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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on:24.03.2025

Judgment pronounced on:15.05.2025

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RFA 152/2012 & CM APPL. 5517/2012

SH. GAJENDER KUMAR & ANR.

...Appellants

Through: Mr. Gaurav Jha, Adv.

versus

SH. GOVIND RAM SHARMA

...Respondent

Through: Mr. Umesh Sharma, Mr. Peeyush Kaushik, Mr. Ritesh Kr. Kaushik, Mr. Siddharth Kaushik and Ms. Shivani, Advs.

CORAM:

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The instant **Regular First Appeal**¹ under Section 96 read with Order XLI and Section 151 of the **Code of Civil Procedure, 1908**², has been filed by the Appellants/original Defendants impugning the judgment and decree dated 17.02.2012 granting recovery of possession, damages/ mesne profits, declaration and permanent injunction in favour of the Respondent herein/ original Plaintiff, passed by the Court of Ld. Additional District Judge-02 (West), Tis Hazari Courts, Delhi

¹ RFA

² CPC



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(hereinafter referred to as ‘**Trial Court**’) in Civil Suit No. 359/11/2003 titled as “*Sh. Govind Ram Sharma vs. Sh. Gajender Kumar & Anr.*”.

2. The dispute between the parties pertains to a property measuring 50 square yards bearing plot No. 47 out of Khasra No. 73/13, Budh Vihar Extn., Delhi, now known as A-47, Shyam Colony, Budh Vihar, Phase-II, Delhi (hereinafter “**suit property**”).

FACTUAL MATRIX:

3. Briefly put, Appellant No. 2 executed a **General Power of Attorney, Agreement to Sell, Receipt, Possession Letter, Deed of Will and Affidavit³**, all dated 10.01.2000, in respect of the Suit Property, in favour of the Respondent, for an alleged consideration of Rs.30,000/-.

4. *Vide* **registered deeds of Revocation of Power of Attorney and Revocation of Will, both dated 26.09.2001⁴**, Appellant No. 2 revoked/ cancelled the Power of Attorney and the Will and sold the suit property to Appellant No. 1/ her real brother for a total sale consideration of Rs. 35000/- by way of registered General Power of Attorney, Will, Sale Agreement, Affidavit, Possession Letter and a Receipt, all dated 26.09.2001.

5. On 04.06.2003, on the complaint of the Respondent in Police Station Sultanpuri, Delhi, an FIR No. 847/2003 under Sections 341/448/506/420/34 of the Indian Penal Code, 1860 was registered against Appellant No. 2, her husband and her father-in-law.

³ Sale documents

⁴ Revocation Deeds



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6. On 19.08.2003, the Respondent filed the suit seeking recovery of possession, damages, mesne profits, declaration and permanent injunction against the Appellants before the Ld. Trial Court.

7. The Ld. Trial Court dismissed the suit *vide* the judgment dated 11.02.2010, holding that the Respondent cannot claim ownership of the suit property solely on the basis of the General Power of Attorney and without a registered sale deed.

8. Being aggrieved, the Respondent preferred Regular First Appeal bearing RFA No. 339/2010 before this Court, wherein, *vide* order dated 28.07.2011, the judgment dated 11.02.2010 was set aside and the suit was remanded back for fresh adjudication. Both parties were directed to appear before the Ld. Trial court on 24.08.2011 to fix the date of the final hearing on the basis of the pleadings and evidence already on record.

9. After hearing the parties, the Ld. Trial Court passed the impugned judgment & decree dated 17.02.2012.

SUBMISSION OF THE PARTIES:

10. The Ld. Counsel for the Appellants would submit that the sale was never effectuated since the Respondent failed to make the payment and the possession of the suit property was never handed over to the Respondent, therefore, the Respondent had no right, title or interest in the interest of the suit property.

11. During the hearing, the attention of this Court was invited to the discrepancies in the statements made by the Respondent in paragraph 4



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of his Evidence by way of Affidavit dated 12.07.2005 *vis-à-vis* his cross-examination dated 28.08.2006.

12. The Ld. Counsel for the Appellants would further submit that though Appellant No. 2 and the Respondent executed various documents on 10.01.2000, the same never culminated in an actual sale and transfer of the property in question.

