

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 18.2.2011
Judgment Pronounced on: 28.2.2011

+ **CS (OS) No.277/2007**

RAJEEV GUPTA

.....Plaintiff

- versus -

J.K. KASHYAP

.....Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr. Ali Naqvi with Mr. Abhishek
Singh and Ms. Ishani Cordeiro.

For the Defendant: Mr. Sumehar Bajaj for D-1.
Mr. P.K. Aggarwal.

AND

+ **CS(OS) No. 2156/2007**

J.K. KASHYAP

.....Plaintiff

- versus -

RAJEEV GUPTA

.....Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr. S. Bajaj.

For the Defendant: Mr. Ali Naqvi with Mr. Abhishek
Singh and Ms. Ishani Cordeiro
for D-1 & 2.
Mr. P.K. Aggarwal.

AND

+ CS(OS) No. 1870/2008

ATUL BANSAL

.....Plaintiff

- versus -

J.K. KASHYAP

.....Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr. P.K. Bansal.

For the Defendant: Mr. S. Bajaj for D-1.

Mr. Meehir Ranjan for D-2.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

- | | |
|--|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

V.K. JAIN, J

IA No.1674/2011 (O.1 R. 10(2) r/w S. 151 CPC)

in CS (OS) No.277/2007

IA No. 1863/2011 (under Order 1 Rule 10(2) CPC) in

CS(OS) No.2156/2007

IA No. 15539/2010 (under Order 22 Rule 10 CPC) in

CS(OS) No.1870/2008

1. One Shri Chandra Prakash Gupta who was the original owner of half portion of the property bearing No. 1/14, Shanti Niketan, New Delhi – 110021 (hereinafter referred to as the “suit property”) measuring 600 Sq. Yds.,

died on 02/01/2000 leaving behind his last will and testament dated 09/03/1995, whereby he bequeathed all his rights, title and interests in the said suit property jointly to Rajiv Gupta and Mrs Chitra Mehta, Defendant No. 1 and Defendant No. 2 respectively in Suit No. 2156/2007. Thus both of them became co-owners of the suit property. The other half portion of the above-mentioned property belongs to N.P. Gupta, defendant No.3 in this suit, who is the uncle of defendant No. 1 and 2. Vide Memorandum to Sell dated 31.1.2005, Rajiv Gupta and Chitra Mehta agreed to sell the suit property to J.K. Kashyap, plaintiff in Suit No. 2156/2007, for a sale consideration of Rs 4.80 crores. He paid Rs 50 lakhs to them at the time of entering into above mentioned memorandum of sale. The remaining sale consideration of Rs 4.30 crores was to be paid at the time of completion of sale. He later paid Rs 45 Lakhs to Smt Jamila Gupta step mother of defendants Nos. 1 & 2, vide agreement dated 18th February 2005, and took possession of ground floor and basement of suit property from her.

2. CS(OS) No. 277/2007 has been filed by Rajiv Gupta and Mrs Chitra Mehta against J.K. Kashyap, seeking recovery of Rs 13.5 lakhs towards damages for unauthorized

use and occupation of the basement and ground floor of the suit property as well as possession of the aforesaid portions. While admitting execution of the Memorandum of Sale dated 31.01.2005 in favour of J.K. Kashyap and receipt of Rs 50 lakhs from him, they alleged that since he failed to pay the balance sale consideration of Rs 3.80 crores and get the sale deed executed by the last date stipulated in the Memorandum of Sale, there was a breach of the contract on his part. It has also been alleged by them that delivery of the possession of the basement and ground floor by Smt. Jamila Gupta to him also was subject to compliance of all the terms and conditions contained in the Memorandum of Sale dated 31.01.2005 and since he had defaulted in complying with those terms and conditions, he was liable to return the possession of the aforesaid portions to them.

3. CS(OS) No. 1870/2008 has been filed by one Shri Atul Bansal, who claims that vide an agreement to sell dated 20th August, 2005, J.K. Kashyap, who is defendant No.2 in this suit, had assigned, to him, all his right, title and interest in the suit property which had accrued to him by virtue of Memorandum/Agreement to Sell dated 31.01.2005, executed between him on one hand and Rajiv

Gupta and Mrs Chitra Mehta on the other and, therefore, he stepped into the shoes of J.K. Kashyap. He also claims to have paid a sum of Rs 1,0020,000/- to J.K. Kashyap. He has sought specific performance of the agreement to sell dated 20th August, 2005 executed between him and J.K. Kashyap with respect to the suit property. Rajiv Gupta and Mrs Chitra Mehta have been impleaded as defendant Nos. 2 and 3 in the suit.

