



2026:DHC:5239



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: 16th March, 2026**
Pronounced on: 1st July, 2026
+ **RSA 150/2018 & CM APPL. 43827/2018**

1. **KIRAN TALWAR**
W/o Sh. Harish Talwar
2. **VIKAS TALWAR**
S/o Sh. Harish Talwar
3. **ANKUR TALWAR**
S/o Sh. Harish Talwar

All R/o JG-1/48B, IInd Floor,
Vikas Puri, New Delhi

Through: Mr. Rakesh Kumar Burman,
Advocate.Appellants

Versus

1. **ANIL GUPTA**
S/o Sh. S.S. Gupta
R/o C-6, New Krishna Park,
Najafgarh Road, New Delhi
2. **HARISH TALWAR**
S/o Late Sh. Ascharaj Lal
R/oB-10, Shanker Garden,
Main Najafgarh Road,
New Delhi -110018

Through: None.Respondents

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. **Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC)** has been filed against the Judgment dated 23.08.2018 of the First Appellate Court in *RCA no.60990/2016*, wherein it **upheld the Judgment dated 18.01.2014** of the Learned Civil Judge, whereby *the Suit for possession was decreed in favour of the Plaintiff.*
2. The Plaintiff/ Respondent No. 1, Sh. Anil Gupta had filed **Civil Suit No. 262/2011** for *Possession, recovery of Damages/ Mesne Profit of Rs. 3,000/- per month, for unauthorised use and occupation and for Permanent Injunction qua the property bearing no. JG-1/48-B, 2nd Floor, LIG Flat, Vikas Puri, New Delhi (hereinafter referred to as the “suit property”) against the defendants.*
3. The **facts in brief as narrated in the plaint**, are that the “*suit property*” was allotted to Sh. Harish Chander Bhatt, vide Allotment Letter dated 10.01.1983, for Rs. 38,200/-. He was handed over the possession of the said flat by the DDA, vide Letter dated 19.04.1983 with leasehold rights underneath the flat, on the *hire purchase basis.*
4. Sh. Harish Chander Bhatt sold the *suit property* to Sh. Ascharaj Lal, for a consideration of Rs 16, 000/-, with the balance instalments payable by him, and executed the documents, viz. the *Agreement to Sell & purchase and Will dated 14.07.1983*, in favour of Sh. Ascharaj Lal, and the *General Power of Attorney dated 14.07.1983 in favour of Sh. Ashok Kumar*, at the instance of Sh. Ascharaj Lal.
5. Thereafter, Sh. Ascharaj Lal sold the *suit property* to his son, *Defendant No. 1/ Defendant No. 1/ Harish Talwar* for a sale consideration of Rs 20,000/- along with the remaining instalments to be paid by him, vide the



Agreement to Sell & Purchase and Receipt and registered Will dated 01.11.1985.

6. *Defendant No. 1/ Harish Talwar* then entered into the transaction of sale dated 01.12.2005 in favour of *Smt. Kiran Talwar* for the consideration of Rs.50,000/- plus the balance instalments payable, and also executed the registered General Power of Attorney dated 01.12.2005. However, the said transaction of sale between Harish Talwar and Smt. Kiran Talwar could not be finalised, and the sale transaction was cancelled by the Defendant No. 1/ Harish Talwar. *Cancellation of the General Power of Attorney was executed by Defendant No. 1 with consideration vide Cancellation Deed dated 18.10.2006, by refunding the amount of Rs. 1, 50,000/- to Smt. Kiran Talwar.*

7. On the very same day, i.e. on 18.10.2006, the *Defendant no.1/ Harish Talwar* sold the said LIG Flat to the **Plaintiff/ Anil Gupta** for a consideration of Rs. 2,00,000/- and executed the documents of title, i.e. Agreement to Sell and purchase for valuable consideration, Registered General Power of Attorney, Will and Receipt dated 18.10.2006, in favour of the plaintiff.

