

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

Reserved on: 18.09.2013

Pronounced on: 26.09.2013

+ CS(OS) 340/2013

GURJEET SINGH MADAAN

..... Plaintiff

Through

Mr. Dinesh Garg and Ms. Rachna
Agrawal, Advocates.

versus

THE SUB-REGISTRAR-IX (DISTRICT
SOUTH-WEST) & ANR

..... Defendants

Through

Mr. V.K. Tandon and Ms. Sucheta
Kumari, Advocates for D-1.
Ms. Surbhi Sharma, Advocate for D-2.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JUDGMENT

(JAYANT NATH, J.)

1. The present Suit is filed under Section 77 of the Registration Act 1908 seeking relief of a decree in favour of the plaintiff directing defendant no.1 to register the document being Sale Deed dated 3.5.2012 executed by defendant No.2 in favour of the plaintiff in respect of Second Floor of property No.A-11/9, Vasant Vihar, New Delhi.
2. The brief facts leading to filing of the present Suit are that M/s. Clement Overseas Pvt. Ltd. had purchased the property No. A-11/9, Vasant Vihar, New Delhi measuring 600 sq. yds vide Sale Deed dated 22.10.1997. A collaboration Agreement was entered into on 13.4.1998 by the said owner company with the developer Shri B.K.Uppal to develop the said property. The property was to

comprise of basement, ground floor, first floor, second floor, terrace and two driveways. The owner's share was basement, ground floor and one drive way towards property No.A-11/10, Vasant Vihar. Developer's share was First Floor, Second Floor, terrace with right to raise further construction and another driveway adjoining the side lane.

3. Vide two sale deeds dated 11.12.1998 the developer sold the entire second floor and the full terrace with the right to raise further construction to one Shri Sanjeev Shankar. The said Shri Sanjeev Shankar on 12.5.2009 got the plans sanctioned from MCD for construction of the third floor. After constructing the same he sold the same vide Sale Deed dated 15.7.2010 to Shri Hira Bakul Shah. Shri Sanjeev Shankar sold the entire second floor to defendant No.2 vide Sale Deed dated 19.7.2010.
4. Thereafter defendant No.2 sold the said second floor being the suit property to the plaintiff and executed Sale Deed dated 3.5.2012 which was presented for registration to defendant No.1.
5. Vide order dated 4.9.2012 the Sub Registrar concerned i.e. defendant No.1 refused to register the said document. Defendant No.1 refused the said registration by stating the following reasons:-

“...Accordingly, the undersigned has perused and examined the documents and material available in the records and it is found that clearly demarcated parking plan has not been provided despite above hearings and the willingness of the vendor to submit the parking

plan, which is in contravention of the section 21 of The Registration Act, 1908.

In view of the position explained in the above paras the undersigned is of the considered opinion that the instrument under consideration cannot be registered. Ordered accordingly. The instrument bearing proofing no.6809 is being refused to register as per the provisions of section 71 of The Registration Act, 1908..”

6. The plaintiff preferred an appeal against the said order of the Registrar under Section 72 of the Registration Act, 1908. The appeal was dismissed by the said functionary on 17.1.2013.

“.... After hearing both the parties at length, I am of the considered opinion that the Sub-Registrar-IX has acted well within his powers and jurisdiction to seek the demarcated parking plan of the said plot in question, to satisfy himself that the plot which was desired to be sold through the sale deed was free from all disputes/encumbrances. It appears that there is no malafide intention on the part of Sub Registrar IX, as alleged by the appellant Sh. Gurjeet Singh Madan in his appeal. Further, no sound grounds have been established for the setting aside of the order of refusal passed by the Sub-Registrar-IX on 04.09.2012 and the appeal stands dismissed being devoid of any merits....”

7. Section 77 of the Registration Act provides that where the Registrar refuses to order the document to be registered then any person claiming the said document may within 30 days institute in a Civil Court a suit for a decree directing the document to be registered in such office. Hence, the plaintiff filed the present Suit.

8. The defendant No.1 has filed his written statement. Defendant No.1

states that even before the Sale Deed in question was presented for registration various complaints were received from co-owners/occupants, residents of the building in question with regard to encroachment of the parking by the plaintiff and his associates. Reliance is placed on complaints dated 21.2.2012, 11.5.2012 in the office of the said defendant from one Ms. Asha Shiv Shankar alleging that the vendee i.e. plaintiff herein are bent upon occupying his parking right in the immoveable property with the intention of encroaching upon the rights of others over the property. It is further stated in the written statement that the Vendee (plaintiff) has intentionally omitted to demarcate the parking rights available and that the rear setback of the building has been encroached upon by the Vendee along with his family as they are living in the ground floor of the building. (Apparently the ground floor of the building is stated to be owned by the father of the plaintiff). The said Ms. Asha Shiv Shankar is also stated to have annexed the copies of the complaints addressed by her to the SHO, Vasant Vihar. It is further stated in the complaint that in the interest of other co-owners, the plaintiff should not be allowed to usurp the rights of other co-owners. It was stated that proper hearing be given in the matter before disposing of the complaint. The written statement refers to further complaints made by the said Ms. Asha Shiv Shankar. Reliance is also placed on a letter dated 13.7.2012 submitted by defendant No.2 where she has stated that she has no objection to the annexation of the site plan to the Sale Deed which has been given for registration. The site plan by defendant No.2 indicates the parking to be occupied by each one of

the residents/owners/occupants of the building.