4. In CS(OS) No.2156/2007, plaintiff Shri J.K. Kashyap has sought specific performance of the Agreement to Sell dated 31.01.2005 from Rajiv Gupta and Mrs Chitra Mehta, who are defendant Nos. 1 and 2 in the suit filed by him. Mr. N.P. Gupta, who has no right, title or interest in the property subject matter of the agreement, but is the co-owner of the other half of property No. 1/14, Shanti Niketen has been impleaded as defendant No. 3 in the suit.

5. I.A. No.15539/2010 has been filed by one Smt. Sheela Gehlot under Order XXII Rule 10 CPC for substituting her as plaintiff in CS(OS) No.1870/2008 in place of Shri Atul Bansal. It is alleged in the application that during pendency of this suit, Shri Atul Bansal, plaintiff in the suit has transferred and assigned all his rights,

interests and obligations under the Agreement to Sell dated 20th August, 2005 executed by Shri J.K. Kashyap in his favour, to the applicant Smt. Sheela Gehlot, for a consideration of Rs.2,50,00,000/-. It is further alleged that under the agreement dated 18th August, 2010 executed between Shri Atul Bansal and the applicant Smt. Sheela Gehlot, the applicant is entitled to sue Shri J.K. Kashyap, Shri Rajiv Gupta and Smt. Chitra Mehta and/or any other person in respect of the suit property and is also entitled to seek substitution as plaintiff in the suit. This application is accompanied by an affidavit of Shri Atul Bansal, who has agreed that the applicant may be substituted in his place. The application has, however, been opposed by Shri J.K. Kashyap, who has claimed that the agreement dated 20th August, 2005 executed by him in favour of Shri Atul Bansal was only a financing arrangement and was not enforceable.

6. I.A. No. 1863/2011 has been filed jointly by Shri Atul Bansal and Smt. Sheela Gehlot in CS(OS) No.2156/2007 for impleading them as parties to the suit on the ground that the plaintiff in the suit Shri J.K. Kashyap had assigned all his rights under the agreement dated 20th August, 2005 in favour of Shri Atul Bansal, who stepped

into his shoes and became his nominee. Referring to the agreement dated 20th August, 2005 between them, they have claimed that in view of assignment firstly by the plaintiff in favour of Shri Atul Bansal and thereafter by Shri Atul Bansal in favour of Smt. Sheela Gehlot, both of them are necessary and proper parties to the present suit.

7. I.A. no.1674/2011 has been filed jointly by Shri Atul Bansal and Smt. Sheela Gehlot under Order 1 Rule 10 (2) of CPC seeking impleadment as parties to CS(OS) No.277/2007.

8. Section 15 of the Specific Relief Act, 1963, to the extent it is relevant, provides that the specific performance of a contract may be obtained by any party to the contract or the 'representative in interest' or the principal of any party thereto.

9. In ***Shyam Singh v. Daryao Singh (Dead) by LRs., (2003) 12 SCC 160***, defendant Nos. 2 to 4, who were Bhumidars of some land executed a sale deed in favour of defendant No.1, who executed an agreement for re-conveyance of the said property in favour of defendant Nos. 2 to 4. Thereafter, defendant Nos. 2 to 4 sold their right to obtain re-conveyance of sale in favour of the plaintiff by

executing a document dated 2nd June, 1977. The plaintiff/appellant filed a suit seeking specific performance of the agreement of repurchase of property in question. The High Court was of the view that right of repurchase was personal in favour of original contracting parties and was not assignable or transferable in favour of the plaintiff. It was found that the document in question contained no express prohibition of transfer/assignment of right by the original parties to a third party. The contention before the Court was that such prohibition against assignment/transfer could be read by implication. During the course of judgment, it was pointed out to the Court that though the recitals contained in the agreement referred to parties and their heirs, there was no mention of transfer or assignment of contracted party, which was a clear indication of an implied prohibition against transfer or assignment of any right by the original contracting parties. Rejecting the contention, Supreme Court, inter alia, held as under:-

“12. We find it difficult to accept this proposition. True it is that there is no clear stipulation permitting assignment or transfer of right of the purchaser by original party in favour of the third party

but both contracting parties would be presumed to have been alive to the legal provisions contained in Section 15(b) of the Specific Relief Act.....