13. The Appellants would also contend that, in fact, even as per the evidence of the Respondent, he did not have possession and relies upon the contradiction between the contents of the evidence affidavit and the cross-examination wherein the Respondent has stated that no goods or articles of the Respondent were lying in the first floor of the Suit Property of which he claimed possession.

14. The Counsel for the Appellants would also claim that the documents executed on 10.01.2000 could not attain fruition in the form of a concluded transaction, as the consideration was never received.

15. It would also be contended that the said documents, in any event, were revoked by registered deeds of revocation and the Respondent has not sought for cancellation of the said deeds of revocation.

16. Appellant No. 2 would further contend that they have remained in possession throughout and the Respondent never had possession of the Suit Property at any point in time.

17. It would also be contended that the Respondent did not send a single notice to Appellant No. 2 to vacate the suit property.



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18. The Ld. Counsel for the Appellants would further submit that Section 54 of the **Transfer of Property Act, 1882**⁵ prescribes that the sale of tangible immovable property can take place only by way of registered documents. Since there is no registered document in the present case and consideration has also not been paid by the Respondent, his suit is liable to be dismissed. The Appellants would also contend that the Respondent's reliance on Section 53A of the TPA is misplaced as he never had possession.

19. On the other hand, supporting the correctness of the impugned judgment, the Ld. counsel for the Respondent would submit that the Respondent is the rightful owner of the suit property. The Respondent had purchased the suit property from Appellant No. 2 on 10.01.2000 for a consideration of Rs. 30,000/-, which was duly paid by him and in lieu of the said sale, Appellant No. 2 executed various documents, all dated 10.01.2000. The payment was duly acknowledged by Appellant No. 2 by issuing a receipt dated 10.01.2000 to the said effect, which clearly states that the payment is made and any denial of non-receipt of payment by Appellant no. 2 is hit by Sections 91 and 92 of the Indian Evidence Act, 1872 and for this purpose he would rely on the Judgments of **Roop Kumar v. Mohan Thedani**⁶ and **Karan Madaan v. Nageshwar Pandey**⁷.

20. Ld. counsel for the Respondent would further submit that the possession of the suit property was handed over to him by Appellant No. 2, after the execution of the sale documents dated 10.01.2000. In that

⁵ TPA

⁶ (2003) 6 SCC 595

⁷ 2014 SCC OnLine Del 1277



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respect, a Possession Letter dated 10.01.2000 was executed. He would also rely on Clause 7 in the Agreement to Sell and Para 3 of the Affidavit of Appellant No. 2, both dated 10.01.2000.

21. It would be the contention of the Respondent/ Plaintiff that two months after he had taken possession, the husband of Appellant No. 2 approached the Respondent and requested him to allow his family to live in the suit property as they were facing great hardships. Thereafter, the possession of the property was handed over to Appellant No. 2 and they have been living in the suit premises without payment of any rent.

22. Ld. counsel for the Respondent would further submit that the reliance placed by Appellant No. 2 on the Revocation Deeds dated 26.09.2001 is misplaced as the said deeds nowhere mention that the sale documents were revoked due to non-payment of the sale consideration to Appellant No. 2.

ANALYSIS & FINDINGS:

23. This Court has carefully considered the submissions made by the parties and perused the documents on record.

24. In the Suit, the Respondent sought the following reliefs:

“(a) Pass a Decree of Possession in favour of the plaintiff and against the defendants, thereby directing the defendants to hand over the peaceful vacant possession of suit property bearing no. 47, measuring 50 sq. yds., out of khasra no. 73/13, Abadi known as Budh Vihar Ext., situated in the area of Village Rithala, Delhi, now known as A-47, Shyam Colony, Budh Vihar, Phase II, Delhi, more specifically shown in Red colour, to the plaintiff. The defendants be also directed to pay a sum of Rs.3,000/- per month from May, 2003 to August, 2003 and mesne profits @ Rs.100/-per day from the date of filing the present suit till the time of handing over the actual physical possession of the suit property to the plaintiff.



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(b) Pass a decree of declaration in favour of the plaintiff and against the defendants thereby declaring the title documents all dt. 26.9.2001 executed by the defendant no.2 in favour of the defendant no. 1 in respect of the suit property, as null and void, and the plaintiff be declared the owner of the suit property.

