreement to Sell dated 18th August, 2006.

125. Accordingly, in view of the evidence on record, such as the water bills and house tax receipts in the name of respondent no. 1, the oral testimony of the respondent no. 1 which stands corroborated by the documents on record, and the testimony of *PW-6* as the neighbour residing near the suit property, along with the admission of the appellant that he was not receiving any rent from the suit property, it is justified to hold that the *preponderance of probability* tilts in favour of the case made out by the respondent no. 1/plaintiff in the suit.

126. In this regard, it would be apposite to refer to the decision of this Court in the case of ***Amrit Pal Kaur and Others Versus Harcharan Singh Josh, 2024 SCC OnLine Del 7161***, wherein this Court, on the basis of electricity bills and tax receipts, amongst other things, decided the issue of possession on the basis of *preponderance of probabilities*, in the following manner:

> *"xxx xxx xxx*
>
> ***58.*** *The plaintiff, by way of oral and documentary pieces of evidence, has proved that he himself, along with his family, stayed in the suit premises and even otherwise, his constructive possession continued up to 1999 and further till 27-6-2003, when the Fard Khana Talashi was prepared by the IO based on the FIR by obtaining the keys of the almirah from the plaintiff who facilitated the opening of the locks.* ***Even otherwise, the fact that the plaintiff paid the property tax on 11-2-2003, and the electricity connection was in the joint name indicates that he may not have been in physical possession of the suit property but his constructive possession cannot be denied.*** *The evidence adduced is sufficient to establish his right or ownership over the property, and his right of possession, as has been extensively dealt with in preceding paragraphs, cannot be denied as being dehors the law.*

> ***59. <u>The settled position in law qua standard of proof concerning civil cases is the preponderance of probability, meaning thereby, that the evidence which is of greater weightage or more convincing than the evidence which is offered in opposition to it, is admitted and preferred. Therefore, in view of the facts and circumstances of the case at hand and on the examination of the oral and documentary evidence adduced before the court, it is justified to hold that the principle of preponderance of probability tilts in favour of the case made out by the plaintiff.</u>*** *Thus, it leaves no doubt that the plaintiff is rightly entitled to the relief granted to him by the trial court.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

127. Thus, applying the test of *preponderance of probabilities*, this Court is of the opinion that the possession of the suit property was with the respondent no. 1. In these circumstances, it cannot be said that the respondent no. 1 failed to prove her possession in the suit property. Therefore, this Court concurs with the finding of the Trial Court in relation to possession of the suit property having been better proved by the respondent no. 1.

128. In this regard, reference may be made to the un-amended Section 53-A of TP Act, prior to the amendment of the year 2001, which deals with part performance, since the Agreement to Sell in favour of respondent no. 1 is of the year 1988, i.e., prior to the Amendment. The said provision reads as under:

> *"xxx xxx xxx*
> ***53-A. Part performance**.— Where any person contracts to transfer for consideration any immoveable property **<u>by writing</u>** signed by him or on his behalf from which **<u>the terms necessary to constitute the transfer can be ascertained with reasonable certainty</u>**,*
>
> *and **<u>the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee,</u>***

being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and ***the transferee has performed or is willing to perform his part of the contract***,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

xxx xxx xxx"

(Emphasis Supplied)

129. A perusal of the un-amended Section 53-A of the TP Act, which reflects the governing law at that point of time, protects the possession of the respondent no. 1, on the basis of the Agreement to Sell, and other documents like Will, GPA etc. executed in favour of respondent no. 1, coupled with proving the factum of possession of respondent no. 1 of the suit property.

Issue with regard to Better Right/Interest over the Suit Property:

130. As noted earlier, no right has been claimed in the suit property by respondent no. 2, as the previous owner of half of the suit property. The respondent no. 2 was proceeded *ex-parte* in the Trial Court, and he never entered into the witness box or led any evidence before the Trial Court. Even before this Court, the LRs of respondent no. 2, though impleaded, never caused any appearance or laid any claim over the suit property. In the

absence of any claim by the true owner, this Court is enjoined upon to adjudicate on the rival claims of the appellant and respondent no. 1 herein as regards right in the suit property.

