

IN THE COURT OF MS. SHILPI M JAIN: DISTRICT JUDGE-05
SOUTH WEST DISTRICT, DWARKACOURTS, NEW DELHI

IN THE MATTER OF :

CS DJ ADJ/17563/16

CNR No.DLSW010070422016



SHEELA DEVI
W/O LATE RAMESH KUMAR
R/O RZ-A-3-62, BLOCK A-3
GALI NO.4, CHANDER MOHALLA,
DHARAM PURA EXTENSION,
NAJAFGARH,
NEW DELHI-110043.

.....PLAINTIFF

VERSUS

1. RAJ KUMAR
S/O SHRI PUTTU LAL
R/O 200-A, DHARAMPURA EXTENSION,
NAJAFGARH, NEW DELHI-110043

2. KAMAL KISHORE,
S/O NOT KNOWN R/O 16/75,
JOSHI ROAD, KAROL BAGH,
NEW DELHI

3. KUSMA DEVI,
W/O RAJ KUMAR
R/O 200-A, DHARAMPURA EXTENSION,
NAJAFGARH,
NEW DELHI-110043..

.....DEFENDANTS

AND

IN THE MATTER OF :

CS DJ ADJ/816/17

DLSW010107692017



KAMAL KISHORE

S/O SH. LAXMI NARAYAN,
R/O87-A/1, FIRST FLOOR,
CHANDER MOHALLA,
NAJAFGARH, NEW DELHI-43

.....PLAINTIFF

Versus

1. SHEELA DEVI
W/O Lt. RAMESH CHAND,
R/O RZ-A-3-62, BLOCK A-3,
GALI NO. 4, CHANDER MOHALLA,
DHARAM PURA EXTENSION,
NAJAFGARH, DELHI-43

2. RAJ KUMAR
S/O Lt. SH. RAMESH KUMAR,
R/O87-A/1, GROUND FLOOR,
CHANDER MOHALLA, NAJAFGARH,
NEW DELHI-43

3. SMT. POOJA
W/O SH. PAPPU
D/O Lt. SH. RAMESH KUMAR,
R/O 87-A/1, GROUND FLOOR,
CHANDER MOHALLA,
NAJAFGARH, NEW DELHI-43

.....DEFENDANTS

SUIT	CS DJ ADJ 17563/2016	CS DJ ADJ 816/2017
Nature of Suit:	Suit for Declaration, Permanent, Mandatory Injunctions and Recovery of Rs. 4,80,000/- (Rupees Four Lacs Eighty thousand only)	Suit for partition, permanent and mandatory injunction and declaration
Date of Institution :	24.09.2016	05.09.2017
Date of Arguments:	03.04.2025	03.04.2025
Date of Judgment :	07.04.2025	07.04.2025

JUDGMENT

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1. Vide this common order, this court shall adjudicate suit for Declaration, Permanent, Mandatory Injunctions qua the property bearing no. *No.87-A/2, Dharampura, Chander Mohalla, Najafgarh, New Delhi-43 (hereinafter referred as the “suit property”)* and recovery of Rs. 4,80,000/- (Rupees Four Lacs Eighty thousand only) as filed by plaintiff i.e. Sheela against the defendant i.e. Raj Kumar, Kamal Kishor and Kusma Devi as well as suit for Partition, Permanent and Mandatory Injunction and Declaration of the sale deed dated 21/06/2016 null and void, with respect to 12.5 sq. yds. of the build-up suit property bearing no. 87-A/2, First Floor, Chander Mohalla, Najafgarh, New Delhi-43, Khasra no. 45/12 filed by plaintiff i.e. Kamal Kishor against defendants i.e. Sheela, Raj Kumar and Pooja. Although, in both suits common evidence and argument led by the parties, but for the purpose of clarification facts and issues involved in each case is given as follows:

FACTUAL BACKGROUND

CS DJ ADJ/17563/16 (Sheela Devi vs. Raj Kumar & Ors.)

2. Briefly stated, the Plaintiff is the owner of constructed property having two storey building on 25 sq.yds. plot No.87-A/2, situated at Khasra No.45/12 in the Revenue Estate of Village Najafgarh, Delhi State and the

abadi known as Dharampura, Chander Mohalla, Najafgarh, New Delhi 43 and the Plaintiff is having the possession of ground floor of the above stated property.

3. It is averred that, the above stated property was sold by Defendant No. 1 & 3 to the Plaintiff in exchange of her 50 sq. yds. constructed plot at 200-A, A-1-Block, Dharampura Extension, Najafgarh, New Delhi-110043 with his above stated suit plot admeasuring 25 sq.yds. constructed plot upto two storey building with cash amount of Rs.4,80,000/- (Rupees Four Lacs Eighty Thousand only) is to be paid as per agreement dated 28.05.2016. It is further averred that, the Defendant No.2 is the son-in-law who fraudulently received Rs. 4,80,000/- (Rupees Four Lacs Eighty Thousand only) from the Defendant No.1 & 3 and fraudulently made half share of the suit property No. 87-A/2, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43 in his name by executing GPA, SPA, Sale Agreement, Will, Affidavit, Receipt, Possession Letter and Indemnity Bond in his name alongwith half share i.e. 12.5 sq.yds. in favour of the Plaintiff. It is further averred that, the Defendants No. 1 and 2 in connivance with each other and taken the half share and keep the consideration amount of Rs. 4,80,000/- with them without paying any consideration amount to the Plaintiff. It is further averred that, the Plaintiff at the time of execution of receipt has objected to put her thumb impression on the receipt made before 6 witnesses but the Defendant No.2 is stated to have taken the amount from Defendant No.1 & 3. It is further averred that, the Plaintiff refused to sign the receipt on 28.05.2016 but, the Defendant No.2 promised her to pay the same by reaching at home after execution of the entire set of documents attested before Notary on 28.05.2016. It is further averred that, all the title documents of the suit property/chain of documents are also illegally retained by the

Defendants to harass the Plaintiff by his misdeeds and misappropriation. It is further averred that, the Plaintiff is entitled to claim the documents of the suit property from the Defendants.

4. It is further averred that, the half share of the suit property i.e. Ist Floor was fraudulently and forcefully occupied by the Defendant No. 2. It is further averred that, the Plaintiff sold the half share of the plot admeasuring 12.5 sq. yards equally among his son Shri Raj Kumar and daughter in law Smt. Pooja wife of other son namely Shri Pappu to save the property from the Defendants and that both the sons are occupying the ground floor of the suit property. It is further averred that, the Defendant No. 2 visited the suit property on 03.09.2016 and locked the first floor alongwith common latrine, bathroom and staircase to which Plaintiff and his family members make objection and called the PCR by dialing 100 number after which police came and the Complaint was amicably settled with the understanding that parties will approach competent court of law for settling their dispute of money and half share of the property. It is further averred that, the Defendant No. 2 again visited the suit property first floor and placed bricks at the door of the house. It is further averred that, the Plaintiff could not use the latrine, bathroom and facing hardship alongwith all family members due to act of defendant. It is further averred that, the Plaintiff who was the owner of 50 sq. yads. and exchange the same with 25 sq. yards. constructed plot with the Defendant No. 1 & 3 thus, he is entitled to claim the absolute ownership of the entire property and also entitled to claim the consideration amount of Rs.4,80,000/- from the Defendants. It is further averred that, the Plaintiff had approached defendants but they refused to do any favour with regard to the suit property and consideration amount of Rs.4,80,000/-. It is further averred that, the Defendant No. 2 and his wife has filed false criminal Complaint for sexual

harassment against her brother who is son of the Plaintiff but, the police officials after investigation closed the matter on account of the above stated dispute between the parties and warned the wife of the Defendant No.2 from lodging any false Complaint in future.

5. It is further averred that, the Plaintiff is residing in rented flat at RZA-3/62, Block A-3, Gali No.4, Chander Mohalla, Dharampura Extension, Najafgarh, New Delhi-43 by paying Rs. 3,200/- rent, as the first floor of the disputed premises is illegally occupied by the Defendant No.2 and locked by him alongwith common latrine bathroom and staircase which is more particularly shown in red colour in the site plan on record. It is further averred that, the Defendant No.2 in order to harass the Plaintiff has called the property dealers for sale of the suit property i.e. Ist Floor, Latrine, bathroom and stairs of property No.87-A/2, Dharampura, Chander Mohalla, Najafgarh, New Delhi-43. It is further averred that, the Plaintiff's son Shri Raj Kumar is residing at ground floor of the said property but, as the Defendant No.2 has locked the doors of the common latrine, bathroom and common staircase illegally, the Plaintiff's son could not use the latrine bathroom and stairs and facing lot of hardship on day-to-day basis from 03.08.2016 when the same were locked by the Defendant No.2 due to the same he also could not visit the roof of the first floor to look after the water tanks and cleaning the roof.

