

**In the Court of Devinder Singh, Additional District Judge, Faridabad.**

**CIS No.CA/345/2014**

**Civil Appeal No.141 of 2014**

**Date of Instt. 29.5.2014/12.4.2016**

**Date of Decision: 11.12.2017**

Ram Singh Yadav son of Shri Kanhiya son of Ghasi Ram(since deceased). Now represented by the following Legal Heir:-

Deshraj son of Ram Singh, resident of village A-31, Panchvati Colony, Opposite Azadpur Sabji Mandi, Delhi – 33.

....Appellant-plaintiff

Versus

1. M/s Om Parkash Baldev Kishan, PSF Work G-6 & 7 Vikram Tower, Rajendra Place, New Delhi.
2. Deepak Sikander son of H.S. Shankar
3. H.S. Sikandar son of R.S. Sikandar, resident of 3-E, Shastri Nagar, Azmer.
4. Surender Gupta son of Kasturi Lal, resident of H-27, Ashok Vihar, Delhi.
5. Director General Air Force, Navel Housing Board Race Course, New Delhi.
6. J.S. Maan son of Sardar Singh son of Bhagat Singh
7. Smt.Rajender Kaur wife of Shri Jasvir Singh, resident of 36/461, Arjun Vihar Dhola Cantt, Delhi – 10.
8. Pardeep Jain son of S.P. Jain, resident of 1-Babar Lane, Bangali Market, New Delhi.
9. Vinod Kumar Bagga son of T.D. Bagga, resident of B-50, Khanpur Extension Devli Road, New Delhi.
10. S.K. Khera son of Shri R.N. Khera, resident of 543/18, S.P. Marg, New Delhi.
11. Anshu Kumar Mahta son of Ved Raj Mahta son of Pehlad Chand.
12. Smt.Suman Katoch Mahta wife of S.K. Mahta, resident of 403, Sishora Tower Yamuna Nagar off Link Road, Andheri Mumbai West.
13. J.S. Malhotra son of S.Malhotra, resident of 2114, Phase-7, SAS Nagar, Chandigarh.
14. N.A. Verma son of D.A. Verma, resident of P-226, Sector-226, Sector-21, Jalvayu Vihar, Noida, Uttar Pardesh.
15. O.P. Kukreja son of Yashpal, resident of C/o Shobha Khatri, 5283, Ground Floor, G.K. Part-I, New Delhi.

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16. Manmohan Singh son of Sunder Singh
17. Amrita Mohan wife of M.M. Singh, resident of C-MLO Housing Quarter, TBC Command, IAF Harbal Bangalore.
18. Sangeet Sharma son of Dr.S.C. Sharma, Airforce Station Bani Camp Nazabgar, New Delhi.
19. N.S. Ahluwalia son of Maharaj Singh, resident of 66, Sukhdev Vihar, New Delhi.
20. J.S. Maan son of Sher Singh, 36/161, Arjun Vihar, Dhola Kuan, New Delhi.
21. S.Ahluwalia son of Maharaj Singh son of Harnam Singh, resident of 66 Sukdev Vihar, New Delhi.
22. Ravi Kohli son of Shri D.R. Kohli, resident of 406, Phase-7, SAS Nagar, Chandigarh.
23. O.P. Kukreja son of Yashpal son of Pyara Ram, resident of C/o Shobhna Khatri, 5283 G/F, G.K. Part-I, New Delhi.
24. J.S. Malhotra son of Shri S.S. Malhotra, resident of 2114 Phase-&, SAS Nagar, Chandigarh.
25. Ashu Kumar Manta son of Ved Ram Manta, resident of 403, Shistra Towers, Yamuna Nagar, Off Link Road, Andheri West, Mumbai.
26. S.S. Saini son of Fakir Chand Saini, resident of L-80, 25 Jalvayu Vihar, Noida.
27. Smt.Dipika wife of M.M. Dutt son of Bishamber Nath, c/o R.K. Manta, B-1, 1618, Basant Kunj, New Delhi.
28. Gianender Kumar Malhotra son of Shri K.K. Malhotra son of Shiv Narain, resident of Air Force Extension Barreley.
29. Shobhan Singh son of Tej Singh, resident of E-30/6, Phase-2 DRDP Complex C.B.V. Raman Nagar Bangalore.
30. Neeraj Singh son of Tej Singh, resident of A-33, Kailash Colony, New Delhi.
31. A.N. Verma son of C.A. Verma son of Vasadh Ram, resident of 226, Sector – 21, New Delhi.
32. Deepak Sikandu son of H.S. Sikandu, resident of E-3/248, Paschim Vihar, New Delhi.
33. Subhash son of Thau Ram son of Himraj, resident of 7-3/248, Paschmi Vihar, New Delhi.
34. Man Mohan Singh son of Col.Bagga son of Jagat Singh, resident of CIL. MOH, New Training Command, I.A.F. Bhawan Bangalore.
35. Charanjit Singh son of M.S. Khurana son of H.S. Khurana, resident of C/o Pawan Kumar Khanpur Extension Devli, Delhi.
36. Vinod Kumar son of T.D. Bagga son of Fateh Chand, resident of C/o Pawan Kumar, Khanpur Extension Devli, Delhi.
37. Sangeet Sharma son of Dr.S.S. Sharma, resident of Airforce Station, Nazafgarh, Delhi.

