

Samarth Shiksha Samiti vs . Ajay Malhotra. on 30 May, 2017

CS No. 159/16/2003

Samarth Shiksha Samiti vs. Ajay Malhotra.

IN THE COURT OF SHRI SHAILENDER MALIK
ADDITIONAL DISTRICT JUDGE-03: CENTRAL
TIS HAZARI COURTS, DELHI

CS No. 159/16/2003

In the matter of

Samarth Siksha Samiti (Regd.)
Having its registered office
At Mata Mandir Gali,
Jhandewalan, New Delhi
Through its Manager
Sh. Amar Nath Sharma
S/o Late Sh. Gian Chand Sharma
Saraswati Sishu Mandir School
2754-A, Ranjit Nagar
Patel Nagar, New Delhi

.....Plaintiff

Versus

1. Sh. Ajay Malhotra
Son of Not Known
C/o Factory At 2754-A, First Floor
Ranjit Nagar, Patel Nagar,
New Delhi
2. Sh. Govind Kishore Grover
(Since Deceased Through Legal Heirs)
 - i. Mrs. Ashi Grover (Wife)
 - ii. Sh. Ravish Grover (Son)
(Defendant no. 3)
 - iii. Sh. Munish Grover (Son)

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All R/o 6/71, West Punjabi Bagh,
New Delhi.

3. Sh. Ravish Grover,
Sh. Govind Kishore Grover
R/o 6/71, West Punjabi Bagh
New Delhi.

4. Sh. Anuj Malhotra,
Son of Not Known
C/o Factory At 2754-A, First Floor
Ranjit Nagar, Patel Nagar
New Delhi.

.....Defendants

Date of filing of the Suit	:	04.06.2003
Date of reserving the Judgment	:	19.05.2017
Date of passing the Judgment	:	30.05.2017

Suit for possession and mesne profits

JUDGMENT

1. This is suit for possession, mesne profits. Plaintiff is a duly registered society under Societies' Registration Act. Plaintiff society in pursuance to its objectives of running educational institution/school namely Saraswati Shishu Mandir and Saraswati CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

Bal Mandir at different places in Delhi.

2 It is mentioned in the plaint that Smt. Krishnawanti w/o Panna Lal Grover was owner of property bearing no. 2754□A, Ranjit Nagar, Patel Nagar, Delhi being her self acquired property. It is stated that late Smt. Krishnawanti in her lifetime proposed the plaintiff society to run school in the above □said property and accordingly she entered into an agreement with plaintiff. Plaintiff society through its Manager Mr. Amarnath Sharma had entered into a Memorandum of Understanding dt. 1.3.2000 with Smt. Krishnawanti, as per her wishes and directions. Such execution of memorandum of understanding was duly witnessed by her family members /legal heirs.

3 It is stated in the plaint that above mentioned property was earlier mortgaged as collateral security for firm M/s.Grover Enterprises for taking a loan. A suit for recovery was filed against borrower firm M/s. Grover Enterprises in respect of that loan being suit no. 810/82. Such suit was later transferred to DRT being OA No. 832/95. Plaintiff society as per the terms and conditions of above referred memorandum of understanding dt. 01.03.2000 settled the bank outstanding amount due on account of firm M/s. Grover Enterprises, resultantly said recovery proceedings being OA CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

no. 832/95 were disposed off on account of settlement and property in question became free from any encumbrances.

4 Since Smt. Krishnawanti was sole and absolute owner of property in question measuring 200 sq. yards comprised of ground, first and "barsati" floor (temporary shed floor) having purchased by the registered sale deed dt.

o 6 . o 6 . 1 9 5 9 . S m t . K r i s h n a w a n t i t h e n handed over the peaceful possession to plaintiff society vide a letter of possession dt.9.12.2000. Plaintiff society shifted partly its "Saraswati Shishu Mandir School" which was earlier situated at Cottage no. 5, West Patel Nagar Delhi to above□said property. Plaintiff accordingly fulfilled the obligation on its part, as per terms and conditions of above referred memorandum of understanding dt. 01.03.2000. It is stated that Smt. Krishnawanti made a written declaration dt. 14.1.01 stating that she is owner of the above□ said property which was herself acquired one, she further mentioned in that declaration that she had entered into a memorandum of understanding with plaintiff, under which she had handed over the property in question to plaintiff subject to clearance of bank loan.

A s t h e c l e a r a n c e o f b a n k l o a n w a s i n t h e p r o c e s s , accordingly she has delivered the possession of property to plaintiff and plaintiff has started running the school. It is stated that unfortunately on 18.1.01 Smt. Krishanawanti expired leaving CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

behind her two sons namely Govind Kishore Grover (defendant no. 2 herein) and Joginder Pal Grover, besides five daughters.

5 It is alleged that defendant no.1, defendant no. 2 and defendant no. 3, in connivance with each other trespassed unauthorizedly, stealthily in the property and occupied the first floor of the property on 19.01.2001 in the morning time when entire family of late Smt. Krishnawanti and office bearers of plaintiff society were attending the cremation of late Smt. Krishnawanti at Sat Nagar, cremation ground. It is stated that plaintiff upon coming to know about above□said alleged trespass and unauthorized occupation of first floor, raised objection against such conduct of defendants. Defendants along with their workers allegedly threatened office bearers of plaintiff and ladies staff of the school. Defendant no.1 allegedly started running hosiery, ready□made clothes factory on the first floor of the property.

