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

Reserved on: 09th December, 2025
Pronounced on: 28th January, 2026

\+ RFA 748/2018

ANAND VERSHA & ANR. .....Appellants

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versus

NARENDER KUMAR SHARMA (DECEASED) THR LRS & ORS. .....Respondents

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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

Background of Appeal

1. Through the present Regular First Appeal, the appellants (defendant nos. 3 and 4 before the Trial Court) assail the correctness of the judgment and decree dated 05th May, 2018 ("impugned judgment") passed by the Additional District Judge – 05 (South-West), Dwarka Courts, New Delhi in *CS No. 724/2017*, captioned "*Sh. Narender Kumar Sharma (Deceased) through LRs Versus Devender Kumar & Others*", whereby, the suit instituted by the respondent no. 1 (plaintiff before the Trial Court) was decreed.

2. The respondent no. 1/plaintiff had filed *CS No. 724/2017* seeking possession of a property admeasuring 60 sq. yds, bearing *No. RZ-35A, Khasra No. 9/5, Village Asalatpur (now known as Indra Park), Uttam Nagar, New Delhi-110059* ("suit property") and for permanent injunction restraining the defendants from alienating or creating third party interest in the suit property. There was further prayer for award of damages to the tune of Rs.10,000/- (Rupees Ten Thousand only) per month from July, 2017 till handing over of possession of the suit property, along with 18% interest thereon.

3. By way of the impugned judgment, the Trial Court has decreed the suit of the respondent no. 1/plaintiff (who passed away during the course of hearing before the Trial Court) in favour of his Legal Representatives ("LRs"), holding them entitled to possession of the suit property and permanent injunction against the defendants in respect thereof. As per the findings of the Trial Court, the defendants did not have any right, title or interest in the suit property as they had failed to prove the 'sale documents' relied upon by them.

Proceedings before this Court

4. While issuing notice in the present appeal on 07th September, 2018, this Court had ordered a stay on the operation of the impugned judgment, based upon the submission of the appellants that the signatures of respondent no.1 on the 'sale documents' dated 15th December, 2015, exhibited by the appellants, had not been disputed by respondent no. 1, or his LRs, in the replication filed before the Trial Court. The said interim order was made absolute *vide* order dated 17th December, 2018.

5. During the course of the present appeal, the respondent no. 2 (defendant no. 1 before the Trial Court) passed away on 18th January, 2023. This Court was informed on 25th August, 2025 that out of respondent no. 2's two LRs, one (his wife) had also expired on 03rd April, 2025, and thus, the appeal stood abated against respondent no. 2/defendant no. 1.

Factual Matrix

6. The facts, leading up to the filing of this appeal and relevant for the present adjudication, are as follows:

Pre-filing of suit:

6.1 The suit property belonged to one Late Smt. Chander Wati, who was the mother of respondent nos. 1 to 3, the mother-in-law of appellant no. 1 and grandmother of appellant no. 2. Smt. Chander Wati passed away intestate in the year 2001. Thereafter, one of the sons of Smt. Chander Wati, i.e., Shri Umesh Kumar Sharma (husband of appellant no. 1 and father of appellant no. 2) passed away in the year 2006, leaving behind the appellants as his legal heirs.

6.2 On 30th November, 2015, a Relinquishment Deed, bearing Registration No. 17488, registered in Book No. I, Vol. No. 994 on Page Nos. 129 to 134, before the Sub-Registrar, Janakpuri, Delhi (marked as *Ex. PW1/2*), was executed amongst the parties before this Court, along with other co-sharers of the suit property, in favour of the respondent no. 1/plaintiff, making him the absolute owner of the suit property.

6.3 It is the case of the appellants that the Relinquishment Deed was executed by the defendants and other co-sharers of the suit property under an express understanding that post execution of the Deed, the respondent no.

1/plaintiff would get the suit property reconstructed in collaboration with some builder, in the shape of parking at Ground Floor ("GF"), upper GF, First Floor ("FF"), Second Floor ("SF") and Third Floor ("TF"). Subsequently, the respondent no. 1 would transfer the entire FF of the reconstructed suit property without roof/terrace rights in the name of defendant no. 3 (appellant no. 1). Upper GF was to be transferred to defendant no. 1 (respondent no. 2) and SF was to be transferred to aforesaid builder in *lieu* of costs, whereas, TF was to be retained by respondent no. 1 along with defendant no. 2 (respondent no. 3).

6.4 It is also the case of the appellants that the respondent no. 1, on 15th December, 2015, executed a set of documents – General Power of Attorney ("GPA"), Agreement to Sell, Affidavit, Possession Letter, Receipt and a Deed of Will (collectively referred to as "sale documents") – in respect of FF of suit property in favour of appellant no. 1. Furthermore, a similar set of sale documents of the even date were executed in favour of respondent no. 2/defendant no. 1 in respect of GF of the suit property.

6.5 In contrast, as per respondent no. 1/plaintiff, the defendants were merely inducted as licensees in the suit property, based upon an oral license between the parties and the said license was revoked by the respondent no. 1 by duly serving a Legal Notice dated 29th May, 2017 (marked as *Ex. PW1/3*) upon the defendants and seeking possession of the suit property. However, despite receiving the said Notice, the defendants did not vacate the suit property.

6.6 Apprehensive, that the defendants/appellants herein were intending to sell off the suit property/create third-party interest therein, the respondent

no. 1 instituted the suit being *CS No. 724/2017*.

***Post-filing of suit**:*

6.7 Before the Trial Court, *vide* order dated 22nd August, 2017, the defendant no. 2/respondent no. 3 before this Court, was proceeded *ex-parte*. Further, the defendants were directed to maintain *status quo*.

6.8 A written statement came to be filed by defendant nos. 3 and 4/appellants, which was adopted by defendant no. 1 (respondent no. 2). Further, the statement of all these three defendants had been recorded in the order dated 19th September, 2017 that they shall maintain *status quo* in respect of the suit property, till disposal of suit.

6.9 It was the case of the contesting defendants in their written statement that respondent no. 1/plaintiff was not the owner of the suit property.

6.10 Thereafter, based upon the pleadings of the parties, *vide* order dated 26th September, 2017, the following issues were framed by the Trial Court:

> *"i). Whether the Relinquishment deed dated 30.11.2015 was executed between the parties with the understanding that the plaintiff would get an exclusive title to the suit property and get the same reconstructed in a collaboration agreement with some builder? (OPD- 1, 3 & 4).*
>
> *ii). Whether the plaintiff has executed GPA, Agreement to sell, Affidavit, Possession Letter, Receipt and Deed of Will, dated 15.12.2015 in favour of defendant nos. 1 & 3? (OPD 1 & 3)*
>
> *iii). Whether the plaintiff is entitled to a decree of possession, as prayed for? (OPP).*
>
> *iv). Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? (OPP).*
>
> *v). Whether the plaintiff is entitled to a decree of Rs. 10,000/- per month as mesne profits/ damages till handing over peaceful and vacant possession of the suit property alongwith interest @ 18% per annum against the defendants? (OPP).*
>
> *vi) Relief."*

6.11 On behalf of respondent no. 1/plaintiff, his son, i.e., respondent no. 1(4) before this Court, deposed as *PW1*, based upon a Power of Attorney ("PoA") dated 23rd November, 2017 (marked as *Ex. PW1/1*), on the ground that the respondent no. 1 was aged 75 years and was unwell. *PW1* exhibited a total of 10 documents and the plaintiff's evidence was closed on 11th December, 2017.

6.12 Subsequently, the respondent no. 1/plaintiff demised on 18th January, 2018 and *vide* order dated 06th February, 2018, the LRs of respondent no. 1/plaintiff were brought on record.

6.13 On behalf of the defendants, defendant no. 1 (respondent no. 2) deposed as *DW1* and defendant no. 3 (appellant no. 1) deposed as *DW2*. Two separate set of sale documents were exhibited by *DW1* and *DW2*, along with other documents, in respect of their claims to GF and FF of the suit property, respectively. It is pertinent to note that the sale documents were exhibited as OSR (Original Seen and Returned) before the Trial Court. Thereafter, the defence evidence was closed on 15th February, 2018.

6.14 Accordingly, the impugned judgment came to be passed on 05th May, 2018, whereby, LRs of respondent no. 1 were held entitled to possession of suit property being *RZ-35A, Khasra No. 9/5, Village Asalatpur (now known as Indra Park), Uttam Nagar, New Delhi-110059*, admeasuring 60 sq. yards. Permanent injunction was granted and defendants were restrained from alienating or creating third party interest in the suit property. In the absence of any positive evidence as regards the claim that the suit property can fetch Rs. 10,000/- per month as rent, the respondent no. 1's claim for *mesne* profits/damages was rejected.

