

(2008) 09 DEL CK 0316
In the Delhi High Court
Case No : CS (OS) 1254 of 1997

Shri Jai Pal Singh Shishodia APPELLANT
Vs
Smt. Poonam Rathore and Another RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Contract Act, 1872 — Section 204, 207, 215, 216
Registration Act, 1908 — Section 17, 49

Citation : (2008) 09 DEL CK 0316

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajesh Tyagi and Aparna Bhadrwaj, for Defendant No, for the Appellant; Chetan Sharma and R.K. Gaur, for Defendant No. 2, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The plaintiff has instituted the suit for possession of property bearing No. 753 admeasuring 200 sq yrds out of Khasra No 305/212 situated in the area of village Shakarpur Khas in abadi of Ganesh Nagar, Ilaka Shahdara, Delhi. The plaintiff claims to be the owner of the land underneath the said property vide registered sale deed dated 4th September, 1970 in his favour; the defendant No. 1 is the daughter of the sister (Smt Vidya Wati) of the plaintiff; the plaintiff permitted his other sister Smt Kailash Devi who was issueless to reside in the said property; the defendant No. 1 also started residing with the said Smt Kailash Devi; Smt Kailash Devi died on 20th December, 1985 and her husband Shri Bhavnish Chandra Chauhan died on 5th January, 1996. The plaintiff, thereafter, requested the defendant No. 1 to vacate the property but the defendant No. 1 did not vacate in spite of assurances; that some time in 1991 the defendant No. 1 had made a proposal for purchase of the property on the then prevailing price and the plaintiff executed a General Power of Attorney dated 12th April, 1991 in favour of the defendant No. 1 to deal with pre-sale affairs of the property under the bona fide belief that the defendant No. 1 shall

pay the sale consideration; that besides the general power of attorney dated 12th April, 1991 the plaintiff had also executed a Will dated 12th April, 1991 in favour of the defendant No. 1; that the GPA being without consideration did not confer any right in the property on the defendant No. 1; that in early 1996 the close relatives of the parties affected a compromise dated 4th February, 1996 between the plaintiff and the defendant No. 1 according to which the plaintiff and the defendant No. 1 were to own the said property in equal share with the defendant No. 1 having a right of pre-emption; that the defendant No. 1 did not act upon the compromise of 4th February, 1996 and again the "Arbitrators" on 24th February, 1996 with the consent of the parties assessed the value of the property at Rs 23 lacs and the defendant No. 1 was to pay Rs 11,50,000/- to the plaintiff on or before 15th March, 1996, out of which the defendant No. 1 paid a sum of Rs 1 lac only as earnest money and failed to pay the balance monies.

The plaintiff, thus, claimed to have become entitled to possession of the property from the defendant No. 1. The plaintiff further claimed the relief of declaration of the compromise dated 4th February, 1996 and 24th February, 1996 as null and void. The plaintiff further claimed that the defendant No. 1 had with malafide intention started making efforts to sell the property on the basis of the GPA and Will dated 12th April, 1991 and thus the plaintiff vide notice dated 18th April, 1996 cancelled the said GPA and Will but the defendant No. 1, on the basis of revoked GPA and Will dated 12th April, 1991, had executed collusive sale deed dated 22nd May, 1996 with respect to the said property in favour of the defendant No. 2 who is the husband of the sister of the husband of the defendant No. 1. The plaintiff also claimed the relief of permanent injunction and mesne profits against the defendants.

2. The defendant No. 1 contested the suit by filing a written statement. The case of the defendant No. 1 is that she is the adopted daughter of Smt Kailash Devi and Shri Bhavnish Chandra Chauhan; that Shri Bhavnish Chandra Chauhan had purchased the land under the suit property benami in the name of the plaintiff; that Shri Bhavnish Chandra Chauhan only had raised construction on the said land and was always in possession of the said property; that the plaintiff had executed a deed of relinquishment dated 10th October, 1986 with respect to the said property in favour of Shri Bhavnish Chandra Chauhan and for the said reason only had executed the power of attorney and Will both dated 12th April, 1991 in favour of the defendant No. 1 as the daughter of Shri Bhavnish Chandra Chauhan; that however the plaintiff became dishonest after the death of Shri Bhavnish Chandra Chauhan and started claiming ownership of the property and the defendant No. 1 was compelled against her wishes to sign the compromise dated 4th February, 1996 and 24th February, 1996 (supra) without any consideration; that the document dated 24th February, 1996 was retained by the plaintiff only and no copy was given to the defendant No. 1 and the plaintiff had tampered with the said documents and changed the figure of Rs 3 lacs as the total value of the property and figure of Rs 1,50,000/- as the amount to be paid by the defendant No. 1 to the plaintiff to Rs 23 lacs and Rs 11,50,000/-