6. It is further averred that, the Plaintiff has filed a written Complaint dated 09.06.2016 to the Commissioner of Police, DCP, ACP and SHO, Police Station Najafgarh, New Delhi for fraud, cheating and misappropriation and threats against the Defendants No.1 & 2. It is further averred that, the Defendants and their associates are trying to sell the first floor / suit property to any third party and threatened the Plaintiff saying that

nobody can stop them. It is further averred that, the acts of the Defendants are illegal, arbitrary, forged, cheating and malafide and the same are being done to harass, cause hardships, humiliations, mental shock, agony, pains and suffering to the Plaintiff to cause wrongful loss to the Plaintiffs for her wrongful gains. It is further averred that, the police of P.S. Najafgarh, New Delhi also despite Complaints dated 09.06.2016 and personal visits of the Plaintiff, is not inclined to interfere into the matter alleging it to be civil in nature and, therefore, police has nothing to do in the same. It is further averred that, due to such illegal possession, threats, fraud and criminal misappropriation at the suit premises, there is imminent danger to the lives of Plaintiffs and their family members. It is further averred that, the Defendants are encouraging such illegal possession and threats with ulterior motive to grab the entire property of the Plaintiff. Hence, finding no other efficacious remedy, present suit has been filed by plaintiff with the following prayer:

- “I. to pass a decree of Possession in favour of the Plaintiff and against the Defendants in respect of suit property i.e. Ist Floor, Latrine, bathroom and stairs of property No.87-A/2, Dharampura, Chander Mohalla, Najafgarh, New Delhi-43 more specifically shown in red colour in the site plan attached;*
- II. A decree of Mesne Profit on account of illegal occupation and user of the premises in question from the date of institution of the suit till possession restored by the Defendant No.2 of the suit property at Rs.4,000/- per month paid by the Defendant No.2. The Plaintiff undertakes to pay court fee to which he may be found liable to pay at the time of passing of the decree for mesne profit/damages;*
- III. pass a decree of Permanent Injunction in favour of the Plaintiffs and against the Defendants and their associates thereby restraining the Defendants, their agents, servants, attorney or any other person acting on their behalf for creating any third party interest in the suit property bearing No. First Floor, common Latrine, bathroom and stairs of property No.87-A/2, Dharampura, Chander Mohalla, Najafgarh, New*

Delhi-43 more specifically shown in the red colour in the site plan annexed or any part thereof;

- IV. *To pass a decree of Mandatory Injunction in favour of the Plaintiff and against the Defendants thereby directing the Defendant No.2/defendants to remove bricks and open the locks of the suit property Ist Floor, Latrine, bathroom and stairs of suit property and also direct the Defendant No.1/defendants to re-execute the ownership documents of the suit the property i.e. No.87-A/2, Dharampura, Chander Mohalla, Najafgarh, New Delhi-43 admeasuring 25 sq.yds in favour of the Plaintiff with return of all the original documents of the suit property, which is more specifically shown in the red colour in the site plan in the interest of justice;*
- V. *to pass a decree of declaration to declare the nullity of the documents illegally conveyed joint ownership in GPA, SPA, deed of will, Affidavit, Receipt, Possession Letter, Indemnity bond executed on 28/05/2016 by Kusma Devi wife of Defendant No. 1;*
- VI. *to pass a decree for recovery of Rs. 4,80,000/- (Rupees Four Lacs Eighty Thousand only) in favour of the plaintiff and against the defendants with Pendente-lite and future interest @24% p.a. from the filing of the suit till its realization of the full amount alongwith the cost of the suit be also awarded to the plaintiff;*
- VII. *Cost of the suit may also be awarded in favour of the Plaintiff and against the Defendants; and*
- VIII. *Any other relief or reliefs which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case be also granted in favour of the Plaintiff against the Defendants.”*

7. The summons of the suit were issued to the defendant and written statement was filed on behalf of defendant wherein it is stated that plaintiff has not placed on record a single document in support of her alleged claim from the defendants and without any supporting documents there cannot be a presumption of the alleged ownership/claim of the two storey built up property bearing number 87-A/2, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43 and/or existence of alleged liability of the

defendant no. 1 towards the Plaintiff. It is further stated that, the present suit is liable to be dismissed on the ground that the Plaintiff has no locus standi, to lodge any claim against the defendants as the Plaintiff as per the contents of Para no. 4 of her Plaint, admittedly executed Agreement to sell, SPA, GPA, Affidavit, Receipt, Possession letter, Indemnity bond and also transferred the possession of the built up 12.5 Sq. Yds. of the above siad property in favour of her son 'Raj Kumar' and her daughter-in-law 'Pooja' against the receipt of consideration to the tune of Rs. 6,00,000/-in cash, thus the plaintiff cannot through the present suit claim the relief of possession of the above said property in favour of herself, over which she has no legal right/dominion as she has already parted off with her ownership/possession vide Agreement to sell, SPA, GPA, Affidavit, Receipt, Possession letter, Indemnity bond dated 21/06/2016 to her son 'Raj Kumar' and her daughter-in-law 'Pooja' i.e. its subsequent purchasers and since the present suit has not been instituted by the subsequent purchasers of built up 12.5 Sq. Yds. of the above said property, the present suit deserves dismissal. It is further stated that, the averments made in the plaint are frivolous, baseless and fabricated and the plaintiff has intentionally and deliberately not disclosed true and actual facts relating to the property bearing no. 87-A/2, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43 as mentioned in the plaint as well as the transaction that have taken place in respect of the sale/purchase of part/portion of the above said property.

8. It is further stated that, the Plaintiff 'Smt. Sheela Devi' in the month of May, 2016 proposed to the Defendant no. 1 'Sh. Raj Kumar' to settle all their claims against each other by exchanging the built up property bearing number 200-A, A-1 Block, Dharampura Extension, Najafgarh, New Delhi-43 ad-measuring 50 Sq yds, of which the Plaintiff 'Smt. Sheela Devi

was the owner, against the two storey built-up property bearing number 87-A/2, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43 ad-measuring 25 Sq. yds. of which 'Smt. Kusum Devi i.e. the wife of the Defendant no. 1 was the owner, in addition to the cash payment to the tune of Rs. 4.8 lacs, which was duly received in cash by the Plaintiff from Defendant no. 1 on 28/05/2016.

9. It is further stated that, the Agreement to sell, SPA, GPA, Deed of Will, Affidavit, Receipt, Possession letter, Indemnity bond executed on 28/05/2016 by 'Smt. Kusum Devi' i.e. the wife of the Defendant no. 1 in favour of the Plaintiff 'Smt. Sheela Devi' and Defendant no. 2 'Sh. Kamal Kishore' who is the son-in-law of the Plaintiff, against the two storey built up property bearing number 87-A/2, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43 ad-measuring 25 Sq. yds. of which 'Smt. Kusum Devi' i.e. the wife of the Defendant no. 1 was the owner along with the receipt of Rs. 4.8 Lacs dated 28/05/2016 duly acknowledged by the Plaintiff of the receipt of the cash of Rs. 4.8 Lacs from the Defendant no. 1, with her thumb impression in the presence/witness of several members of the society. It is further stated that, the Plaintiff had promised the third share i.e. about 16.5 sq. yds. in the built up property bearing number 200-A, Khasra no. 45/15, A-1 Block, Dharampura Extension, Najafgarh, New Delhi-43 ad-measuring 50 Sq. yds. to her daughter Smt. Rajni @Bina, W/o Sh. Kamal Kishore (i.e. Defendant no.2) on 08/10/2012 against the loan of Rs. 4 Lacs taken by the Plaintiff. It is further stated that, the Plaintiff and the Defendant no. 2 are thus after mutual agreement and for the above mentioned Rs. 4 lacs as a consideration, are the joint owners of two storey built up property bearing number 87-A/2. Chander Mohalla, Dharampura, Najafgarh, New Delhi-43 ad-measuring 25 Sq. yds. which is evident from the duly attested and signed Agreement to sell, SPA,

GPA, Deed of Will, Affidavit, Receipt, Possession letter, Indemnity bond executed on 28/05/2016.

10. It is further stated that, it was mutually decided between the Plaintiff and the Defendant no. 2 that while each of the parties have equal share in the Property in question i.e. 12.5 Sq. yds. each, thus the Plaintiff will be in possession of the ground floor while the Defendant no. 2 shall have the possession of the First floor of the two storey built up property bearing number 87-A/2, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43 ad-measuring 25 Sq. yds. It is further stated that, as per their understanding the Plaintiff and the Defendant no 2 started living in the property in question upon the mutual understanding that the Plaintiff shall be using the toilet on the first floor for some time after which the Plaintiff shall build her own toilet for herself on the ground floor by September, 2016.

