

Hardip Kaur Vs. Kailash and Another

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Court : Delhi

Decided On : May-18-2012

Judge : J.R. Midha

Appeal No. : RFA NO. 648 OF 2006

Appellant : Hardip Kaur

Respondent : Kailash and Another

Judgement :

JUDGMENT

1. The Trial Court has dismissed the appellant's suit for possession and mesne profits relating to property bearing No.E-318, East of Kailash, New Delhi which is under challenge in this appeal. For the sake of convenience, the appellant and respondent nos.1 and 2 are referred to by their ranks in the suit as plaintiff, defendant nos.2 and 3 respectively. Mohinder Kaur was defendant No.1 in the suit.

2. The dispute between the parties relate to the first, second and terrace floors of property bearing No.E-318, East of Kailash, New Delhi, hereinafter referred as “the suit property?”. The suit property is built over leasehold plot measuring 125 sq. yards which was originally allotted to Darshan Kaur. Darshan Kaur sold the said plot to the plaintiff on 19th April, 1973 vide construction agreement dated 19th April, 1973 accompanied by General Power of Attorney in favour of the plaintiff's

nominee, T.S. Chadha. The plaintiff constructed a three storey building over the said plot.

3. On 5th June, 1989, the plaintiff sold the first, second and terrace floors to Mohinder Kaur for total consideration of Rs.4,50,000/-. The plaintiff received the entire sale consideration from Mohinder Kaur and handed over the vacant and peaceful possession of the suit property to her. The plaintiff executed following documents relating to the suit property on 5th June, 1989:-

(i) Agreement to Sell.

(ii) Receipt for Rs.4,50,000/-.

(iii) Affidavit.

(iv) Indemnity bond.

(v) Irrevocable General Power of Attorney.

(vi) Will.

4. The agreement to sell, receipt, affidavit, indemnity bond and will are in favour of Mohinder Kaur whereas irrevocable General Power of Attorney is in favour of Surinder Jit Singh, son and nominee of Mohinder Kaur. The receipt, irrevocable General Power of Attorney and will are registered before the Sub-Registrar. Arvinder Singh Arora, son of the plaintiff has witnessed the aforesaid documents. All the aforesaid documents were admitted by the plaintiff before the learned Trial Court and were exhibited as Ex.PW1/D2/1 to Ex.PW1/D2/5 and Ex.D-1. The relevant terms and conditions in the aforesaid documents are as under:-

(i) The agreement to sell dated 5th June, 1989 records that the plaintiff to be the absolute owner in possession of the entire three storey building comprising of **first, second and terrace floors** built over land ad-measuring 125 sq.yrds. bearing No.E-318, East of Kailash, New Delhi having purchased from the original allottee, Darshan Kaur vide construction agreement dated 19th April, 1973.

(ii) Clauses 1 and 3 of the agreement records that the plaintiff has agreed to sell the entire three storey building comprising of **first, second and terrace floors** to Mohinder Kaur for a total consideration of Rs.4,50,000/- and **the plaintiff has received the entire sale consideration and has handed over the vacant and peaceful possession to Mohinder Kaur.**

(iii) Clause 11 of the agreement declares that Mohinder Kaur has become absolute owner of the entire property and she enjoys all rights of ownership and further that **the plaintiff is not left with any rights, title, interest or lien in the suit property** .

(iv) Clause 12 of the agreement empowers Mohinder Kaur **to make any construction on the terrace floor**, renovate, make any alteration or addition in the suit property on her own responsibility to which **the plaintiff shall have no objection.**

(v) In the affidavit dated 5th June, 1989, the plaintiff has solemnly affirmed and declared that she has sold the suit property comprising of first, second and terrace floors to Mohinder Kaur; she has received entire sale consideration of Rs.4,50,000/-; she has handed over the vacant and peaceful possession of the suit property to Mohinder Kaur and further that she has executed agreement to sell, indemnity bond, receipt, affidavit, irrevocable General Power of Attorney and will. The plaintiff further affirmed **not to revoke the aforesaid documents under any circumstances and shall not demand the possession of the above-mentioned property.** She has further declared that she has **no objection to the transfer/mutation** of the suit property in the name of the purchaser.

(vi) The irrevocable General Power of Attorney dated 5th June, 1989 executed by the plaintiff also relates to the suit property and **clause 7 empowers the attorney to sell and transfer the suit property** to any person, to receive the sale consideration and to hand over the possession of the suit property.

(vii) Clause 19 declares the said General Power of Attorney to **be irrevocable and that the plaintiff shall not be entitled to withdraw the same.**

5. On 1st September, 1992, Mohinder Kaur sold the suit property to Rajinder Kumar, defendant No.3 for a total consideration of Rs.5,50,000/-. Mohinder Kaur received the entire sale consideration and handed over the vacant and peaceful possession of the suit property to defendant No.3 and executed the following documents on 1st September, 1992:-

(i) Agreement to Sell.

(ii) Receipt.

(iii) Will

(iv) Indemnity bond.

(v) Affidavit.

(vi) Possession letter.

(vii) General Power of Attorney.

(viii) Special Power of Attorney.

6. The agreement to sell, receipt, will, indemnity bond, affidavit and possession letter are in favour of defendant No.3 whereas the Power of Attorneys are in favour of Kailash Chitkara, defendant no. 2 who is the wife of defendant No.3. All the aforesaid documents have been proved by defendants No.2 and 3 before the learned Trial Court and are Ex.DW1/1 to Ex.DW1/8.

7. On 19th September, 1992, the plaintiff instituted a suit for possession and mesne profits relating to the suit property on the ground that she had agreed to sell only first and second floors of the suit property to Mohinder Kaur who has illegally constructed third floor. The plaintiff further averred that Mohinder Kaur has not obtained the sale permission in terms of the agreement and the period of limitation of three years for implementation of the agreement has expired. The plaintiff further averred that she has cancelled the General Power of Attorney and will both dated 5th June, 1989 on 9th March, 1992. The plaintiff claimed the possession and mesne profits in respect of the suit property.

8. Mohinder Kaur, defendant No.1, in her written statement, pleaded that she had purchased first, second and terrace floors of the suit property from the plaintiff vide agreement to sell dated 5th June, 1989 for a consideration of Rs.4,50,000/-. Defendant No.1 denied having made any unauthorized or illegal construction. Defendant No.1 further denied cancellation of General Power of Attorney and will and stated that the General Power of Attorney was irrevocable and cannot, therefore, be revoked/cancelled. She further stated that she sold the suit property to defendant No.3 for a sale consideration of Rs.5,50,000/- on 1st September, 1992.

9. Defendants No.2 and 3 claimed to be bona fide purchaser and lawful owner of the suit property having purchased from defendant No.1 for a total consideration of Rs.5,50,000/- on the basis of the agreement to sell, receipt, will, indemnity bond, affidavit, possession letter and Power of Attorneys all dated 1st September, 1992.