6 It is stated that on 23.1.01, defendant no. 2 herein filed suit for permanent injunction (Suit no. 438/01) before the Court of then Civil Judge against plaintiff society. Such suit was decided in terms of statement given by plaintiff's counsel that it would not dispossess defendants forcibly and will take legal action to get the possession. It is stated that plaintiff society also filed complaints on 24.01.01, CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

21.03.01 and on 01.05.01 with police against defendants herein for taking lawful action.

7 It is stated that in between such period plaintiff society had been making payments to the concerned bank towards the discharge of loan obligation, as per the terms and conditions of memorandum of understanding with late Smt. Krishnawanti and final installments in this regard for clearance

o f o u t s t a n d i n g a m o u n t w a s m a d e o n 12.1.01. It is stated that plaintiff claims to be the rightful owner of the property and defendant no.1 being in unauthorized possession of first floor of property in question since 19.01.01. it is also mentioned that suit filed by defendant no.2 herein being suit no. 266/02 for relief of declaration, partition and mandatory injunction is also pending. Hence, in the present suit a decree of possession has been sought in respect of first floor of property no. 2754 □A, Ranjit Nagar, Patel Nagar, New Delhi against defendants. Plaintiff further prays for mesne profits @ 10,000/□per month as such, a recovery of sum of Rs. 2,70,000/□ have been sought on account of damages of unauthorized occupation, with interest @ 18% p.a. 8 WS was filed on behalf of defendant no.1 taking the objection therein that plaintiff has no locus standi to file the suit as plaintiff society is neither owner nor landlord of the suit property.

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Another objections is taken to the effect that plaint has not been signed and verified by the competent person on behalf of plaintiff society, suit being devoid of cause of action. It is stated that suit is bad for non joinder of other co tenant Anuj Malhotra. Defendant no.1 pleaded that he is lawful tenant in the premises in question. An objection was taken for stay o f t h i s s u i t u / s 10 C P C a s s u b j e c t matter of the present suit and issues involved in present suit are directly and substantially in issue in earlier instituted suit by defendant no.2.

9 While case of the plaintiff society has been denied in totality, it is denied that late S m t . K r i s h n a w a n t i i n h e r l i f e t i m e proposed to plaintiff to run school in the property in question. It is also denied that plaintiff society through its Manager had entered into any memorandum of understanding with Smt. Krishnawanti on 01.3.2000. It is stated that a l l s u c h d o c u m e n t s a r e f o r g e d . I t i s further denied that late Smt. Krishnawanti handed over the physical possession of the property to plaintiff on 09.12.2000. It is pleaded that defendant no.1 with his brother has been in possession of entire first floor of the suit property. Written declaration dt. 14.1.01 of late Smt. Krishnawanti has also been denied. It is pleaded that property cannot be devolved in favour of plaintiff society without any registered document. After the death of late Smt. Krishnawanti CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

her legal heirs have inherited the property in question. Defendant no.2 being the eldest son of late Smt. Krishnawanti. It is pleaded that defendant no.1 w i t h h i s b r o t h e r a m e i n t o p o s s e s s i o n o f f i r s t floor of property as tenant on 20.7.2000 with monthly rent of Rs. 9000/□ which is being paid

to defendant no.2 . Defendant no.1 being lawful tenant inducted by defendant no.2.

10 Originally suit was filed against defendant nos. 1 to 3. During the pendency of the proceedings upon an application U/o 1 Rule 10 CPC moved by plaintiff defendant no. 4 namely Anuj Malhotra was impleaded as party vide order dated 11.11.03.

11 Defendant nos. 2 and 3 filed WS taking the plea that present suit is liable to be stayed u/s 10 CPC on the ground that issues involved in the present suit are substantially in issue in a previously instituted suit filed by defendant no.2 for declaration and partition. It is pleaded that plaintiff has no locus to file the suit, suit is devoid of cause of action . Similar objections were taken as are pleaded in WS of defendant no.1. While denying the case of the plaintiff it was pleaded on behalf of defendant nos. 2 and 3 that property in question was not self acquired property of late Smt. Krishnawanti. In fact, she was a house wife and had no income . Property is of joint Hindu Family property. Defendant no.2 being eldest in the CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

family has been running partnership firm by its name Northern Steels and General Mills. It is stated that out of earning of that firm , property in question was purchased and no investment was made by late Smt. Krishnawanti .

12 While denying the claim of plaintiff society , it is alleged that memorandum of understanding, possession letter, declaration are forged and fabricated documents. As Smt. Krishnawanti had no title to execute such documents , therefore defendant no. 2 had already filed a suit in this regard. Defendant nos. 2 and 3 have also reiterated that defendant no.1 is in possession of first floor of property being lawful tenant of defendant no.2. Defendant no.1 and his brother came in possession as tenant on 20.7.2000 with monthly rent of Rs. 9000/□ It is pleaded that claim of plaintiff society of discharging all these obligations under the memorandum of understanding dt. 01.03.2000 has also been denied. It is also denied that plaintiff is owner in property in question or that defendant no. 1 is in unauthorized occupation of the same.