11. It is further averred that, the son of the Plaintiff 'Shri Raj Kumar' started living forcibly on the ground floor of the property in question and after barely a month of the joint purchase of the property in question, the Plaintiff chose to sell her share i.e. half of the share of the plot admeasuring 12.5 sq. yds. equally among her son Shri Raj Kumar and daughter in law Smt. Pooja wife of Shri Pappu without informing/discussing about the same with the Defendant no. 2 and thereafter the Plaintiff through the subsequent owners of 12.5 sq. yds. of the property in question started creating ruckus and inconvenience for the family of the Defendant no. 2 who were peacefully residing on the First floor of the property in question as per the previous mutual understanding between the Plaintiff and the Defendant no. 2 and son of the Plaintiff 'Shri Raj Kumar through the help of local goons now started openly threatening the Defendant no. 2 to vacate the first floor of the property

in question stating that he (i.e. Raj Kumar) was the absolute owner of the property in question after his mother and that if the Defendant no. 2 did not vacate the property in question he and his family shall face dire consequences even to the extent of being killed.

12. It is further stated that, the son of the Plaintiff 'Raj Kumar' used to lock the entrance of the house purposefully and would keep the Defendant no. 2 and his family locked out of the property in question for hours in order to harass them. It is further stated that, the situation grew severe when the Defendant no. 2 and his family were not allowed the peaceful possession of the first floor of the property in question and the subsequent owners themselves and through their agents on the pretext of using the toilet passed lewd comments upon the daughter of the Defendant no. 2 who were alone in the house and harassed them in order to discourage the Defendant from continuing to reside in the property in question. It is further averred that, when the toilet was not constructed on the ground floor of the property in question as per the understanding, the Defendant no. 2 in the month of September, 2016 hopelessly locked the toilets on the first floor for the safety and security of his family. It is further stated that, when the complaint of the Defendant no. 2 dated 20/08/2016 to the Commissioner of Police, New Delhi was left unheard, the Defendant no. 2 even wrote an application dated 06/09/2016 to the PMO, elaborating the atrocities being committed by the son of the Plaintiff 'Raj Kumar'.

13. It is further stated that, on one hand the Plaintiff seeks the relief of the possession of two storey built up property bearing number 87-A/2. Chander Mohalla, Dharampura, Najafgarh, New Delhi-43 ad-measuring 25 Sq. yds. claiming herself to be the absolute owner of the property in question;

while on the other hand she admits in para no. 4 of the plaint that 'the Plaintiff sold the half of the share of the plot admeasuring 12.5 sq. yds. equally among her son Shri Raj Kumar and daughter-in-law Smt. Pooja wife of Shri Pappu to save the property from the Defendants. It is further stated that, both the sons are occupying the ground floor of the suit property. The copies of the GPA, SPA, Agreement to sell, Receipt of payment, Affidavit, Possession Letter etc. are annexed herewith....' thus, impliedly admitting the fact that the Defendant no. 2 is the owner of half of the two storey built up property bearing number 87-A/2, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43 ad-measuring 25 Sq. yds. Hence, the present suit is liable to be dismissed.

14. Plaintiffs have filed replication to the written statement of defendants wherein they reaffirmed and reiterated the contents of their plaint and denied all the averments made in the written statement of defendants.

CS DJ ADJ/816/17 (Kamal Kishore vs. Sheela Devi & Ors.)

15. Briefly stated, the Plaintiff is the joint owner of the two storey built up property built upon land ad-measuring 25 Sq. Yds., bearing number 87-A/1, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43, Khasra No. 45/12 vide the SPA, GPA, Agreement to Sell, Affidavit, Receipt, Possession letter, Deed of will and Indemnity Bond, dated 28/05/2016 executed by Smt. Kusum Devi jointly in favour of the Plaintiff and Defendant no. 1, and the Plaintiff is currently in possession of the First floor of the aforesaid property. It is further averred that, the Defendant No. 1 was the joint owner of the two storey built up property built upon land ad-measuring 25 Sq. Yds., bearing number 87-A/1, Chander Mohalla, Dharampura,

Najafgarh, New Delhi-43, Khasra No. 45/12 vide the property documents dated 28-05-2016 executed by Smt. Kusma Devi jointly in favour of the Plaintiff and Defendant no. 1. It is further averred that, the Defendant No. 2 & 3 claim to be the subsequent purchasers of the 12.5 Sq. Yds. of the two storey built up property built upon land ad-measuring 25 Sq. Yds., bearing number 87-A/2, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43, Khasra No. 45/12, illegally vide documents i.e. SPA, GPA, Agreement to Sell, Affidavit, Receipt, Possession letter, Deed of will and Indemnity Bond executed on 21-06-2016 by the Defendant No.1 in favour of Defendant No. 2 & 3, whereby the Defendant no. 1 illegally parted with her un-demarcated share in the suit property without the knowledge or consent of the Plaintiff, who is the joint owner of the property alongwith Defendant no. 1 vide vide the documents executed dated 28-05-2016. It is further averred that, the Defendant no. 2 & 3 are currently in illegal possession of the ground floor of the aforesaid property.

16. It is further averred that, the constructed Property (dwelling house) two storey built up property built upon land ad-measuring 25 Sq. Yds., bearing number 87-A/1, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43, Khasra No. 45/12. It is further averred that, the suit property consists of two floors i.e. ground floor and first floor constructed upon the land ad-measuring 25 Sq. Yds. It is further averred that, the description of the suit property in the property documents executed on 21.06.2016 is mistakenly/malafidely mentioned as 87-A/2, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43, Khasra No. 45/12.

17. It is further averred that, the suit property i.e. the constructed Property (dwelling house) two storey built up property built upon land ad-

measuring 25 Sq. Yds., bearing number 87-A/1, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43, Khasra No. 45/12 was jointly purchased by the Plaintiff and the Defendant no. 1, without any demarcation of share, vide the documents dated 28-05-2016 executed by Smt. 'Kusma Devi'. It is further averred that, the Defendant no. 1 unilaterally and without the consent, knowledge and permission of the Plaintiff illegally parted with her un-demarcated share in the suit property and illegally sold 12.5 Sq. Yds. of the suit property to the Defendant No.2 & 3, who claim to be the subsequent purchasers of the 12.5 Sq. Yds. of the two storey built up property built upon land ad-measuring 25 Sq. Yds., bearing number 87-A/2, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43, Khasra No. 45/12, vide the illegal sale deed dated 21-06-2016.

18. It is further averred that, in the first place the suit property is un-demarcated and even otherwise the Plaintiff has the pre-emptive right upon the portion of the suit property illegally sold by the Defendant no. 1 in favour of Defendant no. 2 & 3 vide the illegal documents executed on 21-06-2016, as the suit property is the dwelling house of the Plaintiff and Defendant no. 1, and was purchased with the intention of residing in the suit property. Thus, Defendant no. 1 by doing so has committed a fraud upon the Plaintiff, who is the joint owner of the property alongwith Defendant no. 1 by virtue of property documents executed, dated 28.05.2016. It is further averred that, the Plaintiff is currently in possession of the First Floor of the suit property, while the Defendant no. 2 & 3 are currently in forcible and illegal possession of the ground floor of the suit property by virtue of the execution of illegal documents dated 21-06-2016 executed by the Defendant no. 1 in favour of Defendant no. 2 & 3. That the Defendant no. 2 & 3, since the day they occupied the ground floor of the suit property, have been constantly harassing

the Plaintiff and his family by creating hindrances for the Plaintiff and his family in accessing their portion of property by closing the gate on the ground floor, thus hampering the Plaintiff's ingress and egress.

19. It is further averred that, the Defendant no. 2 & 3 with the ulterior motive of harassing the Plaintiff and his family are now restraining them from accessing the First floor of the suit property and claiming to be the owner of the 12.5 Sq. Yds. of the suit property from the land beneath to the roof of the first floor of the suit property.

20. It is further averred that, the Defendant no. 2 & 3 also played mischief upon the Plaintiff and his family, by disconnecting the electricity supply to the floor of the Plaintiff. It is further pertinent to mention here that the electricity meter is still in the name of the previous owner of the property i.e. Smt. Kusum Devi, and the Plaintiff has time and again requested the Defendants to get the electricity connection transferred and the husband of 'Smt. Kusum Devi' has already written to the BSES to disconnect the electricity meter, but the Defendant no. 2 & 3 always create ruckus when the officials from BSES come to disconnect the electricity meter in the name of previous owner. It is further averred that, the Plaintiff and his family are continuously harassed and abused by the Defendants and seeing no other recourse, the Plaintiff is constrained to institute the present suit.

21. It is further averred that, Smt. Kusum Devi, W/o Sh. Raj Kumar, executed Agreement to sell, SPA, GPA, Deed of Will, Affidavit, Receipt, Possession letter, Indemnity bond on 28/05/2016 against the constructed two storey built-up property bearing number 87-A/2, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43 ad-measuring 25 Sq. yds., of which

she was the rightful owner, in favour of Plaintiff and Defendant no. 1 jointly, against the settlement of all debts and balances with the husband of 'Smt. Kusum Devi'. It is further averred that, the Defendant no. 1 had promised the third share i.e. about 16.5 sq. yds. in the built up property bearing number 200-A, Khasra no. 45/15, A-1 Block, Dharampura Extension, Najafgarh, New Delhi-43 ad-measuring 50 Sq. yds. to her daughter Smt. Rajni @ Bina, W/O Sh. Kamal Kishore (i.e. the wife of Plaintiff) on 08/10/2012 against the loan of Rs. 4 Lacs taken by the Defendant no. 1. It is further averred that, it was mutually decided between the Defendant no. 1 and the Plaintiff that while each of the parties have equal share in the Property in question i.e. 12.5 Sq. yds. each, thus the Defendant no. 1 will be in possession of the ground floor while the Plaintiff shall have the possession of the First floor of the two storey built up property bearing number 87-A/1, Chander Mohalla, Dharampura, Najafgarh, New Delhi-43 ad-measuring 25 Sq. yds. It is further averred that, the suit property was not demarcated though and the shares of the Plaintiff and the Defendant no. 1 was never defined either in sell and purchase documents, or otherwise.

