
Arbinder Singh Kohli & Anr Vs Gobind Kaur Kohli

Rfa 892 Of 2016 & Cm Nos. 42294 Of 2016 & 37579 Of 201

Court: Delhi High Court

Date of Decision: July 4, 2018

Acts Referred:

Registration Act, 1908 & Section 17, 17(1A) Transfer of Property Act, 1882 & Section 53A

Hon'ble Judges: PRATHIBA M. SINGH, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Prathiba M. Singh, J.,

1. Mrs. Gobind Kaur Kohli Respondent/Plaintiff (hereinafter, "Plaintiff") filed a suit for mandatory injunction against her son and daughter-in-

law, Shri Arbinder Singh Kohli and Mrs. Rabinder Kaur Kohli Appellants/Defendants (hereinafter, "Defendants").

2. The Plaintiff claimed ownership rights in suit property bearing No.E-32-A, Neb Valley, Neb Sarai, New Delhi-110068 admeasuring 500 square

yards falling in Khasra No.234/2, 234/3 and 234/2/1 in the Revenue Estate of Village Neb Sarai, Tehsil Hauz Khas, New Delhi (hereinafter, "suit

property"). She claimed that she had acquired ownership vide Agreement to Sell dated 17th May, 2002. Upon purchase of the property she, along

with her husband, her son and daughter-in-law along with their children moved into the suit property. She claimed that she had permitted the

Defendants to reside in the first floor and also used half portion of the garage of the ground floor as an office.

3. According to the Plaintiff, the Defendants carried out changes in the property in 2006 when she and her husband were on vacation. She was forced

to lodge a police complaint on 16th August, 2006 and upon the intervention of the police, the Defendants agreed to restore the premises to its original

shape. However, despite agreeing, the Defendants did not abide by their assurances. In July, 2009, again while the Plaintiff and her husband were

visiting USA, the Defendants applied and obtained an electricity connection from BSES which was supplying electricity to Sainik Farms. This was

done on the basis of a Power of Attorney dated 17th May, 2002 which was executed in favour of the daughter-in-law at the time when the

Agreement to Sell was executed. Realizing that the Defendants may have some oblique motives, the Plaintiff and her husband contacted Shri Gautam

Kapoor who had executed the Power of Attorney in favour of Defendant No.2. The said Shri Gautam Kapoor cancelled the said Power of Attorney

and the said cancellation was registered with the Sub-Registrar on 10th December, 2009. After cancelling the Power of Attorney executed in favour

of Defendant No.2, a fresh Power of Attorney was executed by Shri Gautam Kapoor in favour of the Plaintiff's husband. In view of the

misbehavior of the Defendants and their children towards the Plaintiff and her husband and use of abuses and derogatory language, the Plaintiff called

upon the Defendants to vacate the suit property by notice dated 29th August, 2010 (inadvertently mentioned as 29th October, 2010).

4. The Defendants replied vide letter dated 9th October, 2010 and refused to comply with the requisitions of the Plaintiff. In the said reply, the plea

was taken by Defendant No.1 that he had contributed equal funds for acquiring the suit property and hence the Plaintiff does not have sole ownership.

The Plaintiff then filed the present subject suit seeking the following reliefs:

“(i) Pass a decree of mandatory injunction in favour of the Plaintiff and against the Defendants directing the Defendants to remove themselves and

their belongings from the suit property.

AND/OR

IN THE ALTERNATIVE

Decree of possession in favour of the Plaintiff and against the Defendants, directing the Defendants to delivery over vacant and peaceful possession

of the suit property to the Plaintiff.

(ii) A decree of injunction restraining the Defendants, their agents, servants, employees, representatives and / or anybody claiming through them or on

their behalf from in any manner whatsoever from reentering in any portion of the suit property.

(iii) Mesne Profit / damages for Defendants unauthorisedly using the suit property equivalent to market rate of rent of suit property.