38. R.K. Srivastava son of I.B. Srivastava, resident of A.D.C.C.HQ.A.C.I.A.F. Subrota Park, New Delhi.
39. R.P.S. Delhi son of Narender Singh, resident of Pasrola Park, New Delhi.
40. Smt.Nirmala Kawaja widow of Satpal Kawaja, resident of A-9, Greater Kailash, New Delhi.
41. S.K. Khera son of R.N. Khera.
42. K.C. Khera, resident of 543/18, S.P. Marg, New Delhi.
43. Rajiv Gupta son of Riyu Daman Singh son of Bakhtawar Singh, resident of C-5/27, Safdarjung Double Payment Area, New Delhi.
44. Satinder Singh son of Sewa Singh son of Bhagat Singh, resident of 263 Signals Unit Air Force through 36A 20.
45. Bijender Singh Yadav son of Ganesh Lal son of Nand Ram, resident of District Ozgar Adhikari, Narnaul Haryana.
46. Kirpal Singh son of Kanoji Lal son of Nand Ram, resident of Education Section, Airforce Abadi Madras.
47. Pankul Nag son of Rajender Gopal Nagar, resident of D-11A 21 South Moti Marg, New Delhi.
48. Umesh Gupta son of Ram Gopal Gupta, resident A.D.S. Nawal Unit M.C.C. Lamba Line Post Delar.
49. Mathew Jeji son of B.George, resident of 20/PLTC Sidharth Extension, New Delhi.
50. J.S. Mann son of Sher Singh son of Bhagat Singh, resident of 36/46, Arjun Vihar Dhola Kuan, New Delhi.
51. N.S. Ahluwalia son of Maharaj Singh, resident of 66 Sukhdev Vihar, New Delhi.
52. Ravi Kohli son of D.R. Kohli son of Gobind Ram, resident of 406, Technology Apartment Patpadganj, Delhil.
53. O.P. Kukreja son of Yas Singh Kukreja, resident of c/o Shobha Khatri House No.K.S. 283, Ground Floor, Grater Kailash Bhag-I, New Delhi.
54. J.S. Malhotra son of Shri S.S. Malhotra, resident of 2114, Phase-7, SAS Nagar, Chandigarh.
55. Anshu Kumar son of Ved Raj Mehta son of Prehlad, resident of 403, Sishi Towers, Yamuna Nagar, Off Link road, Andheri West Mumbai.
56. S.S. Saini son of Fakir Chand Siani son of Sohan Lal, resident of L-80, Sector-25, Jalvayu Vihar, Noida, Uttar Pardesh.
57. Smt.Dipika wife of M.M. Dutt, resident of C/o R.K. Manta, B-1, Basant Kunj, New Delhi.
58. Gianender Kumar Malhotra son of Shri K.K. Malhotra, resident of S.G. (4) Airforce Station Bareli.
59. Soman Singh Dyoda son of Tej Singh Dayoda, resident of 30/6, Phase-2, DRD Complex C.P. Raman Nagar, Bangalore.
60. Neeraj Kumar Singla son of Chaman Lal, resident of A-33, Kailash

Colony, New Delhi.