10. The plaintiff appeared in the witness box before the learned Trial Court as PW-1 and reiterated the averments made in the plaint. PW-1 proved the deed of cancellation of General Power of Attorney dated 9th March, 1992 as Ex.PW1/A. In cross-examination, the plaintiff made material admissions which are as under:-

- (i) The plaintiff admitted Darshan Kaur to be the original owner of the suit property.
- (ii) The plaintiff admitted her title on the basis of construction agreement dated 19th April, 1973 - Ex.PW1/DA in her favour and General Power of Attorney of Darshan Kaur in favour of her nominee, T.S. Chadha. The plaintiff does not have a registered sale deed in her favour.
- (iii) The plaintiff admitted agreement to sell, will, affidavit, indemnity bond and irrevocable General Power of Attorney dated 5th June, 1989 marked as Ex.PW1/D2/1 to Ex.PW1/D2/5.
- (iv) The plaintiff admitted the receipt of the entire sale consideration from defendant No.1 vide receipt dated 5th June, 1989 marked as Ex.D-1.
- (v) The plaintiff admitted handing over of the possession of the suit property to Mohinder Kaur on 5th June, 1989.

(vi) The plaintiff admitted that she had not received any notice of unauthorized construction or demolition from any authority.

(vii) The plaintiff admitted that she never issued any notice of unauthorized construction to Mohinder Kaur.

(viii) The plaintiff admitted the sale of the suit property by Mohinder Kaur to defendants No.2 and 3.

(ix) The plaintiff also admitted that possession of defendants No.2 and 3 over the suit property.

(x) The plaintiff stated that she cancelled the Power of Attorney and will because the defendants misbehaved with her.

11. Defendant No.1 died during the proceedings before the learned Trial Court. Vide order dated 19th January, 2005, the learned Trial Court held that the suit be continued against defendants No.2 and 3 since defendant No.1 claimed no right, title and interest in the suit property and defendant Nos.2 and 3, intermeddling with the estate of the deceased, are the legal representatives of defendant No.1 within the meaning of Section 2(11) of the Code of Civil Procedure.

12. On 24th July, 1997, the following issues were framed by the learned Trial Court:-

“1. Whether there exists any cause of action in favour of the plaintiffs to file the present suit against defendants No.2 and 3?

2. Whether the suit has not been properly valued for the purpose of court fees and jurisdiction?

3. Whether the agreement to sell executed by the plaintiff in favour of defendant No.1 became time barred because of non-performance of agreement by defendant No.1? If so, to what effect?

4. Whether defendants No.2 and 3 are the lawful owners in possession having purchased the property from defendant No.1 for a valuable consideration?

5. Whether the plaintiff is the owner of the suit premises?

6. Whether the plaintiff had any right to terminate the registered General power of Attorney executed in favour of defendant No.1 dated 5th June, 1989? If so, its effect?

7. Whether the plaintiff is entitled to any mesne profits/damages. If so, at what rate? From whom and for what period?

8. Relief.”

13. The Trial Court dismissed the plaintiff's suit. The findings of the Trial Court are as under:-

(i) The plaintiff's claim that she had agreed to sell only first and second floors of the suit property to defendant No.1 is not correct as the agreement to sell - Ex.PW1/D2/1 dated 5th September, 1989, admitted by the plaintiff, clearly records that the plaintiff agreed to sell the first, second and terrace floors of the suit property.

(ii) The Power of Attorney dated 5th September, 1989 - Ex.PW1/D2/5 was executed by the plaintiff for consideration and was, therefore, irrevocable under Section 202 of the Contract Act, 1872.

(iii) The plaintiff ceased to be the owner of the suit property after 5th June, 1989 as she received the entire sale consideration of Rs.4,50,000/- from defendant No.1; handed over the vacant and peaceful possession to defendant No.1; declared defendant No.1 to be the absolute owner of the suit property (clause 11 of the agreement); authorized defendant No.1 to make construction, additions and alterations (clause 12 of the agreement); executed the irrevocable General Power of Attorney authorizing the attorney to construct, demolish or re-construct the building and also authorized him to sell and transfer the suit property.

(iv) The plaintiff's remedy against the unauthorized construction by the defendant is to file a suit for injunction but she cannot cancel the legal documents executed by her.

(v) The plaintiff's suit was barred by Section 53A of the Transfer of Property Act, 1882 and the plaintiff was estopped from going back on the agreement to sell. The Trial Court relied upon D.R. Puri v. Kamlesh Sawhney, (2001) 60 DRJ 736 in this regard.

(vi) It is not open to the plaintiff to cancel any document including General Power of Attorney. As such, the plaintiff has no right to either recover possession or mesne profits from the defendants.

(vii) The agreement to sell has not become time barred as the plaintiff herself has failed to perform her part of the contract. The question of performance on the part of defendant No.1 would have arisen only after the plaintiff had performed her part of the contract.

(viii) Defendants No.2 and 3 have right to possess the suit property to the exclusion of all others including the plaintiff by virtue of the agreement to sell, General Power of Attorney and other documents dated 1st September, 1992 - Ex.DW1/1 to Ex.DW1/5.

(ix) The plaintiff has no cause of action to file the suit against the defendants including defendants No.2 and 3 who are successors in interest in defendant No.1.

14. During the pendency of this appeal, vide order dated 1st October, 2010, this Court framed an additional issue as to whether the sale transaction between the plaintiff and defendant No.1 was cancelled by the plaintiff and if so, to what effect. The case was remanded back to the Trial Court for decision on the additional issue. The parties led evidence on the additional issue.

15. The Trial Court has decided the additional issue against the plaintiff. The findings of the Trial Court on the additional issue are as under:-

(i) The plaintiff had cancelled the General Power of Attorney and will dated 5th June, 1989 but the sale transaction was never cancelled.

(ii) The ground for cancellation that defendant No.1 raised unauthorized construction was not correct as the plaintiff was well aware and she admitted in

cross-examination that defendant No.1 had sold the suit property to defendants No.2 and 3 who were in possession.

(iii) The plaintiff did not receive any notice of unauthorized construction from any authority.

(iv) The plaintiff also did not issue any notice of unauthorized construction to defendant No.1.

(v) The plaintiff has set up a false story of unauthorized construction in the plaint.

16. The learned counsel for the plaintiff has urged only two grounds at the time of hearing of this appeal which are as under:-

(i) The cancellation of the Power of Attorney on 9th March, 1992 is not barred by Section 202 of the Contract Act because the General Power of Attorney dated 5th June, 1989 was executed without any consideration. The plaintiff has not received any consideration from the attorney. The General Power of Attorney was executed in favour of Surinder Jit Singh, son of defendant No.1 whereas the sale agreement relating to the suit property was in favour of defendant No.1 and the attorney cannot be said to have any interest in the suit property.

(ii) The agreement to sell does not create any interest in or charge on the suit property in view of Section 54 of the Transfer of Property Act, 1882.

17. The plaintiff has not challenged the other findings of the Trial Court mentioned in paras 13 and 15 above.

18. Section 202 of the Contract Act, 1872

Section 202 of the Contract Act, 1872 provides that the Power of Attorney coupled with interest is irrevocable and cannot be revoked/terminated even upon the death of the principal. Section 202 of the Contract Act is reproduced hereunder:-

“SECTION 202. Termination of agency where agent has an interest in subject-matter:-

Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. **A cannot revoke this authority, nor can it be terminated by his insanity or death.**

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances. **A cannot revoke this authority, nor it is terminated by his insanity or death.”**

(Emphasis supplied)

(i) In **Harbans Singh v. Shanti Devi, 1977 RLR 487**, the seller had executed an agreement to sell in favour of the purchaser and the General Power of Attorney in favour of her husband. The General Power of Attorney was stated to be irrevocable and it authorized the attorney to further sell the subject property. The seller later cancelled the agreement to sell and all other documents including the General Power of Attorney. The Trial Court held the General Power of Attorney to be irrevocable which was challenged in appeal before this Court. The Division Bench of this Court held that the General Power of Attorney was executed for a valuable consideration and the agent had an interest in the property and, therefore, the General Power of Attorney was irrevocable.

