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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 542/2016, IA No.13139/2016 (u/O VII R-14 CPC) & IA No.13138/2016 (u/O 39 R-1&2 CPC) & IA No.13140/2016 (for condonation of 120 days delay in re-filing)

SH BALJEET GODARA Plaintiff

Through: Mr. D.K. Bhalla, Adv.

Versus

SH JAL SINGH & ORS Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **24.10.2016**

1. The plaintiff has instituted this suit for declaration that the compromise deed-cum-memorandum of understanding dated 19th July, 2012 executed by the defendants no.1 to 3 in favour of the defendants no.4 to 7 is null and void and not binding on the plaintiff and does not affect the rights of the plaintiff in the land ad-measuring 23 bighas and 9 biswas comprised in Mustakil No.24, Kila No.20/1 (2-13), 14 (4-16), 8 (4-16), 7 (4-16), 13 (4-16) and Mustakil No.33 Kila No.1/2 (1-12) situated in the revenue Estate of village Ghumanhera, Tehsil Najafgarh, Palam, New Delhi which is owned by and is in possession of the plaintiff since 16th April, 2007.

2. The plaintiff claims ownership of the aforesaid land on the basis of an unregistered agreement to sell dated 16th April, 2007 executed by the defendant no.1 in his favour and accompanied with a receipt of consideration and registered special power of attorney.

3. It is also the plea of the plaintiff in the plaint that he was put into possession of the land in pursuance to the said agreement to sell.
4. Post the amendment of the year September, 2001 of the Transfer of Property Act, 1882 and Registration Act, 1908, no plea of possession in part performance is available if the agreement to sell is unregistered.
5. Even otherwise, Supreme Court in ***Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana*** (2012) 1 SCC 656 has held that documents such as Agreement to Sell accompanied by power of attorney, receipt of consideration do not create title.
6. The declaration which the plaintiff is claiming is of his ownership of the land and which claim for declaration is contrary to the law declared by the Supreme Court.
7. Seen in this context, the office objection subject to which the suit is listed, of the plaintiff though having valued the suit for the purpose of jurisdiction at over Rs.10 crores having paid court fees of Rs.20/- only, is also valid.
8. The remedy if any of the plaintiff is to seek specific performance of the agreement to sell and only after the plaintiff has the registered sale deed in its favour, can the plaintiff claim ownership of the land.
9. This Court as far back as in ***Jiwan Dass Rawal Vs. Narain Dass*** AIR 1981 Del 291 held that a agreement purchaser has no rights as owner, even if has filed a suit for specific performance and till, in execution of the decree passed therein, a sale deed in his favour has been executed. The said view

has been reiterated in *Cement Corporation of Inida Ltd. Vs. Life Insurance Corporation of India Ltd.* 2014 SCC Online Delhi 4536 (DB) and *Sunil Kapoor Vs. Himmat Singh* 2010 (115) DRJ 229.

10. This suit thus, of declaration of ownership of the plaintiff and on the basis of said declaration, of declaration as void of the document executed by the defendant no.1 to 3 in favour of defendants no.4 to 7 is not maintainable.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 24, 2016

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