61. P.K. Dass Verma son of R.N. Dass, resident of C/o M.M.K. Sindhi, Flat No.1154, Pocket-A, Basant Kunj, Delhi.
62. Kuldeep Roy son of Dr.S.C. Aggarwal son of S.M. Aggarwal, resident of A HQ West Block 6 R.K. Puram, New Delhi.
63. Anil Pandey son of T.N. Pandey son of M.R. Pandey, resident of B-66, Yashpal Tilak Nagar, Jaipur.
64. Sunil Kumar son of Narender Nath Kohli son of Sardari Lal Kohli, resident of C/o Satish Mehta Iind Pocket, 7 Flat No.7244, Basant Kunj, New Delhi.
65. Rajender Kumar son of Kundan Lal Arora son of Bodha Ram, resident of BX 1038, Faridkot Road, Kotak Pura, District Faridkot, Punjab.
66. Parmod Kumar Tayal son of Bashamber Sahai son of Bhagat Singh, resident of ASI C/o ADFC V Ram Nagar, Bangalore.
67. Jasvinder Chauhan son of Ajmer Singh Chauhan, resident of O.To A O.C.N.C. HQ I.A.L.SWAG, Jodhpur, 432-II.
68. Rajiv Gode son of A.K. Gode son of R.K. Gode, resident of C/o Navdeep Nakara, 6/44, Old Rajender Nagar, New Delhi.
69. Tajender Singh son of Rathore son of Thakur D.S. Rathore, resident of C-43, Hole House Lajpat C.Skeen Rajasthan.
70. Joseph Seras son of Krishni Pin Joseph, resident of 3 S.F. C/o 56 ADO.
71. Sudhir Saxena son of R.M. Saxena, son of G.R. Saxena, resident of C/o O.S. Soothar Road No.111D.m.O.D. South Block, New Delhi.
72. Rajender Kumar Bansal son of M.Bansal son of Shri Ram, resident of A-117, Sector-21, Noida, U.P.
73. S.N. Ahluwalia son of Kaharaj Singh son of Harnam Singh, resident of 66 Sukhdev Vihar, New Delhi- 25.
74. R.P.S. Dhilo son of Major General Narender Singh son of Surat Singh, resident of 11 Subrothoi Park, New Delhi.
75. Subhash Chand son of Tau Ram son of Hem Raj, resident of B-3/248, Paschim Vihar, New Delhi.
76. Charanjit Singh son of A.S. Khurana son of H.S. Khurana, resident of C/o R.K. Yadav, c6/55, Sector-31, Noida, U.P.
77. Smt.Nirmala Kawatri Wd/o Satpal Kuwatro.
78. Manoj Kawashi son of Satpal Kawashi, resident of A-9, G.K. Enclave-II, New Delhi.
79. Ravi Kohli son of Shri D.R. Kohli son of Gobind Ram.
80. Smt.Manju Kohli wife of Ravi Kohli son of Shri D.R. Kohli, resident of 406, Technology Apartment 24, Patpadganj, Delhi.
81. R.K. Sriwastwa son of I.B. Sriwastwa son of R.P. Sriwastwa, resident of 1 ADCOOOHQHACIAF Sumrato Park, New Delhi.
82. Ram Parkash Kapoor son of Luxmi Narain Kapoor son of J.N.

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Kapoor, resident of 3125, Sector-27D, Chandigarh.

.. Respondents-defendants

**Civil Appeal under section 96 of the Code of Civil Procedure, 1908 against the judgment and Decree dated 5.5.2014 rendered by the Court of Ms.Reetu Yadav, Civil Judge(Junior Division), Faridabad, in *Civil Suit No.144 of 2007/13 titled Ram Singh Yadav Versus M/s Om Parkash Baldev Kishan and others dismissing the suit for declaration with consequential relief of possession.***

Present: Shri S.C. Mahna, counsel for the appellant  
Shri Tek Chand Sharma, counsel for respondent No.1  
Respondents No.4 & 8 ex-parte before lower court  
Shri Vineet M.Bajaj, counsel for respondents No.2 &3  
Respondent No.43 ex parte vide order dated 16.11.2017.  
Shri L.N. Parashar, counsel for respondents No.6,7,9 to 42,  
44 to 52.  
Respondent no.53 to 82 ex parte vide order dated 4.12.2017.

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

1. This appeal has been preferred against judgment and decree dated 5.5.2014 passed by the court of Ms.Reetu Yadav, Civil Judge(Junior Division), Faridabad.

