

\$~35

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 1st August, 2019
+ **CS(OS) 619/2018, I.As. 16469/2018 & 829/2019**

PUSHPA VADERA Plaintiff
Through: Mr. Sanjeev Anand, Mr. Shiv Chopra
and Ms. Smriti Ravichandran,
Advocates. (M:9711298808)

versus

MRS. SITA NANDA Defendant
Through: Mr. Ashwini K. Matta, Sr. Advocate
with Mr. Vijay K. Sondhi, Mr. Faisal
Sherwani, Mr. Shikher Deep
Aggarwal, Mr. Achal Gupta, Mr.
Shubham Saigal, Mr. Shubham Saigal
& Mr. Karan, Advocates. (M-
9407223688).
Mr. Amit Mahajan, CGSC with Mr.
Dhruv Pande and Mr. Olson Nair,
Advocates for L & DO.
(M9811191920)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. The present suit has been filed in respect of Unit-E, known as 20-E, Prithviraj Road, New Delhi. On 9th March, 1923, a perpetual lease deed (Ex. P-2) was executed in favour of Shri Tirath Ram Sawhney, for Plot No.10 in Block No.11 (now known as Plot No.20 and 20A). Only Plot No. 20, Prithviraj Road, New Delhi, which is admeasuring 9407.44 Sq. yards is the subject matter of the present suit. Thereafter, on 7th August, 1953, Shri Lala Balmukund Shah Sawhney was allotted the said property vide partition deed of the said date (Ex. P-3). Shri Lala Balmukund Shah Sawhney gifted

the said plot to his daughter Mrs. Sita Nanda – Defendant vide gift deed dated 19th August, 1953 (Ex. P-4).

2. A group housing project was approved in the said property on 16th July, 1971, constituting 15 dwelling units per acre in 5 separate units, being 28 dwelling units in all. The Plaintiff entered into a co-lessee deed with Mrs. Sita Nanda on 25th October, 1971. (Ex. P-9). By the said deed, the Defendant transferred and conveyed all her leasehold rights in 1730 Sq. Yards of the property in question marked as Unit-E, which also came to be known as 20-E, Prithviraj Road, New Delhi. The said co-lessee deed was also registered with the Sub-Registrar. At the said time, the property was a leasehold property. At the time when the co-lessee deed was executed and consideration contained therein was paid by the Plaintiff to Mrs. Sita Nanda, the Defendant had paid the capital gains tax as per Mr. Matta, Ld. Senior counsel for the Defendant.

3. Subsequently, since the property continued to be leasehold property and an application for conversion had to be made for converting the property into freehold, the Plaintiff paid her share of the conversion charges to Mrs. Sita Nanda, which is duly acknowledged and admitted. For the conversion of the property, the application for conversion was made by various co-lessees, which culminated in an order of the Ld. Division Bench dated 17th December, 2012. In the meantime, the L&DO had executed a conveyance deed dated 17th September, 2012 (Ex. P-32) converting the property into freehold in favour of Mrs. Sita Nanda. However, there is no dispute to the fact that the Plaintiff had contributed her share of the conversion charges, which was paid to the L&DO.

4. After the conveyance deed was executed by the L&DO in favour of

the Defendant, various meetings were held between the parties in order for the Plaintiff to discuss the nature of the documents that would be required to be executed between the parties for the purpose of ensuring that the Plaintiff's title is secured. However, no agreement was arrived at between the parties owing to various apprehensions expressed by both the sides. This led to the filing of the present suit. The prayer in the said suit is as under:

“(a) directing the defendant to execute and register the sale deed in favour of the plaintiff transferring the freehold ownership rights, title and interest in the land admeasuring 1730 sq.yds. covered by Unit 'E', Known as 20-E, Prithviraj Road, New Delhi, forming part of 20, Prithviraj Road, New Delhi as marked in red the site plan along with rights, title and interest upto 30/135 share in the common areas of the entire plot of 20-Prithvi Raj road admeasuring 1190.66 sq. yds. as marked in yellow in the site plan (the relief is valued at Rs.2,01,00,000/-);

