

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 07<sup>th</sup> February, 2022**

+ CS(OS) 195/2021, I.A. Nos.4937/2021 (by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC for ad-interim ex-parte injunction) & 4939/2021 (by the plaintiff under Order XI Rules 12 & 14 read with Section 151 CPC read with Sections 65, 66 & 68 of the Indian Evidence Act, 1872) & 11758/2021 (by the defendant No.2 under Order VIII Rule 1 read with Section 151 CPC seeking condonation of delay of 24 days in filing the written statement)

SUNIL KUMAR CHATURVEDI (HUF) ..... Plaintiff

Through: Mr. Chetan Lokur & Mr. Jaspal Singh, Advs.

versus

PIYUSH SAMA & ANR. .... Defendants

Through: Ms. Sonali Chopra, Adv. for D-1

**CORAM:**

**HON'BLE MS. JUSTICE ASHA MENON**

### **ORDER**

**I.A. 4937/2021 (by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC for ad-interim ex-parte injunction)**

1. This application has been filed by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC for ad-interim ex-parte injunction.

2. The plaintiff is a Hindu Undivided Family (HUF) suing through the '*Karta*', Mr. Sunil Kumar Chaturvedi (henceforth referred to as the '*Karta*'), for declaration of title over the suit property, namely, Flat No.76, C-2C, Pocket-2, Janakpuri, New Delhi, alongwith *Barsati* on the roof. The plaintiff claims to be the rightful owner in possession of the said property. Consequential reliefs of permanent and mandatory injunctions have been sought against the defendant No.1 to restrain the defendant No.1 from dispossessing the plaintiff from the suit property or alienating or creating any third-party rights over it.

3. The facts as set out are that the suit property had been originally leased by the Delhi Development Authority ('DDA') to one, Mr. Inder Pal Singh Pantle on 20<sup>th</sup> September, 1977. Subsequently, on 11<sup>th</sup> July, 1986, after receiving permission and approval from the DDA, he sold the property to one, Mr. Joginder Pal Singh, by executing an Agreement to Sell and other relevant documents. Later, a Sale Deed was registered on 13<sup>th</sup> February, 1987. Thus, all leasehold rights in the suit property were transferred to Mr. Joginder Pal Singh absolutely. On 18<sup>th</sup> April, 1988, Mr. Joginder Pal Singh executed an Agreement to Sell and a General Power of Attorney (GPA) in favour of defendant No.2/Smt. Rita Chaudhary, who is the sister-in-law of the *Karta*. The defendant No.2 permitted the *Karta* to live in the suit property alongwith his family and thus, the *Karta* has remained in the peaceful possession of the suit property since 1988 in terms of the internal family understanding.

4. It is the case of the plaintiff that on 30<sup>th</sup> October, 1995, defendant No.2 transferred her title and interest in the suit property in his favour by

way of a GPA and Agreement to Sell and other documents and thus, w.e.f. that date, he became the absolute owner of the suit property. On 13<sup>th</sup> January, 2000, the plaintiff applied to the DDA for conversion of the suit property into freehold, but since the requisite conversion charges could not be deposited, the conversion did not take place.

5. Mr. Siddharth Chaturvedi, a co-parcener of the plaintiff, being the son of the *Karta*, had some disputes with his employer, Fastway Transmission Pvt. Ltd. ('FTPL'), as there were allegations made by FTPL that Mr. Siddharth Chaturvedi had siphoned off funds collected from Fastway Media Cable Network Pvt. Ltd. ('FMCNPL') a subsidiary of FTPL, by receiving payments from cable operators but not depositing the same with FMCNPL. A FIR was also registered against him by FMCNPL on 20<sup>th</sup> March, 2017, being FIR No.65/2017 at Police Station Division No.5, Ludhiana. He was also arrested on 10<sup>th</sup> September, 2017.