(c) Pass a decree of permanent injunction in favour of the plaintiff and against the defendants, thereby restraining the defendants, their heirs, relatives, successors, executors, agents etc. etc. from creating any third party interest in suit property bearing no. 47, area measuring 50 sq. yds., out of Khasra no. 73/13, xxxxxxxx Abadi known as Budh Vihar Extn., situated in the area of Vill. Rithala, Delhi, now known as A-47, Shyam Colony, Budh Vihar, Phase II, Delhi, more specifically shown in Red colour in the site plan attached.

(d) Cost of the suit may also be awarded in favour of the plaintiff and against the defendants.

(e) Any other or further relief(s), which this Hon'ble Court may deems fit and proper under the facts and circumstances of the case may also be passed in favour of the plaintiff and against the defendants."

25. While adjudicating, the Ld. Trial Court framed the following issues:

"ISSUES:

1. *Whether the suit of the plaintiff is not maintainable in its present form in view of the preliminary objections taken by on behalf of the defendant no.1? OPP*

2. *Whether the plaintiff is entitled for the decree of declaration in favour of the plaintiff as prayed in prayer clause (b) of the plaint? OPP*

3. *Whether the plaintiff is entitled for the decree of possession as prayed in prayer clause (a)? OPP*

4. *Whether the plaintiff is entitled for the relief of permanent injunction, as prayed? OPP*

5. *Relief."*

26. It is a matter of fact that the onus for Issue Nos. 2 to 4 was on the Respondent.

27. In the impugned Judgment, the Ld. Trial Court examined issues No. 1, 2 & 3 jointly, in the following manner: -

"11. Issues No. 1, 2 & 3



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Issues no. 1, 2 & 3 are being taken up together as all these three issues are interconnected and have to be decided on the basis of the same evidence.

In order to prove its case on record, the plaintiff -Sh. Govind Ram Sharma has examined himself as PW-1 and has filed his evidence by way of affidavit (Ex. PW-1), wherein he has reiterated almost all the averments as have been made by him in his plaint. Further, in his evidence, the plaintiff (PW-1) has proved the site plan of suit property as Ex. PW-1/A. He has further proved the Regd. G.P.A. dated 10.1.2000 & Will dated 10.1.2000 executed by defendant no.2 in his favour as Ex. PW-1/B & Ex. PW-1/C. PW-1 (plaintiff) has also proved the agreement to sell, affidavit, receipt, possession letter, all dated 10.1.2000 executed by the defendant no.2 in his favor as Ex. PW-1/D to Ex. PW-1/G respectively. Apart from this, he has proved the certified copy of the Revocation Deeds dated 26.9.2001 as Ex. PW-1/H and Ex. PW-1/I and stated that he was entitled to the reliefs as prayed for in the plaint.

On the other hand in their DE, the defendants have examined defendant no.1 Sh. Gajinder Kumar as DW-1, who has filed his evidence by way of affidavit which is Ex. DW-1/A, wherein the said defendant has reiterated almost all the averments as has been made by him in his written statement. Further, DW-1 has proved the GPA, agreement to sell, Will and receipt dated 26.9.2011 executed by the defendant no.2 in his favour as Ex. DW-1/1 to Ex. DW-1/4 respectively. He has also proved the site plan of the suit property as Ex. DW-1/5.

In their DE, the defendants have also examined DW-2 Smt. Sushila Devi, who has filed her evidence by way of affidavit (Ex. DW-2/A), wherein she has reiterated all the averments as have been made by her in her written statement and stated that suit of the plaintiff is liable to be dismissed.

12. In the present case, plaintiff has deposed that he purchased the suit property from the defendant no.2 Smt. Sushila Devi for a total sale consideration of Rs. 30,000/- which was duly paid by him to her and in lieu of the said sale, defendant no.2 executed GPA (Ex. PW-1/B), Will (Ex. PW-1/C), agreement to sell, affidavit, receipt, possession letter, all dated 10.1.2000 (Ex. PW 1/D to Ex. PW-1/G) respectively. He has also deposed that after sale of the suit property, the possession of the same was taken by him and after two months, husband of the defendant no.2 approached him and requested him to allow his family to live in the suit property as they were facing great hardship due to paucity of place and on the said request, he permitted the family of defendant no.2 to live on the ground floor of the suit property. It has been submitted on behalf of the plaintiff that in view



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of the above-said sale documents executed by the defendant no.2 in his favour, the plaintiff has become the owner of the suit property and he is entitled to seek possession of the same from the defendants.