2. The present suit was filed by the plaintiff-appellant before the lower court sought relief of declaration to the effect that plaintiff is owner in possession of the land mentioned in para No.1 of the plaint and the alleged sale deed dated 2.7.1989 is false, fictitious and forged document. A prayer has also been made that a decree for possession in respect of land mentioned in para No.1 of the plaint be also passed.

3. Briefly stated, the case of the plaintiff is that he is owner in possession of the land comprised bearing Khewat No.91, Khatoni No.123,

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Mustil No.9, Killa No.14(8-0), 17(8-0), 18(8-0), 19(8-0), 20(8-0), 21(8-0), 22(8-0), 23(8-0), 24(8-0), 25(8-0), Mustil No.10, Killa No.16(7-13), 24(7-3), 25(8-0) total 13 Kita measuring 102 Kanals 16 Marlas situated within revenue estate of village Kabulpur Patti Mehtab vide jamabandi for the year 1986-1987.

4. It has been averred that defendant No.1 through its partners got fabricated a sale deed dated 2.7.1989 and registered in their favour from the office of Sub Registrar, Faridabad, got a sale deed forged through representatives and forged the signatures of the plaintiff and the same has been registered on 5.7.1989. On the basis of forged sale deed, mutation was sanctioned by defendant No.1. Defendants No.1 soled the land in part to defendants No.2 to 82 through various sale deed. The plaintiff never executed and got registered the sale deed in favour of defendant No.1. The plaintiff never signed nor received any consideration from defendant No.1 in respect of sale in question. The signatures on the sale deed are also forged which appears to have been done by free hand. The plaintiff continues to be the owners of the suit land. Since the impugned sale deed and mutations, entries in jamabandies are illegal and not binding on the plaintiff. Defendants have no right, title or interest in the suit land. Defendants were asked several times to vacate the land and to hand over the possession to the plaintiff, but they failed to do so. Hence, the present suit.

5. Upon notice, defendant No.1 appeared and filed his written statement taking preliminary objections on the ground that suit of the plaintiff is not

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maintainable in the present form and plaintiff has not approached the court with clean hands and had concealed true and material facts. It was submitted that plaintiff is estopped from his own act and conduct, behaviour, waiver and acquiescence from filing the present suit against the replying defendant as plaintiff has seeing the replying defendant as well as successors-in-interest in possession of the suit land as owners and plaintiff never objected the same since last 17 years. It was further submitted that the suit is time barred and is bad in the eyes of law. It was also submitted that plaintiff has not filed the proper court fee.

6. Upon merits, it was submitted that plaintiff is not owner in possession of the suit land. It was submitted that plaintiff has illegally filed the copy of jamabandi for the year 1986-87 whereas the suit has been filed in the year 2006. It was submitted that plaintiff sold out the suit property in year 1989 on 5th July on a sale consideration of Rs.1,50,000/-. Defendant No.1 paid the sale consideration through pay order duly issued at New Bank of India at New Delhi and thereafter, plaintiff delivered and handed over the actual physical possession of the suit property to the defendant. It was further submitted that on the basis of legal and valid sale deed dated 5.7.198, defendant No.1 further sold out the suit property to various other person. His successors-in-interest has also purchased the property through valid sale deeds. It was denied that defendant No.1 has forged signature of plaintiff on sale deed dated 5.7.1989. It was further prayed that suit is liable to be out rightly rejected with heavy costs as plaintiff

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has asked not only defendant No.1 but also other person in a false suit.

7. Defendants No.2 and 3 filed their joint written statement taking preliminary objections on the ground that suit of the plaintiff is not maintainable in the present form, suit of the plaintiff is barred by limitation and plaintiff has not affixed advalorem court fee.

8. Upon merits, it was submitted by answering defendants that defendants No.1 and 3 had purchased the suit property from its previous owner vide registered sale deed bearing 3642 dated 4.6.1997 which is registered in the office of Sub Registrar. It was further submitted that defendants No.2 and 3 are bonafide purchasers who have purchased the suit property after giving the valuable consideration, hence, no suit is maintainable against them. Other averments made in the plaint by plaintiff were denied in toto by defendants No.2 and 3 and it was submitted that suit is liable to be dismissed.

9. Defendants No.2,3,5 to 7 to 82 also filed their joint written statement taking preliminary objections as lies to defendants No.2 and 3. They also submitted that they had purchased the property through registered sale deed which are duly incorporated in the office of Sub Registrar, Ballabgarh. It was also submitted that they had paid valuable consideration and no fraud was played upon by them to get the sale deed registered in their favour.

