

**(2011) 07 DEL CK 0154**  
**In the Delhi High Court**  
**Case No : CS (OS) No. 297 of 2009**

Ripu Daman Haryal and Another

APPELLANT

Vs

Miss Geeta Chopra and Another

RESPONDENT

**Date of Decision : 04-07-2011**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 6 Rule 17, Order 7 Rule 11  
Contract Act, 1872 — Section 202  
Government Grants Act, 1895 — Section 3  
Limitation Act, 1963 — Article 54, 58, 9  
Registration Act, 1908 — Section 17(1), 22A, 49  
Specific Relief Act, 1963 — Section 34  
Transfer of Property Act, 1882 — Section 53A, 54

**Citation : (2011) 5 ILR Delhi 406**

**Hon'ble Judges : V.K. Shali, J**

**Bench : Single Bench**

**Advocate : A.S. Chandhiok and Vikram Nandrajog, for the Appellant; Vikas Dhawan, for the Respondent**

**Final Decision : Dismissed**

## **Judgement**

V.K. Shali, J.—This order shall dispose of an application bearing No. 4821/2009 filed by the Defendants under Order VII Rule 11 CPC for rejection of the plaint.

2. Brief facts of the case are that the Plaintiffs filed the present suit for declaration possession and injunction on 12.02.2009 which came up before the Court for the first time on 13.02.2009. It was alleged in the plaint that the plot bearing No. S-106, Panchsheel Park, New Delhi measuring 505.90 sq. yards was owned by one Late Shri Joginder Nath Bharadwaj. It was allotted to him for and on behalf of the President of India by the DDA by way of perpetual sub lease deed dated 18.12.1968. A copy of the lease deed has been filed on record and is admitted by the parties, which is marked as Ex.P-1. It has been alleged that Smt. Geeta Chopra is the widow of Late Shri Joginder Nath Bharadwaj and

Rajesh Bharadwaj is the son. Both of them are Defendant Nos. 1 and 2 respectively. It has been stated that the Plaintiff No. 1 and the Defendants as well as Late Shri Joginder Nath Bharadwaj were known to each other as they were living in the same colony. They also used to meet at the Panchsheel Club of which they were members. It has been stated that Late Shri Joginder Nath Bharadwaj in order to generate funds to settle his son/Defendant No. 2 in some business sold the terrace rights of the first floor i.e. second floor and half of the terrace of the second floor that is Third floor of the suit property bearing No. S-106, Panchsheel Park, New Delhi for a total sale consideration of Rs. 9,50,000/- to the Plaintiffs and their mother Smt. Krishna Haryal. The deceased Joginder Nath Bharadwaj is stated to have received the entire Sale consideration and executed not only the agreement to sell but also Receipt, WILL and the General Power of Attorney in favour of the Plaintiffs on 11.6.1996 and got them duly registered with the Sub Registrar. The case of the Plaintiffs is that the possession of the terrace of the first floor of the suit property was also handed over to them and they had put their locks and one guard named Shishu Pal to look after the said property. Joginder Nath Bharadwaj died on 02.04.1999, and therefore, it is stated that the title of the Plaintiffs was perfected by operation of the registered WILL dated 11.06.1996. It is stated that the Plaintiffs did not raise any construction on the second floor i.e. terrace of the first floor on the ground that Delhi building Bye-laws were under consideration for being amended for permitting construction of the entire second floor as well as the third floor of the properties in Delhi, and therefore, the Plaintiffs preferred to wait for the modified building bye-laws to be notified. It has been stated that since the relations between the Plaintiffs and the Defendants were cordial and there was absolutely no problem and the Plaintiffs allegedly continued to be in possession of the premises sold to them through their guard. However, it is stated that a key of the terrace floor was given to the Defendant in order to see their overhead water tanks. It has been stated that on 02.01.2009 when the Plaintiff No. 1 visited the suit property he found that the air conditioners of the first floor where tenant was living, had been dismantled and house hold goods of the tenant were lying in a packed condition. The Plaintiff No. 1 went to the suit property that is the terrace of the first floor and after locking the same came down to the ground floor and met Defendant No. 1. It is alleged that he was further surprised to see that even the goods of the Defendant No. 1 were lying packed. On enquiry, the Defendant No. 1 had stated that she is going to Dubai and the tenant of the first floor was vacating the property. On enquiring about Defendant No. 2, the Defendant No. 1 stated that he is shifting to Gurgaon. It has been further alleged that on the evening of 02.1.2009 at about 6.45 P.M. the Plaintiff No. 1 along with his wife and son Viraj went to meet the Defendant No. 1 at her residence while the Plaintiff No. 1's wife and son went inside the residence of the Defendant No. 1, the Plaintiff No. 1 went to the terrace of the first floor and to his surprise, found one person removing the handle and lock on the entrance door of the terrace of the first floor and was trying to put lock of larger size then that of the Plaintiff. The Plaintiff No. 1 and his family members intimated the PCR but the