It is pertinent to note that execution of the aforesaid sale documents in favour of the plaintiff has also been admitted by the defendant no.2 as was evident from the para-2 of the reply on merits in her written statement, wherein she has specifically stated that defendant no.2 signed all the sale documents of the said property in favour of the plaintiff on 10.1.2000, but the payment was not made by the plaintiff and it was settled between the plaintiff and the defendant no.2 that the defendant no.2 will remain in possession of the said property till payment is not made by the plaintiff but after some time, the plaintiff flatly refused to make payment of the sale consideration and as such the possession has not been given to the plaintiff and lastly defendant no.2 canceled the GPA dated 10.1.2000 which was in favour of the plaintiff and then she sold the said property to defendant no.1.

Hence, in view of the above averments made by the defendant no.2 in her W.S, it is clear that execution of the sale documents by the defendant no.2 in favour of the plaintiff is not in dispute, the only defence being taken by the defendant no.2 is that she did not hand over the possession of the suit property to the plaintiff as he had not made the payment of the sale consideration, however this contention put forward on behalf of the defendants is nullified by the receipt dated 10.1.2000 (Ex. P W-1/F), wherein it has been specifically mentioned that a sum of Rs. 30,000/- has been received by the defendant no.2 from the plaintiff in full and final settlement of the sale of the suit property and nothing remains due out of the sale price. In these circumstances, in view of the Receipt (Ex. P. W-1/F), it is clear that the payment of the entire sale consideration has been made by the plaintiff and as such the ground of non payment was not available to the defendant no.2 for the purpose of cancellation of sale documents executed by her in favour of the plaintiff.

Further, it has also been submitted on behalf of the defendants that the sale of the said property was not complete as the possession of the suit property was never handed over by the defendant no.2 to the plaintiff and as such there was no sale as contemplated vide section-54 of the Transfer of Property Act, however the said submissions made on behalf of the defendants regarding the non handing of the possession of the suit property by the defendant no.2 to the plaintiff is contrary to the record as is evident from possession letter dated 10.1.2000 (Ex. PW-1/G) executed by the defendant no.2, wherein she has specifically stated that she has delivered the vacant possession of the suit property to purchaser i.e. plaintiff herein. Apart from this, in the said possession letter, it has also been stated that defendant no.2



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has no objection and he i.e plaintiff can use, hold and enjoy the said plot as he likes.

In addition to above, it has been submitted on behalf of the plaintiff that in view of the completion of the sale transaction between plaintiff and defendant no.2, she was not having any right to revoke the GPA etc., executed by her in favour of the plaintiff as Power of Attorney for a consideration is irrecoverable in terms of Section-202 of Contract Act. I find considerable force in these submissions made on behalf of the plaintiff as perusal of the record reveals that sale transaction between the plaintiff and defendant no.2 in respect of the suit property was complete and even the entire sale consideration in respect thereof have been received by the defendant no.2 from the plaintiff as was evident from the receipt (Ex. PW-1/E). In addition to this, the defendant no.2 has also executed the Affidavit (Ex. PW-1/E) wherein she has specifically stated that she shall not revoke or cancel the GPA, Agreement, Cash receipt, Will and Possession Letter etc., which have been executed by her in respect of the suit plot/property. Defendant no.2 has also stated therein that she has delivered the vacant possession of the above said plot/property to the purchaser i.e plaintiff herein.

13. It has also been argued on behalf of the defendants that plaintiff does not have any right to seek possession of the suit property as it was settled legal position that SA/GPA/Will transactions are not transfers or sales and such transactions can not be treated as completed transfers or conveyances. In this regard, Ld. Counsel for the defendants has relied upon the case law cited as **2011 X AD SC 365**, however the said submissions made on behalf of the defendants are not of much use to the defendants in view of the observations made by Hon'ble Supreme Court of India in para-18 of the said judgment.

In para-18 of the above case titled as "**Suraj Lamp & Industries (P) VS. State of Haryana & Anr.**" {cited as **2011 X AD (SC) 365**}, it has been laid down by the Hon'ble Supreme Court of India that:-

"We have merely drawn attention to and reiterated the well settled legal position that SA/GPA/Will transactions are not transfer or sales and that such transaction 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,



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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".

Hence, in view of the above, it is clear that SA/GPA/WILL transactions can continue to be treated as existing agreement of sale and nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. In the above said case law, it has also been held that 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under section 53A of TP Act and that if they are entered before that day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. In these circumstances, the above said case law is not of much use to the defendants in the present case.