8. Though the Defendant No. 1 had clearly mentioned in *paragraph Iof* the said Agreement that the unencumbered vacant physical possession of the said flat was given to the second party, i.e. purchaser plaintiff, at the spot along with the documents related thereto, *but the Defendant No. 1 requested the plaintiff that he would vacate the premises after a month or two, as he could not arrange another accommodation.* On the persistent request of the Defendant No. 1, the Plaintiff agreed to such a request.



9. Defendant No. 1 did not vacate the premises within the said period, and when the plaintiff put pressure to hand over the vacant possession, the *Defendant No. 2/ Kiran Talwar*, wife of the Defendant No. 1, Harish Talwar, conspired with the Defendant No. 3 and 4 and filed a *Suit bearing No. 261/11*, on 12.01.2007, against her husband Harish Talwar/ Defendant No. 1 and the Plaintiff Anil Gupta (he was defendant no. 2 in the Civil Suit bearing No. 261/2011), for *Declaration that she be declared owner of the suit property in view of the Will, executed by her late father-in-law Sh. Ascharaj Lal, in her favour and Permanent Injunction against the Defendant No. 1, her husband, Harish Talwar and the Plaintiff/ Anil Gupta.*

10. It is claimed that she took false and frivolous pleas therein and claimed the Declaration that she is the owner of the suit property, by virtue of a Will dated 15.08.1986 executed by Late Sh. Ascharaj Lal. However, she did not file any alleged Will dated 15.08.1986 in the court or supply any copy thereof. It was alleged that the Suit was totally false and frivolous, and the Will, if any, was a forged and fabricated document.

11. Moreover, it was claimed by the Plaintiff/ Anil Gupta, that the defendants are in illegal possession of the said flat, and their possession of the same is that of a trespasser. The Defendants have no right to use the said premises.

12. The Defendants are thus, liable to pay the damages for unauthorised use and occupation of the said premises at the rate of Rs. 3000/- per month, as that is the rent that can be fetched with regard to the suit property as per the prevalent market rate. Hence, the Plaintiff filed the Suit for *possession, recovery of damages/ mesne and Permanent Injunction.*



13. *Defendant No. 1/ Harish Talwar failed to appear despite service and was proceeded ex parte, on 30.07.2008.*

14. The **Defendants Nos. 2 Kiran Talwar, 3 and 4** filed **Joint Written Statement** asserting that the Agreement to sell and purchase dated 01.11.1985, Receipt and Registered Will, General Power of Attorney dated 01.11.1985, documents executed in favour of *Defendant No. 1/Harish Talwar by Sh. Ashcharaj Lal*, are forged and fabricated documents.

15. **On merits**, it was asserted that on 15.08.1986 Late Sh. Aschraj Lal executed a hand written Will, duly signed by him, in respect of suit property in favour of **Defendant no. 2/ Kiran Talwar**, in the presence of Smt. Suman Anand and Smt. Swaran Dua, who were the witness to the Will. At the time of execution of the Will, Ascharaj Lal was in possession of the suit property. *It was further asserted that the said Will, however, had been snatched by Defendant No. 1/ Harish Talwar from Defendant no. 2, on the same day. Sh. Ascharaj Lal expired on 27.09.1986,* and after the death of Sh. Ascharaj Lal, Defendant No. 2/ Kiran Talwar became the absolute and exclusive owner of the suit property, by virtue of the Will dated 15.08.1986,.

16. It was further submitted that *Defendant No. 1 was living in the suit property as a licensee of Defendant No. 2, Smt. Kiran Talwar* and thus, was not entitled to enter into any transaction of sale in favour of any person, because he had no title in the suit property. The documents in favour of the Plaintiff were got signed by Defendant No. 3, Sh. Vikas Talwar on the stamp papers and other papers that were blank, and thereafter, Defendant No. 1, Harish Talwar, with the connivance of Plaintiff, executed the said documents. *Hence, the suit of the Plaintiff is baseless and liable to be dismissed.*



17. **No Replication was filed** by the Plaintiff/ Anil Gupta, to the Written Statement of the Defendant Nos. 2 to 4.

