

Anuj Chopra And Ors. vs Vaneeta Khanna And Ors. on 25 May, 2016

Bench: S. Ravindra Bhat, Deepa Sharma

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 04.05.2016
Pronounced on: 25.05.2016

+ RFA (OS) 117/2015, C.M. APPL.26171/2015

ANUJ CHOPRA AND ORS.Appellants

Through: Sh. Arvind Nigam, Sr. Advocate with Sh.
Kartik Nagarkatti, Sh. Abhinav Malhotra, Sh.
Manish Sangwan and Ms. Deeksha Rao,
Advocates.

Versus

VANEETA KHANNA AND ORS.Respondents

Through: Sh. B. Mohan with Sh. Gyan Sharma and Ms. Harshlata, Advocates, for Respondent Nos. 1 and 2.

Ms. Sonia. A. Menon, Advocate, for Respondent No.4.

+ RFA (OS) 21/2016, C.M. APPL.8731-8732/2016

RAJEEV GUPTAAppellant

Through: Sh. Aseem Mehrotra with Sh. Rajat
Gupta, Advocates, for the appellant.

Versus

VANEETA KHANNA AND ORS.Respondents

Through: Sh. B. Mohan with Sh. Gyan Sharma and
Ms. Harshlata, Advocates, for Respondent Nos. 1
and 2.

RFA (OS) 117/2015 & RFA (OS) 21/2016

Page 1

Ms. Sonia. A. Menon, Advocate, for Respondent
No.3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

%

1. The appellants in these two proceedings are aggrieved by a judgment of a learned Single Judge decreeing the respondents' suit. The appellants in RFA 117/2015 were arrayed as Defendant Nos. 3 to 6 (hereafter referred to as "Chopras"). They appeal the judgment and decree of a learned Single Judge, allowing a suit for declaration and possession, filed by the first two respondents (hereafter variously "the plaintiffs" or "the Khannas"). The first defendant ("Rajiv" hereafter) is arrayed as the third respondent; the fourth respondent was the second defendant, (referred to hereafter as "Judge Chawla"). Rajiv, in RFA 21/2016, appeals the same decree, to the extent it directs him to pay mesne profits.

2. The Khannas had filed a suit before the Additional District Judge under Sections 5 and 6 of Specific Relief Act contending that in furtherance to a sale transaction with Judge Chawla, (a General Power of Attorney holder of Rajiv), they became owners of property No. 8/289, Sunder Vihar, Paschim Vihar, New Delhi ("suit property") after payment of full sale consideration and execution of Agreement to Sell, General Power of Attorney (GPA) and Special Power of Attorney (SPA) by Judge Chawla in their favour. The vacant physical possession of suit property was, according to the suit, delivered to the plaintiffs on 12.05.2004 and after taking RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 2 possession the plaintiffs had placed their locks over the suit property. It was contended that after entering into the sale transactions and handing over possession, the first and second defendants trespassed the suit property and colluded with each other along with sisters of Rajiv, to deprive the plaintiffs of the property so purchased. trespassed the property. The Khannas discovered this trespass when they visited the property on 24.07.2004 and filed a suit with a claim for directing defendants to vacate the suit property and to restore possession of the suit property to the plaintiffs. Simultaneously, a decree for specific performance of the Agreement to Sell dated 12.05.2004 was also sought, on the ground that the sale consideration has been paid to the defendants. Mesne profits @ 15,000/-per month for unauthorized use and occupation of the property by the defendants was sought. A decree of permanent injunction restraining defendants and their agents, family members from selling, alienating or parting with the possession of the property was made.

3. This suit [Suit No.393/2004] (hereafter "the first suit") instituted by the Khannas was dismissed at the initial stage on an application of defendants made under Order VII Rule 11, Code of Civil Procedure (CPC), by the Additional District Judge (ADJ), who held that the plaintiffs had not disclosed to the Court about execution of a Collaboration Agreement dated 18.05.2004 between Rajiv and the plaintiff. The plaintiffs' statement was recorded by the learned ADJ under Order X, CPC. The plaintiffs had stated that the signatures on the Collaboration Agreement dated 18.05.2004 appeared to be his, but he was unaware how the defendant obtained his signatures on the documents. The ADJ observed that by non-disclosure and non-production of the Collaboration Agreement, the plaintiffs had tried to RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 3 overreach the Court and were guilty of withholding the information of this document and thus played fraud on the

Court. The plaint in the first suit was rejected.

4. Aggrieved, the Khannas appealed to this Court (RFA 631/2004). This Court considered the appeal on merits and held that Khannas had approached the trial Court with unclean hands and suppressed material and relevant facts and dismissed the appeal. The Khannas preferred a special leave petition to the Supreme Court, aggrieved by the dismissal of their appeal. The Supreme Court disposed of the petition, and stated as follows:

"The petitioners herein had filed a Suit purported to be under the provisions of Sections 5 and 6 of the Specific Relief Act. However, in the said Suit the petitioners had prayed for grant of permanent injunction or in the alternative recovery of possession or in the further alternative a decree for specific performance of contract. Such a Suit was not maintainable in law. However, the learned Judge had dismissed the Suit purported to be in terms of Order 7 Rule 11 of the Code of Civil Procedure on the ground that the plaintiff has played a fraud by withholding the relevant agreement and material in the matter. In view of the fact that the plaintiff can file an appropriate Suit, we do not think it to be a fit case for us to exercise our discretionary jurisdiction under Article 136 of the Constitution. The Special Leave Petition is dismissed accordingly."

5. It is in these circumstances that the Khannas filed a new suit, CS (OS) 1200/2006 ("the second suit") on the file of this Court which led to the impugned judgment. The case set up by the Khannas was that the first plaintiff acquired rights in the suit property in terms of the documents executed on 12.05.2004 (Agreement to Sell, GPA, registered Will, possession letter, receipt and affidavit). The power of attorney executed in favour of the second plaintiff by Judge Chawla was registered before the RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 4 Sub-Registrar. The Will too was registered on 12.05.2004; it favours the first plaintiff and was executed by Judge Chawla. The other documents relied on were unregistered documents. The second suit also alleged that a sum of ` 5 lakhs by a crossed cheque was paid to Judge Chawla. The suit also alleged that the Agreement to Sell executed on 12.05.2004 was not registered due to deficiency in stamp duty and, therefore, after making up the deficiency of stamp duty, a fresh Agreement to Sell was executed and registered on 16.06.2004. This agreement was in favour of first plaintiff and executed by the second plaintiff acting under the registered Power of Attorney dated 12.05.2004 executed by Judge Chawla.

