IN THE COURT OF VIJAY KUMAR JHA,
ADDITIONAL DISTRICT JUDGE-02, KARKARDOOMA COURTS(EAST), DELHI

Civil Suit No.593/2016

In the matter of:

Sh. Asutosh Saini
S/o Sh. B.M. Saini
R/o House No.2408,
Kucha Chelan, Daryaganj,
Delhi- 110002. **…......Plaintiff**

Versus

Smt. Sudha Sarin
W/o Sh. Vijay Kumar Sarin
R/o House No. U-189,
First Foor, Upadhyay Block,
Shakarpur, Delhi – 110092.

….........Defendant

Date of Institution	: 24.02.2015
Date of Arguments	: 22.11.2021
Date of Judgment	: 03.01.2022

Suit for possession, recovery of arrears of rent & unauthorised occupation charges and permanent injunction.

JUDGMENT

1. By this judgment, I shall dispose of the two connected suits bearing CS no. 593/2016 title as **Ashutosh Saini v. Sudha Sarin** and another suit bearing no. 2517/2016 title as **Sudha Sarin v. Ashutosh Saini**. Vide Order dated 12/01/2017 both the suits have been consolidated and suit bearing no. 593/2016 has been treated as a lead case in which evidence has been recorded. In the lead case, suit has been filed by the plaintiff

Ashutosh Saini for possession, recovery of arrears of rent and unauthorised occupation charges and permanent injunction. By the present judgment, the lead case bearing no. 593/2016 shall be decided and in the connected suit separate judgment shall be passed with respect to the issues which have been framed therein vide order dated 27/10/2017. The judgment in the connected suit be read in conjugation and continuation with the judgment herein.

2. It is averred in the plaint that the plaintiff had purchased a built-up property one side open flat bearing private flat no. B, in property no. U - 189, First Floor, Upadhyay Block, Shakarpur, Delhi - 92 admeasuring 70 sq. yds. on 28/09/2005 from the defendant. The said property hereinafter referred to as "*suit property*", is shown in red colour in the site plan. The defendant executed all the necessary title documents as required for transferring the title of the suit property in favour of plaintiff i.e., registered irrevocable General Power of Attorney, Agreement to Sell, Indemnity Bond, Affidavit, Will, payment receipts all bearing the date 20/09/2005. The irrevocable General Power of Attorney was registered on 29/09/2005 and the rest of the documents were notarised. The defendant handed over the chain of all previous title documents of the suit property as well as the vacant peaceful possession to the plaintiff. The electricity and water connection are stated to be in the name of the plaintiff.

3. It is the case of the plaintiff that due to paucity of space, after two months of the purchase of the suit property the defendant asked the plaintiff to let out the suit property to the defendant on rent for herself and her family. The plaintiff had purchased the suit property for

investment purposes therefore the plaintiff agreed to let out on rent the suit property to the defendant and the defendant was inducted as a tenant in the suit property on a monthly rent in the month of November 2005. The rent was enhanced from time to time. Lastly, the rent agreement was executed between the plaintiff and the defendant in which the rent was settled for a sum of ₹ 11,000/- per month, the rent deed was executed on 15/01/2013 for 11 months only in the presence of two witnesses. In the year 2005, the rent of the suit property was about half of the present rent but every year the rent was enhanced with mutual consent peacefully and the same is being paid regularly in cash by the defendant to the plaintiff. Till 15/11/2013 the defendant had paid the rent of the suit property regularly and peacefully to the plaintiff in cash. The plaintiff also applied for mutating the suit property in his name before Deputy Assessor and Collector, MCD, Delhi and deposited the house tax.

4. It is the say of the plaintiff that the intention of the defendant changed as and when the plaintiff requested to execute another rent deed on 15/01/2014 for extending the tenancy for further 11 months. At the time, the defendant refused to be executed the rent deed for 11 months and no reason were given for non-execution of the rent deed by the defendant to the plaintiff. Also, the defendant made an excuse of the financial crisis for non-payment of the rent from 15/12/2013 to the plaintiff.

5. It is further averred that initially the tenancy was oral between the plaintiff and the defendant, but in the month of January 2012 the rent deed was executed but the said rent deed was lost along with the chain

of previous title documents of the suit property with respect to which the plaintiff had informed the local police vide NCR no. 1373/2013. During the tenancy, the daughter of the defendant namely Ms Shilpi came very close to the plaintiff and ultimately without the consent of the defendant, the plaintiff got married with the defendant’s daughter on 23/01/2007 and it is stated to be reason as to why there was no dispute between the plaintiff and the defendant regarding the tenancy of the suit property.

6. It is further averred that with the passage of time, some differences cropped up between Ms Shilpi and the plaintiff and ultimately, they agreed to take divorce by mutual consent. On 11/11/2014 the decree of mutual consent for divorce was passed by the concerned Court. As per the plaintiff, the transaction regarding the divorce was separate from the matter of tenancy of the suit property and no dispute ever took place between the plaintiff and the defendant regarding the tenancy and the rent was being paid regularly till 15/11/2013. Thereafter, the plaintiff asked the defendant to pay the rent as and when the defendant could arrange. And these are stated to be the reason as to why regarding arrears of rent and tenancy were not disclosed in mutual consent divorce proceeding and according to the plaintiff that there was no requirement of the same to be disclosed in the divorce petition.

7. It is further the case of the plaintiff that due to the non-payment of arrears of rent for the period from 15/11/2013, the plaintiff got issued a notice on 30/01/2015 for the termination of the tenancy of the defendant and the same was served upon the defendant on 14/01/2015. It is the grievance of the plaintiff that after the service of the notice neither the

plaintiff received any reply nor the possession of the suit property was handed over by the defendant to the plaintiff. On 05/01/2015, when the plaintiff visited the suit property for asking for the rent and vacation of the suit property allegedly the defendant tried to harass the plaintiff and threatened regarding creation of third party interest and execution of title documents with respect to the suit property in favour of a third party. Briefly, in aforesaid facts and circumstances, the plaintiff has filed the present suit for the following reliefs:

1. Pass a decree for possession of the said private flat no. B, in property no. U-189, First Floor, Uppadhyay Block, Shakarpur, Delhi-92, measuring 70 sq. yds. which is specifically shown in the red colour in the site plan attached herewith, in favour of the plaintiff and against the defendant.
2. Pass a decree also of arrears of rent for a sum of Rs. 2,02,125/- for period from 15-11-2013 to 15-02-2015 @ Rs. 11,000/- per month along with 18 % interest on rent in favour of the plaintiff and against the defendant in the interest of justice.
3. Pass a decree of unauthorised occupation charges, in favour of the plaintiff and against the defendant, for the period from 16-02-2015 to 20-02-2015 @ Rs. 1,000/- per day total of Rs. 5,000/- along with pendent-lite and future unauthorised occupation charges @ Rs. 1, 000/- per day from the filing of the present suit till handing over the peaceful vacant physical possession of the said suit property to the plaintiff by the defendant, as per the terms of the said rent deed.
4. Pass a decree of permanent injunction in favour of the plaintiff and against the defendant thereby restraining the defendant from creating any third party interest in the suit property by alienating, transferring the title and possession of the said suit property i.e., private flat no. B, in property no. U-189, First Floor, Uppadhyay Block, Shakarpur, Delhi-92, measuring 70

sq. yds. which is specifically shown in the red colour in the site plan attached herewith.

8. The defendant who is the ex-mother-in-law of the defendant is contesting the suit by filing the written statement. By way of preliminary submissions in the written statement, the defendant has stated that in the suit property the defendant along with her family that is the husband and her daughter Ms Shilpi are residing. That earlier the defendant along with her family members were residing in Darya Ganj, Delhi. In the year 1997, the daughter of the defendant, Ms Shilpi was studying in class X and the plaintiff was also resident of Darya Ganj and was taking tuitions along with the daughter of the defendant. The plaintiff and the daughter of the defendant developed friendly relations and the plaintiff started visiting the house of the defendant. With the passage of time both the families that is the family of the plaintiff and the defendant became friendly maintaining cordial relations and used to visit each other.

9. It is further averred in the written statement that as the defendant was not blessed with any son, the defendant was treating the plaintiff like a son and the behaviour of the defendant was that of a family member. The plaintiff was a frequent visitor to the defendant's house. Later on, friendly relations between Ms Shilpi; the daughter of the defendant and the plaintiff who further developed into a love affair which was within the knowledge of both the families and none had objected for the same.

10. With respect to the suit property, it is averred that in the month of December 2003, the defendant purchased the suit property and about after two months of the purchase of the suit property the defendant

along with her family shifted to the suit property and since then the defendant along with her family member had been living in the same suit property. The suit property was purchased on the basis of registered General Power of Attorney dated 17/12/2003 and the seller of the suit property had handed over all the title documents to the defendant which are stated to be in the possession of the defendant.

11. It is further stated that Ms Shilpi, the daughter of the defendant and the plaintiff were in love and wanted to marry each other and the plaintiff remained a frequent visitor to the suit property. During the visits of the plaintiff, the plaintiff took the defendant under his full confidence and the defendant was considering that one day the plaintiff would become son-in-law of the defendant***. In the month of August/September 2005, the plaintiff approach to the defendant with a request that the defendant wanted to take some loan from ICICI bank. However, the plaintiff did not have any collateral security and the plaintiff requested the defendant for giving collateral security for him in the bank to which the defendant agreed. On the said pretext of the plaintiff, the defendant and her daughter visited the office of Sub-Registrar where the plaintiff got executed and registered some document in respect of the suit property in his favour, on which the daughter of the defendant, Ms Shilpi also signed as a witness.*** After the execution of the document, the plaintiff never talked about either the loan or property or the defendant enquired from the plaintiff.