13. In our considered opinion, in the absence of any words or expressions in the documents indicating prohibition on assignment or transfer of right of repurchase and in the face of clear provisions of Section 15(b) of the Specific Relief Act, 1963, an implied prohibition cannot be read into the terms of the documents. Merely because in the documents, there is mention of “heirs” of the contracting parties but not their “assignees” or “transferees”, the legal right of assignment available to the benefit of original contracting party under Section 15(b) of the Act cannot be denied to it.”

In ***Habiba Khatoon v. Ubaidul Huq and Ors.***,

(1997) 7 SCC 452, the Supreme Court, inter alia, held as under:-

“12.....The Privy Council in *Sakalaguna Nayudu v. Chinna Munuswami Nayakar*, AIR 1928 PC 174 has held that the benefit of a contract of repurchase which did not show that it was intended only for the benefit of the parties contracting, could be assigned and such contract is enforceable. Beaumont, C.J. in *Vishweshwar Narsabhatta Gaddada v. Durgappa Irappa Bhatkar*, AIR 1940 Bom 339 held that both under the common law as well as under Section 23(b) of the Specific Relief Act, 1877, an option given to repurchase the property sold would prima facie be assignable, though it might also be so worded as to show that

it was to be personal to the grantee and not assignable. On the particular facts of that case, it was held that the contract was assignable. In *Sinnakaruppa Gounder v. M. Karuppuswami Gounder*, AIR 1965 Mad 506, it was held: (AIR p.508, para 5)

“In our view, generally speaking, the benefits of a contract of repurchase must be assignable, unless the terms of the contract are such as to show that the right of repurchase is personal to the vendor. In the latter case it will be for the person who pleads that the contract is not enforceable, to show that the intention of the parties thereto was that it was to be enforced only by the persons named therein and not by the assignee.” ’ ’ ”

This issue also came up for consideration before this Court in ***Smt. Pushpa Devi v. Late Shri Maharaj Kumar Mehta and Anr. (through his legal heirs), 173 (2010) DLT 221.*** In that case, the plaintiff before this Court had purchased 50% undivided share of Shri Satish Kumar Mehta in the suit property. As regards the remaining 50% undivided share, which was owned by one late Maharaj Kumar Mehta, the plaintiff claimed rights by virtue of a receipt-cum-agreement dated 7th September, 2008 executed in her favour by defendant No.2 Shri Raj Kumar Gupta. The plaintiff claimed that Shri Raj Kumar

Gupta had assigned his right, title and interest in that other 50% share in the suit property in her favour. As far as Shri Raj Kumar Gupta was concerned, he had acquired the right of late Shri Maharaj Kumar Mehta in the suit property by virtue of receipt-cum-memorandum of understanding dated 13th April, 2007. It was noticed that in the receipt-cum-memorandum of understanding dated 13th April, 2007, there was no clause prohibiting assignment of rights by the vendee. It was held that the plaintiff had a right to maintain a suit for specific performance.

10. The legal proposition, which emerges from the above referred decisions, is that in the absence of prohibition against assignment, the vendee under an agreement to sell is entitled in law to assign his rights, title and interest under the agreement to any person of his choice. Once he assigns his rights under the agreement, the assignee steps into his shoes and being his representative in interest, he can seek specific performance of the contract, in view of the statutory right conferred upon him by Section 15(b) of the Specific Relief Act.

11. During the arguments, the parties opposing the above referred applications referred to the decision of the

Supreme Court in **Anil Kumar Singh v. Shivrath Mishra Alias Gadasa Guru, (1995) 3 SCC 147, Kasturi v. Iyyamperumal, (2005) 6 SCC 733** and to the decision of this Court in **Bharat Bhushan Pahwa v. Metal Foreign Pvt. Ltd. (CS(OS) No.225/2005 decided on 6th December, 2010)**.

