

(2012) 07 DEL CK 0238

In the Delhi High Court

Case No : Regular First Appeal (OS) 73 of 2008

Jai Pal Shishodia

APPELLANT

Vs

Poonam Rathore and Another

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Contract Act, 1872 — Section 10, 30

Citation : (2012) 8 AD 553 : (2012) 191 DLT 487

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Rakesh Tiku, instructed by Mr. V.L. Madan and Mrs. K.K. Madan, for the Appellant; Rajesh Tyagi, Advocate for R-1, Mr. J.P. Sengh instructed by Ms. Sonia Arora, for the Respondent

Judgement

Pradeep Nandrajog, J.—Jai Pal Singh Shishodia had two sisters named Kailash Devi and Vidya Wati. Kailash Devi was married to Bhavnish Chandra Chauhan and the two were issueless. Poonam Rathore was born to Vidya Wati. As pleaded in the plaint by Jai Pal Singh Shishodia, being issueless, Kailash Devi and Bhavnish Chandra Chauhan requested Vidya Wati to let Poonam Rathore reside with them and upon Vidya Wati and her husband so agreeing, Poonam Rathore started residing with Kailash Devi and Bhavnish Chandra Chauhan. Jai Pal Singh Shishodia claimed to have purchased the suit property being a plot of land ad-measuring 200 sq. yds. comprised in khasra No. 305/212 village Shakarpur vide sale-deed Ex. P-2, dated September 04, 1970 which was duly registered with the Sub-Registrar Delhi and that after constructing a building thereon he allowed Kailash Devi, Bhavnish Chandra Chauhan and Poonam Rathore to reside in the suit property. As per him, Kailash Devi expired on December 20, 1985 and her husband Bhavnish Chandra Chauhan expired on January 05, 1996. Thereafter, he requested Poonam Rathore to vacate the suit property but she did not do so. He claimed that prior to January 05, 1996, in the year 1991, Poonam Rathore proposed to him that she would purchase the suit property at the then prevailing market rate and requested that he should execute a General Power of Attorney

authorizing and empowering Poonam Rathore to deal with the pre-sale affairs of the property and under the bona-fide belief that she would pay to him the sale consideration he executed a General Power of Attorney Ex. D-1/1 as also a will Ex. D-1/2 on April 12, 1991; under the former empowering Poonam Rathore to complete the pre-sale formalities and under the latter to be the beneficiary upon his death. However, he lamented in the plaint that taking undue advantage of the relationship, Poonam Rathore retained possession of the property without making any payment to him; he pleaded that the General Power of Attorney executed by him, being without any consideration, conferred no right, title or interest in the suit property in favour of Poonam Rathore. He pleaded that in early 1996 close relations persuaded him and Poonam Rathore to compromise and that on February 04, 1996, in writing, vide Ex. P-3 it was agreed that he and Poonam Rathore would be half owners each of the suit property, market value of which would be assessed with Poonam Rathore having right of pre-emption to purchase his half share and if she fails to do so, he would be the owner of the entire suit property. He claimed that on February 24, 1996, Poonam Rathore and he executed another document, Ex. P-4, recording that value of the suit property was Rs. 23 lakhs; half of which comes to Rs. 11.5 lakhs, which sum was agreed to be paid by Poonam Rathore to him on or before March 15, 1996. He received Rs. 1 lakh pursuant to the written agreement dated February 24, 1996 and no more. He pleaded, in para 4 of the plaint, Quote: "Likewise, the compromises dated 04.02.1996 and 24.02.1996 being violated and being not acted upon do not have any sanctity under the law and facts of the case, thus are liable to be declared as null and void, apart the same being the void documents". He pleaded further that upon learning that Poonam Rathore was trying to sell the suit property on the basis of the General Power of Attorney executed by him, vide notice dated April 18, 1996 he cancelled the General Power of Attorney as also the will executed by him and called upon Poonam Rathore to hand over vacant possession of the suit property to him, but inspite thereof, on the strength of the General Power of Attorney executed by him, Poonam Rathore executed a sale-deed dated May 22, 1996 in respect of the suit property selling the same to her brother-in-law Ajit Singh i.e. the husband of the sister of her husband Bishan Singh. On the pleadings afore-noted, he prayed that the compromises dated February 04, 1996 and February 24, 1996 be declared null and void being violated by Poonam Rathore and the sale-deed dated May 22, 1996 executed by Poonam Rathore in favour of Ajit Singh be also declared null and void being executed on the strength of the General Power of Attorney dated April 12, 1991 which was revoked on April 18, 1996 by him. He prayed that he be put in possession of the suit property and be paid mesne profits in sum of Rs. 10,000/- per month during pendency of the suit and till he was put in possession. In the written statement filed by Poonam Rathore, she pleaded that she was born to Vidya Wati through her husband Aman Singh but was adopted by Bhavnish Chandra Chauhan and Kailash Devi and thus was their successor in interest. She pleaded that Jai Pal Singh Shishodia was a benami owner of the land comprising the suit property which was actually purchased by her father Bhavnish Chandra