12. In the year 2007, the marriage between Ms Shilpi and the plaintiff was solemnised and after four years of the marriage the relation between the daughter of the defendant and the plaintiff became strained and they

started living separately. **The defendant and her family members continued efforts for reconciliation between them and during this the plaintiff got some documents signed from the defendant**. The defendant signed those documents in good faith and keeping in mind the marital life of her daughter. However, finally the plaintiff and the daughter of the defendant decided to get the marriage dissolved by mutual consent accordingly their marriage got dissolved in the month of November 2014.

13. It is further averred that after the dissolution of marriage between the plaintiff and the daughter of the defendant, the defendant received water and electricity bills of the suit property in the name of the plaintiff regarding which the defendant enquired from electricity and water department found that the plaintiff had got transferred both the connections in his name by fraudulent means regarding which the defendant made complaint dated 02/01/2015. The defendant received a notice dated 13/01/2015 and the defendant in order to safeguard the interest approached the office of the Sub-Registrar for getting the sale deed of the suit property restored in her name on 12/02/2015 where the defendant came to know that the plaintiff had already filed objection regarding the suit property and also found that the plaintiff had already filed a civil suit in the Court of Law. It is stated by the defendant that since the purchase of the suit property by the defendant, the defendant was paying the house tax of the suit property. The defendant also filed a suit for cancellation of the alleged title documents of the suit property in favour of the plaintiff (that is the connected suit bearing CS no. 2517/2016).

14. By way of preliminary objections, the defendant raised objections to the suit of the plaintiff regarding the plaintiff not approaching the Court with clean hands; the suit of the plaintiff being without any cause of action; that the suit has not been properly valued for the purpose of Court fees and jurisdiction and that the plaintiff has sworn a false affidavit.

15. On facts, the defendant denied all the material facts as averred by the plaintiff in his plaint. And the defence of the defendant is that the defendant stated by way of preliminary submissions in the written statement that is the GPA in favour of the plaintiff was got executed and registered by the plaintiff with the excuse to get some loan from ICICI bank and some of the other documents were got signed when some reconciliation of the marriage dispute between the plaintiff and the daughter of the defendant was in progress as the plaintiff and the daughter of the defendant were in the process of taking divorce.

16. In the replication to the written statement, the plaintiff has reiterated and reaffirmed the facts as have been averred by the plaintiff in his plaint and denied the facts as stated by the defendant in the written statement. *At many places in the replication as filed, the plaintiff is argumentative and rhetorical.*

17. The plaintiff in his replication denied that there were cordial relations with the plaintiff's family with the defendant or that the defendant was treating the plaintiff as a son. **The plaintiff admitted that friendly relations developed with Ms Shilpi which developed into a love affair but the said love affair happened during plaintiff's visits every month at the suit property for collecting rent and for looking**

after the suit property. The plaintiff averred in the replication that the marriage between the plaintiff and the daughter of the defendant happened without the knowledge of the defendant because of which the family members of the defendant's family were not present during the marriage of the plaintiff with Ms Shilpi at *Arya Samaj Mandir*. The plaintiff admitted the purchase of the suit property by the defendant from the previous owner and handing over of all the title documents by the previous owner to the defendant. But, as per the plaintiff the said documents were handed over by the defendant to the plaintiff at the time of selling of the suit property by the defendant to the plaintiff. As per the plaintiff, it is clearly mentioned in the registered GPA, Affidavit, Agreement to sell and Indemnity Bond that the possession of the suit property with all the documents have been handed over by the defendant to the plaintiff at the time of purchase of the suit property. As per the plaintiff with respect to the fact, as averred by the defendant in the written statement regarding the possession of the previous chain of documents regarding the suit property it is averred by the plaintiff in his replication that the original title chain of documents were under possession of the plaintiff but when the plaintiff went to property dealer to estimate the value of the property on 01-08-2013 in Pitampura, Delhi area and thereafter the plaintiff visited the market of Pitampura for shopping. At that time, the previous chain of the documents in the bag was lost in the market. On the same day, the plaintiff lodged an NCR bearing no. 1373/2013.

18. It is also averred by the plaintiff in his replication that as per the plaintiff thereafter the plaintiff lost the bag containing the chain of

documents of the suit property someone got the bag of a chain of documents and search the defendant from its address of the property and this could be the reason how the defendant came into possession of the chain of the documents regarding the suit property.

19. It is further averred by the plaintiff in his replication that the plaintiff was not aware about the purchase and ownership of the suit property till the first week of September 2005, because in the month of September 2005, the daughter of the defendant informed about the suit property that her mother, i.e., the defendant, was looking for a customer to sell the suit property. Thereafter, the plaintiff contacted the defendant through her daughter Ms Shilpi Sarin and ultimately the suit property was purchased by the plaintiff on 29/09/2005.

20. The plaintiff denied every fact as averred by the defendant with respect to how the defendant came to execute the documents of the suit property in favour of the plaintiff under the alleged pretext of taking a loan by the plaintiff from ICICI bank and furnishing of the collateral security by the plaintiff. The plaintiff denied that defendant tried to make efforts regarding reconciliation between the plaintiff and Ms Shilpi when the talks of divorce were going on between them. It is averred by the plaintiff in his replication that on 16/10/2012 the plaintiff and the defendant's daughter entered into an agreement for dissolution of marriage and that the said agreement was signed in the suit property. In the said agreement, all the terms and conditions were settled between the parties, but no terms were settled about the suit property in this agreement as there was no dispute about the paying of rent, tenancy of the suit property and title of the suit property. Everything was in very

smooth manner as the defendant was paying the rent to the plaintiff and the plaintiff was receiving the rent regularly. The plaintiff admitted regarding the change of name of electricity and water connection (the dates of the said changes have not been mentioned by the plaintiff in his replication).

21. After the completion of the pleadings vide Order dated 12/01/2017 following issues were framed for trial: -

    1. Whether the plaintiff is entitled for a decree of possession of the suit property against the defendant, as prayed in prayer clause (a) of the plaint? OPP
    2. Whether the plaintiff is entitled for the decree of arrears of rent against the defendant has pleaded in prayer clause (b) of the plaint? OPP
    3. Whether the plaintiff is entitled for the decree of unauthorised use and occupation charges of the suit property against the defendant, as prayed in prayer clause (c) of the plaint? OPP
    4. Whether the plaintiff is entitled for the decree of permanent injunction qua the suit property as prayed in prayer clause (d) of the plaint? OPP
    5. Whether the plaintiff is guilty for suppression of material facts? OPD
    6. Whether the documents relied upon by the plaintiff, the ownership of the property, or executed by playing fraud upon the defendant and has no sanctity in the eyes of law? OPD
    7. Relief.

22. To prove the case, the plaintiff examined himself as PW-1. The examination-in-chief is by way of affidavit Ex. PW-1/A. The affidavit of the plaintiff Ex. PW-1/A is the amalgam of the facts as stated/denied by the plaintiff in his plaint and his replication. The plaintiff has relied upon and proved the following documents: -

1. Ex.PW-1/1 is the site plan.
2. Ex.PW-1/2 is certified copy of GPA dated 28.09.2005
3. Ex.PW-1/3 is copy of affidavit
4. Ex.PW-1/4 is copy of Indemnity bond dated 28.09.2005
5. Ex.PW-1/5 is copy of agreement to sell dated 28.09.2005
6. Ex.PW-1/6 is copy of receipt
7. Ex.PW-1/7 is rent deed dated 15.01.2013
8. Ex.PW-1/8 is Notice to Sub-registrar.
9. Ex.PW-1/9 is NCR No.1373/2013.
10. Mark X is copy of electricity bill.
11. Ex.PW-1/11 is letter to BSES
12. Copy of water bill is Mark Y.
13. Ex.PW-1/13 is Letter of Delhi Jal Board.
14. Ex.PW-1/14 is Notice of Deputy Assessor & Collector dated 16.02.2015.
15. Ex.PW-1/15 is Copy of house tax receipt dated 16.02.2015.
16. Ex.PW-1/16 is Copy of house tax receipt dated 13.10.2004.
17. Ex.PW-1/17 is Copy of house tax receipt dated 23.03.2006.
18. Ex.PW-1/18 is Copy of house tax receipt dated 29.10.2009.
19. Ex.PW-1/19 is Notice to defendant dated 13.01.2015.
20. Ex.PW-1/20 is Postal receipt.
21. Ex.PW-1/21 is copy of *Arya Samaj* Marriage Certificate dated 23.01.2007.
22. Four photographs of marriage are mark Y1 to Y4.
23. Ex.PW-1/26 is copy of agreement dated 26.10.2012.
24. Ex.PW-1/27 is copy of divorce decree sheet dated 11.11.2014.
25. Ex.PW-1/28 is Status report of IO dated 11.08.2005.
26. Ex.PW-1/29 is certified copy of suit for injunction titled as Asutosh Saini v. Sudha Sarin.
27. Ex.PW-1/30 is rent agreement dated 15.01.2014
28. Postal tracking report is Mark A.

23. Shri Khem Singh Chauhan, Ahlmad of MM Court has been examined as PW-2 who has proved one status report filed by SI C.L. Meena dated 11/08/2015 exhibited as Ex. PW-2/1.

24. Shri Ram Tirth, LDC from the office of District Magistrate has been examined as PW-3 who has proved GPA dated 28/09/2005 exhibited as Ex. PW-3/1.

25. Shri Deepak Kumar from the office of Sub-Registrar has been examined as PW-4 who has proved GPA dated 17/12/2003 regarding the suit

property in favour of the defendant exhibited as Ex. PW-4/1.

26. Head Constable Hans Raj has been examined as PW-5 who has proved the NCR bearing no. 1373/13 dated 01/08/2013 exhibited as Ex. PW-5/1.