police is stated to have not taken any action, as they were alleged to be in league with the Defendants, whereupon he lodged a report with the ACP of the area that he was dispossessed from the terrace of the first floor which was sold to him by Late Shri Joginder Nath Bharadwaj. The Plaintiffs have further stated that they have learnt in the year 2009 that the Defendants made a false statement to the DDA that they are the only legal heirs of Late Shri Joginder Nath Bharadwaj without disclosing the factum of sale of the terrace of the first floor of the suit property and without disclosing that the deceased had made a WILL in respect of the said terrace floor of the first floor in favour of the present Plaintiffs and applied for conversion of lease hold rights into freehold. This request of conversion by the Defendants was permitted by the DDA and a conveyance deed dated 30.06.2008 has been executed and registered in their favour. The Plaintiffs further states that on the basis of these averments, the terrace of the first floor and half of the terrace of the second floor having been sold to the Plaintiffs for a consideration of Rs. 9,50,000/- with the 1/3rd right in the land underneath, they are entitled to a declaration that they are the owners of the entire terrace of the first floor etc. The Plaintiffs have also stated that they are entitled to the possession of the aforesaid portion of the suit property. Apart from this, the Plaintiffs have also claimed the mandatory injunction against the Defendants. It is stated in the plaint that the cause of action accrued to file the suit on 29.3.1996 and 11.06.1996 when the documents were executed in their favour and in any case it also accrued on 02.04.1999 on account of the death of Shri Joginder Nath Bharadwaj. It further arose on 2.1.2009 till which date the Plaintiffs remained in possession and when they found the Defendants changing the locks of the terrace floor and finally on 5.2.2009 when the Plaintiff found that the Defendants were puncturing the terrace floor and trying to sell the suit property. Along with the suit, an application under Order 39 Rules 1 and 2 CPC has been filed.

3. The suit came up for hearing for the first time on 13.02.2009 and this Court after hearing the learned Counsel for the Plaintiffs passed an ex-parte ad interim order restraining the Defendants from creating any third party interest with regard to the title or possession of the property and were further restrained from demolishing or constructing the suit property. This order was modified by the Court on 23.4.2009 and it was ordered that without prejudice to the rights and contentions of the respective claims of the parties the Defendants were permitted to raise the construction on the basement, ground floor and the first floor. Vide order dated 22.12.2009, the Defendants were further permitted to raise construction over the first floor terrace as per plan duly sanctioned by the local authorities and subject to the condition that entire construction shall be at the risk and the cost of the Defendants and they shall not claim any compensation if the decision is ultimately passed against them. It was also made clear that the Defendants shall not part with the possession of the second floor of the construction so made, however, they were at liberty to use the said construction for their own benefit. The Defendants were also restrained from

creating any third party interest in the portion so constructed.

4. Against the order dated 22.12.2009, an FAO(OS) No. 68/2010 was filed by the Plaintiffs before the Division Bench of this Court which was treated as disposed of on the ground that the interest of the Plaintiffs was sufficiently protected by the statement made by the learned senior counsel for the Defendants that they shall raise the construction at their own risk and the cost.

5. The Defendants have contested the claim of the Plaintiffs both on the question of maintainability as well as on merits. However, it is not necessary to advert to the same while considering the application filed by the Defendants u/O 7 Rule 11 (d) CPC for rejection of the plaint. The only thing to be seen by the Court is as to what are the averments made in the plaint and their effect in the light of the legal position.

6. But before coming to the same, it may be pertinent here to mention that the application filed by the Defendants under Order VII Rule 11 CPC seeking rejection of the plaint filed by the Plaintiffs on the ground that the present suit is barred by law on the ground that the Plaintiffs are claiming a decree of declaration to the effect that they are the owners of the suit property. It is stated that from the meaningful reading of the plaint, it is manifest that the declaration which is prayed for is based on unregistered agreement to sell dated 29.03.1996 and the registered GPA/SPA/WILL dated 11.06.1996. It is further stated that the Plaintiffs in their plaint have specifically averred that the cause of action has accrued to them firstly on 29.3.1996 to file the suit and in any case, it also accrued in their favour on 02.04.1999 when Sh. Joginder Nath Bharadwaj expired. It is further averred that it arose on 2.1.2009 when they found the Defendants changing the lock and also on 5.2.2009, when the Plaintiff found that they were puncturing the terrace. It has been stated by the learned Counsel for the Defendants that according to Article 58 of the Limitation Act a suit for declaration has to be filed within a period of three years from the date of accrual of cause of action, and according, to the Plaintiffs own averment the cause of action firstly accrued in their favour on 29.3.1996 and secondly on 02.04.1999 when Late Shri Joginder Nath Bharadwaj died. In case limitation is reckoned from the date of death i.e. 02.04.1999, it would expire on 01.04.2002 while as the present suit for the declaration has been filed in the year 2009. It is further averred in the application that the Plaintiffs by a clever drafting of the plaint purported to file the present suit for declaration and injunction merely as a camouflage while as in effect they are seeking the specific performance of an agreement to sell dated 29.03.1996 and execution of the documents of title in their favour. In this regard, the learned Counsel for the Defendants has stated that the agreement to sell (which is being termed as sale by the Plaintiffs) is not duly registered and as per the provisions of Section 49 of the Indian Registration Act or Section 54 of the Transfer of Property Act, the said document is inadmissible in evidence. It is alleged that the Plaintiffs have chosen to file the present suit after 13? years of execution of the alleged agreement to sell

knowing fully well that they cannot sue as on date by filing the suit for specific performance as the same is barred by limitation.

7. The Defendants have averred that in effect the Plaintiffs have tried to camouflage the real relief by filing the present suit simplicitor for declaration with a view to avoid the filing of a suit for specific performance for perfecting their title, and therefore, applying the principle laid down by the Apex Court in case titled N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LRs. and Others, and Hardesh Ores Pvt. Ltd. Vs. Hede and Company, the present suit is liable to be rejected.

8. So far as the Plaintiffs are concerned, they have contested the Defendant's application for rejection of the plaint under Order VII Rule 11(d) CPC on the ground that the Plaintiffs had filed an appeal bearing FAO (OS) No. 68/2010 against the order dated 22.12.2009 by virtue of which the Defendants were permitted to raise the construction subject to their unilateral undertaking that they will not use the construction over the disputed portion and the same shall remain locked and unoccupied, is a clear admission that the Defendants have given up their plea of rejection of the plaint under Order VII Rule 11 (d) CPC and have conceded that it being tried on its merit.