10. Notice was served upon defendants No.4 and 8 but did not appear before the lower court and they were proceeded against ex-parte vide order dated 16.8.2010 and 30.8.2012 respectively.

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11. No replication was filed and after considering the pleadings of the parties following issues were framed vide order dated 2.9.2011:-

1. *Whether the plaintiff is entitled to a decree for possession?OPP*
2. *Whether the suit of the plaintiff is maintainable in the present form?OPD*
3. *Whether the suit of the plaintiff is barred by limitation ?OPD*
4. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties?OPD*
5. *Whether this Hon'ble Court has no jurisdiction to try and entertain the present suit?OPD*

**6. Relief.**

12. Vide order dated 3.5.2014, issue No.1 was re-framed as under:-

1. Whether the plaintiff is entitled for a decree of declaration with consequential relief of possession?OPP

13. Thereafter, the case was fixed for plaintiff evidence and in order to prove his case, Savinder Kumar-ARC, as PW-1 who brought the summoned record of vasika No.5998 and certified copy of the same is Ex.P1 on record.

14. Shri Ram Singh, plaintiff himself examined as PW-2 and tendered in his evidence his duly sworn in affidavit as Ex.PW2/A. Following documents have been tendered by plaintiff in his evidence:-

- Ex.P1 Jamabandi for the year 1986-87
- ExP2 Sale deed No.5998 dated 5.7.1989
- Ex.P3 Jamabandi for the year 1991-92
- Ex.P4 &
- Ex.P5 Jamabandies for the year 2001-2002

15. Shri Kamal Kant Khandelwal, handwriting and finger expert, has

been examined as PW-3 who proved photo enlargement as Ex.PW3/1 to Ex.PW3/9, their negatives as Ex.PW3/10 and report which was prepared by him as Ex.PW3/11.

16. Thereafter, evidence of the plaintiff was closed by court order vide order dated 24.9.2013 and to counter the case of the plaintiff, defendants examined Shri Rajiv Abbi as DW-1 who tendered in his evidence his duly sworn affidavit as Ex.DW1/A. Following documents have been tendered by defendants in their evidence:-

Ex.D1 Sale deed bearing vasika No.23637 dated 4.2.2013  
Ex.D2 Pattanama bearing vasika No.6616 dated 26.8.1996  
Ex.D3 Sale deed bearing vasika No.16820 dated 9.3.1998  
Ex.D4 Pattanama bearing vasika No.4218 dated 4.7.1996

17. Shri B.S. Nirola has been examined as DW-2 who tendered in his evidence his duly sworn affidavit s Ex.DW2/A and certain documents i.e. various Special Power of Attorney as Ex.DW2/a to Ex.DW2/41, various mutation as Ex.DW2/42 to Ex.DW2/72 and Mark-1 to Mark-101.

18. Shri B.N. Srivastava has been examined as DW3 who tendered in his evidence his duly sworn affidavit as Ex.DW3/A and his report is Ex.DW3/1.

19. Shri Tribhawan Kumar has been examined as DW4 who tendered in his evidence his duly sworn affidavit as Ex.DW4/A and certificate as Ex.DW4/1.

20. Shri Sukhdev Raj has been examined as DW-5 who tendered in his evidence his duly sworn in affidavit as Ex.DW5/A.

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21. Shri Rajender Prasad has been examined as DW6 who tendered in his evidence his duly sworn in affidavit as Ex.DW6/A. He also tendered attested photocopy of cash book as Ex.DW6/1 and certificate as Ex.DW6/2.
22. Shri Ghanshyam has been examined as DW-7 who proved letter dated 6.2.2014 as Ex.DW7/1 and statement of account as Ex.DW7/2.
23. Shri Sukhvir Singh, ARC has been examined as DW-8 who brought the summoned record of sale deed bearing vasika No.5998 dated 5.7.1989 and tendered certified copy of the same is Ex.DW8/1.
24. Shri Sriamannarayana, Asstt.Admin. Officer has been examined as DW-9 who tendered in his evidence his duly sworn in affidavit as Ex.DW9/A.
25. Thereafter, evidence of defendants was closed by court order vide order dated 4.3.2014.
26. In rebuttal evidence, learned counsel for the plaintiff has tendered certified copy of account as Mark-X and closed the same vide his statement dated 25.4.2014.
27. After hearing both the learned counsels for the parties, Ms.Reetu Yadav, Civil Judge(Jr.Division), dismissed the suit of the plaintiff, which is under challenge before this court.
28. Learned counsel for the appellant-plaintiff Shri S.C. Mahna, Advocate, has argued that the plaintiff is owner in possession of the suit property described in the para no.1 of the plaint situated at village Kabulpur Patti Mehtab. Defendant no.1 got a fabricated sale deed registered in his favour