This Court negated the seller's contention that a contract of sale “of itself” does not create any interest in or charge on immovable property under Section 54 of the Transfer of Property Act, 1988 and, therefore, the purchaser cannot be said to have an interest within the meaning of Section 202 of the Contract Act. It was held that the purchaser had an interest in the immovable property for the purposes of Section 202 of the Contract Act, if not for the purposes of Transfer of Property Act and Registration Act. The findings of the Division Bench of this Court are as

under:-

“10. For the purposes of the Law of Contract, therefore, it would not be useful to restrict the meaning of the word "interest" by the narrow compass in which this word is used at times in relation to immovable property. For instance, the last sentence of section 54 of the Transfer of Property Act states that a contract for sale of itself does not create any interest in or charge on immovable property. Similarly, section 17(1)(b) of the Registration Act makes only those documents compulsorily registerable which create, declare, assign, limit or extinguish any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards to or in immovable property. Since an agreement for sale does not create such a right, title or interest, it may not be compulsorily registerable. But in the context of the Contract Act, it cannot be said that a person who is the beneficiary of an agreement of sale has no right or interest in the subject-matter of the sale. He has a legally enforceable right and interest in enforcing the contract of sale by the execution of a sale deed and in getting possession of the property agreed to be sold under the provisions of the Specific Relief Act. In the English Common Law, the specific performance of contracts was a part of the law of contract. This is why Chapter IV of the Contract Act deals with the performance of contracts which includes the performance of contracts relating to immovable property also. In fact, Section 4 of the Transfer of Property Act says that the chapters and sections of that Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872. **Therefore, the respondent in whose favour the appellant had executed an agreement for the sale of an immovable property had an interest in the subject-matter of the contract, namely, the shop, for the purposes of section 202 of the Contract Act if not for the purposes of the Transfer of Property and the Registration Acts.**”

“13. All the conditions of irrevocability are satisfied in the present case. The authority to the agent was given for valuable consideration which proceeded from the respondent. It was given for the purpose of effectuating security or protecting or securing the interest of the agent. For, the only purpose of the agency was to ensure and secure the performance of the contract by the appellant in favour of the respondent for whom Shri Gulati was acting as the

husband and the nominee and, therefore, a representative or agent. Where the performance of the agency is not to secure the interest or the benefit of the agent then the agency is not irrevocable merely because the agent has an interest in the exercise of it or has a special property in or lieu for advances upon the subject-matter of it."

"15. The matter may be looked at from another point of view. Legally protected interest or a benefit of one party casts a corresponding obligation on the other party to the contract. If the contract of agency confers an interest or a benefit on the agent, it casts an obligation on the principal. In the present case, the appellant, as a principal was under an obligation to perform the contract of sale by the execution of a conveyance. In the words of Bowstead, "authority is normally only irrevocable when it is the security or other proprietary interest, or part of the security, or where its conferring constitutes the performance of the obligation". Such a power is referred to as a "power coupled with an interest" and should be regarded as a property disposition rather than as the conferring of authority. The Restatement (the American Restatement of the Law on Agency, Section 138) uses the phrase "power given as security" defined as "a power to affect the legal relations of another, created in the form of an agency authority, but held for the benefit of the power holder or a third person, and given to secure the performance of a duty or to protect a title, either legal or equitable, such power being given when the duty or title is created or given for consideration." (Optic, page 424). **Since the power of agency has been conferred not for the benefit of the principal but for the benefit of the agent representing a third party and not as representing the principal, the power becomes irrevocable."**

(Emphasis supplied)

It was also contended in the above case that the agreement to sell and the General Power of Attorney were in the name of different persons and, therefore, the attorney cannot be said to have any interest in the immovable property. It was argued that the purchaser and the attorney were two different persons in the eyes of law and the seller had not received any consideration from the attorney. This plea is also negated by the Division Bench and it was held that the attorney was

the nominee/husband of the purchaser and his interest was also that of the purchaser. The interest does not mean ownership or title but an advantage, benefit or a legally enforceable right and, therefore, the Power of Attorney was irrevocable. The findings of this Court in this regard are as under:-

“16. The next question is whether this interest was only that of respondent or that of Shri Gulati also. Paragraph 3 of the agreement of sale executed by the appellant itself describes Shri Gulati as "a nominee and husband" of the respondent. It also says that the appointment of Shri Gulati as the appellant's attorney was made "in order to facilitate the transaction" of sale by the appellant to the respondent. **Why had the appellant to appoint as his agent Shri Gulati who was really the nominee and the husband of the respondent? The reason obviously was that Shri Gulati was regarded really interested in his wife, namely, the respondent rather than in the appellant whose interests were opposed to those of the respondent.** By his relationship with the respondent and also by his nomination by the respondent Shri Gulati was in the position of a representative or an agent of the respondent in fact.

17. It is only in law that he became an agent of the appellant. But this agency was only with a view to serve the purpose of the respondent. This is why the last sentence in paragraph 3 of the said agreement states that the appellant shall not be liable for any negligence of Shri Gulati "who is the nominee" of his own wife. Since Indian ladies are traditionally do not transact business activities, it is well known that their husbands figure as their representatives or agents in these activities. This is why Shri Gulati has acted for the respondent in these transactions. **His interest in this transaction was the same as that of his wife. It was, therefore, the interest of Shri Gulati that the property which was the subject-matter of the agency should be conveyed by the appellant to the respondent.** The interest in such conveyance was not only of the respondent but also of Shri Gulati. The powers of attorney in favour of Shri Gulati were executed by the appellant on the same date on which he executed the agreement of sale in favour of the respondent. **Since Shri Gulati acted for his wife, all these documents, therefore, constitute one transaction. The powers of attorney are granted to Shri Gulati only because an agreement of sale is entered in**

favour of his wife. Shri Gulati no less than his wife is, therefore, interested in the subject-matter of the agency, namely, the shop. If the agency were to be terminated, prejudice would have been caused to the interest not only of the respondent but also of Shri Gulati. Section 202 of the Contract Act, therefore, prohibited the appellant from terminating the agency of Shri Gulati before the shop was duly conveyed by the appellant to the respondent.

18. There is no difference between the general and the special powers of attorney in this respect. Both of them are for the benefit of the respondent and her nominee Shri Gulati. **Neither of them is for the benefit of the principal, the appellant. Shri Vohra argued that the respondent and her husband Shri Gulati are two different persons in the eye of law. This may be so. But their interests are identical. It cannot be said that Shri Gulati had no interest in the property which is the subject-matter of the agency. We have already stated that interest does not mean ownership or title in the immovable property. It means an advantage or a benefit or a legally enforceable right.** Shri Gulati had the right to legally enforce the obligation cast on the appellant to convey the property to the respondent. This interest and right was of Shri Gulati himself though it may be for the benefit of the respondent, namely, his wife. It is immaterial, therefore, that only the general power of attorney was expressly made irrevocable while the special power of attorney was not so made. It is section 202 of the Contract Act which makes them both irrevocable.”

(Emphasis supplied)

(ii) In **Prem Raj v. Babu Ram, 1991 RLR 458**, the seller agreed to sell an immovable property to the purchaser and executed two Power of Attorneys in favour of the wife of the purchaser. The seller later cancelled the Power of Attorneys and sued the purchaser alleging that DDA had refused the permission to sell and, therefore, the agreement became frustrated. The seller claimed that he was entitled to forfeit the money received and the possession be restored. Rejecting the plea, this Court held that the Power of Attorneys executed for a consideration creating interest in the property cannot be revoked or cancelled in view Section 202 of the Contract Act, 1872.