13 Defendant no. 4 also filed the WS pleading therein similar facts and objections as pleaded by defendant no.1 in his WS.

14 Replication to the respective WS of defendant no.1, 2 & 3 CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

as well as defendant no. 4 was filed on behalf of plaintiff.

15 On the basis of pleadings as come on record, following issues were framed :

1. Whether the plaintiff had acquired ownership rights over the property no 2754□A, Ranjeet Nagar, Patel Nagar, New Delhi from Smt. Krishnawanti? OPP
2. Whether the defendant trespassed into property on 19.01.2001 unauthorizedly occupied the first floor of the property? OPP
3. Whether the plaintiff is entitled to decree of possession of the first floor of property no. 2754□A, Ranjeet Nagar, Patel Nagar, New Delhi? OPP
4. Whether defendant no. 1 was a tenant under Smt. Krishnawanti prior to 19.01.2001 and is in lawful possession of the portion of first floor ? OPD□
5. Whether defendant no. 4 was a tenant under Krishnawanti prior to 19.01.2001 and is in lawful possession of the portion of first floor? OPD□4
6. Whether the plaintiff was a properly registered society? OPP
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7. Whether the property in question was a joint Hindu Family property? OPD 2 & D3
8. Whether defendant no.2 and 3 had succeeded to the property in question after death of Smt. Krishnawanti and are the owners of the property? OPD2 & D3
9. Relief (Whether the plaintiff was properly registered society.) 17 Plaintiff society has filed a present suit seeking relief of possession and damages etc. It has come in evidence of PW□ Sh.

Amarnath Sharma that plaintiff is a registered society having certificate of registration Ex. P W 1 / A . Plaintiff society has also examined P W □ 7 Yoginder Singh from Registrar of Societies who has also testified that plaintiff society is registered vide registration no. S□156 of 1959□60. P W □ 7 has proved memorandum of Association and Rules of plaintiff society as Ex. P W 7 / 2 and P W 7 / 3 . On this aspect witness has not been cross examined at all. Which impliedly means that this aspect / issue is not of much dispute. Accordingly, this issue stands decided in favour of plaintiff and against the defendant.

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(Whether the plaintiff had acquired ownership right over the property no. 2754 A Ranjit Nagar, Patel Nagar New Delhi from Smt Krishnawanti?) and

(Whether the property in question was a joint Hindu Property?) 19 Issue no. 1 and 7 are being taken up together because these issues involve inter related facts and these two issues can be decided on examining those inter related facts and counter claims of the parties. Onus to prove Issue No. 1 is on plaintiff whereas onus to prove issue no. 7 is on defendant no. 2 & 3. As is evident from the above discussion of facts arising out of the pleadings, plaintiff society is seeking relief of possession and damages etc., mentioning therein that earlier Smt. Krishnawanti w/o Panna Lal Grover was owner of the property in question by virtue of sale deed dt 06.06.1959. Plaintiff society has claimed above stated reliefs against defendants with precise allegations that defendant no. 1 to 3 in connivance with each other trespassed into first floor of property in question on 19.01.2001. Since plaintiff society has now claimed to be the owner of the property in question, let us examine evidence on the record on this issue CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

20 PW 1 is Sh. Amarnath Shrama who has testified that he has been duly authorized to file suit, affidavit and give statement on behalf of society by authority letter Ex.PW1/B. PW 1 says that late Smt. Krishnawanti was owner of the property in question by sale deed dt 06.06.1959 Ex.PW1/C. 21 PW 1 says that since husband of Late smt. Krishnawanti, namely SH. Panna Lal and his son Joginder Pal were partner in a firm M/s.Grover Enterprises. Such firm had taken a loan from Oriental Bank of Commerce (OBC), regarding which Smt.Krishnawanti stood guarantor by mortgaging the property in question. PW 1 says that such OBC Bank for recovery of Loan amount had filed suit no. 810/82 in High Court for recovery of Rs. 12,07,296.21/ . Such proceedings were later in 1995, transferred to DRT as OA No. 832/95, in which decree was passed in favour of OBC Bank. PW 1 says that since late Smt. Krishnawanti had faith in working an object of plaintiff society, she decided to donate the suit property to plaintiff society. In this regard, she executed a memorandum of understanding dated 15.03.2000 Ex.PW1/D. PW 1 has identified the signature of Smt. Krishnawanti as well as testifies that it was signed by her son Joginder Pal Grover besides other relatives. PW 1 says that plaintiff society discharged its CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

obligation in terms of such memorandum of understanding Ex.PW1/D. Late Smt. Krishnawanti had written letter of OBC Bank for settlement of account of above mentioned firm under the decree against it by enclosing the cheque of Rs. 13 lakhs issued by plaintiff society towards the final settlement of claim of Rs. 33 lakhs of bank under the decree. PW 1 says that Smt Krishnawanti also handed over the possession of suit property to plaintiff

society on 09.12.2000, by letter of possession Ex.PW1/E which was also signed by her son, other witnesses namely Sh. Ajit Kumar Bajaj, Sh. M. L. Sethi and Sh. Gulshan Bhatia.