27. Shri Aamir Raza has been examined as PW-6. The examination-in-chief is by way of affidavit Ex. PW-6/A. PW-6 has deposed in his examination-in-chief that the deponent is like a brother of Ms Shilpi and is the friend of the plaintiff. That the rent agreement was executed on 15/01/2013 between the plaintiff and the defendant with respect to the suit property. The defendant and the plaintiff signed and put their thumb impression on each page of the rent agreement dated 15/01/2013 in his presence.

28. On behalf of the defendant, the defendant has been examined as DW-1. The examination-in-chief of the defendant is by way of affidavit examined DW-1/A. The deposition in the examination-in-chief of the defendant is in consonance with what has been averred by the defendant in his written statement. The defendant has relied upon and proved the following documents: -

1. Ex.DW1/1 is copy of GPA dated 17/12/2003
2. Ex.DW1/2 is copy of agreement to sell dated 17/12/2003
3. Ex.DW1/3 is copy of affidavit of Sh. Manbir Singh dated 17/12/2003.
4. Ex.DW1/4 is copy of receipt dated 17/12/2003.
5. Ex.DW1/5 is copy of possession letter dated 17/12/2003.
6. Mark DW1/6 is copy of document dated 19/01/2002.
7. Mark DW1/7 is copy of document dated 17/02/1981.
8. Mark DW1/8 is copy of sale deed dated 25/08/1970.
9. Mark.DW1/9 is copy of documents dated 29/09/2005.
10. Ex.DW1/10 is copy of bill of Delhi Jal Board dated 29/08/2014.
11. Mark.DW1/11 is copy of bill of BSES dated 22/10/2014.
12. Mark.DW1/12 is copy of letter dated 17/12/2014.
13. Mark.DW1/13 is copy of e-mail dated 01/04/2015 to BSES.

14. Ex.DW1/14 is copy of letter dated 02/01/2015 to Sub-Registrar.
15. Ex.DW1/15 is copy of house tax receipt dated 11/03/2015.
16. Mark.DW1/16 is copy of complaint dated 11/03/2015 to SHO.

29. The daughter of the defendant and the ex-wife of the plaintiff; Ms Shilpi has been examined as DW-2. The examination-in-chief is by way of affidavit Ex. DW-2/A. The gist of the examination in chief of DW-2 is that when DW-2 was studying in X class, DW-2 was attending tutorial classes with the plaintiff and they developed friendly relations. The plaintiff started visiting the house of DW-2 and later on intimacy developed between them. The plaintiff was treated by the family members of DW-2 as a family member. After the purchase of the suit property by the mother of DW-2 in the year 2003, they shifted therein and the plaintiff was visiting the suit property off and on. The plaintiff knew that the suit property was purchased by the mother of DW-2 and that the mother of DW-2 was the absolute owner of the same. The plaintiff has repeated the facts and circumstances as to how the defendant came to execute the property documents in favour of the plaintiff in August/September 2005 as averred by the defendant in her written statement. DW-2 has deposed regarding her marriage with the plaintiff on 23/01/2007 that after 4 years of their marriage the relation between the plaintiff and DW-2 became strained that family members of both tried re-cancellation between them and doing this period the plaintiff got some documents signed from the mother of DW-2. That marriage between the plaintiff and DW-2 got dissolved in the month of November 2014 and other facts deposed to by DW-2 are similar to what has been averred in the written statement of the defendant.

30. Shri Jai Singh, Section Officer MCD house tax department has been

examined as DW-3. DW-3 has proved house tax receipt bearing CD no. 68120 dated 11/03/2015 exhibited as Ex. DW-3/A.

31. Head Constable Ramesh Ojha has been examined as DW-4 who has proved a complaint made by the defendant against the plaintiff regarding fraud vide the no. 64 - B dated 11/03/2015 exhibited as Ex. DW-4/A.

32. Shri Naipal Singh, Assistant Section Officer, Delhi Jal Board has been examined as DW-5 who was summoned to prove record with respect to water collection that is KNO 8445020000 sanctioned in the name of the defendant but as per the deposition of DW-5 the concerned fight was not traceable in the official record. Shri Vinod Kumar as DW-6 from Delhi Jal Board proved the said record as Ex. DW-6/1.

33. I have heard the arguments and perused the record as well as the written submissions filed on behalf of the plaintiff and the defendant. The issue -wise finding of the Court is returned here under: -

Issue no. 1 : Whether the plaintiff is entitled for a decree of possession of the suit property against the defendant, as prayed in prayer clause (a) of the plaint? OPP

Issue no. 6 : Whether the documents relied upon by the plaintiff, the ownership of the property, are executed by playing fraud upon the defendant and has no sanctity in the eyes of law? OPD

34. Issue no. 1 and issue no. 6 are taken together for discussion as both issues are interconnected and the discussion on one touch the important aspects of the other issue.

35. One can have the possession of immovable property through the Court of law on the basis of the title or previous possession. The plaintiff has

come before the court seeking possession of the suit property on the basis of the title. As the case of the plaintiff is that the plaintiff purchased the suit property from the defendant and admits the defendant as the previous owner of the suit property, the court will not be examining neither the 'title' nor documents of the defendant with respect to the suit property. However, it is hereby clarified that the Court in no sense or manner has declared the defendant as the owner of the suit property. But the court is going to scrutinise the documents of the plaintiff to find out whether the plaintiff is really the owner of the suit property and consequently the landlord qua the defendant.

36. This is not a simple case between the landlord and the tenant, but the case is between the plaintiff who purchased the property from the defendant and after two months of the purchase gave the suit property on rent to the defendant. Later on, married the daughter of the defendant and after four years of marriage got divorced. Legal notice by the plaintiff was given to the defendant few months before the finalization of divorce of the plaintiff. Electricity and water connection was changed in the name of the plaintiff after first motion of mutual divorce proceedings.

37. If the case of the defendant is true then the plaintiff has to be assumed to be devious and scheming man who got the property of his would be wife's mother, transferred in his name on some false pretext and kept dormant over the said transfer documents all the time till the marriage of the plaintiff with the daughter of the defendant was smooth and when the marriage of the plaintiff got into rough weathers the plaintiff got executed a rent deed from his 'mother-in-law' and when the plaintiff got

divorced used the documents to harass his ex-in-laws. Therefore, to find out the entitlement of the plaintiff to the possession of the suit property on the basis of the documents which the plaintiff claims of the title documents of his ownership of the suit property, the court would have to find out (1) If the plaintiff is the owner of the suit property or has any title to the suit property? (2) If the plaintiff is the landlord of the suit property and if the defendant is tenant? Only when the answers of both of these questions are in favour of the plaintiff, the plaintiff would be entitled to the possession of the suit property.

38. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in the issue can be said to be proved. *The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities, the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies*.

(**Ref. paragraph 24 of the judgment in N.G. Dastane, Dr. V. S. Dastane AIR 1975 SC 1534**). It is on the balance of probability that the case of the plaintiff is to be decided by the Court. It will be the yardstick of the prudent man which is going to be used by the Court in finding out if the plaintiff has proved the material facts of his case in order to be entitled for the reliefs for which the plaintiff has filed the present suit.

39. The case of the plaintiff is that the defendant was the owner of the suit property from whom the plaintiff purchased the suit property for a total consideration amount of ₹110,000/- on the basis of Irrevocable General Power of Attorney, Agreement to Sell, Indemnity Bond, Affidavit, Will, payment receipts all dated 28/09/2005 and exhibited as Ex. PW-1/2 to Ex.PW-1/6 respectively (all the original documents were seen and returned, this has consciously been noted here). The defendant after selling the suit property to the plaintiff, two months thereafter took the suit property on rent from the plaintiff himself for the rent of ₹5500/- per month.

40. The case of the defendant is that the plaintiff and the daughter of the defendant Ms Shilpi knew each other since 1997, there were friendly relations between Ms Shilpi and the plaintiff and were in love with each other. The defendant was taken into confidence by the plaintiff and Ms Shilpi on the pretext that the plaintiff needed collateral security for the loan from ICICI bank as the plaintiff wanted to start some business and they convinced the defendant to sign certain documents, which the defendant did without consulting the husband of the defendant.

41. If one is to fix the probability as to how likely the story of the defendant and Ms Shilpi (DW-2) is true then taking into consideration that the

daughter of the defendant, Ms Shilpi was in love with the plaintiff, who wanted a loan, needed collateral security of the suit property for taking loans then even without taking into consideration any kind of evidence which has been led (evidence shall be analysed in much detail), it appears highly probable that the story of the defendant/Ms Shilpi is true. Love like Justice in popular connotations is portrayed as blind for a reason (though having different signification). In history there have been many an example of love moving warring flotilla across the oceans, so it is conceivable that a love smitten daughter moved her mother to sign certain documents blindly.

42. For the present disquisition, it is assumed that the documents exhibited as Ex. PW-1/2 to PW-1/6 are title documents of the suit property.

43. In the plaint/replication and the examination-in-chief Ex. PW-1/A the plaintiff has tried to portray the facts that before the purchase of the suit property on 29/09/2005 the plaintiff did not know the daughter of the defendant, Ms Shilpi. That it was during the time the plaintiff was going to the suit property to collect rent, the plaintiff got acquainted / came very close to Ms Shlipi whom the plaintiff married on 23/01/2007 (See para 6 of the plaint). In the replication the plaintiff has averred that the plaintiff was not aware about the purchase of the suit property till the first week of September 2005. That in the month of September 2005, the daughter of the defendant informed that the defendant was looking for a customer to sell the suit property. Therefore, the plaintiff contacted the defendant through her daughter, Ms Shilpi and ultimately purchase the suit property on 29/09/2005.