22. It is further averred that, as per their understanding the Defendant no. 1 and the Plaintiff started living in the suit property in upon the mutual understanding that the Defendant no. 1 shall be using the toilet on the first floor for some time after which the Defendant no. 1 shall build her own toilet for herself on the ground floor by September, 2016. It is further averred that, the son of the Defendant no. 1 'Shri Raj Kumar' (i.e. Defendant no. 2) started living forcibly on the ground floor of the property in question and after barely a month of the joint purchase of the property in question, the Defendant no. 1 chose to illegally transfer her un-demarcated share i.e. half of the share of the plot admeasuring 12.5 sq. yds. equally among her son Shri

Raj Kumar and daughter in law Smt. Pooja wife of Shri Pappu (i.e. the Defendant no. 2&3); without informing/discussing/consent about the same with the Plaintiff. It is further averred that, thereafter, Defendant no. 1 through the subsequent owners i.e. the defendant no. 2 & 3, started creating ruckus and inconvenience for the Plaintiff.

23. It is further averred that, the Subsequent purchaser of the 12.5 sq. yds. of the property in question i.e. son of the Defendant no. 1 'Shri Raj Kumar' through the help of local goons now started openly threatening the Defendant no. 2 to vacate the first floor of the property in question stating that he (i.e. Raj Kumar') was the absolute owner of the property in question after his mother and that if the Defendant no. 2 did not vacate the property in question he and his family shall face dire consequences even to the extent of being killed. It is further averred that, the son of the Defendant no. 2 used to lock the entrance of the house purposefully and would keep the Plaintiff and his family locked out of the property in question for hours in order to harass them. It is further averred that, the Plaintiff made several complaints against the misdeeds of the Defendant no. 2.

24. It is further averred that, the situation grew severe when the Plaintiff and his family were not allowed the peaceful possession of the first floor of the property in question and the Defendant no. 2 & 3 themselves and through their agents on the pretext of using the toilet passed lewd comments upon the daughter of the Plaintiff who were alone in the house and harassed them in order to discourage the Plaintiff from continuing to reside in the property in question. It is further averred that, the plaintiff requested Defendant no. 1 to construct the toilet on the ground floor as agreed between them and even proposed to make financial contribution in the construction of

the same in the form of raw-material, but the Defendant no. 1 but, he made unscrupulous demand of erecting a brick wall right in the middle of the property in question and divide the property in equal halves among the Plaintiff and the subsequent purchasers. It is further averred that, finding no other option and considering the safety of his family; in the month of September, 2016 plaintiff locked the toilets on the first floor for the safety and security of his family. It is further averred that, when the complaint of the Plaintiff dated 20/08/2016 to the Commissioner of Police, New Delhi was left unheard, the Plaintiff even wrote an application dated 06/09/2016 to the PMO, elaborating the atrocities being committed by the Defendant no 2.

25. It is further averred that, the defendant no. 3 takes bath below the stairs of ingress and egress and deliberately creating creating hindrance in ingress and egress of the Plaintiff. It is further averred that, the intention of the Defendant no.1 turned malafide after the due execution of the property documents dated 21.06.2016 and she filed a false and frivolous suit against the Plaintiff bearing Suit Number: 449/2016, titled 'Sheela Devi v. Raj Kumar & Ors. Pending adjudication before the Hon'ble Court of Ld. ADJ, Dwarka Court, Delhi. It is further averred that, xiv. That the intentions of the Defendants have further turned malafide as the Defendants are restraining Plaintiff and his family to enter the property to which they have every right by the virtue of the documents executed in the joint name of Plaintiff and Defendant no.1.

26. It is further averred that, the Defendant no.2 & 3 first took the possession of entire ground floor and now they claim 12.5 sq.yds entirely from the base and creating hurdles for the Plaintiff and his family. It is pertinent to mention here that the Defendant no. 2 & 3 were very well aware

of the fact that the property was purchased by the Plaintiff and Defendant no.1 jointly, and further that the share in the property was not demarcated between the Plaintiff and Defendant no. 1. It is further averred that, the Plaintiff has filed several police complaints against the atrocities of the Defendant which are attached with the present suit.

27. It is further averred that, the documents executed illegally i.e. Agreement to sell, SPA, GPA, Deed of Will, Affidavit, Receipt, Possession letter, Indemnity bond dated 21.06.2016, whereby the Defendant no. 1 has illegally transferred her un-demarcated share to the Defendant no. 2 & 3, unilaterally and without the consent of the Plaintiff, despite knowing the fact that the suit property was a dwelling house, does not specify the demarcation of the property transferred and it barely states 12.5 Sq. Yds. of the property in question.

28. It is further averred that, the defendant no. 2 & 3 cannot have the better title than defendant no. 1 and he may be evicted from taking the illegally sold portion of the said property as same will cause great prejudice to the plaintiff and his family. It is further averred that, the way and manner in which the suit property has been sold leaves the remaining property absurd which will affect the utility of the suit property permanently. Hence, present suit has been filed with following prayer:

“i. That the Hon'ble Court may be pleased to declare the suit property described in Para no. 3 of the Plaint, a dwelling house and thereby declaring the Agreement to sell, SPA, GPA, Deed of Will, Affidavit, Receipt, Possession letter, Indemnity bond dated 21.06.2016 executed by the Defendant no. 1 in favour of the Defendant no. 2&3 null and void as the Defendant no. 1 had no legal right to transfer the un-demarcated/undefined portion i.e. 12.5 Sq. Yds. of the suit

property arbitrarily to Defendant no. 2&3, without the consent or knowledge of the Plaintiff and without offering the Plaintiffs to buy the same first;

- ii. That the Hon'ble Court may be pleased to divide the suit property in metes and bounds and divide the suit property equally between the Plaintiff and the Defendant no. 1, or the partition may be done by selling the suit property, equally between the Plaintiff and the Defendant no. 1;*
- iii. That the Hon'ble Court may be pleased to evict the Defendant no. 2&3 from 12.5 Sq. Yds. of the suit property unlawfully possessed by them by virtue of the Agreement to sell, SPA, GPA, Deed of Will, Affidavit, Receipt, Possession letter, Indemnity bond dated 21-06-2016;*
- iv. That on such adjudication the court may be pleased to declare that the Plaintiff had pre-emptory right to purchase the 12.5 Sq. Yds. of the suit property from the Defendant no. 1 in the name of Plaintiff for valid consideration which the Plaintiff is ready to pay or for any other amount the Hon'ble Court thinks fit and proper, declaring the Agreement to sell, SPA, GPA, Deed of Will, Affidavit, Receipt, Possession letter, Indemnity bond dated 21-06-2016 null and void and illegal and not binding upon the Plaintiff and that the Hon'ble Court may be pleased to direct the Defendant no. 1-3 to execute appropriate transfer documents in favour in favour of the Plaintiff, failing which the Court may be pleased to execute property documents for the 12.5 Sq. Yds. of the Suit property in favour of the Plaintiff;*
- iv. That the Hon'ble Court may be pleased to direct the Defendants not to obstruct the peaceful occupancy of the Plaintiff and his family and not to hinder the ingress and egress of the plaintiff and his family and friends into the suit property or alternatively the construction of separate ingress and egress may be allowed to the Plaintiff;*
- v. That the Hon'ble Court may be pleased to restrain the Defendant no. 2&3 from further alienating the 12.5 Sq. Yds.*

portion of the dwelling house of the Plaintiffs as demarcated in the para no. 3 of the Plaint;

- vi. Pass such other and or further order, direction or relief that this Hon'ble Court may deem it fit and proper in the interest of justice and in favour of the Plaintiffs.”*

29. Summons were issued to defendants who filed their WS wherein it is stated that the plaintiff has no locus-standi to file or institute the present suit against the Defendants as the Defendant No.1 has already challenged the title documents alleged by the Plaintiff in this plaint as ownership document in a separate suit. It is further stated that, under Section 10 CPC, the proceedings of this suit may be stayed till the pendency of the separate suit. It is further averred that, the suit is not maintainable against the Defendants in the present form as there is no cause of action or any relief sought by the Plaintiff in the plaint and the same is liable to be dismissed under Order VII Rule 11 CPC. It is further stated that, the suit has not been properly valued the purposes of court fees and jurisdiction. It is further stated that, the plaintiff has not come to this Hon'ble Court with clean hands and has suppressed the material and true facts. It is further stated that, the Plaintiff has placed on record false and fabricated documents while alleging the 1/3rd share in the property owned by Defendant No.1.