22 PW □1 says that plaintiff society thereafter shifted partly to the suit property. Witness further testified that Smt. Krishnawanti in her lifetime also executed a declaration dt 14.01.2001, Ex.PW1/K. Thereafter, on 18.01.2001, Smt. Krishnawanti had expired leaving behind her two sons namely Govind Kishore Grover (defendant no. 2 herein) and Joginder Pal Grover, besides five daughters. PW□ further testifies in para 17 of his affidavit that son of Late Smt. Krishnawanti namely Joginder Pal Grover, had executed a registered Gift Deed dt 27.01.2001 in favour of plaintiff society which is Ex.PW1/J. As such plaintiff society became owner of suit property by virtue of above mentioned documents.

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23 Before I discuss the other aspect of evidence of PW□ and other witnesses, I find that for examining the issue under consideration, evidence of other witnesses may also be precisely discussed here on the question of ownership of plaintiff society. PW□ 2 is son of late Smt. Krishnawanti, Sh. Joginder Pal Grover. This witness had also testified similar facts as are deposed by PW□1 regarding taking of loan by firm M/s. Grover Enterprises from OBC Bank. This witness also testifies that his mother stood guarantor by mortgaging the property in question. PW□2 further says about execution of memorandum of Understanding dt 15.03.2000 Ex.PW1/D, letter of possession dt 09.12.2000 Ex.PW1/E and also regarding execution of declaration dt 14.01.2001 Ex.PW1/K. PW□2 Joginder Pal Gorver further says that he had signed Memorandum of Understanding as witness. He further identifies signatures of his mother. PW□ 2 says that his mother executed a Will in his favour, on the basis of which he executed a gift deed in favour of plaintiff society which is Ex.PW1/J. 24 PW□3 (though mentioned in judicial record as PW□2) is Gulshan Bhatia whose evidence is also on the same facts as deposed by PW 1 and 2. This witness also identify his signatures of memorandum of understanding Ex.PW1/D. PW□ 4 is A.K.Bajaj, who testifies that Smt Krishnawanti had handed over possession of the CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

property to plaintiff society by possession letter dt 09.12.2000, Ex.PW1/F. This witness further says that son of late Smt. Krishnawanti, namely Joginder Pal Grover had executed a gift deed in favour of plaintiff society which is Ex.PW1/J and same bears his signatures as witness. PW□ 5 is M. L. Sethi who has been witness of letter of possession dt 09.12.2000. Another important witness for proving the documents as relied upon by the plaintiff society is PW□10 M. N. Sharma Advocate

who has testified that he has been attesting witness to the Will dated 22.09.1997 executed by late Smt. Krishnawanti in favour of her son. PW□10 says that such Will was drafted by him on the instructions of testator Smt. Krishnawanti who had signed in his presence at point C of Will Ex.PW10/1.

25 Having considered the above discussed evidence, it is very much clear from the evidence of record that Smt. Krishnawanti was registered owner of the suit property is not a disputed fact. It is also evident from the documents i.e Memorandum of Understanding dated 13.03.2000 Ex.PW1/D whereby late Smt. Krishnawanti in her lifetime executed this document clearly mentioning therein that she being the registered owner of the suit property she has decided to donate / gift the suit property to plaintiff society. If plaintiff society is ready to pay the outstanding amount to bank regarding which DRT has passed the order on 15.05.1998 in OA No. 832/95. This CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

document Ex.PW1/D has been signed by son of Late Smt. Krishnawanti namely Joginder Pal Grover at point A, other witnesses to this document namely PW□3 Gulshan Bhatia, PW□4 A. K. Bajaj, PW□5 M. L. Sethi have also appeared in the witness box and testified about execution of this document. Regarding due execution of this document Ex.PW1/D, nothing could come out in the cross□examination of PW□1 to PW□5.

26 It is also evident from the above discussion of evidence that beside memorandum of understanding Ex . P W 1 / D , late Smt . Krishnawanti in her lifetime handed over the possession of the suit property to plaintiff society by letter of possession Ex.PW1/E (Ex.PW1/F). It is also established from the evidence of PW□1 as well as evidence of PW□8 Sh. Suresh Kumar Gupta, Assistant Manager from Syndicate Bank and PW□9 Sh. Madhwal from OBC Bank that in respect of outstanding amount under the decree passed by the DRT against the firm M/s Grover Enterprises regarding a loan for which suit property was kept mortgaged. Plaintiff society made the payment of outstanding amount under the decree. PW□8 as proved cheques Ex.PW8/A, Ex.PW8/B and Ex.PW8/C being three cheques through which plaintiff society made the payment of outstanding amount to OBC Bank under the above said decree. This fact has also been corroborated from the evidence of PW□9.

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Thus, from reading of evidence of PW□, 8 and 9, it is clear that in terms of the condition laid down by Smt. Krishnawanti in Memorandum of Understanding Ex.PW1/D plaintiff society fulfilled its obligations by establishing the debt under the decree for which suit property was kept mortgaged. On the above mentioned fact also nothing substantive