Thus, in view of the above discussion and observations and having regard to the fact and circumstances of the present case, I am of the considered opinion that the present suit filed on behalf of the plaintiff is maintainable and the plaintiff is entitled to a decree of possession in respect of the suit property and consequently the sale documents dated 26.9.2001 executed by the defendant no.2 in favour of defendant no.1 are also liable to be declared as null and void.

In the instant case, plaintiff is also claiming damages/mesne profits @ Rs. 3000/- p.m from May, 2003 to August 2003 and thereafter @ Rs. 100/- per day from the date of filing of the suit till handing over the actual physical possession of the suit property to the plaintiff, however the said rate of damages /mesne profits appears to be on higher side. Apart from this, no evidence regarding the rates prevalent in the area have been led on behalf of the plaintiff. Further, from the material on record, it is clear that defendant no.2 is in occupation of the suit property. In these circumstances and having regard to the fact and circumstances of the present case, I am of the considered opinion that it will be expedient in the interest of justice that defendant no.2 be directed to pay damages/mesne profits to the plaintiff for the unauthorized use and occupation of the suit property @ Rs. 1500/- p.m from the date of filing of the suit till the peaceful and vacant possession of the suit property is handed over by the defendants to the plaintiff.

Hence, in view of the above, issues no. 1 to 3 are decided in favour of the plaintiff and against the defendants."

(Emphasis supplied)



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28. From the above analyses, it is clear that the Ld. Trial Court has predominantly relied upon the documents dated 10.01.2000 to hold that consideration of the sale was paid and the sale stood concluded in favour of the Respondent and possession of the suit property was handed over to the Respondent by Appellant No. 2.

29. Based on these documents, the Ld. Trial Court refuted the objections of Appellant No. 2 *qua* the non-payment of the sale consideration and possession of the suit property by the Respondent.

30. The first prayer in the suit for a decree of possession and *mesne profit* is premised on the documents dated 10.01.2000 executed as between Appellant No. 2 and Respondent and that two months after allegedly taking possession, at the request of the husband of Appellant No. 2, the Respondent gave the possession of the premises back to Appellant No. 2. The Respondent contends that, in March 2003, when Appellant No. 2 refused to handover the possession back to the Respondent, the suit was filed before the Ld. Trial Court.

31. The fact of, firstly, possession being handed over to the Respondent and the Respondent, thereafter, handing back possession to Appellant No.2 has been disputed by Appellant No. 2 on the ground that the Respondent was never placed in possession of the suit property and there was never a concluded transaction. The Appellants have contended that the suit property was in their possession and more particularly with Appellant No. 2.

32. The Respondent's claims over the recovery of the suit property were based on the documents dated 10.01.2000, i.e., **General Power**



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Attorney⁸, Agreement to Sell, Receipt, Possession Letter, Deed of Will and Affidavit executed in favour of the Respondent by Appellant No. 2 and alleged possession for 2 months.

33. At least two documents, *namely*, the GPA and the Will, both dated 10.01.2000, were revoked by registered documents dated 26.09.2001.

34. The Suit Property came to be the subject matter of registered documents, dated 26.09.2001, seeking to transfer the same in favor of Appellant No. 1.

35. Needless to state that it was for the Respondent/ Plaintiff to prove that the documents executed on 10.01.2000, in fact, (a) culminated in a concluded transaction and (b) in terms of the agreement, possession of the property had been handed over to him.

36. The Respondent has been unable to prove either.

37. The Respondent has been unable to prove the factum of possession for the following reasons:

(i) Admittedly, the Appellants were in possession of the Suit Property for nearly 2 years and 4 months from the date of execution of the documents in favour of the Respondent.

(ii) The Respondent has specifically pleaded that he was put into possession by Appellant No.2 and her husband. It is specifically claimed that possession was handed back at the request of the husband of Appellant No. 2. However, for reasons best known to the Respondent, the husband of Appellant No. 2 was never called as a witness.

⁸ GPA



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(iii) The Suit property was a residential property where the Appellant's family was staying. This would mean that all the belongings etc., of a family would have been in the said property. It is difficult to accept that the Appellant moved out for an extremely brief period of two months and thereafter returned with a request to re-enter into the property. In fact, there is nothing on record to show that the Appellant No.2 ever left the property.