9. It is further stated in the written statement that it is the responsibility of the Registrar to look into all the objections and remove all the ambiguities in the execution of the document before registration of the same. It is further stated that once the objections have been raised by the other occupants/owners and there appears to be likelihood of breach of peace in the building, the plaintiff was asked to incorporate a clear demarcation of the parking plan so that all the occupants/residents of the building are entitled to enjoy the facilities attached to their floors. Hence, it is stated that the demarcation of the parking plan was necessary so that the sale deed is free from all disputes/encumbrances. Hence, it is stated that defendant No.1 has acted bona fide and within the parameters of the statute.
10. On 17.5.2013 this Court recorded that the issue raised in the present Suit is purely a legal one and need for a written statement may not really arise. Similarly, on 3.7.2013, learned counsel for the plaintiff and defendants made their submission that the matter can be taken up for final disposal and there is no need for any of the parties to lead evidence. Accordingly the matter was fixed for final arguments. As the issue revolves around only one aspect i.e. as to whether the order passed by defendant No.1 dated 4.9.2012 and the appeal order refusing registration dated 17.1.2013 are legal and valid, no issues have been framed. Learned counsel for the parties have made extensive arguments on the validity of orders dated 04.09.2012 and

17.01.2013. Neither of the parties has urged the necessity of framing of issues.

11.Learned counsel for the plaintiff has also relied upon a circular dated 16.01.2013 issued by the office of Divisional Commissioner, Delhi wherein it was clarified that if a representation is made to the Sub-Registrar showing same dispute then in the absence of any stay order or direction by the court, Sub-Registrar has no authority to interfere in the registration of document in question.

12.Learned counsel further relied upon the judgment of the Bombay High Court in the case of *Chairman/Secretary, Deep Apartment CHS Ltd. v. State of Maharashtra & Ors. 2013(1) CCC 011 (Bombay)*, to contend that defendant No.1 while dealing with the issue of registration of a document cannot adjudicate upon civil disputes. He vehemently argued that the entire approach of defendant No.1 is misconceived and contrary to the Statutory Scheme of Registration Act, 1908. He submits that a perusal of Section 21 of the Registration Act would show that the only ground on which registration can be refused is if the document does not contain a description of such property sufficient to identify the same. It is submitted that in the present case, there were sufficient details available to identify the property. Mere absence of demarcation of parking rights of other occupants of the property would not imply that defendant No.1 has any power to refuse registration of the document in exercise of power under Section 21 of the said Act. He submits that the sale deed that

was executed by Sh. Shiv Shankar in favour of defendant No.2 on 19.07.2010 also did not contain any details of the parking. The sale deed that has now been executed by defendant No.2 in favour of the plaintiff also has the same details as were given in the previous sale deed dated 19.07.2010 in favour of defendant No.2. He states that defendant No.1 took no objection earlier when Sh. Shiv Shankar presented the sale deed in favour of defendant No.2. Similar sale deed with same description that now is presented by the plaintiff as executed by defendant No.2 is sought to be objected on untenable grounds.

13.It is further submitted that defendant No.1 has converted the proceedings into a civil dispute between the plaintiff and other occupants on account of alleged rights of the occupants relating to car parking. Learned counsel further submits that even otherwise as per the sale deed executed in favour of defendant No.2, occupants of the second floor have one reserved car parking in one drive way. The occupants of the first floor, as per their sale deed, have also in their favour one reserved parking in the said drive way. There is no such mention of reserved parking in the sale deed executed in favour of the occupants of third floor. Hence claim of the occupants of the third floor for a reserved parking in the drive way is untenable and in effect what the Sub-Registrar has done is to try and press the plaintiff to concede a parking right to the occupant of the third floor in the drive way. It is submitted that no such right exists in favour of the occupant of the third floor. If the occupant of third floor has any problem, his

remedy is to approach the civil court. In any case, it is argued that the plaintiff is nobody to grant any right to the occupant of third floor by making additions and alteration in the sale deed executed in his favour by defendant No.2. It is further submitted that the nature of the drive way is such that no demarcation of reserved parking can take place.