(iii) In **H.L. Malhotra v. Nanak Jai Singhani, 1986 RLR (Note) 89**, this Court held the Power of Attorney for a consideration to be irrevocable. This Court further observed that prices of the property have shot up and, therefore, the seller has become dishonest and wants to make more money. (iv) In **Kuldeep Singh Suri v. Surinder Singh Kalra, (1999) 48 DRJ 463**, the seller sold the leasehold plot at Vasant Vihar, New Delhi to the purchaser by means of agreement to sell, General Power of Attorney, construction agreement, affidavit, receipt and will. The General Power of Attorney was in favour of the father of the purchaser. The seller filed a suit for possession which was dismissed by this Court. This Court held the General Power of Attorney to be irrevocable and subsisting and the deed of cancellation to be of no consequence. The findings of this Court are as under:-

“...the plaintiff was not legally competent to revoke the registered irrevocable power of attorney in favour of Sardar Saran Singh as the defendants had paid the entire sale consideration to the plaintiff and the plaintiff had in turn handed over possession of the property to the defendants. **The power of attorney was executed in favour of Sardar Saran Singh, father of defendant No.2, only to facilitate the execution of the sale deed in favour of the defendants. Since Sardar Saran Singh is the father of defendant No.2, he is, therefore, interested in the subject-matter of agency, namely, the plot number B-1/16, Vasant Vihar, New Delhi.** Section 202 of the Contract Act interdicts termination of agency where an agent has an interest in the subject-matter of the agency. The power of attorney executed by the plaintiff in favour of Sardar Saran Singh expressly stated that it could not be revoked by the plaintiff. In the absence of an express contract permitting termination of the agency, section 202 of the Contract Act barred such termination. A similar question came up for consideration before a Division Bench of this Court in Harbans Singh Vs. Shanti Devi, 1977 R.L.R. 487...”

“Therefore, I hold that the registered deed (Ext.P-3) cancelling the power of attorney dated March 6, 1978 (Ext.D-7) is of no consequence and the power of attorney Ext.D-7 in favour of Sardar Saran Singh still subsists.”

(v) In **D.R. Puri v. Kamlesh Sawhney, 2001 (60) DRJ 738**, the vendor executed construction agreement, General Power of Attorney, Special Power of Attorney,

affidavit, will, receipt and repudiation letter in favour of the purchaser in respect of a plot in Friends Colony, New Delhi whereupon the purchaser constructed a building over the subject plot. The vendor later filed a suit claiming possession of the subject property on the ground that he had only permitted the purchaser to construct a building on his behalf. Rejecting the plea, this Court held that the true nature of the transaction between the parties was an agreement to transfer the property. If the transaction is contained in more than one document, they must be read and interpreted together as if they are one document. This Court held the suit to be barred by Section 53A of the Transfer of Property Act, 1882 and, therefore, the vendor was not entitled to recover the possession of the suit property. The Court held as under:-

“16. In *S. Chattanatha Karayalar v. The Central Bank of India Ltd. and Ors.* AIR 1965 SC 1856 the Supreme Court stated in paragraph 3 of the Report as follows :

"The principle is well established that if the transaction is contained in more than one document between the same parties they must be read and interpreted together and they have the same legal effect for all purposes as if they are one document".

17. In the present case, it is not as if the parties had executed only one document. A series of documents were executed which not only included agreements but also two Powers of Attorney, affidavits of the entire family of the plaintiff as well as the plaintiff's Will. If the parties had entered into a simple construction agreement, as alleged by the plaintiff, there was absolutely no reason for the plaintiff to execute a Will and hand it over to the defendants. Similarly, there was absolutely no reason for the family of the plaintiff to execute affidavits relinquishing their rights in the aforesaid plot of land.”

(Emphasis supplied)

It was contended by the plaintiff in that case that the defendant neither filed any suit for specific performance nor filed any Counter-claim. It was further contended that the suit for specific performance had become time barred and, therefore, the plaintiff was entitled to the decree for possession. Rejecting this plea, this Court

held that the non-filing of the suit for specific performance within limitation would mean that the purchaser lost the opportunity of perfecting his title but that does not mean that the seller can claim possession. The findings of this Court are as under:-

“40. It was finally contended by learned counsel for the plaintiff that one of the ingredients of Section 53A of the Transfer of Property Act, 1882 is that the transferee must be ready and willing to perform his part of the contract. It was his contention that the defendants were not willing to perform their part of the contract and that a suit for specific performance of the contract (assuming it to be an agreement to sell) cannot now be instituted because it is barred by time. Reliance in this regard was placed by learned counsel on *Raju Roy and Ors. v. Kasinath Roy and Ors.*, AIR 1956 Pat 308.

41. It is no doubt true that the appropriate course of action for the defendant would have been to either raise a counter claim against the plaintiff or to file a suit against the plaintiff for specific performance of the agreement to sell. This has not been done by the defendants.

42. However, I am of the view that this by itself is not enough to decree the suit in favor of the plaintiff. The reason for this is that the right of the defendants is not extinguished. It is only that the remedy cannot be resorted to by the defendants because it is barred by time. There is nothing to indicate that the defendants are not willing to perform their part of the contract. On the contrary, as far as they are concerned, the contract stood concluded when they paid an amount of Rs.1,40,000/- to the plaintiff and received possession of the aforesaid plot of land as well as all the original documents pertaining to the aforesaid plot of land. The only other thing which was required to be done was to actually have the property mutated in the name of defendant No. 1 and to have the title registered in accordance with law so as to perfect it in favor of defendant No. 1.

43. A down-to-earth view of the whole case has also to be taken. Looked at from this point of view, it must be accepted that the defendants took possession of the aforesaid plot of land in 1979 ; that they spent a considerable amount in constructing a house on the aforesaid plot of land ; and that they have been living

in the suit property since 1982. Is it possible to realistically say that they now have no interest in the aforesaid plot of land?

44. The mere fact that the defendants did not file a counter claim or a suit for specific performance, cannot lead to any conclusion that they have given up all their rights in the aforesaid plot of land. It can, at best, be said that the Defendants have lost the opportunity of perfecting their title. Under the circumstances, I am of the view the decision cited by learned counsel for the plaintiff does not really help him.”

(Emphasis supplied)

(vi) In **Ramesh Mohan v. Raj Krishan, PLR (1984) 86 PandH 211**, an irrevocable General Power of Attorney in respect of an immovable property was executed along with the agreement to sell, receipt of entire sale consideration and delivery of possession. The power of attorney was later cancelled which came for consideration before Punjab and Haryana High Court. It was contended before the Court that an agreement to sell does not create any interest in or charge on immovable property and, therefore, Section 202 of the Contract Act would not be attracted. Repelling this argument, the Court held that the agreement “of itself” may not create any interest in the property but the words “an interest in property which forms the subject matter of the tenancy” in Section 202 of the Contract Act are of wider amplitude than the words “an interest in or charge on such property” in Section 54 of the Transfer of Property Act and where the vendor has received the sale consideration in pursuance of the agreement to sell and has delivered the possession to the purchaser, the purchaser would have interest in the property within the meaning of Section 202 of the Contract Act. The Court held that interest was created in the suit property when its possession was delivered and the total sale consideration was received in pursuance of the agreement under Section 54 of the Transfer of Property Act, 1882. The Court further held that the agreement was not a mere agreement to sell, but more than that because the transaction was complete in all respects except the execution of the regular sale deed and the registration thereof. Thus, interest was created in the property and Section 202 of the Contract Act was applicable. The Court further held that the Power of Attorney

was irrevocable in view of the provisions of Section 202 of the Contract Act and the nominee continued to be the agent of the seller in spite of the cancellation of the Power of Attorney. The findings of the Court are reproduced as under:-

“4. The main contention raised on behalf of the appellants is that the power of attorney, Exhibit P.W.5/3, was irrevocable on account of the following reasons:

(i) because of the agreement to this effect itself between the parties when it was agreed that it was irrevocable; and

(ii) in view of the provisions of Section 202 of the Indian Contract Act, which reads:-

“Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.”