30. It is further averred that, the verification of the plaint of the plaintiff is totally bad in law, unwarranted and untenable in the eyes of law, equity and justice and the plaintiff has left the column of vacant/blank month and date in the verification and also above verification in the copy supplied to the defendant, hence, the suit deserves dismissal on this ground alone. It is

further stated that, the suit is barred by doctrine of *lis pendens* enumerated under Section 52 of the Transfer of Property Act.

31. It is further averred that, the Plaintiff is claiming partition/possession of the suit property on the basis of documents i.e. SPA, GPA, Agreement to Sell, Affidavit, Receipt, Possession Letter, Deed of Will and Indemnity Bond dated 28.05.2016 executed by Smt. Kusum Devi jointly in favour of the Plaintiff and the Defendant No.1 as mentioned in the plaint and in this regard a suit is also pending between the parties before the Hon'ble Court of Shri Kamaljeet Arora, ADJ, Dwarka Courts, New Delhi vide Suit No.449/2016 titled as "Sheela Devi vs. Raj Kumar & Ors". It is further stated that, the Defendant No.1 has challenged the execution of documents jointly with the Plaintiff on the ground that the same are forged and fabricated by the Plaintiff without having any right, title or interest in the suit property.

32. It is further stated that, the Plaintiff is seeking the partition of the suit on the basis of GPA, SPA etc which are subject matter of nullity in the said suit and the matter is subjudice before the Hon'ble Court, therefore, the Plaintiff has no right or title to claim the same in the present suit unless and until the said suit comes to end in favour of either party. Hence, no cause of action has ever arisen in their favour for seeking partition of property. the suit

33. It is further stated that, the Plaintiff is seeking nullity of those documents which are executed by the Defendant No.1 for the property i.e. Ground Floor of the suit property in favour of her two sons, Defendants No.2 and 3. It is further stated that, the Plaintiff has no right, title or interest to challenge the same as the Defendant No.1 has exclusive right and ownership

in her favour to transfer the possession in anybody's favour or to her sons. It is further stated that, the Plaintiff is seeking possession of the property in the present suit while admitting that the first floor of the suit property is in his possession under lock. In view of this fact also, the plaint is not maintainable as there is no claim of partition can be made on the basis of those documents which are under challenge in the pending suit and which have been made fraudulently by the Plaintiff himself. Therefore, the plaint is liable to be rejected outrightly.

34. It is further stated that, the Plaintiff has also sought the nullity of transfer of ownership documents i.e. SPA, GPA etc dated 21.06.2016 in favour of Defendants No.2 and 3 executed by Defendant No.1, which is not maintainable in the eyes of law as the Plaintiff has admitted that the ground floor ownership lies with the Defendant No.1 only, therefore, the Plaintiff cannot seek the nullity of said ownership documents. It is further stated that, the motive to filing the present suit by the Plaintiff is just to grab the suit property owned and possessed by the Defendant No.1 who is about 70 years of age and is being harassed by the Plaintiff with malafide intention and oblique motive. In his parawise reply, defendants have denied entire contents of the plaint.

35. Plaintiffs have filed replication to the written statement of defendants wherein they reaffirmed and reiterated the contents of their plaint and denied all the averments made in the written statement of defendants.

ISSUES

CS DJ ADJ/17563/16 (Sheela Devi vs. Raj Kumar & Ors.)

36. On the basis of pleadings of parties, vide order dated 26.10.2018 passed by Ld. Predecessor of this court, following issues were framed:

- i. *Whether the suit has been under valued for the purpose of court fees and proper court fees have not been affixed?OPD*
- ii. *Whether defendant nos.1 & 3 sold/exchanged two storey building of 25 sq. yds. plot no.87-A/2, situated at Khasra no.45/12 in the revenue estate of village Najafgarh, Delhi state and the abadi known as Dharampura, Chander Mohalla, Najafgarh, New Delhi-43 in lieu of the plaintiff's property i.e. 50 sq.yds. constructed plot at 200-A, A-1 Block Dharampura Extension, Najafgarh, New Delhi-43?OPP*
- iii. *Whether defendant no.2 fraudulently received Rs.4,80,000/-from defendant nos.1 & 3 and has also fraudulently got executed documents such as GPA, SPA, sale agreement, Will, affidavit, receipt, possession letter and indemnity bond in his name along with half share i.e. 2.5 sq. yds i.e. property 1 floor, latrine, bathroom and stairs of property no. 87-A/2, Dharampura, Chander Mohalla, Najafgarh, New Delhi-43 (hereinafter referred to as suit property) in his favour ?OPP*
- iv. *Whether the plaintiff is entitled to decree of possession as well as permanent injunction in respect of the suit property against the defendant, as prayed for?OPP*
- v. *Whether the plaintiff is entitled to decree of mandatory injunction against the defendant, as prayed for?OPP*
- vi. *Whether the plaintiff is entitled to decree of declaration declaring the null and void documents conveying joint ownership of suit property vide GPA, SPA, deed of Will, affidavit, receipt, possession letter,*

indemnity bond executed on 28.05.2016 by Kusma Devi-wife of defendant no.1, as prayed?OPP

- vii. *Whether the plaintiff is entitled to recovery of Rs.4,80,000/-against the defendants alongwith pendente lite and future interest @24% p.a. as prayed for?OPP*
- viii. *Whether the plaintiff is entitled to mesne profits/damages against the defendant, as prayed for? OPP*
- ix. *Relief.*

CS DJ ADJ No. 816/2017 (Kamal Kishore vs. Sheela Devi & Ors.)

37. On the basis of pleadings of parties, vide order dated 26.10.2018 passed by Ld. Predecessor of this court, following issues were framed:

- i. *Whether the suit is barred under Order 10 CPC in view of the pendency of the suit no.449/2016 titled as 'Sheela Devi vs. Raj Kumar & Ors.'?OPD*
- ii. *Whether the suit has been under valued for the purpose of jurisdiction and court fees?OPD*
- iii. *Whether the suit property is a joint property of the plaintiff and defendant no.1?OPP*
- iv. *If the answer to the aforesaid issue no.3 is in affirmative, as to what share the plaintiff is entitled to?OPP*
- v. *Whether the plaintiff is entitled to declaration by declaring agreement to sell, SPA, GPA, deed of Will, affidavit, receipt, possession letter, indemnity bond, dated 21.06.2016 executed by defendant no.1 in favour of defendant nos.2 & 3 as null and void?OPP*
- vi. *Whether the plaintiff is entitled to permanent injunction in the suit property, as prayed?OPP*
- vii. *Relief.*

38. Record reveals that, an application u/o VI Rule 17 CPC filed on behalf of the plaintiff for filing amended plaint which was allowed and as

alternative prayer has been included, following additional issue was framed vide order dt. 01.03.2024:

Additional Issue: *Whether in alternative, plaintiff is entitled for return of chain of title documents and possession of property bearing no. 200-A, Block A1, Dharampura Extn, Najafgarh, New Delhi-110043? OPP.*

JOINT EVIDENCE LED BY THE PARTIES

39. Perusal of record reveals that vide order dt. 04.07.2019 CS DJ ADJ 816/17 and CS DJ ADJ 17563/16 are combined with for the purpose of evidence wherein evidence led by plaintiff in CS DJ ADJ 816/17 is to be read as evidence on behalf of defendant in CS DJ ADJ 17563/16 and vice versa.

40. In support of his case, plaintiff (in CS DJ ADJ 816/17) examined six witnessess. PW1 Sh. Kamal Kishore S/o. Sh Laxmi Narayan, tendered his evidence by way of affidavit **Ex. PW1/A** and has relied upon following documents:

Sl. No.	Particulars of Documents	Exhibits/Mark
1.	Copy of Agreement to sell, SPA, GPA, deed of will, affidavit, Receipt, possession letter etc all dated 28.05.2016	Ex. PW1/1 (colly) (OSR)
2.	Copy of Affidavit dated 08.10.2012 executed by defendant no.1 in presence of the plaintiff promising 1/3rd share in property no. 200-A, Dharampura, Najafgarh to the wife of the plaintiff	Ex. PW1/2 (OSR)
3.	Copy of Agreement to sell, SPA, GPA, Deed of Will, Affidavit, Receipt, Possession Letter, all dated 21.06.2016	Mark-A (colly)

4.	Copy of site plan	Mark B
5.	Copy of complaint dated 20.08.2016 made to the Commissioner of Police, Delhi is marked	Mark C
6.	Copy of application dated 06.09.2016 made to PMO	Mark D
7.	Copy of complaint dated 21.07.17 made to DCP is marked	Mark E

PW1 was cross-examined by Ld. Counsel for defendant at length and discharged.

