



§~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 10th July, 2023*

+ C.R.P. 64/2022 & CM APPL. 20882/2022

ANUJ SHARMA Petitioner
Through: Mr. Vikas Sharma and
Mr. Armaan Bhola, Advocates.

versus

AMIT SHARMA Respondent
Through: Mr. Prashant Mohan, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT**JYOTI SINGH, J.**

1. Present revision petition has been filed by the Petitioner laying a challenge to an order dated 24.09.2021 passed by the Trial Court in CS No.3591/2019, whereby his application under Order VII Rule 11 CPC has been dismissed. Petitioner before this Court is the Defendant before the Trial Court and Respondent is the Plaintiff. Parties hereinafter are referred to by their litigating status before the Trial Court.

2. Factual matrix to the extent relevant is that Plaintiff claims to be the registered owner of property bearing No.4138/1, Ground floor, Gali No.108, B-Block, Near Kapoor Garments Store, Sant Nagar, Burari, Delhi in Khasra No.124/10, admeasuring 55 sq. yds. (hereinafter referred to as the 'suit property'). Defendant, who is the real brother of the Plaintiff, is stated to be in possession of the ground floor of the suit property as a licensee. Plaintiff purchased the suit property from its erstwhile owner by way of Registered GPA, Agreement to Sell and other



allied documents dated 20.10.2004 and water and electricity meters are also installed in Plaintiff's name.

3. It is Plaintiff's case that on request of the Defendant, he permitted the Defendant to reside in the suit property along with his family as a licensee and a permissive user *albeit* without payment of licence fee. However, since Plaintiff was in need of the property and the Defendant was also creating nuisance for him and his family, he requested the Defendant to vacate the property and hand over physical possession to the Plaintiff. On the Defendant's failure to vacate, legal notice dated 09.10.2019 was served on the Defendant terminating the licence and calling upon him to vacate the suit property within 15 days. When the Defendant did not hand over the possession of the property in the time granted, Plaintiff filed the present suit for mandatory and permanent injunction as well as damages.

4. Upon service of the summons, Defendant filed his written statement and subsequently an application under Order VII Rule 11 CPC read with Section 151 CPC to which no reply was filed by the Plaintiff. Two grounds were urged by the Defendant in the application: (a) suit is barred by law as Plaintiff has relied on GPA/agreement to sell etc. to show his ownership, which documents do not legally transfer title/ownership; and (b) suit is not valued properly as Plaintiff claims mandatory injunction, without being in possession of the suit property.

5. Trial Court dismissed the application on the ground that even if GPA and other allied documents are not valid transfer documents and do not transfer title to the Plaintiff, it is irrelevant since the suit is predicated on licensor-licensee relationship and is not based on title of the Plaintiff and in any case, the documents do carry some weight in favour of the



transferee to seek mandatory injunction. The other reason recorded in the order is that for deciding an application under Order VII Rule 11 CPC, only plaint and documents annexed thereto have to be seen and no reference can be made to the written statement and/or documents filed by the Defendant. According to the Trial Court, Plaintiff has averred in the plaint that Defendant was inducted as a licensee and permissive user and there is also a reference to Registered GPA, Agreement to Sell, Affidavit, Will, Receipt, Possession Letter etc. executed in favour of the Plaintiff by the erstwhile owner and no ground was made out to reject the plaint.

6. Insofar as the second ground with respect to payment of court fee and undervaluation of the suit was concerned, Trial Court has disagreed with the Defendant and held that relationship between the Plaintiff and the Defendant is that of licensor and licensee and in such a case he need not seek recovery of possession and the suit was thus correctly valued.

7. Learned counsel for the Defendant contended that Trial Court has erred in appreciating that no right, title or interest was created in favour of the Plaintiff on the basis of documents such as GPA, Agreement to Sell, Will, etc. and therefore Plaintiff could not claim ownership of the suit property. It is a settled law that title of the property cannot be transferred and/or vested in the transferee by documents such as SPA/GPA/Agreement to Sell/Will, etc. Reliance was placed on the judgment of the Supreme Court in *Suraj Lamps and Industries Private Limited (2) Through Director v. State of Haryana and Another, (2012) 1 SCC 656* and of this Court in *Bishan Chand v. Ved Prakash (Since Deceased) Thr Lrs & Anr., 2018 SCC OnLine Del 11408*, wherein this Court held that title of property cannot vest on the basis of



GPA/Agreement to Sell even where transactions have taken place prior to the judgment of the Supreme Court in *Suraj Lamps (supra)*. It was urged that in **CS(OS) 654/2017** titled *Hemant Verma v. Mithilesh Rani & Ors.*, decided on 07.04.2021, this Court rejected the plaint on a similar ground referring to the judgment in *Bishan Chand (supra)* and reiterating that documents such as GPA/Agreement to Sell will not transfer ownership/title.

