

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

% **Pronounced on: 10th September, 2021**

+ **CM (M) 30/2021**

RAYRIKH SAGAR

.....Petitioner

Through: Mr.Siddharth Yadav, Sr. Adv. with
Mr.Wasim Ashraf, Adv.

Versus

PUSHPA DEVI & ORS.

.....Respondents

Through: Mr. Surinder Singh Bhatia and Mr.
Baldev Singh, Adv. for R-1
Mr. Fahad Khan, Adv. for R-3 &
R-4

+ **CM (M) 32/2021**

RAYRIKH SAGAR

.....Petitioner

Through: Mr.Siddharth Yadav, Sr. Adv. with
Mr.Wasim Ashraf, Adv.

Versus

MADHVI SHARMA & ORS.

.....Respondents

Through: Mr. Surinder Singh Bhatia and Mr.
Baldev Singh, Adv. for R-1
Mr. Fahad Khan, Adv. for R-3 &
R-4

+ **CM (M) 43/2021**

RAYRIKH SAGAR

.....Petitioner

Through: Mr.Siddharth Yadav, Sr. Adv. with
Mr.Wasim Ashraf, Adv.

Versus

MOHAN SWAROOP AGGARWAL & ORS.

.....Respondents

Through: Mr. Surinder Singh Bhatia and Mr.
Baldev Singh, Adv. for R-1
Mr. Fahad Khan, Adv. for R-3 &
R-4

+ **CM (M) 45/2021**
RAYRIKH SAGARPetitioner
Through: Mr.Siddharth Yadav, Sr. Adv. with
Mr.Wasim Ashraf, Adv.

Versus
NEETU SHARMA & ORS.Respondents
Through: Mr. Surinder Singh Bhatia and Mr.
Baldev Singh, Adv. for R-1
Mr. Fahad Khan, Adv. for R-3 &
R-4

+ **CM (M) 50/2021**
RAYRIKH SAGARPetitioner
Through: Mr.Siddharth Yadav, Sr. Adv. with
Mr.Wasim Ashraf, Adv.

Versus
LALITESH & ORS.Respondents
Through: Mr. Surinder Singh Bhatia and Mr.
Baldev Singh, Adv. for R-1
Mr. Fahad Khan, Adv. for R-3 &
R-4

+ **CM (M) 51/2021**
RAYRIKH SAGARPetitioner
Through: Mr.Siddharth Yadav, Sr. Adv. with
Mr.Wasim Ashraf, Adv.

Versus
KRISHAN KUMAR AGGARWAL & ORS.Respondents
Through: Mr. Fahad Khan, Adv. for R-3 &
R-4

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

[VIA VIDEO CONFERENCING]

1. These six petitions are being disposed of by this common order, as the issues involved are materially the same.
2. These petitions have been filed under Article 227 of the Constitution of India, challenging the orders dated 25th September, 2020 passed by the learned Additional District Judge/Trial Court, allowing the application under Order XXXIX Rules 1 & 2 CPC filed by each of the plaintiffs before it in CS DJ 119/2019; CS DJ 123/2019; CS DJ 122/2019; CS DJ 121/2019; CS DJ 124/2019 and CS DJ 120/2019 respectively, who are the respective respondent No.1 in each of the petitions before this Court.
3. It is to be noted that the petitioner herein is not a party to the suits. However, he is aggrieved because according to him, the impugned orders affect his rights to the extent of 75% of the undivided share in the property bearing House No. 45, Arjun Nagar, New Delhi (hereinafter referred to as the Suit Property), without giving him an opportunity of being heard.
4. Mr. Siddharth Yadav, learned senior counsel for the petitioner, submitted that respondents No.2 to 5/defendants No.1 to 4 had become owners of 25% undivided share each in the Suit Property, having purchased the same vide registered Sale Deed dated 8th March, 2018, placed on record as Annexure P-2. Amongst themselves, respondents

No. 2 to 5/defendants No.1 to 4 entered into an oral agreement to develop the Suit Property together in such a manner that after the construction/development, the Suit Property would consist of stilt level for parking, Ground Floor, First Floor, Second Floor and Third Floor. They further agreed that the Ground Floor shall belong to respondent No.2/defendant No.1, the First Floor to respondent No. 3/defendant No.2, the Second Floor to respondent No.4/defendant No.3 and the Third Floor to respondent No.5/defendant No.4. They were also free to sell their respective shares to any other third party without any hindrance or objection from the other respondents/defendants.