could come out either in the cross examination of PW□1 or PW8 and PW□9. The fact that M/s. Grover Enterprises had taken loan from OBC Bank and the fact that regarding that loan recovery proceedings were initiated by the bank which culminated in passing of decree from D R T , has not been disputed by the defendants. It is not even the case of defendant no. 2 being another son of Late Smt. Krishnawanti that he had made the payments or cleared the liability under the decree. Thus, it is very much proved on the record that it is plaintiff society which made the payment to the OBC Bank to clear the suit property from the liability under the decree passed by DRT. This fact coupled with the fact that late Smt. Krishnawanti thereafter executed possession letter Ex.PW1/F also corroborates the terms mentioned in the Memorandum of Understanding Ex. P W 1 / D . 27 Now, if we proceed to examine the evidence further, PW□1 and PW□2 have also testified that late Smt. Krishnawanti in her lifetime on 14.01.2001, executed a Declaration Ex.PW1/K. Perusal CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

of this documents shows that late Smt. Krishnawanti reaffirmed entering into Memorandum of Understanding with plaintiff society and further declared that since Gift Deed has not still been executed in favour of plaintiff society, therefore, in case she remains failed to execute such Gift Deed in favour of plaintiff society, then it would be the duty of her son Joginder Pal to execute Gift Deed in favour of plaintiff society because she has already executed a Will in favour of her son Joginder Pal Grover. Thus, this document dt 14.01.2001 Ex.PW1/K becomes another important documents in sequence of earlier two documents executed by late Smt. Krishnawanti in her lifetime. No doubt these documents executed during lifetime of Late Smt. Krishnawanti may strictly speaking convey any legal title of property to plaintiff. But, these documents go to show that she had desire to git property to plaintiff society, when liability of decree was cleared by plaintiff. Document Ex.PW1/K also establishes that late Smt. Krishnawanti was very much willing to execute a Gift Deed in favour of plaintiff society. She further declared that she has already executed a Will in favour of her son Joginder Pal Grover. It has come in evidence of PW1 and PW2 that four days after the execution of this declaration Ex.PW1/K late Smt. Krishnawanti unfortunately expired.

28 It has further come in the evidence that from the sequence of CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

events, since there was a Registered Will dated 22.09.1997 in favour of Joginder Pal Grover, he executed a Gift Deed in favour of plaintiff society. Will in favour of PW□2 Joginder Pal Grover has been duly proved by the evidence of P W □1 and P W 10 . It is a

registered Will and proved in accordance of Section 68 of Indian Evidence Act. Nothing could come out in the cross examination of PW 2/Joginder Pal Grover to render the Will to be suspicious. Witness has been simply suggested on behalf of the defendants in cross examination that Will is forged and fabricated. However, it is not substantiate by defendants as to how a registered Will was forged and fabricated when same has been also duly proved from the evidence of PW 10/ M.N. Sharma, Advocate in whose cross examination also nothing could come out to render his testimony to be unbelievable. Thus, from the pleadings of PW 2 and PW 10, I find that Will in favour of Joginder Pal Grover is also proved beyond doubt. Thereafter, Joginder Pal Grover had executed a registered Gift Deed in favour of plaintiff society which is Ex.PW1/J. This Gift Deed is also proved in the evidence of PW 1, PW 3 and PW 4 besides P W 2 . Reading the evidence of these witnesses in totality would show that there is no much challenge to such execution of Gift Deed in favour of plaintiff society by way of cross examination.

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29 Here, I would like to mention that in plaint, plaintiff society though claimed to be entitled to seek possession form defendants, but there is no specific reference, regarding Gift Deed executed by PW 2 Joginder Pal in favour of Plaintiff society. I call upon counsel for parties, to clarify on this aspect. Having considered the submissions of ld. Counsels for the parties, I am of the view that while there is basic proposition of law, every relevant fact must be pleaded. Evidence of parties cannot go beyond pleadings. Court has to examine the evidence, keeping this basic proposition, in mind.

30 However, in facts of present case, on meaningful reading of plaint, it would be clear that plaintiff society has specifically claimed to be owner. Order 6 Rule 1 CPC also provide that only material facts are necessary to be pleaded, but there is no need to elaborately specify the evidence, by which such facts are to be proved. Reading the plaint, makes it clear, that plaintiff society has referred to all facts and documents, executed by late Smt. Krishnawanti and also pleaded that it is entitled to claim possession being owner. In such circumstance, no specific reference of execution of Gift Deed by Joginder Pal in favour of plaintiff society has not much significance. Ld. Counsel has relied upon judgments in "Ram Swaroop Gupta vs. Bhushan Narain Inter College"

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AIR 1987, SC 1242, "Virender Kashi Nath Rawat vs. Vinayak N. Joshi and Ors"
(1999) 1 SCC page 47, "Bhagwati Parshat vs.

Chandra Maul" AIR 1996 SC 735. In Ram Swaroop Gupta's case (SUPRA) Hon'ble Apex Court, has observed that it is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings, however, should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities.

31 Thus, from above discussion, I have no hesitation to find, that evidence let on behalf of plaintiff is not beyond pleadings. Here, it is also important to note that at any stage, during whole trial, defendants have not raised any objection on this aspect. Defendants have not taken up this aspect, even in written arguments filed on record. Moreover, defendant no. 2 in connected suit filed CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

against plaintiff society has rather stated about Will and Gift Deed executed by Joginder Pal. So defendants were having knowledge of all these facts.

32 In the written arguments filed on behalf of the defendants, it was stated that defendants have denied that suit property was self acquired property of late Smt Krishnawanti. On behalf of defendants it is stated that above referred documents i.e. Memorandum of Understanding Ex.PW1/D and Ex.PW1/F i.e. Possession Letter dt 09.12.2000, Declaration dt 14.01.2001 Ex.PW1/K are forged and fabricated and neither registered nor on sufficiently stamped papers as is required under Section 4 of Indian Stamp Act.