In **Anil Kumar Singh (supra)**, Daulat Singh, father of the petitioner had filed a civil suit for specific performance of a contract of sale. On his death, the petitioner came on record as his legal representative and sought leave to amend the plaint by impleading the respondent as a party defendant in the suit. His contention was that the respondent had secured an interest as co-owner of the land by operation of a collusive decree and was a necessary and proper party. The High Court, however, declined to bring the respondent on record as second defendant. Holding that obtaining a decree and acquiring the status as co-owner during the pendency of suit for specific performance is not obtained by assignment or creation or by devolution of an interest, Supreme Court held that Order 22 Rule 10 of the CPC had no application to the case. Noticing that the suit was based on an agreement of

sale said to have been executed by Mishra, the sole defendant in the suit, it was held that subsequent interest said to have been acquired by the respondent by virtue of a decree of the Court was not a matter arising out of or in respect of the same act or transactions in relation to the claim made in the suit. Observing that the question before the Court in a specific performance is whether the vendor has executed a document and whether the conditions prescribed in the Specific Relief Act had been complied with, the Court held that the respondent was neither a necessary nor a proper party to the suit.

In ***Kasturi (supra)***, the appellant had filed a civil suit against respondent Nos. 2 and 3 for specific performance of contract, entered into between him and respondent Nos. 2 and 3. Respondent Nos. 1 and 4 to 11, who were not parties to the contract and were setting up a claim of independent title and possession over the contracted property filed an application to implead them as defendants. The trial Court allowed them to be added as parties and its decision was upheld by the High Court. Reversing the decision of the High Court, Supreme Court held that stranger to the contract namely respondent Nos. 1

and 4 to 11, who were making claims independent and adverse to the title of respondent Nos. 2 and 3 were neither necessary nor proper parties and, therefore, were not entitled to join as party defendants to the suit for specific performance of contract for sale. The Supreme Court was of the view that the persons seeking addition in the suit for specific performance of the contract for sale who were not claiming under the vendor but were claiming adverse to the title of the vendor do not fall in any of the categories enumerated in sub-sections (a) to (e) of Section 19 of the Specific Relief Act. During the course of the judgment, the Supreme Court, inter alia, observed as under:-

“11. As noted hereinafter, two tests are required to be satisfied to determine the question who is a necessary party, let us now consider who is a proper party in a suit for specific performance of a contract for sale. For deciding the question who is a proper party in a suit for specific performance the guiding principle is that the presence of such a party is necessary to adjudicate the controversies involved in the suit for specific performance of the contract for sale. Thus, the question is to be decided keeping in mind the scope of the suit. The question that is to be decided in a suit for specific performance of the contract for sale is to the enforceability of the contract entered into between the parties to the contract. If the person seeking addition is added in such a suit, the scope of the suit for specific performance would be enlarged and it would be practically converted into a suit

for title. Therefore, for effective adjudication of the controversies involved in the suit, presence of such parties cannot be said to be necessary at all....

13.....They were also not necessary parties as they would not be affected by the contract entered into between the appellant and Respondents 2 and 3. In the case of *Anil Kumar Singh v. Shivnath Mishra*, (1995) 3 SCC 147, it has been held that since the applicant who sought for his addition is not a party to the agreement for sale, it cannot be said that in his absence, the dispute as to specific performance cannot be decided. In this case at para 9, the Supreme Court while deciding whether a person is a necessary party or not in a suit for specific performance of a contract for sale made the following observation:

“Since the respondent is not a party to the agreement of sale, it cannot be said that without his presence the dispute as to specific performance cannot be determined. Therefore, he is not a necessary party.” (emphasis supplied)

15....As noted hereinafter, in a suit for specific performance of a contract for sale, the issue to be decided is the enforceability of the contract entered into between the appellant and Respondents 2 and 3 and whether contract was executed by the appellant and Respondents 2 and 3 for sale of the contracted property, whether the plaintiffs were ready and willing to perform their part of the contract and whether the appellant is entitled to a decree for specific performance of a contract for sale against Respondents 2 and 3. It is an admitted position that Respondents 1 and 4 to 11 did not seek their addition in the suit on the strength of the contract in respect of which the suit for specific performance of the contract for sale has been filed. Admittedly, they based their claim on independent title and possession of the

contracted property. It is, therefore, obvious as noted hereinearlier that in the event, Respondents 1 and 4 to 11 are added or impleaded in the suit, the scope of the suit for specific performance of the contract for sale shall be enlarged from the suit for specific performance to a suit for title and possession which is not permissible in law.