5. It was submitted that the suits were filed for Specific Performance of Agreements to Sell, alleging that respondent No.2/defendant No.1, had transferred various flats to the plaintiffs in the suits, being respondent No.1 in each of the present petitions. Claiming that he had been authorized by the other joint owners, he entered into various Agreements as below:

- (i) with the respondent No.1/plaintiff in CM(M) 30/2021 dated 22nd October, 2017 agreeing to sell to her an Apartment on the left side of the third floor of the Suit Property;
- (ii) with the respondent No.1/plaintiff in CM(M) 32/2021 dated 15th November, 2018 agreeing to sell to her an Apartment on the Upper Ground floor on the right side of the Suit Property;
- (iii) with the respondent No.1/plaintiff in CM(M) 43/2021 dated

03rd November, 2017 agreeing to sell to him an Apartment on the back side on the ground floor of the Suit Property;

- (iv) with the respondent No.1/plaintiff in CM(M) 45/2021 dated 15th November, 2018 agreeing to sell to her an Apartment on the right side of the third floor of the Suit Property;
- (v) with the respondent No.1/plaintiff in CM(M) 50/2021 dated 23rd October, 2017 agreeing to sell to him an Apartment on the left side of the first floor of the Suit Property and,
- (vi) with the respondent No. 1/plaintiff in CM(M) 51/2021 dated 27th April, 2018 agreeing to sell to him an Apartment on the Upper Ground floor of the Suit Property.

6. These Agreements to Sell were not registered. Learned senior counsel for the petitioner therefore submitted that in the absence of registered documents, the respondent No.1/plaintiff in each of the petitions had no right in the Suit Property.

7. Subsequently, through a registered Sale Deed dated 9th January, 2019, respondent No.2/defendant No.1 transferred his undivided 25% share in the Suit Property in favour of respondent No.6/Shri Rambir Singh. Thus the respondent No.2/defendant No.1 was left with no rights or title in his 25% share in the Suit Property as it vested in respondent No.6/Shri Rambir Singh with effect from 9th January, 2019.

8. It was also submitted that subsequently, respondents No.4 and 5/defendants No.3 and 4 sold their 25% share each in the Suit

Property in favour of the petitioner vide registered Sale Deeds dated 28th August, 2020. Further, respondent No.6/Shri Rambir Singh also transferred the undivided 25% share transferred to him by respondent No.2/defendant No.1, to the present petitioner vide registered Sale Deed dated 11th September, 2020.

9. Thus, while the respondent No.1/plaintiff in each of these petitions had no right, title or interest in the Suit Property the petitioner had acquired 75% share in the Suit Property. In these circumstances, the learned senior counsel for the petitioner submitted, that the learned Trial Court erred in passing the impugned orders restraining the respondents No.2 to 5/defendants No.1 to 4 from creating third party interests in the Suit Property bearing House No.45, Arjun Nagar, New Delhi having a plot area of 200 sq. yds while at the same time describing the Suit Property as “a Flat” out of several Flats in the Suit Property.

10. The learned senior counsel for the petitioner submitted that at best, perhaps, the respondent No.1/plaintiff in each of the petitions, could claim a right to the respective flats in the Suit Property, subject matter of the Agreements to Sell, but that could only be against the respondent No.2/defendant No. 1. Learned senior counsel for the petitioner submitted that by means of these suits, the respondent No.1/plaintiff in each of the petitions, were seeking to fasten other defendants with the burden of compensating them, as the respondent No.2/defendant No.1 was absconding. This was unfair and unjust, as none of the other defendants were parties to the alleged Agreements to Sell. Thus, it was prayed that the impugned orders be set aside.

11. In the second limb of his arguments, learned senior counsel for the petitioner, submitted that the impugned order could not be sustained, as the law did not permit stay of registration of a document. It was contended that once documents were submitted to the Registrar, he had no discretion left and had to register the documents. In these circumstances, the request of the Registrar for an order of the court to stop him from registering the Sale Deeds in favour of the petitioner, was improper and the grant of such an injunction by the learned Trial Court was also improper. Reliance has been placed on ***Hari Singh v. Sub Registrar*** (1998) 120 PLR 787 and ***Gurjeet Singh Madaan v. Sub-Registrar-IX (District South-West)***, 2013 SCC OnLine Del 3868. According to learned senior counsel for the petitioner, the documents had in fact been already registered, as evidenced from Annexures P-15, P-16 and P-17.

12. Learned senior counsel for the petitioner submitted that the principle of *lis pendens* would apply to the petitioner only on his being made a party to the suit. It was submitted that Section 52 of the Transfer of Property Act, 1882 did not render a transfer of property during the pendency of the suit void. It only provides that the purchaser would be bound by the decree. Reliance has been placed on ***Hardev Singh v. Gurmail Singh***, (2007) 2 SCC 404 and ***T.G. Ashok Kumar v. Govindammal***, (2010) 14 SCC 370. Since 2019, respondent No.1/plaintiff in each of the petitions was aware of the existence of the petitioner despite which, no action was taken to implead the petitioner in the suits.