(iv) The Respondent relies upon three documents, all dated 10.01.2000, to buttress his claim. The Respondent relies upon Clause 7 in the Agreement to Sell, the Possession Letter and Para 3 of the Affidavit. The Respondent relies purely on the documents to assert a "fact" of actual possession.

(v) The Respondent/ Plaintiff has specifically pleaded that he had been requested by the husband of Appellant No.2 to hand back possession to her. Though the husband is a witness to the documents dated 10.01.2000, the Respondent never chose to examine him. Resultantly, the entire premise of the Respondent of having handed back possession at the request of the husband of Appellant No.2 remains unproven.

(vi) There is nothing to prove that possession was ever handed to the Respondent at any time, except for reliance on the sale documents as afore-stated.

(vii) Before the Ld. Trial Court, the Respondent/ Plaintiff, to prove the factum of his possession in the suit property from the date of execution of the sale documents dated 10.01.2000, placed reliance upon two of such documents, i.e., possession letter (Ex. PW-1/G) and agreement (Ex.



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PW-1/D) acknowledging that the suit property has been handed over to the Respondent. However, no evidence was placed before the Ld. Trial Court to evince the factum of the alleged possession for the initial two months. There is, in fact, evidence to the contrary that the Respondent was never in possession of the Suit premises. The Respondent makes repeated averments, in the suit, replication, evidence etc, to the documents alone.

(viii) The Respondent has not given any cogent reason as to why the possession continued with Appellant No. 2 for a long period of almost two and a half years, post the execution of the documents on 10.01.2000.

(ix) No plausible reason has been given for this alleged possession given by the Respondent, without any remuneration/ consideration/ rent and without having executed any deed/ agreement etc. for the said purpose. Initially, the Respondent in Para 4 of his evidence affidavit attempted to put forth some reasons, as follows:

“4. I say that the family of the defendant no.2 are continuing living in the said property without paying any rent to me as I gave the said property to them in good faith without any charge/rent. However, I had regularly visited the said premises to inspect my portion on the first floor on the suit property, who was in my possession and occupation.”

However, in his cross-examination, the Respondent made a specific statement that the contents of this Para are not correct. The relevant portion of the Respondent’s cross-examination is extracted below:

“.... The contents of Para 4 of my affidavit Ex. PW-1 are not correct. I was explained the contents of the affidavit Ex. PW-1 when the same was prepared. The goods/ articles belonging to me are not lying in the first floor of the suit premises....”



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(x) Thus, except for relying upon the Possession Letter (Ex. PW-1/G) and Agreement (Ex. PW-1/D) and the Appellant No. 2's affidavit before the Ld. Trial Court, the Respondent did not place any documentary proof or witness to establish his averments that since the execution of the sale documents dated 10.01.2000, he took over actual possession of the suit property, and after two months, at the request of the husband of Appellant No. 2, gave possession back to Appellant No. 2.

(xi) The Respondent, for reasons best known to him, did not seek to recover possession for almost 2 and half years before the filing of suit before the Ld. Trial Court.

(xii) The onus of proof while seeking recovery of possession of the suit property is on the Respondent/ Plaintiff. However, the Respondent failed to establish any possession over the suit property by him. The Hon'ble Supreme Court summarized the law in this regard in the judgment of ***Smriti Debbarma v. Prabha Ranjan Debbarma***⁹ as follows:

“34. In the above factual background, for the plaintiff to succeed, she has to establish that she has a legal title to the Schedule ‘A’ property, and consequently, is entitled to a decree of possession. The defendants cannot be dispossessed unless the plaintiff has established a better title and rights over the Schedule ‘A’ property. A person in possession of land in the assumed character as the owner, and exercising peaceably the ordinary rights of ownership, has a legal right against the entire world except the rightful owner. [See *Poona Ram v. Moti Ram (Dead) through Legal Representatives*, (2019) 11 SCC 309 and *Nair Service Society Limited v. Rev. Father K.C. Alexander*, AIR 1968 SC 1165] A decree of possession cannot be passed in favour of the plaintiff on the ground that defendant nos. 1 to 12 have not been able to fully establish their right, title and interest in the Schedule ‘A’ property. The defendants, being in possession, would be entitled to protect and save their possession, unless the person who seeks to dispossess them

⁹ 2023 SCC OnLine SC 9



has a better legal right in the form of ownership or entitlement to possession.