18. **The issues on the pleadings were framed on 16.11.2011**, as under:

“i) Whether the suit of the plaintiff is not maintainable as the same has not been properly valued? OPD

ii) Whether the plaintiff is entitled to the relief of possession as claimed for? OPP

iii) Whether the plaintiff is entitled to the relief of recovery of damages/mesne profits as claimed for? OPP

iv) Whether the plaintiff is entitled to the relief of recovery of future damages/mesne profits as claimed for? OPP

v) Whether the plaintiff is entitled to the relief of permanent injunction as claimed for? OPP

vi) Whether the Plaintiff is entitled to any interest as claimed for? OPP

vii) Relief.”

19. The *Ld. Civil Judge vide Order dated 16.11.2011* directed that common evidence would be recorded in this Suit as well as Suit bearing No. 261/11, filed by defendant No.2 Kiran Talwar and Suit bearing No.261/11 was treated as the lead suit, and the evidence was led in the said suit. The evidence of Plaintiff Anil Gupta was recorded in the Suit bearing no. 261/2011 as DW. The evidence of Defendants no. 2 to 4 was recorded as PW.

20. The **Plaintiff/ Anil Gupta** to establish his case, examined his attorney, **DW-1 Harsh Jhulka**, who proved the Power of Attorney Ex. DW1/1. He



deposed that the suit property was originally allotted to Harish Chand, who sold it to Ascharaj Lal on 14.07.1983 for ₹16,000/- along with liability for the remaining DDA instalments. *This chain of title was not disputed by Defendants Nos. 2 to 4.*

21. It was further deposed that Ascharaj Lal transferred the property to his son, Defendant No. 1/Harish Talwar, on 01.11.1985, who subsequently sold it to the Plaintiff/Anil Gupta on 18.10.2006 through a registered GPA Ex. DW1/2 and Agreement to Sell Ex. DW1/3, for a consideration of ₹2,00,000/-. The Agreement to Sell specifically recorded that Defendant No. 1/ Harish Talwar had acquired ownership from his father, Ascharaj Lal.

22. **Defendant No. 2/Kiran Talwar examined herself as PW-1** and admitted that Ascharaj Lal had purchased the property from the original allottee, Harish Chand, on 14.07.1983, relying upon the Allotment Letter Mark G and Agreement to Sell dated 14.07.1983 Mark H. She deposed that owing to the ill-treatment meted out by Defendant No. 1, Ascharaj Lal had excluded all other legal heirs and bequeathed the suit property exclusively to her, through the Will dated 15.08.1986. According to her, upon the death of Ascharaj Lal on 27.09.1986, she became the absolute owner of the suit property. She further deposed that on 08.09.2006, Defendant No. 1 Harish Talwar, her husband, assaulted her and forcibly took away the Will, and despite repeated requests, failed to return it.

23. **Defendant No. 2/Kiran Talwar**, during her cross-examination, admitted that her father-in-law had executed all property documents in favour of Defendant No. 1/ Harish Talwar, in 1985. She further admitted that the alleged Will had never been registered.



24. *PW2 Smt. Suman Anand* and *PW3 Smt. Swarn Dua*, Sisters of Defendant No. 2 Kiran Talwar, both deposed that they were present when Sh. Ascharaj Lal executed the Will in favour of Kiran Talwar and they had signed it as attesting witnesses.

25. *Ld. Civil Judge on appreciation of evidence* held that the Will dated 15.08.1986, or even its photocopy, which forms the basis of the defence, has not been filed in the judicial record. Although the Will itself was not produced, the Defendants attempted to prove its execution and contents through two witnesses, *PW2 Smt. Suman Anand* and *PW3 Smt. Swarn Dua*, sisters of Defendant No. 2. In their examination-in-chief, both witnesses claimed that they were present when Sh. Ascharaj Lal executed the Will, and they had signed it as attesting witnesses. However, during cross-examination, both admitted that they had not signed the Will.