9. It is further stated in the reply that without prejudice to the aforesaid the suit cannot be rejected on the ground that the said suit is barred by limitation as well as on the ground that the agreement to sell is not a registered document. It is contended that u/s 54 of the Transfer of property Act a distinction is to be drawn between the "sale" and the "mode of sale".

10. It is contended that in the present case Late Shri Joginder Nath Bharadwaj, owner of the property bearing No. S-106, Panchsheel Park, New Delhi sold the entire terrace of the First Floor i.e. the Second Floor and half of the terrace of the Second Floor i.e. the Third Floor for a total sale consideration of Rs. 9,50,000/- to the Plaintiffs and their mother Smt. Krishna Haryal. The deceased stated to have executed an agreement to sell, affidavit and receipt dated 29.03.1996 after having received the entire sale consideration and handed over the vacant and peaceful possession of the same to the Plaintiffs. It is further stated that Late Shri Joginder Nath Bharadwaj also executed the registered GPA with power to execute the sale deed vested in favour of the Plaintiff No. 1 and SPA and WILL dated 11.06.1996. On the basis of the said documents, it is stated that this constituted a sale within the meaning of Section 54 of the Transfer of Property Act and resulted in transfer of ownership by Late Shri Joginder Nath Bharadwaj. It is averred that so far as the question of non-registration of the agreement to sell is concerned, it pertains to the mode of sale which does not in any manner detract from the sale of the property in question by the predecessor in interest of the Defendant. In order to support this, it is stated that as per Clause 9 of the General Power of Attorney, the Plaintiff No. 1 was empowered to sell the suit property. This general power of attorney being registered and consideration having been paid has become irrevocable and does not lapse even on account of

the death of Sh. Joginder Nath Bharadwaj. It is averred that illustrations appended to Section 202 of the Indian Contract Act clearly supports this view that an interest in the property which form the subject matter of agency, cannot in the absence of an express contract be terminated to the prejudice of such interest. Reliance in this regard is placed on case titled Asha M. Jain v. State and Ors. 2002 II AD (Del) 734 to contend that the judgment of the Division Bench in Asha Jain's Case clearly recognizes the ownership of a property on the basis of documents like agreement to sell, Power of Attorney, Will etc.

11. So far as the question of limitation is concerned, it is stated that the Defendants have erroneously taken the period of limitation of three years from 29.03.1996 or alternatively w.e.f. 02.04.1999 without realizing the fact that the plaint makes clear mention that there was no issue with regard to the title or the ownership of the Plaintiffs in respect of the portion of the suit property till 02.01.2009 that is the date upto which they continued to be in possession of the said portion. It is stated that it was only on the said date i.e. 02.01.2009 when an attempt was made by the Defendants to dispossess the Plaintiffs from the suit property that the cause of action arose in their favour to file the suit. It is further stated that it also arose on 5.2.2009 when the Plaintiffs found that the Defendants were puncturing the terrace. And even if the period of limitation of three years is taken into account, the said suit is still well within its time if reckoned from 02.01.2009 or from 5.2.2009. It has been further stated that so far as the relief of possession is concerned, a suit for possession can be filed by the Plaintiffs up to the period of 12 years, and therefore, even if the period of limitation is reckoned as is mentioned in the plaint, the period of 12 years has to be reckoned from the date of dispossession, i.e., 02.01.2009 and therefore, the suit is well within its time.

12. I have heard the learned senior counsel, Mr. A.S. Chandhiok for the Plaintiffs and Mr. Vikas Dhawan, for the Defendants. I have also gone through the record. Before dealing with the respective contention of the parties, it may be pertinent here to refer to undisputed facts as alleged in the plaint.

(i) In paragraphs 5 and 6 of the plaint, the Plaintiffs have claimed that the entire terrace of the first floor that is the second floor and half of the terrace of the second floor i.e. the third floor was sold to him by Late Shri Joginder Nath Bharadwaj by virtue of agreement to sell dated 29.3.1996 and WILL, General Power of Attorney etc. dated 11.6.1999, which were duly registered before the Sub Registrar and the possession was handed over to the Plaintiffs..

(ii) In para 8 of the plaint, it is averred that Late Shri Joginder Nath Bharadwaj expired on 02.04.1999 and on the basis of the registered Will dated 11.6.1996, title of the Plaintiffs was perfected.

(iii) In para 10 of the plaint, the Plaintiffs have stated that they had purchased the property from the father of the Defendants' besides being the owners of the property by virtue of the last WILL and testament of Sh. Joginder Nath

Bharadwaj dated 11.06.1996. Similar, averments were made in para 15 and 16 of the plaint.

(iv) In para 18 of the plaint, it is averred that the cause of action accrued to the Plaintiffs on 29.03.1996 when the property was sold to them by way of an agreement to sell and execution of the General Power of Attorney and will etc. on 11.6.1996 which were duly registered. It further arose, when their title to the part of the suit property was allegedly perfected on account of the death of Late Shri Joginder Nath Bharadwaj on 02.04.1999. The Plaintiffs are also making reference to two dates dated 2.1.2009 when they allege that the Defendants have put their locks on the terrace and secondly, on 5.2.2009 when they found that the Defendants were getting the terrace punctured.

13. On the basis of these averments, the following three reliefs have been claimed by the Plaintiffs:

(a) Pass a decree of declaration in favour of Plaintiffs and against the Defendants that Plaintiffs are owners of entire terrace of first floor i.e. second floor and half of terrace of second floor i.e. third floor along with proportionate undivided 1/3rd rights in the land underneath of the property S-106, Panchsheel Park, New Delhi.

(b) Pass a decree of possession in favour of Plaintiffs and against the Defendants with respect to the entire terrace of the first floor i.e. second floor of the property S-106, Panchsheel Park, New Delhi, directing Defendants to be ejected therefrom and Plaintiffs being put in possession of the same.