6. The second suit alleged that the plaintiffs were given possession of the suit property pursuant to the said documents and also that because it was to be converted from leasehold to freehold, at the request of Judge Chawla, the first plaintiff, in trust gave some blank signed papers to him so that necessary papers could be prepared and filed for conversion before the Delhi Development Authority (DDA). It was alleged that Judge Chawla misused the blank papers and instead created/fabricated a Collaboration Agreement with respect to rights in his favour by the second plaintiff, with regard to the second floor and above of the suit property. According to the plaintiffs, this was because at the time the first plaintiff purchased it, the suit property comprised only of the ground floor and the first floor portion. It was alleged that Judge Chawla had fraudulent intent because he realized that he could take advantage, by colluding with Rajiv inasmuch as the

documents executed in the plaintiff's favour with respect to the suit property contained the ground floor and first floor. It was alleged that when the Khannas visited the suit property on 24.07.2004, it transpired that Rajiv had broken the locks, which RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 5 they had placed on the suit property on execution of the title documents. The Plaintiffs, shocked by Rajiv's action of trespass lodged a complaint with the local police station on 24.07.2004. When called by the police, Rajiv informed that his sisters had filed a suit for partition against him and in that civil suit a status quo order was passed by the Civil Court on 06.09.2000 restraining him (Rajiv) from transferring the suit property.

7. Plaintiffs were shocked to learn about the pendency of the suit filed by the sisters and the plaintiffs realized that Defendant Nos.1 and 2 were cheating them. It was alleged that Rajiv's sisters had already executed a registered Relinquishment Deed on 20.05.2002 and in fact on 17/18.12.2002, Rajiv's name was mutated in the records of the DDA as the sole owner of the suit property. The Khannas alleged that the first two defendants later illegally and fraudulently executed documents dated 17.08.2004, 19.08.2004 and 09.09.2004 whereby Judge Chawla claimed that he had no rights in the suit property and Rajiv alone was owner of the suit property. The Khannas referred to a First Information Report (FIR No.938/2004) registered with the police station with respect to their fraudulent dispossession from the suit property and the illegality of the documents executed by Judge Chawla in favour of Rajiv and the subsequent documents executed by Rajiv favouring the Chopras.

8. Judge Chawla appeared and filed his written statement. He later failed to appear and was proceeded against ex parte; the ex parte proceedings were thereafter set-aside and he was allowed to lead evidence. Rajiv did not file a written statement but appeared and cross-examined the plaintiff's witnesses. Chopras were the main contesting defendants in the suit; they claimed to be bona fide purchasers of the suit property in terms of documents dated RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 6 14.09.2004. The Chopras alleged that they purchased rights in the suit property from Rajiv in terms of the documents dated 14.09.2004, this was preceded by other documents dated 17.08.2004, 19.08.2004 and 09.09.2004. In these, Judge Chawla firstly cancelled the GPA in favour of the second plaintiff and declared that Rajiv was the owner of the suit property and was entitled to deal with it. It is averred by the Chopras, in their written statement, that Rajiv had executed the Agreement to Sell dated 14.09.2004 in their favor.

9. In their written statement the Chopras urged that the second suit was barred by the principle of res judicata and that it was improperly valued for the purposes of court fees and jurisdiction. They further alleged that the Khannas did not approach the Court with clean hands. They denied the validity of the documents executed in favour of the Khannas by Judge Chawla.

The impugned judgment

10. The learned Single Judge was of opinion that Section 48 of the Transfer of Property Act was applicable to the facts of this case. He held that by virtue of Section 53A of the said Act and the doctrine of part performance, once it was established that a valid Agreement to Sell was executed, the vendor could thereafter convey only what he owned. Thus, the later Agreement to Sell, relied

upon by the Chopras to claim rightful interest in the property, was of no avail. It was also held that:

"Once the Agreement to Sell dated 16.6.2004 is duly stamped and registered, plaintiff no.1 will under Section 53A of the Transfer of Property Act, 1882 have rights in the suit property and better rights than those created under any subsequent date documents which are executed with respect to the suit property RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 7 by either the defendant no.1 or defendant no.2 or defendant nos.1 and 2 jointly. Also, it is relevant to note that at the time of executing of the registered Agreement to Sell dated 16.6.2004 by the plaintiff no.2 in favour of plaintiff no.1, plaintiff no.2 was acting under the valid and subsisting registered Power of Attorney executed on 12.5.2004 by the defendant no.2 in favour of the plaintiff no.2 as such Power of Attorney was not cancelled when the Agreement to Sell dated 16.6.2004 was executed by the plaintiff no.2 in favour of the plaintiff no.1. Transferring of possession to plaintiffs is mentioned in the Agreements to Sell dated 12.05.2004 and 16.6.2004. Also, in the written statement of the defendant no.2 there is no dispute that defendant no.2 executed the documents dated 12.05.2004 and the defence is only that these documents were executed as security and which documents alleged were given up in the Collaboration Agreement dated 18.05.2004 being executed between the plaintiff no.2 and the defendant no.2. As will be discussed below, the defendant no.2 has failed to prove any Collaboration Agreement dated 18.05.2004. In my opinion, therefore plaintiff no.1 did get valid title rights in the suit property in terms of the documentation dated 12.5.2004 read with the registered Agreement to Sell dated 16.6.2004."

11. The Chopras' reliance on the documents executed in their favour on 22.03.2004 was held to be insubstantial; their objections to the reliance, by the Khannas, on the documents dated 12.05.2004 and 16.06.2004 on the ground that they were insufficiently stamped too, were overruled. The learned Single Judge also ruled that the second suit was not barred, by the principle of res judicata. It was further held that the Chopras could not claim to be bona fide purchasers:

"(ii) It is noted that in the written statement of the defendant nos.

3 to 5 they have not even whispered about their purchase of rights as being bona fide and that they purchased the rights in the suit property without notice of the earlier title in favour of the plaintiff no.1. Not only there is no pleading but even in the RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 8 evidence led on behalf of defendant nos. 3 to 6 there is not even a whisper that defendant nos. 3 to 6 have purchased rights in the suit property without having notice of the title created in favour of plaintiff no.1 by the documentation dated 12.5.2004 and 16.6.2004. It is also seen that once the Agreement to Sell dated 16.6.2004 in favour of the plaintiff no.1 was a registered document, defendant nos. 3 to 6 are deemed to have notice of this agreement by virtue of Explanation I to Section 3 of the Transfer of Property Act which provides that registration of a document operates as a notice. Therefore, neither there is any pleading nor any evidence that defendant nos.3 to 6 have purchased the rights in the suit property without notice of the prior title in favour of the plaintiff no.1 and which pleading the defendant nos. 3 to 6 cannot legally take up in view of Explanation I to

Section 3 of the Transfer of Property Act.

