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

+ **CS(OS) No.2439/2009 & conn.**

% **15th March, 2016**

+ **CS(OS) No.2439/2009**

SH. C.S. AGARWAL & ANR.

..... Plaintiffs

Through Mr. Abhijat and Mr. Rishabh Bansal,
Advs.

versus

SMT. NIRMAL JAIN & ORS.

..... Defendant

Through Mr. B.B. Gupta, Mr. Arjun Pant and
Mr. Mayank Mikhail Mukherjee, Adv.

+ **CS(OS) No.2443/2009**

SH. C.S. AGARWAL & ANR.

..... Plaintiffs

Through Mr. Abhijat and Mr. Rishabh Bansal,
Advs.

versus

SMT. NIRMAL JAIN

..... Defendant

Through Mr. B. B. Gupta, Mr. Arjun Pant and
Mr. Mayank Mikhail Mukherjee, Adv.

+ **W.P.(C) No.9696/2015 & C.M. No.23234/2015**

C.S. AGARWAL & ANR.

..... Petitioners

Through Mr. Abhijat and Mr. Rishabh Bansal,
Advvs.

versus

COLLECTOR OF STAMP,
SUB DIVISION (HAUZ KHAS)

..... Respondent
Through Mr. Devesh Singh, Addl. Standing
counsel for GNCTD.

+ **W.P.(C) No.9712/2015 & C.M. No.23272/2015**

C.S. AGARWAL & ANR. Petitioners

Through Mr. Abhijat and Mr. Rishabh Bansal,
Advvs.

versus

COLLECTOR OF STAMP,
SUB DIVISION (HAUZ KHAS)

..... Respondent
Through Mr. Devesh Singh, Addl. Standing
counsel for GNCTD.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No.9696/2015 & C.M. No.23234/2015(Stay)

W.P.(C) No.9712/2015 & C.M.No.23272/2015(Stay)

1. The issue in the writ petitions pertains to challenge by the petitioners, who are stated purchasers under the Agreements to Sell dated

11.03.2008 challenging the Orders of the Collector of Stamps dated 20.03.2015, whereby the Collector of Stamps exercising his powers under the Indian Stamp Act, 1899, and, *inter alia* Sections 33 to 35, has fixed a particular amount of duty and penalty on the Agreements to Sell dated 11.03.2008.

2. The aforesaid Agreements to Sell dated 11.03.2008 were impounded pursuant to Orders of the Learned Single Judge of this Court dated 12.12.2013 and 18.12.2013 passed in CS(OS) No.2439/2009 and CS(OS) No.2443/2009 respectively.

3. As per the proviso to Section 49 of the Registration Act, 1908, even if a document is legally required to be registered but is not registered, then in such a case, such a document being an unregistered agreement to sell can always be looked into for seeking the relief of specific performance. Putting it in other words even if an agreement to sell ought to have been registered but is not registered, the proviso of Section 49 of the Registration Act allows the bar under Section 17(1)(b) of the Registration Act to be lifted for not barring a suit for specific performance of the unregistered agreement to sell.

4. A reading of the plaint in the two suits for specific performance bearing CS(OS) Nos. 2439/2009 and 2443/2009 shows that in these suits the plaintiffs do not claim benefit of the doctrine of part performance under Section 53A of the Transfer of Property Act, 1882 as applicable with effect from 24.09.2001 and as amended by the Act 48 of 2001. Once there is no issue of plaintiffs using the subject agreements to sell for taking benefit of the doctrine of part performance, and the plaintiffs are only seeking specific performance of the agreements to sell, there is no requirement so far as the suit for specific performance is concerned for registering and stamping of the Agreements to Sell dated 11.03.2008 as an agreement falling under Section 53A of the Transfer of Property Act.