33 Having given thoughtful considerations on such arguments on behalf of defendants, I find that Section 17 of Indian Registration Act provides for compulsory registration of those documents which create, declare, assign or transfer any right in the immovable property. Documents Ex.PW1/D, PW1/F, & PW1/K, to my mind do not create any right in an immovable property. These documents simply mention about an understanding between plaintiff society and late Smt. Krishnawanti, possession letter simply mentions regarding handing over of possession and declaration is also not a CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

document of title. Therefore, these documents do not come within the scope of section 17 of Indian Registration Act, therefore, were not required to be

compulsorily registered. So far as regarding insufficiency of stamp duty, payable on such documents. No doubt, in terms of section 35 of Indian Stamp Act a document which is insufficiently stamped, cannot be taken into evidence. However, in this case, such objection as to insufficiency of Stamp Duty, was not taken at the time when these documents were being tendered in evidence. In terms of Section 36 of Indian Stamp Act, if an insufficiently stamped document has been taken into evidence, same cannot be challenged later, on the ground of insufficiency of Stamp Duty except in a situation as provided in section 61 of the Act. Such situation does not arise, therefore, even the objection regarding insufficiency of stamp duty cannot be taken into consideration at this stage.

34 Having discussed above evidence led on behalf of the plaintiff society, let us now consider the evidence on behalf of the defendants. As is evident from the discussion of facts arising out of the pleadings, the claim of defendant no. 1 & 4 as well as defendant no. 2 and 3 is that the property in question was not a self acquired property of late Smt. Krishnawanti. Rather, it is claimed that defendant no. 2 being son of late Smt. Krishnawanti, is co-owner of CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

the property as per the oral family settlement and after the death of late Smt. Krishnawanti, defendant no. 2 became the exclusive owner of the first floor of the property in question.

35 Now, if we consider the evidence in this regard, before I discuss the evidence of DW 1 / Ajay Malhotra, it is appropriate to discuss the evidence of Ravish Grover who is grandson of Late Smt. Krishnawanti and son defendant no. 2 Govind Kishore Grover, the eldest son of Late Smt. Krishnawanti. On the issues under consideration, DW 2 testifies that property in question was not self acquired property of Late Smt. Krishnawanti. Witness says that she was only a house wife and had no source of income. DW 2 says that property in question was joint Hindu Family property. DW 2 says that her father being eldest in the family was running a partnership firm M/s. Northern Steel and General Mills, property in question was purchased out of the earning of that firm. DW 2 says that Late Smt. Krishnawanti had not made any investment in purchase of property in question.

36 DW 2 thereafter, went on to deny entering into any memorandum of understanding dated 01.03.2000 by Smt. Krishnawanti with plaintiff society. DW 2 says that all these documents were forged and fabricated. DW 2 also denies handing CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

over of possession of property in question to plaintiff society vide possession letter dt. 09.12.2000. Witness further denies other documents. DW □ 1 says that after the death of Smt. Krishnawanti, property devolved upon her legal heirs and defendant no. 2 being the eldest son in the family had inherited a suit property being one of the legal heirs of Late Smt. Krishnawanti.

37 Now, if we examine such testimony of DW □ 2, it is though not disputed by witness that Late Smt. Krishnawanti was registered owner of suit property by virtue of a registered sale Deed. However, DW □ 2 takes a claim that since his grandmother was a house wife and had no source of income, therefore, the entire investment for purchase of property in question was made by his father late Govind Kishore Grover (Defendant no. 2) out of earning of a partnership firm M/s Northern Steel and General Mills. However, no documentary evidence has been on record to substantiate this fact. If the money towards the payment of sale consideration for purchasing suit property in the name of Late Smt. Krishnawanti was spent out of the funds of above mentioned firm, this fact could have been substantiated by some documentary evidence, however, there is nothing except oral assertion of this claim. Such claim, otherwise, is also not sustainable in law because if one claims that property was purchased by someone though Benami in the name of mother of the CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

parties, such plea in defence is barred by the provisions of Section 4 (2) of Benami Prohibition Act as amended in year 2016. Plea that property though registered in the name of mother of the parties and payment for sale consideration was made by father of DW □ 2 is inherently not sustainable either in law or in facts.

38 Even if Late Smt. Krishnawanti was a house wife, that fact by itself is not sufficient to render property in question to be Joint Hindu Family property. When someone uses the expression "Joint Family property" it be noted that to render the property joint, one who claimed it, must prove that the family was possessed of some property with the income of which the property could have been acquired or from which the presumption could be drawn that all the property possessed by the family is joint family property or that it was purchased by joint family funds such as proceeds of sale of ancestral property or by joint labour. None of these alternatives is matter of legal presumption. It can only be brought to cognizance of a court, by the same way as any other facts, namely by evidence.