(iii) Though learned counsel for the defendant nos. 3 to 6 argued that in the affidavit by way of evidence filed on behalf of defendant nos. 3 to 6, they have used the expression 'bona fide', however, not only no amount of evidence can be looked into on the plea of bona fide action of the defendant nos. 3 to 6 which is not pleaded in the written statement, but also that even assuming there is a plea of bona fides, the same is not sufficient because the same had to be accompanied by pleadings and proof of defendant nos. 3 to 6 having purchased rights in the suit property without having notice of the title of plaintiff no.1, and which the defendant nos. 3 to 6 have miserably failed to plead and prove as so discussed above."

Contentions of the parties

12. The Chopras, in their appeal, urge that the learned Single Judge fell into error in holding that the documents relied on by the Khannas - especially the registered documents, dated 12.05.2004 and 16.06.2004- had legal and binding effect. It was urged that the said documents were inadmissible; the Agreement to Sell, dated 12.05.2004 was unregistered and RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 9 understamped and fell foul of Section 17 (1)(a) of the Registration Act, 1908. It could not have had any effect or create binding rights in view of Section 54 of the Transfer of Property Act. Furthermore, under Section 49 of the Registration Act, it could not have been received in evidence. Learned counsel submitted that being understamped, the document was in contravention to Section 35 of the Stamp Act; it had to be impounded under Section 33. Counsel relied on Avinash Kumar Chauhan v Vijay Krishna Mishra 2009 (2) SCC 532. It was urged that the Agreement to Sell dated 16.06.2004 relied on by the Khannas could not have validly conveyed title or any interest to them, because it was pursuant to a Power of Attorney in favour of the second plaintiff (i.e. one of the Khannas). The original owner, Rajiv is supposed to have executed that power of Attorney on 12.05.2004 in favour of Judge Chawla, with no right to further sub-delegate the power (to sell). This meant that no Power of Attorney could be transferred by Judge Chawla in favour of the second plaintiff to execute or enter into any transaction nor could the latter transact with the first plaintiff to transfer any interest in the suit property. In other words, since the second plaintiff had no legal right to transfer the suit property, he could not have conveyed any such interest to the first plaintiff, his wife. Crucially, submitted Mr. Nigam, learned Senior Counsel for the Chopras, this document (dated 16.06.2004) was not disclosed by the Khannas in the first suit; they were precluded from basing their claim on it in the second suit.

13. It was urged by Mr. Nigam that the learned Single Judge overlooked documentary evidence led during the trial, which clearly established that Rajiv did not possess any legally binding authority to enter into binding arrangement for conveyance of the property. It was submitted that L.R. RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 10 Gupta, Rajiv's father and predecessor, had three children, i.e. Rajiv, Usha Sharma and Anita Ranjan. The latter two, i.e. Rajiv's sisters had filed a suit, on the file of this Court, claiming partition, since they were equal owners of the suit property, after the intestate demise of their parents (L.R. Gupta, on 21.09.1991 and his wife, on 09.10.1991). The property was self-acquired; it consequently devolved equally on all the children, i.e Rajiv and his sisters.

14. After completion of pleadings and other proceedings, seven issues were framed. The parties went to trial and led their evidence. The Khannas relied upon the registered General Power of Attorney (GPA) dated 12.05.2004 executed by Sh. Rajiv in favor of Sh. Judge Chawla (Ex.PW- 1/1); Agreement to Sell in favor of the first plaintiff by Sh. Judge Chawla (again dated 12.05.2004) [Ex.PW-1/2]; registered GPA executed by Sh. Judge Chalwa in favor of the second plaintiff, (Ex.PW-1/6); Receipt issued by Sh. Judge Chawla dated 12.05.2004 in favor of the first plaintiff (Ex.PW- 1/3); an affidavit by Sh. Judge Chawla favoring the first plaintiff dated 12.05.2004 (Ex.PW-1/4); registered Will dated 12.05.2004 by Sh. Judge Chawla favoring the first plaintiff (Ex.PW-1/5) and registered Agreement to Sell dated 16.06.2004 executed by the second plaintiff in favor of the first plaintiff. In this, the second plaintiff acted as Power of Attorney (PoA) holder of Sh. Judge Chawla; the Agreement to Sell was in favor of his wife, the first plaintiff (Ex.PW-1/8). The plaintiff also relied upon a police complaint regarding their continuous possession dated 24.07.2004 (Ex.PW- 1/9).

15. The contesting defendants, i.e. Chopras relied upon a registered Power of Attorney executed by Sh. Rajiv in their favor (Ex.D-1) dated 22.03.2004; a registered Will of the same day executed in favor of Chopras (Ex.D-2);

RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 11 registered Agreement to Sell dated 14.09.2004 - executed by Rajiv in favor of the Chopras (Ex.D3-W1/6); Receipt of the same date in favor of the Chopras (Ex. D3W1/10); the previous judgment of the District Court rejecting the first suit.

16. Rajiv's two sisters filed a suit [CS(OS) 1961/2000] before this Court, claiming partition. It is a matter of record that on 04.09.2000, an order directing maintenance of status quo was made - which enjoined all the parties not to sell, transfer or create any other rights in respect of the suit property. It is submitted that in the written statement this fact was clearly mentioned; the order of 06.09.2000 in CS (OS) 1961/2000 have been averred. Such being the case, during the pendency of status quo, there was no question of Rajiv conveying title, much less a valid title to the Khannas through Judge Chawla. Not being the sole and absolute owner of the suit property, Rajiv could not have transferred title to the Khannas either through the documents dated 12.05.2004 or the Agreement to Sell dated 16.06.2004. The Khannas could not have, on the basis of a bare allegation that Rajiv's two sisters had relinquished their shares on 20.05.2002, without proving it, succeed in securing a decree. In other words, in the absence of proof of relinquishment or giving up of interest or title in the property by Rajiv's two sisters in his favor, he could not have entered into a valid and binding arrangement to convey the property. To the extent he did so through the documents relied upon by the Khannas, they were contrary to law and void. Learned counsel relied upon Vidur Impex and Traders (P) Ltd. v. Tosh Apartments (P) Ltd. 2012 (8) SCC 384 and Jehal Tanti v. Nageshwar Singh 2013 (14) SCC 689.