(c) Pass a decree of permanent injunction restraining Defendants from in any way selling, mortgaging, alienating, transferring, creating third party interest or parting with possession or the entire first floor i.e. second floor and half of terrace of second floor i.e. third floor and 1/3rd rights in the land underneath of the property S-106, Panchsheel Park, New Delhi or raising any construction or demolishing the said property.

14. The question to be considered is, as to whether the plaint is liable to be rejected under Order 7 Rule 11(d) CPC being barred by limitation as the contention of the Defendants is that according to the averments made by the Plaintiffs themselves the cause of action accrued to them on 29.03.1996 when the agreement to sell was executed and in any case it was stated to have arisen in their favour on 02.04.1999 on account of the death of Late Shri Joginder Nath Bharadwaj. Though reference is made to the date 2.1.2009, the day they are allegedly dispossessed and the date 5.2.2009 when they contend that the Defendants were puncturing the terrace. It has been contended that as a matter of fact the Plaintiffs are seeking specific performance of an agreement dated 29.03.1996 on the basis of which they are purported to have purchased the property. Supporting documents dated 11.06.1996 are relied upon by them for this purpose. It has been contended that admittedly the Plaintiffs are not in possession and the suit has been filed after an expiry of 13 ? years by camouflaging the present suit for specific performance as a suit for declaration

while as they ought to have filed a suit for specific performance within 3 years of accrual of the cause of action. It has been further contended that even if it is assumed that the present suit for declaration could be filed, the suit is not maintainable because in effect they ought to have claimed the consequential relief of specific performance, as they do not have the title to the property and they will have to first perfect the same. Reference is made to Section 34 of the Specific Relief Act which lays down that a suit for declaration would not be maintainable if a party omits to claim the consequential relief. It is contended that even a suit for declaration is to be filed within three years and in case the Plaintiffs are claiming to have become owner on the basis of the Will made by Late Shri Joginder Nath Bharadwaj which was duly registered even then the declaration ought to have been sought within three years.

15. The second submission of the learned senior counsel for the Defendants is that the Plaintiffs are making contrary averments in the plaint. Firstly, they are claiming that they have purchased the property and the sale itself was completed u/s 54 of the Transfer of Property Act when the agreement to sell was executed. It has been urged that Section 54 of the Transfer of the Property Act specifically laid down as to how the sale is to be made and it has been defined as a transfer of ownership in exchange for a price paid or promised or part paid and part promised. It further lays down that such sale in the case of tangible immovable property of the value of Rs. 100 and upwards has to be made only by a registered document. It has been contended that admittedly in the instant case the document which is relied upon by the Plaintiffs is not a registered document, and therefore, it could not be treated as a document of sale and consequentially no declaration can be claimed as the document itself is inadmissible in law. Further, it has been stated that the Plaintiffs in para 10 has stated that they became the owner on the basis of the registered WILL, the moment Late Shri Joginder Nath Bharadwaj died on 02.04.1999. It has been contended by the learned Counsel that either the property has been sold involves or it has been passed by way of testamentary succession. Admittedly the WILL of Late Shri Joginder Nath Bharadwaj has not been got probated, and therefore, it could not be said that the property was passed on to the Plaintiffs on the basis of the WILL of Late Sh. Joginder Nath Bharadwaj. In this regard, reference has been made to case titled N. Ramaiah v. Nagaraj S. AIR 2001 Kar 395, which makes a distinction between the involves sale and testamentary succession.

16. The third submission made by the learned senior counsel for the Defendants is that the suit has been cleverly drafted by the Plaintiffs only with a view to overcome the period of limitation which admittedly accrued in favour of the Plaintiffs on 29.03.1996 and in any case according to their own submissions it accrued on 02.04.1999 and a meaningful reading of the plaint would clearly show that in effect what the Plaintiffs are claiming is specific performance of the agreement to sell dated 29.03.1996 and it is only with a view to get over the bar of limitation that the Plaintiffs have chosen to file the present suit after expiry of 13 ? years by camouflaging it as a suit for declaration. The learned senior

counsel for the Plaintiffs have placed reliance on cases titled N. V. Srinivasa Murthy and Ors. v. Mariamma (Dead) (2005) 5 CSS 548 and Hardesh Ores Pvt. Ltd. Vs. Hede and Company, in order to substantiate his plea.

17. The learned senior counsel Mr. A.S. Chandhiok for the Plaintiffs has contested this and urged that in view of the order dated 27.04.2010 passed by the learned Appellate Court where the Defendants have unilaterally submitted that they will not use the construction over the second floor and the third floor and will keep the same locked and unoccupied is in itself an admission made by the Defendants that the Suit has to be adjudicated on merits by permitting the parties to adduce evidence.

18. So far as the merits of the case are concerned, the learned senior counsel for the Plaintiffs has stated that there is a difference between the sale and mode of sale. It has been contended that this difference is laid down in Section 54 of the Transfer of Property Act itself. It has been stated that sale is a transfer of ownership in exchange of price paid or promised or part paid or part promised. It has been contended that in the instant case admittedly Late Shri Joginder Nath Bharadwaj had sold the entire terrace of the first floor that is the second floor and half of the terrace of the second floor i.e. the third floor and executed agreement to sell, affidavit, receipt, etc. on 29.03.1996 and thus having received the entire money, the sale was complete. Late Sh. Joginder Nath Bharadwaj had executed a General Power of Attorney/Special Power of Attorney/Will on 11.06.1996 which were duly registered before the Sub-Registrar. On the basis of these documents, the Plaintiffs have become the owner of the suit property.

19. It has been further contended by the learned Counsel that the General Power of Attorney which is purported to have been executed by Late Shri Joginder Nath Bharadwaj for consideration in favour of the Plaintiffs is an irrevocable power of attorney which does not get lapsed on account of the death of the deceased. It is stated that such a contingency is specifically envisaged u/s 202 of the Contract Act.

