

(2012) 03 DEL CK 0095

In the Delhi High Court

Case No : Regular First Appeal (OS) 28, 29 and 33 of 2011

Satyender Singh and Others (L.Rs. of Hari Singh) APPELLANT

Vs

Gulab Singh and Others
 Braham Prakash and Others RESPONDENT
Vs Satyender Singh and Others

Date of Decision : 22-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 136
Contract Act, 1872 — Section 29
Delhi Development Act, 1957 — Section 53B
Delhi Land Reforms Act, 1954 — Section 161A, 7
Land Acquisition Act, 1894 — Section 4
Limitation Act, 1963 — Section 14
Specific Relief Act, 1963 — Section 31

Citation : (2012) 129 DRJ 128

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sanjay Poddar, instructed by Dr. B.K. Dash, Ms. Navlin and Mr. Govind Kumar, in RFA OS 28 and 29/2011 and Mr. J.K. Jain in RFA OS 33/2011, for the Appellant; Sandeep Agarwal and Mr. K.A. Singh, Advocates for R-1/ Gulab Singh, S.D. Dixit, Advocate for R-2/ Rajbir Singh, Yashraj Singh Deora, Advocate for R-3/ Ramesh Kumar and Mr. Kirti Uppal instructed by Mr. Vaibhav Sharma, Advocate for R-4/ Mahesh Kumar in RFA (OS) 28 and 29/2011 and Mr. Sanjay Poddar instructed by Dr. B.K. Dash, Ms. Navlin and Mr. Govind Kumar, Advocates for R-1 to R-3 i.e. Satyender Singh, Jitender Singh and Yudhister Singh, Sandeep Agarwal and Mr. K.A. Singh, Advocates for R-6/Gulab Singh, Mr. S.D. Dixit, Advocate for R-7/ Rajbir Singh, Kirti Uppal instructed by Mr. Vaibhav Sharma, Advocate for R-8/ Mahesh Kumar and Mr. Yashraj Singh Deora, Advocate for R-9/ Ramesh Kumar in RFA (OS) 33/2011, for the Respondent

Judgement

Pradeep Nandrajog, J.—We preface our decision by extracting certain pertinent observations made by the Supreme Court in the decision reported as Dalip Singh Vs. State of U.P. and Others, :

1. For many centuries, Indian society cherished two basic values of life i.e., "Satya" (truth) and "Ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

2. In *Hari Narain Vs. Badri Das*, this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations:

It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is, entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked.

2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall,

the yarn of the warp also collapses; and there is no fabric left.

3. We have to undertake such a voyage in the instant appeals. As would be noticed from the facts hereinafter recorded, the parties have litigated for over 50 years and have not only consumed precious judicial time; but have resorted to adopting convenient stand, as per the situation in which they found themselves, oblivious of what they had spoken earlier. The siblings of late Ram Chander have been firstly fighting the Government, their uncle Chain Singh and inter-se themselves for over 50 years.

4. Though the fight pertains to many properties, the main bone of contention between the parties is a piece of land ad-measuring 312 sq.yd. bearing Municipal No. 17, Ashok Vihar Community Centre, Delhi. This land was allotted to Hari Singh, father of the appellants in RFA(OS) 28/2011 and RFA(OS) 29/2011 by DDA vide allotment letter dated 30.07.1982, Ex. D-1. It is not in dispute that this allotment was made pursuant to a settlement between Hari Singh and DDA in Civil Writ No. 376/1973 titled Gulab Singh and Ors. v. DDA and Ors. Land comprised in Khasra No. 533/1, Village Wazirpur, Delhi ad-measuring 13-02 bigha was the subject matter of litigation in the said writ petition where 30 writ petitioners including Hari Singh, his brothers and their uncle Har Chain Singh were staking claim to the land as owners and the stand taken by the respondents in the writ petition was that the land was under the title of the Gaon Sabha and upon acquisition the compensation was assessed in the name of the Gaon Sabha of the village.

5. A word needs to be spoken pertaining to the history of litigation between the biswaders of village Wazirpur which included the 3 sons of late Ram Lal and the Gaon Sabha of the village with respect to Khasra No. 533 ad-measuring 23 bigha and 10 biswa. It is not in dispute between the parties that as per the Land Revenue Law in force and applicable to the land in village Wazirpur, prior to the promulgation and enforcement of the Delhi Land Reforms Act, 1954, the land was banjar qadim i.e. waste land and the ownership was recorded as Shamlat Deh i.e. common village land. The land was thus not a part of the holding of any proprietor. With the promulgation and enforcement of the Delhi Land Reforms Act 1954, by virtue of Section 7 of the Act, treating the land as waste land, it is the stand of the Government that the land stood automatically vested in the gaon sabha by operation of the Act.

6. A suit registered as Suit No. 339/1958 titled Munshi and Ors. vs. Onkar Nath Seth and Ors. " was filed seeking partition of the 23 bigha and 10 biswa land comprised in Khasra No. 533. The Gaon Sabha as well as the Central Government were not impleaded as a party in the suit, and the 33 parties either plaintiffs or defendants, but the suit being one for partition, each having the status of a plaintiff as also that of a defendant, entered into a settlement and the learned Civil Judge Sh. C.D. Vasisht, was misled into passing a decree on January 14, 1959, and as per the decree the 23 bigha and 10 biswa land was partitioned by allocating specific shares to the 33 litigating parties. It be highlighted that 3

out of the 33 litigating parties were Ram Chander, Har Chain Singh and Raghunath Singh, the sons of Late Ram Lal.

7. At this stage the relationship of the litigating parties may also be brought out because we feel that this would facilitate an understanding of our present decision by whosoever reads the same. The pedigree table is as under:-

Sh. Ram Lal (Deceased father)

I (son)

II (son)

III (son)

Sh. Ram Chander

Sh. Harchain Singh

Sh. Raghunath

Died on 15.09.1960

Died on 13.11.2004

1. Hari Singh ? (Died on 29.05.2003)

1. Satyender

1. Braham Parkash

2. Jitender

2. Ved Parkash

3. Yudhister

3. Om Parkash

4. Anita

4. Hari Parkash

5. Sangeeta

5. Krishna Parkash

6. Shiv Parkash

2. Gulab Singh

3. Rajbir Singh

4. Ramesh Kumar

5. Mahesh Kumar

8. Thereafter, another suit registered as Suit No. 386/1959 was filed by 37

persons, whom we note are either the 33 persons who had filed Suit No. 339/1958 or the legal heirs of some of whom who had died. Challenge in the suit was to the vesting in the Gaon Sabha of 14 bigha and 16 biswa land out of 23 bigha and 10 biswa land comprised in Khasra No. 533. A declaration was prayed for that the vesting order was illegal. The suit was disposed of by Shri Gian Inder Singh, learned Civil Judge, Delhi vide decree dated March 17, 1961 Ex. DW-4/D-2, and the declaration sought was granted.

9. It may be highlighted that in the suit certain other lands comprised in other khasras being vested in the Gaon Sabha were also questioned and qua them, no relief being granted, the plaintiffs of the suit filed an appeal which was disposed of pursuant to a compromise between the appellants/plaintiffs and the Gaon Sabha by Shri K. S. Sidhu, learned Senior Sub Judge, vide decree dated June 07, 1963, Ex. DW-4/D-3. The Gaon Sabha surrendered its claim to the remaining land as well.

10. Since as per the mandate of Section 161-A of the Delhi Land Reforms Act 1954, in a suit pertaining to Gaon Sabha property, apart from the Gaon Sabha even the Union of India has to be impleaded as a party, and since Union of India was not impleaded as a party, Union of India challenged the decree dated June 07, 1963 by and under CR No. 154/1969 in this Court and urged that only the Revenue Courts had jurisdiction to adjudicate the claim, a plea which was accepted by this Court as per the decision dated December 24, 1976, Ex. D-1/6, in view of the law declared by the Supreme Court in the decision reported as Hatti Vs. Sunder Singh, .

