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

+ CS(OS) 620/2017 & IA 13477/2017

SH. NARENDER KUMAR ..... Plaintiff

Through Mr.V.K.Garg, Sr.Adv. with Mr.Vinay  
Gupta, Ms.Noopur Dubey and  
Mr.Vinay Gautam, Advs.

versus

SH. BRAHM PRAKASH ..... Defendant

Through Mr.J.K.Jain, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

% **06.03.2019**

1. This suit is filed seeking a decree of possession in favour of the plaintiff and against the defendant in respect of the suit property situated at Village Kakrola, New Delhi alongwith freehold rights. A decree of declaration is also sought declaring the suit property falls under Khasra No.30/16, 17 & 25 and the title documents relied upon by the defendant for claiming possession rights over the plaintiff's subject suit property as null and void and be cancelled.
2. This court on 21.05.2018 while framing of issues had observed that the plaintiff appears to have no title to the property in his favour and is claiming title only on the basis of agreement to sell etc. and which do not vest any title. Observation regarding the suit being barred by limitation was also made.
3. However, after having made observations, the court adjourned the matter to hear further arguments. It is manifest that the observations made by the court on 31.05.2018 were *prima facie* observations.

4. The learned senior counsel appearing for the plaintiff submits that the title of the plaintiff flows from the documents, like agreement to sell, power of attorney, etc. which were executed prior to the judgment of the Supreme Court in the case of *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr.*, AIR 2012 SC 206.

5. The learned senior counsel also relies upon the judgment of the Supreme Court in the case of *Maya Devi v. Lalta Prasad*, (2015) 5 SCC 588 where the Supreme Court dealt with the issue of power of attorney and sales and noted as follows:

“9. Paragraph 27 of the judgment of this Court in *Suraj Lamp and Industries (P) Ltd*, reads as follows :

“27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding “SA/GPA/will transactions” are not intended to apply to such bona fide/genuine transactions.”

10. In the above judgment, it has been stated that the observations made by the court are not intended to in any way affect the validity of sale agreements and powers of attorney

executed in genuine transactions. I am of the view that the Power of Attorney executed on 12.5.2006 in favour of the appellant by the wife of Prem Chand Verma is a genuine transaction executed years before the judgment of this court. The facts will clearly indicate that the agreement for sale dated 3.11.2003 was created by none other than the husband of Nirmal Verma, who had executed the General Power of Attorney and possession was handed over to the appellant. That being the fact situation, in my view, the objection filed by the appellant under Order 21 Rule 58 in execution has to be allowed. I, therefore, hold that the executing court can execute the decree in Civil Suit No.407 of 2007, but without proceeding against the property referred to in registered Power of Attorney dated 12.5.2006.”

Hence, the transactions, which relate to a claim of title under agreement to sell and powers of attorney executed before the judgment of the Supreme Court in *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr.*(supra), do not stand completely nullified.

6. In my opinion, the issues raised herein would have to go for trial. The following issues are framed:

- i) Whether the plaintiff has any right, title or interest in the suit property? OPP
- ii) Whether the suit filed by the plaintiff is barred by limitation? OPD
- iii) Whether the subject property/plot Nos.53-54, situated in the area of Village Kakrola(now known as Bharatpur) falls under Khasra No.30/16, 17 & 25? OPP
- iv) Relief.

7. Parties will file list of witnesses within three weeks. Plaintiff will file affidavit by way of evidence within three weeks thereafter.

8. List on 01.5.2019 before Joint Registrar for fixing dates for cross-examination of the plaintiff's witnesses.

**MARCH 06, 2019/v**

**JAYANT NATH, J.**