35. The burden of proof [See Paragraph 19 in *Anil Rishi v. Gurbaksh Singh*, (2006) 5 SCC 558] to establish a title in the present case lies upon the plaintiff as this burden lies on the party who asserts the existence of a particular state of things on the basis of which she claims relief [See *Addagada Raghavamma v. Addagada Chenchamma*, AIR 1964 SC 136]. This is mandated in terms of Section 101 of the Evidence Act, which states that burden on proving the fact rests with party who substantially asserts in the affirmative and not on the party which is denying it. This rule may not be universal and has exceptions [See Sections 103, 104 and 105 of the Evidence Act], but in the factual background of the present case, the general principle is applicable. In terms of Section 102 of the Evidence Act, if both parties fail to adduce evidence, the suit must fail [See *Anil Rishi v. Gurbaksh Singh*, (2006) 5 SCC 558]. **Onus of proof, no doubt shifts and the shifting is a continuous process in the evaluation of evidence, but this happens when in a suit for title and possession, the plaintiff has been able to create a high degree of probability to shift the onus on the defendant.** In the absence of such evidence, the burden of proof lies on the plaintiff and can be discharged only when he is able to prove title [See *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple*, (2003) 8 SCC 752]. The weakness of the defence cannot be a justification to decree the suit [See *Union of India v. Vasavi Cooperative Housing Society Limited*, (2014) 2 SCC 269]. The plaintiff could have succeeded in respect of the Schedule 'A' property if she had discharged the burden to prove the title to the Schedule 'A' property which squarely falls on her. This would be the true effect of Sections 101 and 102 of the Evidence Act [See *Sebastiao Luis Fernandes (DEAD) Through LRs. v. K.V.P. Shastri (DEAD) Through LRs.*, (2013) 15 SCC 161]. Therefore, it follows that the plaintiff should have satisfied and discharged the burden under the provisions of the Evidence Act, failing which the suit would be liable to be dismissed. Thus, the impugned judgment by the High Court had rightly allowed the appeal and set aside the judgment and decree of the trial court. We, therefore, uphold the findings of the High Court that the suit should be dismissed. We clarify that we have not interfered or set aside any observations of the High Court *in re* the Tripura Land Revenue and Land Reforms Act, or defendants' claim etc. Notably, M/s. Hotel Khosh Mahal Limited is not a party to the present proceedings."

(Emphasis supplied)



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38. The Ld. Trial Court has held the Respondent entitled to possession on the basis of the documents dated 10.01.2000, despite their being sufficiently under a cloud due to (a) there being no possession with the Respondent; (b) The registered Revocation deeds and (c) the documents in favour of Appellant No.1 herein.

39. The Hon'ble Supreme Court has held that where there is a sufficient cloud over the title on the basis of which possession is being sought, a declaratory relief in respect of the documents on which the claim is made will also have to be sought. The Hon'ble Supreme Court in *Anathula Sudhakar v. P. Buchi Reddy*¹⁰ summarized the law on this issue as follows:

“21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in *Annaimuthu Thevar* [*Annaimuthu Thevar v. Alagammal*, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or

¹⁰ (2008) 4 SCC 594



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examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

(Emphasis supplied)

40. In the present case, neither has a declaration in respect of the documents on the basis of which the Respondent claims relief been sought, nor has a relief of cancellation of the Revocation deeds dated 26.09.2001 been sought.

41. In view of the afore-stated, this Court, given the conspectus of facts as seen, holds that, the finding of the Ld. Trial Court, *qua* the grant of relief of possession purely on the basis of the documents without in any manner being able to prove possession from the date of the documents till the filing of the Suit is unsustainable.

42. The Ld. Trial Court has also held that the receipt dated 10.01.2000 establishes the fact of receipt of the monies, thereby concluding the transaction. However, this Court is of the view that the entire case revolves around the factum of possession and the abject failure on the part of the Respondent to establish the same. It is trite that possession is



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the culmination and the fruit of the transaction of the alleged sale. There is nothing that has been brought on record to show actual possession or even assertion of any rights as the lawful owner in terms of receiving any rent etc. for the continued occupation by the Appellants. The police FIR No. 847/2003 with respect to Appellant No.2, her husband and father-in-law, is very close in time to the filing of the Suit and after a considerable period of continued possession by the Appellants herein.