respectively; that the defendant No. 1, pursuant to the compromise dated 24th February, 1996, had agreed to sell the property to the defendant No. 2 and had out of the advance received from the defendant No. 2 paid a sum of Rs 1 lac to the plaintiff; that the plaintiff was well aware of the sale of the property by the defendant No. 1 to the defendant No. 2. The defendant No. 1 joined the plaintiff in claiming that the documents dated 4th February, 1996 and 24th February, 1996 be declared as null and void. The defendant No. 1 also denied that the plaintiff had given any notice dated 18th April, 1996 of revocation of GPA and Will and claimed that the said notice was sent by the plaintiff only on 8th July, 1996 i.e., after the sale by the defendant No. 1 of the property to the defendant No. 2 on 22nd May, 1996 on the basis of the said GPA and the Will.

3. The plaintiff in his replication took a stand that the defendant No. 1 was in collusion with the defendant No. 2; the plaintiff denied knowledge that the defendant No. 1 was the adopted daughter of Shri Bhavnish Chandra Chauhan. He denied execution of a relinquishment deed dated 10th October, 1986; he denied that the documents dated 4th February, 1996 and 24th February, 1996 are void (even though the plaintiff himself had sought declaration to the said effect); he reiterated that the total price of Rs 23 lacs was settled for the property; he denied that he was the benami owner of the property or that Shri Bhavnish Chandra Chauhan was the real owner of the property. He admitted receipt of Rs 1 lac from the defendant No. 1 and claimed that the defendant No. 1 had failed to pay the balance Rs 10,50,000. The defendant No. 1 reiterated that the GPA and the Will were revoked on 18th April, 1996, i.e. before the sale by the defendant No. 1 to the defendant No. 2 on 22nd May, 1996.

4. The defendant No. 2 also contested the suit. He claimed the plaintiff and the defendant No. 1 to be in collusion to deprive him of the property purchased by him vide sale deed dated 22nd May, 1996. He claimed that the documents dated 4th February, 1996 and 24th February, 1996 had been prepared by the plaintiff and the defendant No. 1 in collusion. He further claimed to be the bona fide purchaser in good faith of the property and that the plaintiff had not served any notice upon him and as such the plaintiff could not recover possession of the property and mesne profit from the defendant No. 2.

5. The plaintiff in his replication to the written statement of the defendant No. 2 reiterated that the power of attorney, on the basis of which the sale deed in favour of the defendant No. 2 was executed, had been revoked prior to the date of the sale deed and hence defendant No. 2 could not claim any title to the property.

6. It may be noticed that the defendant No. 1 had filed an application u/s 8 of the Arbitration and Conciliation Act 1996 on the basis of the documents dated 4th February, 1996 and 24th February, 1996 but the same was dismissed by this Court vide order dated 11th May, 1999, inter alia, on the ground that the plaintiff had challenged the validity of the said documents and claimed a relief that they are null and void and for the reason that from the said documents no arbitration

agreement was made out between the parties.

7. In the aforesaid state of pleadings, the following issues were struck on 24th July, 2003:

1. Whether the suit is maintainable in its present form" OPP
2. Whether the plaintiff has got any locus standi to file the present suit" OPP
3. Whether the power of attorney dated 12.4.1991 executed by the plaintiff in favour of defendant No. 1 was concealed by the plaintiff before 22.5.1996 OPP
4. Whether the sale deed executed by defendant No. 1 in favour of defendant No. 2 on 22.5.1996 is valid and binding on the plaintiff OPD
5. Whether the deed of relinquishment dated 10.10.1986 was executed by the plaintiff in favour of father of the defendant No. 1, Sh. Bhavish Chandra, pertaining to the suit property and whether is binding upon the plaintiff, and if so what effect OPD
6. Whether the agreements dated 4.2.1996 and 24.2.1996 have any legal sanctity, being obtaining from the defendant No. 1, under duress and coercion and without consideration, by the plaintiff OPD
7. Whether the agreement dated 24.2.1996 is tampered by the plaintiff to enhance the figures of alleged amount of consideration OPD
8. Whether the defendant No. 1 has made payment of Rs One lakh to the plaintiff, in pursuance of Agreement dated 24.2.1996 OPD
9. Whether defendant No. 1 is adopted daughter of Mr. Bhavish Chandra OPD.
10. Relief.