11. The obvious result was that the 14 bigha and 16 biswa of land, or for that matter the entire 23 bigha and 10 biswa land, was required to be treated as Gaon Sabha land.

12. On November 13, 1959 a notification was issued u/s 4 of the Land Acquisition Act 1894, inter-alia proposing acquisition of 13 bigha and 2 biswa land comprised in Khasra No. 533. Followed by a declaration u/s 6 of the Act. Before the acquisition could be completed a writ petition was filed in this Court which was registered as WP(C) No. 376/1973, having 30 writ petitioners, including Har Chain Singh, Hari Singh, his 4 brothers and Raghunath i.e. the two sons of late Ram Lal and his five grandsons. In the said writ petition the decree passed by Shri C.D. Vasisht was relied upon and a site plan, annexed as Annexure-F was filed showing possession of the 30 writ petitioners.

13. Highlighting that with consent of parties, in the three suits filed, which have given birth to the three captioned Regular First Appeals, the writ pleadings and annexures were required to be read in evidence, it needs to be brought out, since it would be relevant to the claim of Har Chain Singh, that the site plan Annexure-F showed a portion stated to be that under possession and ownership of Har Chain Singh and in respect thereof it is the claim of Har Chain Singh that when Hari Singh entered into a settlement with DDA in the writ petition and

under the settlement was allotted Plot No. 17, Ashok Vihar, Community Centre, Delhi, he bargained even with respect to said land.

14. There was a pressing need to establish a police station in the area and as per the Zonal Plans prepared by DDA, 688 sq.yd. land comprised in Khasra No. 533, which we note subsequently came to be treated with a Min number, due to titamma being cut i.e. the Khasra being subdivided, as Khasra No. 533/1, was earmarked as the site of the building to house the Police Station. An interim stay had been obtained by the writ petitioners of WP(C) No. 376/1973. Hari Singh moved an application which was registered as CM No. 3577/1982, in which Hari Singh pleaded that he had settled the matter with DDA pertaining to his share in the disputed lands, which according to him pertained to the 688 sq.yd. land needed for the police station, and thus prayed that the interim stay be vacated qua said land. Taking cognizance of the application, vide order dated October 05, 1982, the interim stay was vacated in terms of the order as under:

Stay order dated 19.03.1981 is vacated. Earlier, stay order passed on 09.05.1973 is modified to the extent that the respondent shall be at liberty to carry on the construction of the police station on the small piece of land belonging to the petitioners. As shown in the plan annexed to CM No. 656/81, respondent can construct the wall at point _G" and _H". CM No. 3577/82 is disposed of.

15. Subsequently, vide letter dated 30.07.1982, Ex. D-1, DDA allotted Plot No. 17, Ashok Vihar Community Centre to Hari Singh at a premium of Rs. 3,27,600/-. On payment being made by Hari Singh, possession of the land was given to Hari Singh on 19.10.1982 vide possession letter Ex. D-2.

16. Har Chain Singh, filed an application which was numbered as CM No. 5921/1982 in the writ petition challenging the said land being allotted to Hari Singh alone and staked a claim to be part owner of the land ad-measuring 688 sq.yd. Filing a reply to the application, Hari Singh claimed that the said 688 sq.yd. land belonged to all the five sons of Ram Chander, but stated that he was carrying on business as the sole proprietor of M/s. Capital Chemicals from the land in question. Since the site plan Annexure-F filed along with the writ petition was admittedly showing that qua part of the land comprised in Khasra No. 533 and relatable to the 688 sq.yd. land belonged to Har Chain Singh, it was pleaded that the site plan was incorrectly prepared by the draftsman Kanhaiya Singh. A supporting affidavit filed along with the reply by Gulab Singh also affirmed as aforesaid.

17. Vide order dated April 20, 1983, Ex. D-1/43, the application filed by Har Chain Singh was rejected and challenge thereto by Har Chain Singh before the Supreme Court remained unsuccessful when SLP (Civil) No. 9860/1983 filed by him was dismissed by the Supreme Court vide order dated September 12, 1983, Ex. D-6/A.

18. The writ petition was finally disposed of vide order dated February 03, 1995

by granting relief to the writ petitioners as prayed for except in respect of 688 sq.yd. land, which land, by an express agreement was surrendered by Hari Singh, and in lieu thereof he was granted perpetual lease-hold rights of Plot No. 17, Community Centre, Ashok Vihar, New Delhi.

19. With this litigious background of the various litigations fought, in which, it would be apparent that the five sons of Ram Chander i.e. Hari Singh, Gulab Singh, Rajbir Singh, Ramesh Kumar and Mahesh Kumar were united and only Har Chain Singh, their uncle had taken a somewhat discordant note with respect to 688 sq.yd. land, but otherwise was playing music in harmony with his nephews, it is time for us to narrate the disputes raised in the three suits which have been disposed of by the judgment under challenge. Two disputes raised by Gulab Singh who was the plaintiff of Suit No. 1099/1983 and Suit No. 1138/1987 and one by Har Chain Singh, who was the plaintiff of Suit No. 2996/1988 have been decided.

20. We firstly put, in tabular form, followed by reproducing the relief claimed in the two suits by Gulab Singh and the suit filed by Har Chain Singh. The graphic picture in a tabular form, with the suit number and appeal number, put in opposite to each other, as also the litigating parties, would be as under:-

Parties in Suit No. 1099/83

Parties in RFA (OS) No. 29/2011

Gulab Singh ?

Satyendra Singh & Ors ?

Plaintiff

Appellants

Vs.

Lrs. of Hari Singh

1. Hari Singh (D), Through LRs

Vs.

2. Rajbir Singh,

1. Gulab Singh

3. Ramesh Kumar,

2. Rajbir Singh

4. Mahesh Kumar

3. Ramesh Kumar

?Defendants

4. Mahesh Kumar

5. Smt. Anita

6. Smt. Sangeeta

?Respondents

Relief:

i. That a decree for partition by metes and bounds and separate possession and enjoyment of the 1/5th share of the suit properties described in para 2(a) and (b) and Para 5 above, be passed in favor of the plaintiff and against the defendants.

ii. That a decree for the rendition of the accounts of the income and expenditure of the said properties from 1st of May, 1981 up to the date of payment of the amount found due to the plaintiff be also passed in favor of plaintiff and against the defendant No. 1.

Parties in Suit No. 1138/87

Parties in RFA (OS) No. 28/2011

Gulab Singh ?Plaintiff

Satyendra Singh & Ors

Vs

? Appellants

1. DDA, though its Secretary

LRs. of Hari Singh

2. Vice Chairman, DDA

Vs

3. Dy. Director (Commercial) Lease Deed Section, DDA

1. Gulab Singh

4. Hari Singh (D) Through LRs

2. Rajbir Singh

5. Rajbir Singh

3. Ramesh Kumar

6. Ramesh Kumar

4. Mahesh Kumar

7. Mahesh Kumar

5. Smt. Anita

?Defendants

6. Smt. Sangeeta

7. DDA

8. Vice Chairman, DDA

9. Dy. Director (Com)

..Respondents

Relief:

a. Decree for declaration in favor of the plaintiff and against the defendant No. 1 to 3 calling upon them to reopen the case of allotment of the suit plot No. 17, Community Center, Central Market, Ashok Vihar, Delhi and to cancel the lease deed dated 26.09.1984 in the name of Sh. Hari Singh defendant No. 4.

b. Decree for mandatory injunction in favor of the plaintiff and against the defendant No. 1 to 3 directing them to execute a fresh lease deed of the plot No. 17, Community Center, Central Market, Ashok Vihar, Delhi in the name of Sh. Gulab Singh, Hari Singh, Rajbir Singh, Ramesh Kumar, and Mahesh Kumar sons of late Sh. Ram Chander, the plaintiff and the defendant No. 4 to 7 as member of HUF M/s Hari Singh and Bros.