44. From what has been averred by the plaintiff in the plaint/replication few

presumptions could be safely made that the plaintiff knew Ms Shilpi earlier to the plaintiff allegedly purchase the suit property from the defendant, the relationship between the plaintiff and Ms Shilpi was thick/amorous otherwise the probability of Ms Shilpi informing the plaintiff that the defendant was in the process of selling the suit property was very high. Otherwise, why Ms Shlipi inform the plaintiff, if the plaintiff was not known to her. **That the material averments in para 5 of reply to the plaint as well as of the replication are false that earlier to the purchase of suit property, the plaintiff did not know Ms Shilpi.** In the cross-examination of the plaintiff on 09/08/2018 the plaintiff deposed, "*I was in acquaintance with the daughter of defendant Ms Shilpi Sarin since 2000 as initially I met with Shilpi Sarin in morning walk at Rajghat…Thereafter I and Shilpi Sarin got tuitions in the same institute in 2001 but I do not remember the name of said institute…It is correct that prior to 2005, I used to talk to the daughter of the defendant telephonically*."

45. There has to be a reason as to why the plaintiff lied on such a vital fact. The real reason is known only by the plaintiff but from the facts which have come on record the probable reason appears that the plaintiff wanted to show the alleged purchase of suit property from the defendant as a genuine transaction and to pre-empt the defence of the defendant of execution of the property documents in favour of the defendant as a collateral security for the bank for the purpose of the plaintiff seeking a loan.

46. If the plaintiff would have admitted his previous relations with Ms. Shilpi before purchasing the suit property the story of the plaintiff

would have appeared unbelievable. No one would have believed the story of purchasing property from the mother of one's girlfriend and giving on rent the same property to girlfriend's family. The story of the boy or the girl financially helping each other's family in the case of need is more believable if there were friendship between the boy and the girl instead of a girl or boy purchasing immovable property from the parents.

47. Ms Shilpi Sarin has been examined in defence by the defendant as DW-2. And examination-in-chief; Ex. DW-1/A in which DW-2 has deposed that DW-2 was studying in class and was attending tutorial classes with the plaintiff and that they developed friendly relations and the plaintiff started visiting the house of the DW-2 and later on intimacy developed. With the passage of time, the friendship between the plaintiff and DW-2 turned into a relationship. As the plaintiff used to visit often at the suit property which was purchased by the mother of DW-2 on 17/12/2003, the plaintiff was aware that the suit property was in the name of the defendant. In the month of August/September 2005, the plaintiff represented to DW-2 that before marriage the plaintiff required to start some business for which the plaintiff required some money but due to non-availability of funds and the plaintiff was unable to start business and that the plaintiff had taken a loan from the bank. The plaintiff persuaded DW-2 to approach the defendant and convince the defendant to sign certain documents for his own purposes as the plaintiff did not have any property/guarantee for loans. DW-2 believed the plaintiff. The plaintiff in the presence of DW-2 told the said facts to the defendant to which the defendant agreed. On that pretext the plaintiff took the defendant and DW-2 to the office of Sub-Registrar and got the signature

and thumb impressions on some typed documents without disclosing the nature of the documents. DW-2 also put her signatures as a witness without going through the documents.

48. In the cross-examination DW-2 deposed that the friendship of DW-2 with the plaintiff converted into relationship in the year 1999. DW-2 had invited the plaintiff at *grah parvesh* of the suit property. DW-2 denied the suggestion regarding plaintiff never talking about any loan with DW-2 from ICICI bank. DW-2 admitted that DW-2 did not make any enquiry regarding the said alleged loan in any bank. DW-2 denied the suggestion that the plaintiff never requested DW-2 for any collateral security, however, DW-2 admitted that DW-2 did not file any document showing any collateral security.

49. From the cross-examination of DW-2, it is not clear as to what fact the counsel for the plaintiff wanted to bring forth, whatever may be the intention, the examination in chief of DW- 2 read with her cross-examination has completely demolished the case of the plaintiff. The stand of the plaintiff that love affair between the plaintiff and Ms. Shilpi developed during the plaintiff's visits every month at the suit property for connecting rent and for looking after the suit property stands belied. The stand of the plaintiff that the plaintiff was not aware about the purchase and ownership of the suit property till the first week of September 2005 is demolished.

50. It is not the case of the defendant or that of DW-2 that the plaintiff really wanted loan from the bank for which the collateral security was required. It was told by the plaintiff that the plaintiff required loan, it may or may not be true. From the subsequent conduct of DW-2 in

marrying the plaintiff on 23/01/2007 without the knowledge of the consent of her family members/parents in *Arya Samaj Mandir* does indicate that DW-2 was head over heels in love with the plaintiff and therefore it is highly probable that in August /September 2005 the plaintiff told DW-2 that before the plaintiff got married to DW-2, the plaintiff required to start some business for which the plaintiff required money and the story regarding the collateral security. In those circumstances where DW-2 was in love/relationship with the plaintiff had implicit faith in the plaintiff (which is confirmed by the subsequent marriage of the plaintiff with DW-2) it would have been highly improbable that DW-2 would have made any enquiry regarding the fact whether or not plaintiff did in fact applied for any loan from ICICI bank needed any collateral security or insisted in seeing any documents regarding that from the plaintiff. It is not clear as to the reason why the suggestion was given to DW-2 by the counsel for the defendant regarding DW-2 not finding any document showing any collateral security.

51. It is highly probable that the entire fact regarding the alleged taking of loans by the plaintiff from the bank and giving collateral security could have been a ruse in order to deceive the defendant as well as DW-2 to get the documents of the suit property executed in favour of the plaintiff.

52. In the light of what has been discussed in above, even if DW-2 admitted her signatures and thumb impressions on documents exhibited as Ex. PW-3/1 (General Power of Attorney dated 28/09/2005) and Ex. PW-1/6 (notarised receipt dated 29/09/2005) does not mean that by the said

documents ownership of the suit property was transferred from defendant to the plaintiff. The admission of DW-2 on the balance of probability also indicates the fact that the plaintiff took the signatures and thumb impressions of DW-2 on the said documents by deception/fraud.

53. As per the case of the plaintiff, the plaintiff purchased the suit property from the defendant for a total consideration amount of ₹110,000/-. Nowhere (plaint, replication as well as in examination in chief; Ex.PW-1/A) the plaintiff has mentioned as to the date or the manner in which the plaintiff paid the consideration amount to the defendant. It is the defence of the defendant that the plaintiff did not pay any consideration amount and that the defendant even did not have any financial capacity to pay such an amount as the plaintiff is claiming to have paid.

54. In the cross-examination, the plaintiff; PW-1 on 09/08/2018 with respect to the payment of consideration amount for the purchase of the suit property deposed that, *"The father of Ms Shilpi Sarin had accepted the payment when I had tendered the same to him. I had paid an amount of Rs 10000/- as bayana and the remaining amount of Rs 1 lac was paid afterwards. I do not remember exactly the date when the payment of Rs. 10000/- was made as bayana, however it was made 7-10 days prior to alleged transaction. A document in writing was executed with respect to payment of Rs I0000/-. The document of earnest money was destroyed at the time of purchasing the suit property before the defendant. There was no document evidencing payment of earnest money of Rs 10000/- except one document which was destroyed. The bayana document was executed at the suit property in my presence as*

well as in presence of defendant. her husband and her daughter Ms Shilpi Sarin.… It is correct that I stated my counsel that for purchasing the suit property, I paid an earnest money of Rs. 10000/- and thereafter I paid remaining payment for purchasing the suit property. It is correct that I signed the plaint after reading it. It is correct that the fact of payment of bayana is not mentioned in my plaint as well as in my affidavit in evidence separately. On 29/09/2005, I paid the remaining amount of Rs I lac to defendant at the suit property in the presence of her husband in the morning. On 29/09/2005, a receipt of Rs 1,10,000/- was executed for purchasing the suit property but separately I did not get a receipt of Rs 1 lac. From my side, Ms Shilpi Sarin was present at the time of purchasing of suit property".

55. If the father of Ms Shilpi had accepted the bayana amount then the absence of the signature of the father of Ms. Shilpi on receipt; Ex. PW-1/6 is highly suspicious (the Court is not going into the aspect that as per Section 17 of Indian Registration Act the receipt is compulsorily registrable document and the same is unregistered has no objection regarding it has been taken by the defendant).

56. Ex. PW-1/6 does not explicitly mention as to exactly when it was the date when the plaintiff made the payment of the consideration amount of ₹110,000/-, what was the mode and the manner of the payment of the said amount. Ex. PW-1/6 only mentions that payment of ₹110,000 has been received by the defendant from the plaintiff prior to the execution of the receipt.

57. Even in General Power of Attorney; Ex. PW-1/2 that the defendant i.e., the executant agreed to sell the suit property for a consideration amount

of ₹110,000/- which the executant has received from the plaintiff in full and final settlement. Again, in Ex. PW-1/2 neither any date nor any mode or manner of payment of ₹110,000/- has been mentioned. However, PW-1 in his cross-examination deposed that the *bayana* document was executed at the suit property in the presence of the plaintiff as well as in the presence of the defendant, her husband and Ms Shilpi with respect to payment of ₹10,000/- that on 29/09/2005 PW-1 paid the remaining amount of ₹100,000/- to the defendant at the suit property in the presence of her husband and that on 29/09/2005 a receipt of ₹110,000 was executed.

58. The absence of date and the mode and manner of payment on all the so-called title documents executed by the defendant in favour of the plaintiff read with the cross-examination of the plaintiff quoted herein above, absence of the husband of the defendant being a witness on any of the documents makes it highly probable that the defendant did not receive any consideration amount of ₹110,000/- from the plaintiff.

59. In the cross-examination as quoted herein above the plaintiff admitted the presence of the father of Ms Shilpi during the sale transaction of suit property in the absence of the signature of the father of Ms Shilpi on any of the so-called title documents of the suit property executed by the defendant in favour of the plaintiff makes the documents exhibited from Ex. PW-1/2 to PW-1/6 highly suspicious and not worthy of any credence.