8. On 1st May, 2008 with the consent of the parties, it was ordered that the issue No. 3 above named should be read as under: "3. Whether the power of attorney dated 12.4.1991 executed by the plaintiff in favour of defendant No. 1 was cancelled by the plaintiff before 22.5.1996" OPP"

9. The plaintiff examined himself and Shri Raj Kumar Rana as PW2. The defendant No. 1 besides herself examined her husband Shri B.S. Rathor as D1/W2, Shri Aman Singh her natural father as D1/W3, Shri Balbir Singh colleague of her adoptive father Shri Bhavnish Chandra Chauhan as D1/W4, Shri Bijender Singh as D1/W5, her husband's elder brother Shri Kishan Pal as D1/W7, her father in law Shri Ram Chander Singh as D1/W8 and the handwriting expert also as D1/W8. Defendant No. 2 examined himself.

10. Arguments have been heard from the counsel for the plaintiff and the defendant No. 1 and the senior counsel for the defendant No. 2. My issue-wise findings are as under:

Re: Issue No. 1 (Whether the suit is maintainable in its present form" OPP)

11. The issue was framed on the plea of the defendant No. 1 contained in para 1 of the preliminary submission of her written statement. The said plea itself is bereft of any particulars. No arguments have been addressed by either of the parties as to how the suit is not maintainable. If the plaintiff is found to have cancelled the power of attorney on the basis of which the defendant No. 1 has sold the property to the defendant No. 2, the plaintiff would be entitled to maintain the suit for possession and mesne profits as filed. The said issue is accordingly decided in favour of the plaintiff and against the defendants.

Re: Issue No. 2 (Whether the plaintiff has got any locus standi to file the present suit" OPP)

12. This issue was framed again on the plea of the defendant No. 1. The case of the defendant No. 1 was that the plaintiff having executed a deed of relinquishment with respect to the property in favor of Shri Bhavnish Chandra Chauhan and having executed a power of attorney dated 18th April, 1991 in favour of the defendant No. 1 and the defendant No. 1, on the basis of the said document, having executed sale deed in favour of the defendant No. 2, the plaintiff had no locus to claim possession and mesne profits with respect to the property. Thus, the decision of this issue will depend upon the findings herein below on issues 5 and 3. If the relinquishment is found to be invalid and the cancellation of the power of attorney is found to be before the sale dated 22nd May, 1996 in favour of the defendant No. 2, the plaintiff would have locus standi to file the suit and if otherwise then not.

Re: Issue No. 3 (Whether the power of attorney dated 12.4.1991 executed by the plaintiff in favour of defendant No. 1 was cancelled by the plaintiff before 22.5.1996" OPP)

13. The plaintiff in his affidavit by way of examination in chief stated that upon the failure of the defendant No. 1 to abide by the compromise dated 24th February, 1996, he, vide notice dated 18th April, 1996, cancelled the GPA in favour of defendant No. 1. Copy of the notice dated 18th April, 1996 is exhibited as Exhibit PW1/5 and the registration slip is exhibited as Exhibit PW1/6.

14. I have, however, on the file not found any documents bearing the said exhibit marks. There is, however, on the file a list of documents dated 5th June, 1997 filed by the plaintiff bearing the signatures of the plaintiff and the counsel for the plaintiff, containing at serial No. 5 "notice dated 18/04/1996 along with copy of registered AD envelop". The same is a photocopy of a letter dated 18th April, 1996 of the plaintiff to the defendant No. 1. The plaintiff by the said letter terminated/revoked the GPA and Will dated 12th April, 1991 "with immediate effect" and a photocopy of a postal certificate dated 18th April, 1996 with an endorsement in hand dated 8th July, 1996 as under:

08.07.96

By registered A.D.