Parties in Suit No. 2996/88

Parties in RFA (OS) No. 33/2011

Harchain Singh ?Plaintiff

Braham Parkash & Ors.

Vs.

? Appellants

1. DDA, though its Chairman

Vs.

2. Dy. Director (Com.) Lease Deed Section, DDA

1. Satyender Singh

3. Mahesh Kumar

2. Jitender Kumar

4. Ramesh Kumar

3. Yudhister Singh

5. Rajbir Singh
4. Anita
6. Hari Singh (D) Through LRs
5. Sangeeta
7. Gulab Singh
6. Gulab Singh
8. Raghunath Singh
7. Rajbir Singh

?Defendants

8. Mahesh Kumar
9. Ramesh Kumar
10. Raghunath
11. DDA

...Respondents

Relief:-

It is, therefore, respectfully prayed that your Lordship may graciously be pleased to declare the lease deed with respect to plot No. 17, Ashok Vihar in the layout plan of Community centre, Wazirpur, Residential Phase I, Delhi, measuring 312 sq. meters executed exclusively in favor of the defendant No. 6 and registered as document No. 3492 in Addl. Book No. I Volume No. 4357 on pages from 153 to 158 on 26.9.1984, as illegal and void by passing a decree of declaration and direct the defendant No. 1 and 2 to execute and get registered a fresh lease deed with respect of the aforesaid plot No. 17 in favor of the plaintiff as well to the extent of 1/3rd share by passing a decree of mandatory injunction, with cost of the suit.

21. The subject matter of Suit No. 1099/1983, in which partition was claimed by Gulab Singh, praying that each son of Hari Singh be declared to be the owner of 1/5th share in the properties, as per pleadings in paragraphs 2 and 5 sought partition of the following:

- 2(a) -House No. 297, Wazirpur
- 2(b) -520 sq yds, Wazirpur (Plot No. 479)
- 2(c) -688 sq yds, Wazirpur
- 2(d) -615 sq yds Wazirpur
- 2(e) -Acquired agricultural land - compensation received and distributed by 5

brothers in equal shares

2(f) -Acquired agricultural land

5(a) -Jaibabad property

5(b) -Ashok Vihar property

5(c) - Rs. 80,000/-

5(d) - Rs. 110/- lying in bank account

5(e) -Right of alternate plot allotted in lieu of the acquisition of land at Sl. No. 2(e) and 2(f) above pursuant to Award No. 1231 and 1329.

22. A word needs to be spoken. Claim to property at serial No. 2(c) is an obvious misnomer because said property was already released and in lieu thereof the property at Ashok Vihar, at Sl.No. 5(b) was allotted to Hari Singh. Similarly, the five brothers had already received the compensation in equal share when agricultural lands as per 2(e) and 2(f) were acquired and the question of any partition relating thereto was redundant. The actual claim was as per 5(e) for the reason as per the Land Acquisition Policy in Delhi, the owners of agricultural lands which are acquired for planned development of Delhi are entitled to a residential plot being allotted at pre-determined rates.

23. The suit was resisted by Hari Singh who filed a separate written statement and also by Rajbir Singh, Ramesh Kumar and Mahesh Kumar who were impleaded as defendants No. 2 to 4 and who filed a brief joint written statement affirming the stand taken by Hari Singh. Inter-alia, it was pleaded as under:

a. Only properties mentioned in sub-paras 2(a), (d) (e) and (f) of the plaint were inherited by the parties, but the land mentioned in sub-paras 2(b) and (c) were not inherited as those lands were vested in the gaon sabha during the life time of Late Shri Ram Chander and no compensation for such land was claimed by any of the parties to the suit and the claim was made and established by the Pradhan of the gaon sabha alone.

b. That physical possession of the land measuring 688 sq. yds mentioned in para 2(c) has throughout been with Hari Singh since 1959 onwards, who had been carrying on business as the sole proprietor under the name and style M/s. Capital Chemicals.

c. That property at sub-para 2(a) stands partitioned and in respect of properties at paras 2(e) and (f), the brothers have received the compensation individually and separately from the Land Acquisition Collector. That the HUF came to an end prior to September 1981. After all the joint properties had been orally partitioned by metes and bounds and, therefore, thereafter there was no question of rendition of accounts by anyone to each other nor the defendant No. 1 was obliged qua any act in relation to the suit properties. Neither the plaintiff nor defendants 2 to 4 have a right, interest or title over the property bearing No. 17,

Ashok Vihar Community Centre Delhi and all the parties to the suit had executed a registered relinquishment deed dated 16.11.1981 (Ex. D-1) in favor of Hari Singh in respect of the land comprised in Khasra No. 533, Village Wazirpur, Delhi.

d. The plot at 17, Ashok Vihar Community Centre Delhi is the property solely belonging to Hari Singh, who has acquired the same from his own resources and raised constructions thereon from his own funds. None of the parties to the suit have any interest in the same.

e. As far as the agricultural land measuring 15-8 bigha situated at Jaibabad is concerned, at the family partition, the same fell to the share of defendants No. 2 to 4 with each having 1/3rd share therein.

f. That at the oral partition between the five brothers which took place somewhere prior to September 1981, property bearing No. 479, Shiv Market, Wazirpur and land in question from a part of Khasra No. 533 was given to the defendant No. 1, and a land in Rithala was given to Gulab Singh from where he is running his business.

24. Thus, it can safely be said that Hari Singh, Rajbir Singh, Ramesh Kumar and Mahesh Kumar took a united stand against Gulab Singh.

25. Now, the reason for our preamble statement. When it came to fighting the Gaon Sabha, it was the common stand of Hari Singh and his three brothers Rajbir Singh, Ramesh Kumar and Mahesh Kumar that the entire land to which a claim was staked by the five brothers in WP(C) No. 376/1973 was not Gaon Sabha land. In the written statement filed, a contrary stand was taken that the land was Gaon Sabha land and that Hari Singh gave up his possessory rights qua the land under the settlement when DDA agreed to allot Plot No. 17, Community Centre, Ashok Vihar to him. Similarly, as we have noted herein above, when Har Chain Singh filed CM No. 5921/1982 in WP(C) No. 376/1973 questioning Plot No. 17, Community Centre, Ashok Vihar being allotted to Hari Singh alone, Gulab Singh had deposed to an affidavit in support of the reply filed to the application by Har Chain Singh pleading that 688 sq.yd. land in question was in the exclusive possession of Hari Singh who was carrying on business there from as the sole proprietor of M/s. Capital Chemicals. But in the plaint, pleadings to the contrary were made. It is apparent that the five brothers have been taking stand as per convenience of time.

26. It needs to be highlighted that in the plaint filed by him, Gulab Singh has spoken not a word about the registered relinquishment deed dated November 16, 1981, Ex. D-1 and has not sought cancellation thereof.

27. In the replication filed by Gulab Singh, controvert the averments made in the written statement and reiterating the averments in the plaint, with respect to the relinquishment deed Ex. D-1, Gulab Singh pleaded as under:

The area allotted to Shri Ram Chander, father of the parties hereto along with his brothers S/Shri Raghunath Singh and Harchain Singh under the judgment and

decree passed in civil suit No. 338 of 1958 decided by Shri C.D. Vashisht, the then Sub Judge, Delhi out of the land of Khasra No. 533 comes to 3285 square yards forming part of plot Nos. 533/2, 7, 15, 17, 28 and 33; out of which the share of Shri Ram Chander comes to 1095 sq. yards only; whereas in the relinquishment deed the area is stated as 1639 sq. yards;

2. Secondly in his reply dated 7.1.1983 to the C.M. application No. 5921 of 1982 of Shri Harchain Singh in civil writ No. 376 of 1973 (Annexure XIII to the plaint) Shri Hari Singh, defendant No. 1 has categorically admitted that the petitioners 1 to 5 (parties hereto) are the sole owners and in possession of the portion marked red in the plan attached, as Annexure A to the said reply (copy of which is Annexure XIV to the plaint). The plot No. 17-Ashok Vihar Community Centre, was allotted to the parties hereto in lieu of this very red portion shown in Annexure XI to the plaint.