41. PW2 Sh. Ms. Beena Talwar W/o. Sh. Kamal Kishore tendered her affidavit Ex. PW2/A and relied upon the documents which are already exhibited by PW-1. PW2 further relied upon the document i.e. receipt of Rs. 4.8 Lacs dated 28.05.2016, same is Ex. PW2/1 (OSR) (Objected to by the Ld. Counsel for defendant subject to mode of proof). PW2 was cross-examined by Ld. Counsel for defendants and discharged.

42. PW-3 Ms. Kusma Devi @ Kusum Devi W/o Sh. Raj Kumar tendered her affidavit Ex. PW3/A and relied upon the documents which are already exhibited by PW-1 and PW-2. PW3 was cross-examined by Ld. Counsel for defendants and discharged.

43. PW-4 Sh. Raj Kumar S/o Sh. Putu Lal tendered his affidavit Ex. PW4/A and relied upon the documents which are already exhibited by PW-1 and PW-2. PW4 was cross-examined by Ld. Counsel for defendants and discharged.

44. PW-5 Sh. Sushil Kumar S/o late Sh. B. S. Sharma tendered his affidavit Ex. PW5/A. PW5 was cross-examined by Ld. Counsel for defendants and discharged.

45. PW-6 Smt. Meena W/o Sh. Shankar Lal tendered her affidavit which is Ex. PW6/A. PW6 relied upon the complaint to ACP to PS Najafgarh dated 28.09.2016 against the misdeeds of son of defendant no. 1 and defendant no. 1, the copy of the same is already on record and same is Ex. PW6/1 (OSR) (however it has been mentioned as Ex. PW6/A in her affidavit) (objected to mode of proof). PW 6 also rely on the document already Ex. PW1/2. PW6 was cross-examined by Ld. Counsel for defendants and discharged.

46. Thereafter, plaintiff's evidence was closed and matter was fixed for DE.

47. In her defence, defendant (CS DJ ADJ 816/17) has examined 3 witnesses. DW-1 Smt. Sheela Devi W/o Late Ramesh Kumar tendered her evidence by way of affidavit Ex.DW1/A and relied upon the following documents:

Sl. No.	Particulars of Documents	Exhibits/Mark
1.	GPA, SPA, Sale agreement, Will, affidavit, receipt, possession letter, indemnity bond all dated 28.05.2016	Already Ex. PW1/1
2.	GPA, agreement to sell, affidavit, receipt, possession letter, Will, SPA, indemnity bond, specimen signatures and ID proofs of Sheela Devi, Raj Kumar and Pooja	Ex. DW1/1 (colly) (OSR)
3.	Original Site plan	Ex. DW1/2
4.	Copy of postal receipts of criminal	Mark Z

	complaint	
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DW1 was cross-examined by Ld. Counsel for plaintiff at length and discharged.

48. DW2 Sh. Raghunandan Sharma S/o Late Sh. Parmanand Sharma tendered his affidavit in evidence Ex. DW2/A and relied upon the documents which are already Ex. PW1/1 (colly) and bears his signatures at points X1 to X6. DW2 was cross-examined by Ld. Counsel for plaintiff at length and discharged.

49. Thereafter, DE was closed and matter was listed for final arguments.

50. Arguments heard. Record perused.

SUBMISSIONS OF THE PARTIES

51. Ld counsel for plaintiff i.e. Kamal Kishore (CS DJ ADJ 816/17) strongly objected the plea made by defendant. It is submitted that there is no connection between the sale of 50 Sq. Yds. property and purchase of 25 Sq. Yds. property as both are independent transactions wherein property of 50 Sq. Yds. was sold by defendant for Rs. 15,00,000/- to Kusma Devi while property of 25 Sq. Yds. was jointly purchased by defendant and plaintiff for Rs. 12,00,000/- i.e. paid in cash by both parties. It is submitted that receipt of Rs. 12,00,000/- itself proved that suit property was purchased for consideration of Rs. 12,00,000/- and not in exchange of some 50 Sq. yds. property. It is further submitted that by virtue of title documents Sheela Devi and Kamal Kishore became joint owner of 25 sq. yds property i.e. 12.5 sq.

yds each, hence, partition for the same is sought. It is further averred that defendant without any authority and illegally transferred her share of 12.5 sq. yds in favour of her son namely Raj Kumar and daughter-in-law namely Pooja wife of Pappu. It is further submitted that since defendant i.e. Sheela Devi was owner of 12.5 sq yds only that is why she executed subsequent document for 6.25 sq. yds each in favour of her son and daughter-in-law. It is further submitted that since Raj Kumar and Pooja entered into the shoes of defendant, suit property may be equally divided between plaintiff for ½ share and Raj Kumar and Pooja for 1/4th share each. Ld counsel for plaintiff further relied upon the testimony of Sheela Devi wherein she herself had disputed execution of subsequent document in favour of her son and daughter-in-law as well as receipt of consideration amount. Lastly it is submitted that suit for declaration as filed by defendant may be dismissed and present suit for partition may be decreed.

52. *Per contra*, Ld. counsel for defendant i.e. Sheela (CS DJ ADJ 816/17) strongly objected the plea made by plaintiff. It is submitted that, the factum of exchange of 50 sq. yds. constructed house with 25 sq. yds. house i.e. suit property is not disputed. It is submitted that document executed between the parties for transferring the right, title and interest do not convey any title being unregistered/notarized document except the admission for exchanging the respected properties between them on account of general agreement dated 28.05.2016 i.e. Ex.PW3/A (OSR). It is further submitted that suit for partition i.e. CS NO. 816/17 as filed by Kamal Kishore is liable to be dismissed being based upon unregistered document. It is further submitted that defendant duly proved her claim of exchange of property and receipt of Rs. 4,80,000/- by Kamal Kishore during evidence while defendant failed to give any substantial defence, hence, suit may be decreed in favour of

defendant. During the course of arguments Ld. counsel for defendant heavily relied upon the deposition given on behalf of Kamal Kishore wherein entire claim of the defendant duly admitted. Lastly, it is submitted that since defendant raised cloud on the title of plaintiff, suit filed by plaintiff may be dismissed as no declaratory relief sought by him. Ld. Counsel for defendant relied upon following judgments in support of his contentions:

- a. *"Sonu deceased through Lrs Vs Amrtulal deceased through Lrs" dated 31.01.2025 passed by High Court of Judicature at Bombay in Second Appeal No 152/1994.*
- b. *"Birma Devi & Ors. Vs Subhash & Anr." in SLP-29397/2024 dated 06.12.2024 passed by Hon'ble Supreme Court of India.*
- c. *"Shivraj Yadav & Ors Vs Dr Arun Nirula" in RFA-71/2022 dated 02.08.2022 passed by Hon'ble High Court of Delhi.*

ISSUEWISE ANALYSIS & FINDING:

CS DJ ADJ/17563/16 (Sheela Devi vs. Raj Kumar & Ors.)

Issue no. 1: *Whether the suit has been under valued for the purpose of court fees and proper court fees have not been affixed? OPD*

53. In civil proceedings plaintiff is bound to value the relief sought and pay court fees as per valuation. Onus of this issue was upon defendant but, no argument advanced by Ld. Counsel for defendant during the course of arguments. Thus, this court carefully examined the material placed on record for adjudication of the present issue.

54. U/s 7 (iv) of Court Fees Act 1970, provides that in suits for declaration and consequential relief, court fees is to be paid according to the

amount at which the relief sought is valued in the plaint. It is settled that each relief has to be valued separately upon which court fees is to be paid.

55. In the present suit, plaintiff is seeking decree of possession, mesne profit, permanent/mandatory injunction, declaration and recovery of Rs. 4,80,000/- but, valued the suit for the relief of possession for Rs. 6 lacs and recovery for Rs. 4,80,000/- and paid the court fees for Rs. 7,300/- only i.e. deficient. Hence, this issue is decided against the plaintiff w.r.t. deficient court fees.