17. Learned counsel relied upon the documents (Ex.PW-3W/4); the RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 12 judgment of the Court, which recorded their statements; the relinquishment deed dated 03.09.2004 whereby Rajiv's sisters gave up their rights, title and interest in his favor [registered relinquishment deed (Ex.PW-1/5)]; a registered Agreement to Sell dated 04.09.2004 by Rajiv in favor of appellants, i.e. Chopras (Ex.D-3/1/4) and other documents such as the Will

(Ex.DD-1/7) and GPA (Ex.D3W-1/8). Furthermore, emphasized learned counsel, all original documents of title pertaining to the suit property along with registered lease deed (Ex.DW-1/7) and House Tax receipts were handed over. The Chopras secured possession of the property from Rajiv and thereafter proceeded to demolish the existing structure after which the Khannas instituted the first suit. It was pointed out that the findings rendered by the learned Single Judge that a Collaboration Agreement dated 18.05.2004 existed between Rajiv, the second plaintiff and Judge Chawla which had been relied upon in the first suit, was a forged and fabricated document. It is urged that this finding is contrary to the binding judgment of the Division Bench of this Court in RFA 631/2004 filed by the Khannas. The Division Bench had clearly held that the original Agreement to Sell dated 12.05.2004 was unenforceable in view of the so-called Collaboration Agreement dated 18.05.2004. Thus, the findings in the first suit regarding the invalidity and unenforceability of the document dated 12.05.2004 on account of the Collaboration Agreement dated 18.05.2004 had become final and operated as *res judicata* between the parties. Reliance was placed on *Pawan Kumar Gupta v.. Rochiram Nagdeo*(1999) 4 SCC 243. Learned counsel relied upon *Raja Kumari v. P.Subbarama Naidu &Anr.* (2004) 8 SCC 74 to submit that in the circumstances of this case, the observations of the Supreme Court did not amount to a permission to the Khannas to re-agitate the matter RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 13 which had been settled and attained finality in the previous proceedings. Learned counsel also urged that the provisions of Order II Rule 2 CPC estopped Khannas from claiming any rights in respect of the document dated 12.05.2004. Furthermore, the omission to mention the so called registered Agreement to Sell dated 16.06.2004 in their first suit precluded the plaintiff, i.e. Khannas from relying upon it.

18. Learned counsel highlighted that the findings of the learned Single Judge resulting in a decree for possession are plainly erroneous. It was submitted that having claimed title under these decisions and other documents, and having failed in a suit for recovering of possession, the Khannas could not have asserted that they were real owners and that they were dispossessed. In other words, learned counsel elaborated his submissions by stating that in the first suit, the Khannas had sought relief of possession and specific performance. However, in the second suit, they claimed declaration that in fact they were owners and a decree for possession was sought. Once they sought to rest their title on this basis, having regard to the findings in the previous suit, there is no question of other reliefs being granted. It was urged that the law relating to part-performance under Section 53A of the Transfer of Property Act protects only possession of a transferee who has obtained possession under a contract for sale; it cannot clothe him with right to assert title - much less against the true owner. Furthermore, Section 53A could not have been invoked by Khannas since it was a matter of record that Chopras were in continuous possession of suit property since 14.09.2004. Lastly, it was urged that the learned Single Judge completely overlooked material circumstances that were both pleaded and urged by the Chopras. It was submitted in this regard that firstly the observations of the RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 14 learned Single Judge, with regard to the issue of Chopras being bona fide purchasers for value, as not having been pleaded was contrary to the record. In fact the Chopras had in their written statement clearly averred so. Furthermore, it was averred that Chopras' rights were superior to those of Khannas as was borne from an overall consideration of the record. The transaction by which the Chopras acquired rights over the suit property commenced by the execution of the set of documents in their favor by 27.03.2004 and handed on 14.09.2004 when the Agreement to Sell was executed. The subsisting impediment by way

of status quo order in the suit filed by Rajiv's sisters was vacated on 02.09.2004; the very next day, they executed a registered relinquishment deed, which was proved. In these circumstances, the only valid and binding document was the Agreement to Sell conveying rights, title and interest in respect of the suit property by the registered agreement dated 2004 executed by Rajiv in favor of Chopras - all these documents had been proved. By including them, the learned Single Judge fell into error.

19. On behalf of the Khannas, Sh. B. Mohan, learned counsel urged that the findings of the learned Single Judge are in error. It was argued that the suit was not barred by the principle of res judicata. Learned counsel relied upon the observations of the Supreme Court and submitted that once liberty was granted to institute a suit, the order of this Court as well as that of the Division Bench merged with that of the Supreme Court. Reliance was placed on Kunhayammed & Ors v. State of Kerala & Anr. 2000 (6) SCC

359. Furthermore, it was submitted that the earlier decision of the learned Single Judge, declining reliefs under Sections 5 and 6 of the Specific Relief Act were not based on merits but in the course of deciding an application RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 15 under Order VII Rule 11 CPC.

20. It was argued that in the absence of any defense by Rajiv, the undoubted owner of the property who did not even file a written statement, the claim of the Chopras to be owners of the suit property could not be sustained. The documents placed on the record in the form of registered irrevocable GPA favoring Arun Khanna; the Agreement to Sell dated 12.05.2004; the receipt; the registered Will and the decision - all favoring Vaneeta, and the subsequent Agreement to Sell dated 16.06.2004 executed on behalf of Judge Chawla by Arun Khanna transferring interest on suit property for ` 5 lakhs clearly established that Khannas were the original owners of property and who had conveyed possession. It was submitted that the findings of the learned Single Judge that the registered documents having been executed on 12.05.2004 had to prevail over the subsequent documents (registered Agreement to Sell dated 14.09.2004) relied upon by Chopras by virtue of Section 48 of the Transfer of Property Act. It was submitted that neither the Collaboration Agreement dated 18.05.2004 entered into with the Khannas nor the Agreement to Sell dated 16.06.2004 favoring Vanita Khanna were disputed. It was also highlighted that Judge Chawla attempted to execute all the documents relied upon by Khannas. Those proved flow of title in favor of Khannas. Learned counsel relied upon the affidavit evidence of Judge Chawla (Ex. DW-1/8).

21. Learned counsel also highlighted that when the third defendant (one of Chopras) was examined as witness, his attention was drawn to the pleadings on a query as to whether he had prior knowledge of the Agreement to Sell dated 16.06.2004, he did not deny such knowledge. Furthermore, he did not produce the Agreement to Sell relied upon by him (dated 15.03.2004).

RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 16 Learned counsel relied upon the judgment in Thomson Press (India) Ltd. v. Nanak Builders and Investors P. Ltd. AIR 2013 SC 2389 that a bona fide purchaser can only pursue such defenses as are available and are taken by the original defendants and none others. Since Rajiv did not file any written statement and having regard to the fact that it was Judge Chawla who filed a written statement and admitted the title documents

favoring Khannas, the learned Single Judge's findings were sound and could not have been faulted.

22. It was urged that the Khannas' title (to the suit property) could not be questioned or shaken for the reason that there is no dispute about the fact that Rajiv was shown in the records of DDA as owner of suit property. Learned counsel relied upon the mutation extract which was placed on record of suit dated 17-18.12.2002. On the basis of these, Khannas were entitled to state successfully that they, to the exclusion of Chopras, were entitled to be treated as owners having overriding right, title and interest with respect to the suit property. Learned counsel submitted that the observations of the learned Single Judge with respect to the validity of the PoA/transactions cannot be faulted. He relied upon the decision reported as Suraj Lamp and Industries P. Ltd. v. Govt. of Haryana 2012 (1) SCC 656 and DDA v. Gaurav Kukreja [Civil Appeal No.3124/2015]. Learned counsel lastly highlighted that the findings of the learned Single Judge, by virtue of the Section 3 of the Transfer of Property Act, which stipulates that registration of documents operates as notice, is conclusive and precludes the claim by Chopras that any rights accrued in their favor after the Agreement to Sell dated 16.06.2004, which was executed in favor of the Khannas.