Chauhan and that the building thereon was constructed by her father and that in recognition of said fact Jai Pal Singh Shishodia had executed a deed of relinquishment on October 10, 1986 relinquishing his title in the suit property in favour of her father Bhavnish Chandra Chauhan, a fact she claimed being suppressed in the plaint by Jai Pal Singh Shishodia. Poonam Rathore claimed ownership right in the property as the successor in interest of Bhavnish Chandra Chauhan when he died. She pleaded that Power of Attorney dated April 12, 1991 was executed by Jai Pal Singh Shishodia to ensure complete vesting of rights in the suit property in her favour. She denied the reason pleaded by Jai Pal Singh Shishodia in the plaint as the one pursuant whereunto he claimed to have executed the General Power of Attorney. Admitting having signed the written agreement dated February 04, 1996 and February 24, 1996; she claimed interpolation being made in the written memorandum dated February 24, 1996. She pleaded that the market value agreed to was Rs. 3 lakhs which she claimed was interpolated to read Rs. 23 lakhs i.e. the numeral "2" being inserted in the document before the numeral "3" and likewise the numeral "1" being inserted before the figure "1.5" so as to read "11.5"; she pleaded to have executed the same as a result of coercion by close relatives. Thus, she sought avoidance of the two written agreements as being the result of coercion and in addition, laid a challenge to the second agreement on the plea of the same being an interpolated document. She pleaded that notwithstanding she being coerced to execute the written agreement dated February 24, 1996 as per which she had to pay Rs. 1.5 lakhs to Jai Pal Singh Shishodia she paid Rs. 1 lakh to buy peace and evinced her desire to pay the balance Rs. 50,000/- stating that Jai Pal Singh Shishodia was not receiving the same. She thus opposed the reliefs sought in the plaint by projecting a case as aforesaid.

2. Ajit Singh the purchaser of the property, and as noted above, a close relative of Poonam Rathore, took a defence of being a bona-fide purchaser for valuable consideration i.e. having purchased the suit property for a valuable consideration of Rs. 3.5 lakhs.

3. In the replication filed, Jai Pal Singh Shishodia denied that he was a benami owner of the property. He denied that Bhavnish Chandra Chauhan was the owner thereof. He denied having executed the deed of relinquishment dated October 10, 1986 and that Poonam Rathore was the adopted daughter of his sister Kailash Devi and her husband Bhavnish Chandra Chauhan. He denied that Poonam Rathore had executed the writings dated February 04, 1996 and February 24, 1996 as a result of coercion or that he made any interpolation in the writing dated February 24, 1996.

4. On the pleadings of the parties, issues were settled.

1. Whether the suit is maintainable in its present form? OPP
2. Whether the plaintiff has got any locus standi to file the present suit? OPP
3. Whether the power of attorney dated 12.4.1991 executed by the plaintiff in

favour of defendant No. 1, was cancelled by the plaintiff before 22.5.1996? OPP

4. Whether the sale deed executed by defendant No. 1 in favour of defendant No. 2 on 22.5.1996 is valid and binding on the plaintiff? OPD

5. Whether the deed of relinquishment dated 10.10.1986 was executed by the plaintiff in favour of father of the defendant No. 1, Sh. Bhavish Chandra, pertaining to the suit property and whether is binding upon the plaintiff, and if so to what effect? OPD

6. Whether the agreements dated 4.2.1996 and 24.2.1996 have any legal sanctity, being obtaining from the defendant No. 1, under duress and coercion and without consideration, by the plaintiff? OPD

7. Whether the agreement dated 24.2.1996 is tempered by the plaintiff to enhance the figures of alleged amount of consideration? OPD