13. Furthermore, no relief had been claimed against respondent No.6/Shri Rambir Singh, as stated in the reply filed on behalf of respondent No.1/plaintiff placed at page 262 of the e-file in CM(M) 30/2021. Thus, it was submitted that when his undivided share in the premises was sold by respondent No.2/defendant No.1 to respondent No.6/Shri Rambir Singh and he in turn had transferred the same to the petitioner, and as no declaration or relief has been claimed by respondent No.1/plaintiff in each of the petitions against respondent No.6/Shri Rambir Singh, the petitioner's interest could not have been prejudiced by the learned Trial Court.

14. Mr. Surinder Singh Bhatia, learned counsel for the respondent No.1/plaintiff in CM(M) 30/2021, CM(M) 32/2021, CM(M) 43/2021, CM(M) 45/2021, CM(M) 50/2021, submitted that the respondent No.1/plaintiff in each of the petitions had never at any point of time, conceded the claim of the petitioner to the complete ownership of the Suit Property. The petitioner had no *locus standi* to file the present petitions, as he was not a party before the learned Trial Court. Moreover, if the Sub-Registrar had been restrained from registering the documents of transfer, the petitioner has failed to implead the State/Sub-Registrar, as a party here. According to the learned counsel for the respondent No.1/plaintiffs, the documents filed by the petitioner itself reveal that they have not been registered. Further, because the Sub-Registrar of his own, could not have refused to register the documents, it had become necessary for him to ask the respondent No.1/plaintiff to bring such an order from the court and, the application seeking these directions, was

thereafter filed before the learned Trial Court, on which, the orders were issued, restraining the Sub-Registrar from registering the Sale Deeds.

15. Learned counsel for the respondent No.1/plaintiff further pointed out to the RTI reply dated 19th March, 2021 to the RTI application of the respondent No.1/plaintiff, that the Sale Deeds in respect of the Suit Property in favour of the petitioner had yet not been registered, as the process had not been concluded and there was a restraint order of the Court.

16. It was submitted by learned counsel for respondent No.1/plaintiff that Section 60 of the Registration Act, 1908 requires that an endorsement be made and therefore without the endorsement, it cannot be said that the documents have been registered. Thus, there was no jurisdictional error in the impugned orders and therefore the present petitions were not maintainable.

17. Learned counsel for the respondents further argued that though the Agreement to Sell were between the respondent No.1/plaintiff and respondent No.2/defendant No.1, the other respondents/defendants were impleaded as respondent No.2/defendant No. 1 was acting on their behalf as well. The Sale Deed referred to undivided shares. Since respondent No.2/defendant No.1 had fraudulently transferred for consideration, the Flats as described in each of the Agreements to Sell, the respondents No. 2 to 5/defendants No.1 to 4, being owners of the entire Suit Property, were jointly liable for the Specific Performance of the Agreements or for return of the consideration paid, as the amounts received had been shared

amongst the respondents No.2 to 5/defendants No.1 to 4. The respondent No.1/defendant No.1 had processed the entire transaction by purchasing the stamp paper on behalf of the respondents No.2 to 5/defendants No.1 to 4. Similarly for de-sealing and other municipal dues, the respondent No.2/defendant No.1 had acted on behalf of respondents No.2 to 5/defendants No.1 to 4, as such the claim of the respondent No.1 as plaintiff in each of the petitions against all these defendants was fully maintainable.

18. The remaining questions as to the source of money for payment of consideration whether or not a cash transaction, as claimed by the petitioner could have been made, were questions that required evidence. The law does not make a cash transaction void. There are only penalties prescribed for taxation purposes and therefore the claims of the respondent No.1/plaintiff in each of the petitions that the amounts of Rs.35,00,000/-, Rs.28,50,000/-, Rs.20,00,000/-, Rs. 21,00,000/-, Rs.45,00,000/- and Rs.32,00,000/- have been paid in cash respectively, would not suffice to detract from the fact that such a transaction had in fact occurred. It was submitted that all the payments, whether by cash or otherwise, having been shared by the respondents No.2 to 5/defendants No.1 to 4, and if no protection was given and the respondents No.2 to 5/defendants No.1 to 4 frittered away the Suit Property, the respondent No.1/plaintiff in all the petitions would be left high and dry. It was submitted that if the petitioner so felt the need, he could implead himself by moving an application before the learned Trial Court. Hence it was prayed that the petitions be dismissed.

19. Having heard learned counsel for the parties, it is clear that the questions of what consideration was paid or against whom the relief as claimed in the plaint can be granted, are not questions that need to be considered by this Court at this stage. What needs to be looked into is whether the impugned orders are in any way so perverse that calls for interference by this Court in exercise of its powers under Article 227 of the Constitution of India.