26. The *Ld. Civil Judge* rejected the Defendants' version regarding the non-production of Will as having been forcibly taken away by Harish Talwar, her husband. Moreover, the *oral evidence* of PW-2 and PW-3, sisters of Defendant No. 2, who were alleged to be the attesting witnesses to the alleged Will, was noted to be self-contradictory and unreliable. *Smt. Kiran failed to produce either the alleged original Will dated 15.08.1986 or even a copy of it, and to prove it in accordance with law.*

27. Accordingly, **it was held** that the *Defendants had miserably failed to establish the existence, execution, attestation, or contents of the alleged Will dated 15.08.1986.* and that Defendant Nos. 2 to 4 had failed to establish any legal right, title, or interest in the suit property. Conversely, the Plaintiff was found to have established a better title and a superior right to possession.



Accordingly, Defendant Nos. 2 to 4 were held to be in unauthorised occupation of the suit property.

28. Ld. Civil Judge thus, held that the Plaintiff, Anil Gupta was entitled to recover mesne profits/damages for the Defendants' unauthorised occupation and use of the suit property for the period from 18.10.2006 to 31.07.2007 at the rate of ₹3,000 per month. Further, interest was awarded on the decreed amount, granting pendente lite and future interest at the rate of 10% per annum until realisation.

29. **The Suit of the plaintiff, Anil Gupta, was accordingly decreed for possession and mesne profits.**

30. **Suit No. 261/2011 filed by Defendant No. 2 Kiran Talwar, was dismissed, vide separate judgment dated 18.01.2014.** However, this judgement has not been challenged by Kiran Talwar.

31. The **Defendants Nos. 2 to 4** challenged the decree passed in favour of Plaintiff Anil Gupta in **Civil Suit No. 262/2011, by filing the Regular First Appeal No.60990/2016.**

32. **Ld. Additional District Judge** observed that the Defendants no. 2 to 4 nowhere, in the entire trial of the suit, denied the execution of documents dated 01.11.1985 by late Sh. Ascharaj Lal in favour of Defendant no. 1; rather Kiran Talwar has specifically admitted in her cross-examination that the suit property was transferred by late Sh. Ascharaj Lal, in favour of her husband Harish Talwar.

33. The Defendants Nos. 2 to 4 had only contended that title documents in favour of Harish Talwar are forged and fabricated, but they have nowhere, in the entire suit, stated how those documents are forged and fabricated.



34. **Ld. Additional District Judge** found no infirmity in the judgment dated 18.01.2014 of the Ld. Civil Judge and *dismissed the Regular First Appeal, vide Order dated 23.08.2018.*

35. Aggrieved, the *Second Regular Appeal under Section 100 CPC has been filed.*

36. *The grounds of challenge* are that the Defendant No.1/ Harish Talwar was not the owner of the suit property and was not competent to enter into Agreement to sell the suit property. Plaintiff/Anil Gupta has also not produced any documents of ownership of the Defendant No.1/ Harish Talwar in the suit property.

37. It was also claimed that DW-1 Sh. Harsh Jhulka gave evidence on behalf of the Plaintiff Anil Gupta, on the basis of Power of Attorney executed by the Plaintiff, in his favour, which is against Section 59 and Section 60 of the Indian Evidence Act, 1872.

38. Hence, it is submitted that the impugned Judgment is liable to be set aside.

Submissions heard and record perused.

39. The *Substantial Question of Law had been framed by this Court vide order dated 22.10.2018*, as follows:

1. *Whether the disposition of immovable property can be proved without production of the documents of the said disposition and whether the provision of section 91 of The Indian Evidence Act is not a bar?*



2. *Whether the contents of the documents of disposition of the Immovable property may be proved by oral evidence?*

40. It is the admitted case of the parties that originally the suit property was allotted to one Sh. Harish Chander vide allotment letter dated 10.01.1983. The suit property was sold by said Sh. Harish Chander to late Sh. Ascharaj Lal, for a total sale consideration amount of Rs. 16,000/- by way of Agreement to Sell, Will and GPA, all dated 14.07.1983. *Hence, it is not disputed by either of the parties that late Sh. Ascharaj Lal was the owner of the suit property, by virtue of the title documents dated 14.07.1983.*