5. In the written statement, the Defendants took the plea that the property is a joint family property belonging to the parents and the Defendants. Since

the Plaintiff is only one member of the joint family, she has no right to call upon the Defendants to leave the suit property. It was also claimed that the

property was purchased from the funds of the joint family. Defendant No.1 claimed that he was the adopted son of the Plaintiff and her husband,

being the biological son of Shri Jagmohan Singh Kohli (real brother of Plaintiff's husband). He then claimed that there was a joint family comprising

“In view of my findings on issues no. 3 and 4, the suit is decree. The defendants are directed to remove themselves and their belongings from the

property bearing no. E-32-A, Neb Valley Neb Sarah New Delhi-110068, admeasuring 500 square yards falling in Khasra no. 234/2, 234/3 and 234/2/1

in the Revenue Estate of Village Neb Sarai, Tehsil Hauz Khas, New Delhi and put the plaintiff into the possession thereof within two months from

today. Keeping in view the relation of the parties, the damages awarded to the plaintiff are restricted to Rs.5000/- per month from the date of

institution of suit till the date of handing over possession. Costs of the suit is also awarded in favour of the plaintiff and against the defendants.

Decree-sheet would be prepared accordingly.Ã¢â¬â€œ

9. In the present appeal, the matter was initially adjourned to enable parties to negotiate a settlement and thereafter, parties were heard. Ã,

Submissions of the Appellants/Defendants

10. Shri Harish Malhotra, Senior Advocate appearing on behalf of the Defendants submitted that the suit property was purchased from the funds of

the joint business conducted by the three sons of Late Shri Jagat Singh. The father of Defendant No.1, being one of the brothers, had acquired funds

from the joint family business. The family owned joint property in Pedder Road in Mumbai and two flats in Hyderabad. All the three brothers were

living in Mumbai. When the house at Pedder Road was sold, a property was purchased in Defence Colony. When the property in Defence Colony

was sold, two properties, one in DLF and the suit property were purchased. The DLF property was again jointly in the name of his mother and his

wife. Similarly, the suit property is also jointly owned by his mother and wife, according to him.

11. Shri Malhotra further urged that the Agreement to Sell does not confer any title upon the Plaintiff. The consideration was paid from the joint family

funds as admittedly, the Plaintiff did not have any source of income. He relied on the cross-examination of the Plaintiff to the effect that she had no

source of income. He further submitted that along with the Agreement to Sell, which was executed by Shri Suresh Chand Kapoor in favour of the

Plaintiff, on 17th May, 2002, a Power of Attorney was executed by Shri Gautam Kapoor in favour of Defendant No.2, the daughter-in-law. In the said

Power of Attorney, it is recorded that possession is also being given to the daughter-in-law. Though the said Power of Attorney has been subsequently

cancelled, the Defendants also have a Power of Attorney from the original owners, i.e. the the Balharas, who were the original Bhumidars of the suit

property. He submits that a mere Agreement to Sell which is not registered, cannot confer any title on the Plaintiff in view of the judgment of the

Supreme Court in Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana (2012) 1 SCC 656 (hereinafter, Ã¢â¬â€œSuraj LampsÃ¢â¬â€œ).

12. In the absence of registration, the Plaintiff is not entitled to any rights in the suit property, in view of Section 17 and 17(1-A) of the Registration

Act and Section 53A of the Transfer of Property Act. He further submits that Power of Attorney which is registered transfers the title in favour of

the daughter-in-law as it also has the right to sell in her favour. He further submits that the Agreement to Sell merely permits the Plaintiff to seek

specific performance and nothing more.

Submissions of the Plaintiff

13. On the other hand, Shri Pawan Bindra appearing for the Plaintiff submits that the Defendants have been taking contradictory stands. Initially it

was claimed in the reply to the legal notice that the son had contributed to the purchase of the property but thereafter, in the written statement, it was

pleaded that the property was purchased from joint family funds. These two pleas are self defeating and mutually destructive. He further submits that

there is nothing unusual about the sale transactions. Sainik Farms being an unauthorised colony, no sale deeds are registered for properties in Sainik

Farms. He submits that as was the practice prevalent in 2002, a full set of documents were executed including an Agreement to Sell, Will, Receipt,

possession letter and General Power of Attorney. While all the former were executed in favour of the Plaintiff, the General Power of Attorney was

executed in favour of Defendant No.2 as she was the daughter-in-law whom the Plaintiff trusted. The purpose of the General Power of Attorney was

merely to enable the execution of a sale deed, at a later point of time, if and when the sale deeds for the suit properties became registrable.

