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

+ **C.R.P. 226/2017**

MAHESH CHAND SHARMA

..... Petitioner

Through: Mr. Shahid Ali & Mr. Umardraj,
Advs.

Versus

ANGAD RAJ SHARMA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **16.10.2017**

CM No.37040/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

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3. This Revision Petition under Section 115 of the CPC impugns the order [dated 2nd August, 2017 in CS No.87/2017 of the Court of Additional District Judge (ADJ)-03, South-East District, Saket Courts, New Delhi] of dismissal of the application under Order VII Rule 11 of the CPC filed by the petitioner / defendant for rejection of the plaint in the suit for partition, separate possession and perpetual injunction filed by the respondent / plaintiff.
4. The petitioner/defendant seeks rejection of the plaint on the ground that the claim of the respondent / plaintiff is on the basis of unregistered Agreement to Sell and General Power of Attorney (GPA).

5. The undisputed facts are, that the property with respect to which the suit was filed has been acquired vide the aforesaid Agreement to Sell, GPA etc. in the joint name of the respondent / plaintiff as well as the petitioner / defendant. It is the case of the respondent / plaintiff that the property has been purchased by the parties by making equal contribution of the sale consideration and the respondent / plaintiff in this regard also relies upon an earlier Agreement to Sell which the petitioner / defendant claims to be forged and fabricated. However, the petitioner / defendant admits receipt of certain monies from the respondent / plaintiff but pleads repayment thereof. The petitioner / defendant does not dispute that the documents under which he is holding the property i.e. the Agreement to Sell, GPA etc. aforesaid are in the joint name of the petitioner / defendant and the respondent / plaintiff.

6. I have enquired from the counsel for the petitioner / defendant whether not upon the petitioner / defendant contending that the documents are unregistered and thus of no avail, the title of the petitioner / defendant under the said documents also disappears.

7. The counsel for the petitioner / defendant states that it would not be so because the petitioner / defendant is in possession.

8. The documents under which the petitioner / defendant is in possession of and claims title to the property, even if not of conveyance of title to the property, confer some rights in or to the said property and whatever may be the said rights, are in the joint name of the petitioner / defendant and the respondent / plaintiff. Mere fact that the petitioner / defendant is in

exclusive possession would not come in the way of the respondent / plaintiff not being entitled to seek partition of such rights. There is thus no merit in the petition.

9. Though the counsel for the petitioner has not argued but before the Trial Court another ground for rejection of the plaint taken was of the suit, without seeking the relief of declaration, is not maintainable.

10. The said principle, enunciated in the context of a suit for injunction simpliciter, would have no application to a suit for partition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 16, 2017

‘gsr’..