20. The learned senior counsel has also placed reliance on the Division Bench judgments of this Court in case titled Asha M. Jain v. The Canara Bank and Ors. 2002 II AD (Del) 734 wherein the High Court of Delhi has recognized the sale of properties on the basis of General Power of Attorney, u/s 202 and it has been stated to be a valid defence u/s 53A of the Transfer of the Property Act. The learned senior counsel has also cited the judgment of the Apex Court in case titled Suraj Lamp and Industries (P) Ltd. thru. DIR Vs. State of Haryana and Another, to contend as not an authority on the question as to whether the sale of power of attorney is illegal or not, and therefore, not applicable to the facts of the present case. The learned senior counsel has referred to the judgment of Apex Court in case titled State of Rajasthan and Others Vs. Basant Nahata, where in the Apex Court had observed that an Agreement to Sell executed in favour of an attorney is a document which cannot be refused registration on the ground that the State (of Rajasthan) has amended the Registration Act and

introduced Section 22A and issued notification thereunder that such attorney be not registered being opposed to public policies. It is stated that the Apex Court had set aside the Section 22A as unconstitutional. Apart from these some more judgments have been cited with which I will deal at appropriate stage.

21. So far as the averments made in the application that the suit is barred by limitation in view of Article 58 of the Limitation Act is concerned, it is contended that this is a misconceived argument as the plaint is to be read as a whole and not in an isolated manner. It is also stated that the plaint cannot be rejected in part. Even if the declaration is claimed to be barred it is stated that Plaintiffs are claiming possession as well for which period of limitation is 12 years which has to be reckoned from 02.01.2009 or 05.02.2009. It is the case of the Plaintiffs that they were in possession of the terrace floor above the first floor till 02.01.2009 when an attempt was made to dispossess them. Further, on 5.2.2009, the Plaintiffs had noticed that the Defendants were puncturing the terrace and therefore, there was hardly any occasion for the Plaintiffs to come to the Court prior to that date. It is stated that the averments made in the plaint, that the cause of action accrued for the first time on 29.3.1996 is only a background averment in the context that the Plaintiffs acquired the right to the suit property on 29.03.1996 and the dispute arose in the year 2009, and therefore, the suit was filed in the year 2009 and it could not be said to be beyond limitation. The learned senior counsel placed reliance on the case titled C. Natrajan Vs. Ashim Bai and Another, in order to contend that the suit is within limitation.

22. On the basis of these averments, it has been contended that the suit of the Plaintiffs is well within time and the application filed by the Defendants is totally misconceived and without any merits.

23. In the light of the aforesaid facts and the respective submissions. The following points emerge to be considered as to whether the Plaintiffs are entitled to a declaration to the effect that they are the owners of the suit property on the basis of the agreement to sell dated 29.03.1996 or they had become the owners of the suit property on the basis of the registered Will dated 02.04.1999 when Late Shri Joginder Nath Bharadwaj had died or alternatively whether the Plaintiffs were required to file a suit for specific performance of the agreement dated 29.03.1996.

24. Section 54 of the Transfer of Property Act, 1882 defines sale as under:

54. "Sale" defined.- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made: Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

25. A perusal of the aforesaid Section clearly shows that sale is a transfer of ownership in exchange of a price which is paid or promised to be paid and it is further stated that if the sale pertains to an immovable property the value of

which is more than Rs. 100/- and upwards the document is to be compulsorily registered. Section 17(1)(b) of the Registration Act, 1908 also makes non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property, as compulsorily registerable.

26. A reading of the aforesaid two provisions together would clearly show that no right or title or interest in any immovable property passed on to the purchaser until and unless the document is duly registered. In the instant case, the Plaintiffs of their own admission have stated that they have purchased the terrace of the first floor vide agreement to sell dated 29.03.1996 which is not a registered document. First of all, the said document in question is an agreement to sell and not a sale document as is sought to be claimed by the Plaintiffs. Even if it is assumed to be a sale document, as it has been contended by the Plaintiffs, even then the document being an unregistered document cannot be taken cognizance of, therefore, the contention which is sought to be made by the learned Counsel for the Plaintiffs that there is a distinction between the sale and the mode of sale may be right but the fact remain that the right or title or interest in the immovable property does not pass on to the Plaintiffs until and unless they seek specific performance of the said agreement on the basis of the aforesaid documents. Further, according to Article 54 of the Schedule of the Limitation Act, the said suit for specific performance is to be filed within three years from the date of accrual of cause of action or within three years from the date of refusal by the Defendants to perfect the title of the Plaintiffs. While as in the instant case, the suit is filed for declaration to the effect that they should be declared owners. Plaintiffs cannot be declared as owners on the basis of an inchoate title to the property. The Plaintiffs are admittedly not in possession of the suit property. Even if it is assumed that the Plaintiffs have not filed the suit for specific performance they ought to have claimed consequential relief u/s 34 of the Specific Relief Act wherein they were seeking declaration by claiming that the Defendants be directed to perfect their title by execution of certain documents in terms of Section 54 of Transfer of Property Act pertaining to sale and mode of sale and by getting them registered u/s 17(1)(b) of the Registration Act, 1908 but this has not been done. The Plaintiffs have actually camouflaged the present suit to overcome the bar of limitation which admittedly in a suit for specific performance under Article 54 of the Limitation Act is three years. If it is taken to be a suit for declaration even then the period of limitation is three years which is to be reckoned, when the right to sue first accrues. The Plaintiffs of their own admission have stated that the right to sue first accrued on 29.3.1996 and therefore, the said period of three years comes to an end in 1999. According to Section 9 of the Limitation Act, the period of limitation cannot be stopped once it starts running. Therefore, the period of limitation for seeking declaration is not to be reckoned from 2.1.2009 or 5.2.2009 as claimed by the Plaintiffs. So far as the question of possession is concerned, it is only a consequential relief to the

declaration or specific performance which the Plaintiffs have failed to claim within the period of limitation of three years, reckoning either from 29.3.1996 or 11.6.1996 or 2.4.1999 and hence the suit, on the meaningful reading of the entire plaint, is barred by limitation both under Article 54 or 58 of the Schedule to the Limitation Act.