14. Learned counsel for defendant No.1 has, on the other hand, vehemently argued that as there were complaints pouring in from the occupants of other floors. In order to ensure an amicable solution, defendant No.1 undertook a hearing of the matter. He relies upon complaints dated 10.01.2012 sent by Ms. Asha Shiv Shankar, occupant of the first floor copy of which was sent to defendant No.1. Copy of complaint dated 10.01.2012 was also forwarded to SHO Vasant Vihar by the same person. Reliance is placed on a complaint dated 07.06.2012 sent by the said Ms. Asha Shiv Shankar attorney of the owner of the first floor and Ms. Heera Bakul Shah, owner of the third floor to defendant No.1., complaint dated 27.01.2012 made by Ms. Asha Shiv Shankar to SHO Vasant Vihar, complaint made by defendant No.2 to SHO on 18.04.2012. He also relies upon a communication dated 13.07.2012 addressed by defendant No.2 enclosing a map demarcating parking areas to be attached to the sale deed executed by her. He submits that defendant No.1 acted in the interest of peace and amity to pass the said order dated 04.09.2012. Learned counsel for defendant has also submitted that the present suit is deficient in court fees.

15.It may be noted that the occupant of the first floor namely Ms. Asha Shiv Shankar had intervened in the matter. On 26.08.2013 a statement was made by learned counsel appearing on behalf of the plaintiff that the occupant of the first floor have a right to park one car in the drive way and that the plaintiff would have no objection if the said occupant parks one car in the drive way. In view of the said statement of learned counsel for the plaintiff, learned senior counsel for the intervener (i.e. Ms. Asha Shiv Shankar) stated that his client would have no objection if the present suit is allowed. Hence in effect, occupant of the first floor has withdrawn her objections to the registration of the sale deed in question. Similarly on 17.05.2013, counsel for defendant No.2 had made a statement that defendant No. 2 is not contesting the suit. What survives are some complaints now on record received by defendant No.1 from Ms. Heera Bukul Shah, owner on the third floor.

16.The issue which now arises for consideration is as to the legality and validity of the order passed by defendant No.1 on 04.09.2012 and that passed by the Registrar on 07.01.2013.

17.Reference may be had to Section 21 of the Registration Act, which reads as follows:

“21. Description of property and maps or plans.-

(1) No non- testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situated, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.”

18. Reference may be had to the judgment of Kerala High Court in the case of ***T. Sankaranarayanan Nair v. Achuthan Nair and Ors 1982, KLJ 61*** wherein the Court in para 5 held as follows:

“But Section 21 requires that the description of the property in the document should be sufficient to identify it. Section does not provide for an enquiry at that stage or later by the Registrar to ascertain what the property dealt with is Under Section 3 of the Transfer of Property Act registration of a document is deemed to be notice to all of the disposition contained therein. It stands to reason that the description in the document should be such that any person making a search of the registry should be able to ascertain the property dealt with. Therefore in order that the document dealing with immovable property should be registered the property dealt with should be capable of ascertainment on

the materials available before the Registrar.”

19. A plain reading of the above Section shows that all that Section 21(1) of the Act requires is that a document relating to immovable property will not be acceptable for registration unless it contains “a description of such property sufficient to identify the same”. As noted in the above judgment of the Kerala High Court, the description of the document should be such that any person making a search of the registry should be able to ascertain the property dealt with. A perusal of the sale deed executed by defendant No. 2 in favour of the plaintiff dated 3rd May, 2012 will show that a description sufficient to identify the property is there in the said sale deed. Page 3 of the said sale deed provides that M/s Claimant Overseas Pvt. Ltd. purchased the free hold built up property bearing No. A-11/9 measuring 600 sqyd situated at Vasant Vihar, New Delhi. The location of the properties on the East West North and South are also indicated. The area of the flat in question being sold is also elaborated in page 6 of the said sale deed i.e. entire second floor of the said property comprising four bed rooms with attached toilets, one drawing-cum-dining room, one kitchen, one family lounge, one toilet, one servants’ quarter on the same floor level, space of car parking one car in the drive way etc. in the said property. Map of the said flat is also attached to the sale deed. Hence, the provisions of Section 21 of the Registration Act are fulfilled.

20. However, defendant No.1 appears to have refused registration on the

ground of demarcation of parking as per the order passed by defendant No.1 on 04.09.2012. The objection is that “A clearly demarcated parking plan has not been provided”. It is stated that this is in contravention of Section 21 of the Registration Act. The said objection is wholly contrary to Section 21 of the Registration Act. All that Section 21 of the said Act requires is that the document must contain a description of the property sufficient to identify the same. As noted above, the sale deed dated 3.5.2012 fulfils the said requirement.