15..... As discussed above, in the event any decree is passed against Respondents 2 and 3 and in favour of the appellant for specific performance of the contract for sale in respect of the contracted property, the decree that would be passed in the said suit, obviously, cannot bind Respondents 1 and 4 to 11. It may also be observed that in the event, the appellant obtains a decree for specific performance of the contracted property against Respondents 2 and 3, then, the Court shall direct execution of deed of sale in favour of the appellant in the event Respondents 2 and 3 refusing to execute the deed of sale and to obtain possession of the contracted property he has to put the decree in execution. As noted hereinearlier, since Respondents 1 and 4 to 11 were not parties in the suit for specific performance of a contract for sale of the contracted property, a decree passed in such a suit shall not bind them and in that case, Respondents 1 and 4 to 11 would be at liberty either to obstruct execution in order to protect their possession by taking recourse to the relevant provisions of CPC, if they are available to them, or to file an independent suit for declaration of title and possession against the appellant or Respondent 3. On the other hand, if the decree is passed in favour of the appellant and sale deed is executed, the stranger to the contract being Respondents 1 and 4 to 11 have to be sued for taking possession if they are in possession of the decretal property.

18. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litis and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are, therefore, of the view that Respondents 1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale.”

In ***Bharat Bhushan Pahwa (supra)***, an application under Order 1 Rule 10 of CPC was filed on the ground that the applicant had entered into an agreement with the first defendant/vendor with respect to the suit property. The agreement between the applicant and the defendant was with respect to only a portion of the property whereas the plaintiff before this Court had sought specific performance of an agreement to sell the entire property. Observing that if the contention of the applicant were to be accepted, in every instance where a subsequent agreement or arrangement is entered into by the original vendor, the plaintiff would unnecessarily be compelled to amend the suit and also seek additional reliefs against such third party strangers, on the assumed basis that they were purchasers

entitled to enforce their agreements through specific performance actions and that would enlarge the scope of the suit, this Court was of the view that the applicant was not entitled to be impleaded as a party to the suit.

12. None of these judgments deal with the right of an assignee from the vendee under an agreement to sell, to seek specific performance of the agreement in his capacity as the representative in interest of the vendee on account of assignment in his favour and, therefore, these judgments do not apply to the issues involved in these applications.

13. The Memorandum to Sell dated 31st January, 2005 executed between Shri Rajeev Gupta and Smt. Chitra Mehta on the one hand and Shri J.K. Kashyap on the other hand is an admitted document and paras 9, 10, 13 and 16 of the document read as under:-

“9. That the Vendor hereby declares that the Vendors have absolute authority to enter into this Memorandum and that no person other than the Vendors have any right, title, claim or interest in the said property or any part thereof and that the said property and every part thereof is the exclusive property of the Vendor free from any and all charges, encumbrances, claims, legal defects and demands whatsoever

and the said property or any part thereof or allow any distress or attachment or other legal process to be levied thereon or howsoever otherwise transfer or deal with the same and the Vendor hereby further undertakes to indemnify and keep the Vendees, their agents, nominee(s) indemnified from and against all claims, actions, demands and encumbrances or distress or execution or attachment or other legal process or defects whatsoever.

10 that the Vendor hereby undertakes to take all steps as may be necessary to ensure execution and registration of a valid conveyance/transfer deed in favour of the Vendees, and the Vendor shall obtain all pre-requisite clearances, permissions and certificates including those required to be obtained from the Income Tax Authorities or any Govt. or municipal authority (s) to enable convenient transfer of the said property to the Vendees or their nominees at the time of payment of the total sale consideration as enumerated in this Memorandum.

13. That in the event of the failure on the part of the Vendors to transfer all their rights in favour of the Vendees or their nominees, the Vendees shall be at liberty to enforce the same by way of Specific Performance through the court of law to get the said

property with all the rights, facilities, fittings, constructions and building existing on it transferred in their own name or in the name of their nominees.

16. All costs and expenses towards execution of this Memorandum as well as towards execution and registration of Conveyance/transfer Deed and mutation in respect of the said property such as stamp duty, typing expenses and registration expenses shall be borne by the Vendees or their nominee.”

14. The covenant to transfer the property in the name of the Vendees or their nominees and the covenant to indemnify the vendees, their agents or nominees clearly show that the vendee Shri J.K. Kashyap was entitled to nominate another person and assign all his rights and obligations under the agreement to any person of his choice and the vendors i.e. Shri Rajeev Gupta and Smt. Chitra Mehta were obliged to execute the sale deed/transfer deed in favour of such nominee/assignee. Reference to the nominees in Clause 13 and 16 of the agreement is yet another indicator that Shri J.K. Kashyap could have transferred all his rights under the agreement to any person.