60. It may be noted that during the arguments the Court put a specific query to the counsel for the defendant as to the reason of absence of the signature of the father of Ms Shilpi/husband of the defendant on any of

the documents regarding the suit property executed by the defendant in favour of the plaintiff. The reply was that in the household of the defendant, the husband of the defendant had no say of any kind. It may or may not be true but if the plaintiff has admitted in his cross-examination that father of Ms Shilpi had accepted the payment when the plaintiff had tendered the same to him then it is very hard to accept the submissions of the counsel for the defendant that the father of Ms Shilpi did not have any say in the household.

61. It may also be noted that in spite of the admission of the plaintiff stated herein above with respect to acceptance of payment of consideration amount by the father of Ms Shilpi, it is inexplicable as to why the plaintiff did not have any talk with respect to the purchase of the suit property with the father of Ms. Shilpi. And one of the possibilities for the same is that in the case of the defendant and the reasons and is given for the execution of documents exhibited as Ex. PW-1/2 to Ex. PW-1/6 is true on the balance of probability.

62. The absence of date as well as mode and manner of the payment of the consideration amount of ₹110,000/- in the so-called sale documents in favour of the plaintiff and the deposition of the plaintiff with respect to receipt of payment by the father of Ms Shilpi, by a receipt and its destruction, etc. also indicates to the possibility that at the time when the documents Ex.PW-1/2 to Ex.PW-1/6 were executed the plaintiff did not have any financial capacity to make the payment of ₹110,000/-.

63. The plaintiff in his cross-examination on 02/08/2018 deposed that the plaintiff had passed his B.A. examination in the year 2003 and that the plaintiff did not remember as to the year when the plaintiff passed the

course in Tour, Travels and Ticketing. Nowhere it has come on record whether before the year 2003 or thereafter till the suit property was purchased by the plaintiff in the year 2005 the plaintiff was working anywhere.

64. The fact that the plaintiff opened a saving account in ICICI bank on 03/12/2007 indicates that earlier to the opening of the bank account the plaintiff was not working are having any are enough saving to be deposited in the bank.

65. It is not the case of the plaintiff that the consideration amount of ₹110,000/- was arranged by the plaintiff after taking a loan from his friends/family members, etc. in the cross-examination of the plaintiff on 09/08/2018 the plaintiff deposed that in January 2005, the plaintiff was doing the work of selling purchasing of second-hand mobile from his residence and was earning ₹ 7000/- to ₹ 8000/- per month from January 2005 to May 2005.

66. Even if that deposition of the plaintiff is assumed to be true then if the plaintiff saves the entire earnings and the plaintiff did not have more than ₹40,000/- with him. The plaintiff not even volunteered that after May 2005 the plaintiff was doing any work. The deposition of the plaintiff that the plaintiff was not income tax assessee in conjugation with the fact that the plaintiff did not file any document to show that the plaintiff had ₹110,000/- makes the suggestion as given by the counsel for the defendant to the plaintiff highly probable that in the year 2005 the plaintiff was not doing any business and that the plaintiff was not earning even a single penny. On this aspect the deposition of PW-6 that the plaintiff was engaged in the business of herbs in Khari Baoli for the

last 10 - 15 years also does not help the plaintiff.

67. In the light of discussion so far herein above, it could be said on the balance of probability that at the time when allegedly the plaintiff purchased the suit property in the year 2005 from the defendant the plaintiff did not have the financial capacity to pay the alleged consideration amount of ₹110,000/- to the plaintiff and because of the cross-examination with respect to the receipt of payment of consideration amount by the father of Ms Shilpi and his absence as a witness on the property documents in favour of the plaintiff makes the entire case of the plaintiff as 'not proved' as per of Section 3 of Evidence Act.

68. The defendant purchased the suit property on 17/12/2003. As per para no. 14 of the examination-in-chief; Ex. PW-1/A in the month of September 2005 the daughter of the defendant that is Ms Shilpi informed the plaintiff that the defendant was looking for a customer to sell the suit property. Any ordinary person of reasonable prudence in the situation of the plaintiff would have asked the logical question as to why the defendant was selling the suit property that too admittedly with Ms Shilpi the plaintiff as per his cross-examination was acquainted since the year 2000. The family of the defendant from the record of the case appears to have consisted of her two daughters and husband. It has not come on record as to when the elder daughter of the defendant got married but from the deposition of PW-6 it appears that the alleged daughter of the defendant was married earlier to the marriage of the plaintiff with Ms Shilpi. The husband of the defendant as per the deposition of the plaintiff in his cross-examination was doing the

business of milk products and at the time around September 2005 it is not apparent that the defendant was in any urgent need of money for which the defendant was in any kind of pressure to sell the suit property to the plaintiff.

69. In the cross-examination of the plaintiff on 09/08/2018 to the question put by the counsel for the defendant that there was no need, reason or ground to sell the suit property by the defendant the reply of the plaintiff was that the plaintiff did not know as to what was the reason for the defendant for selling the suit property.

70. Keeping into consideration the nature of the relationship which the plaintiff had with Ms Shilpi, the younger daughter of the defendant and the fact that the plaintiff got married to Ms Shilpi on 23/01/2007 it is highly improbable that if there was any pressing need with the defendant to sell the suit property Ms Shilpi would not have known it and Ms Shilpi would not have told to the defendant about it.

71. It is also rather strange that after selling the suit property to the plaintiff in September 2005, the plaintiff would again come in the suit property as a tenant of the plaintiff after only two months in November 2005 with the rent of ₹5500/- per month. If the defendant was in really need of ₹110,000/- in the September 2005 the defendant could have got that amount by mortgaging the suit property or getting ₹110,000/- on interest and whatever could have been the rate of interest on the said amount it would have definitely been less than ₹5500/- per month.

72. The plaintiff got married with Ms Shilpi on 21/01/2007 got separated in June 2011 ("Ms Shilpi Sarin left the matrimonial house in the month of Jane 2011"), mutual divorce agreement was executed between the

plaintiff and Ms Shilpi on 26/10/2012 and they were divorced on 15/11/2013. In spite of all these, out of the ordinary fact as per the case of the plaintiff is that, ***the defendant was regularly paying the rent in cash till 15/11/2013***. Not only that the defendant executed the rent deed with the plaintiff on 15/01/2013. Further, not only that, as per the case of the plaintiff, the plaintiff purchased the suit property in September 2005. Had a runaway marriage with the daughter of the defendant, Ms Shilpi without the consent and permission of the defendant of the family of Ms Shilpi on 23/01/2007 and during all the time since November 2005 till 15/11/2013 as per the plaintiff the defendant was paying the rent regularly to the plaintiff.

73. On many dates of hearing when the matter was taken up for final arguments Ms Shilpi along with the father used to appear before the Court. On October 12, 2021 when the statement of the plaintiff was recorded by the Court under Order 10 of CPC, Ms Shilpi was present before the Court (however her attendance has not been marked in the Order sheet of the said date), the Court put a query to Ms Shilpi if Ms Shilpi knew after her marriage with the plaintiff that her mother was the tenant of the plaintiff would Ms Shilpi have allowed her husband i.e., the plaintiff to take rent from the defendant i.e., her mother. The answer of Ms Shilpi was an emphatic no which is in consonance with the kind of social setup that we have.

74. If the defendant had been really the tenant of the plaintiff since November 2005 Ms Shilpi would have surely known about it before marriage and it is highly unlikely that after her marriage with the plaintiff Ms Shilpi would have allowed her husband to take rent or

permitted her mother to give rent to her own son-in-law. Again, no matter how advanced our society may be a divorce is still seen as a taboo; even a divorce by mutual consent is the last resort, before that a lot of efforts are made by the family members to save the marriage and lots of acrimony and hard feelings between the families are generated when two people are taking divorce.

75. It is highly improbable from the standpoint of a prudent man that after Ms Shilpi left the plaintiff in June 2011, executed mutual divorce agreement on 26/10/2012 all the while the defendant would have regularly paid the rent to the plaintiff till November 2013 'without any protest' (as stated by the plaintiff in his examination under Order 10 of CPC on 12/10/2021). And for the entire period of November 2005 till November 2013 when as per the plaintiff, the defendant was the tenant in the suit property the defendant does not have even a single proof of any kind (except his own testimony) that the defendant in fact paid any rent to the plaintiff. It is improbable that the defendant would execute the rent deed; Ex. PW-1/7. (Proper Stamp duty has not been paid on Ex. PW-1/7 over the same cannot be impounded at this stage).

76. On Ex. PW-1/7 there are two witnesses. Witness no. 1 is the relative of the plaintiff and the witness no. 2; Shri Aamir Raza has been examined as PW-6.

77. The examination-in-chief of PW-6 is by way of affidavit; Ex. PW-6/A. In examination-in-chief PW-6 deposed that the defendant and the plaintiff signed and put their thumb impression on each page of Ex. PW-1/7 in the presence of PW-6. The examination-in-chief is very cryptic. As per the deposition of plaintiff recorded on 09/08/2018,

Ex.PW-1/7 was signed by the plaintiff and the defendant at the suit property, that at the time of execution of Ex.PW-1/7, the plaintiff, the defendant, her husband, Ms Shilpi and both the witnesses to the document Ex. PW-1/7 were present.

78. The testimony of plaintiff is shaken by the following cross-examination on this aspect which is, "*The Ex. PW-1/7 was notarised near the office of Sub Registrar, Asaf Ali Road, New Delhi. All the executants and witnesses put their signatures on the register. Again said. The signatures were put on the document only. Again said. The thumb impressions were put in Asaf Ali Road before notary but the signature was put on the document at the suit property. I do not remember whether the signatures and thumb impressions were obtained in the register of notary public at the time of notarisation of document Ex PW-1/7. I do not remember whether the notary made any entry in the register in this regard*". The plaintiff is trying to be consistent, but the effort of the plaintiff failed.