14. He further submits that the entire sale consideration for the suit property went from the bank account of the Plaintiff. The Plaintiff's husband

was not part of any HUF, as the businesses were run by various companies, firms, in which third parties also had a share. He cites the example of the

buffalo meat business in which one Shri Ramesh Kashyap who was a third party, was also a Director.

15. Insofar as the DLF property is concerned, he submits that Defendant No.2 paid Rs.5,00,000/- for the said property as both the Plaintiff and

Defendant No.2 had 50:50 share in the said property. The three sons of late Shri Jagat Singh have never expressed their intention to establish or run

an HUF business with them as the coparceners. In the law as prevalent in 2002, women could not have been coparceners, and hence the purchase

was not as part of a joint Hindu family. He further submits that the Plaintiff is not seeking any benefit under 53A of the TPA or seeking specific

performance. The Plaintiff is merely seeking to remove the Defendants who were allowed to stay in her property, and the permission having being

revoked, they become unauthorised occupants.

16. Shri Bindra further urges that a General Power of Attorney does not require registration and hence it could be cancelled even by an unregistered

document. He submits that the second Power of Attorney executed in favour of Defendant No.2, allegedly by the Balharas, has not been pleaded in

the written statement, and hence cannot be relied upon. He submits in conclusion that the Plaintiff having paid the consideration to the owners, and

having various documents executed in her favour, his client is the rightful owner of the suit property and the Defendants have no right to stay in the

suit property.

Details of Documents Executed

17. In 1988, an Agreement to Sell was entered into between Shri Deep Chand and Shri Kishan Chand, Shri Tek Chand, who sold the property vide

Agreement to Sell and purchase in favour of Mrs. Vimla Malhotra, and her husband Shri Baldev Raj Malhotra, in whose favour the Power of

Attorney was also executed. The sellers are loosely described as the Balharas, and were the original Bhumidars of the suit property. On 20th

November, 1992, Mrs. Vimla Malhotra/Shri Baldev Raj Malhotra, entered into an Agreement to Sell and Power of Attorney, in favour of Mrs. Veena

Malhotra and Shri Subhash Kundal Lal Malik.

18. On 18th August, 1993, a similar transaction was entered into by Mrs. Veena Malhotra and Shri Subhash Kundal Lal Malik in favour of the three

members of the Ghate family.

19. On 24th May, 1996, the Ghate family entered into an Agreement to Sell with Shri J.P. Gupta and Power of Attorney was executed in favour of

Vikas Jain (Nephew of Shri J.P. Gupta).

20. On 23rd September, 1998, Shri J.P. Gupta entered into a similar transaction with Shri Suresh Chand Kapoor and his son Shri Gautam Kapoor.

21. On 17th May, 2002, the following documents were executed: -

1. Exhibit PW1/1 - Agreement to Sell by Shri Suresh Chand Kapoor in favour of Mrs. Gobind Kohli - This Agreement records the previous

history of transactions and also records the payment by cheque of Rs.9,00,000/- which is the sale consideration. The Agreement to Sell provides that

the Plaintiff "Shall hereinafter become the absolute owner/bhumidar of the aforesaid land and shall enjoy all rights of the ownership, possession,

privileges, easements and appurtenances, whatsoever of the said land. The Agreement also records that the actual vacant, physical possession has

been delivered to the Plaintiff and the Plaintiff is in actual physical possession of the aforesaid land. The Plaintiff was also given the right to receive

the entire compensation if the suit property gets acquired by the Government. She also was given full right to get the property mutated in her name,

and/or in her nominee's name in the revenue records. The Agreement interestingly records that possession was given before signing of the

Agreement. The Agreement to Sell is witnessed by Shri Gautam Kapoor and Shri Pramod K. Dang.