8. Whether the defendant No. 1 has made payment of Rs. One Lakh to the plaintiff, in pursuance of Agreement dated 24.2.1996? OPD

9. Whether defendant No. 1 is adopted daughter of Mr. Bhavish Chandra? OPD

10. Relief.

5. At the trial, Jai Pal Singh Shishodia, besides examining himself as PW-1, examined Raj Kumar Rana as PW 2 and suffice would it be to record that he deposed facts to support his version pleaded in the plaint and denials of facts as set forth by him in the replication filed. Raj Kumar Rana, a witness to the writing dated February 04, 1996, Ex. P-3, deposed that Poonam Rathore executed the same voluntarily as result of a settlement arrived at between her and Jai Pal Singh Shishodia in front of the Panchas. But relevant would it be to note that with respect to his claim of having sent a notice on April 18, 1996, as pleaded by him in the plaint, cancelling the General Power of Attorney executed by him on April 12, 1991, on being cross-examined he admitted:

I have not given any notice to defendant No. 1 of cancelling the said Power of Attorney and will. Volunteered: I had made a document on a stamp paper of Rs. 10/- cancelling the Power of Attorney in favour of defendant No. 1.

6. Poonam Rathore besides examining herself as D-1/W1 examined her husband Bishan Singh Rathore, Ram Chander Singh, Balbir Singh, Aman Singh and S.P. Singh as witnesses and relevant would it be for us to note that S.P. Singh was examined as a hand-writing expert to prove the report Ex. D-1W8/1 as per which he had opined that on the relinquishment deed dated October 10, 1986 the signatures appended were those of Jai Pal Singh Shishodia. The other witnesses examined by Poonam Rathore either deposed that Bhavnish Chandra had paid the price for the plot when it was purchased in the name of Jai Pal Singh Shishodia and that Bhavnish Chandra had constructed a building thereon with his own funds and/or deposed that the relinquishment deed dated October 10, 1986 was executed by Jai Pal Singh Shishodia in recognition of his being the

benamidar and to confirm title of Bhavnish Chandra and additionally that the Power of Attorney dated April 12, 1991 and the will of even date was executed by Jai Pal Singh Shishodia to further strengthen his acknowledgment of not being the owner of the property for the reason Poonam Rathore was the adopted daughter of Bhavnish Chandra.

7. As regards Poonam Rathore she deposed on lines as per her written statement and maintained the same stand with respect to the writings dated February 04, 1996 and February 24, 1996 i.e. maintained that the two documents were executed by her on being coerced to do so and additionally there being an interpolation in the writing dated February 24, 1996 as pleaded by her in the plaint. In her examination-in-chief filed by way of an affidavit she referred to a wedding card pertaining to her marriage. We find from the record that Poonam Rathore has filed the original degree awarded to her by CBSE when she cleared the Senior Secondary School examination as also a mark-sheet issued by the University of Rajasthan when she obtained a master degree in which it stands recorded that her father's name is Bhavnish Chandra Chauhan, but unfortunately for her the said documents have remained un-exhibited.

8. As regards Ajit Singh, he examined himself as his witness and deposed that before he purchased the property under the sale-deed which was questioned on the same being executed by Poonam Rathore he had verified the authenticity of the Power of Attorney dated April 12, 1991 shown to him by Poonam Rathore and that Jai Pal Singh Shishodia had confirmed having executed the same. He deposed of being a bona-fide purchaser for valuable consideration.

9. We need to highlight that the relinquishment deed dated October 10, 1986 which Poonam Rathore claimed was executed by Jai Pal Singh Shishodia has not been exhibited as a document which is proved, but with respect to the testimony of D-1W8, the handwriting expert Sh. S.P. Singh and his report Ex. D-1W8/1, it stands established that the writing on the original deed filed by Poonam Rathore is that of Jai Pal Singh Shishodia. We may also note that the sale-deed dated May 22, 1996 executed by Poonam Rathore in favour of Ajit Singh is an un-exhibited document, and would record our surprise at the fact that Jai Pal Singh Shishodia who was challenging the said sale-deed denied the same during admission/denial of documents.