Thus argued the Learned Counsel that the provisions, of Section 202 of the Contract Act are applicable to the transfer of the immovable property under the Transfer of Property Act (hereafter called the Act) in view of the provisions of Section 4 of the Act, which read:-

“The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 and Sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908.”

According to the learned counsel for the plaintiffs-respondents, no interest was created in the property agreed to be sold by merely executing the agreement, Exhibit D.W.1/1, in favour of Ram Narain, defendant, because Section 54 of the Act, inter alia provides that a contract for the sale of immovable property is a contract; that a sale of such property shall take place on terms settled between the parties and that it does not, of itself, create any interest in, or charge on, such property, and, therefore, the provisions of Section 202 of the Contract Act, (as reproduced above), were not attracted in the present case. On the other hand, the argument raised on behalf of the appellants is that the agreement “of itself” may not create any interest in the property, but in the present case, on the facts admitted,

interest was created in the suit property when its possession was delivered and the total sale price was received in pursuance of the agreement. I find force in this contention. In a somewhat similar situation, it was observed in *Rabindra Nath v. Harendra Kumar*, A.I.R. 1956 Cal. 462 that the answer to such question depends on the nature of the agreement for sale in each case. **The language of Section 54 emphasises that “of itself” a contract for sale does not create any interest or charge on the property. But very often a contract for sale does not stand by itself where there is a part payment of the purchase price or payment of what is called the earnest money. In that event Section 55(6)(b) of the Act, would be attracted and it will be treated as though the ownership of the property had passed and there is a charge for part of the purchase money paid. In the present case, the agreement, Exhibit D.W.1/1, was not a mere agreement to sell, but more than that because practically, the transaction, was complete in all respects except the execution of the regular sale deed and the registration thereof. Thus, interest was created in the property under the agreement and the provisions of Section 202 of the Contract Act are applicable to the facts of the present case. Moreover, the words, "an interest in the property which forms the subject-matter of the agency" occurring in Section 202 of the Contract Act, are of wide amplitude than the words, "interest in or charge on, such property," in Section 54 of the Act. It is true that the mere execution of the agreement for sale without doing anything more will not create any interest in the property to be sold, but where the vendor has received the sale price and in pursuance of the agreement to sell possession thereof has been delivered to the prospective vendee, then it could not be successfully argued on the basis of Section 54 of the Act that no interest was created in the property. The words, “of itself” in Section 54 of the Act, are very material to reach the right conclusion in a given case. Thus, on the facts of the present case, the irresistible conclusion is that in view of the provisions of Section 202 of the Contract Act, as well as because of the agreement itself the power of attorney, Exhibit, P.W.5/3, was irrevocable. Ram Narain, defendant-appellant continued to be the agent of the plaintiffs-respondents in spite of any cancellation of the power of attorney, Exhibit P.W.5/3. Thus, the decree suffered by Ram Narain, on behalf of the plaintiffs in the**

suit filed on behalf of Ramesh Mohan, defendant-appellant, was binding on them. In any case, it could not be held to be invalid or to have been obtained by fraud or misrepresentation as alleged in the plaint. In view of the said finding, the second limb of the question formulated above, does not arise. However, independent of the power of attorney, and the said decree the defendants are entitled to protect their possession of the suit land which they got in performance of the agreement on payment of the entire sale price. There was nothing more to be done in furtherance of the agreement, Exhibit P.W. 5/3, on the part of the vendee as he had paid the whole sale price and had taken possession of the suit land. It was for the Plaintiffs to execute the regular sale deed in favour of Ram Narain, defendant-appellant, or in favour of any other person he may so choose. This, the plaintiffs failed to do in spite of the telegram, Exhibit DW 3. Not only that, in the present case, the plaintiffs nowhere pleaded that they were ready and willing to perform their part of the agreement; rather they denied the execution of the agreement in the first instance and also the receipt of the sale price of Rs.41,000/-. It was only during the trial that on account of the overwhelming evidence led on behalf of the defendants, the plaintiffs had to admit the execution of the agreement to sell as well as the receipt of the sale price by them. From the evidence, of the defendants, the suit by Romesh Mohan, defendant-appellant, was filed at the instance of the plaintiffs in order to get the necessary transfer made by way of the consent decree. However, it may or may not be so, but it is immaterial for the purposes of the present controversy. Ram Narain, defendant-appellant, in order to safeguard his interest and to debar the plaintiffs from doing any mischief, in future, after receiving the sale price, also got the irrevocable power of attorney in his favour. As observed earlier, the plaintiffs never pleaded any such agreement or admitted the receipt of any sale price, but filed the simple suit for the cancellation of the decree on the basis of fraud and collusion etc. As held earlier, the question of any fraud etc. did not arise because the plaintiffs had already washed off their hands from the land, in dispute, by receiving the entire sale price and handing over its possession besides executing the irrevocable power of attorney in favour of Ram Narain, defendant-appellant. **The equitable considerations as embodied in Section 53A of the Act, are fully applicable to the facts of the present case.** In a similar situation, it was held in Venkatesh v. Mallappa, A.I.R. 1922 Bom. 9 (2),

that the plaintiff who sells an immovable property to defendant, cannot claim possession from defendant-vendee who has paid the purchase money and has been all along in possession, though no sale-deed has been executed. The equitable principles which should be applied to such facts are perfectly clear. ...”

(vii) In **Suraj Lamp and Industries Private Limited v. State of Haryana, 183 (2011) DLT 1 (SC)**, the Supreme Court held that General Power of Attorney transactions do not convey any title or interest in an immovable property except to the extent of limited rights granted under Section 53A of the Transfer of Property Act, 1882 and Section 202 of the Contract Act, 1872. The Supreme Court held that General Power of Attorney transactions cannot be treated as complete transfer but they can be treated as existing agreement of sale and the attorney holder can execute the deed of conveyance in exercise of the power granted. The Supreme Court further held that the General Power of Attorney transactions executed before the date of the judgment can be relied upon to apply for regularization of allotments/leases. The observations of the Supreme Court are as under:-

“12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property **(except to the limited right granted under Section 53A of Transfer of Property Act)**. According to Transfer of Property Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of Transfer of Property Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

Scope of Power of Attorney

13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time **unless it is made irrevocable in a**

manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee. In **State of Rajasthan v. Basant Nehata, VI (2005) SLT 609 = III (2005) CLT 283 (SC) = 2005 (12) SCC 77**, this Court held:

“A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. **Except in cases where power of attorney is coupled with interest, it is revocable.** The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.”

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor.”