79. Since the moment of the filing of the written statement, the plaintiff knew as to what was the defence of the defendant with respect to documents exhibited as Ex. PW-1/3 to PW-1/7 which are notarised documents. From the stamp of the notary on the said documents it is not clear as to who the notary was, what was his registration number, the details regarding the notarisation for example the attestation number of the register, who had identified the executants of the said documents, etc. In the facts and circumstances of the case, it was incumbent upon the plaintiff to call the notary public who had notarised and the documents exhibited PW-1/3 to PW-1/7. The argument could have been

that even the defendant could have called the public notary but then for the defendant to call the notary public as a witness their own to have been property deals with the notary public. The plaintiff shall be a liberty to try and examine the concerned public notary at later stage if there be any need for the same.

80. PW-6 has not deposed as to where Ex. PW-1/7 was executed, nothing has been said about Ex. PW-1/7 being notarised.

81. From examination-in-chief of PW-6 it appears that both the plaintiff and the defendant put their signatures and thumb impression at the same time which is in contradiction with the deposition of the plaintiff.

82. From the cross-examination of PW-6 by the counsel for the defendant, it does not appear that if Ex. PW-1/7 was executed at the suit property (as per the deposition of the plaintiff) PW-6 was present at the suit property. PW-6 could not tell the exact date, month and year when PW-6 visited the suit property. PW-6 could not tell when PW-6 visited the suit property for the first and the last time. PW-6 did not know the number of stories of the building in which the suit property is situated. PW-6 did not attend the marriage of Ms Shilpi with the plaintiff indicating that the relations between Ms Shilpi and PW-6 were not as thick which would have made it probable the presence of PW-6 at the suit property on 15/01/2013 when Ex. PW-1/7 was executed between the plaintiff and the defendant. PW-6 also deposed that PW-6 was not in telephonic conversation with Ms Shilpi and that PW-6 did not know her telephone number. The cross-examination has completely demolished the testimony of PW-6 and cannot be relied upon for the purpose of proof of any fact as deposed to by PW-6.

83. During the tendering of the examination-in-chief by the plaintiff on 07/08/2018 all the documents exhibited by the plaintiff were objected by the counsel for the defendant with respect to mode of proof. Section 67 of Evidence Act provides that if the document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting on such document as it is alleged to be in that person's handwriting must be proved to be in his handwriting. It is well settled that Section 67 of Evidence Act as not use the word "execution" but there can be no doubt that the said section is intended to lay down generally the mode of proof of execution of documents. This is clear from the language of sections 68 to 71 of Evidence Act in which the word execution is used. Execution means signed. ***The execution consists in signing a document written out and read over and understood by the executant of any document. Execution is not consistent merely signing upon a blank sheet of paper or putting the thumb impression of both***.

84. In the cross-examination of the defendant; DW-1 documents of the plaintiff exhibited as Ex. PW-3/1 i.e., General Power of Attorney dated 28/09/2005, PW-1/7 i.e., rent deed dated 15/01/2013, Ex. PW-1/3 i.e., affidavit dated 29/09/2005, Ex. PW-1/5 i.e., Agreement to Sell dated 28/09/2005, Ex. PW-1/6 i.e., notarised receipt dated 29/09/2005 were put to the defendant and was only asked to identify the signatures and thumb impressions on the said documents which the defendant did better, however, the counsel for the plaintiff did not put any questions to the defendant for the purpose of proving the contents of the said document. As already stated herein above proving execution of any

document does not merely consist of proving the signature or the thumb impression on any document. To the very first question in the cross-examination, DW-1 had deposed that DW-1 had studied up to 8th standard and all the documents relied upon by the plaintiff are in English which made it very necessary that the contents of the documents purportedly executed by DW-1 were put to her for the purpose of proving the contents that is DW-1 had executed the said documents after the contents of the document were read over to DW-1 and that DW-1 had signed those documents after having understood the contents.

85. As already stated herein above when the divorce proceedings are in progress between two parties their family members make an effort to reconcile both the parties and tried to stop happening of divorce between the married couple. Since June 2011 Ms Shilpi was living separately from the plaintiff with her parents i.e., the defendant and father in the suit property. The mutual divorce agreement dated 26/10/2012; Ex. PW-1/26 was executed between the plaintiff and Ms Shilpi. In these facts, it is highly improbable that the defendant would execute the rent deed dated 15/01/2013; Ex. PW-1/7. However, it is probable and very likely that the plaintiff got the signature and thumb impression of the defendant in the garb of some settlement documents with respect to the impending divorce of the daughter of the defendant; Ms Shilpi with the plaintiff.

86. During the time of the alleged execution of document Ex.PW-1/7 if not the defendant, but Ms Shilpi would have been very vigilant with respect to execution of any document at the behest of the plaintiff and in all

probability, this could be the reason in spite of the fact that in the alleged title documents of the suit property Ms Shilpi is one of the witnesses but in Ex. PW-1/7 Ms Shilpi is not the witness.

87. It has been already observed herein above that out of the two witnesses on Ex. PW-1/7 one is the relative of the plaintiff and that the witness has been examined as PW-6 whose deposition has not been found to be trustworthy. Both the witnesses to the documents Ex. PW-1/7 had no business or purpose to be present on the day of its execution at the suit property. The witnesses who would have been naturally present in the suit property at the time of execution of Ex. PW-1/7 would have been Ms. Shilpi and the husband of the defendant who could have been and should have been the natural witnesses. In aforesaid facts and circumstances the very authenticity of the document Ex. PW-1/7 is found to be questionable and not worthy of given any credence by the Court for any purpose whatsoever including for establishing the legal status between the plaintiff and the defendant which is purported to have been evidenced by Ex. PW-1/7.

88. If any ordinary person of reasonable prudence was in the process of taking divorce from his wife and any agreement with respect to the impending divorce like that of Ex. PW-1/26 were executed between them and the factual situation would have been like that of the plaintiff that is the husband purchasing immovable property from his mother-in-law with further factual scenario that the mother-in-law of such person along with other family members were the tenant in such immovable property paying rent to the husband without any complaint such fact would have found mentioned in ordinarily all the documents executed

between the husband and wife and at least the divorce agreement pursuant to which the divorce was finalized between the husband and wife. The plaintiff has tried to explain the said anomaly with respect to example PW-1/26 by his averment in para 7 of the plaint that, "*That due to passage of time, certain difference had been occurred between Ms Shilpi and the plaintiff and ultimately the plaintiff and Ms Shilpi agreed to take mutual divorce and at last on 11-11-2014 the decree of mutual consent divorce was passed from the court of Shri Talwant Singh, ADJ, Family Court, Vishwas Nagar, Delhi.* ***Although this is a separate family matter from the tenancy of above suit property to the plaintiff and no dispute was ever took place with regard to the said tenancy as the rent was being paid regularly till 15-11-2013***". (Emphasis supplied) and ordinary person of reasonable prudence, would not believe whatever has been averred by the plaintiff with respect to the absence of mentioning regarding the suit property in Ex. PW-1/26.

89. One of the anomalies in the case of the plaintiff with respect to the suit property is that though the plaintiff averred in his plaint that the defendant handed over the chain of all previous title documents of the suit property to the plaintiff, however, the original of the said documents were not in possession of the plaintiff. Those documents have been proved by the defendant as Ex. DW-1/1 to DW-1/4; the originals of the said documents were seen and returned. Certain other documents pertaining to the suit property were marked. The absence of the said documents along with other documents (rent deeds, etc.) were tried to be explained by the plaintiff with his averment in paragraph 5 of the plaint, "*That initially the tenancy was oral between the parties, but*

in the month of January 2012 the rent deed was also executed between the parties but the same rent deed was lost along with the chain of previous title documents of the said suit property and in this regard, at that time, the plaintiff had informed the local police and NCR No. 1373/2013 was also registered for searching the same. But till date, the police have not succeeded in searching the same".

90. After analysing everything which is on record, the Court is of the opinion that the plaintiff has used the ruse of having lost documents and registration of NCR; Ex. PW-5/1 (containing 5 pages) as *Deuce Ex Machina* for extricating himself from unexplainable and difficult situations.

91. From the contents of hand-written complaint dated 01/08/2013 on the basis of which NCR no. 1373/2013 was lodged by the police contains the fact that the plaintiff had come to movie hall and when the plaintiff was in a queue to buy the ticket the plaintiff misplaced his bag which contained property documents. Here the date 01/08/2013 is to be kept in mind. Ms Shilpi was living separately from the plaintiff since June 2011 the mutual divorce agreement between the plaintiff and Ms Shilpi was executed on 26/10/2012; Ex. PW-1/26 and the plaintiff lost property documents of the suit property on 01/08/2013 and the circumstances in which the plaintiff lost the documents as per his complaint dated 01/08/2013 to the police also needs to be kept in mind along with the fact that in Ex PW-5/1 (colly) the plaintiff did not mention the details of any of the documents related to the suit property which was misplaced by the plaintiff.

92. The plaintiff was examined by the Court under Order 10 of CPC on

12/10/2021. The same is not treated as evidence by the Court but is being used by the Court only to understand the deposition of the witnesses which are on record. The Court put the query to the plaintiff as to what was the documents which were lost by the plaintiff in August 2013. The plaintiff stated that the plaintiff had lost all the documents pertaining to the suit property. Thereafter, the plaintiff could find that the plaintiff did not lose the original GPA executed by the defendant in favour of the plaintiff and the rent agreement executed in the year 2013. The plaintiff further stated that the plaintiff had taken the documents to Pitampura to show those documents to a buyer whose name the plaintiff did not remember. (During the course of argument, the counsel for the defendant had stated before the Court that with respect to purchase and sale of any property the witnesses/purchaser or the seller remembers everything). Suffice to say that when the Court examined the plaintiff on 12/10/2021 the plaintiff did not say before the Court that the plaintiff had lost the document/misplaced the bag containing the property documents in a queue for taking the ticket for a movie in a cinema hall.