21. There is also merit in the contention of learned counsel for the plaintiff that it is not possible to demarcate an exact parking area of each flat in the building inasmuch as the drive way in question can only accommodate one car after the other in one row. Hence if one car is parked, the second car has to be parked behind the first car. The second car will then block the exit of the first car. The owners of the respective floors will have to carry out mutual adjustments to accommodate each other's cars. A demarcated car parking is not feasible given the nature of the drive way. No such identified car parking is provided in the sale deed that is executed in favour of defendant No.2 dated 19.07.2010. Accordingly, clearly the order passed by defendant No.1 dated 04.09.2012 refusing registration in absence of demarcation of parking place is wholly without merits and is contrary to Section 21 of the Registration Act.

22. The whole exercise seems to have been carried out by defendant No.1

at the behest of the owner of the first floor and third floor who appear to have grievances against the plaintiff. Owner of the first floor has withdrawn her complaint.

23. Reference may be had to the judgment of Bombay High Court in the case of *Chairman/Secretary, Deep Apartment CHS Ltd. v. State of Maharashtra (supra)* where in para 9 the Court held as follows:

“9. In this case the Registering Authority has persisted in refusing to register the document on the ground that the title of the vendor has not been shown. It is only the Civil Court which would consider the title. There is nothing in the Registration Act or the Registration Manual to empower the Registrar in seeing or satisfying himself about the title of the vendor. Hence, registration entails nothing more than the factum that the executants or their agents attended before the Registrar and admitted the execution of the document.

24. Reference may also be had to the judgment of the Punjab and Haryana High Court in the case of *Hari Singh and Anr v. Sub Registrar and Ors (1998) 120 PLR 787*, where in para 9 the Court held as follows:

“9. The Registration Act itself is a complete code. All reasons have been specifically enumerated under Sections 21, 23, 28, 32 and 35 of the Act for which a Sub Registrar or the Registrar may refuse to register the sale deed and other documents required to be registered under the Act. The Act nowhere provides that the Sub Registrar/Registrar can refuse to register the lease deed/sale deed pertaining to a property the ownership of which is in question. It does not fall within the domain of the Registrar or Sub Registrar to ask the executant of the deed to establish his or her ownership in respect of the property which is subject matter of the deed of conveyance. The legislature, in its wisdom, has not

thought it proper to make such a provision in the Act authorising the Registrar/Sub Registrar to make a probe into the ownership of the property sought to be transferred in any manner.”

25. In view of the above judgments and on a plain reading of Section 21 of the Registration Act, it is obvious that the Registering Authority cannot convert a proceeding pertaining to registration of a document into a same sort of title suit. The complaint of the occupant of the third floor regarding her rights to park one car in the drive way cannot be a subject matter of a proceeding before defendant No.1 pertaining to registration of sale deed by defendant No.2 in favour of the plaintiff pertaining to a different property. Any such issue has to be necessarily adjudicated upon in a civil court if the said occupant of third floor chooses to approach the civil Court. Refusal of defendant No.1 to register the sale deed on account of the complaint of the owner of the third floor is contrary to section 21 of the Registration Act.

26. Even otherwise, the order dated 3.5.2012 and 17.1.2013 passed by the Sub-Registrar and Registrar respectively are liable to be quashed on another ground submitted by the learned counsel for the plaintiff. There is merit in the submission of learned counsel for the plaintiff that the sale deed which is said to be executed in his favour by defendant No.2 on 03.05.2012 is an identical copy of the sale deed that was executed on 19.07.2010 in favour of defendant No.2. While conveying her title to the plaintiff, defendant No.2 cannot improve upon her title and start adding conditions which were not there in her favour. Learned counsel for the plaintiff has placed reliance on a Full

Bench judgment of Allahabad High Court in the case of *Ramu Aiyar v. Sankara Aiyar, Minor by guardian Latchumi Ammal*, to argue that a suit like the present one is a suit in which it is not possible to estimate the money value of the subject matter in dispute and hence under Article 17(6) of Schedule II of the Court Fees Act, a fixed court fees is payable. In my view, there is merit in the said submission of learned counsel for the plaintiff.

27. Accordingly, the order passed by defendant No.2 dated 04.09.2012 and passed by the Registrar on 17.01.2013 are illegal. Defendant No.1 had no authority to pass such an order passed on a complaint received from other occupants of the building. Accordingly, the plaintiff is entitled to a decree as prayed for.

28. A decree is passed in favour of the plaintiff and against defendant No.1 directing defendant No.1 to register the document i.e., sale deed dated 03.05.2012 executed by defendant No.2 in favour of the plaintiff in respect of the second floor of property i.e., A-11/9, Vasant Vihar, New Delhi, if presented for registration within 30 days after passing of the present decree.

29. Cost of the suit are also awarded in favour of the plaintiff.

JAYANT NATH, J

SEPTEMBER 26, 2013
n/raj'