Submissions of the Parties in Appeal

7. On behalf of the appellants, the impugned judgment has been assailed on the following grounds:

7.1 Respondent no. 1 executed a Deed of Will dated 15th December, 2015 (*Ex. DW2/11*) in favour of appellant no. 1, bequeathing the entire FF of the suit property, without roof/terrace rights. The said Deed of Will was duly exhibited as *Ex. DW2/11 (Original Seen and Returned – "OSR")* and proved during the trial proceedings. Needless to state, the Deed of Will was executed after the Relinquishment Deed dated 30th November, 2015.

7.2 Execution and existence of the Deed of Will - *Ex. DW2/11* has never been disputed by the respondent no. 1 or his LRs, at any stage of the proceedings. The plaint, as well as the replication, is silent on the point of said Will. The respondent no. 1 and his LRs have neither made any attempt to challenge, deny, or revoke the Will, nor is it their case that it has been obtained by fraud/coercion. Thus, the Deed of Will - *Ex. DW2/11* was valid and operative during the lifetime of the testator and became irrevocable upon respondent no. 1's death.

7.3 During cross-examination of *PW1*/respondent no. 1(4), upon being confronted with the Deed of Will - *Ex. DW2/11, PW1* has refused to answer on account of them being "*photocopies*". However, the Deed of Will had already been marked as *Ex. DW2/11 (OSR)* by the Trial Court, only after perusal of the original document. It is pertinent to note that *PW1* did not deny the execution of the said Will.

7.4 The respondent no. 1/plaintiff passed away on 18th January, 2018, during the course of suit proceedings before the Trial Court. By the time the

impugned judgment was delivered on 05th May, 2018, the appellant no. 1 had already acquired complete title to the suit property by way of the Deed of Will - *Ex. DW2/11*.

7.5 Despite framing an issue on the execution of Deed of Will and other sale documents, the Trial Court has failed to render any finding on the execution and effect of the Deed of Will being *Ex. DW2/11* post death of the testator/respondent no. 1, which is contrary to Order XIV, Rule 2 of the Code of Civil Procedure, 1908 ("CPC"). Though the impugned judgment was delivered on 05th May, 2018, i.e., after expiry of respondent no. 1, this aspect of validity of Deed of Will has not been examined by the Trial Court. The same strikes at the very root of the impugned judgment.

7.6 Appellant no. 1 has been in continuous, uninterrupted, and peaceful possession of the suit property since the year 1987 and such a long, continuous possession, spanning over 30 years, cannot be characterized as that of a mere licensee. The respondents have failed to prove both *animus possidendi* and *corpus possessionis*.

7.7 The respondents cannot, at the stage of appeal, as an afterthought, raise the objection of non-probate of Will when they themselves have treated the Will as admitted by maintaining complete silence. Thus, the principle of estoppel is applicable.

7.8 Respondent no. 1's deliberate abstention from the witness stand attracts an adverse inference under Section 114(g) of the Indian Evidence Act, 1872 ("Evidence Act")/ Section 119(g) of the Bharatiya Sakshya Adhiniyam, 2023 ("BSA"), and strikes at the root of respondent no. 1's case and renders his claim unsubstantiated.

7.9 The only witness examined on behalf of respondent no. 1/plaintiff was his son and PoA holder - Hitesh Sharma/respondent no. 1(4), who admittedly had no personal knowledge of the facts, was not a witness to any documents executed by respondent no. 1, including the Deed of Will, and was incompetent to depose regarding the state of mind, intent, or understanding of respondent no. 1 at the time the Relinquishment Deed, and the subsequent documents, were executed.

7.10 Non-entering of the witness box by respondent no. 1 and further, his PoA holder deposing on behalf of actual witness, when actual witness had been alive, is a material irregularity. The entire evidence of *PW1* should be excluded from consideration as being hearsay, and no reliance should be placed on the evidence of *PW1*.

7.11 The failure of the respondent no. 1 to challenge the sale documents exhibited by defendants, to deny the Deed of Will – *Ex. DW2/11*, and to explain the intention behind their execution, shows that the respondent no. 1 did intend to convey rights to the appellant no. 1, particularly, after the purpose of the Relinquishment Deed had failed.

7.12 The Relinquishment Deed was not an absolute or unconditional transfer of ownership, but a purpose-oriented family arrangement, wherein, respondent no. 1 was entrusted to undertake construction, and thereafter, re-distribute the newly constructed floors in terms of the mutually agreed family settlement. Once the respondent no. 1 admittedly failed to perform the very purpose for which the Relinquishment Deed was executed, the Relinquishment Deed became inoperative and inexecutable in law, as the underlying purpose for vesting title in respondent no. 1 had failed.

7.13 Under settled law, a suit for possession can be decreed only in favour of a plaintiff who has a subsisting title on the date of decree. However, on the date of judgment, the respondent no. 1 had no subsisting title in the suit property, and his LRs, who did not inherit ownership due to execution of the Deed of Will – *Ex. DW2/11*, were incapable of prosecuting a possession suit.

7.14 The observation of the Trial Court that no evidence had been led by the appellants herein to show the source of amount of Rs. 9.6 lakhs, paid as consideration to respondent no. 1 by appellant no. 1, is unjustified and places an unreasonable burden on the appellants. The Receipt dated 15th December, 2015, marked as *Ex. DW2/10*, and signed by respondent no. 1, is a valid acknowledgment of receipt of consideration amount.

8. *Per contra*, on behalf of the LRs of respondents no. 1, the following submissions have been put forth:

8.1 Respondent no. 1/plaintiff and presently, LRs of respondent no. 1, are the absolute owners of the suit property by virtue of the registered Relinquishment Deed dated 30th November, 2015 – *Ex. PW1/2*. The said document stands admitted by all executing parties, and is thus, undisputed. Only the appellants herein have sought to contest the impugned decree.

8.2 The said Relinquishment Deed does not contain any recital to the effect that the Deed has been executed for the purpose of reconstruction of the suit property, as falsely claimed by the appellants.

8.3 The son of respondent no. 1/plaintiff was an attesting witness to the Relinquishment Deed – *Ex. PW1/2* before the Sub-Registrar, and therefore, had personal knowledge of the same. Therefore, the appellants' contention that a PoA holder cannot lead evidence, as he had no personal knowledge,

has to be rejected.

8.4 All the six sale documents relied upon by the appellants are not registered and hence, as per settled law, no title can be passed onto appellant no. 1 by virtue of said unregistered documents, namely the Deed of Will, Agreement to Sell, Affidavit, Possession Letter and Receipt. Even these sale documents exhibited by appellants do not contain any recital to the effect of reconstruction of suit property and transfer of FF to the appellants. Thus, such a stand is an afterthought and the sale documents are fabricated to put up a false narrative.

8.5 The appellants neither filed any original documents on which they are relying with their Written Statement before the Trial Court, nor did they confront the *PW1* with any original document during cross-examination. They only exhibited the unregistered sale documents as *OSR* during defence evidence.

8.6 Further, the appellants have also failed to bring any witness to prove execution of the said unregistered sale documents.

8.7 The onus to prove these documents was on the appellants/defendants and they cannot shift the burden/onus of proving these documents onto the respondent no. 1/plaintiff. The appellants are relying on several documents and none of them have been proven as per the Evidence Act. A mere exhibiting of a document during defendants' evidence does not mean that the document stands proven.

8.8 The appellants have failed to prove the Deed of Will dated 15th December, 2015 (*Ex. DW2/11*), i.e., the document on which they seek to press their entire argument, especially, in light of the fact that when the

appellants have led defence evidence on 15th February, 2018, i.e., only after the demise of respondent no. 1 – Shri Narender Kumar Sharma on 18th January, 2018. Even otherwise, the appellants have not proved the disputed unregistered Will either by filing a probate petition or by bringing any one of the attesting witnesses to the stand.

8.9 The said alleged Deed of Will dated 15th December, 2015 (*Ex. DW2/11*), is a fake document which has never been proven by the appellants and thus, the Trial Court was not required to give any finding in that respect.

8.10 Appellants have failed to show any irregularity or perversity in the impugned judgment.

9. I have heard the learned counsels for the parties at length and perused the pleadings, documents and evidence on record.

Findings and Analysis

10. The respondent no. 1, as plaintiff in the suit, has claimed to be the absolute owner of the suit property by virtue of the registered Relinquishment Deed. As per the case of respondent no. 1, the appellants, who were defendant nos. 3 and 4 in the suit, were inducted in the suit property as licensees, which license was terminated by Legal Notice dated 29th May, 2017. Despite the same, the appellants have failed to handover vacant possession of the suit property.