5. In view of the aforesaid legal position, it is agreed to by the counsels for the stated purchasers and the stated sellers, who are the plaintiffs and defendants in CS(OS) Nos. 2439/2009 and 2443/2009, that, the documents in question being the Agreements to Sell dated 11.03.2008 need not be impounded, and the suits for specific performance can proceed on the basis of the Agreements to Sell dated 11.03.2008 as they stand. Of course, it is made clear that the counsel for the plaintiffs in the suits who are the stated

purchasers concedes to the position that in the suits no relief is predicated by asserting rights under Section 53A of the Transfer of Property Act.

6. In my opinion the Collector of Stamps can legally have no objection to the present course of action because an issue of impounding is qua the documents which are to be used as evidence in the suits i.e evidence for the purpose of subject suits for specific performance. By the suits what would only be done is that only specific performance is sought of the agreements to sell by virtue of the first proviso of Section 49 of the Registration Act and no benefits are claimed on the documents itself as a basis for seeking benefit of the doctrine of part performance under Section 53A of the Transfer of Property Act. When the issue comes with respect to relying upon the agreements to sell for the purpose of benefit under Section 53A of the Transfer of Property Act, then in such judicial proceedings, the issue if arises with respect to the issue of stamping of the Agreements to Sell dated 11.03.2008, then the same would be considered in accordance with the law.

7. I may also note that an issue with respect to impounding of documents under the relevant provisions of the Indian Stamp Act is not absolute, inasmuch as, Section 36 provides that when an unstamped

document is admitted in evidence, the issue of stamping will not be called in question on the ground that the instrument has not been properly stamped.

8. In view of the above, the writ petitions are allowed and the impugned Orders passed by the Collector of Stamps dated 20.3.2015 are quashed and the Orders of the learned Single Judge of this Court in CS(OS) Nos.2439/2009 and 2443/2009 dated 12.12.2013 and 18.12.2013 respectively are recalled and which required impounding and stamping of the Agreements to Sell dated 11.03.2008.

9. It is finally observed that nothing contained in the present order is in any manner reflection on the merits of the cases of the respective parties in the specific performance suits and which merits will be decided in accordance with the issues framed and the evidence which is led by the parties in the suits for specific performance.

10. Writ petitions are allowed and disposed of accordingly.

+ CS(OS) Nos.2439/2009 & 2443/2009

11. In both these suits the counsel for the plaintiffs agrees that a Local Commissioner/Retired Additional District Judge be appointed to record evidence in the suit at the cost of the plaintiffs. Accordingly, Sh. S.K.

Sarvaria, retired District & Sessions Judge, Mobile No.9910384642 is appointed as Local Commissioner to record evidence in this case. Fees of the Local Commissioner is fixed at Rs.75,000/- and which will cover ten hearings of the recording of the evidence. If more than ten opportunities are taken before the Local Commissioner for recording evidence, for the dates thereafter on which the evidence is recorded, the Local Commissioner will be paid Rs.7,500/- per hearing, to be equally shared by the parties.

12. Local Commissioner is requested to ensure that the recording of evidence is completed within six months from the first date fixed for the recording of the evidence. It is agreed that the Local Commissioner as a delegatee of this Court can impose costs on any of the parties who seeks unnecessary adjournments. Plaintiffs will make available an appropriate space in the High Court premises for recording of evidence so that the judicial file does not go outside the High Court premises.

13. The Local Commissioner at the time of recording of evidence will take note of the ratio of the judgment of the Supreme Court in the case of *Bipin Shantilal Panchal Vs. State of Gujarat and Anr. (2001) 3 SCC 1*.

14. List before the Local Commissioner for further proceedings in terms of the present order on 27.04.2016 at 4:00 PM.

15. Plaintiff will, in the meanwhile, positively file evidence by way of affidavit of its witnesses, if not already filed, within a period of four weeks from today and if affidavits are not filed within four weeks, thereafter the same will be taken on record subject to the costs of Rs.25,000/- for each witness whose affidavit of evidence is not filed. It is made clear that this order with respect to evidence by way of affidavits is with respect to those witnesses whom the plaintiff will bring on his own responsibility and not for the summoned witnesses.

16. List in Court for further proceedings on 29.08.2016.

MARCH 15, 2016
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VALMIKI J. MEHTA, J