“15. Therefore, a SA/GPA/WILL transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court, in *Asha M. Jain v. Canara Bank*, 94 (2001) DLT 841 that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/WILL are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/WILL transactions are some kind of a recognized or accepted mode of transfer and that

it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept SA/GPA/WILL transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, **except to the limited extent of Section 53A of the Transfer of Property Act.** Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.”

“18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not 'transfers' or 'sales' and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under Section 53A of Transfer of Property Act. **If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.**

19. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bona fide/genuine transactions.”

(viii) In **Ramesh Chand v. Suresh Chand, 188 (2012) DLT 538**, this Court held that the Power of Attorney given for a consideration coupled with interest is irrevocable under Section 202 of the Contract Act, 1872 and subsists even after the death of the executant. This Court further held that the purchaser may not be a classical owner as would be an owner under the registered sale-deed but surely he would have better rights/entitlement of possession than the person who is in actual physical possession. This Court held that the Supreme Court in **Suraj Lamp and Industries Private Limited v. State of Haryana** (supra) has reiterated the rights in an immovable property under Section 53A of the Transfer of Property Act, 1882 as well as Section 202 of the Indian Contract Act, 1872. The observations of this Court are reproduced hereunder:-

“3. ...The Supreme Court has however reiterated that rights which are created pursuant to Section 53A of the Transfer of Property Act, 1882 dealing with the doctrine of part performance (para 12), an irrevocable right of a person holding a power of attorney given for consideration coupled with interest as per Section 202 of the Contract Act, 1872 (para 13) and devolution of interest pursuant to a Will (para 14). Therefore, no doubt, a person strictly may not have complete ownership rights unless there is a duly registered

sale deed, however, certain rights can exist in an immovable property pursuant to the provisions of Section 53A of the Transfer of Property Act, 1882, Section 202 of the Contract Act, 1872. There also takes place devolution of interest after the death of the testator in terms of a Will.”

“4. ...The object of giving validity to a power of attorney given for consideration even after death of the executants is to ensure that entitlement under such power of attorney remains because the same is not a regular or a routine power of attorney but the same had elements of a commercial transaction which cannot be allowed to be frustrated on account of death of the executant of the power of attorney.”

“12. In view of the aforesaid facts and the validity of the documents, being the power of attorney and the Will dated 16.5.1996, **the respondent No.1/plaintiff would though not be the classical owner of the suit property as would an owner be under a duly registered sale deed, but surely he would have better rights/entitlement of possession of the suit property than the appellant/defendant No.1.** In fact, I would go to the extent saying that by virtue of para 14 of the judgment of the Supreme Court in the case of Suraj Lamps and Industries Pvt. Ltd. (supra) taken with the fact that Sh. Kundan Lal has already died, the respondent No.1/plaintiff becomes an owner of the property by virtue of the registered Will dated 16.5.1996. **A right to possession of an immovable property arises not only from a complete ownership right in the property but having a better title or a better entitlement/right to the possession of the property than qua the person who is in actual physical possession thereof.** The facts of the present case show that the respondent No.1/plaintiff has undoubtedly better entitlement/title/rights in the suit property so as to claim possession from the appellant/defendant No.1/brother.”

19. The Supreme Court and this Court have time and again held that heavy cost should be imposed in frivolous cases and in appropriate cases, prosecution be ordered to maintain purity and sanctity of judicial proceedings. It is necessary to examine the relevant judgments in this regard.

20. False claims and defences

(i) In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria, 2012 (3) SCALE 550**, the Supreme Court held that false claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. The Supreme Court held as under:-

“False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.”

(ii) In **Dalip Singh v. State of U.P., (2010) 2 SCC 114**, the Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

“1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has over shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to

meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

(Emphasis supplied)

(iii) In **Satyender Singh v. Gulab Singh, MANU/DE/1047/2012**, the Division Bench of this Court following **Dalip Singh v. State of U.P.** (supra) observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Court's time for a wrong cause. The observations of this Court are as under:-

“2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. **In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts’ time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.** Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left.”

(Emphasis supplied)

21. Imposition of costs

(i) In **Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249**, the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder:-

“45. ...We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.”

“52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

xxx

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings...”

“54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and

dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.”

(Emphasis supplied)

(ii) In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria (supra)** the Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and defences. The Supreme Court held as under:-

“85. This Court in a recent judgment in Ramrameshwari Devi and Ors. (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. **In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.**”

(iii) In **Padmawati and Ors. v. Harijan Sewak Sangh, 154 (2008) DLT 411**, this Court imposed cost of Rs.15.1 lakhs and noted as under:

“6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.”

“9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately lose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.”

(Emphasis supplied)

22. Truth should be the guiding star in the entire legal process

(i) In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria (Dead) through LRs. (supra)**, the Supreme Court held that truth should be a guiding star in entire legal process. The observations of the Supreme Court are reproduced hereunder:-

“Truth as guiding star in judicial process

31. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies. **The truth should be the guiding star in the entire judicial process.**

32. **Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth.** That is their mandate, obligation and bounden duty.

33. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

34. In **Mohanlal Shamji Soni v. Union of India**, 1991 Supp (1) SCC 271, this Court observed that in such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been

accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In **Ritesh Tewari v. State of U.P.**, (2010) 10 SCC 677 this Court reproduced often quoted quotation which reads as under:

“Every trial is voyage of discovery in which truth is the quest”

37. This Court observed that the power is to be exercised with an object to subserve the cause of justice and public interest and for getting the evidence in aid of a just decision and to uphold the truth.

38. Lord Denning, in the case of **Jones v. National Coal Board**, (1957) 2 QB 55 has observed that:

“In the system of trial that we evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of the society at large, as happens, we believe, in some foreign countries.”

39. Certainly, the above, is not true of the Indian Judicial system. A judge in the Indian System has to be regarded as failing to exercise its jurisdiction and thereby discharging its judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

40. Lord Denning further observed in the said case of **Jones** (supra) that "It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth....

" 41. World over, modern procedural Codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimized.

42. In civil cases, adherence to Section 30 Code of Civil Procedure would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges. Section 30 Code of Civil Procedure reads as under:

30. Power to order discovery and the like. - Subject to such conditions and limitations as may be prescribed, the Court may, at any time either of its own motion or on the application of any party, -

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit

43. "**Satyameva Jayate**" (Literally: "Truth Stands Invincible") is a mantra from the ancient scripture Mundaka Upanishad. Upon independence of India, it was adopted as the national motto of India. It is inscribed in Devanagari script at the base of the national emblem. The meaning of full mantra is as follows:

"Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of Truth resides.

44. Malimath Committee on Judicial Reforms heavily relied on the fact that in discovering truth, the judges of all Courts need to play an active role. The Committee observed thus:

2.2... "In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral judge. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt. The State discharges the

obligation to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society doubt and gives the benefit of doubt to the accused. It is the parties that determine the scope of dispute and decide largely, autonomously and in a selective manner on the evidence that they decide to present to the court. The trial is oral, continuous and confrontational. The parties use cross-examination of witnesses to undermine the opposing case and to discover information the other side has not brought out. The judge in his anxiety to maintain his position of neutrality never takes any initiative to discover truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before court....”

2.15 “The Adversarial System lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the Inquisitorial System. When the investigation is perfunctory or ineffective, Judges seldom take any initiative to remedy the situation. During the trial, the Judges do not bother if relevant evidence is not produced and plays a passive role as he has no duty to search for truth....”

2.16.9. “Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the Criminal Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. **Truth is the very soul of justice. Therefore truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth.** It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth.”