3. Thirdly after 16.11.1981 in none of the application and/or replies filed by Shri Hari Singh, Defendant No. 1 in the aforesaid writ petition, it has been alleged by him that the plaintiff and the defendants 2 to 4 have relinquishment their right and interest in the said property in his favor by virtue of the said deed of relinquishment dated 16.11.1981, rather he has been alleging that he along with his brothers i.e. the plaintiff and defendants Nos. 2 to 4 are the owners in possession of the said property.

4. Fourthly, after the execution of the alleged deed of relinquishment Shri Hari Singh has not moved any application in the aforesaid writ petition claiming/ alleging therein that on account of the said deed of relinquishment he has become the absolute owner of the suit land / property and that the name of his brother be struck off form the record. Rather the latest application dated 18.7.1983, (being C.M. No. 2356 of 1983) which has been moved by him along with his brothers, defendants Nos. 2 to 4 hereto and Shri Raghunath Singh in the aforesaid Civil Writ No. 376 of 1973, goes to show that the parties hereto continue to be the owners of land subject matter of the writ petition.

5. Fifthly, in the deed of the relinquishment detailed description of the various properties built and/or unbuilt held by the H.U.F. have not been specified, rather the area of the land is mentioned as being 1639 sq. yards which area was never owned by the H.U.F.

28. On the pleadings of the parties, following 8 issues were settled in Suit No. 1099/1983:

1. Has the Joint Hindu Family of the parties disrupted as a result of partition in the year 1972-73 with respect to properties other than that mentioned in Para 2(d) of the plaint? If so, to what effect? (Onus objected to).

2. Does the plot over which the business Capital Chemicals is being operated belong to the Hindu Undivided Family of the parties? If so, to what effect?

3. Is the relinquishment deed executed by the plaintiff with regard to the plot

where Capital Chemicals business is being operated not binding on the plaintiff for the reasons mentioned in the plaint? Is so, to what effect?

4. Do the properties mentioned is sub-Paras (b) and (e) of Para 5 of the plaint belong to the Hindu Undivided Family of the parties?

5. In case issue No. 1 is not proved, is the suit for partition not maintainable?

6. What is the value of the suit for purposes of court fee and jurisdiction?

7. Is the plaintiff entitled to a decree for accounts?

8. Relief.

29. Probably in view of the stand taken in the written statement filed in Suit No. 1099/1983, Gulab Singh was led to file another suit registered as Suit No. 1138/1987, in which the relief sought by him, as per prayers made in the suit, has been noted by us in para 20 above.

30. Needless to state, in the said suit, stand taken by Hari Singh was in conformity with the written statement filed by him in the previous suit. But the other three brothers i.e. Rajbir Singh, Ramesh Kumar and Mahesh Kumar started questioning Hari Singh's ownership qua Property No. 17, Ashok Vihar Community Centre, Delhi and pleaded that the release deed Ex. D-1 was inoperative. On the pleadings of the parties, in said Suit No. 1138/1987, following issues were settled:

1. Whether the plaintiff had 1/3rd share in the land of plot No. 533/1 in Village Wazirpur, Delhi?

2. Whether the plaintiff and defendants No. 3 to 8 admitted; and depicted their respective shares in above land in CW 376/73 and site plan filed therewith respectively.

3. Whether defendant No. 6 fraudulently and dishonestly surrendered the land of Khasra No. 533/1 to defendants 1 and 2, including the share of the plaintiff and other defendants to get the allotment of plot No. 17 in Ashok Vihar Community Centre only in his name?

4. Whether the defendant No. 6 illegally got the lease of plot No. 17 in Ashok Vihar Community Centre, Delhi, executed from DDA exclusively in his name?

5. Whether the plaintiff is entitled to have share in plot No. 17 aforesaid?

6. Whether the lease of plot No. 17 mentioned in Para 28 of the plaint is liable to declared as illegal and null and void?

7. Whether the DDA is liable to execute a fresh lease deed of plot No. 17 aforesaid in favor of the plaintiff and defendants No. 3 to 8 as per their share in the land of Khasra No. 533/1.

8. Whether the suit is within time?

9. Whether the suit discloses cause of action?

10. Whether the plaintiff has locus standi to challenge the transfer of the lease hold rights by President of India in favor of Defendant No. 6 for the consideration mentioned therein?

11. Whether the plaintiff is estopped from filing the suit, as to his knowledge construction was made by Defendant No. 6 on the plot in suit and the plaintiff knowing all this stood by as alleged in para 5 of preliminary objection of written statement of defendant No. 6?

12. Whether the suit for setting aside the lease deed granted in favor of Defendant No. 6 by President of India and for relief of injunction claimed by the plaintiff for the execution of lease deed about 1/3rd share in his favor is maintainable without making Union of India as party?

13. Whether the suit against the DDA is maintainable without service of notice u/s 53-B of Delhi Development Act?

14. Whether the decree passed by Shri K.S. Sidhu, Senior Sub-Judge, Delhi referred to in para 8 of the plaint, holding that land in question did not vest in Gaon Sabha, was without jurisdiction? If so, what is its effect?

15. Whether the plaintiff was in possession of land, which was given by Defendant No. 6 for purposes of construction of Police Station?

16. Whether the Defendant No. 6 had set up a factory and was alone in possession of land which he surrendered to the Union of India for construction of Police Station?

17. Relief.

31. The next year i.e. in the year 1988, Har Chain Singh filed a Suit which was registered as Suit No. 2996/1988, in which the relief sought as per prayer made, has been noted by us in para 20 above. The claim of Har Chain Singh was disputed by the five sons of late Ram Chander and even the bar of limitation was raised. On the pleadings of the parties, the following issues were settled:

1. Whether the plaintiff had 1/3rd share in the land of Plot No. 533/1 in Village Wazirpur, Delhi?

2. Whether the plaintiff and defendant No. 3 to 8 admitted; and depicted their respective shares in above land in CW 376/73 and site plan filed therewith respectively.

3. Whether defendant No. 6 fraudulently and dishonestly surrendered the land of Khasra No. 533/1 to defendants 1 and 2, including the share of the plaintiff and other defendants to get the allotment of plot No. 17 in Ashok Vihar Community Centre only in his name?

4. Whether the defendant No. 6 illegally got the lease of plot No. 17 in Ashok

Vihar Community Centre, Delhi, executed from DDA exclusively in his name?

5. Whether the plaintiff is entitled to have share in plot No. 17 aforesaid?

6. Whether the lease of plot No. 17 mentioned in para 28 of the plaint is liable to declared as illegal and null and void?

7. Whether the DDA is liable to execute a fresh lease deed of plot No. 17 aforesaid in favor of the plaintiff and defendants No. 3 to 8 as per their share in the land of Khasra No. 533/1.

8. Whether the suit is within time?

9. Whether the suit discloses cause of action?

10. Whether the plaintiff has locus standi to challenge the transfer of the lease hold rights by President of India in favor of Defendant No. 6 for the consideration mentioned therein?

11. Whether the plaintiff is estopped from filing the suit, as to his knowledge construction was made by Defendant No. 6 on the plot in suit and the plaintiff knowing all this stood by as alleged in para 5 of preliminary objection of written statement of defendant No. 6?