93. With respect to alleged loss of the previous chain of property documents of the suit property on 09/08/2018 the plaintiff in his cross-examination deposed, "*I do not know whether the defendant is in possession of the previous chain of document in original. It is wrong to suggest that I have made a complaint which is Ex PW-1/9, is a false document. The previous chain was lost in Pitampura, Delhi. It was lost on 1st of August but I do not remember the year. I said, I do not know the exact date. I went to met (sic) my friend Salish Kumar at Pitampura. On that day, I met Satish Kumar before losing of previous chain of document. At that time, I was in the search of buyer of suit property and I was carrying*

the previous chain of documents but I do not know the name of the buyer". What the plaintiff deposed in his cross-examination with respect to the loss of the documents is completely different from the facts as given by the plaintiff in his complaint dated 01/08/2013 on the basis of which NCR; Ex.PW-5/1 (colly) was registered.

94. The counsel for the defendant in the cross-examination of the plaintiff with respect to the loss of the document did not ask the question if at the time when the plaintiff had lost the previous chain of documents, the plaintiff was in search of a buyer of the suit property and for that purpose the plaintiff was carrying the previous chain of documents then how come in the bag which contained previous chain of documents did not contain the documents which were executed by the defendant in favour of the plaintiff? The prospective buyer would have been interested in knowing as to the title of the plaintiff qua the suit property. The entire story of loss of documents by the plaintiff on 01/08/2013 and registration of NCR; Ex. PW-5/1 (colly) is *hocus-pocus*.

95. The plaintiff in his replication as well as in examination-in-chief; Ex. PW-1/A (para 13) has deposed that the plaintiff had gone to the property dealer to estimate the value of the property on 01/08/2013 in Pitampura and thereafter the plaintiff visited the market of Pitampura for shopping. At that time the plaintiff was carrying previous chain of documents in a bag which was lost in the market and the plaintiff tried to give explanation as to the possession of original previous chain of documents with the defendant as, "*When the defendant herself claimed the possession of the same documents, it seems that someone got the bag of chain of documents and searched the defendant from its address*

of the property. Then the defendant might be in possession of the said chain of the documents and the defendant did not disclose the same to the Deponent about being in possession of the said chain of documents through someone. It shows the malafide intention of the defendant just to grab the suit property".

96. The plaintiff has not proved **first**, that the defendant did in fact gave the previous chain of documents of the suit property to the plaintiff. The plaintiff in his cross-examination on 09/08/2018 deposed that, "*It is mentioned in my title documents that at the time of purchasing of suit property, all the previous documents were handed over by the defendant to me. Except the said mentioning regarding handing over the previous chain of title documents, no other proof is with me*". The plaintiff has not proved even the title documents of the suit property exhibited as Ex. PW-1/2 to PW-1/6 in terms of section 67 of Evidence Act (discussed here in above) and at the same time the said documents are highly suspicious. **Second**, the plaintiff on the balance of probability did not prove that NCR; Ex. PW-5/1 (colly) is a genuine document in the sense that the plaintiff did in fact lose a bag containing the property documents pertaining to the suit property. **Third**, the plaintiff did not prove that if the plaintiff lost the bag containing the previous chain of documents someone really found that bag. **Forth**, if someone did in fact find the bag then that someone returned back to the defendant. Occam's razor explanation is that the defendant never gave the previous chain of documents of the suit property to the plaintiff at any point of time which leads to the irresistible conclusion that Ex PW-1/2 to Ex.PW-1/7 are false documents.

97. After anyone purchases any immovable property which is built up property and the first thing done by the purchaser is to transfer their utilities such as electricity and water (gas as well) connection in the name of the purchaser. As per the case of the plaintiff himself, the plaintiff purchased the suit property in September 2005 and since the alleged purchase of the suit property the plaintiff applied for the transfer of water and electricity connection which was in the name of the defendant and it was after the same motion of divorce that the plaintiff got the electricity and water connection transferred in his name. ("*My divorce with Ms Shilpi Sarin had taken place on 11/11/2014 which is the date of divorce decree. It is correct that the electricity and water connections installed at the suit property were in the name of defendant. Vol. After second motion of divorce, I got the electricity and water connection transferred in my name*", Ref. cross-examination of the plaintiff on 19/08/2018). There could be many explanations for that that is the transfer of the water and electricity connection so late, from sinister to innocuous. At the same time, it is also probable that after the alleged purchase of the suit property in September 2005 the plaintiff did not apply for transfer of electricity and water connection which was in the name of the defendant as the alleged title documents of the suit property; Ex. PW-1/2 to PW-1/6 were got executed by the plaintiff by legerdemain. That the defendant was excluding the said documents really under the impression that those documents were being executed by the defendant as a collateral security for securing the loan to the plaintiff at the behest of his daughter, Ms Shilpi.

98. As per section 3 of the Evidence Act the proof of any fact is not a mathematical formula or a chemical composition that a fact would be

said to be proved when exact mathematical formula is applied or the right proportion of various components of the chemicals are mixed in the cauldron of trial. **The final authority to hold whether a particular fact has or has not been proved is with the Court**. Section 3 of Evidence Act provides that a fact is said to be 'proved' when, after considering the matter before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. “The Court is the measure of all facts.”

99. After considering the entire facts as averred in the pleadings, the facts regarding which the depositions were made by the witnesses of the plaintiff as well as defendant the Court is of the opinion that even on the balance of probability the plaintiff failed to prove that documents Ex. PW-1/2 to PW-1/7 were executed by the defendant for the purposes of transferring ‘title’ of the suit property in favour of the plaintiff or creating a relationship of landlord and tenant between the plaintiff and the defendant.

100. In all probability the plaintiff got executed Ex. PW-1/2 to PW-1/6 by practising deception upon the defendant as well as the daughter of the defendant, Ms Shilpi that the plaintiff required said documents for the purpose of securing a loan from a bank. The runaway marriage of the plaintiff with the daughter of the defendant, Ms Shilpi on the balance of probability indicates that Ms Shilpi was in love/relationship with the plaintiff since the year 1999 - 2000.

101. The evidence on record does in fact indicate the slithering and treacherous personality of the plaintiff in getting the documents Ex.

PW-1/2 to PW-1/6 executed from the mother of Ms Shilpi to be as an ace of card for cajoling Ms Shilpi to marry the plaintiff or to use the said documents as an instrument of seeking revenge from the defendant as well as Ms Shilpi if the marriage of the plaintiff with Ms Shilpi encountered rough weather.

102. The plaintiff wanted to have an element of surprise with respect to documents Ex. PW-1/22 to PW- 1/6 and this could be the reason why since the alleged execution of the said documents in September 2005 the plaintiff didn’t get the electricity and water connection transferred in his name against the suit property mutated in the name of the plaintiff. This could have been also the reason as to why not a whisper was made regarding the existence of the said documents as well as Ex. PW-1/7 in the mutual divorce proceeding between the plaintiff and Ms Shilpi.

103. The discussion herein above is based on the premise that documents exhibited as Ex. PW-1/2 to PW-1/6 are title documents. But legally the said documents are not title/ownership documents with respect to any immovable property. Legal firmament on this aspect is a little bit complicated because of various judgments of the Hon'ble Supreme Court and Hon'ble Delhi High Court.

104. The Hon'ble Supreme Court in **Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana; 2011(183) DLT 1** held that no immovable property can be legally transferred or conveyed through a General Power of Attorney, Agreement to sell or Will. That an immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. In the said judgment, relying upon State of **Rajasthan v. Basant Nehata; 2005(12) SCC 77** the Hon'ble

Supreme Court held;

> "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.
>
> 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 executor.

105. On the basis of Power of Attorney, as held by the Hon'ble Supreme Court in **State of Rajasthan v. Basant Nehata**, (supra) and relied upon by the Hon'ble Supreme Court in **Suraj Lamp** (supra) an attorney holder cannot be the owner of immovable property though he may transfer or convey the title on behalf of the donor or the grantor of power of attorney which is a unilateral document whether irrevocable or not. If the power of attorney holder (grantee or donee) transfers immovable property, in law such transfer shall be deemed to have been effected by the principal/donor/grantor of power of attorney. However, Hon'ble Delhi High Court in **Ramesh Chand (Shri) v. Suresh Chand;**

2012(188) DLT 538 distinguished the Suraj Lamp (supra) judgment in the light of section 202 of Indian Contract Act. (In the humble opinion of this Court the ratio of the said judgment is not applicable in the present case).