10. With respect to Issue No. 1 and Issue No. 2, the learned Single Judge has held that as pleaded, the suit was maintainable, and that the locus standi to file the suit would depend upon the findings pertaining to other issues. On Issue No. 3 i.e. whether the plaintiff cancelled the Power of Attorney Ex. D-1/1 executed by him on April 12, 1991 before defendant No. 1 sold the property to defendant No. 2; in view of the admission made by Jai Pal Singh Shishodia during cross-examination, contents whereof have been noted by us in paragraph 6 above, has returned a finding against Jai Pal Singh Shishodia, and in respect of which finding, Sh. Rakesh Tikku, learned counsel for the appellant conceded that the finding was correct. However, it was sought to be urged by learned counsel for

Jai Pal Singh Shishodia before the learned Single Judge, as noted by the learned Single Judge in paragraphs 22 to 24 of the impugned decision, that the writings dated February 04, 1996 and February 24, 1996, Ex. P-3 and Ex. P-4 amounted to a revocation of the General Power of Attorney Ex. D-1/1 executed by him. The learned Single Judge has opined that Jai Pal Singh Shishodia did not approach the Court i.e. never pleaded that the effect of Ex. P-3 and Ex. P-4 being executed by Poonam Rathore amounted to a revocation of Ex. D-1/1 and has held that thus he could not build up a case on the strength of the said arguments. Secondly, the learned Single Judge has held that Jai Pal Singh Shishodia himself had prayed that the two documents be declared void and thus could not build or project a case on the strength of the said documents. Upon the finding that Ex. P-3 and Ex. P-4 were validly exhibited documents the learned Single Judge has held that the same empowered and authorized Poonam Rathore to act as the owner of the property, albeit upon paying the agreed consideration to Jai Pal Singh Shishodia and thus on the strength of the said documents there was an implied authorization on behalf of Jai Pal Singh Shishodia in favour of Poonam Rathore to act under the Power of Attorney in question. In view of the finding and the reasoning afore-noted pertaining to Issue No. 3, the learned Single Judge has opined that the decision on Issue No. 4 would be the logical conclusion, which would flow with respect to the decision on Issue No. 3 i.e. that the sale-deed dated May 22, 1996 executed by Poonam Rathore in favour of Ajit Singh is a legal and a valid document. With respect to Issue No. 5, the learned Single Judge has opined that the evidence of D-1W1 Sh. Balbir Singh establishes that the relinquishment deed dated October 10, 1996 was duly executed by Jai Pal Singh Shishodia in favour of Bhavnish Chandra Chauhan, father of Poonam Rathore, but has held that being not a registered document, and inasmuch as it conveyed interest in immovable property of value more than Rs. 100/- , was of no legal consequences i.e. though the issue was decided in favour of Poonam Rathore but it has been expressly held that the same is of no effect. With respect to Issue No. 6, the learned Single Judge has opined that there is no evidence of any duress and coercion and that the two documents are in the nature of a family settlement, but has held that since Jai Pal Singh Shishodia has not sought to enforce his rights under the said documents and on the contrary had claimed the same to be declared null and void, he could not be granted any relief by treating the writings Ex. P-3 and Ex. P-4 as embodying a family settlement. Having so answered Issue No. 6, and returning a finding that Ex. P-3 and Ex. P-4 were validly exhibited documents, the learned Single Judge has proceeded to consider Issue No. 7 i.e. whether Ex. P-4 was interpolated as claimed by Poonam Rathore. In paragraph 37 of the impugned decision, the learned Single Judge has opined that since the documents Ex. P-3 and Ex. P-4 were scribed by Jai Pal Singh Shishodia it would not be possible to decipher any alternation being made therein by Jai Pal Singh Shishodia by either writing the numeral "2" or the numeral "1" as claimed by Poonam Rathore. However, the learned Single Judge has reasoned that one factor compels him to decide the issue in favour of Poonam Rathore. The reason stated in paragraph 38 of the impugned decision is

that there is evidence of the value of property being more than Rs. 23 lakhs and the value written appears to be much below the market value and that Jai Pal Singh Shishodia appears to have succumbed to family pressure and agree to a low value; the learned Single Judge has opined that this appears to be reason why Jai Pal Singh Shishodia sought the documents to be declared void and he not enforcing a right under the documents. Holding that in view of the admission made in the plaint itself, Issue No. 8 had to be decided that Jai Pal Singh Shishodia received Rs. 1 lakh from Poonam Rathore pursuant to the agreement dated February 24, 1996. Holding that Poonam Rathore to be the adopted daughter of Bhavnish Chandra Chauhan, the learned Single Judge found the issue irrelevant for adjudication. On the reasoning afore-noted the suit has been dismissed.