Analysis and Findings

23. The following main questions arise for consideration:

RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 17 (1) Whether the second suit was barred by reason of res judicata and whether the Khannas were precluded from relying on the registered Agreement to Sell dated 16.06.2004;

(2) Whether the learned Single Judge's findings regarding the documents (dated 12.05.2004) produced by the Khannas, on rejecting the Chopras' submission that they were not registered and were insufficiently stamped is correct;

(3) Whether the Khannas can be said to have acquired valid and legally binding title or interest in respect of the suit property.

24. The first suit had claimed that the Khannas had acquired rights over the suit property; Rajiv and Judge Chawla were impleaded as parties. A reading of the pleadings in the first suit would reveal that the Khannas claimed rights over the suit property by virtue of the documents dated 12.05.2004; and mutation extract dated 17/18.12.2002 and that on 24.07.2004, they discovered trespass into the property when the locks placed on the door were removed. The Khannas also stated that they lodged a police complaint, pursuant to which Rajiv had denied having transferred or created any rights in their favour. The Khannas also mentioned about becoming aware of the status quo order in the suit filed by Rajiv's sister against him CS (OS) 1961/2000 (Usha Sharma v. Rajiv Gupta). In these circumstances, they claim to be bona fide purchasers and sought a decree for possession against the defendant. During the course of the proceedings, the Chopras were impleaded as party/respondent. Judge Chawla - who was also impleaded as second defendant - in the written statement, alleged suppression of facts by the Khannas inasmuch as they had entered into RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 18 Collaboration Agreement dated 18.05.2004 with him for construction of the

property and no absolute title was transferred to them. Judge Chawla's written statement also mentioned that the property was handed over through a valid transaction to the Chopras on 14.09.2004.

25. The Trial Court which considered an application for rejection of the plaint, took into consideration the statement of Arun Khanna, recorded on 28.09.2004. The statement recorded in Court was as follows: -

"I have seen collaboration agreement dated 18.05.2004 running into four pages and the signatures at point 'A' thereon appeared to be mine. I am not aware as to how defendant no.2 obtained my signatures thereon. It is for him to explain."

26. After considering the submissions of the parties, the Trial Court held that the Collaboration Agreement dated 18.05.2004 marked as Ex.C-1 was an undenied document and that the said agreement itself disclosed that the Khanna was builder. It revealed that `5 lakhs was paid to Judge Chawla on 12.05.2004 and was shown as non-refundable security. The Trial Court thereafter held that since the said Collaboration Agreement of 18.05.2004 (Ex.C-1) was executed after the General Power of Attorney dated 12.05.2004, the question of ownership did not arise.

27. In the appeal, the Division Bench of this Court by a judgment dated 02.03.2006 confirmed the findings of the Trial Court and held that the document of 12.05.2004 were substituted by the subsequent contract of collaboration and that consequently the original Agreement to Sell etc. became inoperative and unenforceable with the execution of the subsequent Collaboration Agreement on the basis of the principle of law laid down by the Division Bench of this Court in M/s. Dadri Cement Co. & Anr. v. M/s.

RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 19 Bird & Co. Pvt. Ltd., AIR 1974 Del 223.

28. The first suit had sought a decree for possession and injunction - and was based upon title to the property - as is evident from a clear reference to Section 5 of the Specific Relief Act. In the present case, the second suit makes more or less the same averments except that for the first time the Khannas rely upon the transaction embodied in the Agreement to Sell dated 16.06.2004. Interestingly, this agreement never saw the light of the day when they did file the earlier suit (sometime in 2004 i.e. CS (OS) 393/2004, dated 16.09.2004). Each of the documents relied upon to show a flow of title are traceable to the documents that were held to be ineffective in the first suit - Ex.PW-1/1 (Power of Attorney by Rajiv in favour of Judge Chawla); Ex.PW-1/2 (unregistered Agreement to Sell between Judge Chawla and the first plaintiff Vinita Khanna); Ex.PW-1/5 (Will by Judge Chawla in favour of Vinita Khanna); and Ex.PW-1/6 (General Power of Attorney of Judge Chawla in favour of Arun Khanna, i.e., the second plaintiff). All these documents were held to be ineffective and of no consequence due to the Collaboration Agreement dated 18.05.2004 proved in the previous proceedings (as Ex.C-1). Significantly, the plaintiffs - i.e. Khannas despite knowledge of existence of that document, which stands in their way (and assuming that they had a right to file the present suit) did not claim that the said document was not binding, or had to be cancelled, or was fraudulent and could not be construed as undermining their rights. The assumption that such

Collaboration Agreement was fraudulent or of no effect has virtually been endorsed by the learned Single Judge.

29. In these circumstances, this Court is of the opinion that the learned Single Judge's findings that the nature of the reliefs claimed in the two RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 20 proceedings were different and consequently the second suit was maintainable, is erroneous.

30. This Court is also of the opinion that the previous suit was a composite one which claims possession based on assertion of title as well as on the basis that the plaintiff had been unlawfully dispossessed. A plain reading of the suit itself reveals that it was both under Sections 5 and 6 of the Specific Relief Act. The basis in the claim was the same as in the present case - the document dated 12.05.2004. For a moment *arguendo* if the Khannas' plea with respect to the Agreement to Sell dated 16.06.2004 was to be accepted, nevertheless, the fact remains that that document itself is based upon the previous power of attorney executed by Judge Chawla in favour of Arun Khanna (Ex.PW-1/6). In these circumstances, there can be no manner of doubt that all the requisites of Section 11 CPC, i.e., the parties being the same, the Court being entitled to decide the issues which it did (claim for possession based on title and on alleged unlawful dispossession) on the strength of same documents which are sought to be pressed into service by the Khannas and between the same parties i.e., Khannas, Chopras, Rajiv and Judge Chawla, are fulfilled.

31. It is noteworthy that in para 20 of the second suit, the Khannas mentioned about the Collaboration Agreement (marked Ex.C-1 in the first suit) and also alleged, "needless to add, the said dismissal was without trial and without enabling the plaintiffs to set-up their defence with respect to the false documents." Thereafter, the Khannas mentioned about the dismissal of their appeal and the order of the Supreme Court; they also mentioned about the deed of declaration and the cancellation of the previous documents in their favour and in para 30 stated that the second plaintiff, i.e. Arun Khanna RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 21 did not execute any Collaboration Agreement in favour of Judge Chawla and that the said Collaboration Agreement:

"set up by the second defendant is forged, fabricated and a false document. The second plaintiff was never *ad idem* nor had any intent, i.e. the second plaintiff never agreed to the terms set in the Collaboration Agreement set up by the second defendant. The second defendant has deceived second plaintiff to affix signatures on blank papers which the second defendant set up as documents for conversion to freehold."