To, Poonam Rathor"

15. The original postal certificate dated 18th April, 1996 has not been filed before the court. It has been contended by the counsel for the defendants that the plaintiff has totally failed to prove the dispatch of any letter dated 18th April, 1996 to the defendant No. 1 cancelling the power of attorney and further that the endorsement set out hereinabove at the bottom itself shows that the cancellation of the power of attorney was sent by the plaintiff to the defendant No. 1 for the first time on 8th July, 1996 by registered A.D. Post. It is argued that the photocopy of the postal certificate dated 18th April, 1996 is a forged and fabricated document.

16. The plaintiff in his cross examination, by the counsel for the defendant No. 1, stated:

(a) that he had not given any notice to the defendant No. 1 of cancelling the power of attorney and Will but had made a document on a stamp paper of Rs 10/- cancelling the power of attorney in favour of the defendant No. 1 (no such document has been placed on record);

(b) that he did not remember whether he had filed any UPC receipt with regard to the notice sent to the defendant No. 1;

(c) He reiterated that he had not sent any legal notice of revocation of the power of attorney to defendant No. 1 before the filing of the suit.

17. The plaintiff in cross examination by the counsel for the defendant No. 2 stated that he had not given any advertisement in any newspaper with regard to the cancellation of power of attorney in favour of the defendant No. 1; he denied that the defendant No. 2 had approached him to inquire about the status of the power of attorney; he admitted having not given any notice to the defendant No. 2. PW2 examined by the plaintiff has not deposed on this issue.

18. The defendant No. 1 in her affidavit by way of examination in chief stated that it was after the registration of the sale deed by her in favour of the defendant No. 2 on 23rd May, 1996 that the plaintiff sent a letter dated 8th July, 1996 through registered post cancelling the GPA and Will. The said letter and the envelop had been proved as exhibit D1/W1/4. She further stated that the said letter dated 8th July, 1996 is the only notice sent by the plaintiff cancelling the GPA and the Will and that the purported notice dated 18th April, 1996 alongwith UPC dated 18th April, 1996 filed by the plaintiff were forged documents and no such notice had been received by her.

19. The defendant No. 1 in cross examination by the counsel for the plaintiff denied having received any notice in April, 1996 from the plaintiff revoking the GPA and confirmed that she had received a registered letter in July, 1996 from the plaintiff. It is significant that the counsel for the plaintiff, while cross examining the defendant No. 1, did not challenge the statement in the examination in chief of the defendant No. 1 with respect to having received the

letter dated 8th July, 1996 from the plaintiff cancelling the power of attorney and which alongwith the postal envelop in which it was sent has been proved as Exhibit D1/W1/4. The said letter dated 8th July, 1996 gives the subject thereof as "Revocation of general power of attorney and the Will both of dated 12th April, 1991" and purports to cancel the General Power of Attorney and the Will both dated 12th April, 1991 with immediate effect. The said letter nowhere mentions dispatch by the plaintiff to the defendant No. 1 of any letter dated 18th April, 1996 as pleaded in the plaint and does not even state that the power of attorney and the Will had been revoked at any time prior to 8th July, 1996. The envelop in which the said letter was sent by the plaintiff shows the date of posting thereof as 8th July, 1996 and the sender as the plaintiff.

20. In my view the aforesaid letter dated 8th July, 1996 unequivocally falsifies the case of the plaintiff of having cancelled the power of attorney on 18th April, 1996. As aforesaid, the cancellation on 18th April, 1996 though pleaded in the plaint has, in any case, not been proved by the plaintiff. The photocopy of the postal certificate, though not proved but filed by the plaintiff can always be read against the plaintiff and the same also contains an admission of the plaintiff of having sent a letter dated 8th July, 1996 to the defendant No. 1 by registered A.D. post.

21. Thus, under issue No. 3, it is found that the power of attorney dated 12th April, 1991 executed by the plaintiff in favour of the defendant No. 1 was not cancelled by the plaintiff before 22nd May, 1996.