11. Attacking the impugned judgment and decree, Sh. Rakesh Tikku, learned senior counsel for Jai Pal Singh Shishodia urged : (a) that the learned Single Judge ignored that the deed of relinquishment dated October 10, 1986 was not a registered document and since the document extinguished the right of Jai Pal Singh Shishodia in immovable property; value whereof was more than Rs. 100/- and conveyed the same in favour of Bhavnish Chandra Chauhan, the same was inadmissible in evidence; (b) that the General Power of Attorney dated April 12, 1991 was not a registered document and thus the same could not be looked into as the source of a power, validly conferred, to sell immovable property and since admittedly the offending sale-deed was executed by Poonam Rathore in favour of Ajit Singh on the power derived under the said General Power of Attorney, the sale was invalid (in view of the admission made by Jai Pal Singh Shishodia during cross-examination pertaining to his plea in the plaint of having revoked the Power of Attorney, learned senior counsel conceded that his client had no case to argue on the plea taken in the plaint of the Power of Attorney being revoked vide notice dated April 18, 1996); (c) that the finding returned by the learned Single Judge on Issues No. 6 and 7 was based on surmises and conjectures with respect to the two issues and in particular Issue No. 7, inasmuch as the learned Single Judge has held that he could not decipher any interpolation in Ex. P-4, but gave reasons in paragraph 38 to decide Issue No. 7 in favour of Poonam Rathore; (d) lastly, learned senior counsel urged that the learned Single Judge read Jai Pal Singh Shishodia's pleadings very mechanically pertaining to Jai Pal Singh Shishodia's pleadings the writing dated February 04, 1996 and February 24, 1996 be declared void; by relying upon the inartistically drafted paragraph 4 of the plaint. Counsel highlighted that meaningfully read, case pleaded by Jai Pal Singh Shishodia was that upon Poonam Rathore defaulting in making payment to him, he was entitled to avoid the transaction.

12. At the outset we must record our anguish at the abysmal low level of legal knowledge evidenced by the learned counsel who drafted the plaint on behalf of Jai Pal Singh Shishodia. Though law requires a presumption that every person knows the law, the truth is otherwise and especially with respect to the laws of pleading. When parties entrust the brief to a lawyer, they are expected to tell the

facts to the lawyer and it is the lawyer who has to bring in his skill to draft the pleading of the party concerned; keeping in view the substantive laws. Chapter II i.e. Section 10 to Section 30 of the Indian Contract Act, 1872 contains provisions pertaining to voidable contracts and void agreements; and suffice would it be to state that as pleaded in the plaint, the grievance pertaining to the agreements Ex. P-3 and Ex. P-4 raised by Jai Pal Singh Shishodia was that since Poonam Rathore did not pay him balance sum of Rs. 10.5 lakhs, out of the agreed sum of Rs. 11.5 lakhs, to buy his half share in the property, she was not entitled to the benefit contained in Ex. P-4. On this plea, we are surprised that the counsel went on to plead that the documents be declared void. What the counsel could plead was that the contract between the parties became voidable at the option of Jai Pal Singh Shishodia when Poonam Rathore failed to pay Rs. 11.5 lakhs to him. We are further surprised that the counsel forgot that Jai Pal Singh Shishodia had laid a challenge to the sale-deed dated May 22, 1996 executed by Poonam Rathore in favour of Ajit Singh, and yet in spite thereof, during admission/denial, denied the said document. We are further pained to note that there are various documents in the file which have remained un-exhibited but otherwise stand proved as per the testimony of various witnesses, but we refrain from assigning any exhibit mark to them inasmuch as we need not discuss the effect thereof; but would simply highlight that the same has resulted in useless and surplus evidence being recorded.

13. Legal remedies are provided by law on the belief that parties transact their affairs as per law and disputes arise in the said backdrop of parties having transacted their affairs as per law. When this happens, since the acts of the parties are illuminated by light, applying the law of evidence and substantive laws, courts can decide as to who is in the right or who is in the wrong. But where transactions are carried out in darkness and parties have taken recourse to a course of conduct which is not recognized by substantive laws, it becomes a nightmare for the Judge to discern that elusive nugget of truth which law requires to be discerned by Judges; after parties have led their evidence. The problem becomes accentuated, when parties spin truth with a mass of lies; polluting the fabric i.e. the evidence to such an extent that when a Judge attempts to remove, from the fabric i.e. the evidence, the tainted part, the truth is reduced to strands; and no fabric is left. What does the Judge then stitch?