12. Whether the suit for setting aside the lease deed granted in favor of Defendant No. 6 by President of India and for relief of injunction claimed by the plaintiff for the execution of lease deed about 1/3rd share in his favor is maintainable without making Union of India as party?

13. Whether the suit against the DDA is maintainable without service of notice u/s 53-B of Delhi Development Act?

14. Whether the decree passed by Shri K.S. Sidhu, Senior Sub-Judge, Delhi referred to in para 8 of the plaint, holding that land in question did not vest in Gaon Sabha, was without jurisdiction? If so, what is its effect?

15. Whether the plaintiff was in possession of land, which was given by Defendant No. 6 for purposes of construction of Police Station?

16. Whether the Defendant No. 6 had set up a factory and was alone in possession of land which he surrendered to the Union of India for construction of Police Station?

17. Relief

32. Since DDA was impleaded as defendant No. 1 and its Vice Chairman and Deputy Director (Lease) as defendants No. 2 and 3 respectively in Suit No. 1138/1987 filed by Gulab Singh in which he had attacked the lease-deed executed by DDA in favor of Hari Singh with respect to Plot No. 17, Community Centre, Ashok Vihar, New Delhi, the stand taken by DDA in the written statement filed would be relevant and is pithily highlighted in para 3 of the Reply on Merits

in the written statement, wherein it is pleaded:

.....it is stated that it was Sh. Hari Singh, who was allotted a plot bearing No. 17, community Centre, Ashok Vihar, Delhi a his land was utilized for the construction of a police station. Sh. Hari Singh alone was found to be in possession of the land against which the plot was allotted to him. It would not be out of place to mention that Sh. Gulab Sing, the present plaintiff had moved an application to the answering defendants for inserting his name (Gulab Singh) in lease deed to be executed in favor of Late Sh. Hari Singh. On receiving this application the matter was thoroughly investigated by the legal department and was found that the present plaintiff along with his brothers barring Mr. Hari Singh had signed a relinquishment deed in favor of Sh. Hari Singh. The said Relinquishment deed has duly been registered with the Sub - Registrar's office. Therefore, Sh. Hari Singh emerged as the only person, who could be allotted the above stated land...

33. As per orders passed, the three suits were consolidated and evidence was led in Suit No. 2996/1988.

34. Gulab Singh appeared as his witness as PW-1 and inter-alia deposed that his father Ram Chander had taken the compensation in respect of the land mentioned in paras 2(e) and 2(f) of Suit No. 1099/1983. But, on being cross-examined he admitted that the compensation was received by all the five brothers in equal shares from the Land Acquisition Collector. Qua Hari Singh's possession, and the act of Hari Singh carrying on business as the sole proprietor of M/s. Capital Chemicals from 688 sq.yd. land in lieu whereof Plot No. 17, Community Centre, Ashok Vihar was allotted to Hari Singh, contrary to his admission contained in the affidavit filed along with the reply to CM No. 5921/1983 filed by Har Chain Singh in WP(C) No. 376/1973, he deposed to the contrary by stating that the business was joint family business, but admitted having no record to prove the same. He admitted that Hari Singh sustained head injury during the police action. He also admitted the suggestion that Hari Singh was taken into custody by the police and was subsequently released on bail and that the surety bond was furnished by Gulab Singh i.e. he himself. His deposition shows that he was thoroughly confused regarding the area of the land comprised in Khasra No. 533/1 falling to the share of their father late Ram Chander. In the examination-in-chief, he mentioned the area as 1800 sq. yd. contrary to the area being referred to as 1934 sq.yd. in the plaint and 1095 sq.yd. in the replication. He admitted the execution of the relinquishment deed dated November 16, 1981, Ex. D-1 (also exhibited as Ex. PW-1/DA). At the first instance, he denied various decisions of the Courts at the earlier litigations to which we have adverted to herein above, but admitted subsequently to the same having been passed.

35. Relevant would it also be to highlight that he sought to prove a registration under the Shop Establishment Act i.e. Ex. D and a Sale Tax Registration Certificate pertaining to the business of M/s. Gulab Singh and Sons and attempted to establish that through the sole proprietary firm M/s. Gulab Singh

and Sons he was in possession of the 688 sq.yd. land, but forgot that the certificates pertained either to Property No. 479 Wazirpur or to Property No. 456/5 Wazirpur. However, he admitted that the Municipal License dated May 02, 1970 Ex. DW-6/A was in the name of M/s. Capital Chemicals.

36. It is apparent that Gulab Singh was making inchoate statements and was roving and fishing in the turbulent waters hoping that by fluke or by chance he may net a fish.

37. Rajbir, Mahesh and Ramesh attempted to wriggle out of their admissions in favor of Hari Singh in the written statement filed by seeking to amend the written statement filed and withdraw the admissions in Suit No. 1099/1983, which was denied to them when the application under Order 6 Rule 17 CPC filed by them was dismissed vide order dated April 04, 1995 against which appeals filed were dismissed. In spite thereof the three brothers filed affidavit by way of examination-in-chief, taking a stand contrary to their pleading in the written statement and Mahesh sought to file fresh documents, contents whereof would be contrary to his stand taken in the written statement, and needless to state, vide order dated July 10, 2005, the three brothers were not permitted to either lead said evidence and Mahesh was not allowed to bring on record the documents on record as per order dated November 03, 2009.

38. Gulab Singh, wanting to take advantage of the aforesaid, attempted to prove the same very documents, which attempt was negated vide order dated May 21, 2010.

39. As regards Har Chain Singh he led evidence that vide Ex. D-1/44 he had sought correction of the revenue record pertaining to 688 sq.yd. land comprised in Khasra No. 533/1 Village Wazirpur by seeking to include his name as a co-bhumidar thereof, which application was dismissed. Against which Har Chain's plea before the Revenue Assistant was dismissed vide order dated September 23, 1988 against which, vide order dated March 20, 1989, Ex. PW-1/X, Har Chain's Revision Petition was disposed of by the Financial Commissioner with the matter being remanded to the Tehsildar to take a fresh decision.

40. What is the fate of the matter on remand? There is no evidence on record.

41. Vide impugned judgment and decree dated January 07, 2011 suit filed by Har Chain Singh has been held to be barred by limitation on the reasoning as under:

a. Suit No. 2996/1988 filed by Harchain Singh was filed on November 28, 1988 challenging the perpetual lease-deed dated September 26, 1984 and being filed beyond three years when the lease-deed was executed, claim would be barred by Limitation, in as much as per the learned Single Judge the cause of action to seek the reliefs in the suit arose on September 26, 1984. The learned Single Judge has noticed that after Har Chain's application in WP(C) No. 376/1973 was dismissed on April 20, 1983 he had litigated further till he lost before the

Supreme Court on November 29, 1983 and attempt by him to have the revenue entry corrected had failed. The learned Single Judge has noted that there was no evidence as to what happened after the learned Financial Commissioner had remanded the matter for fresh adjudication as per his order dated March 20, 1989.

b. Denying benefit of Section 14 of the Limitation Act 1963, the learned Single Judge has held that said benefit would be available to a party litigating before a wrong Forum on the same cause of action. The learned Single Judge accordingly has held that

Har Chain's contention that since he was seeking correction of the revenue entry before the Revenue Authorities, time spent therein had to be excluded while computing limitation had no legal foundation.

42. Highlighting that the learned Single Judge has not discussed the evidence and the rival versions with respect to the correctness or otherwise of the plan annexed to WP(C) No. 376/1973 as per which Har Chain was pleading an admission by the opposite group that part of 688 sq.yd. land which was surrendered for police station to be erected was owned by him, and the sons of Ram Chander claiming that the draftsman had incorrectly drawn the site-plan which was annexed with the writ petition.