15. Clause 10 of the agreement dated 20th August, 2005 executed by Shri J.K. Kashyap in favour of Shri Atul Bansal reads as under:-

“10. That the Vendee shall have full right to nominate and/or assign all rights under this Agreement to Sell in favour of any person or persons, be it a body Corporate, firm or Association of Persons or an individual and the Vendor shall have no objection thereto.”

The above referred Clause gave an express right to Shri Atul Bansal to assign all his rights under this agreement in favour of any person of his choice.

16. Agreement dated 18th August, 2010 executed by Shri Atul Bansal in favour of Smt. Sheela Gehlot would show that Shri Atul Bansal received a sum of Rs.2,50,00,000/- from Smt. Sheela Gehlot and assigned all his rights, interest and title in respect of property No.1/14, Shanti Niketan, New Delhi under the agreement/MOU dated 20th August, 2005, to Smt. Sheela Gehlot and also agreed that she would be entitled to be substituted in CS(OS) No.1870/2008, which Shri Atul Bansal has instituted. She is also entitled under Clause 6 of this agreement to sue and seek reliefs against Shri J.K. Kashyap, Shri Rajeev Gupta and Smt. Chitra Mehta in her own name in respect of

property No.1/14, Shanti Niketan, New Delhi to the same extent as Shri Atul Bansal would have been entitled to do.

This documents refers not only to the agreement dated 31st January, 2005 between Shri Rajeev Gupta and Smt. Chitra Mehta on one hand and Shri J.K. Kashyap on other hand, it also refers to the agreement dated 20th August, 2005 between Shri J.K. Kashyap and Shri Atul Bansal. Clause 3, 4, 5 and 6 of this agreement read as under:-

- “3. That in consideration to the abovesaid sum of Rs.2,50,00,000/- (Rupees Two Crore Fifty Lacs Only) already paid in by the Party of Second Part towards full and final payment of agreed sale consideration to the Party of First Part, all rights, interest and title or interest of the party of the First Part in upon or to the property at 1/14, Shanti Niketan, New Delhi – 110 021 and under the agreement/MOU dated 20th August, 2005 entered into with Shri J.K. Kashyap shall stand transferred and assigned in favour of the party of the Second Part. The party of the First Part covenants and declares that on encashment of the cheque, he shall be left with no right or interest of any nature whatsoever in respect of the said property at 1/14 Shanti Niketan, New Delhi –

110 021 or in or under the agreement dated 20th August, 2005 entered into between the party of the First Part and the said Shri J.K. Kashyap.

4. That all rights and obligations in or under the agreement dated 20th August, 2005 shall hereby stand transferred in favour of the party of the Second Part, without any further liability/responsibility of the First Party has now stepped into the shoes of the First Party.
5. That the party of the Second Part shall be entitled to be substituted in CS(OS) No.1870/2008 titled Shri Atul Bansal v/s Shri J.K. Kashyap. The party of the Second Part shall be entitled to continue the said suit in her own name and shall further be entitled to seek specific performance of the agreement dated 20th August, 2005 as nominee/assignee of the party of the First Part under this agreement in the same way and to the same extent as the party of the First Part is or would be entitled to enforce the same and seek the reliefs in the said suit.
6. That the party of the Second Part shall further be entitled in her own name to sue and seek reliefs against Shri J.K. Kashyap, Shri Rajiv Gupta and Smt. Chitra Mehta and/or any other person whomsoever in respect of the property at 1/14, Shanti Niketan in the same manner and to the

same extent, as the party of the First Part would have been entitled thereto.”

17. Since the agreement dated 31st January, 2005 executed by Shri Rajeev Gupta and Smt. Chitra Mehta in favour of Shri J.K. Kashyap does not contain any clause prohibiting Shri J.K. Kashyap from assigning his right, title and interest under that agreement, in the absence of such a prohibition, Shri J.K. Kashyap became entitled to assign all his rights under the agreement dated 31st January, 2005 to Shri Atul Bansal. In any case, reference to nominee in various clauses of the agreement dated 31st January, 2005 shows that the parties to the agreement had agreed that Shri J.K. Kashyap would be entitled to nominate a person of his choice and assign all his rights and interests in the agreement to him/her.