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on 2.7.1989 and got mutation sanctioned in his favour vide Jamabandi 1992. Sale deed in question was never signed by the appellant-plaintiff. The suit of the plaintiff is within limitation as plaintiff came to know disputed sale deed on 1.5.2007/2.5.2007. Learned counsel has relied upon 2007(3) CCC 255, 2009(4) CCC 736, 2008(4) CCC , 2011(3) CCC 176, 2009(1) CCC 90, 2007(3) CCC 661, 2011(7) RCR 237, 2006(3) CCC 257 and AIR 2003 Orissa 136.

29. On the other hand, learned counsel for the respondents-defendants have argued that the plaintiff has argued that suit of the plaintiff is time barred. The plaintiff has filed suit for possession while in the plaint, he has averred that he is in possession of the suit land. Alleged sale deed was executed in the year 1989 while the plaintiff had filed suit in the year 2006 . Learned counsel further argued that presumption of truth is attached to the registered sale deed, which is notice to the general public at large and appeal is liable to be dismissed.

30. The plaintiff has appeared as PW2 and during cross-examination he has stated that vendee is in possession of the suit land. The plaintiff has examined Kamal Kant Khandelwal Handwriting and Finger Print Expert as PW3. In order to rebut oral and documentary evidence of the plaintiff, the defendants have examined Rajiv Abbi as DW1. B.S.Nirola , Asst. Director Admin(Legal ) has appeared as DW2. B.N.Srivastava has appeared as DW3 and Tribhawan Kumar has appeared as DW4. Sukh Dev Raj has appeared as DW5. Rajender Prasad has appeared as DW6. Ghanshyam has appeared as DW-7 and Sukhvir Singh, ARC has appeared as DW-8 and Sriamannarayana,

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Asstt.Admin. Officer has appeared as DW-9.

31. Apparently , the plaintiff has slept over his right for about two decade. The plaintiff has failed to furnish details of the sale deeds which were executed in faovur of the defendant no. 2 to 82. Except bald statement of the plaintiff, there is no cogent and concrete evidence to prove fraud played upon the plaintiff. The plaintiff has taken two contradictory stands, in the plaint, he has averred that he is in possession of the suit land and on the other hand he as sought relief of possession. The defendant has produced sale deed dated 5.7.1989 Ex. D1 and which was proved by producing record Ex. D6/1. Defendants have proved that an amount of Rs. 1,50,000/- was debited from their account. Mere asserting that he did not execute the sale deed is not suffice in the eyes of law but the same has to be proved by leading cogent and concrete evidence.

32. The appellant-plaintiff has failed to prove the ingredients of fraud described in Order6 , Rule4 of the Civil Procedure Code. A registered document carries even presumption of truth, if not challenged within the prescribed period of limitation, it is hard to believe that the appellant-plaintiff was not aware of the particulars of the land agreed to be sold as he stated to have received the sale consideration. Be that as it may, the fact remains that the rejection of the suit was on the ground of limitation. I am of the view that the ingredients of Order6 , Rule4 CPC have also not been proved and in the absence of the same, the Courts below rightly rejected the claim of the

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appellant-plaintiff and reliance is placed on **Ram Kumar v. Surjit Singh, (Punjab and Haryana) : Law Finder Doc Id # 826112 : 2017(1) PLR 89** and reliance is also placed on **Gajjan Singh v. Virsa Singh, (P&H) : Law Finder Doc Id # 127190: 2007(3) RCR(Civil) 3.**

33. The limitation for challenging the sale deed was to be from the date of registration of the said document, especially when, in the present case the possession was also handed over to the defendant-respondents in pursuance to the sale deed and mutation was also duly sanctioned. This view finds support from the judgment of Hon'ble Supreme Court in the case of **Janardhanam Prasad Vs Ramdas, 2007(1) RCR(Civil) 881: JT 2007(3) SC 187** and the Para No. 14 of that judgment reads as under :-