43. In the second prayer of the suit, the Respondent sought a decree of declaration in his favour declaring the documents all dated 26.09.2001 executed by Appellant No. 2 in favour of Appellant No. 1 in respect of the suit property as null and void, and the Respondent be declared the owner of the suit property.

44. It is settled law that in a suit for declaration of title, the onus to prove a better title over the suit property shall be on the plaintiff and without proving the same, the declaration cannot be laid in favour of the Plaintiff. The Hon'ble Supreme Court in *Nagar Palika v. Jagat Singh*¹¹ made the relevant observations in this regard, which are as follows:

“6. The counsel appearing for the respondent, could not explain as to how in face of such clear denial of the title and possession of the respondent by the Municipal Committee in its written statement, the court of appeal proceeded on the assumption that the acquisition of the title through the sale deed, which had not been produced before the court, was an admitted fact in the case and had never been questioned by the Municipal Committee. According to us, when the court of appeal proceeded to consider the evidence relating to the possession of the respondent after the alleged date of purchase by him through the sale deed in question, which was never produced before the court, the court of appeal committed a grave error. It never applied its mind to the main issue, in a suit based on title, whether the respondent had proved his title to the suit property. It cannot be

¹¹ (1995) 3 SCC 426



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disputed that onus to prove his title to the property in question was on the said respondent. It further appears, that on behalf of the appellant, it was pointed out before the court of appeal that the said respondent was claiming the share of one of the co-sharers in the patti, but no co-sharer can convey title to a specific part of joint property. Having omitted to consider the basic issues in the case, the court of appeal proceeded only to consider the revenue records from the year 1974-75 like jamabandi for the year 1974-75 and Khasra Girdwari pertaining to the year 1977-79.”

(Emphasis supplied)

45. Further, the Hon’ble Supreme Court in *Union of India v. Vasavi Coop. Housing Society Ltd*¹² held as under:

“15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

16. The High Court, we notice, has taken the view that once the evidence is let in by both the parties, the question of burden of proof pales into insignificance and the evidence let in by both the parties is required to be appreciated by the court in order to record its findings in respect of each of the issues that may ultimately determine the fate of the suit. The High Court has also proceeded on the basis that initial burden would always be upon the plaintiff to establish its case but if the evidence let in by the defendants in support of their case probabalises the case set up by the plaintiff, such evidence cannot be ignored and kept out of consideration.”

(Emphasis supplied)

46. In the present case, the Respondent produced the sale documents dated 10.01.2000, which are, General Power Attorney, Agreement to Sell, Receipt, Possession Letter, Deed of Will and Affidavit, to establish his alleged title over the suit property.

47. As already held hereinbefore, this Court is of the view that there is no concluded transaction between the parties. This Court has also held

¹² (2014) 2 SCC 269



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that the Respondent has been unable to prove his possession for the purpose of getting any relief in that respect.

48. In view of the same, it would not be possible to hold that the said documents dated 10.01.2000 are determinative of the ownership of the Suit Property.

49. Of note is also the fact that Appellant No. 2 revoked at least two of the documents dated 10.01.2000 *vide* registered deeds of revocation dated 26.09.2001 and executed sale documents dated 26.09.2001 in favour of Appellant No. 1. The Appellants have also produced a letter of intimation dated 26.09.2001 in respect of the said revocation of the same date.

50. In light of the findings hereinbefore, this Court finds that the declaratory relief in respect of the documents in favour of Appellant No. 1 as granted by the Ld. Trial Court is unsustainable in law.

51. Prayer (c) of the suit seeks a decree of permanent injunction.

52. It is no longer *res integra* that the relief of permanent injunction, which is prohibitory in nature without being in possession of the suit property and not having sought a declaration of title, is otiose.

53. In the present case, the Respondent has been unable to establish the possession of the suit property on the date of the institution of the suit. There is a doubt on the culmination of the transaction based on the documents the Respondent has relied upon. The relief seeking permanent injunction by the Plaintiff/ Respondent is, therefore, not sustainable in law.

54. Prayer (d) of the suit is for costs. The Respondent, not being entitled to any of the other reliefs, is held not entitled to costs either.



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55. In light of the aforesaid, the present appeal is allowed and the impugned judgment and decree passed by the Ld. Trial Court is quashed.

56. The Appeal and pending application(s), if any, are disposed of in the above terms.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 15, 2025/sm/er