2. Receipt for a sum of Rs.9,00,000/- duly signed with revenue stamp. This receipt is also witnessed by the same witnesses.

3. Possession letter signed by Shri Suresh Chand Kapoor, Plaintiff and the 2 witnesses given in favour of the Plaintiff.

4. Exhibit PW1/2 - General Power of Attorney is executed by Shri Gautam Kapoor in favour of Mrs. Rabinder Kaur Kohli, Defendant No.2, wife of

Defendant No.1 i.e., daughter in law of the Plaintiff.

Exhibit PW1/3 - A Will dated 17th May, 2002 was executed by Shri Suresh Chand Kapoor in favour of Mrs. Gobind Kaur Kohli.

The same is a registered Will and is duly witnessed by Shri Vineet Anand and Shri S.S. Sahni.

22. Thereafter, on 10th December, 2009, Shri Gautam Kapoor cancelled the Power of Attorney executed in favour of Defendant No.2. The Said

cancellation was duly registered with the Sub-Registrar (Exhibit PW1/9), and a fresh Power of Attorney was executed in favour of Shri Rajender

Singh Kohli, husband of the Plaintiff. The said Power of Attorney (Exhibit PW1/10) is witnessed by S.S. Sahni, Shri Gulratan Singh Kohli and Shri

Vineet Anand. Two of the witnesses were the same as in the Will dated 17th May, 2002.

23. Apart from the above mentioned documents, the other documents relied upon by the Plaintiff are: -

(i) Exhibits PW1/5 and Exhibit PW1/9 respectively - Complaints dated 15th August, 2006 and 19th August, 2006, given by the Plaintiff's husband to

the police;

(ii) Exhibit PW1/21 - Sale deed dated 21st August, 1970 in respect of Flat bearing No.29, 4th Floor, Mount Unique, Peddar Road, Mumbai;

(iii) Exhibit PW1/23 - Sale deed dated 28th August, 1995 in respect of purchase of prop C-320, Defence Colony by Plaintiff;

(iv) Exhibits PW1/24 to PW1/27 - Sale deed dated 7th October, 2002 and sale deeds executed by different vendees by the Plaintiff on various portions

of C-320, Defence Colony;

(v) Exhibit PW1/28 - Copy of lease deed dated 11th October, 2010 along with the bank statements showing leasing of the Sainik Farm property

bearing No.433-B at Forest Lane, Sainik Farms, Neb Sarai, New Delhi along with the bank statement showing the payment of monthly lease rent of

Rs.63,000/-;

(vi) Exhibit PW1/9 - Letter written by Plaintiff to BSES asking for an electricity connection.

(vii) Exhibit PW1/19 (colly) and Exhibit PW1/20 (colly) - Receipt showing payment of property tax by the Plaintiff dated 23rd June, 2011 to the MCD,

along with the bank statement.

24. None of the documents filed by the Plaintiff are disputed by the Defendants. The Defendants, however, relied on only one document i.e. copy of a

Power of Attorney dated 23rd July, 2002 purportedly executed by Balharas in favour of Defendant No.2 (Mark-A).

Summary of the Evidence given by the Witnesses

25. PW-1 - the Plaintiff and her husband, PW-2 - primarily exhibited all the relevant documents. PW-1 in her evidence submitted that her husband and

his brothers had started business under the name and style of "Kohli Brothers". They were in auto part business, however, thereafter, they moved

to the business of export of buffalo meat. She stated that there was a split between the brothers, and her husband thereafter continued the buffalo

meat business with Defendant No.1, her son. She confirmed that the Mumbai flat was sold in 1995, and thereafter a flat was purchased in Defence

Colony. After selling the property in Defence Colony, a property was purchased in DLF Gurgaon and the suit property was also purchased. She

admitted that DLF property was purchased jointly in her name and in the name of daughter-in-law i.e. Defendant No.2. She confirmed that the suit

property was purchased from Shri Suresh Chand Kapoor and her son Shri Gautam Kapoor. She also confirmed that the original owners were the

Balharas. She stated that at the time when the suit property was purchased, the whole family resided together with the Plaintiff with a common

kitchen till 2004. She stated that the businesses were always separate though the brothers used to visit each other regularly. She confirmed that she

was always a house wife and did not carry out any business or job. She also confirmed that the buffalo meat business was in the name of "Linkers

International Export Pvt. Ltd.". Even in the cold storage business called Prem Raj Cold Storage there were other shareholders. She submitted that the

Mumbai flat was in the joint name of herself and her sister-in-law, Mrs. Surjit Kaur Kohli and when it was sold, she got 50% of the consideration.