6. It is the case of the plaintiff that under the coercion of FTPL and FMCNPL, it was compelled to transfer four different properties, including the suit property, in the name of the representatives and associates of FTPL and FMCNPL and all title documents, including those relating to the suit property were taken from the custody of the plaintiff on the pretext of preparing Agreement to Sell etc. However, the defendant No.1 insisted that the Agreement to Sell should be executed by the defendant No.2. In these circumstances, the defendant No.2 agreed to execute the Agreement to Sell in favour of the defendant No.1 though she had no marketable title or possession over the suit property. She did so only in order to secure the release of the son of the *Karta*, Mr. Siddharth

Chaturvedi.

7. It is the contention of the learned counsel for the plaintiff that in actual fact, no consideration had passed for this Agreement to Sell, since, the defendant No.1 had handed over a cheque of Rs.44 lakhs to defendant No.2 and defendant No.2 transferred the said amount to the plaintiff who in turn transferred the same to FMCNPL. Thus, what was paid through cheque on 25<sup>th</sup> September, 2017, was transferred on that very day into the account of FMCNPL. What was supposedly paid by the defendant No.1, had returned to him in other words. Learned counsel submitted that the *Karta* and his family members are still in possession of the entire suit property and therefore, pending the disposal of the suit, their possession be protected.

8. Learned counsel for the plaintiff also submitted that the defendant No.1 was closely connected with the FMCNPL, as his maternal aunt was a 25% shareholder in it and, all the documents filed by the defendant No.1 established the clear nexus between the defendant No.1 and FMCNPL. The bank statements that have been produced by defendant No.1 also disclose specific monetary transactional relationship between defendant No.1 and FMCNPL. It was defendant No.1 who had assisted Mr. Siddharth Chaturvedi to get a job at FMCNPL. The defendant No.1 was in possession of a Mahindra car which was actually owned by FMCNPL. The FMCNPL was being run and operated from a building which was owned by a close family member of defendant No.1. The defendant No.1 has also been receiving regular monetary remuneration from FMCNPL.

9. In the light of all these circumstances, according to learned counsel, it was clear that the defendant No.1 was linked with FMCNPL, at whose instance, Mr. Siddharth Chaturvedi had been arrested, and hence the Agreement to Sell executed by defendant No.2 was clearly under coercion. Secondly, no consideration had passed. Therefore, the Agreement to Sell was invalid and *non est* and on that basis, the defendant No.1 could not be permitted to dispossess the *Karta* and his family members from the suit property, during the pendency of the suit.

10. Learned counsel for the plaintiff has also placed reliance on the judgment of the Supreme Court in ***Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana***, (2012) 1 SCC 656, to submit that even the Supreme Court had protected *bonafide* transfer of immovable property between family members through Agreement to Sell, GPA etc., whereas the transaction relied upon by the defendant No.1 was hit by Section 53A of the Transfer of Property Act, 1882 ('TPA'), since, the plaintiff having acted upon the Agreement to Sell dated 30<sup>th</sup> October, 1995 and, having paid full consideration and, having been in possession since that date, the plaintiff had a superior claim to the suit property than that set up by the defendant No.1.

11. The defendant No.1 has filed his written statement and reply to the application. Written arguments have also been filed on behalf of defendant No.1.

12. Ms. Sonali Chopra, learned counsel for defendant No.1, submitted that defendant No.1 and Mr. Siddharth Chaturvedi were close friends

since 2006. In 2016, upon the arrest of Mr. Siddharth Chaturvedi, on account of certain acts committed by him during his employment with FTPL, in order to come to a one time full and final settlement with FTPL, the *Karta* approached the defendant No.1 for assistance in arranging funds. Pursuant to those discussions, the defendant No.1 purchased the suit property from defendant No.2 for a mutually agreed sum of Rs.44 lakhs. A registered Agreement to Sell and a registered GPA were executed on 25<sup>th</sup> September, 2017 and the leasehold rights in respect of the suit property were voluntarily sold by defendant No.2 to defendant No.1 for the said sum. A cheque bearing No.536526 dated 22<sup>nd</sup> September, 2017 was also handed over to defendant No.2, who encashed the same on 27<sup>th</sup> September, 2017.