However, in the relief clause, Khannas sought for: (i) a decree of declaration that they were exclusive owners and that none of the defendants had right, title or interest (ii) a decree for possession and (iii) consequently decree for mesne profits/damages. Further, they sought a decree for injunction against the defendants and most importantly, decree seeking declaration that the deeds of cancellation dated 17.08.2004 to be null and void; decree for declaration in respect of deed of cancellation dated 19.08.2004 (executed by Rajiv); declaration of deed dated 09.09.2004 (executed by Judge Chawla) and declaration that the documents set as registered agreement dated 14.09.2004 favoring the Khannas were void and inoperative, were sought. However, significantly, the Khannas

did not seek a declaration that the Collaboration Agreement was void or consequent to a fraud or was a fabrication or forgery. More importantly, they did not seek cancellation of that agreement.

32. In the affidavit evidence by the sole witness on behalf of the plaintiff, i.e. Arun Khanna (in affidavit evidence PW-2, marked as Ex. PW-2/A) in para 22, the allegation in the plaint is not verified. On the contrary, the second plaintiff Arun Khanna stated that the case set up by Judge Chawla RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 22 with respect to the Collaboration Agreement "is totally false because there was no question of deponent having signed the alleged Collaboration Agreement since he did not have any right, title or interest in the property because the right, title and interest in the suit property belonged to his wife, who became sole owner by virtue of the documents executed by the second defendant on 12.05.2004." Arun Khanna did not assert that the said document, Ex. C-1 was a forgery nor was any independent evidence led to show that the said document was a forgery. He thus accepted the genuineness of the document; his evidence in the first suit was equivocal.

33. In the light of the above discussion, it is quite evident that in the second suit, the Khannas did not seek any relief as to the Collaboration Agreement dated 18.05.2004. The said agreement was a matter of record and had been the basis for rejection of the plaint in the first suit. Section 31 of the Specific Relief Act provides for the relief of cancellation of instruments. It stipulates that anyone against whom, "a written instrument is void or voidable and who has reasonable apprehension that the instrument if left outstanding may cause him serious injury" can have it adjudged void or voidable. The omission of the plaintiff to seek relief of cancellation of Collaboration Agreement, and to assume that the assertions they made in the suit as to forgery and fabrication "without proof" of all those allegations by way of evidence was fatal to the suit. This is because the Collaboration Agreement on 18.05.2004 formed the basis of the rejection of the first suit. It was, therefore, of paramount importance that the Khannas sought an appropriate relief against the said document. None- even in the form of a declaration was sought. Furthermore, the findings in the first suit were premised on the legality of the said document, which according to the RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 23 Khannas, was set up against them and created without their knowledge. Their claim to right and title, i.e. through GPA, the Agreement to Sell, receipt, will etc., all dated 12.05.2004 were also held finally to have been effaced by the Collaboration Agreement.

34. Furthermore, the assertions of the plaintiffs/Khannas directly contradict the stand they took on first occasion when they had to challenge the Collaboration Agreement, i.e. doubt its veracity in the appeal preferred by them to this Court. However, in RFA 631/2004 (filed by the Khannas against the dismissal of their first suit), they did not doubt or question the Collaboration Agreement dated 18.05.2014 and on the contrary admitted it as well as explained its legal effect. According to the Khannas, the set of documents dated 12.05.2004 were admitted documents and had the effect of conferring title or creating interest in their favour. In para 17 of RFA 631/2004, filed in the list of documents produced along with the second suit (at S.No.46 of the list of documents filed with the plaint), the Khannas stated as follows:

"In view of the aforesaid admissions on behalf of Respondent Nos. 1 and 2, it is evident that the case of appellant is admitted by clear, clean and unambiguous

admissions. The only position of the respondents before the Trial Court is that the Collaboration Agreement dated 18.05.2004 describes Respondent No.1 as owner of the property. In other words, the Collaboration Agreement has been imposed/thrust before the Trial Court. It has been mainly made out that in case the documents of sale dated 12.05.2004 and Collaboration Agreement dated 18.05.2004 are read together being part of one transaction, which clearly reveals a sale transaction by Respondent No.2 to appellants/plaintiff."

In Ground C, the existence and correctness and legal effect of the RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 24 Collaboration Agreement dated 18.05.2004 was explained and the argument is that read with the previous documents, support or strengthen the interest and title of Khannas.

35. It is thus evident that the basis for the first suit - which claimed possession on the basis of entitlement (Section 5) as well as on the basis of wrongful dispossession (Section 6) were the same facts, i.e. the acquisition of rights through the said documents (Ex. PW-1/1, PW-1/2, PW-1/5 and PW-1/6) as in the present case, i.e the second suit. It was on the basis of these documents that the further registered Agreement to Sell dated 16.06.2004 was executed. The Collaboration Agreement dated 18.05.2004 stood as a barrier on the one hand and the finding that it had effaced the previous documents dated 12.05.2004 had not been set aside; they attained finality. On the other hand, even if the second suit were to be based entirely on the subsequent Agreement to Sell (dated 16.06.2004) (Ex. PW-1/8), that document never saw the light of the day in the first suit. The facts and averments forming the basis of the issues in both the suits, i.e. entitlement to the relief claim - declaration, decree for possession, both under Sections 5 and 6 on the basis of interest and prior possession on the one hand and relief of declaration and possession, again on the basis of entitlement and right to the property were identical. The omission to rely upon registered sale deed, the findings as to the ineffectiveness to the said documents dated 12.05.2004 (Ex. PW-1/2) attained finality. They were not confined to the Khannas' claim in the previous suit under Section 6 but also extended to the legal effect of the Collaboration Agreement dated 18.05.2004 and it has the effect of effacing of rights under the documents dated 12.05.2004. As long as these findings were final, the Khannas could not have sought for a declaration and RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 25 possession in respect of the suit property, as the same was without seeking cancellation of Collaboration Agreement dated 18.05.2004. Also, the Khannas were precluded from setting up title or interest on the basis of Ex. PW-1/8, the registered Agreement to Sell dated 16.06.2004, because that was never put in issue nor did they ever claim rights under it though it was open for them to do so. Consequently, the principle of constructive res judicata applied.

