

**IN THE COURT OF SH. RAJINDER KUMAR**  
**SCJ/RC(WEST), TIS HAZARI COURTS, DELHI**

**CS No.10768/2016**

**In the matter of :**

**(1) Smt. Babita Gahlot,  
W/o Sh. Rambir Gahlot,  
R/o 291, Shiv Vihar,  
Rishal Garden, Nangloi,  
New Delhi-110041.**

**..... Plaintiff**

**VS.**

**(1) Sh. Mool Chand,  
S/o Late Sh. Jwala Prasad,  
R/o H.No.E-3/64-B,  
Shiv Ram Park, Nangloi,  
New Delhi-110041.**

**..... Defendant**

Date of institution of the suit	:	31.03.2015
Date of reserving order	:	30.06.2020
Date of pronouncement	:	04.07.2020

**J U D G M E N T**

1. This is a suit for Possession, Recovery of Licence Fee,

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Mesne Profits and Permanent Injunction.

2. Brief facts of the case as per the plaintiff are that she is the owner of 20 sq.yards out of **40 sq.yards of the house no.E-3/64-B, Khasra No.25/9, Village Kamruddin Nagar, Shiv Ram Park, Nangloi, Delhi** duly divided between the defendants and his brother. That the property was purchased by the plaintiff on 30.08.2013 through GPA etc. for consideration of Rs.2 lacs. That the defendant also handed over **previous** chain of documents to the plaintiff. That the defendant requested the plaintiff for 6 months time as he was looking for another accommodation. That the plaintiff has **agreed** to remain there for 6 months and to pay Rs.30,000/- in advance @ Rs.5000/- per month as occupation charges. That the electricity meter, which was in the name of the defendant was got transferred in the name of the plaintiff. That the licence period came to an end in February, 2014 and the plaintiff asked him to vacate but excuses were given by him. That on the basis of a concocted story, the defendant herein has filed a case against the plaintiff. That the plaintiff has issued a legal notice dated 09.01.2015 but the same was refused by the defendant.

3. In the Written Statement, certain preliminary objections are

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the material facts. It is also pleaded that the plaintiff is neither the owner nor landlord nor is in the possession of the suit property. It is also pleaded that the defendant has borrowed a sum of Rs.20,000/- from the husband of the plaintiff in August, 2013 on interest @ 3% per month. That at the time of said borrowing, the plaintiff and her husband took the documents from the defendant with assurance to return the same at the time of return of amount.

4. In the replication, plaintiff has denied the case of the defendants and re-iterated his own case as stated in the plaint.

5. On the basis of pleadings, following issues were settled on 07.02.2017 :-

1. ***Whether the plaintiff is entitled to a decree of possession, as prayed for? OPP***
2. ***Whether the plaintiff is entitled to a decree of***

3. *Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for ? OPP*

4. *Relief.*

6. The plaintiff got examined her husband Sh. Rambir Singh Gahlot (PW1), who relied upon several documents i.e Ex-PW1/1 to Ex-PW1/12. The plaintiff also got examined Sh. Krishna Nand Dubey (PW2), Sh. Shiv Prakash (PW3) and Sh. Puran Chand (PW4) in support of her case. Plaintiff evidence was closed on 30.07.2018.

7. The defendant got himself examined as DW-1, in support of his pleadings. Defendant evidence was closed on 25.11.2018.

**Issue-wise findings are as under :-**

8. All the issues are inter-connected, hence, the same are taken up together. The onus to prove the same was upon the plaintiff. It is the plea of the plaintiff that she has purchased 20 sq.yards out of 40 sq.yards of the property in question from the defendant on 30.08.2013 for a consideration of Rs.2 Lacs by executing GPA etc. It is also the plea of the plaintiff that the defendant was permitted to reside for a period of 6



months starting from 30.08.2013 and the defendant also agreed to pay Rs.30,000/- in advance as occupation charges @ Rs.5000/- per month.

It is the plea of the defendant that the plaintiff has not disclosed the true and correct material facts as it is the defendant, who had borrowed Rs.20,000/- from the plaintiff on interest @ 3% per month. It is also the plea of the defendant that the documents were obtained by the plaintiff and her husband at the time of said borrowing with assurance to return the same at the time of returning the borrowed amount.