13. According to Ms. Chopra, since the suit property was the only dwelling unit available with the *Karta*, the defendant No.1 did not disturb their occupation, till they found an alternate accommodation. Thus, only symbolic possession was handed over by defendant No.2 to the defendant No.1. It is claimed that defendant No.1 was to be paid a sum of Rs.20,000/- per month towards use and occupation charges by the *Karta*. Towards this end, six cheques for Rs.20,000/- each were handed over to the defendant No.1. However, when three of these cheques were presented, they were dishonored. However, no legal action was taken, as the son of the *Karta* pleaded financial crunch.

14. The learned counsel for defendant No.1 submitted that the plaintiff was relying on unregistered and unstamped documents. Therefore, there was no valid transfer of rights in the immovable property. Section 54 of

the TPA provides that sale of immovable property can be only through a registered instrument. Even the Supreme Court in *Suraj Lamp & Industries (P) Ltd. (2)*(supra) affirmed this position in law that an Agreement to Sell, not being a registered Deed of Conveyance would not meet the requirement of Sections 54 & 55 of the TPA. Thus, the plaintiff could not claim any ownership or title in the suit property, on the basis of which, they could file the instant suit or seek interim protection.

15. In respect of the argument of learned counsel for the plaintiff that the plaintiff was protected under Section 53A of the TPA, the learned counsel for the defendant No.1 submitted (including in the written submissions) that such a protection did not endow the transferee with any rights of ownership which remained with the full owner, till it was legally conveyed by a registered Sale Deed in favour of the transferee. Since the defendant No.2 had not executed such a registered Sale Deed or any other instrument in favour of the plaintiff, the mere continued possession cannot be accepted as a reflection of its ownership, as the ownership continued to remain with the defendant No.2. In any case, according to the learned counsel for the defendant No. 1, the doctrine of Part Performance as enshrined in Section 53A of the TPA could be raised by the plaintiff only against the defendant No.2, had there been an agreement between the two, but was not relevant to determine the rights of the defendant No.1 in respect of the suit property, as there was no privity of contract between them.

16. Learned counsel for defendant No.1 further submitted that the plaintiff had failed to disclose precisely, the manner of the alleged fraud

that was committed as bald assertions and allegations were insufficient. Reliance has been placed on the decision of this Court in ***Mukesh Hans v. Uma Bhasin***, 2010 SCC OnLine Del 2776. It is also submitted that there was not one averment either in the plaint or in the application which satisfied the definition of ‘coercion’ under Section 15 of the Indian Contract Act, 1872, or of ‘fraud’ as defined in Section 17 of the said Act. No circumstances have been set out in the plaint. No dates or time have been revealed. No other particulars have been disclosed, on the basis of which, the court could conclude that there was either fraud, coercion, or undue influence or all of them, at the time when the Agreement to Sell was executed in favour of the defendant No.1 on 25<sup>th</sup> September, 2017. Thus, vague and frivolous pleas have been taken in an effort to defeat the rights of the defendant No.1.

17. It was submitted that admittedly, the sale consideration of Rs.44 lakhs had actually been paid by defendant No.1 to defendant No.2. Thus, through registered documents, for consideration, the suit property had been transferred to the defendant No.1. The plaintiff had transferred the money to FMCNPL only in terms of the one-time full and final settlement entered between the *Karta* and FTPL. The defendant No.1 had no connection with FTPL but was only an employee of FMCNPL, in which his maternal aunt was a 25% shareholder. Moreover, the defendant No.2 had not challenged any of these registered documents executed by her in favour of defendant No.1. The GPA executed was an irrevocable registered Power of Attorney for valuable consideration and the *Karta* had participated in the execution and registration of these title documents



executed by defendant No.2 in favour of defendant No.1, signing the same as a witness.

18. Thus, the plaintiff had neither disclosed a *prima-facie* case nor would irreparable injury and damage be caused to him. The balance of convenience was also not in his favour and thus, it was not entitled to any interim injunction. Hence, it was prayed that the application be dismissed.