131. Thus, based on the above findings, as well as the documents and evidence on record, the respondent no. 1 has been able to establish her right over the suit property, over and above the right asserted by the appellant. Pertinently, both the appellant and respondent no. 1, claim their rights in relation to the suit property on the basis of documents, other than a registered Sale Deed. However, in the overall conspectus of the facts and circumstances of this particular case, it is apparent that the respondent no. 1 has a better right with respect to the suit property than the appellant.

132. While the appellant and respondent no. 2 have contended that the documents of the year 1988 had been executed by respondent no. 2 and Smt. Bassi Devi *in lieu of* an alleged loan taken from the respondent no. 1, this Court finds itself in accord with the findings of the Trial Court that the appellant was unable to prove such contentions. Additionally, the appellant has been unable to prove that the documents of year 1988 in favour of the respondent no. 1, were forged in any manner.

133. At this stage, it would be fruitful to refer to the judgment of the Supreme Court in the case of ***Swadesh Ranjan Sinha Versus Haradeb Banerjee, 1991 SCC OnLine SC 265***, wherein, delving on the aspect of ownership, the Supreme Court held that there are various rights or incidents of ownership, all of which need not necessarily be present in every case. It was held that all that a plaintiff in the suit needs to prove is that he has a better title than the defendant. His ownership is good against the whole world except the true owner. It was further held that the rights of an owner

are seldom absolute and the question is whether a party has a superior right or interest *vis-a-vis* the person challenging it. Thus, Supreme Court held as follows:

> *"xxx xxx xxx*
>
> ***8. "Ownership denotes the relation between a person and an object forming the subject matter of his ownership. It consists in a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons." (Salmond on Jurisprudence, 12th edn., Ch. 8, p. 246 et seq). There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. Such a right may be indeterminate in duration and residuary in character. A person has a right to possess the thing which he owns, even when he is not in possession, but only retains a reversionary interest, i.e. a right to repossess the thing on the termination of a certain period or on the happening of a certain event.***
>
> ***9. All that a plaintiff needs to prove is that he has a better title than the defendant. He has no burden to show that he has the best of all possible titles. His ownership is good against all the world except the true owner. The rights of an owner are seldom absolute, and often are in many respects controlled and regulated by statute. The question, however, is whether he has a superior right or interest vis-a-vis the person challenging it.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

134. Therefore, from the evidence and documents on record, it is manifest that the appellant failed to adduce any evidence which could raise any doubt on the valid execution of the documents of year 1988 in favour of respondent no. 1 by the respondent no. 2 and Smt. Bassi Devi. It is also to be noted that during cross-examination, the appellant herein admitted that no Sale Deed had been executed in his favour till date. Thus, the Trial Court,

upon appreciation of the evidence and documents on record, rightly came to the conclusion that the documents dated 07th April, 1988 executed by respondent no. 2 and Smt. Bassi Devi in favour of respondent no. 1, stood duly proved.

135. At this stage, this Court deems it fit to refer to Section 48 of the TP Act, which embodies the rule of priority in successive transfers of immovable property, and reads as under:

> *"xxx xxx xxx*
>
> ***48. Priority of rights created by transfer**.—**Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

136. Thus, a reading of the aforesaid provision makes it evident that where two successive transfers of the same immovable property have been made, the one prior in time takes precedence in law over the transfer that is subsequent in time. The aforesaid provision encapsulates the maxim *"qui prior est tempore potior est jure"*, which means that he who is earlier and prior in time, is stronger in law and has a superior right in law.