45. In **Chandra Shashi v. Anil Kumar Verma**, (1995) 1 SCC 421, to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to

administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

46. Truth has been foundation of other judicial systems, such as, the United States of America, the United Kingdom and other countries.

47. In **James v. Giles et al. v. State of Maryland**, (386 U.S. 66, 87, S. Ct. 793), the US Supreme Court, in ruling on the conduct of prosecution in suppressing evidence favourable to the Defendants and use of perjured testimony held that such rules existed for a purpose as a necessary component of the search for truth and justice that judges, like prosecutors must undertake. It further held that the State's obligation under the Due Process Clause "is not to convict, but to see that so far as possible, truth emerges."

48. The obligation to pursue truth has been carried to extremes. Thus, in **United States v. J. Lee Havens**, 446 U.S. 620, 100 St.Ct. 1912, it was held that the government may use illegally obtained evidence to impeach a defendant's fraudulent statements during cross-examination for the purpose of seeking justice, for the purpose of "arriving at the truth, which is a fundamental goal of our legal system".

49. Justice Cardozo in his widely read and appreciated book "The Nature of the Judicial Process" discusses the role of the judges. The relevant part is reproduced as under:

"There has been a certain lack of candour," "in much of the discussion of the theme [of judges' humanity], or rather perhaps in the refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations." "I do not doubt the grandeur of conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. None the less, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do."

50. Aharon Barak, President of Israeli Supreme Court from 1995 to 2006 takes the position that:

“For issues in which stability is actually more important than the substance of the solution - and there are many such case - I will join the majority, without restating my dissent each time. Only when my dissenting opinion reflects an issue that is central for me - that goes to the core of my role as a judge - will I not capitulate, and will I continue to restate my dissenting opinion: "Truth or stability - truth is preferable”.

“On the contrary, public confidence means ruling according to the law and according to the judge's conscience, whatever the attitude of the public may be. Public confidence means giving expression to history, not to hysteria. Public confidence is ensured by the recognition that the judge is doing justice within the framework of the law and its provisions. Judges must act - inside and outside the court - in a manner that preserves public confidence in them. They must understand that judging is not merely a job but a way of life. It is a way of life that does not include the pursuit of material wealth or publicity; it is a way of life based on spiritual wealth; it is a way of life that includes an objective and impartial search for truth.”

51. In the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure that truth triumphs in the administration of justice.

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.” RFA No.648/2006 Page 49 of 63

“72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73. Discovery and production of documents and answers to interrogatories, together with an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.

75. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

76. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.”

(Emphasis supplied)

(ii) In **A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President etc., MANU/SC/0336/2012**, the Supreme Court held as under:-

“ENTIRE JOURNEY OF A JUDGE IS TO DISCERN THE TRUTH

24. The entire journey of a judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of justice delivery system. This Court in **Dalip Singh v. State of U.P. and Ors.** (2010) 2 SCC 114 observed that truth constitutes an integral part of the justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system.”

“26. As stated in the preceding paragraphs, the pleadings are foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and the authenticity of the matter pleaded.

27. The pleadings must set-forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials or false denials are introduced, then the Court must carefully look into it while deciding a case and insist that those who approach the Court must approach it with clean hands.”

“RESTITUTION AND MESNE PROFITS

34. Experience reveals that a large number of cases are filed on false claims or evasive pleas are introduced by the defendant to cause delay in the administration of justice and this can be sufficiently taken care of if the Courts adopt realistic approach granting restitution. This Court in the case of **Ramrameshwari Devi v. Nirmala Devi**, (2011) 8 SCC 249 (of which one of us, Bhandari, J. was the author of the judgment) in paragraph 52 (C, D and G) of the judgment dealt with the aspect of imposition of actual or realistic costs which are equally relevant for this case reads as under:

“C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.

G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.”

35. Unless wrongdoers are denied profit or undue benefit from frivolous litigations, it would be difficult to control frivolous and uncalled for litigations...We need to decide cases while keeping pragmatic realities in view. We have to ensure that unscrupulous litigant is not permitted to derive any benefit by abusing the judicial process.”

“37. False averments of facts and untenable contentions are serious problems faced by our courts. The other problem is that litigants deliberately create confusion by introducing irrelevant and minimally relevant facts and documents. The court cannot reject such claims, defences and pleas at the first look. It may take quite sometime, at times years, before the court is able to see through, discern and reach to the truth. More often than not, they appear attractive at first blush and only on a deeper examination the irrelevance and hollowness of those pleadings and documents come to light.

38. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, on later stage, but once discovered, it is the duty of the Court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.

39. Now, when we revert to the facts of this case it becomes quite evident that the appellant is guilty of suppressing material facts and introducing false pleas and irrelevant documents. The appellant has also clouded the entire case with pleas which have nothing to do with the main controversy involved in the case.”

“FALSE AND IRRELEVANT PLEAS:

41. The appellant is also guilty of introducing untenable pleas. The plea of adverse possession which has no foundation or basis in the facts and circumstances of the case was introduced to gain undue benefit. The Court must be cautious in granting relief to a party guilty of deliberately introducing irrelevant and untenable pleas responsible for creating unnecessary confusion by introducing such documents and pleas. These factors must be taken into consideration while granting relief and/or imposing the costs.”

The Supreme Court laid down the following principles:-

“42. On the facts of the present case, following principles emerge:

1. It is the bounden duty of the Court to uphold the truth and do justice.
2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.
3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.
4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.
5. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.
6. Watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience,

Courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

7. The watchman, caretaker or agent holds the property of the principal only on behalf the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.

8. The protection of the Court can be granted or extended to the person who has valid subsisting rent agreement, lease agreement or licence agreement in his favour.”

23. Sections 165 of Indian Evidence Act, 1872

(i) Section 165 of Indian Evidence Act empowers the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant facts.

(ii) Section 165 of the Indian Evidence Act, 1872 reads as under:

“The Judge may, in order to discover or obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted.”

(iii) The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

(iv) The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

(v) The scope of Section 165 of the Indian Evidence Act has been discussed by the Supreme Court and High Courts in **Ramchander v. State of Haryana, (1981) 3 SCC 191**; **Ritesh Tewari v. State of Uttar Pradesh, (2010) 10 SCC 677**; **Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158**; **State of Rajasthan v. Ani, AIR 1997 SC 1023**; **Mohanlal Shamji Soni v. Union of India, 1991 Supp. (1) SCC 271**; **Jamatraj Kewalji Govani v. State of Maharashtra, AIR 1968 SC 178**; **Jai Prakash v. National Insurance Company, (2010) 2 SCC 607**; **Somari Devi v. Ragwar Singh, III (2010) ACC 147**; and **Sessions Judge Nellore Referring Officer v. Intha Ramana Reddy, 1972 Cri LJ 1485**.

24. Findings

Applying the aforesaid principles of law to the facts of the present case, the findings of this Court are as under:-

(i) Vide agreement to sell dated 5th June, 1989, the plaintiff agreed to sell first, second and terrace floors of the suit property to Mohinder Kaur for a total consideration of Rs.4,50,000/-. The plaintiff received the entire sale consideration from Mohinder Kaur, handed over the vacant and peaceful possession to her and simultaneously executed the agreement to sell, receipt, affidavit, will, indemnity bond and irrevocable General Power of Attorney all dated 5th June, 1989. The plaintiff declared in the agreement that she is not left with any right, title or interest in the suit property. The plaintiff authorized defendant No.1 to make construction, additions and alterations in the suit property. The General Power of Attorney authorized the attorney to sell the suit property as well as to carry on additions and alterations. Clause 19 of the General Power of Attorney declared it to be irrevocable. The plaintiff also deposed on oath in her affidavit that she would not withdraw or cancel any of the documents under any circumstances. The agreement to sell, receipt, indemnity bond and affidavit are legal, valid and subsisting and have not been cancelled by the plaintiff. The plaintiff has no interest left in the suit property and, therefore, cannot claim the possession or mesne profits in respect of the suit property.