39 Supreme Court in the case of Sathyaprema Manjunatha Gowda (Smt.) v. Controller of Estate Duty, Karnataka, III (1997) CLT 44 (SC)=(1997) 10 SCC 684, has held as follows:

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"The Hindu Joint family is purely a creature of law and cannot be created by act of parties save insofar that by adoption or marriage a stranger may be affiliated as a member thereof. An undivided family which is the normal condition of Hindu society is ordinarily joint not only in estate but in food and worship; therefore, not only the concerns of the joint family, but whatever relates to their commonality and their religious duties and observances are regulated by the members or by the manager to whom they have, expressly or by implication, delegated the task of regulation. The joint family status being the result of birth, possession of joint properties is only an adjunct of the joint family and is not necessary for its constitution. Nor is it necessary that all the members possess rights or status even though the property of the family is called joint family property. On the other hand, coparcenary is a narrower body than a joint family and consists of only those persons who have taken, by birth, an interest in the property of the holder for the time being and who can enforce a partition whenever they like. It commences with a common ancestor and includes a holder of joint property and only those males in his male line who are not removed from him by more than three degrees."

40 Surendra Kumar v. Phoolchand (dead) through and Anr., I AIR 1996 SC 1148 and Bharat Sanchar Nigam Limited and Ors. v. Abhishek Shukla and Anr., (2009) 5 SCC 368, the Supreme Court held that a person alleging the property to be joint has to establish CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

to establish that the family was possessed of some property with the income of which the property could have been acquired and that such a presumption is a presumption of fact which can be rebutted. It is when it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family.

41 In the instant case as I have noted above is that there is no sufficient evidence to establish that property in question was purchased from joint funds of a family which belong to the family as a whole or from sale of any ancestral property. The suit property to be joint Family property.

H a v i n g e x a m i n e d t h e e v i d e n c e a n d concluding that defendants no. 2 and 3 have failed to establish the property in question to be a j o i n t f a m i l y p r o p e r t y b y n e c e s s a r y consequence, I find that it is also not proved that after the death of late Smt. Krishnawanti, any interest or share had accrued by inheritance in favour of defendant no. 2 Late Govind Kishore Grover. Once a Will in favour of Joginder Pal Grover had already been duly proved, then I find that plaintiff society has been able to CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

establish the ownership of the suit property in its favour by preponderance of probabilities. Thus, from the above discussion of facts and evidence I find that Issue No. 1 is decided in favour of plaintiff society and also decided Issue No. 7 against defendant no. 2 & 3.

(Whether defendant no. 2 and 3 had succeeded in the property in question after the death of Smt. Krishnawanti and are the owners of the property in question?) 43 Since this court has already decided Issue No. 7 against defendant no. 2 & 3. Since it has already held that defendant no. 2 & 3 failed to establish the property in question to be a joint family property, for the reasons already discussed above, therefore, it can be held by necessary consequence that defendant no 2 & 3 did not have any right to succeed any share or right in the property in question, after the death of late Smt. Krishnawanti and therefore, cannot be considered to be owner of property in question. Issue No. 8 accordingly, also decided against the defendant no. 2 & 3.

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(Whether defendant no.1 was a tenant under Smt.Krishnawanti prior to 19.01.2001 and is in lawful possession of the portion of first floor?) and (Whether defendant no. 4 was a tenant under Krishna Wanti prior to 19.01.2001 and is in lawful possession of the portion of first floor?) 45 Issue no. 4 & 5 are being taken together. These issues have been framed on the plea of defendant n. 1 & 4 as they claim to be lawful tenant in possession of the first floor of property in question. Defendant no. 1 in the written statement has taken a plea that he and his brother has been in possession of entire first floor of the suit property as tenant since 20.07.2000 with monthly rent of Rs. 9000/□ which is being paid to defendant no. 2.

46 Let us now consider whether defendant no. 1 & 4 have been able to establish the above said claim as taken by them in their written statement. At the outset it be noted that this court has already held that defendant no. 2 and 3 have failed to establish that they had any right by way of succession in the property in question after the death of late Smt. Krishnawanti. Issue no.7 & 8 have CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

already been decided against defendant no. 2 & 3. therefore, defendant no. 2 & 3 cannot be considered to be landlord/ owner by any manner. Keeping this aspect in mind, if we consider the evidence of DW□ / Ajay Malhotra he inte□alia testifies in his affidavit of examination in chief that he is co□tenant in the entire first floor of the property in question since 19.01.2000 and has been paying rent of Rs. 9000/□ per month to defendant no. 2 since July 2000. DW□ further says in paras□ 12 and 16 of his affidavit that he had paid security amount of Rs. 20,000/□by way of cheque.

47 Considering such evidence of DW□1, first of all it be noted that witness has not bee able to establish tenancy in his favour and defendant no. 4 by any documentary evidence. Even if we read the evidence of DW□ 1, his testimony is altogether contradictory because according to defendant, first floor of the property in question is being used by him in running his factory. He testifies in cross examination that he has not given the address of the suit property to Sale Tax or Income Tax authorities. Witness further admits that he has not got installed any telephone connection in the suit property. DW□ 1 further admits that he has not seen any documents showing defendant no. 2 & 3 being owner of the suit property. DW□ further says in his evidence that he has been paying the rent by cheque, however no such copy of cheque has been placed on record. DW□ CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

states in cross examination that he initially used to take receipts of payment of rent, however, DW□ 1 admits that he has not placed on record any such receipts. If I read the testimony of DW□ in totality, it would be clear that defendant no. 1 & 4 have failed to establish tenancy or payment of rent or even running of their factory from the first floor of property in question. DW□ rather in cross□ examination recorded on 17.03.2008 had admitted that he had never paid any rent to defendant no. 2 nor had issued any cheque towards the rent in the name of defendant no. 2. Thus, I find that testimony of DW□ 1, does not establish possession of defendant no. 1 and of 4 in first floor of the suit property being lawful tenant, Issue No. 4 & 5, therefore, stands decided against defendant no. 1 & 4.