14. We therefore begin our analysis of the evidence by reminding ourselves the words of the great Albert Einstein : "We can't solve a problem by using the same kind of thinking we used when we created them". Applying the quote to the instant case, what we intend to convey is that it would be useless for us to resolve the issue by relying upon the course of conduct adopted by the parties which has created the problem for them. Firstly, if claim of Poonam Rathore is correct that Jai Pal Singh Shishodia is a name lender and the actual owner was her father, it would be the first instance of the parties having transacted their affairs in darkness. In relation to real estate, benami transactions have played havoc in India, and from a hindsight, we regret today that law recognized

benami transactions. The reason was that even as per the claim of the proponent i.e. the person who claimed the transaction to be benami, everything was conceived of in the darkness of secrecy. We then have on record a relinquishment deed being executed, which is actually a deed of declaration upon affirmation, that Jai Pal Singh Shishodia was a benamidar; but the document is not registered. We then have Ex. P-3 and Ex. P-4 recording that the suit property belongs half and half to Jai Pal Singh Shishodia and Poonam Rathore and that upon it being valued at Rs. 23 lakhs, Poonam Rathore would pay Rs. 11.5 lakhs i.e. half value to Jai Pal Singh Shishodia to become full owner of the entire property. Obviously, there was something kept in the dark even when documents were executed prior to February 1996 inasmuch as if parties had settled their affairs under the previously executed documents, where was the need to execute Ex. P-3 and Ex. P-4? Whereas Poonam Rathore has lied on solemn verification when she took a stand in the written statement that Ex. P-4 was interpolated and lied on oath when in her examination-in-chief she reiterated the stand, even Jai Pal Singh Shishodia lied under a solemn verification when he filed the replication and denied having executed any relinquishment deed and further denied Poonam Rathore to be the adopted daughter of Bhavnish Chandra Chauhan and repeated the wrong when he lied on oath when he appeared as his own witness.

15. The reasons given by the learned Single Judge to doubt Ex. P-4 with respect to Poonam Rathore's claim of there being an interpolation therein not sound logic. The reasons are to be found in paragraph 38 of the impugned decision which reads:

However, I find one factor which leads me to decide the issue in favour of defendant No. 1 and against the plaintiff. It is in evidence from the plaintiff that the market value of the property was then the same as mentioned in the document, i.e., Rs. 23 lacs. Had that been the position, the plaintiff would have been satisfied with receiving his share. The value written appears to be much below the market value of the property, for the plaintiff to, in spite of having entered into the compromise, to abandon the compromise altogether and to not even call upon the defendant No. 1 once to pay the amount which he had agreed to receive but to rush to the court for possession of the entire property as owner and for seeking declaration of the document dated 24th February, 1996 as null and void. The plaintiff appears to have succumbed to the pressure of the family into agreeing to a very low value of the property, to receive 50% share thereof and seems to have taken the default of the defendant No. 1 to pay even the said amount, to claim the entire property. I, therefore, decide issue No. 7 in favour of the defendant No. 1 and against the plaintiff.

16. Now, if Jai Pal Singh Shishodia had to interpolate the document, and there being proof, as per the learned Single Judge, that the value of the property was much above Rs. 23 lakhs; the stated value in Ex. P-4, why would Jai Pal Singh Shishodia make an interpolation to record the value at Rs. 23 lakhs. Now,

Poonam Rathore claims that the agreed value was Rs. 3 lakhs. If Jai Pal Singh Shishodia had to interpolate by inserting the numeral "2" before the numeral "3" to convert Rs. 3 lakhs into Rs. 23 lakhs, he could well have interpolated the numeral "3" or may be the numeral "4" so that the agreed value would be Rs. 33 lakhs or Rs. 43 lakhs; it was he who had to receive the half agreed value. Further, the learned Single Judge has ignored the fact that it was a case of poor drafting by the learned counsel for Jai Pal Singh Shishodia who did not understand the distinction between a contract being void and a party being entitled to avoid a contract. From the ill-drafted pleadings, the learned Single Judge has inferred a finding pertaining to a fact, which is not only an incorrect approach to deal with the situation in the facts of the instant case, but even otherwise is not borne out from the facts of the instant case, and more so when we keep into account that as per Poonam Rathore the value of the property was Rs. 3 lakhs; an assertion which is patently another lie spoken of by Poonam Rathore.