(ii) The agreement to sell “of itself” may not create any interest in the property under Section 54 of the Transfer of Property Act, 1882 but the agreement along with the payment of the entire sale consideration, handing over of the possession, execution of the receipt, affidavit, will, indemnity bond and irrevocable General Power of Attorney create “an interest in the property” within the meaning of Section 202 of the Contract Act.

(iii) The words “an interest in property which forms the subject matter of the agency” in Section 202 of the Contract Act, 1872 are of wider amplitude than the words “an interest in or charge on such property” in Section 54 of the Transfer of Property Act, 1882. Where the seller has received the sale consideration in pursuance of the agreement to sell and has delivered the possession to the purchaser, the purchaser would have interest in the property within the meaning of

Section 202 of the Contract Act.

(iv) The Power of Attorney has been conferred not for the benefit of the plaintiff but for the benefit of the agent representing the purchaser and not as representing the principal and, therefore, it is irrevocable. The reason to appoint Surinder Jit Singh, the son and nominee of the purchaser, obviously was that the attorney was regarded as a person interested in the purchaser rather than in the plaintiff whose interest was opposed to that of the purchaser. It is only in law that the attorney became an agent of the plaintiff. But this agency was only with a view to serve the purpose of the purchaser. His interest in this transaction was the same as that of the purchaser. It was, therefore, the interest of the attorney that the property which was the subject-matter of the agency should be conveyed by the plaintiff to the purchaser.

(v) The Power of Attorney was granted only because an agreement to sell was entered in favour of the purchaser. The attorney no less than the purchaser was, therefore, interested in the subject-matter of the agency, namely, the suit property. If the agency was to be terminated, prejudice would have been caused to the interest not only of the purchaser but also of the attorney.

(vi) The agreement to sell, General Power of Attorney, receipt, affidavit, will and indemnity bond executed contemporaneously constitute one transaction and they have to be read and interpreted together as if they are one document. The true nature of the transaction between the parties is the agreement to transfer the suit property by the plaintiff to defendant No.1. There is no clause in any of the documents that the plaintiff can claim back the possession of the suit property in any situation. Rather, the plaintiff has agreed not to cancel/revoke any document and not to claim back the possession under any circumstances. The plaintiff is, therefore, not entitled to recover the possession of the suit property. If the plaintiff was aggrieved by any unauthorised construction, the plaintiff's remedy was to seek injunction to stop the alleged unauthorized construction or to have approached the Municipal Authorities to take action against the unauthorized construction.

(vii) The plaintiff has argued that the purchaser and her attorney are two different persons in the eye of law. This may be so. But their interests are identical. It cannot be said that the attorney had no interest in the property which is the subject-matter of the agency. The interest does not mean ownership or title in the immovable property. It means an advantage or a benefit or a legally enforceable right. The Power of Attorney was executed only to facilitate the execution of the sale deed in favour of the purchaser and, therefore, the attorney was interested in the subject-matter of agency, namely, the suit property.

(viii) The object of giving validity to a Power of Attorney given for consideration even after death of the executants is to ensure that entitlement under such Power of Attorney remains because the same is not a regular or a routine Power of Attorney but the same had elements of a commercial transaction which cannot be allowed to be frustrated on account of death of the executant of the Power of Attorney.

(ix) The purchaser would though not be the classical owner of the suit property as would an owner be under a duly registered sale deed, but surely he would have better rights/entitlement of possession of the suit property than the plaintiff. A right to possession of an immovable property arises not only from a complete ownership right in the property but having a better title or a better entitlement/right to the possession of the property than qua the person who is in actual physical possession thereof.

(x) All the conditions of irrevocability are satisfied in the present case. The authority to the agent was given for valuable consideration which proceeded from Mohinder Kaur. It was given to Surinder Jit Singh, son and nominee of Mohinder Kaur to ensure and secure the performance of the contract by the plaintiff in favour of Mohinder Kaur.

(xi) The General Power of Attorney dated 5th June, 1989 is irrevocable in view of Section 202 of the Contract Act. The plaintiff, therefore, had no right to terminate the said General Power of Attorney. The General Power of Attorney is legal, valid and subsisting. The revocation of the General Power of Attorney by plaintiff is, therefore, of no consequence.

(xii) The defendants are protected by Section 53A of the Transfer of Property Act, 1882 and, therefore, the plaintiff is not entitled to the recovery of possession of the suit property. (xiii) The mere fact that the defendants did not file a Counter-claim or suit for specific performance cannot lead to a conclusion that they have given up all their rights in the suit property. It can, at best, be said that the defendants have lost the opportunity of perfecting their title but it would not entitle the plaintiff to claim the possession.

(xiv) Except for the two limited grounds mentioned in para 16 above, the plaintiff has not even challenged the other findings of the learned Trial Court mentioned in paras 13 and 15 above.

(xv) The plaintiff has made absolutely false and incorrect statements on oath before the Trial Court. The plaintiff has made false statements on oath in the plaint as well as in her deposition as PW-1 that she agreed to sell only first and second floors of the suit property to defendant No.1 whereas the agreement to sell, affidavit, indemnity bond and Will dated 5th June, 1989 admitted by the plaintiff clearly records that she had sold the first, second and terrace floors of the suit property to defendant No.1. The plaintiff has failed to prove unauthorized construction alleged to have been raised by the defendants on the terrace floor. The plaintiff neither received any notice of unauthorized construction from any authority nor issued any such notice to the defendants. The plaintiff did not make any complaint to any authority. The plaintiff also admitted that defendant No.1 had sold the suit property to defendants No.2 and 3 who were in possession. If that is so, it is false that defendant No.1 had carried out any unauthorized construction. The plaintiff admitted in her cross-examination that she cancelled her General Power of Attorney and Will because the defendants misbehaved with her. The plaintiff has also violated the solemn statement made on oath in her affidavit dated 5th June, 1989 that she will not revoke any of the documents under any circumstances and shall never demand the possession. The plaintiff has questioned the interest of the defendants under the agreement to sell whereas she herself was holding the title under the construction agreement and General Power of Attorney.

25. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases.

26. It is the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs of all these years long litigation. Imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of filing false cases.

CONCLUSION

On consideration of totality of the facts and circumstances of this case, I do not find any infirmity in the well reasoned impugned judgment. The plaintiff has misused the process of law by raising a false claim. The plaintiff has no respect for truth and has made false statements on oath. The plaintiff has shamelessly resorted to falsehood and has attempted to pollute the pure fountain of justice with tainted hands and, therefore, the plaintiff is not entitled to any relief. This case is squarely covered by the above mentioned judgments and warrants prosecution as well as imposition of penal costs on the plaintiff. However, considering that the Courts are already overburdened, directing prosecution of the plaintiff would further burden the system. This appeal is consequently dismissed with costs of Rs.2,00,000/- on the appellant. The cost be paid by the appellant to the respondents within four weeks.

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