26. PW-2 stated in his evidence that he used to do business jointly with his brothers of auto parts, but later on the business was moved into partnership

firms. He stated that one third party by the name Shri Raj Kumar Jaisinghani had started the meat export business. He confirmed that none of the

women had any independent source of income. PW-2 was confronted with Mark-A i.e. certified copy of Power of Attorney dated 23rd July, 2002

purportedly executed by Balharas in favour of Defendant No.2. To this, he replied that he could only confirm the same, after seeing the original. PW-2

stated that the Balharas had also executed an affidavit in favour of the Plaintiff and also a Will in favour of the Plaintiff. Apart from this, the entire

cross-examination proceeded only in respect to the businesses of PW-2 with his brothers. PW-2, in his affidavit, relied upon a lease deed of a

neighbouring property in Sainik Farms to establish the monthly rental of Rs. 63,000/-.

27. PW-4 confirmed the police complaint dated 19th August, 2006 which was given by the Plaintiff's husband to the Police Station, Hauz Khas. PW-

5 confirmed that PW-1/9 is a registered document i.e. the deed of cancellation. PW-6 confirmed that PW-1/4, PW-1/3, are both registered

documents. PW-8 confirmed that PW-1/23 is a registered document. PW-9 confirmed that PW-1/24, PW-1/25, PW-1/26 and PW-1/27 are all

registered documents. PW-10 from the MCD office confirmed all the challans placed as PW-1/19 (Colly).

28. DW-1 stated in his evidence that the property is a joint family property purchased out of the funds generated out of the joint family business. He

further stated that the suit property is a joint family property of the Plaintiff, her husband and both the Defendants. He further stated that the money

paid for purchase of the property was joint family money, in which his contribution was equal. In his cross-examination, he denied most of the

suggestions put to him. He admitted that the DLF property was purchased out of a loan sanctioned by HDFC Bank. He admitted that in Prem Raj

Cold Storage, one Shri Ramesh Kashyap had shareholding, and this dispute had even been adjudicated in the Company Law Board. On a specific

question, if in the Income Tax Returns whether he had claimed that he had a part of an HUF, the witness answered as under: -

“Q. In any of your income tax returns have you ever disclosed that you are part of HUF or have share in joint family as you have alleged in your

written statement and evidence by way of affidavit that there were joint family properties and businesses in which you have a share.

Ans. Since I do not have the income tax return at this point of time, hence I am unable to answer the said question.

It is incorrect to suggest that I have not filed my income tax return because there is no reference of HUF or joint family business in the said returns

and I have falsely stated so in my written statement and my evidence by way of affidavit.”

Analysis and Findings

29. From an analysis of the documents and oral evidence on record, it is clear that almost all the documents in this case are admitted between the

parties. Mark-A being a Power of Attorney purportedly executed by the Balharas in favour of Defendant No.2 has not been proved in accordance

with law and cannot be read into evidence. The said document has neither been pleaded nor proved.

30. A perusal of the documents reveals that all the sale transactions, historically, in respect of the suit property have been by means of an Agreement

to Sell coupled with a General Power of Attorney in favour of one of the family members of the purchaser. The reasons for this pattern of

sale/purchase of this property located in Sainik Farms may be many but this Court is not concerned with the same. Sufficient to say that this appears

to have been the general practice. The sale consideration for the suit property has been paid only from the bank account of the Plaintiff.