41. The case of the plaintiff/Anil Gupta, was that Late Sh. Ascharaj Lal sold the suit property to his son, i.e. Defendant No. 1 Harish Talwar, for a sale consideration amount of Rs. 20,000/- by virtue of an Agreement to sell, receipt, Will, etc., all dated 01.11.1985. Thereafter, Defendant no. 1 Harish Talwar sold the suit property to the plaintiff Sh. Anil Gupta, by virtue of registered GPA, Will and receipt, all dated 18.10.2006. *Thereby, the plaintiff has become the owner of the suit property.*

42. The Defendant No.2 Smt. Kiran Talwar, in her cross-examination dated 01.11.2010, admitted that her father-in-law, Late Sh. Ascharaj Lal had executed the documents for the sale of the property, in favour of her husband, Harish Talwar/Defendant No.1, in the year 1985. Smt. Kiran Talwar thus, admitted the execution of the sale documents in favour of Harish Talwar.

43. She had asserted that the title documents of the suit property, i.e. registered GPA, Will, etc., dated 01.11.1985, executed in favour of Harish Talwar, Defendant No.1, were *forged and fabricated*, but there is no



explanation, whatsoever, or the grounds specified on which the alleged documents in favour of Harish Talwar were claimed to be forged and fabricated.

44. Further, Defendant No. 2 Kiran Talwar was claiming her ownership in the suit property on the ground that late Sh. Ascharaj Lal, her father-in-law (who expired on 27.09.1986), had executed a Will dated 15.08.1986, whereby he bequeathed the suit property to Smt. Kiran Talwar.

45. The *substantial questions of law as framed*, are whether the oral evidence in respect of a document *is barred under Section 91 Indian Evidence Act; and whether oral evidence in respect of a Document is admissible?*

46. **Section 91 of Indian Evidence Act, 1872** provides that when a document has been reduced to writing, no other evidence except the document itself or secondary evidence of its content in cases where it is admissible, shall be permissible.

47. It has been further explained in **Section 92 of Indian Evidence Act** that no oral evidence is admissible in respect of a document executed between the parties for the purpose of contradicting, waiving, adding or subtracting from its terms.

48. The Supreme Court in Roop Kumar v. Mohan Thedani (2003) 6 SCC 595, explained the scope of Section 91 of the Indian Evidence Act and observed that when the parties have deliberately put their Agreement into writing, it is conclusively presumed that the whole engagement is contained in the document itself and oral evidence is excluded for proving the terms thereof. It was also held that Section 91 forbids proving the contents of a



writing otherwise than by the writing itself and is founded upon the doctrine that documentary evidence is superior to oral evidence.

49. The distinction between proving a collateral fact and proving the contents of a document, was explained by the Supreme Court in Gangabai v. Chhabubai (1982) 1 SCC 4. It was held that while oral evidence may in certain circumstances be admissible to show that a document was never intended to operate or was merely sham and nominal, oral evidence is not admissible to prove the actual contents of the document itself where the law requires the transaction to be proved through the writing.

50. Similarly, in Bai Hira Devi v. Official Assignee of Bombay, AIR 1958 SC 448, the Supreme Court observed that when rights in immovable property are sought to be established through a written instrument, the contents of that instrument cannot be proved by oral testimony. The law insists upon the production of the document because it is the most reliable and authentic evidence of its own contents.

51. Further, in K.B. Saha & Sons Pvt. Ltd. v. Development Consultant Ltd. (2008) 8 SCC 564, the Supreme Court held that where a document is inadmissible for want of registration, *its terms cannot be received in evidence to prove the transaction affecting immovable property*. The Court clarified that a party cannot circumvent statutory requirements by seeking to prove through oral testimony what the law requires to be proved through a duly admissible document.

