



and whether the view taken by the Delhi High Court in "Asha M Jain versus Canara Bank" [(2001) 94 DLT 841] represent the correct position of law.

Since the petitioner herein appears to have transferred 50% of the property in dispute by the same mechanism, we deem it proper to seek independent assistance and for that purpose a request was made to Shri Rakesh Dwivedi, learned senior counsel, who graciously accepted our request to assist the Court as amicus in deciding the question.

The Registry is directed to supply a complete set of paper book to the counsel assisting Shri Rakesh Dwivedi within two weeks.

List the case on 25.7.2011.

In the meanwhile, status quo, as it is obtaining today, shall be maintained by all the parties."

Shri Rakesh Dwivedi, learned amicus submitted that the question formulated by the Court on 11.05.2011 has been considered and answered by a three Judge Bench of this Court in Special Leave Petition(C) No.13917 of 2009 titled Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & another.

We have gone through the judgment to which reference has been made by Shri Dwivedi. Paragraphs 15 to 19 of the

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judgment, which contain answer to the question framed by this Court on 11.5.2011 are extracted below:

15. Therefore, 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 - 94 (2001) DLT 841, 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.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/

GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

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

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regularize 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 TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. 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.

19. 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 bonafide/genuine transactions."

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In view of the law laid down in the aforesaid judgment, the impugned judgment, which is founded on the judgment of the Division Bench in Asha M Jain vs. Canara Bank (supra), cannot be sustained.

In the result, the appeal is allowed, the impugned judgment is set aside and the matter is remitted to the High Court for fresh disposal of the appeal filed by the appellant.

.....J.  
[G.S. SINGHVI]

New Delhi;  
October 31, 2011

.....J.  
[SUDHANSU JYOTI MUKHOPADHAYA]

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ITEM NO.57

COURT NO.6

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).12512/2011

(From the judgement and order(s) dated 28/02/2011 in RFA No.358/2000 of The HIGH COURT OF DELHI AT N. DELHI)

RAMESH CHAND

Petitioner(s)

VERSUS

SURESH CHAND & ANR.

Respondent(s)

(With prayer for interim relief )

Date: 31/10/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

Amicus

Shri Rakesh Dwivedi, Sr. Adv.

For Petitioner(s)

Mr. Rajesh Aggarwal, Adv.  
Mrs.Mridul Aggarwal, Adv.

For Respondent(s)            Ms. Ambika Das, Adv.  
                                     Ms. Rekha Pandey, Adv.

                                     Mr. Amit Verma, Adv.  
                                     Ms. Mridula Ray Bharadwaj ,Adv

UPON hearing counsel the Court made the following  
                                     O R D E R

The appeal is allowed in terms of the signed order.

(Parveen Kr. Chawla)  
Court Master

(Phoolan Wati Arora)  
Court Master

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[signed order is placed on the file]