27. As a matter of fact, a perusal of the agreement to sell itself shows that the Plaintiffs were under an obligation to file a suit for specific performance if the Defendant's predecessor in interest defaulted, it may be pertinent here to refer to few paragraphs of the agreement to sell dated 29.03.1996 which will clearly show that this was only an agreement to sell and the Plaintiffs who are mentioned as parties 1, 3 and 4 in the said agreement were required to seek necessary permission from DDA as well as impleading co-operative housing society for perfecting their title which admittedly has not been done by them. The relevant clauses of the agreement to sell are as under:

Clause 4: That the Second, Third and Fourth parties shall realize all the profits or the said terrace on the first floor after the date of execution of this agreement and the first party shall not create any charges or make any claim.

Clause 8: That the second, third and fourth parties shall obtain all the permissions, necessary approvals to complete the sale transaction including the following:

(a) Permission from the DDA to transfer the aforesaid terrace right on first floor only of property in favour of the second, third and fourth parties or his/her/their nominee(s) at the cost of the second party.

(b) Permissions from the competent authority under the Urban Land (ceiling & Regulations) Act, 1976 if required, or in the alternative the first party shall produce the necessary affidavits(s), declarations or prescribed performs .

(c) On any other permission that may be required to transfer the said terrace right of the first floor only in favour of the second, third and fourth parties at the time of the registration of the sale deed at his/her/their own cost. The unearned increase, stamp duty, registration charges, conveyancing etc. shall be paid and borne by the second, third and fourth parties and in that even the first party shall not make any further claim demand and objection whatsoever. But the first party would provide necessary help, would provide necessary information and sign the execute required papers/documents; if so required by the concerned authority to do all or nay of the acts mentioned in point No. 9.

Clause14: That in case the first party does not perform its part of the contract then the second, third and fourth parties shall be entitled to enforce this contract by way of specific performance before the appropriate court at the risk and cost of the first party

28. A perusal of the aforesaid clauses clearly show that the Plaintiffs were under an obligation to apply to the DDA for obtaining necessary permission for

perfecting their title, by way of sale in their favour, for which there is a limitation contained in para 6(a) of the perpetual sub lease deed which reads as under:

The Sub-lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the residential plot in any form or manner, benami or otherwise, to a person who is not a member of the Lessee.

29. It may be pertinent here to mention that the perpetual sub lease which is an admitted document between the parties and marked as exhibit P-I dated 18.12.1968 is executed for and on behalf of the President of India by Cooperative Housing Building Society as a lessee and Late Shri Joginder Nath Bharadwaj as a sub lessee by way of tripartite agreement in terms of Government Grants Act 1998. Section 3 of the Government Grants Act, 1985 clearly lays down that any provision of the perpetual sub lease or lease granted under Government Grants Act will have the same force as a provision of law, therefore, the agreement to sell which is treated as a sale document by the Plaintiffs, apart from other infirmities as have been stated hereinabove is also hit by Section 3 of the Government Grants Act, 1985 because Clause 6(a) of the perpetual sub lease deed will supersede the terms and conditions of the agreement and prior permission for sale had not been obtained by the Plaintiffs as envisaged in their own agreement. Order 7 Rule 11(d) CPC lays down a contingency of rejection of the plaint if it is barred by any law.

30. Further in the agreement to sell itself it has been envisaged that in case any of the contracting parties, namely, the Plaintiffs and the Defendants do not adhere to the terms and conditions of the agreement to sell dated 29.03.1996, the aggrieved party have an option to go for a specific performance. In the instant case, the Plaintiffs having been aggrieved admittedly ought to have filed a suit for specific performance and not a suit for declaration as has been done by them. In this regard, I agree with the submissions made by the learned Counsel for the Defendants that the Plaintiffs have camouflaged the present suit by filing a suit for declaration so as to escape the period of limitation which is admittedly three years in respect of suit for specific performance in terms of Article 54 of the Limitation Act. The learned Counsel for the Defendants has rightly cited N. V. Srinivasa Murthy and Ors. v. Mariyamma (Dead) where the Apex Court has upheld the rejection of a plaint because the party had omitted to claim the relief warranted on the facts of the case only with a view to get around the bar of limitation. Also, in case titled Hardesh Ores (P) Ltd. v. Hede and Company the order of rejection of plaint was upheld by the Apex Court after observing that the plaint is to be read as a whole for the purpose of arriving at such a conclusion, has been fully complied with in the instant case. In the present case, I have not referred to the written statement at all and the plaint of the Plaintiff has been seen as a whole. Further reliance can safely be placed on the judgment of the Apex Court in T. Arivandandam v. T.V. Satyapal SCC p. 468.

The trial court must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a

clear right to sue, it should exercise its power under Order VII Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the part searchingly under Order 10 CPC. An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Chapter 11) and must triggered against them.

31. The contention of the learned Counsel for the Plaintiffs is that Late Shri Joginder Nath Bharadwaj had executed a General Power of Attorney on 11.06.1996 authorizing the Plaintiffs to sell the property or part of property sold to them notwithstanding the fact that Late Shri Joginder Nath Bharadwaj had died. No doubt, Section 202 clearly lays down that where the principal executes a General Power of Attorney and a document of agency in favour of other persons to discharge an obligation qua the person in whose favour the attorney is executed the said attorney does not come to an end on account of death or insanity of the principal.

32. Section 202 of the Contract Act, 1872 reads as under:

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 is it terminated by his insanity or death.