137. In this regard, reference may be made to the *dictum* in the case of ***Smt. Subudini Kar and Another Versus Smt. Sabitri Rani Deb, 2012 SCC OnLine Gau 390,*** wherein the Gauhati High Court, while delving into Section 48 of the TP Act, held that when similar rights are created in favour of two persons at different times, the one who has the advantage in time should also have the advantage in law, in the following manner:

"xxx xxx xxx

19. ***When similar rights are created in favour of two persons at different times, the one who has the advantage in time should also have the advantage in law. This rule, however, applies only to cases where the conflicting equities are otherwise equal. Section 48 of the Transfer of Property Act, 1882 is founded upon the important principles that no man can convey a title than what he has. If a person has already effected a transfer, he cannot derogate from his grant and deal with the property free from the rights created under the earlier transaction. Section 48 is an absolute in its terms and does not contain any protection or reservation in favour of a subsequent transferee who has no knowledge of the prior transfer.***

20. ***Section 48 determines the priority when there are successive transferee. It provides that where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their fullest extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferee, be subject to the rights previously created.***

xxx xxx xxx"

(Emphasis Supplied)

138. Drawing from the conspectus of the aforesaid, it is clear that in the present case, both the parties do not have a registered Sale Deed in their favour and have relied upon other documents to claim right and interest over the suit property. Considering, the evidence and documents on record, it is manifestly evident that the respondent no. 1 has a superior right over the suit property.

Appellant Not A *Bona Fide* Purchaser:

139. The appellant contends that he conducted due diligence by verifying all records, before purchasing the suit property, and is thus a *bona fide* purchaser of the suit property, protected under Section 53-A of the TP Act and Section 19(1) of Specific Relief Act.

140. In this regard, it is pertinent to take note of Section 3 of the TP Act, i.e., interpretation clause, as per which a person is said to have notice when, but for wilful abstention from any enquiry or search that he ought to have made, he would have known it. The said Section reads as under:

> *"xxx xxx xxx*
> *3.* ***Interpretation clause****.—In this Act, unless there is something repugnant in the subject or context,—*
> *xxx xxx xxx*
> ***"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.***
> *xxx xxx xxx*
> *Explanation II.—****Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.***
> *Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:*
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

141. The law with regard to *bona fide* purchasers was recently discussed by the Supreme Court in the case of ***K.S. Manjunath and Others Versus Moorasavirappa Muttanna Chennappa Batil and Others, 2025 SCC OnLine SC 2378***, in the following manner:

> *"xxx xxx xxx*
>
> *68. In such circumstances referred to above, the subsequent purchasers are seeking to bring themselves within the status of a bona fide purchaser under Section 19(b) of the Act of 1963. Section 19 provides for the categories of persons against whom specific performance of a contract may be enforced. Amidst all, Clause (b) of Section 19 states that specific performance may be enforced against any other person claiming under him by a title arising subsequently to*

the contract except a transferee for value who has paid his money in good faith and without notice of the original contract. Thus, a transferee for value who has paid his money in good faith and without notice of the original contract is excluded from the purview of the said clause. ***In the case of Ram Niwas v. Bano, reported in (2000) 6 SCC 685, this Court had set out three factors that a subsequent transferee must show to fall within the excluded class: (a) he has purchased for value the property, which is the subject matter of the suit for specific performance; (b) he has paid his money to the vendor in good faith; and (c) he had no notice of the earlier contract for sale specific performance of which is sought to be enforced against him. The court observed that "notice" can be (i) actual notice or (ii) constructive notice, or (iii) imputed notice.*** *As per Section 3 of Transfer of Property Act, 1882, a person is said to have notice of a fact when he actually knows that fact or when but for wilful abstention from inquiry or search which he ought to have made, or gross negligence, he would have known it. The relevant observation is as under:*

> *"3. Section 19 provides the categories of persons against whom specific performance of a contract may be enforced. Among them is included, under clause (b), any transferee claiming under the vendor by a title arising subsequently to the contract of which specific performance is sought. However, a transferee for value, who has paid his money in good faith and without notice of the original contract, is excluded from the purview of the said clause. To fall within the excluded class, a transferee must show that: (a) he has purchased for value the property (which is the subject-matter of the suit for specific performance of the contract); (b) he has paid his money to the vendor in good faith; and (c) he had no notice of the earlier contract for sale (specific performance of which is sought to be enforced against him).*
>
> *4. The said provision is based on the principle of English law which fixes priority between a legal right and an equitable right. If 'A' purchases any property from 'B' and thereafter 'B' sells the same to 'C' the sale in favour of 'A', being prior in time, prevails over the sale in favour of 'C' as both 'A' and 'C' acquired legal rights. But where one is a legal right and the other is an equitable right*
>
> *"a bona fide purchaser for valuable consideration who obtains a legal estate at the time of his purchase without notice of a prior equitable right is entitled to priority in equity as well as at law". (Snell's Equity — 13th Edn., p. 48.)*

This principle is embodied in Section 19(b) of the Specific Relief Act.