11. The issue for adjudication before this Court is regards the entitlement of the parties to the suit property. While the appellants have relied upon unregistered sale documents *viz.* the GPA, Agreement to Sell, Affidavit, Possession Letter, Receipt and Deed of Will dated 15th December, 2015 in their favour, the LRs of respondent no. 1 rely upon a registered

Relinquishment Deed dated 30th November, 2015, to claim their title over the suit property.

12. The main contention raised by the appellants is that the Relinquishment Deed dated 30th November, 2015 was executed with an understanding that the suit property would be demolished and re-built, and that the appellants would be entitled to get the FF thereof. It is to be noted that the validity of the Relinquishment Deed is undisputed and stands admitted and accepted by all the parties. However, the said Relinquishment Deed does not contain any recital to the effect that the same had been executed for the purpose of reconstruction of the suit property.

13. In his Evidence Affidavit dated 06th February, 2018, i.e., *Ex. DW1/A*, *DW1*, Shri Devender Kumar, defendant no. 1 (now deceased), stated that he reserved the right to file a suit for cancellation of the Relinquishment Deed dated 30th November, 2015. Relevant portion of the said Evidence Affidavit is extracted as below:

> *"xxx xxx xxx*
>
> *5. That the relinquishment deed dated 30.11.2015 had been got executed by the plaintiff by playing an active fraud and cheating the defendant no. 1 and other co-shares in the suit property and plaintiff is liable to be booked for the same by way of registration of an FIR.* ***That defendant no. 1 reserve their right to file a suit for cancellation of relinquish deed dated 30.11.2015****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

14. Similarly, *DW2*, Ms. Anand Versha (appellant no. 1) has stated in her Evidence Affidavit dated 06th February, 2018 that the Relinquishment Deed is liable to be cancelled/set aside. The relevant portion of *DW2*'s Evidence Affidavit reads as under:

"xxx xxx xxx

13. ***I state that the registered relinquishment deed dated 30.11.2015 had been got executed by the plaintiff by playing an active fraud and cheating upon the deponent and other co-sharers in the suit property and is therefore liable to be cancelled/ set aside****.*

xxx xxx xxx"

(Emphasis Supplied)

15. However, it is pertinent to note that no such remedy has been resorted to by the appellants or respondent no. 2. Thus, the validity of the Relinquishment Deed dated 30th November, 2015 stands and is established.

16. Furthermore, it is relevant to note that the defendant no. 1, during the course of his cross-examination, has made various admissions regarding the fact of execution of the Relinquishment Deed in favour of father of respondent no. 1(4). *DW1* has admitted that he had no document in writing to show that the father of respondent no. 1(4), elder brother of *DW1*, would get the suit property re-constructed in a collaboration agreement with some builder. The cross-examination of *DW1* in this regard, reads as under:

"xxx xxx xxx

…… ***The Relinquishment deed Ex. PW1/2 bears my signature at encircled point-A. I have no document in writing to show that it was agreed between the parties that the plaintiff would get the suit property reconstructed in a collaboration agreement with some builder in the shape of parking at ground floor, upper ground floor, first floor, second floor and third floor and after the re-construction of the same, plaintiff would get the ground floor of the suit property.*** *It is further wrong to suggest that no such agreement was ever entered into between me and the plaintiff. The address on the legal notice Ex. PW1/3 is my correct address.*

xxx xxx xxx"

(Emphasis Supplied)

17. It is material to note that *DW2*, Ms. Anand Varsha/appellant no.1 herein, during the course of her cross-examination also admitted to the

execution of Relinquishment Deed, her photograph on the Relinquishment Deed, as well as her signatures thereupon. She has further deposed that the Relinquishment Deed was correct and that the same had been signed by her in her full senses. She has further admitted that the other LRs have not raised any objection pertaining to the execution of the Relinquishment Deed. She further admits that she has not given any request in writing to the plaintiff in the suit, asking the plaintiff/respondent no. 1 herein to re-construct the suit property. The deposition of *DW2* on this aspect reads as under:

> *"xxx xxx xxx*
>
> ***It is correct that the document Ex. PW1/2 i.e. Relinquishment deed, my photograph has been affixed in encircled Mark X. It is also correct that in the same document, I bear my signature in encircled Mark-Y. It is also correct that in the same document, I bear my signature and finger impressions in encircled Mark-Z. I have not given anything in writing to the plaintiff to the effect of the property pertaining to the Relinquishment Deed Ex. PW1/2. I have not given anything in writing asking the plaintiff to construct the suit property. It is correct that on Ex. PW1/2, my daughter also bears her signature. My daughter did not issue me any objection in writing pertaining to the subject Relinquishment Deed Ex. PW1/2. The Relinquishment deed Ex. PW1/2 is altogether correct and I have signed on the same in my full senses and due diligence.*** *I have not made any effort to vacate the suit property for its reconstruction.*
>
> *xxx xxx xxx*
>
> ***It is correct that the children of my sister in law (Nanad) and my brother in law (Jeth) did not raise any objection pertaining to the execution of the Relinquishment deed****. It is incorrect to suggest that I am deposing falsely.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

18. Thus, on the basis of the depositions and evidences on record, the veracity of the Relinquishment Deed stands established. Further, the Relinquishment Deed is a registered document, and the same has not been

challenged by the appellants, in any manner whatsoever. No such prayer seeking cancellation of the Relinquishment Deed was sought by the appellants in the proceedings before the Trial Court. No counter claim, or any separate suit, seeking such cancellation of the Relinquishment Deed, has ever been filed by the appellants. Further, no such issues were framed before the Trial Court in this regard.

19. When the Relinquishment Deed has not been challenged by any party and is a registered written document in favour of the respondent no. 1, no oral evidence can be led against the said registered written document. When there are written instruments or contracts, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. Thus, in the case of ***Roop Kumar Versus Mohan Thedani, (2003) 6 SCC 595***, the Supreme Court has elucidated on this aspect, as under:

> *"xxx xxx xxx*
>
> ***16.*** *The practical consequence of integration is that its scattered parts, in their former and inchoate shape, have no longer any jural effect; they are replaced by a single embodiment of the act. In other words,* ***when a jural act is embodied in a single memorial all other utterances of the parties on the topic are legally immaterial for the purpose of determining what are the terms of their act. This rule is based upon an assumed intention on the part of the contracting parties, evidenced by the existence of the written contract, to place themselves above the uncertainties of oral evidence and on a disinclination of the courts to defeat this object. When persons express their agreements in writing, it is for the express purpose of getting rid of any indefiniteness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. Written contracts presume deliberation on the part of the contracting parties and it is natural they should be treated with careful consideration by the courts and with a disinclination to disturb the conditions of matters as embodied in them by the act of the parties.*** *(See McKelvey's*

Evidence, p. 294.) As observed in Greenlear's Evidence, p. 563, one of the most common and important of the concrete rules presumed under the general notion that ***the best evidence must be produced and that one with which the phrase "best evidence" is now exclusively associated is the rule that when the contents of a writing are to be proved, the writing itself must be produced before the court or its absence accounted for before testimony to its contents is admitted****.*

17. It is likewise a general and most inflexible rule that wherever written instruments are appointed, either by the requirement of law, or by the contract of the parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instruments, or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. It is of policy because it would be attended with great mischief if those instruments, upon which men's rights depended, were liable to be impeached by loose collateral evidence. *(See Starkie on Evidence, p. 648.)*

18. In Section 92 the legislature has prevented oral evidence being adduced for the purpose of varying the contract as between the parties to the contract; but, no such limitations are imposed under Section 91. Having regard to the jural position of Sections 91 and 92 and the deliberate omission from Section 91 of such words of limitation, it must be taken note of that even a third party if he wants to establish a particular contract between certain others, either when such contract has been reduced to in a document or where under the law such contract has to be in writing, can only prove such contract by the production of such writing*.*

19. Sections 91 and 92 apply only when the document on the face of it contains or appears to contain all the terms of the contract. Section 91 is concerned solely with the mode of proof of a document with limitation imposed by Section 92 relates only to the parties to the document. If after the document has been produced to prove its terms under Section 91, provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. Sections 91 and 92 in effect supplement each other. Section 91 would be inoperative without the aid of Section 92, and similarly Section 92 would be inoperative without the aid of Section 91*.*

