

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

% **Date of decision: 3rd March, 2020**

+ **CS(OS) 63/2020, IA No.2117/2020(u/O.XXXIX R.1&2 CPC) & IA No.2118/2020(u/S.53(B) 3 of DDA Act)**

ABDUL SALAM & ORS. Plaintiffs

Through: Mr. Shiv Upadhayay, Adv.

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Defendants

Through: Ms. Beenashaw N.Soni, ASC, DDA
with Ms. Megha Saini & Mr. Akshay
Sharma, Advs. for D-1 & 2.
Mr. R.M.Sinha, Adv. for D-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 14th February, 2020, when the suit had first come up before this Court, the following order was passed:

"1. The three plaintiffs namely (I) Abdul Salam, (II) Abdul Karim, and, (III) Mohd. Shafi, have sued (a) Delhi Development Authority, (b) Deputy Director (LAB - Residential) Delhi Development Authority, (c) Girish Mittal, (d) Bhardwaj Bhagyawan Estate Property Consultants, (e) Vijay Bhardwaj, and (f) Subhash Bhardwaj, for (i) recovery of possession of plot No.52, Sector-12A, Dwarka, New Delhi; (ii) mandatory injunction directing the defendants no. 1 and 2 DDA to execute Conveyance Deed of the aforesaid plot as per its rules and regulations; and, (iii) permanent injunction to restrain the defendants from dealing with the plot.

2. The plaintiffs, in the plaint have pleaded (i) that the names of father and mother of the plaintiffs, namely Noor Mohammad and Avadhi, were recommended for allotment of an alternate plot measuring 400 sq.yds. in South Zone on perpetual leasehold basis, vide letter dated 12th April, 1989; (ii) that the parents of the parties fulfilled all the terms and conditions of the said letter; (iii) that the defendant no.3 Girish Mittal is

the duly appointed Attorney of the deceased parents of the plaintiffs and who colluded with defendants no. 4 to 6 who are in possession of the said property; (iv) that pursuant to the recommendations aforesaid, the parents of the plaintiffs were allotted the plot, for recovery of possession of which the present suit is filed, vide perpetual Lease Deed dated 12th May, 1994; (v) that the parents of the plaintiffs, at the time of allotment of the plot, were old and uneducated and unable to deal with the defendant DDA, and to fulfil all formalities, had appointed the defendant no.3 as their Attorney for the said purpose; (vi) that Avadhi, mother of the plaintiffs, died intestate on 24th September, 2001; Noor Mohammad, father of the plaintiffs also died on 17th January, 2008 leaving a Will dated 3rd January, 2008 bequeathing the property in favour of plaintiff no.1; (vii) that father of the plaintiffs, at the time of making of the Will, also handed over all original documents with respect to the said property to the plaintiff no.1 and also took the plaintiff no.1 to the suit property on 4th January, 2008; (viii) that the plaintiffs also are uneducated and understood the purport of the documents handed over by their father to plaintiff no.1 only after the demise of their father; (ix) that the plaintiffs, soon after the demise of their father on 17th January, 2008 lost all the said original documents and in which respect NCR No.973/2008 was lodged on 1st April, 2008 at PS Malviya Nagar and public notice got published on 16th April, 2008; (x) that though the parents of the plaintiffs had executed Power of Attorney dated 2nd June, 1994 in favour of defendant no.3 Girish Mittal but had on 27th April, 1994 and 22nd December, 1999 and in the year 2000 deposited all the dues of the subject plot; (xi) that the plaintiffs also found a photocopy of a notice dated 4th December, 2007 issued in the name of the deceased parents of the plaintiffs to demolish the illegal construction in the suit property; (xii) that the plaintiffs visited the suit property in March/April, 2008 and found a lock installed at the main gate and unknown persons measuring the property on account of some difference in the measurement in the records of the DDA; (xiii) that on 23rd March, 2014, the plaintiffs went to the suit property where they were obstructed by a person claiming to be from defendant no.4 Bhardwaj Bhagyawan Estate Property Consultants who handed over to the plaintiffs a photocopy of a Deed of Agreement to Sell, Indemnity Bonds, affidavit, undertaking, all executed on 22nd December, 1999 and a photocopy of the Conveyance Deed dated 5th June, 2000 and the plaintiffs were told that defendants no. 3 to 6 are the owners of the property; (xiv) that the plaintiffs went to Police Station Dwarka to lodge a report but the police refused, stating that the matter was of a civil nature; (xv) that the plaintiffs, on making enquiries learnt