18. The next question which comes up for consideration is as to whether by virtue of agreement dated 20th August, 2005, Shri J.K. Kashyap has assigned all his rights, title and interest under the memorandum dated 31st January, 2005 to Shri Atul Bansal. The relevant portions of the agreement read as under:-

“AND WHEREAS the Vendor for his bonafide needs and requirements have agreed to sell, convey, transfer and assign to the Vendee and the Vendee has agreed to purchase the said property i.e. Eastern Side Portion of the said Plot of land measuring 600 Sq. Yds., alongwith residential Unit constructed thereon, comprising of Basement, Ground Floor, First Floor and Second Floor, out of the total area measuring 1200 Sq. Yds., bearing No.1/14, situated at Shanti Niketan, New Delhi, with all rights of ownership, possession, privileges, easements and appurtenances, with all fittings, fixtures, connections, structure standing thereon, for a total consideration of Rs.9,50,00,000/- (Rs. Nine Crores Fifty Lacs Only).

**NOW THIS AGREEMENT TO SELL
WITNESSETH AS UNDER:**

1. That in consideration of the aforesaid total sum of Rs.9,50,00,000/- (Rs. Nine Crores Fifty Lacs Only) and upon the terms and conditions contained herein, the Vendor do hereby agree to sell, convey, transfer and assign the said property, (fully described above) alongwith ownership rights in the land measuring 600 Sq. Yds. with all fittings, fixtures, connections, structure standing thereon, free from all encumbrances, unto the Vendee.

2. (a) That out of the total consideration as aforesaid, the Vendee has paid to the Vendor a sum of Rs.1,00,20,000/- (Rs. One Crore Twenty Thousand Only) as part sale consideration, in the following manner:

Rs. 20,000/- in cash;

Rs. 1,00,00,000/- vide Cheque
No.157296 drawn on
Corporation Bank,
Vasant Vihar, New
Delhi,

the receipt of which the Vendor hereby admit and acknowledge and a further part payment of Rs.8,49,80,000/- (Rs. Eight Crores Forty Nine Lacs Eighty Thousand Only) shall be paid by the Vendee to the Vendor within 30 days from the date of completion of all the Requirements mentioned below, simultaneously when the vacant physical possession of the entire said property will be delivered by the Vendor to the Vendee and also all the deeds and documents as may be required by the Vendee for the conveyance, transfer and sale of the said property will also be executed and registered by the Vendor as well as Shri Rajiv Gupta and Mrs. Chitra Mehta personally, in favour of the Vendee or his nominee.

3. That the actual physical vacant possession of the said property will be delivered by the Vendor to the Vendee, on receiving the balance sale consideration, in full and final settlement.

11. That in case the vendee fails to make the payment of the balance sale consideration as per the terms of the para 2(a) and 4 above, then in that event, this agreement to sell shall stand terminated and advance money shall be forfeited. Likewise in case the Vendor fails to fulfill his part of the contract, then in that event the Vendor shall also pay a penalty to the tune of Rs.1,00,00,000/- to the Vendee, which shall be without prejudice to the right of specific performance of the

contract available to the Vendee. This Agreement shall stand terminated in case the said Cheque of Rs.1,00,00,000/- paid under this agreement is returned on account of insufficient funds.”

19. This document to my view cannot be said to be an assignment of the rights and interest, which Shri J.K. Kashyap possessed in the said property under the agreement dated 31st January, 2005, to Shri Atul Bansal. It only obliges him to transfer the suit property to Shri Atul Bansal or his nominee for a total consideration of Rs.9.5 crores. In the case of an assignment, all the rights of the assigner, which are subject matter of the assignment, stand transferred to the assignee and thereafter, the assignor is left with no right or claim with respect to the interest assigned by him to another person. The agreement dated 20th August, 2005 does not transfer the rights which Shri J.K.Kashyap possessed under Memorandum dated 31st January, 2005 to Shri Atul Bansal. It only gives a legal right to Shri Atul Bansal to obtain transfer of the suit property, on payment of the agreed sale consideration, as and when Shri J.K. Kashyap was in a position to transfer those rights to him. This document does not divest Shri J.K. Kashyap of his legal right to seek performance of the