20. *The two sections, however, differ in some material particulars. Section 91 applies to all documents, whether they purport to dispose*

of rights or not, whereas Section 92 applies to documents which can be described as dispositive. Section 91 applies to documents which are both bilateral and unilateral, unlike Section 92 the application of which is confined to only bilateral documents. (See : Bai Hira Devi v. Official Assignee of Bombay [AIR 1958 SC 448]) Both these provisions are based on "best-evidence rule". In Bacon's Maxim Regulation 23, Lord Bacon said "The law will not couple and mingle matters of speciality, which is of the higher account, with matter of averment which is of inferior account in law." ***It would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory****.*

21. The grounds of exclusion of extrinsic evidence are *: (i) to admit inferior evidence when law requires superior would amount to nullifying the law, and (ii)* ***when parties have deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory****.*

xxx xxx xxx"

(Emphasis Supplied)

20. In the present case, the appellants, having accepted the execution of the registered Relinquishment Deed, cannot seek to challenge the same by way of any oral evidence. Law is settled in this regard that oral evidence of a written agreement is excluded. Thus, relying upon Sections 91 and 92 of the Evidence Act, which provides that where terms of the contract have been reduced in the form of a document and have been proved, no evidence of any oral agreement between the parties for contradicting, varying, adding or subtracting from the terms therein shall be admitted, this Court in the case of ***Promila Gulati Versus Anil Gulati, 2015 SCC OnLine Del 7406***, held as follows:

"xxx xxx xxx

16. ***It is a rule of law of evidence, which is also known as the "best evidence rule" that in case a written document is available, no oral evidence can be lead in that regard. In the present case, in the face of a document in writing, the pleas of the defendant cannot be permitted to be taken and are barred by the provision of Section 92 of the Evidence Act****. The following cases are relevant in this regard:*

(a) In Kusum Enterprises v. Vimal Kochhar 207 (2014) DLT 172, it was observed as follows:

"(c) ***Section 91 of the Indian Evidence Act, 1872 provides that where the terms of a contract have been reduced in the form of a document and where the matter is required by law to be reduced in the form of a document, no evidence shall be given in proof of the terms of such contract except the document itself; Section 92 of the Evidence Act provides that where the terms of the contract required by law to be reduced in the form of a document have been proved according to Section 91, no evidence of any oral agreement between the parties for the purpose of contradicting, varying, adding to, or subtracting from its terms shall be admitted****; though there are exceptions to both the said provisions but the same have not been invoked by the respondents/plaintiffs or their counsel and the case is not found to be falling in any of the exceptions;*

(d) it is also the settled position in law (See Chandrakant Shankarrao Machale v. Parubai Bhairu Mohite (2008) 6 SCC 745 and S. Saktivel v. M. Venugopal Pillai (2000) 7 SCC 104) that the ***terms of a registered document can be varied/altered by a registered document only****; in Raval & Co. v. K.G. Ramachandran (1974) 1 SCC 424 it was specifically held that any variation of rent reserved by a registered lease deed must be made by another registered instrument;"*

(b) In the case of Roop Kumar v. Mohan Thedani (2003) 6 SCC 595, it was held as follows:

"Section 91 relates to evidence of terms of contract, grants and other disposition of properties reduced to form of document. This section merely forbids proving the contents of a writing otherwise than by writing itself; it is covered by the ordinary rule of law of evidence, applicable not merely to solemn writings of the sort named but to others known some times as the "best evidence rule". It is in really declaring a doctrine of the substantive law, namely, in the case of a written contract, that of all proceedings and contemporaneous oral expressions of the thing are merged in the writing or displaced by

it. (See Thaver's Preliminary Law on Evidence p. 397 and p. 398; Phipson Evidence 7th Edn. p. 546; Wigmore's Evidence p. 2406.) It has been best described by Wigmore stating that the rule is no sense a rule of evidence but a rule of substantive law. It does not exclude certain data because they are for one or another reason untrustworthy or undesirable means of evidencing some fact to be proved. It does not concern a probative mental process - the process of believing one fact on the faith of another. What the rule does is to declare that certain kinds of facts are legally ineffective in the substantive law; and this of course (like any other ruling of substantive law) results in forbidding the fact to be proved at all. But this prohibition of providing it is merely the dramatic aspect of the process of applying the rule of substantive law. When a thing is not to be proved at all the rule of prohibition does not become a rule of evidence merely because it comes into pay when the counsel offers to "prove" it or "give evidence" of it; otherwise any rule of law whatever might reduced to a rule of evidence. It would become the legitimate progeny of the law of evidence. For the purpose of specific varieties of jural effects - sale, contract etc. there are specific requirements varying according to the subject."

(c) In Far East Marketing (P) Ltd. v. Khurana Electricals (in I.A. Nos. 17592/2011 and 17593/2011 in CS (OS) No. 303/2011, Decided On : 10.11.2014), this court observed that:

"13. ***No evidence of any oral agreement or statement can be admitted when the terms of any such contract have been reduced in the form of a document****. Thus, the grounds mentioned in the application for leave to defend as defence, it is merely a moonshine defence. The said grounds have no application in law."*

xxx xxx xxx"

(Emphasis Supplied)

21. It is apparent from the record that the plea of oral family agreement between the parties *qua* execution of the Relinquishment Deed has not been established by the appellants in the present case, by means of any cogent evidence, documentary or otherwise. It has not been established that the Relinquishment Deed was executed by the appellants and other co-sharers of the suit property under an express understanding that post execution of the said Deed, the respondent no. 1/plaintiff in the suit would get the suit

property reconstructed for the benefit of all. It is also material to note that eight persons had executed the Relinquishment Deed. However, no proceedings have been initiated by any other party raising challenge to the Relinquishment Deed.

22. The contention of the appellants that they relinquished their share in favour of the respondent no. 1/plaintiff in the suit, as a mark of respect as he was eldest in the family is doubtful, as in terms of the Relinquishment Deed, the age of defendant no. 1 in the suit, Devender Kumar is shown as 74 years, whereas, the age of plaintiff in the suit, Narender Kumar was 71 years at the time of execution of the said Relinquishment Deed. The recital of the age of the various parties, as reflected in the Relinquishment Deed, is extracted as follows:

> *"xxx xxx xxx*
>
> Whereas Smt. Chander Wati wife of Late Shri Hirdey Ram has expired (intestate) on 23.10.2001 and her husband Shri Hirdey Ram also expired on 24.03.2005 and leaving behind the following legal heirs:
>
> | Sl. No. | Name | Age | Relationship with Deceased |
> |---|---|---|---|
> | 1. | Narender Kumar Sharma | 71 years | Son |
> | 2. | Devender Kumar | 74 years | Son |
> | 3. | Chander Prakash Sharma | 62 years | Son |
> | 4. | Umesh Kumar Sharma | (now expired) | |
> | 5. | Shashi Bala | (now expired) | |
>
> There in no other legal heirs of the deceased except the above.
>
> *xxx xxx xxx"*

23. From the deposition of the appellant no. 1 as *DW2* and respondent no. 2 as *DW1* on record, it is established that there is no document in writing to show that it was agreed amongst the parties that the plaintiff/father of respondent no. 1(4) herein, would get the suit property reconstructed in

collaboration with some builder. Further, there is no document in writing to show that the appellants ever requested the plaintiff/father of respondent no. 1(4) herein, for reconstruction of the suit property. Thus, it has not been established that any oral agreement was as such entered into between the parties for reconstruction of the suit property. The respondent no. 1(4) herein, Hitesh Sharma, in his capacity as *PW1*, has categorically denied that the Relinquishment Deed was executed with the intention of having the suit property reconstructed by way of a collaboration agreement. The relevant portion of the cross-examination of *PW1*, reads as under:

> *"xxx xxx xxx*
>
> ***It is wrong to suggest that Ex. PW1/2 i.e. Relinquishment Deed dated 30.11.2015 had been executed by defendant nos.3 & 4 alongwith other defendants and releasors qua the suit property under the distinct understanding that my father i.e. plaintiff, after execution of the said relinquishment deed will enter into a Collaboration Agreement with some builder and will get the same reconstructed in the form of parking at ground floor, upper ground floor, first floor, second floor and third floor and thereafter, entire first floor in the reconstructed property without roof rights would be given to the defendant no.3.*** *It is further wrong to suggest that intentions of my father after execution of the aforesaid Relinquishment deed have become dishonest and he is deliberately not honouring his commitments and understandings with the defendant nos. 3 & 4. Voltr.* ***My father did not give any commitment and understanding of such nature qua the suit property.*** *……*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

24. No other witnesses have been produced by the appellants in order to prove the fact of any oral agreement between the parties. Thus, the appellants have been unable to establish that the Relinquishment Deed was executed with a view to reconstruct the property and to hand over respective portions to the various parties thereafter.