that the defendants no. 3 to 6, in collusion and connivance with officials of defendants no. 1 and 2 DDA, had trespassed into the property; (xvi) that the plaintiffs filed a complaint on 2nd May, 2014 of offences under Sections 420/467/468/506/120B Indian Penal Code, 1860 (IPC) at Police Station, Dwarka; (xvii) that the plaintiffs thereafter on 18th December, 2019 applied for mutation in their name of the aforesaid property, from the name of their parents; (xviii) that the Deed of Sale Agreement dated 31st May, 1994 notarised on 22nd December, 1999, two Indemnity Bonds dated 22nd December, 1999 regarding execution of General Power of Attorney by the deceased parents of the plaintiffs and in respect of possession of the property, affidavit and undertaking shown to be executed by defendant no.3 Girish Mittal and Conveyance Deed dated 5th June, 2000 shown to be executed by the deceased parents of the plaintiffs in favour of defendant no.3 Girish Mittal are void-ab-initio and of no value; (xix) that the Conveyance Deed dated 5th June, 2000 is forged, false and fabricated and has not been executed by the defendants No.1 and 2 DDA in the prescribed form; (xx) that the defendant no.3 was not an eligible person to acquire the subject property and was constituted as their Attorney by the deceased parents of the plaintiffs only to deal with the office of the DDA; and, (xxi) that the Conveyance Deed dated 5th June, 2000 executed by defendants no. 1 and 2 DDA in favour of defendant no.3 is by way of suppression of facts, misstatement, misrepresentation and fraud and is liable to be cancelled and is thus void-ab-initio.

3. The plaintiffs, along with the plaint, have at page 17 of Part III-A File, filed a photocopy of a perpetual Lease Deed dated 2nd June, 1994 of the subject land in favour of the parents of the plaintiffs and at page 94 have filed a photocopy of the Conveyance Deed dated 5th June, 2000 of freehold rights in land underneath the property aforesaid in favour of defendant no.3 Girish Mittal.

4. The title of the property, of which recovery of possession is sought, as per the Conveyance Deed dated 5th June, 2000 filed by the plaintiffs themselves and as per averments of the plaintiffs themselves being of the defendant no.3 Girish Mittal, I have enquired from the counsel for the plaintiffs, how the plaintiffs, when as per the Conveyance Deed dated 5th June, 2000 not having title to the property, are entitled to maintain a suit for recovery of possession thereof.

5. *The counsel for the plaintiffs states that the Conveyance Deed is void-ab-initio as pleaded in the plaint and the perpetual Lease Deed of the land underneath the property is in the name of the parents of the plaintiffs.*

6. *I am unable to agree.*

7. *As far as the title on the basis of the perpetual Lease Deed is contended, the perpetual Lease Deed dated 2nd June, 1994 stands superseded by the Conveyance Deed dated 5th June, 2000.*

8. *As far as the contention of the counsel for the plaintiffs, of the Conveyance Deed dated 5th June, 2000 being void-ab-initio is concerned, the said Conveyance Deed itself is shown to have been executed by the defendants no. 1 and 2 DDA, the father of the plaintiffs acting through his Attorney defendant no.3, in favour of the defendant no.3 Girish Mittal. The plaintiffs admit execution of the Power of Attorney by the parents of the plaintiffs in favour of the defendant no.3 Girish Mittal and in fact at Page 53 of Part III-A File have filed a photocopy of the said registered General Power of Attorney dated 2nd June, 1994 executed by the parents of the plaintiffs in favour of the defendant no.3 Girish Mittal and a perusal of which Power of Attorney shows the parents of the plaintiffs to have constituted defendant no.3 Girish Mittal as their Attorney, also to let out the subject property to receive the rent therefrom, to sell the subject property and to enter into agreements with respect thereto and to receive consideration thereof and acknowledge receipt thereof and do all other acts/deeds and things in that regard.*

9. *Thus on the basis of documents filed by the plaintiffs before this Court, it is clear that there is a chain of documents under which the title to the property stands transferred from the parents of the plaintiffs to the defendant no.3 Girish Mittal and the plaintiffs cannot maintain a suit for recovery of possession, ignoring the said title, and without claiming any relief therefor.*

10. *The counsel for the plaintiffs at this stage states that the plaintiffs at Page 108 of Part III-A File have filed a photocopy of the notice dated 4th December, 2007 issued by DDA in the name of the parents of the plaintiffs, for removal of unauthorized construction on the subject plot. It is contended that had the Conveyance Deed been*

executed on 5th June, 2000, the notice would not have been issued in the name of the parents of the plaintiffs.