agreement executed by Shri Rajeev Gupta and Smt.Chitra Mehta in his favour on 31st May, 2005. In fact, in the event of default on the part of Shri Atul Bansal, to make payment of the balance sale consideration in terms of this agreement, his right would stand terminated and the advance money paid by him to Shri J.K. Kashyap can be forfeited. Of course, Shri J.K. Kashyap is obliged under Clause 13 of this agreement to ensure that Shri Rajeev Gupta and Mrs. Chitra Mehta execute all relevant deeds and documents in favour of Shri Atul Bansal but it cannot be said that on execution of this document, he was left with no right, interest or claim under the agreement dated 31st January, 2005 executed by Shri Rajeev Gupta and Smt. Chitra Mehta in his favour. The possession of the property also continues to vest with Mr. J.K. Kashyap and in terms of Clause 3 of the agreement dated 20th August, 2005, it was to be handed over to Shri Atul Bansal on receiving the balance sale consideration. Thus, despite having a right to do so, J.K. Kashyap did not assign his rights and claims under the Memorandum dated 31st January, 2005, to Shri Atul Bansal. Since Shri J.K. Kashyap did not assign his right, title and interest under the agreement dated 31st January,

2005 to Shri Atul Bansal, it cannot be said that Shri Atul Bansal is representative in interest of Shri J.K. Kashyap within the meaning of Section 15(b) of the Specific Relief Act.

20. The agreement between Shri J.K. Kashyap and Shri Atul Bansal expressly permitted Shri Atul Bansal to assign all his rights under the document to any person and such assignment was made binding on Shri J.K. Kashyap.

21. Coming to I.A. No.1674/2011 filed in CS(OS) No.277/2007, the first relief claimed in the suit is recovery of possession of the basement and ground floor, which Shri J.K. Kashyap has obtained from Smt. Jamila Gupta. Admittedly, possession of the aforesaid portions continues to be with Shri J.K. Kashyap. Neither Shri Atul Bansal nor Smt. Sheela Gehlot claims to be in possession of the aforesaid portions of the suit property. Therefore, they are not in a position to deliver possession to the plaintiffs in the suit. Hence, neither Shri Atul Bansal nor Smt. Sheela Gehlot is either necessary or proper party to this suit. The second relief claimed in the suit for recovery of Rs.13.5 lakhs from Shri J.K. Kashyap on account of unlawful and unauthorized use of the basement and ground floor of the

suit property. Again, this relief can be claimed by the plaintiffs only from Shri J.K. Kashyap, he being in possession of basement and ground floor. Therefore, neither Shri Atul Bansal nor Smt. Sheela Gehlot can be said to be necessary or proper party with respect to this relief. The third relief sought in the suit is injunction restraining Shri J.K. Kashyap from disturbing the use and enjoyment of the plaintiffs in respect of the suit property. Again, this relief cannot be claimed either against Shri Atul Bansal or Smt. Sheela Gehlot since there is no allegation that either of them are trying to interfere with the possession of the plaintiff. The fourth relief claimed in the suit is for recovery of Rs.2,00,000/- from Shri J.K. Kashyap towards cost of undertaking journey from USA to India and vice versa from 17th to 24th July, 2005 and again from 19th September, 2005 to 17th October, 2005 respectively.

22. For the reasons given in the preceding paragraphs, I.A. No.15539/2010 filed in CS(OS) No.1870/2008 instituted by Shri Atul Bansal needs to be allowed, he having assigned all his rights, claims and interest under the agreement dated 20th August, 2005 to Smt. Sheela Gehlot. She, therefore, steps into the shoes of Shri Atul Bansal and

can claim those rights, which Atul Bansal had against J.K. Kashyap, under the Agreement dated 20th August, 2005. In any case, since Shri Atul Bansal, who is the plaintiff in the suit himself is seeking his substitution by Smt. Sheela Gehlot and the plaintiff in a suit being *dominus litis*, there can be no valid objection to substitution of Shri Atul Bansal by Smt. Sheela Gehlot. The I.A. is accordingly allowed. The remaining IAs being I.A. Nos. 1674/2011 in CS(OS) No.277/2007 and 1863/2011 in CS(OS) No.2156/2007 cannot be allowed and need to be rejected. These two IAs are accordingly dismissed.

CS(OS) Nos. 277/2007, 2156/2007 and 1870/2008

List on 8th August, 2011 for hearing.

(V.K. JAIN)
JUDGE

FEBRUARY 28, 2011
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