25. In this regard, it would be fruitful to refer to the judgment of a Division Bench of this Court in the case of ***Dr. Suraj Munjal Versus Chandan Munjal and Others, 2022 SCC OnLine Del 1717***, wherein, it has been held that an oral agreement, which has not been established by some cogent evidence, cannot be considered by the Court and such plea has to be rejected. Thus, it has been held as follows:

> *"xxx xxx xxx*
>
> ***52. <u>There is no dispute about the proposition that an oral agreement may be acted upon by the parties without its formal registration provided it is established by some cogent evidence. However, what has been raised by the appellant is merely a vague plea of oral agreement</u>**. He claims, "That as regard the shareholding in the Defendant No 6 Company and **the joint properties,** the same was matter between the Plaintiff and the Defendant No. 1, **both in fact stood settled long ago but made effective w.e.f. January, 2017"**. No date of alleged Oral settlement is pleaded by the appellant except claiming it be have been done "long ago" but interestingly, the same is claimed to have been made effective from January, 2017. **<u>Once a fact itself is not pleaded and is absolutely vague it cannot be considered by the court and merits rejection</u>**.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

26. Since the appellants have been unable to prove the existence of any oral agreement to show modification of terms of the registered Relinquishment Deed, and further, the execution of the Relinquishment Deed having been accepted and the said registered document having been validly proved, no oral understanding between the parties, as alleged by the appellants, can be accepted by this Court. Thus, holding that terms of registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise, the Supreme Court in the case of ***S. Saktivel (Dead) by LRs Versus M. Venugopal Pillai and Others, (2000) 7***

SCC 104, held as follows:

> *"xxx xxx xxx*
>
> ***5.*** *Learned counsel appearing for the appellant urged that the view taken by the High Court in decreeing the suit of the plaintiff was erroneous inasmuch as the settlees under Ext. A-1 got the suit property and by the subsequent oral arrangement, they agreed to work out their rights without varying or substituting the terms of Ext. A-1 and, therefore, the High Court was not right in not considering the oral arrangement as pleaded by the defendant-appellant. It is not disputed that disposition under Ext. A-1 in the present case is by way of grant and under the said disposition all the sons of Muthuswamy Pillai acquired rights. It is also not disputed that the settlement deed is a registered document and by virtue of alleged subsequent oral arrangement, the other sons of Muthuswamy Pillai were divested of the rights which they acquired under the settlement deed. Under such circumstances the question that arises for consideration is as to whether any parol evidence can be let in to substantiate subsequent oral arrangement rescinding or modifying the terms of the document which, under law, is required to be in writing or is a registered document, namely, Ext. A-1. Section 92 of the Evidence Act reads as thus:*
>
> > *"92. Exclusion of evidence of oral agreement.—When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:*
> >
> > * * *
> >
> > *Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents."*
>
> ***A perusal of the aforesaid provision shows that what Section 92 provides is that when the terms of any contract, grant or other disposition of property, or any matter required by law to be reduced in the form of a document, have been proved, no evidence of any oral agreement or statement is permissible for the purpose of contradicting, varying, adding or subtracting from the said written***

document. *However this provision is subject to provisos (1) to (6) but we are not concerned with other provisos except proviso (4), which is relevant in the present case. The question then is whether the defendant-appellant can derive any benefit out of proviso (4) to Section 92 for setting up oral arrangement arrived at in the year 1941 which has the effect of modifying the written and registered disposition.* ***Proviso (4) to Section 92 contemplates three situations, whereby:***

> ***(i) The existence of any distinct subsequent oral agreement to rescind or modify any earlier contract, grant or disposition of property can be proved.***
>
> ***(ii) However, this is not permissible where the contract, grant or disposition of property is by law required to be in writing.***
>
> ***(iii) No parol evidence can be let in to substantiate any subsequent oral arrangement which has the effect of rescinding a contract or disposition of property which is registered according to the law in force for the time being as to the registration of documents****.*

6. In sum and substance what proviso (4) to Section 92 provides is that where a contract or disposition, not required by law to be in writing, has been arrived at orally then subsequent oral agreement modifying or rescinding the said contract or disposition can be substantiated by parol evidence and such evidence is admissible*. Thus if a party has entered into a contract which is not required to be reduced in writing but such a contract has been reduced in writing, or it is oral, in such situations it is always open to the parties to the contract to modify its terms and even substitute by a new oral contract and it can be substantiated by parol evidence. In such kind of cases the oral evidence can be let in to prove that the earlier contract or agreement has been modified or substituted by a new oral agreement.* ***Where under law a contract or disposition is required to be in writing and the same has been reduced to writing, its terms cannot be modified or altered or substituted by oral contract or disposition. No parol evidence will be admissible to substantiate such an oral contract or disposition. A document for its validity or effectiveness is required by law to be in writing and, therefore, no modification or alteration or substitution of such written document is permissible by parol evidence and it is only by another written document the terms of earlier written document can be altered, rescinded or substituted****. There is another reason why the defendant-appellant cannot be permitted to let in parol evidence to substantiate the subsequent oral arrangement. The reason being that the settlement deed is a registered document. The second part of proviso (4) to Section 92 does not permit leading of parol evidence for proving a subsequent*

oral agreement modifying or rescinding the registered instrument. The terms of registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise. If the oral arrangement as pleaded by the appellant, is allowed to be substantiated by parol evidence, it would mean rewriting of Ext. A-1 and, therefore, no parol evidence is permissible.

xxx xxx xxx"

(Emphasis Supplied)

27. It is also relevant to note that the Relinquishment Deed dated 30th November, 2015, *Ex. PW1/2*, has been executed by the releasors, i.e., the appellants/defendants in the suit, and sons and daughter of Smt. Shashi Bala, the deceased daughter of Late Smt. Chander Wati. The legal heirs of Smt. Shashi Bala have not challenged the Relinquishment Deed, nor were they parties in the suit, even though they were also the releasors. It is to be noted that the Relinquishment Deed, *Ex. PW1/2* records in categorical terms that all the releasors relinquish all their rights, claims and interests in the suit property in favour of the plaintiff/respondent no. 1 herein, and that the plaintiff has become the exclusive and absolute owner of the suit property on account of execution of the Relinquishment Deed. It is further stated in the Relinquishment Deed that no legal heirs of the releasors shall have any interest/claim/right in the suit property. Therefore, the right of the respondent no. 1/LRs of respondent no. 1 to the suit property, by way of the registered Relinquishment Deed, stands proved. The Relinquishment Deed is valid and remains in full force and effect.

28. The appellants have relied upon various documents to claim their entitlement over the suit property. The documents relied upon by the appellants are in the nature of Electricity Bill in the name of Devender Kumar/defendant no. 1; Ration Card of Devender Kumar; GPAs;

Agreements to Sell; Affidavits from Late Shri Narender Kumar Sharma/plaintiff in the suit; Possession Letters from Late Shri Narender Kumar Sharma; Receipts for Rs. 9.6 Lakhs in cash; Deeds of Will executed by Late Shri Narender Kumar Sharma, plaintiff in the suit, in favour of defendant no. 1/respondent no. 2 and defendant no. 3/appellant no. 1.

29. The aforesaid sale documents in the nature of GPA, Agreement to Sell, Affidavit, Will, etc., all dated 15th December, 2015, which have been relied upon by the appellants, are unregistered documents, and cannot transfer title in an immovable property, as they hold no evidentiary value regarding claim of transfer of any proprietary right over an immovable property. The Court cannot give credence to said unregistered documents.

30. The Supreme Court in the case of ***Suraj Lamp and Industries Private Limited (2) Through Director Versus State of Haryana and Another, (2012) 1 SCC 656***, has held in clear terms that a PoA is not an instrument of transfer in regard to any right, title or interest in an immovable property. Thus, the Supreme Court has held that transactions in the nature of GPA/Will do not convey title and do not amount to transfer of immovable property. Such documents cannot be considered as completed or concluded transfers or conveyances, as they neither create title, nor create any interest in the immovable property. Accordingly, Supreme Court in the aforesaid case has held as follows:

> *"xxx xxx xxx*
>
> ***18.*** *It is thus clear that* ***a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.***
>
> ***19. 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****.*

Scope of power of attorney

20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property*. 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.***

21. *In State of Rajasthan v. Basant Nahata [(2005) 12 SCC 77] this Court held: (SCC pp. 90 & 101, paras 13 & 52)*

> *"13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor.* ***A power of attorney is, as is well known, a document of convenience****.*
>
> * * *
>
> *52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable.* ***The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own***

benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee. *"*

An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.