33. A perusal of the aforesaid Section would clearly show that the power of agency does not come to an end on account of the insanity or the death of the principal provided the document of agency confers a power on the agent to do something for his own benefit, like in illustrations 1 and 2, the sale of the property and payment thereof to the agent himself in discharge of debts.

34. If we look at the General Power of Attorney which is sought to be relied upon by the Plaintiffs in the instant case, at the very outset it must be mentioned that it does not say that it is an irrevocable power of attorney. Even if this factor is assumed in favour of the Plaintiff for the sake of argument, further, a reading of the General Power of Attorney does not show that it meets the requirements as envisaged u/s 202 of the Contract Act which in the instant case would be to

perfect the title of the Plaintiffs themselves on account of having paid an amount of Rs. 9,50,000/- to Late Shri Joginder Nath Bharadwaj.

35. The Plaintiffs in support of their contentions have relied on Clause 9 of the General Power of Attorney which read as under:

To execute, sign and present for registration, before proper registering authority, proper sale/conveyance deed, for conveying my rights, interests, liens and titles in the property only terrace of the said property, in favour of the intended purchaser(s) and for the purpose of conveying the same, absolutely forever in favour of the intended purchaser(s) or his/her/their nominee (s) and to do all other acts, deeds and things which are necessary for the purpose, i.e. to receive the consideration and to admit the receipt thereof, and to deliver the possession to the said purchaser(s), or his/her/their nominee(s) either physical or constructive as may be feasible.

36. A perusal of the aforesaid clause shows that the agent, namely, the Plaintiff No. 1 Ripu Daman Haryal is only authorized to appear before the registering authority and execute the sale deed, conveyance deed or create right or title or interest in the suit property in favour of "intending purchaser" (emphasis added) and for the purpose of conveyance of the same.

37. Similarly in Clause 15 of the General Power of Attorney the agent namely the Plaintiff No. 1 herein is permitted to further delegate the power of attorney in favour of any other person to perform all the acts which he is entitled to do under the power of attorney with liberty to cancel, withdraw or revoke the said powers conferred on the attorney so appointed by the Plaintiff No. 1.

38. Thus, the aforesaid perusal of the General Power of Attorney clearly shows that the plea of the Plaintiffs is totally misconceived. In my considered opinion, keeping in view the language of the General Power of Attorney, Section 202 of the Contract Act, 1872 is not at all applicable to the facts of the present case.

39. The other contention of the learned senior counsel for the Plaintiffs has been that the General Power of Attorney is a recognized mode of sale u/s 202 of the Contract Act as well as u/s 53A of the Transfer of Property Act. Reliance in this regard has been placed on case titled Asha M. Jain v. The Canara Bank and Ors. 2002 II AD (Del) 734.

40. Before referring to Asha M. Jain's case (Supra) it may be pertinent here to borne in mind that the Apex Court in case titled Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, has specifically laid down that while applying the law laid down in judgment of the Apex Court to the facts of a particular case, the facts of the said reported judgment must be seen and co-related to the facts of the case to which the judgment is sought to be applied. Seen in this background, it has been noticed that most of the judgments which have been referred by the Plaintiffs are the judgments which do not apply to the facts of the present case. In Asha M. Jain's case (supra) the question was

involved as to whether the property of a person who was claiming to be the owner on the basis of the Will and General Power of Attorney coupled with the transfer of possession could be attached or whether he could be considered as the owner. It was in this context that the Court upheld the plea that such a person was the owner and was competent to use the said documents coupled with the possession as a shield envisaged u/s 53A of the Transfer of Property Act. In the present case, the facts are totally different, the Plaintiffs are not in possession and the documents on the basis of which they are claiming the ownership are not registered though they require compulsory registration and the Will which is sought to be relied upon as a document of title cannot be considered as a document of title. Even probate on the basis of said Will has not been obtained, therefore, Asha M. Jain's case (supra) is totally distinguishable from the facts of the present case. Similarly, the judgment in State of Rajasthan and Others Vs. Basant Nahata, is also distinguishable because the facts are totally different.

41. In the instant case, I have already observed that Section 202 of the Contract Act does not apply to the facts of the present case and so far as Section 53A of the Transfer of Property Act is concerned, that can only be used as a shield not as a sword and that shield could have been used by the Plaintiffs provided that they were in possession of the first floor of the suit property. The Plaintiffs could have defended their possession in case they were having the same against the Defendants if they brought any action. According to the Plaintiffs own admission they were not in possession of the suit property at the time of the filing of the suit. In this regard I may state the judgments which have been relied upon by the Plaintiffs in Chetak Constructions Limited Vs. Om Prakash and Others, Bhulkoo Ghaslya v. Hiriya Bai AIR (36) 1949 Nag. 415 Shrimant Shamrao Suryavanshi and Another Vs. Pralhad Bhairoba Suryavanshi by Lrs. and Others, instead of supporting the Plaintiffs are actually supporting the Defendants because they are in possession. The plea stating that the suit for possession could be filed within a period of 12 years from the date of dispossession does not apply to the present case because the possession is only a consequential relief to the specific performance or the declaration which is barred as on date when the suit was filed.

42. The judgment cited by the learned senior counsel for the Plaintiffs on the question of rejection in case titled Popat and Kotecha Property Vs. State Bank of India Staff Association, does not apply to the facts of the present case as in the reported judgment a disputed question of fact was involved and it was in that context that the Apex Court observed that the suit ought not to have been rejected as being barred by limitation. While as in the present case, there is no dispute about the documents having been exhibited and in any case averments made in the plaint have been taken to be correct. Similarly, in the case titled C. Natrajan Vs. Ashim Bai and Another, where it has been laid down that the allegations made in the plaint if taken to be correct in its entirety, must be the only ground for consideration as to whether the suit is barred by limitation or

not. It has been specifically observed in the said judgment that the defence of the Defendants is not taken into consideration and further only the applicability of one or the other provisions of the Limitation Act was considered. The ownership cannot be decisive for the purpose of determining the question as to whether the suit of the Plaintiffs is falling under one Article or the other contained in the schedule to the Limitation Act.