36. For the above reasons, it is held that the findings of learned Single Judge that the principles of res judicata under Section 11 did not preclude the maintainability of the second suit are erroneous. They are set aside. Point No.2

37. The Khannas' claim for rights over the suit property in the second suit is based on PW-1/1 (a registered PoA) executed by Rajiv in favour of Judge Chawla in respect of the suit property. This conferred the right to contest and initiate legal proceedings, enter into binding transactions and also sell the property to any person for consideration. The second document was Ex. PW-1/2 - signed by

Judge Chawla favouring Vaneeta Khanna, the first plaintiff; this was an Agreement to Sell on `20 stamp paper and had recorded that, "actual physical possession of the property had been delivered to the second party." The Agreement to Sell is not registered. The third document is a receipt (Ex.PW-1/3), which evidences payment of `5 lakhs through a cheque by Vaneeta Khanna to Judge Chawla. The fourth document is an affidavit by Judge Chawla (Ex.PW-1/4), declaring that possession has been handed over to Vaneeta Khanna of the suit property. The fifth document (Ex.PW-1/5) is a Will "bequeathing and declaring that upon the demise of Judge Chawla, the suit property would devolve upon RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 26 Vaneeta Khanna." The seventh document is a registered GPA (Ex.PW-1/6) conferring upon Arun Khanna the right to apply for conversion of the suit property from leasehold to freehold and also to sell it and receive consideration. This document - the GPA is a registered one. All these documents/exhibits are dated 12.05.2004.

38. Section 17(1A) of the Registration Act provides as follows:

"17. Documents of which registration is compulsory (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:-

instruments of gift of immovable property;

***** (1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A *****

49. Effect of non-registration of documents required to be registered.-- No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall-

(a) affect any immovable property comprised therein,

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power; unless it has been registered:

Provided that an unregistered document affecting immovable RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 27 property and required by this Act or the Transfer of

Property Act 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property or as evidence of any collateral transaction not required to be effected by registered instrument."

Section 53A of the Transfer of Property Act, 1882 reads as follows:

"53A. Part performance.--Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that 2[***] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

39. The judgment in *Som Dev v. Rati Ram* AIR 2006 SC 788 holds that after the coming into force of the Registration and Other Related Laws (Amendment) Act, 2001, all documents, "containing contracts to transfer for consideration in immovable property for the purpose of Section 53A of RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 28 the Transfer of Property Act shall be registered if they have been created after commencement of sub-section 1A (of Section 17) of the Transfer of Property Act. (sic)" The effect of this amendment - on a joint reading of Section 17 (1A), Section 49 of the Registration Act and Section 53A of the Transfer of Property Act-is that the claim to title on the basis of part performance - under Section 53A of the Transfer of Property Act is untenable if the Agreement to Sell is unregistered.¹ In the present case, the Agreement to Sell executed by Judge Chawla in favour of Vaneeta Khanna, first plaintiff clearly did not create any legal right and could not have been even considered; in any event it created no rights under Section 53A and could not have been brought on record by virtue of Section 49 of the Registration Act.

40. The second aspect, which the appellant/Chopras had highlighted, was as to the inadmissibility of the Agreement to Sell. It was contended that the proper stamp duty on the Agreement to Sell had not been paid and consequently, the instrument could not have been received in evidence and had to be impounded. The appellant, i.e. Chopras relied upon *Avinash Kumar Chouhan v. Vijay Krishna Mishra* 2009 (2) SCC 532. This Court is of the opinion that though substantially, the error if any on this aspect is not so important as to altogether rule out documents. Moreover, the inadmissibility on

ground of inadequate stamp does not appear to have been urged. As a result, it is held that even though the Agreement to Sell (Ex.DW-

1) might have been insufficiently stamped, its receipt in evidence was at best irregular and due to the appellant's omission to object to this aspect, the A view supported by the decisions of the Punjab and Haryana High Court in *Ram Kishan & Anr v Bijender Mann alias Vijender Mann & Ors* (2013) 1 PLR 195 RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 29 impugned judgment cannot be faulted on this score. However, in view of the finding with regard to the legal status of the Agreement to Sell and that it could not have conferred any interest by virtue of a combined reading of Section 17(1)(A) and Section 49 of the Registration Act, the claim to right, title and interest under Section 53A of the Khannas had to fail. In view of the above discussion, it is held that the findings of the learned Single Judge with respect to ownership and interest in the suit property on account of Khannas being put in possession in part performance of the Agreement to Sell dated 12.05.2004 are erroneous and cannot be sustained. The said Agreement to Sell could not have created any rights in view of the Section 17(1A) of the Registration Act and Section 53 A of the Transfer of Property Act. Therefore, the claim for title, based upon that document was legally unenforceable.

Point No.3

41. This issue is in one sense at the core of the entire dispute. On the one hand, the Khannas claim to be original owners and, therefore, entitled to the reliefs of declaration and consequently directions such as injunction, decree for possession etc. On the other hand, the Chopras (subsequent transferees) claim to have better right by virtue of being in possession pursuant to part performance of Agreement to Sell dated 14.09.2004. They also say that they were bona fide purchasers without notice of previous transactions and, therefore, are entitled to continue in possession as against the Khannas.

42. It would be seen from the factual discussion that the Khannas' interest emanated from a series of documents executed on 12.05.2004. One of these was a registered GPA (Ex.PW-1/6) executed by Judge Chawla in favour of Arun Khanna authorizing him to manage the suit property, institute RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 30 proceedings for ejectment of unauthorized occupants, sign, execute and institute proceedings, obtain sanctions and sell the property to anyone for consideration. The case set up by Judge Chawla now is that by virtue of exercise of GPA conferred by Judge Chawla, Arun Khanna executed a registered Agreement to Sell in favour of his wife Vaneeta Khanna. This Agreement to Sell is registered and in the latter part stated unequivocally that the first party, i.e. Arun Khanna is not left with any right, title or interest. As observed earlier, the Agreement to Sell in favour of Vaneeta Khanna - executed by Judge Chawla himself, was hit by Section 17(1A) of the Registration Act and could not have conferred any rights. The question, therefore, is whether the registered PoA in favour of Arun Khanna - by Judge Chawla, could have conferred on the former, i.e. Arun Khanna the right to create binding interest as against all, in respect of the suit property by virtue of Ex.PW-1/8 (Agreement to Sell of 16.06.2004). For this, the parties would necessarily have to bank upon the GPA executed by Rajiv in favour of Judge Chawla (Ex.PW-1/1) dated 12.05.2004.

43. In both suits, i.e. in the first as well as in the second suit, the Khannas clearly stated that a status quo order had been made in the suit filed by the two sisters of Rajiv against him claiming partition. To recapitulate the facts here briefly, Rajiv was one of the heirs of late L.R. Gupta. The other two heirs were Smt. Usha Sharma and Smt. Anita Ranjan. That suit (CS(OS) 1961/2000) was not premised upon the existence of an HUF but that all parties were co-owners having 1/3rd share each in the suit property. The plaintiffs, i.e. Usha Sharma and Anita Ranjan, had claimed their share on the basis of their status as heirs to their fathers' properties. On the strength of the averments, a status quo order was made on 06.09.2000. The first suit, i.e. RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 31 CS(OS) 393/2004 filed by Khannas as well as the second suit, i.e. CS(OS) 1200/2006 clearly revealed the awareness of the Khannas with respect to the suit as well as the status quo order.