22. The counsel for the plaintiff, faced with the aforesaid position which emerged during hearing, in his rejoinder, argued that the power of attorney came to an end on 4th February, 1996 or in any case on 24th February, 1996 and thus the sale registered on 23rd May, 1996 on the basis of the said power of attorney is invalid. On 4th February, 1996 and 24th February, 1996, as aforesaid, compromise had taken place between the plaintiff and the defendant No. 1. The counsel for the plaintiff argued that the power of attorney was impliedly revoked on 4th February, 1996 and 24th February, 1996 and in this regard relied upon Section 207 of the Indian Contract Act. Reliance was also placed upon *Azam Khao Vs. S. Sattar*, and *Amrik Singh v. Sohan Singh* 1988 63 PLR 541. It was contended that once in the compromise on 4th February, 1996 it was settled that both the plaintiff and the defendant No. 1 had 1/2 share each in the house and further when on 24th February, 1996 it was agreed that the defendant No. 1 shall purchase the share of the plaintiff for the price mentioned therein, the authority of the defendant No. 1 to act under the power of attorney given by the plaintiff as sole owner of the property, stood impliedly revoked.

23. In my view, the plaintiff is not entitled to even plead or succeed on such a case. Firstly, this is not the case on which the plaintiff approached the court. The plaintiff approached the court with a specific case of the power of attorney having been revoked on 18th April, 1996 prior to the execution of the sale deed by the defendant No. 1 in favour of the defendant No. 2 on the basis of the said

power of attorney. The plaintiff obtained interim relief against the defendants on the strength of such a case. The plaintiff at no time during the trial took a stand that revocation instead of 18th April, 1996 was on 4th February, 1996 or on 24th February, 1996. The parties have not gone to trial on the said basis. Specific issue No. 3 was framed on the basis of the case of the plaintiff of having revoked the power of attorney vide letter dated 18th April, 1996. Allowing the plaintiff now to setup a case of implied revocation of the power of attorney on 4th February, 1996 and 24th February, 1996, in my view, is contradictory to the case with which the plaintiff approached the court.

24. Secondly, the question of revocation of the power of attorney on 4th February, 1996 and 24th February, 1996 is a question of fact. Without any pleadings and evidence on the same, the plaintiff cannot be permitted to argue so, upon finding himself to have not made out a case of cancellation on 18th April, 1996 pleaded in the plaint. Thirdly, the plaintiff approached the court with a case and with a prayer of declaration that the compromise dated 4th February, 1996 and 24th February, 1996 are null and void. A transaction which the plaintiff claimed to be null and void, the plaintiff cannot be permitted to fall back on and the same would again tantamount to allowing the plaintiff to withdraw an admission. Fourthly, the plaintiff who, it is now clear, had forged and fabricated the letter dated 18th April, 1996 and the postal certificate dated 18th April, 1996 does not deserve any concession of the nature by the court. Fifthly, even on merits, I do not find that there could be any implied revocation of the power of attorney on 4th February, 1996 and 24th February, 1996. The compromise of 4th February, 1996 also envisaged the sale of the property and the right of the defendant No. 1 to acquire the same. When the compromise envisaged, the plaintiff seizing to have any claims as asserted by him over the property, the cancellation of the power of attorney already executed by the plaintiff in favour of the defendant No. 1 could not be the intent of the compromise. Similarly, the compromise of 24th February, 1996 also contemplated payment of price by the defendant No. 1 of the plaintiff's share of the property. There was no restriction on the defendant No. 1 from paying the balance price of the share of the plaintiff by sale of the property. Thus, the said compromise also by implication authorized the defendant No. 1 to act under the power of attorney in her favour and could not by implication have meant the cancellation or revocation of the power of attorney. The plaintiff is, thus, not entitled to succeed on his alternate arguments also under this issue. The issue No. 3 is accordingly decided against the plaintiff and in favour of the defendants.