31. The Defendants have not placed on record a single document to establish that the Plaintiff's husband ever had an HUF with his brothers. The

Defendants have also not placed on record any document to show that there exists an HUF between the Plaintiff's husband and Defendant No.1. In

the absence of any document to prove the existence of an HUF, the Defendants claim that there was an HUF in existence, of which Defendant

No.1 was a part, seems a far cry. The existence of an HUF has to be proved in some manner and the intention to establish an HUF by the

coparceners has also to be established. The same cannot be asserted without any evidence. The manner in which the Defendants have tried to argue

that the funds were from a joint family HUF business is completely farfetched inasmuch as not a single witness has been produced by them to show

that there was any intention to establish an HUF or that it had been in existence. There is no doubt that a large number of businesses were carried on

by the family of the Plaintiff's husband, however, that itself would not lead to an inference of an HUF.

32. None of the members of the so called HUF have staked any claim to the suit property, or claimed any funds of the HUF were used by the

Plaintiff to acquire the suit property. In the absence of such evidence, it cannot be held that the suit property was purchased out of HUF funds.

33. Coming to the issue of joint family, Defendant No.1 has not filed a single bank statement from any of his accounts to show that he had contributed

to the purchase of the suit property. In the reply to the legal notice (PW1/17), the Defendant initially claimed that he had equally contributed in the

purchase of the property, and in the said reply there was no plea in respect of existence of an HUF of his father. Thus, the plea of contribution ought

to have been made good in some form or the other, which is conspicuously lacking. The defence of joint contribution to the purchase is, therefore,

rejected.

34. Coming to the issue of the documents which were executed for the purchase of the suit property. A perusal of all the documents clearly shows

that at the time of the execution of the Agreement to Sell, various other documents including, the Will, receipt, the possession letter were executed in

favour of the Plaintiff by Shri Suresh Chand Kapoor. His title to the suit property is not disputed by the Defendants. The only plea of the Defendants

is that Mr. Gautam Kapoor, who was the son of Shri Suresh Chand Kapoor, executed a General Power of Attorney in favour of Defendant No.2. The

question, therefore, is what is the effect of the said Power of Attorney in favour of Defendant No.2?

35. A Power of Attorney merely permits the holder to act as the agent of the person executing the attorney. This Power of Attorney on a standalone

basis is merely an agency and cannot vest a title in an immovable property. The execution of the Power of Attorney without any consideration thereof,

on a standalone basis merely constitutes an agency and nothing more. Even though the Power of Attorney can be termed as being irrevocable, the

nature of the documents cannot be changed. This General Power of Attorney has to be tested as against the entire set of documents executed in

favour of the Plaintiff. The pattern which clearly emerges is that the Plaintiff purchased the suit property from Shri Suresh Chand Kapoor and the

Power of Attorney was executed in favour of her daughter-in-law by the son of the vendor only to enable the registration of the sale deed at a future

point of time. The General Power of Attorney, without the remaining set of documents, does not constitute a transfer of title.

36. Mr. Malhotra relies on State of Rajasthan v. Basant Nahata AIR 2005 SC 3401 (hereinafter, *Āĉā,~Ā*“Basant NahataĀĉā,~”) to argue that a Power of

Attorney once granted cannot be revoked. It is relevant to note that this judgment clearly observes as under:

Āĉā,~Ā“Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of

attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his

own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.Āĉā,~Ā

37. The Power of Attorney being a document appurtenant to the Agreement to Sell, Will and letter of possession, the minute the Defendant no.2 acts

contrary to the interest of the person who is the actual purchaser, she breaches the trust of the donor of the Power of Attorney. Thus Shri Suresh

Chand Kapoor cancelled the Power of Attorney. In Suraj Lamps (supra), the Supreme Court clearly holds -

“25. 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 regularize the

transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

26. 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 Transfer of

Property 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.

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, sons, 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 land relating to

apartments in favor 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.”

38. Thus, the irrevocable General Power of Attorney in favour of Defendant No.2 does not have the effect of transferring any title in favour of

Defendant No.2. The Plaintiff can in fact use the Agreement to Sell and the General Power of Attorney executed in favour of her husband to get the

conveyance deed executed in her favour as held in Suraj Lamps, if and when the same becomes possible or permissible.