(b) of perpetual injunction restraining the defendant, her heirs, legal representatives, agents, employees or any other person claiming through her, from directly or indirectly, transferring, alienating, encumbering, mortgaging, charging or dealing in any other manner with the suit property being land admeasuring 1730 sq. yds. covered by Unit 'E', known as 20-E, Prithviraj Road, New Delhi, forming part of 20, Prithviraj Road, New Delhi as marked in red the site plan and Plaintiffs share being 30/135 in the common area admeasuring 1190.66 sq. yds. as marked in yellow in the site plan (the relief is valued at Rs.130/-);

(c) award cost of the present suit in favour of the plaintiff and against defendant.”

5. The Defendant has also filed her written statement. She does not dispute the fact that the Plaintiff was inducted as a co-lessee as per the co-lease deed dated 25th October 1971. The documents filed by the Plaintiff

also stand admitted by the Defendant and are duly exhibited as Exhibits P-1 – P-51. The factual narration noted above is not disputed by either of the parties. The documents, including co-lessee deed dated 25th October, 1971 and the receipt of consideration by the Defendant under the same is also not disputed.

6. Disputes appear to have arisen merely under the apprehension that there may be financial implications, if a conveyance deed is executed in favour of the Plaintiff in the current date. Since the Defendant does not dispute the ownership rights of the Plaintiff in Unit-E known as Plot No.20-E, Prithviraj Road, New Delhi and considering the fact that she no longer enjoys any rights in Unit - E and had divested her rights under the co-lessee deed for payment of consideration in 1971 itself, ld. counsel for the Plaintiff submits that a declaration be granted in favour of the Plaintiff that the Plaintiff is the absolute owner of Plot No.20, Prithviraj Road, New Delhi along with all the right, title and interest including the rights in the common areas, as described in the co-lessee deed dated 25th October, 1971, notwithstanding the subsequent execution of the conveyance deed in favour of the Defendant. The prayers sought in the suit would be satisfied if such a declaration is granted. None of the other reliefs prayed for are pressed by the Plaintiff.

7. A perusal of the documents and pleadings on record shows that the execution of the co-lessee deed dated 25th October, 1971 stands admitted. The payment of consideration at the relevant point in time in 1971 is also admitted. The fact that ownership vested in the Plaintiff in respect of the suit property at the relevant point in time in 1971 is also not disputed. It is further not disputed that no further consideration has been paid in respect of

the suit property to the Defendant apart from what is mentioned in the co-lessee deed dated 25th October, 1971. Thus, there is no impediment for this Court to declare that the Plaintiff is the absolute owner of the suit property since the time of execution of the co-lessee deed dated 25th October, 2017.

8. Accordingly, a decree of declaration is granted in favour of the Plaintiff declaring the Plaintiff as the exclusive owner along with all rights, title and interest in the land covered by Unit E, known as 20-E, Prithviraj Road, New Delhi – 110011 (bound by – common pathway and 20-A, Prithviraj Road on the north side, common pathway and unit 20-D, Prithviraj Road on the west side, unit 20-F Prithviraj Road on the south side and plot no. 1 Rajesh Pilot Marg on the east side) admeasuring 1730 square yards along with undivided rights, share and interest upto 30/135 share in common areas of the entire plot of 20- Prithviraj Road, New Delhi – 110011 admeasuring 1190.66 square yards. None of the other reliefs are pressed.

9. The Plaintiff is permitted to approach the authorities for mutation of the suit property in her name, on the strength of this order/decreed. The decree of declaration granted by the Court today shall not fasten any liability on the Defendant. Mr. Shilendera Singh, Id. counsel for the Income Tax Department has entered appearance in place of the earlier counsel and submits that he has no instructions in the matter.

10. Let the decree sheet be drawn in the above terms. The suit and all pending I.As. are disposed of. Parties left to bear their own costs.

PRATHIBA M. SINGH
JUDGE

AUGUST 01, 2019

dj