43. I have gone through this judgment also and I do not feel that the said judgment supports the Plaintiffs case in any manner. The defence of the Defendants in the present case has not been considered at all. The averments made in the plaint having been taken to be correct and the question as to whether the suit is barred by limitation or not has been discussed from all possible angles with reference to Article 54 for Specific performance and declaration under Article 58. So far as the question of possession is concerned, no doubt the Article 65 envisages that the same can be claimed within 12 years but the possession in the present case is only a consequential relief and admittedly the Plaintiffs are not in possession as on the date of the filing of the suit according to their own averments, therefore, the period of limitation of 12 years does not help the Plaintiffs so as to bring the suit for declaration within the period of limitation as is sought to be done by the Plaintiffs. Similarly, I have gone through the judgments in the case title Seshumull M. Shah v. Saye Abdul Rashid and Ors. AIR 1991 Kar 273 and Roop Lal Sathi Vs. Nachhattar Singh, the same also does not help the Plaintiffs in any manner whatsoever. The Plaintiff's plaint has not been rejected in part, it has been rejected in its entirety.

44. So far as the contention of the learned senior counsel for the Plaintiffs that in view of the order dated 27.04.2010 passed by the Division Bench of this Court, after recording the unilateral statement of the Defendants that they shall keep the disputed portion locked and unoccupied and consequentially the suit cannot be rejected under Order VII Rule 11 (d) CPC, is concerned, I do not agree with the same. This is on account of the fact that it amounts to a waiver with regard to a provision of law or its applicability. The question of law of limitation is a question between the Court and the party seeking to get his grievance redressed. Even if a party concedes, as suggested by the learned senior counsel, I do not think it can prevent or prohibit the Court from considering as to whether the suit is within limitation or not. Even if it is assumed that this was a concession or waiver by the Defendants before the Appellate Court, I do not think it stops the Defendants from raising this plea as there is no estoppel against law. Reliance can be placed on Faqir Chand Vs. Shri Ram Rattan Bhanot,

#### CONCLUSION:

45. For the foregoing reasons, I reach to the following conclusions:

(i) That the case of the Plaintiffs that they had purchased the property on the basis of an agreement to sell dated 29.03.1996 and the supporting documents dated 11.06.1999 and thus became the owners thereof is not substantiated on

account of the fact that document dated 29.03.1996 is only an agreement to sell and not a sale document as the document is not a registered document. The General Power of Attorney dated 11.06.1996 is not a document which falls within the parameters of Section 202 of the Indian Contract Act.

(ii) The question of the Plaintiffs being deemed to be the owners of the suit property on the basis of the agreement to sell, General Power of Attorney, Receipt, Will etc. in terms of case titled Asha Jain Case (Supra) is not correct and sustainable in the facts of this case. The agreement to sell is unregistered. The will is not probated and even if it is taken to be a document, it does not confer title. The probate Court only determines the correctness of the Will.

(iii) A reference has been made to Section 53A of Transfer of Property Act by the Plaintiffs but it does not save them as Section 53A of the Transfer of Property Act is only a shield not a sword and this shield could have been set up by the Plaintiffs only if they were in possession and against the action brought against them and therefore, this also does not help the Plaintiffs in any manner.

(iv) According to the agreement to sell dated 29.03.1996 itself the Plaintiffs were required to seek specific performance of the agreement to sell as is envisaged therein and according to Article 54 of the Limitation Act the said suit has to be instituted within a period of three years from the date of accrual of cause of action. Even if the suit for declaration is said to be correct, even then no relief of declaration can be granted because consequential relief of specific performance is not claimed and this declaration suit is hit by Section 34 of the Specific Relief Act. Secondly, even if the declaration is to be sought it had to be within 3 years according to Article 58 of the Limitation Act from the date of first accrual of cause of action which according to the Plaintiff accrued on 29.3.1996. According to Section 9 of the Limitation Act, once the period of limitation starts, it does not stop and therefore, no help can be sought by simply saying that the cause of action further arose on 2.1.2009 or 5.2.2009.

(v) The Plaintiffs, themselves have stated in para 18 that the cause of action accrued to them on 29.03.1996 firstly and secondly on 02.04.1999 and if the period of limitation is to be reckoned from either of the two dates the said period of limitation has come to an end long back on 01.4.2002 in both the cases of specific performance and declaration.

(vi) It is correct that according to Article 65 of the Limitation Act, the period of limitation for filing the suit for possession is 12 years but for filing a suit for possession the Plaintiffs must have a title to the property which admittedly according to their own averments there is none as there is inchoate title. They are seeking declaration which as a matter of fact is also not sustainable as they ought to have filed a suit for specific performance.

(vii) The suit on a meaningful reading of the plaint is a suit for specific performance. Even if it is taken to be a suit for declaration, in my view, the suit is barred by limitation on account of having not been filed within a permissible

period of three years either in terms of Article 54 or Article 58 of the Limitation Act, if the period of limitation is reckoned from any of the dates i.e. 29.03.1996, 11.06.1996 and 02.04.1999.

46. For the foregoing reasons, the suit is rejected as being barred by limitation under Order VII Rule 11 (d). Since the suit itself has been dismissed as barred by limitation, the question of considering the application of the Plaintiffs under Order VI Rule 17 CPC for amendment of the plaint does not arise and the same is also dismissed.

47. The order of stay granted by this Court on 13.2.2009 and modified subsequently stands vacated.

48. File be consigned to the Record Room.