Issue no. 2: *Whether defendant nos. 1 & 3 sold/exchanged two storey building of 25 sq. yds. plot no.87-A/2, situated at Khasra no. 45/12 in the revenue estate of village Najafgarh, Delhi state and the abadi known as Dharampura, Chander Mohalla, Najafgarh, New Delhi-43 in lieu of the plaintiff's property i.e. 50 sq. yds. constructed plot at 200-A, A-1 Block Dharampura Extension, Najafgarh, New Delhi-43?OPP*

Issue no. 6: *Whether the plaintiff is entitled to decree of declaration declaring the null and void documents conveying joint ownership of suit property vide GPA, SPA, deed of Will, affidavit, receipt, possession letter, indemnity bond executed on 28.05.2016 by Kusma Devi-wife of defendant no.1, as prayed? OPP*

56. Both above issues are inter-linked hence, taken simultaneously.

57. Ld. Counsel for plaintiff also relied upon the testimony/cross-examination of Kamal Kishore wherein he specifically admitted that, ‘*Sheela*

Devi sold 50 sq. yards of property in exchange of 25 sq. yards and transaction of Rs. 4,80,000/- was also made'. Relevant deposition/testimony/cross-examination of said witness is reproduced here-in-below:

"It is correct that Sheela Devi was the absolute owner of 50 sq. yards sold in exchange of 25 sq. yards. The deal of the said property of Smt. Sheela Devi with Smt. Kusum Devi W/o. Raj Kumar was executed through me. Smt. Sheela Devi was in urgent need of money after the marriage of her son namely Pappu. It was agreed between the parties to exchange the respective plots with each other by paying Rs. 4,80,000/- to Smt. Sheela Devi by Smt. Kusum Devi W/o. Sh. Raj Kumar. The payment of Rs. 4,80,000/- and documents were executed on 28.05.2016. It is correct that Smt Sheela Devi is a illiterate lady and do not know how to read and write English and Hindi. It is correct that Smt. Sheela Devi could not count the currency money on her own. At the time of execution of the documents of exchange of plot/property dated 28.05.2016, the son of Smt. Sheela Devi was not present. It is wrong to suggest that the amount of Rs. 4,80000/- was never paid to Smt. Sheela Devi. I am aware that a suit has been instituted by defendant no.1 Smt. Sheela Devi to declare the documents Ex. (Colly) It is PW1/1 (Colly)."

(emphasis is mine)

58. Ld. Counsel for plaintiff submitted that, defendants do not dispute the execution of documents but merely denied the contents then, they are bound to take declaration of said document to be invalid and not binding upon them. It is further submitted that since, in the present matter, no declaration qua Ex.PW2/1 (OSR) is sought on behalf of the defendants hence, document is valid as per Section 34, Specific Relief Act¹.

¹ 34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

59. At this juncture, it is imperative to discuss the law of exchange of property which includes Section 118 of the Transfer of Property Act, 1882² and Sections 17³ and 49⁴ of the Registration Act.

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

² 118. "Exchange" defined--When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange". A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

³ 17. Documents of which registration is compulsory.-

(l) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

- (a) instruments of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- 1[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property: Provided that the [State Government] may, by order published in the [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a District, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

4[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

(2) Nothing in clauses (b) and (c) of sub-section (l) applies to-

- (i) any composition deed; or
- (ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in

60. It is settled that, title of immovable property having value of more than Rs. 100/- can only be transferred by registered documents, as provided under Section 17 of the Registration Act. Similarly, no document as required by Section 17 to be registered shall affect any immovable property comprised therein or received as evidence of any transaction affecting such property unless it is registered. The exchange of property is governed by

immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or (iv) any endorsement upon or transfer of any debenture issued by any such Company; or

- (v) [any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or (vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or
- (vii) any grant of immovable property by [Government]; or
- (viii) any instrument of partition made by a Revenue-Officer; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or
- (x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or 3[(xa) any order made under the Charitable Endowments Act, 1890, (6 of 1890) vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage;
- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

4[Explanation.-A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered....."

⁴ 49. Effect of non-registration of documents required to be registered.-

No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall-

- (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Section 118 of the Transfer of Property Act, 1882 which provides that there is no difference between exchange and sale.

61. Hon'ble High Court of Punjab and Haryana in ***Satyawan and others vs. Raghubir AIR 2002 Punjab and Haryana, 290***, has examined the provisions of Section 118 of the Transfer of Property Act in para 18 which is extracted below.

“18. It was submitted that there is no difference between exchange and sale. Except that, in sale, title is transferred from the vendor to the vendee in consideration for price paid or promised to be paid. In exchange, the property of 'X' is exchanged by 'A' with property 'Y' belonging to 'B'. In this manner, the property is received in exchange of property. There is transfer of ownership of one property for the ownership of the other. It was submitted that prior to when decree dated 20.10.1992 was not passed, there was no title of 'A' in property 'Y' and there was no title of 'B' in property 'X'. It was submitted that for the first time, the right was created in immovable property by decree and, therefore, that decree required registration. It was submitted that if there was no pre-existing right in the property worth more than Rs. 100/- and the right was created in the immovable property for the first time by virtue of decree, that decree would require registration. In my opinion, oral exchange was not permissible in view of the amendment of Section 49 of the Registration Act brought about by Act No. 21 of 1929, which by inserting in Section 49 of the Registration Act

1[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) 2, 3 [***] or as evidence of any collateral transaction not required to be effected by registered instrument.]....."

the words "or by any provision of the Transfer of Property Act, 1882" has made it clear that the documents of which registration is necessary under the Transfer of Property Act but not under the Registration Act falls within the scope of Section 49 of the Registration Act and if not registered are not admissible as evidence of any transaction affecting any immovable property comprised therein, and do not affect any such immovable property. Transaction by exchange which required to be affected through registered instrument if it was to affect any immovable property worth Rs. 100 or more."

62. Hon'ble Supreme Court in ***M/s. Suraj Lamp and Industries Private Limited through Director vs. State of Haryana and another*** **MANU/SC/1021/2009 : (2009) 7 SCC 363** has held in paras 15, 16, 17 and 18 which are extracted below:

- "15. The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.*
- 16. Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs. 100 and upwards to or in immovable property.*
- 17. Section 49 of the said Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affected such property, unless*

it has been registered. Registration of a document gives notice to the world that such a document has been executed.

18. *Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.:*

63. Again, Hon'ble Supreme Court in case of ***SMS Tea Estates Private Limited vs. Chandmari Tea Company Private Limited*** **MANU/SC/0836/2011 : (2011) 14 SCC 66**, has held in para which is extracted below:

"11. Section 49 makes it clear that a document which is compulsorily registrable, if not registered, will not affect the immovable property comprised therein in any manner. It will also not be received as evidence of

any transaction affecting such property, except for two limited purposes. First is as evidence of a contract in a suit for specific performance. Second is as evidence of

any collateral transaction which by itself is not required to be effected by registered instrument. A collateral transaction is not the transaction affecting the immovable property, but a transaction which is incidentally connected with that transaction. The question is whether a provision for arbitration in an unregistered document (which is compulsorily registrable) is a collateral transaction, in respect of which such unregistered document can be received as evidence under the proviso to section 49 of the Registration Act.”

64. Now, coming to the facts of the present case, no document placed on record in terms of Sec. 118 r/w Sec. 54 of the Transfer of Property Act. During the course of arguments, Ld. Counsel for plaintiff strongly relied upon Ex.PW2/1 (OSR) in support of his contention. It is submitted that, since properties were exchanged via general agreement which is duly admitted by defendants in their testimony, impugned GPA, agreement to sell, affidavit, original letter and Will may be declared as null and void. For the purpose of clarification, contents of Ex.PW2/1 (OSR) is reproduced here-in-below:

(52)

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31 OCTOBER SATURDAY

28/5/2016

DEPT. M T W T F S S

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श्रीला देवी प/० श्री रमेश कुमार R/o A3 ब्लॉक

अमान नं० 200A धर्मपुरा रमेश - अमान 2018

अपना अमान राज कुमार S/o श्री 3000 मान

R/o 87A / A3 ब्लॉक धर्मपुरा नजद, 87A

का 4, 80000/- रुपय धर्मपुरा ए.नगर से दे दिया

है व पुत्र के अने राज कुमार का अमान जमीन

मिया है अने 4, 80,000/- रुपय मान अमान

एनार से नगद वधुन पार

अमान 28/5/2016

का 10/5 धर्मपुरा रमेश

का 97/1052018

(1) Kamal 9999999 1556

(2) Sushma Kumari 9999999 1556

(3) Chakral 22 47 A 28/5/2016

(4) राजेश 12115 1552 28/5/2016

(5) तबरीक दुधमान 28/5/2016

(6) काजी चरन 2834941087/28/5/2016

राज - काश काश 28/5/2016

EX PW-2/1 (OSR)

CA. ADD. DWK

7/4/2018

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65. Thus, considering the facts and circumstances of the present case and the law duly settled, Ex.PW2/1 (OSR) cannot be termed as valid deed of exchange within the meaning of Section 118 of TPA. Hence, issue no. 2 is decided against the plaintiff. Further, in later para of this judgment, this court has discussed the law on transfer of ownership and given its opinion about GPA, SPA, Deed of Will, affidavit, receipt, possession letter, indemnity

bond as same cannot confer/convey any ownership. No separate declaration is required as impugned documents are void *ab initio* for the purpose of ownership. Hence, issue no. 6 is disposed off accordingly.