5. It may be noted here that "notice" may be (i) actual, (ii) constructive, or (iii) imputed."

(Emphasis Supplied)

xxx xxx xxx

70. ***The expression "wilful abstention from inquiry or search" recalls the expression used by Sir James Wigram VC in the case of Jones v. Smith, reported in (1841) 1 Hare 43, wherein the High Court of Chancery of England & Wales had held that constructive notice is basically a manifestation of equity which treats a man who ought to have known a fact, as if he had actually known it.*** *The court noted that:*

"It is, indeed, scarcely possible to declare a priori what shall be deemed constructive notice, because, unquestionably, that which would not affect one man may be abundantly sufficient to affect another. But I believe, I may, with sufficient accuracy for my present purpose and without danger assert that the cases in which constructive notice has been established resolve themselves in two classes:

First, cases in which the party charged has had actual notice that the property in dispute was in fact charged, encumbered or in some way affected, and the court has thereupon bound him with constructive notice of facts and instruments, to a knowledge of which he would have been (sic) led by an enquiry after the charge, encumbrance or other circumstances affecting the property of which he had actual notice*; and secondly, cases in which the court has been satisfied from the evidence before it that the party charged had designedly abstained from enquiry for the very purpose of avoiding notice [...]"*

(Emphasis Supplied)

xxx xxx xxx

73. Therefore, in order to come to a conclusion that an act was done in good faith it must have been done with (i) due care and attention, and(ii) there should not be any dishonesty. This Court recently in case of Manjit Singh v. Darshana Devi, reported in 2024 SCC OnLine SC 3431, wherein one of us, J.B. Pardiwala, J., forming a part of the Bench, construed the usage of the term "good faith" under Section 19(b) of the Act of 1963 in the above sense and held that each of the abovementioned aspects is a complement to the other and not an exclusion of the other. This Court observed that the definition of the BNS emphasizes due care and attention whereas the definition of the

GC Act emphasizes honesty. The relevant observation is as under:

> *"13. Section 3(2) of the General Clauses Act defines 'good faith' as follows:—*
>
> > *3(22). A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not.*
>
> *14. Section 2(11) of the Bhartiya Nyaya Sanhita, 2023defines "good faith", as follows:—*
>
> > *2(11). "Good faith- Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention;*
>
> *15. The above said definitions and the meaning of the term "good faith" indicate that in order to come to a conclusion* ***Special Civil Petition (C) Nos. 29405-29406 of 2017 Page 80 of 96*** *that an act was done in good faith it must have been done with due care and attention and there should not be any negligence or dishonesty. Each aspect is a complement to the other and not an exclusion of the other. The definition of the Penal Code, 1860 emphasises due care and attention whereas General Clauses Act emphasises honesty.*
>
> *16. The effect of abstention on the part of a subsequent purchaser, to make enquiries with regard to the possession of a tenant, was considered in Ram Niwas v. Bano, (2000)6 SCC 685 […]*
>
> *17. In the case reported in Kailas Sizing, Works v. Municipality, B. & N., reported in 1968 Bombay Law Reporter 554, the Bombay High Court observed as follows:—*
>
> > *A person cannot be said to act honestly unless he acts with fairness and uprightness. A person who acts in a particular manner in the discharge of his duties in spite of the knowledge and consciousness that injury to someone or group of persons is likely to result from his act or omission or acts with wanton or wilful negligence in spite of such knowledge or consciousness cannot be said to act with fairness or uprightness and, therefore, he cannot be said to act with honesty or in good faith. Whether in a particular case a person acted with honesty or not will depend on the facts of each case. Good faith implies upright mental attitude and clear conscience. It contemplates an honest effort to ascertain the facts upon which the exercise of the power must rest. It is an honest*

determination from ascertained facts. Good faith precludes pretence, deceit or lack of fairness and uprightness and also precludes wanton or wilful negligence."