Re: Issue No. 4 (Whether the sale deed executed by defendant No. 1 in favour of defendant No. 2 on 22.5.1996 is valid and binding on the plaintiff" OPD)

25. The effect of the decision of Issue No. 3 (supra) is that the power of attorney given by the plaintiff in favour of the defendant No. 1 and whereunder the defendant No. 1 was authorized to sell the property was cancelled on 8th July, 1996 i.e., after the sale deed dated 22nd May, 1996 and registered on 23rd May,

1996. Thus, as on the date of the sale deed, the defendant No. 1 was authorized to sell the property and to execute the sale deed on behalf of the plaintiff. The only challenge to the said sale deed was on the ground of the cancellation of the power of attorney prior thereto. The said challenge has failed. Accordingly, it has to be held that the sale deed is valid and binding on the plaintiff. The counsels for defendants No. 1 and 2 relying on Section 204 of the Indian Contract Act urged that, in fact, the agreement to sell the property had been executed by the defendant No. 1 acting on the power of attorney, even prior to 18th April, 1996 and thus even if the power of attorney was cancelled on 18th April, 1996, the same could not invalidate the sale deed made in pursuance to an agreement to sell through a valid attorney. However, having found as above that the power of attorney had not been cancelled till 22nd May, 1996 when the sale deed was executed, I do not deem it necessary to enter into the said aspect.

26. The counsel for the plaintiff again faced with the aforesaid situation sought to fall back on Sections 215 and 216 of the Indian Contract Act to urge that the defendant No. 1 in the matter of sale acted on her own and without obtaining the consent of the principal and without acquainting the principal with all material circumstances. However, the said argument is again bereft of any pleadings and are not mere questions of law and cannot be entertained at this stage. The power of attorney gave the unfettered right to the defendant No. 1 to sell the property to whomsoever and without referring to the plaintiff first. The subsequent revocation of the power of attorney would not affect the sale deed executed when the power of attorney was valid and subsisting. I, therefore, find that the sale deed executed by the defendant No. 1 in favour of the defendant No. 2 is valid and binding on the plaintiff. The said issue is decided in favour of the defendants and against the plaintiff.

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

27. The deed dated 10th October, 1986 is of a relinquishment of rights of immovable property. Such a deed u/s 17 of the Registration Act is compulsory registerable. The deed dated 10th October, 1986 is admittedly not registered. The same cannot affect any immovable property. The said position has not been controverted by the counsel for the defendants also. It has, however, been contended that the said deed can be used as an estoppel against the plaintiff from averring contrary thereto. I find such a proposition hard to digest. What the law prohibits to be done cannot be permitted to be done in an indirect manner. The requirement of compulsory registration of documents cannot be whittled down by reading and using the said documents under some other head or principle of law. The courts have made only one distinction and which is provided u/s 49 of the Registration Act itself i.e., the use of the documents for the collateral purposes or in a suit for specific performance or earlier, as evidence of

part performance. The present is not a suit for specific performance or claiming any benefit of part performance. The claim on the basis of said document is also barred by the Benami Transactions (Prohibition) Act. Thus, I do not find the said document can be looked into for any purposes whatsoever. The documents cannot be admitted in evidence at all. However, the issue as framed also requires me to find whether the said deed was executed by the plaintiff or not. Even though in view of the findings hereinabove I do not see any reason for returning the findings but since the issues were framed more than 10 years ago and since the decree of this Court is subject matter of appeal, I proceed to return findings on this aspect also.

28. The defendant No. 1 denied his signatures on the said deed. The said deed has witnesses. The plaintiff has not deposed as to what animosity the said witness have against the plaintiff so as to be privy to fabrication of a document against the interest of the plaintiff. One of the said witnesses has been examined as D1W4 Shri Balbir Singh and who has deposed of the plaintiff having executed the said deed in his presence. The said witness was not cross examined at all by the plaintiff with respect to the execution of relinquishment deed. His statement remains unchallenged.

29. Even otherwise, in the facts and circumstances of the case, I find it more believable/plausible that the plaintiff is the signatory of the said deed. The plaintiff admits having executed a power of attorney and a Will both dated 12th April, 1991 in favour of the defendant No. 1. The reason given by the plaintiff for the execution of the said documents is not in the normal course of human conduct and is not believable. The plaintiff claims to have given the power of attorney to enable the defendant No. 1 to complete the preliminaries before the sale of the property by the plaintiff to the defendant No. 1. However a perusal of the power of attorney would show that the same is not for the said purposes but is to enable the defendant No. 1 to exercise all powers/rights as owner with respect to the property. If till then the price also had not been settled between the plaintiff and the defendant No. 1, it is inconceivable that the plaintiff would give a general power of attorney to the defendant No. 1 including the clause enabling the defendant No. 1 to sell the property. Had the story of the plaintiff been true, the plaintiff would have given a power of attorney for the specific purpose of carrying out the preliminaries before sale. Further, it has not been stated as to what preliminaries were required to be completed before the sale. Not a single letter has been placed on record by the plaintiff enquiring from the defendant as to whether she had completed the preliminaries or not. Had the power of attorney been given for the purposes alleged by the plaintiff, the same would have been cancelled immediately upon no agreement to sell having been finalized between the parties. On the contrary nothing whatsoever was done from 12th April, 1991 till the compromise ultimately effected on 4th February, 1996.