106. The argument of the counsel for the plaintiff is that Suraj Lamp (supra) is prospective therefore the ratio of the said judgment is not applicable. So has been held by Hon'ble Supreme Court in **Maya Devi v. Lalta Prasad; 2015(5) SCC 588** that;

> My learned Brother has succinctly analysed the sterling judgment in Suraj Lamp and Industries Private Limited v. State of Haryana, (2009)7 SCC 363, which has been rendered by a Three-Judge Bench of this Court. I completely concur with the view that since General Power of Attorney (GPA) in favour of the Appellant was executed and registered on 12.05.2006, it could not be impacted or affected by the Suraj Lamp dicta. Furthermore, a reading of the order of the Executing Court as well as of the High Court makes it palpably clear that both the Courts had applied the disqualification and illegality imposed upon GPAs by Suraj Lamp, ***without keeping in mind that the operation of that judgment was pointedly and poignantly prospective***. This question has been dealt with by my esteemed Brother most comprehensively. (Emphasis supplied)

107. The Hon'ble Delhi High Court in **Sushil Kumar Bagga v. Dewan Chander Batra; 2014(207) DLT 346** in para 57 has observed:

> 57. ***The contention of the counsel for the appellant/defendant no. 2 that Suraj Lamp & Industries Pvt. Ltd. being prospective would thus not apply is not correct***. As aforesaid this was the view of this Court as far back as in Jiwan Das supra (1981). Moreover the protection afforded in Suraj Lamp & Industries Pvt. Ltd. is for regularising the transaction and cannot be used to contend that rights in property were created by an Agreement to Sell. Further the said protection is meant for claims of transferors after having transferred the property in such manner. (Emphasis supplied)

108. The Hon'ble Delhi High Court again in **Bishan Chand v. Ved Prakash; 2018(172) DRJ 420** in para 13 observed, "*There appears to*

be a prevalent ***misconception*** *that Suraj Lamp & Industries P. Ltd. supra is only prospective and not retrospective*." (Emphasis supplied).

109. The Hon'ble Delhi High Court in **Satvinder Singh v. Jasvinder Kaur; 2015(41) R.C.R.(Civil) 929** in para 13 held, "The decision in Suraj Lamp (supra) is dated 11.10.2011. *The transaction in question between the respondents and the erstwhile owners took place in the year 2009.* ***The decision in Suraj Lamp (supra) applies prospectively*** *and, therefore, would not affect the transaction, whereby the respondents derive their rights in the suit property, of the year 2009*". (Emphasis supplied)

110. The Hon'ble Delhi High Court in **Laxman Singh v. Urmila Devi; 2014(3) ILR (Delhi) 1649** in para 20 held, "*In view of the above legal position, it would follow that the defendant admittedly as per the written statement was inducted in the suit property as a licencee. Shri Ganpat Ram has now died on 20.08.2010. Their license has been terminated. He cannot challenge the title of the licensor now at this stage after 14 years. The reliance of the defendant on the judgment of Suraj Lamps (supra) is clearly misplaced.* ***Even otherwise, the judgment of the Hon'ble Supreme Court in Suraj Lamps (supra) has prospective effect and would not affect the transactions that have already been effected***". (Emphasis supplied)

111. This Court is aware that as per judicial propriety and principle of precedent on the same issue, the principle of law laid down by Hon'ble Supreme Court (*ratio decidendi*) is binding in this court. That if with respect to same factual scenario there is the law declared by Hon'ble Delhi High Court and the Hon'ble Supreme Court, then in such

situation, the law as declared by the Hon'ble Supreme Court has to be followed and applied by this Court. In the case of two judgements of Hon’ble Supreme Court on the same issue, the judgement having greater strength of Hon’ble judges is binding. The decision in Suraj Lamp (supra) judgement has been rendered by bench of 3 Hon’ble judges and in the said judgement in paragraph 17 the Hon’ble Supreme Court noted the submissions regarding making the decision in the said judgement made applicable prospectively to avoid hardship. And in paragraph 18 of the said judgement for certain aspects the Suraj Lamp (supra) judgement was made prospective. The Maya Devi (supra) judgement is the judgement of bench of 2 Hon’ble judges and both the judgements that is Suraj Lamp (supra) and Maiya Devi (supra) has referred about prospectivity and retrospectivity, the bench strength of Suraj Lamp (supra) judgement being higher, the ratio of the said judgement on all aspect shall be binding upon this Court. Both the paragraphs of Suraj Lamp (supra) judgement are quoted herein law for ready reference:

> 17. **It has been submitted** that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularise the transactions by obtaining deeds of conveyance. **It is also submitted that this decision should be made applicable prospectively to avoid hardship**.
>
> 18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. **They can continue to be treated as existing agreement of sale**. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. **The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A of**

> **Transfer of Property Act**. ***<u>If they are entered before this day, they may be relied upon to apply for regularisation of allotments/leases by Development Authorities</u>***. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.(Emphasis supplied)

112. The constitution bench of Hon'ble Supreme Court in **C.B.I. v. Keshub Mahindra etc. 2011; AIR (SC) 2037** has held in para 4 that, "***No decision by any Court including Supreme Court can be read in a manner as to nullify the express provisions of an Act or the Code***." For the purpose of considering the nature and effect of documents of the plaintiff (Ex. PW-1/2 to PW-1/6) with respect to the assertion of the plaintiff that the plaintiff is the owner of the suit property, relevant provisions of Transfer of Property Act may be referred with some profit [Ref. Paragraphs 7, 11 and 12 of the Suraj Lamp (supra) judgement].

113. The 'sale' under Transfer of Property Act has been defined under section 54 as, "*Sale, is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised*". Section 54 of Transfer of Property Act further provides, "***Sale how made***. *- Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing,* ***can be made only by a registered instrument***. *In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property*". Section 54 of Transfer of Property Act further provides, "***Contract for sale***. *- A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself,*

create any interest in or charge on such property".

114. The rule of law is that where a thing is required by a statute to be done in a particular way it shall be deemed to have prohibited that thing being done in any other way. (Ref. **Patna Improvement Trust v. Smt. Lakshmi Debi, (1963) Supp 2 SCR 812** relied upon in **State of Bihar v. J.A.C. Saldanna AIR 1980 SC 326**). If as per section 54 of Transfer of Property Act, in case of tangible immoveable property of more than ₹100/- sale can only be made by a registered instrument then other ways for the sale of such immoveable property are prohibited and if done that shall not constitute sale and therefore transfer of ownership.

115. In view of the discussion herein above, the Court agrees with the submissions of the counsel for the defendant that documents Ex. PW-1/2 to PW-1/6 legally cannot be said to be the documents of ownership/title of the suit property in favour of the plaintiff. And, as the said documents cannot not cloak the plaintiff with the ownership of the suit property and the fact that the defendant has challenged those documents, therefore the defendant could be said to have raised a cloud over the title of the plaintiff with respect to the suit property. And, therefore in view of the judgment of the Hon'ble Supreme Court **Anathula Sudhakar v. P. Buchi Reddy; 2008 AIR (SC) 2033** which has been relied upon by the Hon'ble Supreme Court in **T. V. Rama Krishna Reddy V/s M. Mullapa and Anr.** on dated 07.09.2021 (Civil Appeal No. 5577 OF 2021) it was necessary for the plaintiff to file a suit for the declaration and possession and as the plaintiff has not sought the relief of declarations the suit as filed by the plaintiff is not maintainable.

116. The 2 questions which have been formulated by the Court in paragraph 37 of this judgement have to be answered as follows; the plaintiff is neither the owner nor has any title over the suit property and that plaintiff is not the landlord with respect to the suit property and the defendant is not the tenant in the suit property.

117. In the light of discussion herein above issue no. 6 is decided in favour of the defendant against the plaintiff and it is hereby held that the documents which were purportedly executed by the defendant and relied upon by the plaintiff with respect to the suit property for staking the claim of the owner of the suit property were executed in favour of the plaintiff by playing/deception upon the defendant as well as Ms Shilpi and therefore those documents have no sanctity of any kind in the eyes of law and the said documents does not transfer any right, title or interest in the suit property in favour of the plaintiff.

118. In view of the aforesaid decision of the Court on issue no. 6, the issue no. 1 is decided against the plaintiff and in favour of the defendant thereby holding that plaintiff is not entitled for a decree of possession of the suit property.

Issue no. 2 Whether the plaintiff is entitled for the decree of arrears of rent against the defendant has pleaded in prayer clause (b) of the plaint? OPP

Issue no. 3 Whether the plaintiff is entitled for the decree of unauthorised use and occupation charges of the suit property against the defendant, as prayed in prayer clause (c) of the plaint?

OPP

Issue no. 4. Whether the plaintiff is entitled for the decree of permanent injunction qua the suit property as prayed in prayer clause (d) of the plaint? OPP

119. The issues no. 2, 3 and 4 are taken together as they are interconnected. In view of the decision of the Court on issues no. 1 and 6 the Court is of the opinion that on the basis of documents Ex. PW-1/2 to PW-1/6 the plaintiff is not the owner of the suit property, moreover, the Court has not also believed in the due execution of the said documents by the defendant in favour of the plaintiff along with the rent document Ex. PW-1/7. Therefore, the Court is further of the opinion that there is no relationship of landlord and tenant between the plaintiff and the defendant. And, therefore, the plaintiff is not entitled for any arrears of rent from the defendant as charges of the suit property and consequently the plaintiff is also not entitled for a decree of permanent injunction with respect to the suit property in favour of the plaintiff against the defendant. Issues under discussion are decided in favour of the defendant and against the plaintiff.

Relief

120. As all the issues which had been framed for the trial vide Order dated 12/01/2017 have been decided in favour of the defendant and against the plaintiff, therefore the suit filed by the plaintiff is liable to be dismissed. Accordingly, the present suit is dismissed with costs.

121. As the Court is of the opinion that by way of present suit the plaintiff tried to misuse the machinery of law for the predation of the defendant and her daughter Ms Shilpi and deprived the defendant from the title

and possession of the suit property with a false claim based on a false/illegally procured documents therefore under section 35 of CPC the costs of the suit is hereby quantified at ₹110,000/- to be paid by the plaintiff to the defendant.

122. Decree sheet be drawn in terms of the judgment. File be consigned to record room after necessary compliance.

123. Copy of the judgment be also placed in the connected matters bearing CS no. 2517/2016.

The suit is dismissed with costs.

VIJAY KUMAR JHA

Digitally signed by VIJAY KUMAR JHA
Date: 2022.01.04 14:50:32 +0530

Announced from residence **(VIJAY KUMAR JHA)**
through Webex **Addl. District Judge-02(East)**
on 3rd January, 2022. **Karkardooma Courts, Delhi.**