8. It was further contended that even otherwise Plaintiff cannot place reliance on the Agreement to Sell in the absence of its registration. Trial Court erred and overlooked that the document is required to be compulsorily registered by virtue of Section 17 of the Registration Act, 1908. Reading of Clause 5 of the Agreement to Sell dated 23.12.2004, purportedly executed by Amol Bhargava in favour of the Plaintiff, itself shows that the parties thereto were required to execute a sale deed, which was never executed and thus the suit, predicated on an unregistered Agreement to Sell was liable to be dismissed.

9. It was further contended that the Trial Court has misinterpreted the judgment of this Court in *O.P. Aggarwal & Anr. v. Akshay Lal & Ors., 2012 SCC OnLine Del 1589* and erred in holding that Plaintiff has some rights in the suit property. The said judgment was based on totally different facts where all documents regarding complete chain of transfer of the property were filed and the erstwhile owner had acquired title through a registered Sale Deed. In the present case, no document has been filed by the Plaintiff which establishes that the predecessor owned the suit property. It was also contended that the Trial Court has passed the impugned order in a great haste ignoring that two separate applications were filed by the Defendant, one under Section 35-A of



Indian Stamps Act, 1899 and another under Order VII Rule 11 CPC and no order was passed on the former application.

10. Learned counsel on behalf of the Plaintiff defended the impugned order and submitted that the application under Order VII Rule 11 CPC was correctly rejected by the Trial Court in light of the judgment of this Court in *O.P. Aggarwal (supra)*. It was further submitted that the suit was filed for mandatory and permanent injunction since the Defendant was in possession of the suit property as a licensee and despite service of termination notice, had refused to vacate the suit property. Plaintiff has clearly pleaded in the plaint that he is the owner of the suit property by virtue of documents such as Agreement to Sell/GPA, etc. and no other issue is relevant for the purpose of deciding the injunction suit between a licensor and licensee, which relationship was never denied by the Defendant.

11. I have heard learned counsels for the parties and examined their respective contentions.

12. At this stage, I may pen down that insofar as the second ground on which rejection of plaint was sought pertaining to undervaluation of the suit and court fee, neither the same has been pleaded in the revision petition nor canvassed during the course of hearing and therefore the Court is restricting the consideration only to the arguments with respect to plea in bar.

13. Challenge in the present revision petition is to an order of the Trial Court whereby application under Order VII Rule 11 CPC filed by the Defendant has been dismissed. Before examining the issue at hand, it is necessary to have a close look on the parameters which circumscribe the consideration/adjudication of the application under Order VII Rule 11



CPC, seeking rejection of plaint. In order to avoid prolixity, I may only refer to the judgment of the Supreme Court in ***Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) Dead Through Legal Representatives and Others, (2020) 7 SCC 366***, relevant paras of which are as follows:-

“23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.

xxxx

xxxx

xxxx

23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”



23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941].*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.*

xxxx

xxxx

xxxx

23.15. *The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.”*

14. In the present case, the ground urged in the application under Order VII Rule 11 CPC is that the suit of the Plaintiff is not maintainable as no title/ownership vests in him with respect to the suit property by virtue of documents in the nature of GPA, Agreement to Sale and Purchase, Affidavit, Will, Receipt, Possession Letter, etc. It is trite that transfer of immovable property by way of sale can only be by a Deed of Conveyance/Sale Deed, duly stamped and registered as required by law and in the absence of this, no right, title or interest can be transferred in an immovable property. In *Suraj Lamps (supra)*, the Supreme Court held that Power of Attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property and only authorizes the Attorney to do the acts specified therein. It was further held that transactions of the nature of “GPA sales” or ‘SA/GPA/Will/Transfers’ do not convey title and do not amount to transfer nor can they be



recognized as valid mode of transfer of immovable property and Court will not treat such transactions as completed or concluded transfers or as conveyances. The Supreme Court observed that these documents cannot be recognized as deeds of title, except to the limited extent of Section 53-A of Transfer of Property Act, 1882.