19. Though none had appeared on behalf of defendant No.2 to argue the matter, in the written statement filed by defendant No. 2, she has materially supported the case of the plaintiff by stating that she was also a victim of the coercive action initiated by the defendant No.1. She has stated that she had transferred the suit property to the plaintiff way back on 30<sup>th</sup> October, 1995 vide the Agreement to sell, GPA etc., and that she treated the son of the *Karta*, Mr. Siddhant Chaturvedi like her own son. Therefore, when the defendant No.1 forced the *Karta* to transfer the suit property to him, at the same time, not wanting to show any link in the transaction, out of filial love and on account of the pressure and coercion, fraud and undue influence and extortion exerted upon her by defendant No.1, she agreed to execute the documents in his favour on 25<sup>th</sup> September, 2017. The sale consideration of Rs.44 lakhs was as per the circle rate and whatever money was received by defendant No.2 on 29<sup>th</sup> September, 2017, was returned to defendant No.1, as per his instructions. Thus, it is clear that the defendant No.2 has also taken the stand that the consideration had been returned.

20. I have heard the submissions of learned counsel for the parties and

have also considered the material available on record. It is apparent from the pleadings that the material facts are not in dispute, namely, that there was an earlier transaction dated 30<sup>th</sup> October, 1995 between the defendant No.2 and the plaintiff, and that the plaintiff has been in possession since before then, that Mr. Siddharth Chaturvedi was involved in a criminal case filed by FMCNPL, of which, the defendant No.1 is an employee and that in order to facilitate a one-time settlement, a transaction dated 25<sup>th</sup> September, 2017 was facilitated in respect of the suit property which is now the bone of contention.

21. Both sides have relied on the decision of the Supreme Court in ***Suraj Lamp & Industries (P) Ltd. (2)***(supra), one claiming that such transactions between family members were to be recognized, as argued on behalf of the plaintiff, while the other submitting that without registration, the prior documents could not have transferred any right in the immovable property to the plaintiff.

22. However, the transaction between defendant No.2 and defendant No.1 has been questioned by the plaintiff, firstly, on a lack of title with the defendant No.2 to have transferred the suit property to defendant No.1 and, secondly, the absence of consideration. The routing of the sum of Rs.44 lakhs will need to be considered as to whether it went to defendant No.1 or went towards the final settlement of the matter with FMCNPL, as it is not disputed by the defendant No.1 that the *Karta* had actually paid that sum of money to FMCNPL. It needs to be also determined on evidence, as to the circumstances in which this transaction was effected, in view of the fact that evidence in respect of the bail proceedings etc.

will be relevant to come to any conclusion.

23. To that extent, the plaintiff has disclosed a *prima-facie* case. The balance of convenience lies in favour of the plaintiff inasmuch as since the year 1988, the *Karta* and his family have been in a possession of the suit property and have continued to remain in possession thereof, after the execution of documents by defendant No.2 in favour of the plaintiff on 30<sup>th</sup> October, 1995.

24. Admittedly, even after the execution of the documents in favour of the defendant No.1 on 25<sup>th</sup> September, 2017, the *Karta* and his family members have continued to be in possession till date. Clearly, irreparable loss and injury would be caused to the plaintiff, if, at the end of the trial, it were to succeed in the suit, but in the absence of an interim injunction, it stood dispossessed, or third-party interests created in the suit property.

25. Thus, in view of the observations made hereinabove, the application is allowed. The defendant No.1 is restrained from interfering with the peaceful possession of the plaintiff and its members, in the suit property, namely, Flat No.76, C-2C, Pocket-2, Janakpuri, New Delhi. The defendant No.1 is also restrained from creating any third-party rights, title or interests in the said suit property.

26. Nothing contained in this order shall be a reflection on the merits of the case.

27. The application stands disposed of.

**CS(OS) 195/2021, I.A. Nos. 4939/2021 (by the plaintiff under Order XI Rules 12 & 14 read with Section 151 CPC read with Sections 65, 66 & 68 of the Indian Evidence Act, 1872) & 11758/2021 (by the defendant No.2 under Order VIII Rule 1 read with Section 151 CPC seeking condonation of delay of 24 days in filing the written statement)**

28. List before the Joint Registrar on 12<sup>th</sup> April, 2022, for completion of pleadings in the suit as well as in the applications and admission/denial of documents.

29. The order be uploaded on the website forthwith.

**(ASHA MENON)  
JUDGE**

**FEBRUARY 07, 2022**

ck