52. Accordingly, it is well settled that the ***contents of a document embodying a disposition of immovable property cannot be proved by oral evidence. Such contents can be proved only by the document itself or by admissible secondary evidence after laying the necessary foundation***



contemplated by law. Oral testimony cannot be used as a substitute for proof of the document or its contents. Section 91 operates as a complete bar against proving the terms of such a disposition by oral evidence.

53. Furthermore, oral evidence may be admissible only in respect of matters collateral to the document and independent of the terms creating rights and obligations. However, where the very purpose is to establish the contents of the document constituting the disposition of immovable property, oral evidence is wholly inadmissible. If such evidence were allowed, it would amount to permitting witnesses to reconstruct the contents of documents from memory, thereby undermining certainty in property transactions and defeating the legislative intent underlying Sections 91 Indian Evidence Act, 1872.

54. The connected proposition of law is that where the original documents is not available, *it may be proved through secondary evidence, in terms of Section 92 of Indian Evidence Act, 1872.*

55. *Section 61* of the Indian Evidence Act, 1872 provides that the content of a document may be proved *either by primary or by secondary evidence.* Section 63 of the Indian Evidence Act, 1872 *defines what the secondary evidence means and includes.*

56. *Section 65* of the Indian Evidence Act, 1872 further explains the circumstances in which secondary evidence in respect of a document may be given. **Section 65 reads as under:-**

“S.65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

- (a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to*



- beproved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;*
- (b) *When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;*
 - (c) *When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;*
 - (d) *When the original is of such a nature as not to be easily movable;*
 - (e) *When the original is a public document within the meaning of section 74;*
 - (f) *[When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] [Cf. the Bankers' Books Evidence Act, 1891 (18 of 1891), Section 4.]], to be given in evidence;*
 - (g) *When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.*

57. It is trite that under Indian Evidence Act, 1872, facts have to be established by primary evidence and secondary evidence is only an exception to the rules for which foundational facts have to be established to account for the existence of the primary evidence. Similar observations had been reiterated in the case of **H. Siddiqui (Dead) by LRs v. A. Ramalingam,** (2011) 4 SCC 240.



58. From *Clause (b) and (c) of Section 65 Indian Evidence Act, 1872* it emerges that secondary evidence in respect of a document, the original of which is not available or is destroyed or lost, can be proved by way of oral evidence.

59. In *Rakesh Mohindra v. Anita Beri & Ors.* (2016) 16 SCC 483, it was observed that the pre-condition for leading secondary evidence is that such original document could not be produced by the party relying on the document despite best efforts, as the same is beyond their control. The party seeking to produce secondary evidence, must establish the reason for non-production of primary evidence; *unless it is established that the original document is lost or destroyed or is being deliberately withheld by the party in respect of that document, secondary evidence in respect of such document, cannot be accepted.*

60. Thus, before secondary evidence can be admitted, the party relying on it, must lay a factual foundation, which involves two steps: (i) *the party must prove that the original document factually existed and was executed;* (ii) *the party must establish valid reasons as to why the original cannot be furnished.*

61. The secondary evidence is inadmissible, unless the aforesaid two circumstances are established.

62. In view of the aforesaid, *it becomes imperative to consider whether the Appellant, Kiran Talwar, has been able to prove the existence of the alleged Will dated 15.08.1986, in her favour.* She admitted that she cannot produce the Will in original or its copy, on the ground that the Will had been snatched away by Shri Harish Talwar/Defendant No.1 on 15.08.1986 (the



date on which the Will was allegedly executed), and therefore, she was not in possession of the Will.

63. In order to corroborate her assertions of snatching of the Will dated 15.08.1986 by her husband, the Appellant had relied upon a copy of the Police Complaint dated 26.02.2007, Mark A. The *learned Civil Judge* rightly observed that the said Complaint made by Defendant No.2, reported the missing of her husband since 09.01.2007 and also mentioned the snatching of the Will on 08.09.2006. The Complaint was first made on 26.02.2007, i.e. after the filing of the connected Suit No.261/2011. Hence, the inevitable conclusion was that this Complaint had been made belatedly, only to create evidence. The explanation given by the Appellant to explain non-production of alleged Will, is absolutely untenable.