44. The submission of the Chopras is that during the subsistence of such a status quo order Rajiv could not have validly conveyed any right to anyone. They rely upon the decision of the Supreme Court in Vidur Impex and Trader (P) Ltd. v. Tosh Apartments 2012 (8) SCC 384. In that decision, the Supreme Court, after considering its previous ruling in Surjit Singh v. Harbans Singh 1995 (6) SCC 50; Sarvinder Singh v. Dalip Singh 1996 (5) SCC 539 and Bibi Zubaida Khatoon v. Nabi Hassan Saheb 2004(1) SCC 191 held that the principle underlining Section 52 of the Transfer of property Act, i.e. that alienation or creation of any interest in respect of a property which is subject matter of a pending proceeding, without leave of the Court, cannot result in interest "so as to affect rights of any party thereto under a decree or order which may be made therein" Similarly, the observations of the Court in Jehal Tanti v. Nageshwar Singh 2013 (14) SCC 689 are categorical that alienations or transfers of properties which are subject matter of litigation and interim orders are unenforceable.

45. The above considerations do not appear to have been taken into account at all by the learned Single Judge although the complaints in both the suits were a matter of record. Equally, this is evident from paras 10 and 11 of the affidavit of the defendant, Praveen Chopra. Even the averments of the Khannas substantiate that the deed was in subsistence on 12.05.2004 and had not been varied. It is evident, therefore, from the above discussion that firstly the status quo order subsisted and bound the parties, by reason of Section 52 of the Transfer of Property Act. Any transfer, alienation or creation of any RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 32 right, title or interest in respect of the suit property could have been made by Rajiv alone either with the consent of the other party or with the approval of the Court. Secondly and more fundamentally, there is no controversy about the fact that upon the death of late L.R. Gupta, by virtue of Section 8 of the Hindu Succession Act, the suit property devolved through intestate succession upon his LRs, i.e. Rajiv and his two sisters Anita and Usha. They had sought for a partition and separate possession of their shares. Independently of the pendency of the proceedings, Rajiv - without any authority from his two sisters could not have conveyed title over the entire property or created interest in respect of the entire property. In other words, the creation of any rights through the registered PoA by Rajiv either in favour of Judge Chawla or in favour of Khannas or in favour of Khanna through Judge Chawla was not valid and legally binding, Therefore, the creation of the document relied upon in the second suit, Ex.PW-1/8 (Agreement to Sell dated 16.06.2004) had no legal binding effect inasmuch as it could not have created any interest. If Judge Chawla could not have been conferred the right by Rajiv, equally, he could not have, therefore, - created any rights in favour of Arun Khanna and likewise Arun Khanna

could not have conveyed title or interest or any binding alienations through Ex.PW-1/8.

46. As far as Chopras are concerned, they premise their claim firstly upon a set of documents dated 22.03.2004 between Rajiv and Chopras. They also rely upon a GPA in favour of Anuj Chopra dated 22.03.2004. These documents, in the opinion of the Court, cannot be looked into for the same reasons as mentioned above, i.e. that the GPA is unregistered and more fundamentally Rajiv could not have created valid or binding interest during RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 33 the subsistence of status quo order or without the participation of other co- owners. However, the matter does not end there. Inter se disputes between Rajiv and his two sisters Anita and Usha were apparently resolved. On the basis of these, direct payments were made by Chopra to the said two sisters, through cheques which were marked in evidence as Ex.D3W/18 and D3W/16 along with receipt of these amounts. Usha and Anita moved applications in the pending suit CS(OS) 1961/2000 which were subsequently transferred to District Court Delhi. Their statements were recorded under Order XXIII Rule 3 on 02.09.2004 (Ex. D3W/D). Pursuant to these terms and after receiving the amount from the Chopras, Usha and Anita executed a relinquishment deed whereby all rights, title and interest in the suit property were relinquished to Rajiv. This document was registered on 03.09.2004 and was marked as Ex.D3W-1/5. It was after these events, i.e. once Rajiv acquired full right, title and interest in the suit property that he executed a registered Agreement to Sell in respect of Chopra Ex.B-3/1/6 and other documents, including PoA in respect of suit property, Ex.D3W1/8. The original documents of title too were handed over in respect of the suit property (Ex.D3W1/11).

47. The learned Single Judge returned a finding that the Chopras could not be considered bona fide purchasers without notice, for valuable consideration because they did not plead so in their written statement and that they are deemed to have constructive notice of the registered document Ex. PW-1/8 (Registered Agreement to Sell, dated 16.06.2004). This Court is of opinion that the impugned judgment is in error- the error is egregious for the simple reason that the record itself is to the contrary. The Chopras' written statement clearly avers in Para 2 (in the reply on merits) that they RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 34 were bona fide purchasers for valuable consideration without notice of the previous transaction. As far as registration of the document constituting constructive notice is concerned, this court has held that the said document could not have created any legally binding right in respect of the suit property.

48. The above discussion would show that whereas on the one hand Rajiv could not have for two compelling reasons conveyed any valid interest over the property to Khannas, he could and did after resolution of the disputes i.e. after the execution of the relinquishment deed on 03.09.2004 in his favour by his sisters, the co-owners of property. As a result, the registered Agreement to Sell - which was also preceded by payment and handing over of original title deeds and possession, created a valid clear and binding right and interest in the suit property in favour of Chopras.

49. It is, therefore, held that the findings of the learned Single Judge with respect to Chopras not possessing any legally enforceable interest in the suit property are erroneous. Equally erroneous are the findings that the Khannas had any legally enforceable title or interest in the suit property.

50. In RFA(OS) 21/16, the grievance of Rajiv is with respect to direction to pay mesne profits for three months, in favour of Chopras. The finding of the learned Single Judge is that Khannas had become owners, based on his finding that the dispute arose on account of wrongful action by Rajiv, which entitled them to claim 15% per month as mesne profits/damages along with 9% interest. In view of the Court's finding that Khannas were not entitled to any interest, their claim for possession was also unenforceable. Therefore, Rajiv's appeal has to succeed only on this ground.

51. In view of the above discussion, the impugned judgment and decree of RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 35 the learned Single Judge in CS(OS) 1200/2006 is hereby set aside. The appeals are allowed in the above terms without any order as to costs.

S. RAVINDRA BHAT (JUDGE) DEEPA SHARMA (JUDGE) MAY 25, 2016 RFA (OS) 117/2015 & RFA (OS) 21/2016 Page 36