17. We do not intend therefore to decide the instant case with respect to the issues settled, because the great Albert Einstein tells us that we cannot solve a problem by using the same kind of thinking we used when we created the problem. It may be true, as opined by the Supreme Court in the decision reported a Syed Abdul Khader Vs. Rami Reddy and Others,) that a General Power of Attorney is not a compulsorily registrable document. It may also be true, as opined by the Supreme Court in the decision reported as Controller of Estate Duty, Lucknow Vs. Alope Mitra, that a benami property is succeeded to, by the successor-in-interest of the benamidar, when the benamidar dies; but the facts of the instant case would render it useless for us to apply the ratio of law declared in the said decisions inasmuch as we find that both parties have conducted their affairs in darkness and have spoken half truths and a lot of lies. It would be our duty therefore to cull out the truth and do justice in light of the truth, and of course in our endeavour to be guided by sound judicial principles declared in past precedents.

18. An adversarial trial, as opined upon by Lord Denning, in the decision reported as (1957) 2 QB 55 Jones vs. National Coal Board requires Judges to hear and determine the issue raised by the parties strictly as per the rules and procedures of evidence pertaining to admissibility, inadmissibility, relevance and proof thereof keeping in view the substantive law and not to conduct an investigation or examination as to what the truth actually is. Notwithstanding that in India we have adopted the system of adversarial trial, but as observed by the Supreme Court (after noting a Catena of authorities on the subject) in the decision reported a Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs., , the statement by Lord Denning is not true of the Indian judicial system and that it has to be kept in mind that in India every trial is a voyage of discovery in which truth is the quest. The Supreme Court highlighted that truth is the cherished ideal and ethos of India and that truth alone has to be the foundation of justice and at all levels the Judges have to

seriously engaged themselves in the journey of discovering the truth. The Supreme Court reminded that Judges in India cannot simply sit as mere umpires at a contest between two parties and declare at the end of the combat who has won and who has lost. The Judge must take an active role in the proceedings in finding the truth while administering justice.

19. The aforesaid observations of the Supreme Court, with respect to the duty of a Judge in India, become all the more relevant when Judges deal with disputes amongst family relations. By the very nature of the relationship i.e. kinship, it is to be expected that people would be un-officious in conducting the affairs within the family and would feel comforted that their trust and confidence would not be belied; for the party they are dealing with is their own kith and kin and further that the truth is known to all the relations and the very factum of being looked down upon by the kith and kin if the correct fact is denied by a family member would be sufficient guarantee to secure their right. In the decision reported as *Kale and Others Vs. Deputy Director of Consolidation and Others*, the Supreme Court highlighted that the principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements which are governed by special equity and would be enforced if honestly made even if they are the result of some mistake or ignorance of the facts as to what their rights actually are. It was highlighted that this would be the calling of the Court where it finds a family property being equitably distributed and even if it is to be found that a beneficiary had no title, one would be presumed. When substantives laws such as laws of registration are attracted and it is pleaded that there cannot be an estoppel against a Statute, the Supreme Court observed that the rule of evidence pertaining to estoppel could be applied, and in this way, there would be no conflict in law. We hasten to add that although the Supreme Court was dealing with a memorandum of family settlement which was making a record in writing of an oral settlement arrived at and acted upon so that in future the oral settlement could be reflected in a written memorandum, but the observations made by the Supreme Court would be equally relevant where family members resolve the conflicting claims and buy peace as per a written document, with further condition that parties act upon the same. As in the instant case, if we find that the writings executed between the parties on February 04, 1996 and February 24, 1996 were voluntary and admittedly the two were acted upon evidenced by the fact that thereafter in March 1996, Jai Pal Singh Shishodia paid, and Poonam Rathore received Rs. 1 lakh; and the parties are not at variance that the said money was tendered and received pursuant to the settlement reduced in writing on February 24, 1996.