64. Not only this, the Appellant Kiran Talwar had admitted in her cross-examination that even prior to the execution of the alleged Will dated 15.08.1986 in her favour, the property had already been sold by Ascharaj Lal to Defendant No.1 Harish Talwar, who along with Agreement to Sell, etc, had also executed a Will dated 01.11.1985 in favour of Harish Talwar. The Appellant cannot claim that the property was subsequently, bequeathed to her by virtue of Will dated 15.08.1986, without producing or even proving the very existence of this alleged subsequent Will in her favour.

65. *Having failed to produce the copy or the original alleged Will dated 15.08.1986 in her favour*, she tried to prove it by examining PW2 *Smt. Suman Anand* and PW3 *Smt. Swarn Dua*, her two sisters, who deposed that they were the attesting witnesses to the alleged Will. However, both PW2 and PW3, in their cross-examination stated that they were not witnesses to any Will. Both PW2 and PW3, therefore, did not support the Appellant



Kiran Talwar in regard to the execution of the Will. **The Appellant, therefore, miserably failed to prove even the existence of the Will, what to talk of its contents.**

66. The entire defence of the Appellant was based on oral deposition to prove the contents of the document, i.e. the alleged Will dated 15.08.1986, without even proving the existence of any such document. In the absence of any proof of any Will ever being written in her favour, *the question of leading secondary evidence to prove this alleged Will does not arise under Section 92 of the Indian Evidence Act, 1872.*

67. It is also significant to observe that the Appellant, Kiran Talwar had filed *Suit No. 261/2011*, seeking Declaration of being the Owner of the suit property by virtue of this alleged Will dated 15.08.1986, but the Suit was dismissed vide separate judgment dated 18.01.2014, which has not been challenged and has attained finality. The findings of this Suit, thus operate as res judicata; on this ground itself, this Appeal is liable to be dismissed.

68. An *objection was taken by the Appellant in this Appeal*, that the Plaintiff Anil Gupta himself did not step into the witness box, but had examined DW1 Sh. Harsh Jhulka, in whose favour, Power of Attorney Ex.DW1/1 had been executed by him. A Power of Attorney holder cannot be a witness, on behalf of the Plaintiff.

69. It is a settled law that any person who is aware of the facts of the case is a competent witness and does not need any Power of Attorney, to depose about the facts which are in his knowledge. Therefore, the objection that DW1 was an incompetent witness only because he had relied on a Power of Attorney in his favour is not tenable, under the law. He is competent to depose about the facts as per his knowledge.



70. Moreover, the entire case, insofar as the execution of the sale documents in favour of Anil Gupta, was not in dispute. It was only Kiran Talwar who had tried to establish her possession by claiming execution of an alleged Will dated 15.08.2026 in her favour by Late Sh. Ascharaj Lal, which she has not been able to substantiate. Therefore, there is no merit in this ground taken by the Appellant, in this Second Regular Appeal.

71. The *learned Civil Judge as well as learned ADJ* have thus, rightly held that not only was the Will in original or photocopy not produced, but her two alleged attesting witnesses, namely PW2 Smt. Suman Anand and PW3 Smt. Swarn Dua also contradicted the claim of the Appellant Kiran Talwar, by denying being a witness to the alleged Will. Both the Courts, thus rightly disbelieved the defence of Kiran Talwar about her having acquired the ownership by virtue of an alleged Will dated 15.08.1986 in her favour.

72. It is thus, concluded that there is no ground for interference in the Judgment of the learned Civil Judge dated 18.01.2014, which has been upheld by the learned ADJ in the Regular First Appeal, vide Judgment dated 23.08.2018.

Conclusion:

73. In the light of the aforesaid discussion, it is evident that the two question of law, do not favour the Appellant. It is held that the **Appeal is devoid of merit, and is accordingly, dismissed.**

74. All pending Applications are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

JULY 1, 2026/VA