(Emphasis Supplied)

xxx xxx xxx

***78**. The language of the termination notice itself discloses the unilateral and self-serving character of the so-called termination. A bare reading of the notice of termination shows that the original vendors had stated therein that due to the status quo order in effect and the death of one of the original vendors, they were "unable to execute a regular sale deed in respect of land in question" and that they "cannot wait for an indefinite period". Thus, the original vendors cited their own inability to execute a sale deed in view of the status quo order operating in the Original Suit No. 30 of 2001 and the death of one of the original vendors. Such grounds, as already discussed, were matters of inconvenience very much personal to the original vendors and not the breaches attributable to the original vendees. The subsequent purchasers, upon a bare reading of the said notice of termination, ought to have made inquiries to ascertain whether the original vendees had challenged the factum of termination by any subsequent communication. This was all the more necessary because the language employed by the original vendors in the notice of termination itself clearly gave away that what was being asserted was not a termination arising out of any breach or default attributable to the original vendees but rather a unilateral act grounded in the original vendors' own inability and inconvenience. **It is a trite law that a subsequent purchaser who relies merely on the assertions of the vendor or who chooses to remain content with his own limited knowledge while consciously abstaining from making further inquiry into the subsisting interests in the property cannot escape the consequences of deemed notice. Equity ought not assist a transferee who deliberately avoids the truth that lies open to discovery.** Thus, a purchaser who has before him a document which on its very face shows the termination to be unilateral and rooted in the vendors' inconvenience cannot by shutting his eyes claim the benefit of "good faith".*

xxx xxx xxx"

(Emphasis Supplied)

142. Thus, a reading of the aforesaid decision of the Supreme Court makes it clear that for a subsequent purchaser to be a *bona fide* purchaser, he must

show that he did not have notice of the earlier contract, whether actual, constructive or imputed notice. Further, a person is said to have notice of a fact when he actually knows that fact or when, but for wilful abstention from inquiry or search which he ought to have made, or gross negligence, he would have known it. Thus, where a subsequent purchaser relies merely on the assertions of the vendor, and abstains from making further inquiry into the subsisting interests in the property, he cannot escape the consequences of deemed notice.

143. In view of the aforesaid position of law, this Court takes note of the submission of the appellant in his Evidence Affidavit, filed before the Trial Court, as *Ex. DW 1/1*, which reads as under:

> *"xxx xxx xxx*
>
> *5. I state that in the meanwhile I have carried the above transaction after making all verification from records.* ***The defendant no. 1 has assured to get me latest mutation letter and will confirm the house tax mutation****. The defendant no.1 has also given me the electric bills and had delivered photo copies of the latest bill in confirmation of the same to be in the name of his father.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

144. This Court further takes note of the submission of the appellant in his cross-examination, which is reproduced as follows:

> *"xxx xxx xxx*
>
> ***The assurance given by the Som Nath with regard to the mutation in favour of me was oral. I did not personally check the record of the Registrar Office, in the MCD and in the L&DO personally.*** *Registry means the Registered document, I have mention in para 6 that I have got the registry executed. By registry I mean the registered agreement to sell and the GPA. I came to know this controversy only at the receipt of the summon of this case.* ***After coming to know of this controversy I did not serve any notice in writing on Somnath or lodged any complaint against Som Nath as to why he has re-sold the property (vol. I talked to Mr. Somath personally and I satisfied after***

talking to him. It was not a case of re-sale).

xxx xxx xxx"

(Emphasis Supplied)

145. Thus, from a perusal of the Evidence Affidavit as well as the cross-examination of the appellant, it is clear that the appellant never himself verified the records/documents from the office of the Registrar, MCD and L&DO. The appellant only relied on the oral assurance of the respondent no. 2. The appellant has only verified the electricity bills to be in the name of Shri Kanshi Ram, i.e., the father of respondent no. 2.