30. Further there is no explanation as to why a Will alongwith the power of

attorney was given. If the idea was to only enable the defendant No. 1 to do the spade work for the sale, there was no occasion for execution of the will also. This Court has already in *Asha M. Jain Vs. The Canara Bank and Others*, and in *Kuldip Singh Suri Vs. Surinder Singh Kalra*, held that judicial notice can be taken on such power of attorney transaction in the city of Delhi. In the present case, the general power of attorney and the Will are in consonance with transfer of rights in the property. Of course, the agreement to sell which generally accompanies such transactions is not to be found in the present case but the agreement to sell was not required in view of the relinquishment deed dated 10th October, 1986 already executed by the defendant No. 1 in favour of the plaintiff. These circumstances also lead one to believe in the execution of the relinquishment deed dated 10th October, 1986. Execution of relinquishment deed was more in consonance with normal human behaviour and conduct and there is every reason for the plaintiff to have executed the same. It cannot also be lost sight of that the plaintiff has also not been able to establish having at any time been in possession of the property or of having constructed the property. On the contrary, it is in evidence that the adoptive father of the defendant No. 1 Shri Bhavnish Chandra Chauhan was employed in CPWD and retired only on 18th March, 1977. In the entirety of this circumstance, the version of the defendant No. 1 that it was, in fact, the adoptive father of the defendant No. 1 who had purchased the property and for that reason the plaintiff had executed the relinquishment deed dated 10th October, 1986 is more believable.

31. The plaintiff is also found to have lied with respect to the adoption of the defendant No. 1. The plaintiff in an attempt to gain advantage in this case lied about the said adoption even when the plaintiff himself has in the power of attorney and the Will admittedly executed by him referred to the defendant No. 1 as the daughter of Shri Bhavnish Chandra Chauhan. When the plaintiff is found to lie on this aspect, I find it more probable that the plaintiff is lying with respect to his signatures on the relinquishment deed also. It was held by this Court in *Mr. V.P. Saxena Vs. Mr. Avinash Chander Bhasin*, that when a witness is found to be lying on one aspect his testimony on the other aspect is also liable to be disbelieved.

32. The defendant No. 1 has also examined a handwriting expert who has also deposed that the relinquishment deed is signed by the plaintiff. However, I find it more reliable to rely upon the circumstances aforesaid rather than on the said report.

33. The issue No. 5 is decided finding the defendant No. 1 to have executed the relinquishment deed but the same is of no effect.

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

34. It is interesting to note that both the plaintiff and the defendants have

claimed that the agreements dated 4th February, 1996 and 24th February, 1996 are void and have no legal sanctity. In view of the said unanimity between the parties at least on this aspect, this issue ought not to have been framed. I do not find the defendant No. 1 also on whom the onus of this issue has been placed to have established that the documents were got signed from her by the plaintiff under duress and coercion or without consideration. On the contrary, the said compromise appears to have been executed by the parties in the process of settling their claims and counter claims with respect to the property and which had arisen after the demise of Shri Bhavnish Chandra Chauhan. It is significant that during the life time of the sister of the plaintiff and even till the life time of Shri Bhavnish Chandra Chauhan, the plaintiff at no point of time made any claims over the property. It is only thereafter that the plaintiff started claiming rights over the property. The position then was that title documents of the property were in the name of the plaintiff and taking of the plea of benami had been barred by law and the possession of the property was of the defendant No. 1 coupled with the relinquishment deed, power of attorney and the Will executed by the plaintiff. There was no occasion for any of the parties to be under duress and coercion from each other for signing the documents to settle the disputes with respect to the property. I also do not find that the said documents were without any consideration. The said documents were signed in consideration of mutual terms whereby each of the parties instead of claiming 100% rights over the property confined his/her claim to 50% only over the property.