43. The learned Single Judge has decreed both the suits filed by Gulab Singh and ordered partition of the properties mentioned in paras 2(b) and (5) of Suit No. 1099/1983. It has been held by the learned Single Judge that the release-deed dated November 16, 1981 was executed by Gulab Singh, Rajbir Singh, Ramesh and Mahesh for purposes of seeking allotment of alternative plot from DDA in favor of Hari Singh, who received the same for the benefit of all the five brothers and thus the property was a joint property.

44. In taking the said view, the learned Single Judge has opined that the release-deed is vague. It be highlighted that though not expressly stated in the judgment, a perusal of the discussion on the subject would reveal that the learned Single Judge had in mind Section 29 of the Indian Contract Act. This can be the only legal premise on which the learned Single Judge has opined that it hardly mattered whether Gulab Singh specifically challenged the document or not. The learned Single Judge has also been influenced by the fact that in reply to CM No. 5921/1982 filed by Har Chain Singh, Hari Singh had pleaded that the 688 sq.yd. land belonged to all five brothers. This admission has been held binding Hari Singh.

45. The decision has not discussed the effect of Gulab Singh filing an affidavit in reply to CM No. 5921/1982 in which he categorically deposed that his brother Hari Singh was in exclusive possession of the 688 sq.yd. land since 1959 and was carrying on business there from as sole proprietor of M/s. Capital Chemicals. The decision also does not discuss the admissions by Rajbir, Mahesh and Ramesh in the written statement filed by them, and they being prevented from

withdrawing the admissions, that at a family partition land ad-measuring 15 bigha and 8 biswa at village Jaibabad U.P. in the names of Gulab, Ramesh and Mahesh stood allotted to Rajbir, Mahesh and Ramesh and the effect of the latter two having sold their one-third share each and hence said part of the property no longer available for being partitioned. Their admission that Hari Singh alone was the owner of Plot No. 17, Community Centre, Ashok Vihar, New Delhi has not been taken note of. Pertaining to premium in sum of Rs. 3,27,600/- paid by Hari Singh to DDA for acquiring perpetual lease-hold rights with respect to plot No. 17, Community Centre, Ashok Vihar and money spent on constructing a building thereon, the learned Single Judge has held that the funds came from HUF, but in what manner? The decision is silent. Admittedly, there is no evidence of the HUF having an income or the funds, except a sum of Rs. 80,000/- which the brothers admit was partitioned amongst them. We highlight that in spite thereof the impugned decree embraces even said sum of Rs. 80,000/-.

46. Thus, the Legal Heirs of Hari Singh and the Legal Heirs of Harchain Singh, being aggrieved by the common impugned judgment, have preferred the aforesaid appeals.

47. We commence our journey by examining the main question pertaining to the release-deed dated November 16, 1981, Ex. PW-1/DA. It reads as under:

Release Deed

This Agreement made this 16th day of November 1981 between Shri Hari Singh son of Late Ch. Ramchander of the one part, hereinafter known as the FIRST PARTY and Shri Gulab Singh, Shri Rajbir Singh, Shri Ramesh Kumar and Shri Mahesh Kumar, all sons of late Ch. Ramchander, all residents of village Wazirpur, Delhi - 110052 of the other part, hereinafter known as the SECOND PARTY.

Whereas there is a joint family property bearing Khasra No. 533 measuring 23 bighas and 10 biswas in village Wazirpur, Delhi.

AND WHEARAS the said Khasra No. 533 was mutually divided and partitioned between late Ch. Ramchander and other co-owners by virtue of judgment and decree passed in Civil Suit No. 339 of 1958 decided by Sh. C.D. Vashisht, Sub Judge, Delhi, and by virtue of the said decree a parcel of land fell to the share of late Ch. Ramchander and his sons arrayed above as First and Second party.

AND WHEARAS disputes and litigation ensued between the parties hereto with various Departments because of the acquisition proceedings initiated by the Delhi Development Authority and other Departments.

AND WHEARAS out of the total land of approximately 1639 sq.yds. which fell to the share of late Ch. Ramchander, an area of 1124 sq.yds. is hotly contested and disputed and there is a litigation going on with the Police Authorities and also with the Delhi Development Authority, who have been allotted that piece of land for construction of police station.

AND WHEARAS the First party, Shri Hari Singh, being the First son, Manager and Karta of the family has been looking after the family affairs and following up the litigation on behalf of the other family members. He was litigating with the Delhi Development Authority, Police Department at his own cost and expenses, and has spent considerable amount and furthermore he was carrying on his business in premises on a piece of land which was demolished in 1972 by the then SHO and his other sub-ordinate officers of Police Station, Sarai Rohilla, Delhi.

NOW THEREFORE IN WITNESS WHEREOF the IInd party do and each and every one of them doth hereby absolutely release and for ever relinquish their right and title if any to the said total land of 1639 sq.yds. which is now the absolute and exclusive property of the said Shri Hari Singh, First Party.

IN WITNESS WHEREOF the parties hereto have put their hands on the day, month and year first state above.

WITNESS:

(HARI SINGH) 1ST Party

RELEASEE

(GULAB SINGH) IInd Party

(RAJBIR SINGH) IInd Party

(RAMESH KUMAR)

IInd Party

(MAHESH KUMAR) IInd Party

RELEASORS.....

48. The vagueness found in the document by the learned Single Judge is premised on the fact that in the release-deed reference to the area released is 1639 sq.yd. The learned Single Judge has noted that the said area, was referred to in the release deed as comprised in Khasra No. 533. The decision notes that undisputably, in the said khasra number two plots ad-measuring 431 sq.yd. and 520 sq.yd. existed on which buildings were constructed and the plot ad-measuring 431 sq.yd. was partitioned amongst the five brothers and a share was assigned to the mother as well. Qua the plot ad-measuring 520 sq.yd., parties are not at variance that the entire property is tenanted and admittedly, rent is being collected by Hari Singh. The dispute is whether he is so doing in his individual capacity or as Karta of HUF. Suffice would it be to state that $431 + 520 + 688 = 1639$.

49. There is thus no vagueness in the document, if read in light of the surrounding evidence what is probablized is the fact that while executing the release deed, rather than mentioning 688 sq.yd. land being released, it got typed that the area released is 1639 sq.yd.

50. Now, if there is an ambiguity in a document, the recital comes into aid, and the recital in the document refers to Hari Singh litigating with DDA and the police department at his own cost and having spent considerable amount in said litigation and furthermore, carrying on business from the land in question i.e. land measuring 688 sq.yd. Just as bad grammar does not vitiate a deed, a typographic error or a mathematical error in adding up three figures, would not vitiate a deed, if on the error being spotted, there is intrinsic material in the document itself to rectify the same.

51. The decision does not discuss as aforesaid and the recital in the document. We do so and express our disagreement with the conclusion arrived at. We do not find any irreconcilable ambiguity in the document, much less of a kind attracting Section 29 of the Contract Act.

52. It is well-settled law that there is a presumption of a registered document being validly executed. A registered document would, therefore, prima facie, be valid in law. The onus of proof, thus, would be on a person who questions the same. There is a distinction between a void and a voidable document. A person is not required to seek cancellation of a document which is void, but he is required to seek cancellation of the document which is voidable. When a document is valid, no question can arise of its cancellation. Section 31 of the Specific Relief Act, 1963 refers to both void and voidable documents. It provides for a discretionary relief. Prem Singh and Others Vs. Birbal and Others, .

53. A suit for cancellation of an instrument is governed by Section 31 of the Specific Reliefs Act which reads as under:

31. When cancellation may be ordered.-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

54. In the decision reported as Vishwanath Bapurao Sabale Vs. Shalinibai Nagappa Sabale and Others, , the Supreme Court observed as under:-

21. We would proceed on the basis that respondent No. 1 has not been able to prove his contention that Shivappa executed an unregistered document in favor of Laxmibai.