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

xxx xxx xxx

24. *We therefore reiterate that* ***immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/will transfers" do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property****. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property.* ***A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales****.*

xxx xxx xxx"

(Emphasis Supplied)

31. Likewise, holding that no right, title or interest in immovable property can be conferred without a registered document, in the case of ***Shakeel***

Ahmed Versus Syed Akhlaq Hussain, (2023) 20 SCC 655, the Supreme Court has held as follows:

> *"xxx xxx xxx*
>
> ***12. <u>The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a court of law on its basis. Even if these documents i.e. the agreement to sell and the power of attorney were registered, still it could not be said that the respondent would have acquired title over the property in question</u>**. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. **<u>In this regard, reference may be made to Sections 17 and 49 of the Registration Act and Section 54 of the Transfer of Property Act, 1882</u>**.*
>
> *13. **<u>Law is well settled that no right, title or interest in immovable property can be conferred without a registered document</u>**. Even the judgment of this Court in Suraj Lamp & Industries [Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351 : (2011) 183 DLT 1 (SC)] lays down the same proposition. Reference may also be made to the following judgments of this Court:*
>
> > *(i) Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar [Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar, (2018) 7 SCC 639 : (2018) 3 SCC (Civ) 696]*
> > *(ii) Balram Singh v. Kelo Devi [Balram Singh v. Kelo Devi, (2024) 12 SCC 723 : 2022 SCC OnLine SC 1283]*
> > *(iii) Paul Rubber Industries (P) Ltd. v. Amit Chand Mitra [Paul Rubber Industries (P) Ltd. v. Amit Chand Mitra, (2024) 13 SCC 219 : 2023 SCC OnLine SC 1216]*
>
> ***14. <u>The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property</u>**. Once this is the settled position, the respondent could not have maintained the suit for possession and mesne profits against the appellant, who was admittedly in possession of the property in question whether as an owner or a licensee.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

32. Similarly, in the case of ***Ramesh Chand (D) Thr. Lrs Versus Suresh***

Chand and Another, 2025 SCC OnLine SC 1879, the Supreme Court analysed Section 5 and Section 54 of the Transfer of Property Act, 1882 ("Transfer of Property Act") to hold that for sale of immovable property, specific mode of execution requires three conditions to be fulfilled, i.e., the said documents should be in writing, validly attested and registered. Otherwise, the property will not be transferred. The Court further held that a PoA does not transfer any title. Further, receipt of consideration and/or affidavit, also do not transfer valid title in view of Section 54 of the Transfer of Property Act. The Supreme Court, thus, held as follows:

> *"xxx xxx xxx*
>
> ***14.*** *Perusal of above said provisions lays down a specific mode of execution of sale deed with respect to immovable property for concluding the sale of a property.* ***In sale for an immovable property the value of which exceeds Rs. 100/-, the three requirements of law are that the transfer of property of sale must take place through a validly executed sale deed, i.e., it must be in writing, properly attested and registered. Unless the sale deed is in writing, attested and registered, the transaction cannot be construed as sale, or in other words, the property will not be transferred****.*
>
> ***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.*** *If after entering into a contract for sale of property, the seller without any reasonable excuse avoids executing a sale deed, the buyer can proceed to file a suit for specific performance of the contract.*
>
> *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.*** *[Dr. Poonam Pradhan Saxena, Property Law, Third Edition, 2017 (Lexis Nexis), p. 66]*

xxx xxx xxx

28. *Apart from the aforementioned documents,* ***there is also an affidavit dated 16.05.1996 said to have been executed by Sh. Kundan Lal in favour of the plaintiff, along with a receipt of consideration, wherein Sh. Kundan Lal is said to have acknowledged receipt of full consideration for the sale of suit property to the tune of Rs. 1,40,000/- from the Plaintiff. The said instruments do not confer a valid title upon the plaintiff because as per Section 54 of TP Act, only through a deed of conveyance can a title can be transferred, and none of the other documents and recitals in the said affidavit are not proved by examining any other independent witnesses****.*

xxx xxx xxx"

(Emphasis Supplied)

33. In the present case, the appellants/defendants in the suit, have not proved the due execution of the unregistered sale documents by leading any evidence. Further, in view of the law established by the Supreme Court, such unregistered documents relied upon by the appellants cannot be held to be valid instruments for transfer of title in the suit property.

34. Further, in the set of sale documents, the appellants have relied upon a Deed of Will dated 15th December, 2015 as well, stated to have been executed by the deceased plaintiff/respondent no. 1.

35. However, the son of respondent no. 1, Hitesh Sharma (before this Court as respondent no. 1(4)), in his deposition as *PW1*, did not admit to the execution of the documents as relied upon by the appellants, including, the

Deed of Will and had stated that since the said documents were photocopies, he would not be able to answer questions in their regard. The relevant extract of the deposition of *PW1* on this aspect, reads as under:

> *"xxx xxx xxx*
>
> *……. At this stage* ***witness is confronted with the photocopies of GPA, Agreement to sell etc. filed by defendant nos. 3 & 4 and asked whether these documents were executed by his father in favour of defendant no. 3. Witness states that he will not be able to answer the said question as these are the photocopies only****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

36. Reading of the deposition of respondent no. 1(4)/ *PW1* clearly demonstrates that there were no admissions by *PW1* with regard to execution of any documents by his father (plaintiff/respondent no. 1) in favour of the appellants. In the absence of any admission to the execution of Deed of Will dated 15th December, 2015 (*Ex. DW2/11*) in favour of the appellants, the appellants were enjoined upon to prove and establish the execution of the disputed Will, in accordance with law.

37. Thus, holding that onus is placed on the propounder of a Will to dispel all doubts regarding execution of a Will, the Supreme Court in the case of ***Murthy and Others Versus C. Saradambal and Others, (2022) 3 SCC 209***, held as follows:

> *"xxx xxx xxx*
>
> ***31.*** *One of the celebrated decisions of this Court on proof of a will, in H. Venkatachala Iyengar v. B.N. Thimmajamma [AIR 1959 SC 443] is in H. Venkatachala Iyengar v. B.N. Thimmajamma, wherein this Court has clearly distinguished the nature of proof required for a testament as opposed to any other document. The relevant portion of the said judgment reads as under : (AIR p. 451, para 18)*
>
> *"18. …* ***The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document***

and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. *Similarly, Sections 59 and 63 of the Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus,* ***the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act****. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty.* ***The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters****."*

32. *In fact, the* ***legal principles with regard to the proof of a will are no longer res integra. Section 63 of the Succession Act, 1925 and***

> ***Section 68 of the Evidence Act, 1872, are relevant in this regard. The propounder of the will must examine one or more attesting witnesses and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

38. The said Deed of Will relied by appellants is an unregistered document. Even if a Will is not required to be registered, the same has to be proved in terms of the law. The appellants did not summon any witnesses to prove the execution of the said Deed of Will, *Ex. DW2/11*.

39. In contentious proceedings, a propounder of a Will must satisfy the legal requirements to prove the validity of a Will. In order to rely upon a Will in contested cases, the same has to be proved in accordance with law, by examining the attesting witnesses of the Will. Even if a Will is registered, validity of the said document cannot be presumed in cases of dispute in that regard. Thus, Supreme Court in the case of ***Ramesh Chand (D) Thr. Lrs. Versus Suresh Chand and Another, 2025 SCC OnLine SC 1879***, has held as follows:

> *"xxx xxx xxx*
>
> ***27.*** *Considering the aforementioned cases,* ***it is clear that in order to rely upon a Will, the same has to be proved in accordance with law****. **A Will has to be attested by two witnesses, and either of the two attesting witnesses have to be examined by the propounder of the will.** In the present matter, we have carefully perused the Trial Court's judgment.* ***There is not an iota of discussion about the validity of the Will as contemplated under Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872 and yet, the validity of the Will has been upheld. This is contrary to law****. Even the High Court, while evaluating the validity of the Will, has gone on a different tangent and has erroneously held that the requirement of examining the attesting witnesses springs into action only in cases of disputes between legal heirs. Such an observation is quite contrary to law, for* ***Section 68 of the Evidence Act makes it mandatory to examine at least one of the attesting witnesses of the Will. Mere fact that the***

> ***Will was registered will not grant validity to the document.*** *Besides that, the will propounded by plaintiff is surrounded with suspicious circumstances, in as much* ***as the alleged propounder of the Will, Lt. Sh. Kundan Lal, had four children, including the plaintiff and the defendant No. 1. There is not even a whisper of reasoning as to why the propounder of the Will choose to exclude other three children from the bequest, and whether any other properties or assets were given to them. It is highly unlikely that a father would grant his entire property to one of his children, at the cost of three others, without there being any evidence of estrangement between the father and the children****. This suspicious circumstance surrounding the will has not been removed by the plaintiff either. Hence, for these cumulative reasons, the Will propounded by plaintiff though registered would not confer any valid title on the plaintiff either.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

40. It is imperative to note that the Deed of Will, *Ex. DW2/11* relied upon by the appellants, is not registered. Further, no evidence has been led by the appellants to prove its execution, in terms of the Evidence Act. Therefore, the validity of the said Will cannot be presumed and accordingly, the same had to be proved by the appellants, in accordance with law.