15. The Trial Court while deciding the application of the Defendant in the present case took note of this *binding dictum* of the Supreme Court. The application has been dismissed, however, relying on the judgment in *O.P. Aggarwal (supra)*, wherein the Court has held that while documents such as Agreement to Sell/GPA do not confer ownership rights as held in *Suraj Lamps (supra)*, but such documents would create certain rights in immovable property in favour of a person who has documents executed in his favour, though not strictly ownership rights but rights entitling to claim possession of the suit property. In my view, no infirmity can be found in the order of the Trial Court as the same is in consonance with the judgment of this Court where it is held that documents in the nature of GPA/Agreement to Sell, etc. may not transfer title but do create certain rights, such as possessory rights, which cannot be disturbed by a third party. Relevant extract of the judgment is as under:-

"11. No doubt, documents such as Agreement to Sell, Power of Attorney, Will etc do not strictly confer ownership rights as a sale deed, however, such documents create certain rights in an immovable property, though which are strictly not ownership rights but definitely the same can be construed as entitling the persons who have such documents to claim possession of the suit property inasmuch as at least the right to the suit property would stand transferred to the person in whose favour such documents have been executed. The Supreme Court in the recent judgment of Suraj Lamp Industries Pvt. Ltd. v. State of Harvana, 183 (2011) DLT 1(SC) has reiterated the rights created by virtue of Section 53A of Transfer of Property Act, 1882 and Section 202 of the Contract Act, 1872 in paras 12, 13 and 16 of the said judgment."



16. In this context, I may refer to a recent judgment of the Supreme Court in *Ghanshyam v. Yogendra Rathi, 2023 SCC OnLine SC 725*. In the said case, Plaintiff/Respondent had instituted a suit for eviction of the Defendant/Appellant from the suit premises as well as for mesne profits on the ground that he was the owner of the property by virtue of an Agreement to Sell, Power of Attorney, receipt of payment, will, memo of possession, etc. Possession of the suit premises was handed over to the Plaintiff but subsequently on the request of the Defendant, Plaintiff allowed him to occupy the ground floor and one room on the first floor for three months as a licensee. Defendant failed to vacate the property after expiry of the license period, despite service of termination notice.

17. Defendant contested the suit but the Trial Court decreed the suit in favour of the Plaintiff with a categorical finding that no evidence was led to prove that the documents were obtained by misrepresentation, manipulation or fraud. The question for consideration before the Supreme Court was whether documents namely, Power of Attorney, Agreement to Sell, etc. would confer any title upon the Plaintiff entitling him to a decree of eviction and mesne profits. After examining the issue before it, the Supreme Court held as follows:-

“9. No doubt, agreement to sell is not a document of title or a deed of transfer of property by sale and as such, may not confer absolute title upon the plaintiff-respondent over the suit property in view of Section 54 of the Transfer of Property Act, 1882, nonetheless, the agreement to sell, the payment of entire sale consideration as mentioned in the agreement itself and corroborated by the receipt of its payment and the fact that the plaintiff-respondent was put in possession of the suit property in accordance with law as is also established by the possession memo on record, goes to prove that the plaintiff-respondent is de-facto having possessory rights over the suit property in part performance of the agreement to sell. This possessory right of the plaintiff-respondent is not liable to be disturbed by the transferer, i.e., the defendant-



appellant. The entry of the defendant-appellant over part of the suit property subsequently is simply as a licensee of the plaintiff-respondent. He does not continue to occupy it in capacity of the owner.

10. *In the wake of the finding that the above-mentioned documents have not been fraudulently obtained or have not been manipulated, treating the said documents to be duly executed and as genuine, one thing is clear that the plaintiff-respondent is in a settled possession of the suit property at least in part performance of the agreement which cannot be disturbed or disputed by the transferer, i.e., the defendant-appellant.*

11. *At the cost of repetition, the suit is for eviction of the defendant-appellant from the suit premises and for recovery of mesne profits on the ground that after the defendant-appellant has parted with the possession of the property in favour of the plaintiff-respondent in part performance of the agreement, he has no right to disturb his possession. He is simply a licensee and the licence having been terminated, he has no right to remain in possession but to restore possession to the person having rightful possessory title over it.*

12. *It goes without saying that the power of attorney executed by the defendant-appellant is of no consequence as on the strength of said power of attorney, neither sale deed has been executed nor any action pursuant thereof has been taken by the power of attorney holder which may confer title upon the plaintiff-respondent. Non-execution of any document by the general power of attorney holder consequent to it renders the said general power of attorney useless.*