39. Moreover the General Power of Attorney in favour of defendant no.2 having now been cancelled by a registered cancellation deed, it no longer

holds good. The new Power of Attorney holder being the Plaintiff's husband, he now enjoys the trust of the owner for execution of the sale deed.

Basant Nahata (supra) clearly holds that the attorney holder acts in a fiduciary capacity. Once the trust reposed in the attorney is lost, exercise of the

rights by the attorney can no longer be done. Suraj Lamps (Supra) holds that the attorney holder can execute a deed of conveyance and convey title

on behalf of the grantor, but for that the Power of Attorney has to be in existence.

40. The Plaintiff herein, is not seeking protection of her possession under Section 53A of the TPA in the present case. She, having purchased the

property through various documents namely, Agreement to Sell, Will, letter of possession and receipt, is seeking to evict her son and daughter-in-law

who she had permitted to stay with her in the suit property. The Plaintiff only needs to establish a better title than the Defendants and not an absolute

title. Suraj Lamps (Supra) clearly holds that though sales by Agreement to Sell, Will, etc, are not legally valid modes of transfer, they are permitted to

get the transactions already entered into, regularised. Thus to this extent, Suraj Lamps (Supra), completely protects the Plaintiff's rights. The Plaintiff

has taken steps to get the General Power of Attorney in favour of Defendant No.2 cancelled and get a new Power of Attorney executed in favour of

her husband. The parties who have purchased properties by means of Agreement to Sell/Will are entitled to obtain and seek specific performance.

Suraj Lamps (Supra) also recognises that on the basis of such documents, even mutations made by the municipal or revenue authorities need not to be

disturbed. A General Power of Attorney given amongst family members is also recognised by Suraj Lamps (Supra).

41. The history of transactions in respect of the suit property shows that while the main Agreement to Sell and the accompanying documents like Will,

Receipt, Letter of Possession, are executed in favour of one person, the General Power of Attorney is executed in favour of a family member in order

to enable the execution of a conveyance deed in future. Thus, the circumstances in the present case clearly show that the Plaintiff got the GPA

executed after paying the consideration amount in favour of her daughter-inlaw by reposing her trust and faith in her. This is a simple transaction not

between the Kapoors and Defendant No.2, but in fact, the Plaintiff allowing the General Power of Attorney to be executed in favour of her daughter-

inlaw. The Defendant No.2 had not contributed any amount in the purchase of the property. No member of the family has been able to establish any

contribution. The manner in which the Defendants seek to trace out funds from past businesses cannot establish that the amount was from the joint

family businesses. The possession letter having been executed in favour of the Plaintiff and the Agreement to Sell clearly recording that the

possession was handed over even prior to the execution of the documents on 17th May, 2002, it is clear that the Plaintiff was also in possession even

prior to the General Power of Attorney being executed. Thus, the Defendant No.2 did not come into possession due to the execution of the General

Power of Attorney, but because the Plaintiff permitted her to be in possession as a member of the family and nothing more. The Plaintiff is thus

declared as owner of the suit property by virtue of documents namely; Agreement to Sell dated 17th May, 2002, receipt dated 17th May, 2002,

possession letter dated 17th May, 2002, and Will dated 17th May, 2002

42. As observed by this Court, in Sachin & Anr. v. Jhabbu Lal & Anr. AIR 2017 Del 1, the Plaintiff has established a better right and title to the suit

property than her son and daughter-in-law, who were permitted to live in the suit property by her.

43. Thus, the judgment and decree of the Trial Court does not call for any interference. The Defendants are given four weeks time to vacate the suit

premises, and remove their belongings and articles from the suit property.

44. Insofar as mesne profits are concerned, the Defendants have been in possession of the first floor of the property. PW-2 has placed on record the

documents to show that the monthly rent for such properties is in the range of Rs.63,000/-. Since the Defendants have been in occupation of half of

the suit property, the mesne profits are modified from Rs.5000/- per month to Rs.30,000/- per month on the same terms as has been directed by the

Trial Court. The payment be made by the Defendants/Appellants within a period of eight weeks.

45. Appeal is dismissed in the above terms. No order as to costs.

Miscellaneous applications stand disposed of.