41. Significantly, even in cases of registered Will, the same has to be proved by following the due process, in order to dispel doubt as to genuineness of the Will. Thus, in the case of ***Dhani Ram (Died) Through Lrs. and Others Versus Shiv Singh, 2023 SCC OnLine SC 1263***, the Supreme Court has held as follows:

> *"xxx xxx xxx*
>
> ***21. It is well settled that mere registration would not sanctify a document by attaching to it an irrebuttable presumption of genuineness****. The observations of this Court in Rani Purnima Debi v. Kumar Khagendra Narayan Debi [AIR 1962 SC 567 : (1962) 3 SCR 195], which were referred to by the Himachal Pradesh High Court, are of guidance in this regard and are worthy of extraction. These observations read as under:*

*"**There is no doubt that if a Will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a Will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination.** If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a Will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the Will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the Will did not read it over to the testator or did not bring home to him that he was admitting the execution of a Will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the Will) that the testator knew that it was a Will the execution of which he was admitting, the fact that the Will was registered would not be of much value. **It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered Wills have not been acted upon ……**

Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a Will; though the fact that there has been registration would be an important circumstance in favour of the Will being genuine if the evidence as to registration establishes that the testator admitted the execution of the Will after knowing that it was a Will the execution of which he was admitting."*

22.** We may also refer to Janki Narayan Bhoir v. Narayan Namdeo Kadam [(2003) 2 SCC 91], wherein this Court held that, **to prove that a Will has been executed, the requirements in clauses (a), (b) and (c) of Section 63 of the Succession Act have to be complied with. It was pointed out that the most important point is that the Will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will or must have seen some other person sign the Will in the presence of and by the direction of the testator or must have received from the testator a personal acknowledgment of his signature or mark or of the signature or mark of such other person and each of the witnesses

> ***has to sign the Will in the presence of the testator.*** *It was further held that,* ***a person propounding a Will has got to prove that the Will was duly and validly executed and that cannot be done by simply proving that the signature on the Will was that of the testator, as the propounder must also prove that the attestations were made properly, as required by Section 63(c) of the Succession Act.*** *These observations were affirmed and quoted with approval by this Court in its later judgment in Lalitaben Jayantilal Popat v. Pragnaben Jamnadas Kataria [(2008) 15 SCC 365].*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

42. Similarly, holding that the person propounding the Will has to prove that it was duly and validly executed, the Supreme Court in the case of ***Janki Narayan Bhoir Versus Narayan Namdeo Kadam, (2003) 2 SCC 91***, has held as follows:

> *"xxx xxx xxx*
>
> ***9. It is thus clear that one of the requirements of due execution of a will is its attestation by two or more witnesses, which is mandatory****.*
>
> ***10. Section 68 of the Evidence Act speaks of as to how a document required by law to be attested can be proved. According to the said section, a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence. It flows from this section that if there be an attesting witness alive capable of giving evidence and subject to the process of the court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act.*** *It is true that Section 68 of the Evidence Act does not say that both or all the attesting witnesses must be examined. But* ***at least one attesting witness has to be called for proving due execution of the will as envisaged in Section 63****.* ***Although Section 63 of the Succession Act requires that a will has to be attested at least by two***

> ***witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the court.*** *In a way, Section 68 gives a concession to those who want to prove and establish a will in a court of law by examining at least one attesting witness even though the will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that one attesting witness examined should be in a position to prove the execution of a will. To put in other words, if one attesting witness can prove execution of the will in terms of clause (c) of Section 63 viz. attestation by two attesting witnesses in the manner contemplated therein, the examination of the other attesting witness can be dispensed with.* ***The one attesting witness examined, in his evidence has to satisfy the attestation of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the will by the other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act.*** *Where one attesting witness examined to prove the will under Section 68 of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

43. Thus, the contention of the appellants that the Will of the deceased respondent no. 1 is in their favour, conferring rights over them, and the same has not been disputed/revoked by the respondent no. 1/LRs of respondent no. 1, does not hold any water. Production of a document before Court and proving a document in accordance with law, are two different facets. Mere production and marking of a document as 'Exhibit' by Court cannot be held

to be a due proof of its contents. Execution of such document, which has not been admitted, has to be proved by admissible evidence. ***[See: Narbada Devi Gupta Versus Birendra Kumar Jaiswal and Another, (2003) 8 SCC 745]***

44. Accordingly, the contention of the appellants that upon demise of plaintiff/respondent no. 1 herein, the registered and admitted Relinquishment Deed became inoperative and the unregistered and unproved Will came into play, thereby, superseding the Relinquishment Deed, is totally misguided and untenable. The veracity of the Will has not been proved by established means of evidence. Such unregistered and unproved document cannot be said to have an overriding effect on a registered document, which is undisputedly admitted by all parties.

45. The contention of the appellants that the learned Trial Court did not give any finding with respect to the validity of the Deed of Will (*Ex. DW2/11*), as the plaintiff before the Trial Court, who was executor of the Will had expired during the pendency of the suit, is also without any merit and is liable to be rejected. The said Will was never proven in terms of Section 63 of the Indian Succession Act, 1925 ("Indian Succession Act") or Section 68 of the Evidence Act, and accordingly, the Trial Court has held the *Issue No. (ii)* against the appellants herein/defendant nos. 3 and 4 in the suit.

46. It is to be noted that in the present case, at the time of institution of the suit, the respondent no. 1/plaintiff was alive, and thus, the question of operation of the Deed of Will, *Ex. DW2/11*, did not arise. Accordingly, the suit for possession and permanent injunction was validly filed by respondent

no. 1/plaintiff. Moreover, in his replication to the written statement filed by the appellants before Trial Court, the respondent no. 1/plaintiff had stated, that the sale documents exhibited by appellants were a nullity in law. Thus, the Deed of Will had been disputed by the respondent no. 1/plaintiff in the suit. Once the Will became disputed, for it to come into operation post the death of respondent no. 1/plaintiff, the appellants were required to prove the Will in accordance with Evidence Act, i.e., by leading evidence under Section 68 of the Evidence Act. Having not done so, the Will cannot be said to be a valid document in the eyes of law.

47. It is pertinent to note that during the lifetime of plaintiff/respondent no. 1, the appellants failed to call the testator/plaintiff on to the witness stand before the Trial Court to prove the execution of Deed of Will in terms of Section 63 of the Indian Succession Act. Furthermore, the defendants' (appellants herein) evidence was closed/concluded only after the death of respondent no. 1/plaintiff. Thus, the appellants/defendants had ample opportunity to move appropriate application before the Trial Court seeking adjudication on the aspect of operation and validity of the Deed of Will, *Ex. DW2/11*, which they have not done.

48. The appellants have neither led any evidence to prove the unregistered Will and nor is there any express issue framed on the validity of the Will. Thus, the Trial Court was not required to go beyond the pleadings and issues framed to give a categorical finding on the aspect of validity of the Deed of Will, *Ex. DW2/11*.

49. Thus, holding that a Court should confine its decision to the question raised in the pleadings and not grant a relief which is not claimed, Supreme

Court in the case of ***Bachhaj Nahar Versus Nilima Mandal and Another, 2008 (17) SCC 491***, held as follows:

> *"xxx xxx xxx*
>
> ***8.*** *The High Court also observed that if there was any encroachment over the said passage by the first defendant, that will have to be got removed by the "process of law". The High Court also issued a permanent injunction restraining the plaintiffs from encroaching upon the suit property (passage) till the plaintiffs got a declaration of their title over the suit property by a competent court. The first defendant sought review of the said judgment. The review petition was dismissed by the High Court by order dated 9-12-2004.*
>
> ***9.*** *The said judgment and order on review application, of the High Court, are challenged by the first defendant in these appeals by special leave.* ***The appellant contends that neither in law, nor on facts, the High Court could have granted the aforesaid reliefs****.*
>
> ***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****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

50. Another issue raised by the appellants in the present appeal, though not raised before the Trial Court, is that the son of respondent no. 1/plaintiff, i.e., respondent no. 1(4), testified on behalf of his father on the basis of a PoA (*Ex. PW1/1*), regarding the execution of the Relinquishment Deed. As per the appellants, respondent no. 1, late Shri Narender Kumar Sharma, never entered the witness box during his lifetime to depose in support of his case. Thus, as per the appellants, the non-appearance of respondent no. 1/plaintiff strikes at the root of the plaintiff's case, as he could have given the best possible evidence regarding the execution and purpose of the Relinquishment Deed, as well as the subsequent sale documents, i.e., GPA, Agreement to Sell, etc.