11. Though the plaintiffs themselves have filed the Conveyance Deed dated 5th June, 2000 aforesaid and have pleaded the same to have been executed but since on the photocopy filed there is no mark of registration, a doubt arises whether the Conveyance Deed dated 5th June, 2000 has been registered or not.

12. The presence of Mr. Pawan Mathur, standing counsel for DDA has been requested in the Court and he is asked to verify, whether the Conveyance Deed dated 5th June, 2000 is registered or not.

13. List on 17th February, 2020.”

2. On 17th February, 2020, the following order was passed:-

“3. In continuation of order dated 14th February, 2020, today Mr. Pawan Mathur, Advocate for DDA along with Mr. M.L. Sharma, Deputy Director, LAB (Residential), Delhi Development Authority, appears and states that the DDA had issued the Conveyance Deed dated 5th June, 2000 duly executed on behalf of the DDA to the applicant/defendant No.3 Girish Mittal and the signatory on behalf of the DDA is not required to go for registration and that the applicant along with witnesses, can present the Conveyance Deed so issued, for registration, at any of the offices of Sub-Registrar and the Sub-Registrar is required to register the same without presence of executant on behalf of the DDA.

4. With respect to the issuance of notice dated 4th December, 2007 to the parents of the plaintiffs, it is stated that the subject notice was issued by the Building Section, the records of which may not indicate the subsequent changes.

5. Issue summons of the suit, to verify the aforesaid aspect.

6. Summons are accepted by Mr. Pawan Mathur, Advocate on behalf of the defendants No.1 and 2.

7. The plaintiffs to serve defendants No.3 to 6, by all modes including dasti returnable on 27th February, 2020.”

3. The counsel for the defendant no.3 appears.
4. The defendants no. 4 to 6 remain unserved and none appears on their behalf. However, since it is the defendant no.3 who is in possession of the property, the presence of the defendants no.4 to 6 is not relevant.
5. The counsel for the DDA today again states that the DDA would not know whether the Conveyance Deed of freehold rights is registered or not.
6. However, Mr. R.M.Sinha, Advocate appearing for the defendant no.3 confirms that the Conveyance Deed dated 5th June, 2000 has been registered with the Office of the Sub-Registrar-7, New Delhi on 5th June, 2000 i.e. on the same day on which the Conveyance Deed was executed by the DDA.
7. Mr. R.M.Sinha, Advocate has also handed over a copy of the said Conveyance Deed bearing the marks of registration and which is taken on record and be tagged to Part-I File.
8. With the aforesaid, the doubt for the reason whereof, in spite of otherwise holding that the suit was liable to be dismissed, I had refrained from doing so, also disappears.
9. The plaintiffs today are not the owner of the property of which possession is claimed and cannot thus sue for recovery of possession. Similarly, defendants no. 1 and 2 DDA already having executed the Conveyance Deed dated 5th June, 2000, which the counsel for the defendants no. 1 and 2 DDA today also confirms, cannot be directed to again execute a Conveyance Deed of freehold rights in favour of the plaintiffs. The plaintiffs, not having any title to the property, cannot also restrain the defendants from dealing with the property.
10. At this stage, the counsel for the plaintiffs states that the plaintiffs have on 24th February, 2020 filed and yesterday re-filed an application for

amendment of the plaint to also seek the relief of declaration of the ownership of the plaintiffs.

11. Needless to state that no such application is on record.

12. The counsel for the plaintiffs has in Court handed over a copy of the said application and which is taken on record and be also tagged to Part-I File.

13. A perusal of the said application shows the plaintiffs to have only sought amendment, to also claim a decree of declaration of the plaintiffs as owners of the property.

14. However, the plaintiffs, without seeking declaration as null and void with respect to the documents purported to be executed by parents of the plaintiffs and of the Conveyance Deed of freehold rights executed in favour of the defendant no.3, by the DDA in furtherance thereof, cannot seek the relief of declaration. Thus, the need to await the application for amendment stated to have been filed, is also not felt.

15. The suit, in the form filed, is not maintainable in law and is dismissed.

16. However, it is felt that for the fault in drafting the plaint and conducting the suit, the plaintiffs should not suffer.

17. It is thus ordered that a certificate entitling the plaintiffs to refund of Court fees paid less Rs.50,000/- be issued and handed over to the counsel for the plaintiffs.

RAJIV SAHAI ENDLAW, J

MARCH 03, 2020

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