9. In his examination-in-chief, the husband of the plaintiff (PW1) re-affirmed the contents of the suit but while under cross-examination it was deposed by him on 26.09.2017 (at page no.1) that the SPA (Ex-PW1/1) was prepared at Tis Hazari Courts and his wife was also present at the time of preparation of the said SPA (Ex-PW1/1). It was also deposed that his wife was 12<sup>th</sup> passed and was a tutor. At page no.2, it was deposed by the (PW1) that he do not know the date of preparation of the site plan (Ex-PW1/12). It was also deposed by him that the document i.e GPA (Ex-PW1/2) was prepared by his wife on 30.08.2013 and also that the stamp paper was purchased by his wife.



In view of the above, it is clear that it is the plaintiff herself only, who got the GPA (Ex-PW1/2) executed by purchasing a stamp paper of Rs.100/-. This admission on the part of the witness, itself confirms the defence of the defendant, who has pleaded that his signatures were obtained by the defendant and her husband on some blank papers and were misused by them. It was also deposed by Sh. Rambir Singh Gahlot (PW1) that he asked from his wife about the registration of the document (Ex-PW1/2) and she said that the documents were registered and she put her thumb impression and signature on a heavy register. It was also deposed by him that he do not know whether the documents (Ex-PW1/3 to Ex-PW1/7) were having any registration number.

10. It was also admitted to be correct by the witness (at page no.3) that the documents (Ex-PW1/2 to Ex-PW1/7) were not prepared in his presence. It was also deposed by him that he was deposing about those documents as he had heard about the same from his wife. At page no.4, it was also deposed by him that he do not know whether the suit property was partitioned among defendant and his brother. At page no.5, it was admitted by him that the defendant has transferred all the



documents w.r.t the suit property in his name. If, it was so, then, it is beyond understanding as to why the case was not filed by witness himself but was filed by his wife.

11. During his subsequent cross-examination dated 27.11.2017 (at page no.1), it was admitted by Sh. Rambir Singh (PW1) that the property in dispute was undivided. So, it has now become an admitted fact that the property in question was jointly owned by the defendant and his brother Sh. Gauri Shankar and the same was also undivided.

It is held by the Hon'ble Apex Court of India in "Suraj Lamp & Industries (P) Vs. State of Haryana & Anr" 2009 (7) SCC 363 that ;

*"18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are 'transfers' or 'sales' and that such transactions can not be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale.*

*Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain*



of various material things, which he was supposed to know being the only witness from the side of the plaintiff.

14. There is nothing mention in the SPA (Ex-PW1/1) as to why the plaintiff did not turn up in the witness box when she had appeared and was present in the court on the day of preparation of SPA (Ex-PW1/1). Even, as per (PW1), GPA (Ex-PW1/2) was prepared by his wife. The husband of the plaintiff i.e. (PW1) admittedly is not aware about the area of suit property and also whether the documents (Ex-PW1/3 to Ex-PW1/7) were registered documents. Admittedly, the documents Ex-PW1/2 to Ex-PW1/7 were not prepared in his presence.

15. The plaintiff herself could have led the best evidence in this case. The same is withheld by the plaintiff. There is nothing to record what prevented the plaintiff to come to the witness box to depose in this case.

On the basis of the pleadings and the evidence led by the parties, all the issues are decided against the plaintiff and in favour of the defendant.

16. **Relief.**

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*specific performance or to defend possession under section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments / leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other development authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision."*

12. In the case in hand, the plaintiff is not having sale deed in her favour executed by the defendant of the 20 sq.yards of the area of the suit property for a consideration of Rs.2 lacs. For the sake of arguments, if the documents filed by the plaintiff in this case are presumed to be true and correct, the same was executed on 30.08.2013 i.e. much after the pronouncement of the Suraj Lamp Case (Supra). So, the documents filed by the plaintiff (Ex-PW1/3 to Ex-PW1/7) can not be treated as title documents.

13. After the perusal of the deposition of the husband of the plaintiff i.e. Sh. Rambir Singh (PW1), it is also clear that he is not aware

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In view of the findings on the above issues, the plaintiff is not found entitled to any relief. **Hence, the suit is dismissed.**

No order as to costs.

Decree-sheet be prepared accordingly.

File be consigned to record room after necessary compliance.

**PRONOUNCED ON**  
*04<sup>th</sup> of July 2020.*

  
**(RAJINDER KUMAR)**  
**SCJ/RC(WEST)/DELHI**