146. Thus, since the appellant himself admits that he only relied on the oral assurances of respondent no. 2, and never himself verified the records from the concerned authorities, he cannot be said to have exercised due diligence before entering into the Agreement to Sell dated 18th August, 2006.

147. This Court has already noted the documents on record, wherein, the house tax receipts issued by the MCD, as well as water bills issued by the DJB, are in favour of the respondent no. 1. Had the appellant made *bona fide* inquiries and verified the record, he would have been aware of the house tax having been deposited by the respondent no. 1 with the MCD for the years 2004, 2005 and 2006. Therefore, on a genuine and proper verification, the appellant is deemed to be aware and have notice of the property tax having been deposited by the respondent no. 1 for the last three years prior to the transaction in favour of the appellant by respondent no. 2. Thus, the appellant cannot be considered a *bona fide* purchaser of the suit property.

148. Further, this Court notes that the appellant has admitted that even when he became aware about the controversy with respect to the suit property, he did not file any complaint against respondent no. 2, and after

speaking to only respondent no. 2, he was satisfied that it was not a case of re-sale of the suit property.

149. Further, the appellant simply states that he visited the suit property and met tenants who confirmed that they were paying rent to respondent no. 2. However, the appellant does not state to have seen any rent agreement or any rent receipt in favour of respondent no. 2. Given the failure on the part of the appellant to make an enquiry in the nature of the tenancy, the appellant cannot be considered to be a *bona fide* purchaser.

150. In this regard, it would be fruitful to refer to the decision in the case of ***Ram Niwas Versus Bano and Others, (2000) 6 SCC 685***, wherein, the Supreme Court has held that a person is not a *bona fide* purchaser if he fails to enquire into the nature of possession of tenants in the suit property, in the following manner:

> *"xxx xxx xxx*
>
> ***18.*** *Both the learned Single Judge as well as the learned Judges of the Division Bench of the High Court dealt with the question whether the purchasers had actual knowledge of Ext. 1, the earlier contract, and on evidence found that the purchasers did not have any knowledge of it. But they failed to notice the provisions of Explanation II to Section 3 of the Transfer of Property Act which is germane on the point of notice. Indeed, Issue 10 was not properly framed. The word "notice" should have been used in Issue 10 instead of "knowledge" because Section 19(b) uses the word "notice". From the definition of the expression "a person is said to have notice" in Section 3 of the Transfer of Property Act, it is plain that the word "notice" is of wider import than the word "knowledge". A person may not have actual knowledge of a fact but he may have notice of it having regard to the aforementioned definition and Explanation II thereto.* ***If the purchasers have relied upon the assertion of the vendor or on their own knowledge and abstained from making inquiry into the real nature of the possession of the tenant, they cannot escape from the consequences of the deemed notice under Explanation II to Section 3 of the Transfer of Property Act.*** *On this point, in the light of the above discussion, we hold that the purchasers will be deemed to have*

notice of Ext. 1, should it be found to be true and valid.

xxx xxx xxx"

(Emphasis Supplied)

151. Additionally, in the case of ***R.K. Mohammed Ubaidullah and Others Versus Hajee C. Abdul Wahab and Others, (2000) 6 SCC 402***, the Supreme Court held that a subsequent purchaser is bound to make inquiry into the nature of possession and title under which a person is in possession of the suit property, on the date of purchase of the property, in the following manner:

"xxx xxx xxx

15. *Notice is defined in Section 3 of the Transfer of Property Act. It may be actual where the party has actual knowledge of the fact or constructive.* ***"A person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.*** *Explanation II of said Section 3 reads:*