20. A writing acknowledging a person being a benamidar being acted upon by the parties, was accorded the status of a family settlement in the decision reported as AIR 1938 Oudh 119 *Zafar Ali Khan v. Mt. Qamarunnissa* and in spite of the same dealing with property valued at more than Rs. 100/- and not being registered was not only affirmed by the Court but even made the foundation of the decision. In *Kale's* case (supra), in para 38 the Supreme Court categorically

held that family arrangements, if acted upon, would operate as an estoppel by preventing the parties, after having taken advantage under the same, to resile from the same or try to revoke them. In the decision reported as S. Shanmugam Pillai and Others Vs. K. Shanmugam Pillai and Others, the Supreme Court observed that equitable principles such as estoppel, election, family settlement etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. For the ultimate aim of law is to secure justice and in recent times, in order to render justice between parties, courts have been liberally relying on those principles.

21. Ex. P-4 and Ex. P-3 read together constitute a family arrangement between relations, a finding correctly arrived at by the learned Single Judge in paragraphs 34 and 35; in particular in para 35 where the learned Single Judge has categorically opined that the documents are in the nature of a family settlement. That Ex. P-4 was acted upon is proved by the fact that after February 24, 1996, Jai Pal Singh Shishodia received Rs. 1 lakh from Poonam Rathore. Thus, the parties are estopped from pleading anything contrary to Ex. P-3 and Ex. P-4 and have to be held bound by the same.

22. The last documents executed between the parties in February 1996 i.e. Ex. P-3 and P-4 unequivocally record Jai Pal Singh Shishodia and Poonam Rathore recognizing both having half share in the suit property, and we have already held that the same binds the two. Ex. P-4 records value of the suit property to be Rs. 23 lakhs and we bind the parties to the same. The offending sale deed executed by Poonam Rathore on May 22, 1996 records the sale consideration to be Rs. 3 lakhs. The buyer is none other than the husband of her husband's sister i.e. her brother-in-law. Surprisingly, Poonam Rathore continues to occupy the suit property. It is not her case that she is a tenant under Ajit Singh. Why should Ajit Singh part with Rs. 3 lakhs and not enjoy, even for a single day, the benefit of the property he buys" It is apparent that Poonam Rathore was trying to take the property outside the reach of the Court, and there are traces which compel us to hold that the sale deed executed by her is not intended to be acted upon, and has not been acted upon.

23. What should be the relief which should flow to Jai Pal Singh Shishodia?

24. Poonam Rathore has been residing in the property since her childhood. Prior thereto her adoptive parents were residing in the property. It is not only her house but her home. Law leans, insofar it is possible, to protect possession. Under the agreement Ex. P-4 she had to pay Rs. 11.5 lakhs to Jai Pal Singh Shishodia. She admittedly paid Rs. 1 lakh and Jai Pal Singh Shishodia who admits having received Rs. 1 lakh. Thus, justice and equity commands us to mould the relief and for which we may only state that as per the unnumbered prayer after prayer No. (v) in the plaint, Jai Pal Singh Shishodia has prayed to the Court that such orders may be passed in his favour as the Court may deem fit. In the written statement filed by Poonam Rathore, in the prayer clause, even she has prayed that this Court may pass such orders as it may deem fit in the

interest of justice. Thus, both parties have required this Court to pass any order which would be required keeping in view justice.

25. Being bound by Ex. P-4, Poonam Rathore is required to pay further sum of Rs. 10.5 lakhs to Jai Pal Singh Shishodia inasmuch as she has admittedly paid Rs. 1 lakh and this amount she must pay with a reasonable return by way of interest to Jai Pal Singh Shishodia; the value of the suit property has risen enormously evidenced by the fact that during arguments Jai Pal Singh Shishodia offered to pay Poonam Rathore Rs. 75 lakhs for her half share therein, which offer was declined by Poonam Rathore. Thus, a 12% simple rate of interest per annum would be sufficient recompense for Jai Pal Singh Shishodia. The appeal filed by Jai Pal Singh Shishodia stand disposed of setting aside the impugned judgment and decree dated September 12, 2008 dismissing suit filed by Jai Pal Singh Shishodia. CS (OS) No. 1254/1997 filed by Jai Pal Singh Shishodia is decreed against Poonam Rathore in sum of Rs. 10.5 lakhs together with simple interest @12% per annum from February 24, 1996 till date of payment, leaving the parties to bear their own costs all throughout.