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

Date of decision: 1st October, 2020

+ **C.R.P. 64/2020 and CM APPLs. 24680/2020, 24681/2020**

GAGNINDER KUMAR GANDHI & ANR. Petitioners

Through: Mr. Pawantjit S. Bindra, Advocate
(M: 9811054970).

versus

VIJAY GUPTA & ANR. Respondents

Through: Mr. Sanjeev Rajpal, Mr. Viplav
Sharma, Advocates for Respondent
No. 1 with Respondent No. 1 in
person (M: 9810017534).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been held through video conferencing.
2. The present revision petition has been preferred against the impugned order dated 20th May, 2020 by which the application under Order VII Rule 11 CPC filed by Defendant Nos.1&2/Petitioners (*hereinafter, "Petitioners"*) has been rejected by the Id. Trial Court.
3. The brief background is that vide sale deed dated 11th July, 2001 and 7th August, 2003, the Plaintiff/Respondent No. 1 (*hereinafter, "Respondent No.1"*) acquired rights in the first and second floor, with open terrace, of property bearing No. A-148, Defence Colony, New Delhi -110024. Along with the sale deeds, an undertaking of the same date i.e., 11th July, 2001 was also allegedly executed by the mother of Defendant No.3/Respondent No.2 (*hereinafter, "Respondent No.2"*).
4. Respondent No.1 filed a suit for declaration, perpetual and mandatory

injunction to enforce one clause of the alleged undertaking, which according to him, gives him parking rights in the rear portion of the property. The Petitioners filed an application under Order VII Rule 11 CPC in this suit, primarily on the ground that the alleged undertaking is not genuine and does not have any sanctity in law as the same is not a registered document.

5. Ld. counsel for the Petitioners argues that if documents create rights in immovable property the same require registration. It is further argued that there was also a settlement which was entered into between the parties which was recorded in an earlier suit, being CS (OS) 940/2010 on 6th September, 2013, in which no mention is made of the parking space. Thus, it is argued that the undertaking is not genuine and that the suit is not maintainable.

6. On the other hand, ld. counsel appearing for Respondent No.1 submits that the proviso to Section 49 of the Registration Act, 1908 is clear that if there is any document which is evidence of a collateral transaction, it need not be registered.

7. The issue involved in this case is very short - whether the undertaking can be enforced without the same being registered and whether the undertaking is genuine or not. Considering the fact that the entire suit is based on the undertaking and the question as to whether under the proviso to Section 49 registration is required or not, is an issue which can be decided as a preliminary issue by the ld. Trial Court. Accordingly, the following directions are issued:-

- i. The ld. Trial Court shall frame an issue as to the enforceability and illegality of the undertaking dated 11th July, 2001;
- ii. The said issue can be decided as a preliminary issue;

iii. The Id. Trial Court can hear the parties on the question as to whether any evidence would be required on the said preliminary issue or not and proceed in accordance with law.

8. Considering that the issue involved is quite short, the Id. Trial Court shall adjudicate this matter on this issue within a period of four months. If there is any report of the Economic offences Wing, in respect of this undertaking, the same shall be considered by the Id. Trial Court. The observations made in the impugned order shall not bind the final adjudication of this issue.

9. With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 1, 2020
MR/T