> *"Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof."*

Section 3 was amended by the Amendment Act of 1929 in relation to the definition of "notice". The definition has been amended and supplemented by three explanations, which settle the law in several matters of great importance. For the immediate purpose Explanation II is relevant. It states that actual possession is notice of the title of the person in possession. Prior to the amendment there had been some uncertainty because of divergent views expressed by various High Courts in relation to the actual possession as notice of title. A person may enter the property in one capacity and having a kind of interest. But subsequently while continuing in possession of the property his capacity or interest may change. A person entering the property as tenant later may become usufructuary mortgagee or may be agreement holder to purchase the same property or may be some other interest is created in his favour subsequently. ***Hence with reference to subsequent purchaser it is essential that he should make an inquiry as to the title or interest of the person in actual possession as on the date when the sale transaction was made in his***

favour. The actual possession of a person itself is deemed or constructive notice of the title if any, of a person who is for the time being in actual possession thereof. A subsequent purchaser has to make inquiry as to further interest, nature of possession and title under which the person was continuing in possession on the date of purchase of the property. *In the case on hand Defendants 2 to 4 contended that they were already aware of the nature of possession of the plaintiff over the suit property as a tenant and as such there was no need to make any inquiry. At one stage they also contended that they purchased the property after contacting the plaintiff, of course, which contention was negatived by the learned trial court as well as the High Court. Even otherwise the said contention is self-contradictory. In view of Section 19(b) of the Specific Relief Act and definition of "notice" given in Section 3 of the Transfer of Property Act read along with Explanation II, it is rightly held by the trial court as well as by the High Court that Defendants 2 to 5 were not bona fide purchasers in good faith for value without notice of the original contract.*

16. *The High Court of Andhra Pradesh in Mummidi Reddi Papannagari Yella Reddy v. Salla Subbi Reddy [AIR 1954 AP 20] referring to various decisions in para 8 has stated thus:*

> *"It may be mentioned here that an Explanation was introduced into the Transfer of Property Act by the Amending Act 21 of 1929. Even prior to this amendment, the law, as declared in decided cases, was that,* ***when a person purchased property from the owner knowing that it is in the possession of another, he is under a duty to inquire into the nature of that possession, and, in the absence of such inquiry, knowledge of title under which possession is held, should be attributed to the purchaser.*** *The leading case on the subject, relied on in a number of Indian decisions is — 'Daniels v. Davison' [(1809) 16 Ves Jun 249 : 33 ER 978] . The Lord Chancellor held that:*
>
> > *'where there is a tenant in possession under a lease, or an agreement, a person purchasing part of the estate must be bound to inquire on what terms that person is in possession ... that a tenant being in possession under a lease, with an agreement in his pocket to become the purchaser, those circumstances altogether give him an equity repelling the claim of a subsequent purchaser who made no inquiry as to the nature of his possession.' "*
>
> *(emphasis supplied)*

> ***17.*** *Relying on the decision of this Court a Division Bench of the High Court of Madras in Veeramalai Vanniar v. Thadikara Vanniar [AIR 1968 Mad 383 : (1968) 1 MLJ 437] has held that* ***it is also the duty of the subsequent purchaser to inquire from the persons in possession as to the precise character in which they were in possession at the time when subsequent sale transaction was entered into. If there be a tenant in possession of land a purchaser is bound by all the equities which the tenant could enforce against the vendor and such equity extends not only to the interest connected with the tenancy but also to interests under the actual agreement.***
>
> *xxx xxx xxx*
>
> ***19.*** *In view of what is stated above,* ***it is clear that Defendants 2 to 5 were not bona fide purchasers for value without prior notice of the original contract and that they were required to make inquiry as to the nature of possession or title or further interest, if any, of the plaintiff over the suit property at the time when they entered into sale transaction notwithstanding they were already aware that the plaintiff was in possession of the property as the tenant. What is material is the inquiry at the time when the subsequent sale transaction was entered into.***
>
> *xxx xxx xxx*
>
> *(Emphasis Supplied)*

152. In view of the aforesaid wilful abstention of the appellant in verifying the official records, and placing mere reliance on the oral assurance of respondent no. 2, along with failure to enquire in the nature and basis of the possession of the tenants, the appellant, in the present circumstances, cannot be regarded as a *bona fide* purchaser.

Findings on other aspects raised before the Court:

153. This Court further notes that merely because the appellant had a registered Agreement to Sell, while the respondent no. 1 had an unregistered Agreement to Sell, will also have no bearing in the present case. This is so, since the Registration and Other Related Laws (Amendment) Act, 2001, which introduced the requirement of the registration of documents for the

purposes of Section 53-A, is prospective in nature, and came into force with effect from 24th September, 2001.