(Whether the defendant trespassed into property on 19.01.2001 unauthorizedly occupied the first floor of the property?) and (Whether the plaintiff is entitled to decree of possession of the first floor of property no. 2754□A, Ranjeet Nagar, Patel Nagar, New Delhi?) 49

Onus of proving both these issues no. 2 & 3, is on plaintiff society. Let us again consider the evidence for issues under CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

consideration. PW□, Amar Nath Sharma beside those facts have already been discussed above, has also testified that Smt. Krishnawanti had expired on 18.01.2001. On 19.01.2001, defendants Ajay Malhotra, Govind Kishore Grover and Ravish Grover, unauthorizedly trespassed in the house no. 2754□A, Ranjit Nagar, Patel Nagar Delhi. P W □ 1 s a y s t h a t r e g a r d i n g s u c h unauthorized trespassed by defendant no. 1 to 3, police complaint was made on 24.01.2001 and on 21.03.2001, which are Ex.PW1/F and PW1/H. Reminder dt 28.07.2002 is Ex.PW1/I. PW□1 says that defendant no. 1 to 3 or any other person have no entitlement for possessing any portion of the property in question.

50 All the allegations as made in the plaint, have been denied by the defendants. Defendant no. 1 & 4 as well as 2 & 3 in their respective written statement have taken the plea that they have never trespassed into the first floor of property in question. Defendant no. 1 & 4 claimed to be occupied the first floor of the property in question as tenant, inducted by defendant no. 2 w.e.f. 20.07.2000 with monthly rent of Rs. 9000/□

51 This court has already decided Issue No. 4 & 5 against defendant no. 1 & 4 and it has already been held that defendant no.

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1 & 4 have failed to establish tenancy in their favour in respect of portion of the property in question. Now, considering the evidence of PW□ 1 Amarnath Sharma in the entire cross examination, nothing could come out to render the testimony of PW□1 to be unbelievable. Rather, it is being matter of record that earlier defendant no. 1 had filed a suit for permanent injunction being suit no. 438/01, against plaintiff society, in which statement was given on behalf of the plaintiff society that they will seek possession against defendant no. 1 and others as per the process of law. Unrebutted testimony of PW□ 1 coupled with police complaints proved on the record as well as on account of findings on Issue No. 4 & 5 against defendant no. 1 and 4, necessary conclusion can be drawn that defendants have trespassed into first floor portion of the property in question unauthorizedly on 19.01.2001, without any legal right or title.

52 This court has already decided Issue No. 1 in favour of plaintiff society. While deciding Issue No. 7 & 8, it is already been decided that defendant no. 2 and 3 had no ownership right by way of succession in the property in question when Late Smt. Krishnawanti being registered owner had already executed Will in

favour of her son Joginder Pal Grover besides documents Ex.PW1/D, PW1/F and PW1/J. It has already been held while deciding Issue No. 1 that on account of registered Gift Deed in CS No. 159/16/2003 Samarth Shiksha Samiti vs. Ajay Malhotra.

favour of plaintiff society, plaintiff society became owner of the property in question.

53 Plaintiff in the present suit have also sought relief of damages/ mesne profits and recovery of sum of Rs. 2,70,000/□ as damages upto date of filing suit as well as mense profits from the date of institution of the suit till realization of the possession @ Rs. 10,000/□ per month. If I consider the entire evidence led on behalf of the plaintiff, PW□ 1 only has testified in para□20 of his affidavit that plaintiff society claims Rs. 10,000/□ per month as damages since 19.01.2001. However, even the evidence of PW□ is silent regarding basis of such claim of Rs. 10,000/□ as mesne profit. In the absence of any cogent and specific evidence to substantiate the basis for claim of mesne profits @ 10,000/□ because no evidence is led to establish that such property in that locality could have fetched rent upto Rs.10,000/□ for first floor of that property. In the absence of any such evidence, this court can simply take judicial notice of all facts, including area where property is situated. Taking note of all these facts, I find plaintiff society is entitled to damages @ Rs.4000 pm from 19.01.2001 till realization of possession, against all defendants jointly and severally.

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54 Thus, for the reasons discussed above as well as on account of findings on other issues, I find that plaintiff society is entitled for decree of possession. Issue No. 2 and 3, accordingly, decided in favour of plaintiff society.

55 RELIEF In view of my findings on above said issues, suit of the plaintiff stands decreed. Plaintiff is entitled for decree of possession of first floor of property No. 2754 A, Ranjit Nagar, Patel Nagar, New Delhi against all the defendants as well as damages @ Rs.4000/□ per month w.e.f. 19.01.2001 from all defendants till realization of possession. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.

ANNOUNCED IN THE OPEN COURT TODAY: 30.05.2017 (SHAILENDER MALIK)
ADDL.DISTT.JUDGE□3 CENTRAL/DELHI