35. As far as the legal sanctity of the documents dated 4th February, 1996 and 24th February, 1996 is concerned, I find the same also of no relevance inasmuch as nothing turns on the outcome of the said issue. However, in the entirety of the facts and circumstances of the case, I find the documents to have legal sanctity and capable of being admitted in evidence. The said documents are in the nature of a family settlement. The plaintiff and the defendant No. 1 were members of a family and both had antecedent claims to the property in the manner aforesaid and sought to settle the said claims by confining their respective shares to 50% of the property. Thus, issue No. 6 is answered in the following manner: firstly, the agreements dated 4th February, 1996 and 24th February, 1996 have legal sanctity; secondly they were not obtained from the defendant No. 1 by the plaintiff under duress and coercion or without consideration. The plaintiff, however, has not sought to enforce his rights, if any, under the said documents and on the contrary claimed a decree of declaration of the said documents as null and void and chose to exercise rights with respect to the property as absolute owner thereof.

Re: Issue No. 7 (Whether the agreement dated 24.2.1996 is tampered by the plaintiff to enhance the figures of alleged amount of consideration" OPD)

36. I find the said issue also to be redundant since the plaintiff has not come with a monetary claim under the document dated 24th February, 1996. Had the plaintiff made such a claim, it would have been necessary to adjudicate as to

whether the defendant No. 1 had agreed to pay a sum of Rs 1.50 lacs or a sum of Rs 11.50 lacs to the plaintiff. However, again feeling bound, I proceed to answer this issue.

37. Both the plaintiff as well as defendant No. 1 have examined witnesses to the documents. The said witnesses supported the party examining them. Thus, no relevance can be placed upon the said testimonies. The same is the position with respect to the testimonies of the plaintiff and the defendant No. 1. A perusal of the document also does not lead me to any conclusion inasmuch as the addition, if any, of 2 before 3 and of 1 before 1.50 is not decipherable from the document. The plaintiff has admitted the document to be in his own hand and that explains as to why, alternation even if any, is not decipherable.

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

Re: Issue No. 8 (Whether the defendant No. 1 has made payment of Rs One lakh to the plaintiff, in pursuance of Agreement dated 24.2.1996" OPD

39. The plaintiff has admitted payment of Rs 1 lac from the defendant No. 1 in pursuance of agreement dated 24th February, 1996 and this issue is decided accordingly.

Re: Issue No. 9 (Whether defendant No. 1 is adopted daughter of Mr. Bhavish Chandra" OPD.

40. This issue is also redundant and has no bearing on the outcome of the suit. However, as noted by me above, the plaintiff had admitted the defendant No. 1 to be the adopted daughter of Shri Bhavnish Chandra Chauhan in the power of attorney and Will admittedly executed by the plaintiff in favour of the defendant No. 1. The plaintiff has been found to be lying in denying the said position. The defendant No. 1 has also placed on record various documents of her school etc showing the name of her father as that of Shri Bhavnish Chandra Chauhan. However, since this issue may have repercussions on several other aspects and parties who are not before this Court and further since I have found the decision

on this issue to be irrelevant for the adjudication of the case, I deem it appropriate to strike of this issue.

Re: Issue No. 10 (Relief)

41. Having found the plaintiff to be the owner of the property and having further found the relinquishment deed executed by the plaintiff in favour of the father of the defendant No. 1 to be of no avail and having further found the plaintiff to have executed the power of attorney, with a right to sell, in favour of the defendant No. 1 and having further found the said power of attorney to be valid and subsisting on the date of the sale by the defendant No. 1 of the property to the defendant No. 2, I find that the plaintiff is not entitled to the relief claimed of possession of the property. The defendant No. 1 acting under a valid power of attorney sold the property to the defendant No. 2 and the plaintiff is bound by the said act of his agent. The plaintiff being not found entitled to possession, the question of the plaintiff being entitled to mesne profits or injunction does not arise. The documents dated 4th February, 1996 and 24th February, 1996 are also not liable to be declared null and void as claimed by the plaintiff. The suit of the plaintiff is accordingly dismissed with costs. Counsels fee assessed at Rs 50,000/- for each of the defendants, the plaintiff having been found to have approached the court with a false case of cancellation on 18th April, 1996 of the power of attorney.