154. Since the Agreement to Sell in favour of the respondent no. 1 is of the year 1988, the requirement of registration would not apply to it. In this regard, reliance is placed on the case of ***Gurmeet Kaur Versus Harbhajan Singh and Another, 2017 SCC OnLine Del 12863***, relevant paragraph of which, is reproduced as under:

> *"xxx xxx xxx*
>
> ***9. It is an undisputed fact that the appellant/plaintiff proved the documents being the agreement to sell, general power of attorney and the receipt as Ex. P.W. ½ to Ex. P.W. ¼. These documents have been executed prior to amendment of section 53-A of the Transfer of Property Act, 1882 by Act 48 of 2001 and which came into effect from 24.9.2001. These documents therefore need not have been stamped or registered so as to create rights in terms of doctrine of part performance under the then existing section 53-A of the Transfer of Property Act. It is only by the subsequent amendment of section 53-A of the Transfer of Property Act w.e.f 24.9.2001, that an agreement to sell would not confer any rights in terms of the doctrine of part performance if such an agreement to sell is not registered. Since the amendment is prospective in nature, therefore, the documents executed prior to 24.9.2001 being the documents Ex. P.W. ½ to Ex. P.W. ¼ dated 19.4.1995 did not require registration and stamping****. This aspect has been dealt by this Court in detail in the judgment in the case of Shri Ramesh Chand v. Suresh Chand,1 and in which judgment this Court has referred to the judgment of the Supreme Court in the case of Suraj Lamps and Industries Pvt. Ltd. v. State of Haryana, and as per which Supreme Court judgment agreements to sell, general power of attorneys and Wills which are validly executed are protected and such documents will have rights flowing under the same in terms of section 53-A of the Transfer of Property Act, section 202 of the Indian Contract Act and the relevant provisions of the Indian Succession Act pertaining to devolution of properties by a Will le only such documents executed post 24.9.2001 will not have validity if they are not stamped and registered.*

xxx xxx xxx"

(Emphasis Supplied)

155. Another important point to be noted is that even though the impugned judgment places reliance on the decision of this Court in the case of ***Ramesh Chand Versus Suresh Chand & Anr. 188 (2012) DLT 538***, which was subsequently overruled by the decision of the Supreme Court in the case of ***Ramesh Chand (D) Thr. Lrs (Supra)***, the same would not have effect on the final outcome of the present case. The decision of the Trial Court was based upon the evidence and documents before it and the findings of the Trial Court are duly supported by the evidence on record.

156. It is to be noted that in ***Ramesh Chand Versus Suresh Chand & Anr. 188 (2012) DLT 538,*** this Court had held that ownership of the property therein had devolved upon the plaintiff in terms of the Will executed by his father, as the father had passed away. However, the said decision of this Court was set aside by the Supreme Court on the ground that the Will therein, had not been duly proved under Section 68 of the Evidence Act. Further, the Supreme Court held that possession had not been proved in the said case, as the suit was for possession, on account of which, benefit under Section 53-A of the TP Act, could not be given.

157. However, the aforesaid judgment of the Supreme Court is not applicable to the facts and circumstances of the present case. In the present case, the registered Wills executed by respondent no. 2 and his mother in favour of respondent no. 1, have been duly proved. Further, the possession of the respondent no. 1 also stands duly proved. Thus, the finding of the Trial Court will remain valid.

Conclusion:

158. Considering the detailed discussion hereinabove, this Court finds no infirmity with the findings arrived at by the Trial Court.

159. For the aforesaid reasons, no merit is found in the present appeal. The same is accordingly dismissed. Consequently, the Agreement to Sell dated 18th August, 2006 executed by respondent no. 2, Late Shri Som Nath, in favour of the appellant, i.e., Shri Rajeev Miglani, is cancelled.

160. A copy of this judgment shall be sent by the Registry of this Court to the concerned Sub-Registrar, in whose office the Agreement to Sell dated 18th August, 2006 in favour of the appellant, had been so registered.

MINI PUSHKARNA, J

27th March, 2026/AK/KR/SK