"14. The Ist Defendant was a friend of the 2nd Defendant. Admittedly, the usual stipulations were knowingly not made in the agreement of sale dated 11.1.1983. The Ist Defendant may or may not be aware about the agreement entered by and between the respondent herein. But he cannot raise a plea of absence of notice of the deed of sale dated 4.9.1985, which was a registered document. Possession of the suit land by the appellant also stands admitted. Registration of a document as well as possession would constitute notice, as is evident from Section 3 of the Transfer of Property Act, 1882, which is in the following terms :

"a person is said to have notice" of a fact when he actually knows that fact, or when, but for willful absentaton from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

*Explanation 1* :- Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one

sub-district, or where the registered instrument has been registered under sub-section (2) of Section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property, which is being acquired, or of the property wherein a share or interest is being acquired, is situated :

- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,
- (2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and
- (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under Section 55 of that Act.

*Explanation II* :- Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

*Explanation III* :- A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material :

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

34. A registered document i.e. sale deed 2.7.1989/5.7.1989, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, appellant-plaintiff has not been able to rebut the said presumption. The Hon'ble Supreme Court in case of **Prem Singh and Ors. v. Birbal and Ors., 2006(5) SCC 353 : (2006(3) PLJR (SC) 179**, laying down that there is a presumption

that a registered document is validly executed and prima facie would be valid in law. Paragraph 27 of the said judgment is being quoted hereinbelow for quick reference:-

"27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption."

35. The appellant has relied upon handwriting report Ex. PW3/11 prepared by PW3 Shri Kamal Kant Khandelwal. It is well settled that the opinion of the handwriting expert is not conclusive but is in the nature of opinion evidence. It is, therefore, clear that conclusion can not be based entirely on the evidence of handwriting expert, there must be independent evidence or other cogent evidence. Reliance is placed on **Deepa Arora v. Saurabh Arora & Anr. FAO No. 3/05** decided on 10th December, 2007 declined to rely upon the testimony of the handwriting expert produced by the Objector before the Court holding that not much importance could be attached to the testimony and report of the handwriting expert . In fact, way back in 1933, Hon'ble Lahore High Court in **Diwan Singh v. Emperor, AIR 1933 Lahore 561** quoted with approval the following passage:

"It must be borne in mind that an expert witness, however, impartially he

may wish to be, is likely to be unconsciously prejudiced in favour of the side which calls him. The mere fact of opposition on the part of the other side is apt to create a spirit of partisanship and rivalry, so that an expert witness is unconsciously impelled to support the view taken by his own side. Besides, it must be remembered that an expert is often called by one side simply and solely because it has been ascertained that he holds views favour-able to its interests."

36. Sale deed in question was executed in the year 1989 while the suit was brought on 1.11.2007 i.e. after the expiry of the prescribed period of limitation of three years in the Limitation Act, 1963 to bring an action in a court of law to challenge a sale deed. When the allegation of fraud was not proved by plaintiff in the making of the sale deed and these facts are assumed to be known to the plaintiff then limitation began to run after the first sale deed was executed on 2.7.1989/5.7.1989. On these premises, the suit was dismissed and reliance is placed on **Tirath Singh v. Manpreet Kaur, (P&H) : Law Finder Doc Id # 736827 : 2015(4) LAR 213 : 2016(5) RCR(Civil) 27**. Ratio of law relied upon by the appellant is not applicable to the facts of this case.

37. In over all discussions, facts and law, the learned lower court has correctly appreciated the entire evidence on file and no illegality, impropriety or incorrectness is found in the judgment, so passed, by it and its findings on all the issues are upheld. Resultantly, no merit is found in the present appeal filed and the same is hereby dismissed. Decree sheet be prepared accordingly.

11.12.2017  
Vivek

Devinder Singh  
ADJ,Fbd.  
UID No.HR0153

38. LCR along-with copy of this judgment be sent back. File be consigned to record room after due compliance.

Pronounced in open Court.  
Dt. 11.12.2017

(Devinder Singh)  
Additional District Judge,  
Faridabad. 11.12.2017

Note: All the eighteen pages of this judgment have been checked and signed by me.

(Devinder Singh)  
Additional District Judge,  
Faridabad. 11.12.2017  
UID No.HR0153

11.12.2017  
Vivek

Devinder Singh  
ADJ,Fbd.  
UID No.HR0153