51. The aforesaid contentions raised on behalf of the appellants are again liable to be rejected. It is to be noted that in the present case, the son of plaintiff/respondent no. 1 was an attesting witness to the registered Relinquishment Deed. Thus, he could have testified to the state of mind of his father at the time of execution of the Relinquishment Deed and its surrounding circumstances. In this regard, reference may be made to the judgment in the case of ***Shyam Kumar Inani Versus Vinod Agrawal and***

Others, (2025) 3 SCC 286, wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> ***2. Plaintiff not entering the witness box***
>
> ***58. <u>Any adverse inference drawn by the High Court for the reason that the plaintiffs did not enter the witness box to prove the agreement to sell, in our opinion, was completely misplaced. Mr K.D. Maheshwari is one of the purchasers and the plaintiff in his suit for specific performance. He was throughout present in the transaction which took place on 30-8-1990. He held the power of attorney from the other plaintiffs and therefore, it was not necessary for each of the plaintiffs in separate suits to appear and prove the transaction of 30-8-1990. Mr K.D. Maheshwari, who was examined as PW 1 in each of the suits whether in his capacity as plaintiff or as power of attorney from other plaintiffs, was fully justified in establishing the facts that transpired on 30-8-1990</u>****. The trial court had examined this aspect and had found favour with the plaintiffs. The finding of the High Court on this aspect is not approved in view of the above.*
>
> *xxx xxx xxx*
>
> ***69.*** *The respondents have relied upon the judgment of this Court in Thiruvengadam Pillai [(2008) 4 SCC 530, para 19] to argue that the plaintiffs failed to prove the execution of the agreement to sell dated 30-8-1990 and the general power of attorney dated 4-9-1990. In that case, the Court dismissed the suit for specific performance because the agreement was written on old stamp papers purchased years earlier, the attesting witnesses were close relatives of the plaintiff and one was not examined, possession was not delivered despite being stated in the agreement, and there was no expert verification of the thumb impression alleged to be that of the defendant. The plaintiff also failed to discharge the burden of proof, and the appellate court wrongly shifted this burden to the defendants.*
>
> ***70.*** *However, the present case is distinguishable on key facts. Here, the* ***<u>agreement to sell was executed on appropriate stamp paper without irregularities, and the plaintiffs diligently discharged their burden by providing credible evidence, including the testimony of PW 1 (either the plaintiffs or their power-of-attorney holder with personal knowledge) and the attesting witness PW 2, who was not a close relative but an independent witness</u>****.*
>
> *xxx xxx xxx*
>
> ***91. <u>The appellants have further relied upon the judgment in Man</u>***

> ***Kaur*** *[(2010) 10 SCC 512, paras 17 & 21 : (2010) 4 SCC (Civ) 239]* ***to substantiate the argument that a power-of-attorney holder can depose on behalf of the principal in respect of acts and transactions that the attorney has personal knowledge of. In this case, this Court clarified that while an attorney-holder can definitely testify regarding the acts they have personally carried out on behalf of the principal, they cannot testify about matters requiring personal knowledge of the principal, such as the principal's state of mind or readiness and willingness to perform obligations under a contract****.*
>
> ***92. In the present case, the power of attorney K.D. Maheshwari was himself one of the vendees and all the transactions in the six suits having taken place simultaneously on the same day, same time and at the same place he was well aware personally of all the facts****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

52. Accordingly, the son of plaintiff/respondent no. 1 could have deposed regarding the Relinquishment Deed even in his own capacity, as he was a witness to the said registered transaction, and thus, had personal knowledge of the same. Accordingly, the objection raised by the appellants in this regard, for the first time at this appellate stage, cannot be allowed.

53. Considering the evidence and documents on record, it is evident that the plaintiff in the suit, now represented by his LRs, i.e., respondent nos. 1(1) to (4) herein, has a registered Relinquishment Deed in their favour, duly admitted by all parties, which confers exclusive and absolute title of the suit property upon them. Whereas, the contesting defendants, the appellants herein, have an unregistered Will in their favour, which has not been proved in terms of the Evidence Act. Undisputedly, the respondents having a registered Relinquishment Deed in their favour have a better title in their favour, than the appellants, who have based their claim upon unregistered documents and an unproven Will.

54. It is undisputed that a document that gives a better legal title shall be

considered by the Court. In this regard, reference may be made to judgment in the case of ***Smriti Debbarma (Dead) through Legal Representative Versus Prabha Ranjan Debbarma and Others, 2023 SCC OnLine SC 9***, wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> ***36. In the above factual background, for the plaintiff to succeed, she has to establish that she has a legal title to the Schedule 'A' property, and consequently, is entitled to a decree of possession. The defendants cannot be dispossessed unless the plaintiff has established a better title and rights over the Schedule 'A' property. A person in possession of land in the assumed character as the owner, and exercising peaceably the ordinary rights of ownership, has a legal right against the entire world except the rightful owner*** *[See Poona Ram v. Moti Ram, (2019) 11 SCC 309 : (2019) 3 SCC (Civ) 733 and Nair Service Society Ltd. v. K.C. Alexander, 1968 SCC OnLine SC 97 : AIR 1968 SC 1165]. A decree of possession cannot be passed in favour of the plaintiff on the ground that Defendants 1 to 12 have not been able to fully establish their right, title and interest in the Schedule 'A' property.* ***The defendants, being in possession, would be entitled to protect and save their possession, unless the person who seeks to dispossess them has a better legal right in the form of ownership or entitlement to possession***.
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

55. It is also relevant to note that there are inherent contradictions in the depositions of *DW1* and *DW2*, as regards the extent of construction in the suit property. *DW1* stated in the cross-examination that during the lifetime of his mother, Smt. Chander Wati, the suit property consisted only of GF and the FF was constructed by him later on. The deposition of *DW1* in this regard, reads as under:

> *"xxx xxx xxx*
>
> *……* ***The suit property is built up upto ground and first floor. The suit property was consisting of only ground floor during the lifetime of my mother. The first floor at the suit property was constructed by me***.

xxx xxx xxx"

(Emphasis Supplied)

56. On the other hand, *DW2* in her cross examination has stated that the suit property consisted of GF and FF even during the lifetime of Smt. Chander Wati. Her deposition in this regard is reproduced as under:

> *"xxx xxx xxx*
>
> *I have been residing in the suit property since 1987 when my marriage was solemnized.* ***The suit property is consisting of ground floor and first floor. The suit property was in the same position when my mother in law was alive****. The water connection and the electricity connection in the suit property are in the name of my mother in law. I paid Rs. 230/- as electricity charges for the month of January 2018.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

57. Accordingly, it is clear that the testimony of the appellant no. 1 (defendant no. 3) and respondent no. 2 (defendant no. 1) does not establish their case regarding their entitlement to the suit property, in any manner whatsoever.

58. Moreover, the appellants have not sought cancellation or any declaration against the Relinquishment Deed by way of separate appropriate civil proceedings. As noted hereinabove, only a bare statement has been made in their written statement that the Relinquishment Deed is liable to be cancelled. Further, the unregistered sale documents, as exhibited and relied by the appellants before the Trial Court, which have been allegedly executed post the Relinquishment Deed, bear no mentioning of revocation of the Relinquishment Deed and/or the effect of its operation. It is also not understandable as to why the same parties who had executed the Relinquishment Deed on 30th November, 2015 and got the same registered, would not get the sale documents registered, which were allegedly executed

just 15 days later on 15th December, 2015.

59. Thus, the Trial Court has rightly decreed the suit of the plaintiff/respondent no. 1 herein, as the plaintiff has been able to demonstrate and establish a better legal title by way of the registered Relinquishment Deed, *Ex. PW1/2*, whereas, the appellants have failed to show, by way of cogent evidence, the execution of the unregistered sale documents dated 15th December, 2015, including the Deed of Will, *Ex. DW2/11*, based upon which, they seek to establish their title in the suit property. Accordingly, no infirmity is found in the impugned judgment dated 05th May, 2018.

60. Considering the detailed discussion hereinabove, no merit is found in the present appeal. The same is accordingly dismissed.

MINI PUSHKARNA
(JUDGE)

JANUARY 28, 2026
KR/SK/AU/AK