The suit filed by Nagappa however was based on title. Once he proved his title the onus was on Laxmibai and consequently upon the appellant to prove that they started possessing adversely to the interest of Shivappa.

For the purpose of arriving at a finding as to whether appellant and Laxmibai perfected their title by adverse possession, the relationship of the parties may have to be taken into consideration. It must also be borne in mind that factum of execution of the documents being not in question, it was also expected that Bapurao and after his death Laxmibai would file a suit for cancellation of those documents in terms of Section 31 of the Specific Relief Act, 1963.

22. In Prem Singh and Others Vs. Birbal and Others, , this Court held:

20. If the plaintiff is in possession of a property, he may file a suit for declaration that the deed is not binding upon him but if he is not in possession thereof, even under a void transaction, the right by way of adverse possession may be claimed. Thus, it is not correct to contend that the provisions of the Limitation Act would have no application at all in the event the transaction is held to be void.

21. Respondent 1 has not alleged that fraudulent misrepresentation was made to him as regards the character of the document. According to him, there had been a fraudulent misrepresentation as regards its contents.

55. In the decision reported as Ramti Devi (Smt) Vs. Union of India (UOI), , the Supreme Court held that the recital of a document would be relevant with respect to an ambiguity therein. Further, the Supreme Court observed that to challenge a document which is a registered document, foundations have to be laid in the pleadings and thereafter, keeping in view the provisions of the Evidence Act, relevant and admissible evidence brought on record. It was opined that till a document, avoidance whereof is sought is got cancelled by a proper declaration, the registered document binds the parties.

56. In the decision reported as 1996 (7) SCC 766 Md. Noorul Hoda Vs. Bibi Raitunnisa and Ors., the Supreme Court observed that when the plaintiff seeks to establish a title to a property which cannot be established without avoiding the decree or an instrument the same stands as an insurmountable obstacle in his way, which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have the decree, instrument or contract cancelled or set aside or rescinded. It was opined that Section 31 of the Specific Relief Act, 1963 regulates suits pertaining to cancellation of an instrument, which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. A similar view has been expressed in the decision reported as 2000 AIHC 1981 (AP) Habeeba Begum Vs. Gulam Rasool.

57. We notice the observations of the learned Single Judge in the impugned judgment on the subject, which read as under:-

47. It was also sought to be argued that the 1983 suit was not maintainable since Gulab Singh had not firstly, disclosed the factum of existence of release

deed to which he was admittedly a party and, having known of its existence had not sought the requisite reliefs of declaration and cancellation of the release deed. In my opinion this argument is untenable for the reason that in so far as Gulab Singh is concerned his entire suit, i.e., 1983 suit, is cast on the basis that an HUF came into existence on demise of his father, and that the HUF had various properties within its fold which had not been partitioned including land admeasuring 688 sq. yds. It was Hari Singh, who, in his defence referred to release deed. In the replication Gulab Singh adverted to circumstances as to why the release deed was not legally efficacious, and in particular, was not meant to apply to the properties of the joint family including land admeasuring 688 sq. yds. Ordinarily no evidence would have been admissible to controvert or seek to vary the terms of the document. The document being in writing, ought to speak for itself, but as noticed above, the document is both vague and ambiguous and hence, one needed to look at the surrounding facts. Therefore, in these circumstances to suggest that the suit was not maintainable because Gulab Singh had not sought a declaration or cancellation of the release deed, in my view, is not sustainable. The document, in fact, as indicated by me above, became a pivotal part of Hari Singh's defence. The LRs of Hari Singh having failed, in my opinion, to prove the object and purpose for which the document was executed, cannot now seek to take advantage by propping up a plea that this Court cannot examine the defence in the absence of pleadings impugning release deed. There is though no doubt that release deed has been impugned in the replication filed by Gulab Singh once a defence based on it was taken by Hari Singh in his written statement. That replication is part of pleadings cannot be doubted. This is especially so, in the circumstances, that Hari Singh seems to have taken the stand on a demurer that even if land admeasuring 688 sq. yds. is taken to be part of the HUF, interest in that land and other properties covered by the release deed has been relinquished by his siblings in his favor. The crucial issue here is who was required to prove the circumstance surrounding the execution of release deed and what exactly it dealt with. In my view, it had to be the LRs of Hari Singh since a defence based on the release deed had been set up by Hari Singh; which is also the reason why Gulab Singh did not refer it in his examination-in-chief. Had Gulab Singh done so, it would have been a case of first raise a ghost, and then, try and slay it. A litigant is required to seek cancellation or setting aside of a document u/s 31 of the Specific Relief Act, 1963. If the document prima facie gives rights to the contesting party which could cause serious prejudice to him by exposing him to vexatious litigation where, however, the document on the face of it is illegal, inchoate and lacking in legal efficacy - as is the case of a release deed in the instant case, the plaintiff cannot be non-suited on the ground that cancellation of the release deed was not sought.

58. In view of the law settled by the Supreme Court, as noted above, we are respectfully unable to agree with the findings of the learned Single Judge in this behalf. We do not find the document to be vague and hit by Section 29 of the Indian Contract Act.

59. The decision has reasoned that the purpose of executing the release-deed was to facilitate an alternative plot being received by the family as under:

...that the question is why the Release deed was executed. To my mind the answer to this question lies buried seemingly innocuously, though otherwise most revealing, in the pleadings of Hari Singh and the testimony of DW6. To this vexed question, the response somewhat to the effect that Gulab Singh, Rajbir Singh, Mahesh Kumar and Ramesh Kumar had applied for an alternate plot in lieu of land acquired by DDA and/or the police authorities; realizing that their applications would be time barred, and that Hari Singh's application was the only one which was in time they relinquished their interest in favor of Hari Singh. It is thus quite possible that the release deed was perhaps executed for the purpose of securing an alternate plot. The parties not wanting to rule themselves out of a share in pie have been nebulous, to say the least, as regards the terms of the release deed. Because the terms of the release deed lack clarity there is a need to look at the surrounding circumstances...

60. Now, neither in his pleadings nor in his deposition has Gulab Singh ever pleaded or deposed that the said release deed was executed by him for the purposes of allotment of alternative plot. In fact, he did not furnish any explanation as to why the same was executed by him and the other brothers.

61. As we have noted while recapitulating the facts, that each party has taken contradictory stands in different proceedings, as and when it suited them, and in the suit, Hari Singh took the stand that 688 sq.yd. land was gaon sabha land, which was contrary to the common stand of the five brothers when they litigated against the government, the learned Single Judge has opined as above. But why only note the contrary and shifting stand of Hari Singh and ignore the shifting stand of the other brothers?

62. The evidence on record brings out that as regards Rajbir, Ramesh and Mahesh, in the written statement filed by them they supported Hari Singh on the factum of the joint family properties being partitioned and at the partition, the three being given a share, one-third each, in the land at Jaibabad. That under the same partition, it was agreed that in lieu of 688 sq.yd. land surrendered for purposes of construction of a police station, wherefrom Hari Singh was carrying on business, plot in lieu thereof to be allotted by DDA would be the property of Hari Singh. That Ramesh and Mahesh sold their one-third share each in the land at Jaibabad, without any protest from the other brothers also affirms, by conduct, that there was a family settlement. Undisputably, on the 431 sq.yd. land in Khasra No. 533, each brother is in occupation of approximately 1/5th portion of the land and Shri Sanjay Poddar, learned senior counsel who appeared for Hari Singh conceded that his client was ill advised to stake a claim to the said plot by taking advantage to a typographic error in the release-deed where the intention was to have the operative portion relatable to only 688 sq.yd. land and the recital that the brothers were having 1639 sq.yd. land got inadvertently reflected as the area released. But, no partition would be required for the said

property inasmuch as the five brothers are already occupying five different approximately same areas in the said plot of land ad-measuring 431 sq.yd.