Issue no. 3: *Whether defendant no.2 fraudulently received Rs.4,80,000/- from defendant nos.1 & 3 and has also fraudulently got executed documents such as GPA, SPA, sale agreement, Will, affidavit, receipt, possession letter and indemnity bond in his name along with half share i.e. 2.5 sq. yds i.e. property 1 floor, latrine, bathroom and stairs of property no. 87-A/2, Dharampura, Chander Mohlla, Najafgarh, New Delhi-43 (hereinafter referred to as suit property) in his favour ?OPP*

Issue no. 7: *Whether the plaintiff is entitled to recovery of Rs.4,80,000/- against the defendants alongwith pendentelite and future interest @24% p.a. as prayed for?OPP*

66. Both above issues are inter-linked hence, taken simultaneously.

67. It is the contention of the plaintiff that at the time of execution, GPA, SPA, Deed of Will, affidavit, receipt, possession letter, indemnity bond defendant no. 2 fraudulently received Rs. 4,80,000/- from defendant no. 1 and 3 and executed his name for half share i.e. 12.5 sq. yards equivalent to first floor of the suit property. To prove her claim, she examined defendant no. 3 namely Kusma Devi. However, in her examination-in-chief she nowhere stated to have given Rs. 4,80,000/- to Kamal Kishore rather in her cross-examination she specifically deposed that, she did not count the money i.e. Rs. 4,80,000/- and same was counted by her husband in her presence. She

further deposed that, she exchanged her property with the property owned by Sheela Devi in addition to cash amount of Rs. 4,80,000/-. Similarly, defendant no. 1 namely Raj Kumar duly confirmed payment of Rs. 4,80,000/- to Sheela Devi against receipt/acknowledgment dt. 28.05.2016 in his examination-in-chief. Not only this, during cross-examination, he confirmed the said fact. Hence, no material placed on record by the plaintiff to prove her contention. Infact, in her own testimony, Sheela Devi specifically deposed that Kamal Kishore had promised her to pay the consideration amount later but, no specific time-line was given. She further deposed that she never demanded or issued any legal notice to Kusma Devi to give Rs. 4,80,000/- which disprove the claim of plaintiff. Accordingly, this issue is also decided against the plaintiff.

Issue no. 4: *Whether the plaintiff is entitled to decree of possession as well as permanent injunction in respect of the suit property against the defendant, as prayed for? OPP*

Issue no. 5: *Whether the plaintiff is entitled to decree of mandatory injunction against the defendant, as prayed for? OPP*

Issue no. 8: *Whether the plaintiff is entitled to mesne profits/damages against the defendant, as prayed for? OPP*

68. In view of aforesaid discussion these issues are also decided against the plaintiff.

CS DJ ADJ/816/17 (Kamal Kishore vs. Sheela Devi & Ors.)

Issue no. 1: *Whether the suit is barred under Order 10 CPC in view of the*

pendency of the suit no.449/2016 titled as 'Sheela Devi vs. Raj Kumar & Ors.'? OPD

69. It is settled that, for application of section 10 CPC⁵ the entire subject matter of the two suits must be the same. Thus, Section 10 CPC will not apply where a few of the matters in issue are common and will apply only when the entire subject matter in controversy is same. Since, vide separate order of even date, since this court has already decided CS no. 17563/16 (earlier 449/2016) present issue need not to be adjudicated as become *infructuous*.

Issue no. 2: *Whether the suit has been under valued for the purpose of jurisdiction and court fees?OPD*

70. Plaintiff has valued the suit property for Rs. 12 lacs for the relief of declaration and partition. However, onus of this issue was upon defendant but, no material placed on record in support of their contention, hence this issue is decided against the defendant and in favour of plaintiff.

Issue no. 3: *Whether the suit property is a joint property of the plaintiff and defendant no.1? OPP*

71. Kamal Kishore (Plaintiff in CS DJ ADJ 816/17) relied upon the notarized power of attorney, ATS, affidavit, receipt, possession letter and deed of Will dt. 28.05.2016 i.e. Ex.PW1/1 as title document qua the suit

⁵ 10. Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in 1 [India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of 1 [India] established or continued by 2 [the Central Government 3***.] and having like jurisdiction, or before 4 [the Supreme Court].

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in 1 [India] from trying a suit founded on the same cause of action.

property, it is submitted that, the suit property was purchased for Rs. 12 lacs which was jointly paid by plaintiff and defendant namely Kamal Kishore.

72. At this juncture, it would be imperative to discuss law on relevance of POA, ATS, Affidavit, Receipt etc. for deciding title or ownership w.r.t. immovable property.

73. In *Suraj Lamp Industries Pvt. Ltd. Vs. State of Haryana (2012 SCC 656)* Hon'ble Supreme Court of India specifically hold that, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in *Asha M. Jain v. Canara Bank*⁶, that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

74. Thus, judgment in *Suraj Lamp (supra)* reaffirms an important legal position i.e. It "Sale" is a transfer of ownership in exchange for a price paid or promised and said transfer can be made only a registered instrument⁷ and indispensability of registering a sale deed during transfer. In fact in

⁶ 94 (2001) DLT 841.

⁷ Section 54, Transfer of Property Act.

Shakeel Ahmed vs Syed Akhlaq Hussain⁸, Hon'ble Supreme Court further held that:

- ‘10. Having considered the submissions at the outset, it is to be emphasized that irrespective of what was decided in the case of *Suraj Lamps and Industries*(supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the Respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to Sections 17 and 49 of the Registration Act and Section 54 of the Transfer of Property Act, 1882.
11. Law is well settled that no right, title or interest in immovable property can be conferred without a registered document. Even the judgment of this Court in the case of *Suraj Lamps & Industries* (supra) lays down the same proposition. Reference may also be made to the following judgments of this Court:
- (i). *Ameer Minhaj v. Deirdre Elizabeth (Wright) Issar and Ors.* MANU/SC/0685/2018 : 2018:INSC:578 : (2018) 7 SCC 639
- (ii). *Balram Singh v. Kelo Devi* MANU/SC/1241/2022 : 2022:INSC:10111
- (iii). *M/S Paul Rubber Industries Private Limited v. Amit Chand Mitra and Anr.* MANU/SC/1051/2023 : 2023:INSC:8542
12. The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property.

⁸ MANU/SC/1257/2023

Once this is the settled position, the Respondent could not have maintained the suit for possession and mesne profits against the Appellant, who was admittedly in possession of the property in question whether as an owner or a licensee.'

75. In ***Shakeel (Supra)***, Hon'ble Supreme Court specifically hold that, the ratio in ***Suraj Lamps & Industries (supra)*** only approves the provisions in the two enactments. Thus, in view of the above authoritative judgment juxtaposed with the facts of the present case, notarized GPA, ATS, Affidavit etc. as relied upon by defendants cannot be considered in evidence as title documents.

76. Thus, Considering the facts and circumstances of the present case this court is of opinion that GPA, SPA, Deed of Will, affidavit, receipt, possession letter, indemnity bond cannot confer/convey any ownership. Thus, impugned documents are void *ab initio* for the purpose of ownership. Since, GPA, SPA, Deed of Will, affidavit, receipt, possession letter, indemnity bond cannot be the valid mode of transfer of ownership, suit property cannot be held as a joint property to the plaintiff and defendant no. 1, in absence of any valid title documents. Moreover, testimony of PW1 is contrary to the stand taken by him. Hence, this issue is decided against the plaintiff.

Issue no. 4: *If the answer to the aforesaid issue no.3 is in affirmative, as to what share the plaintiff is entitled to?OPP*

77. Since, issue no. 3 is decided in negative, this issue need not to be adjudicated as become *infructuous*.

Issue no. 5: *Whether the plaintiff is entitled to declaration by declaring agreement to sell, SPA, GPA, deed of Will, affidavit, receipt, possession letter, indemnity bond, dated 21.06.2016 executed by defendant no.1 in favour of defendant nos. 2 & 3 as null and void?OPP*

78. As this court has already held that the suit property is not the joint property in the hand of plaintiff and defendant no. 1. Thus, any declaration for the documents which are void *ab initio* at its inception itself, need not to be given. As it is a settled law that once title of plaintiff and defendant is not established, any subsequent transfer would not have any legal sanctity under law as no one can give better title what he has. Hence, this issue stands disposed off in negative.

Issue no. 6: *Whether the plaintiff is entitled to permanent injunction in the suit property, as prayed?OPP*

79. In lieu of foregoing discussion, this issue is also decided against the plaintiff.

80. In view of submissions made on behalf of parties, following issues are framed:

Additional issue : *Whether in alternative, plaintiff is entitled for return of chain of title documents and possession of property bearing no. 200-A, Block A1, Dharampura Extn, Najafgarh, New Delhi-110043 ? OPP.'*

81. In view of discussions held in above paragraphs, this issue is also decided against the plaintiff.

Relief (CONCLUSION)

82. In the light of above discussion and findings, this court is of the opinion that plaintiffs in both the suits i.e. **CS DJ ADJ/17563/16 (Sheela Devi vs. Raj Kumar & Ors.)** and **CS DJ ADJ/816/17 (Kamal Kishore vs. Sheela Devi & Ors.)** have failed to discharge the onus upon them and also failed to prove their cases, both present suits stand dismissed. Parties shall bear their own cost.

83. Decree sheet be prepared accordingly in both suits.

84. Case files of both suits be consigned to Records after due compliance.

**Announced in open court
on 07.04.2025**

**(SHILPI M JAIN)
District Judge-05, South West District
Dwarka Courts, New Delhi**