13. *Similarly, the will dated 10.04.2002 executed by the defendant-appellant in favour of the plaintiff-respondent is meaningless as the will, if any, comes into effect only after the death of the executant and not before it. It has no force till the testator or the person making it dies. The said stage has not arrived in the present case and, therefore, even the aforesaid will in no way confers any right upon the plaintiff-respondent.*

14. *In connection with the general power of attorney and the will so executed, the practice, if any, prevalent in any State or the High Court recognizing these documents to be documents of title or documents conferring right in any immovable property is in violation of the statutory law. Any such practice or tradition prevalent would not override the specific provisions of law which require execution of a document of title or transfer and its registration so as to confer right and title in an immovable property of over Rs. 100/- in value. The decisions of the Delhi High Court in the case of *Veer Bala Gulati v. Municipal Corporation of Delhi*, (2003) 104 DLT 787 following the earlier decision of the Delhi High Court itself in the case of *Asha M. Jain v. Canara Bank*, (2001) 94*



*DLT 841 holding that the agreement to sell with payment of full consideration and possession along with irrevocable power of attorney and other ancillary documents is a transaction to sell even though there may not be a sale deed, are of no help to the plaintiff-respondent inasmuch as the view taken by the Delhi High Court is not in consonance with the legal position which emanates from the plain reading of Section 54 of the Transfer of Property Act, 1882. In this regard, reference may be had to two other decisions of the Delhi High Court in *Imtiaz Ali v. Nasim Ahmed*, AIR 1987 Del 36 and *G. Ram v. Delhi Development Authority*, AIR 2003 Del 120 which inter-alia observe that an agreement to sell or the power of attorney are not documents of transfer and as such the right title and interest of an immovable property do not stand transferred by mere execution of the same unless any document as contemplated under Section 54 of the Transfer of Property Act, 1882, is executed and is got registered under Section 17 of the Indian Registration Act, 1908. The decision of the Supreme Court in *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana*, (2009) 7 SCC 363 also deprecates the transfer of immovable property through sale agreement, general power of attorney and will instead of registered conveyance deed.*

15. *Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming under him.*

16. *Notwithstanding the above as the plaintiff-respondent admittedly was settled with possessory title in part performance of the agreement to sell dated 10.04.2002 and that the defendant-appellant has lost his possession over it and had acquired the right of possession under a licence simpliciter, exhausted his right to continue in possession after the licence has been determined. Thus, the defendant-appellant parted with the possession of the suit property by putting the plaintiff-respondent in possession of it under an agreement to sell. The plaintiff-respondent in this way came to acquire possessory title over the same. The defendant-appellant, as such, ceased to be in possession of it as an owner rather occupied it as a licensee for a fixed period which stood determined by valid notice, leaving the defendant-appellant with no subsisting right to remain in possession of the suit premises.*

17. *In view of the aforesaid facts and circumstances, the plaintiff-respondent has rightly been held to be entitled for a decree of eviction with mesne profits, we do not find any error or illegality in such a decree being passed. Accordingly, the appeals lack merit and are dismissed with no order as to costs."*



18. Coming to the facts of the present case, as the Trial Court rightly noted, Plaintiff has averred in the plaint that the suit property was transferred to the Plaintiff by execution of Registered GPA/Agreement to Sell and Purchase, etc. and therefore going by the judgment in *Ghanshyam (supra)*, Plaintiff would be *prima facie* entitled to possessory rights which are required to be protected against the licensee. Therefore, the licensee must part with possession at the end of the license period and the mere fact that the Plaintiff sets up a title on documents such as GPA/Agreement to Sell cannot be an impediment in filing a suit for mandatory/permanent injunction against the licensee. Moreover, at the stage of deciding an application under Order VII Rule 11 CPC, the Court was required to examine only the averments in the plaint on a mere demurrer and the documents annexed thereto. Not only does the plaint contain averments as aforementioned, however, Plaintiff has also filed the documents such as GPA, etc. Therefore, at this stage, it cannot be said that the plaint deserves to be rejected as being barred by law and no interference is warranted in the impugned order.

19. For all the aforesaid reasons, the revision petition is dismissed making it clear that this Court has not expressed any opinion on the merits of the case and the observations made herein are for the purpose of deciding the present revision petition.

20. Pending application also stands disposed of.

JYOTI SINGH, J

JULY 10, 2023/kks