63. Evidence brings out that when it suited the five brothers to litigate against the government, they staked a claim to the land in Khasra No. 533 as their ancestral property. When the five brothers fought the claim against Har Chain Singh, their uncle, they were united in the stand that from the 688 sq.yd. land Hari Singh was carrying on business as the sole proprietor of M/s. Capital Chemicals. This fact was even admitted by Gulab Singh when he appeared in the witness box. The five brothers were not in disagreement that to protect the property Hari Singh had litigated with the police and DDA and has used his own funds. On the unified stand, they defeated the claim of Har Chain Singh when WP(C) No. 376/1973 was fought. That the land at Jaibabad was in the name of Gulab Singh, Ramesh and Mahesh was not disputed by either brother and that it came to be assigned one-third each to Rajbir, Ramesh and Mahesh was also an undisputed fact. That notwithstanding the said land being registered in the name of three brothers, but was joint family property was the common case of all the brothers. That Ramesh and Mahesh had sold their respective one-third share each in the said land is an admitted fact. That Rajbir, who otherwise has not title to the land, is occupying the unsold one-third land is an admitted fact. How would this come into being, if not for a family settlement, has not been attempted to be answered by the learned Single Judge, and had it been so attempted, the answer plain and simple would have emerged: this is only possible if there was a family settlement.

64. We are of the view that none of the parties stated the correct facts before the court on oath. Each of them resorted to falsehood to defeat the claim of the other and thus the nightmare for the learned Single Judge and also for us. So stained and soiled is the evidence that its true colour is rendered questionable and even an intellectual washing machine cannot wash it white.

65. We crystallize our reasons to support a family partition. Firstly is the reason that the land at Jaibabad which admittedly was joint family property, though registered in the names of Gulab, Mahesh and Ramesh, has been sold, one-third by Mahesh and Ramesh and qua the one-third unsold portion Rajbir is in possession. That Gulab Singh neither questioned the sales nor staked a claim to one-third share in the land. We highlight that Gulab Singh is staking a claim to one-fifth share in the entire properties. Secondly, while fighting the battle with Har Chain Singh in WP(C) No. 376/1973 Gulab Singh having admitted that Hari Singh was in possession of 688 sq.yd. land since 1959 and was carrying on business there from as the sole proprietor of M/s. Capital Chemicals and the same suggesting that in lieu of his possessory rights in the said land, the brothers executed the relinquishment deed pursuant to a family partition. Thirdly, that the allotment made by DDA in favor of Hari Singh of plot No. 17, Ashok Vihar Community Centre, did not attract any immediate claim by any brother and thereby permitted Hari Singh to construct a building thereon and

only a year thereafter Gulab Singh started raising a claim to the said plot, which claim was opposed by Hari Singh, Rajbir Singh, Mahesh and Ramesh, by Hari Singh staking an exclusive right in the plot and Rajbir Singh, Mahesh and Ramesh affirming his claim. Fourthly, the four brothers executing the relinquishment deed in favor of Hari Singh without any demur or protest. Fifthly, that compensation pertaining to the acquired lands as per para 2(e) and (f) of the suit filed by Gulab Singh was received one-fifth each by the five brothers and with respect to an alternative plot to be allotted being the claim as per para 5(e) of the plaint being in the name of the five brothers, in respect of which reason we highlight that we intend to bring out that the alternative plot had not been allotted till the year 1983 and thus could not be a subject matter of partition and hence the brothers agreeing as afore-noted. Sixthly, admitted evidence coming on record showing that the property at Serial No. 2(a) i.e. House No. 297 Wazirpur, in respect whereof Gulab Singh had sought a partition, had already been partitioned and even Gulab Singh admitted to said fact during final arguments and as noted by the learned Single Judge.

66. We highlight once again that the impugned decree in the suits filed by Gulab Singh has directed partition of the entire property at Jaibabad ignoring that admittedly two-third portion thereof was sold, one-third each by Mahesh and Ramesh and to that extent the property was just not available to be partitioned.

67. To be fair to Gulab Singh, we may note that as per the stand of Hari Singh, which was supported by the other three brothers, at the time of partition a property at village Rithala (details whereof have not surfaced) was allotted to Gulab Singh. Learned Counsel for Gulab Singh did not dispute before us that Gulab Singh owns a property in village Rithala but claims that he got the same through his in-laws. Now, we have already noted herein above the inchoateness of the evidence led by the parties and also the contradictory stands taken by them to suit the convenience of time.

68. We have extracted herein above in the first paragraph of our decision, the law declared by the Supreme Court that where parties touch the fountain of justice with tainted hands, neither is entitled to relief, interim or final. It is also settled law that a wrong must be allowed to settle where it rests. The evidence noted by us brings out that the shamlat deh land which was waste land was rightly vested in the gaon sabha of village Wazirpur and the biswedars thereof managed, with contrivance, declarations from Courts that they were owners of different portions. The five brothers and other biswedars have managed to get hold of gaon sabha property and thus there cannot inherently be any claim to the same as ancestral property. The ill-gotten wealth, cannot be the subject matter of any litigation and the illegality must rest where it is. That apart, in the tainted hand, least taint would be that of Hari Singh inasmuch as the equitable claim based on possession would be his for the reason undisputably he was occupying the said 688 sq.yd. land on which he had constructed a building and was carrying on business. He resisted the possession when the police resorted to force. He

bore the brunt of the wrath of the police. It was he who went to jail. It was he who spent money to earn a freedom. It was he who spent money to protect possession of the land. It was with him that DDA entered into a settlement. It was he who paid the premium and spent money to construct a building. The finding by the learned Single Judge that the premium was paid and the building was constructed from the joint family funds is sans any evidence for the reason there is just no material to show that Hari Singh was possessed of any ancestral liquid funds. There is evidence that Rs. 80,000/- belonging to the joint family was divided amongst the brothers.

69. But, we note that during arguments in the appeal, Shri Sanjay Poddar, learned Senior Counsel for LRs of Hari Singh stated that as regards Rajbir, Ramesh and Mahesh they would be bound by the written statement filed by them and as regards Gulab Singh, without prejudice to his stand that at a family partition, Gulab Singh had been allotted land at village Rithala, his clients would be willing to give one-fifth value of the land comprising Plot No. 17, Community Centre, Ashok Vihar, New Delhi to Gulab Singh and for which appropriate directions may be passed. This was accepted to by Shri Sandeep Agarwal, Learned Counsel for Gulab Singh.

70. As regards Har Chain Singh, we concur with the reasoning of the learned Single Judge that his claim is barred by limitation, and adopt the same.

71. Accordingly, RFA(OS) No. 33/2011 is dismissed.

72. RFA(OS) No. 28/2011 and RFA(OS) No. 29/2011 stand disposed of setting aside the impugned judgment and decree dated January 07, 2011 and as per the statement made by Shri Sanjay Poddar, learned Senior Counsel for the appellants therein and the statement made by Shri Sandeep Agarwal, Learned Counsel for Gulab Singh, we dispose of Suit No. 1099/1983 and Suit No. 1138/1987 filed by Gulab Singh declaring that with respect to the land comprised in Plot No. 17, Community Centre, Ashok Vihar, Delhi (excluding the building), he would be entitled to receive one-fifth of the current value of the land and accordingly a preliminary decree is passed declaring as aforesaid, requiring the learned Single Judge to have the land valued by causing an inquiry to be made by appointing a Local Commissioner and thereupon passing a final decree, which would be a money decree, in favor of Gulab Singh alone and against the LRs of deceased Hari Singh.

73. We leave the parties to bear their own costs.