20. The question whether the Sale Deeds have been registered or not and whether the Sub-Registrar can be restrained from registering the same are of course the matters, which need to be considered by this Court. The procedure for admitting documents for registration is mentioned in Sections 58-60 of the Registration Act, 1908. Under Section 58, various particulars have to be endorsed on every document admitted to registration. Under Section 59, these endorsements have to be signed by the Registering Officer who is also to affix the date to the effect that the signatures on the documents have been made in his presence on that day. However, the registration of a document is completed when the Certificate of registration is issued under Section 60. Section 60 of the Registration Act is reproduced herein below:

“60. Certificate of registration.—

(1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word “registered”, together with the number and page of the book in which the document has been copied.”

21. The Hon'ble Supreme Court in ***Chandrika Singh v. Arvind Kumar Singh***, (2006) 10 SCC 404 of course while considering the issue of right of pre-emption, had occasion to observe that unless the registration is complete under Section 60 of the Registration Act, 1908, the transfer of the land in question would still be inchoate. Referring to its previous decisions in ***Radhakisan Laxminarayan Toshniwal v. Shridhar Ramchandra Alshi***, (1961) 1 SCR 248 and ***Hiralal Agrawal v. Rampadarath Singh***, (1969) 1 SCR 328, where too it was observed, again no doubt in the context of enforcement of right to pre-emption, that no transfer of immovable assets takes place unless the deed is registered and registration is complete only when the Certificate under the provisions of the Registration Act, 1908 is issued. In other words, even if the proceedings have taken place as provided under Section 58 and 59 of the Registration Act, 1908, until and unless the Certificate duly signed, sealed and dated by the Registering Authority is issued under Section 60, the transfer of title will not have taken place.

22. A reference may also be made to the Guidelines issued to the Sub-Registrar Offices by the Department of Revenue, Government of NCT of Delhi dated 12th November, 2014 where it is clearly directed to the Sub-Registrar that he shall not keep any document pending on the ground of a complaint made by any party unless there was a stay order granted by a Court of law to maintain *status quo* or restraining the transfer of property. To that extent, if the Sub-Registrar had asked the respondent No.1/plaintiff to produce a court order, it cannot be said that he was over

stepping his powers.

23. In the present case, from the reply dated 19th April, 2021 given to the RTI query, it is evident that no Certificate in respect of any of the three Sale Deeds executed in favour of the petitioner has been issued. The response in the RTI query is reproduced herein below:

The revised reply is as under:-

Point No.	Reply
1.	Yes, three Sale Deeds in respect of property No.45, Arjun Nagar, New Delhi has been presented for registration in this office.
2.	Following three Sale Deeds were presented by three vendors/sellers in respect of Property No.45, Arjun Nagar, New Delhi in the office of Sub-Registrar-VII-A, Sarojini Nagar, New Delhi. (a) The first Sale Deed (Proofing No.3273 dated 28/06/2020) was presented by Sh. Rajesh S/o Sh. Bijender Singh in favour of Sh. Rayrikh Sagar S/o Sh. Rajesh Kumar to sell convey and transfer his entire share of 25% property in the said property. The said sale deed has been Registered/Regularized on 10/09/2020. However, certificate under Section 60, having detail of parties such as Names And Photographs of the parties and witnesses, Book Number, Volume Number, Registration year and thumb impression of of the parties has not been issued by this office as such whole process of registration has not been completed. (b) Second Sale Deed (Proofing No.3273 dated 28/06/2020) was executed by Sh. Sulekh Malik S/o Sh. Mohan Lal in favour of Rayrikh Sagar S/o Sh. Rajesh Kumar to sell convey and transfer his entire share of 25% property, however, same was not regularised/registered, as such, is still pending for registration. (c) Besides, third Sale Deed (Proofing No.3564 dated 11/09/2020) was also presented by Sh. Rambir Singh s/o Late Sh. Pyare Lal in favour of Rayrikh Sagar S/o Sh. Rajesh Kumar sell convey and transfer his entire share of 25% property which has also not Registered/Regularized due to restraining by Hon'ble Court.

24. It is thus apparent that while the Sale Deeds had been presented before the Sub-Registrar and the Sub-Registrar had proceeded to start the process of registering them, in the absence of the Certificate of registration, the transfer has not been completed. The impugned order restraining the Sub-Registrar has been issued, clearly before the completion of the process of registration. It is also to be noted that it is not the Sub-Registrar who has refused to register the Sale Deeds, but it is

the Court, having heard the parties, that has asked the Sub-Registrar not to go ahead. The Sub-Registrar has not over-stepped his powers.

25. The question now to be addressed is whether the learned Trial Court was justified in issuing the restraint orders while disposing of the applications under Order XXXIX Rules 1 & 2 CPC. The main grievance of the petitioner is that the respondent No.1/plaintiff had entered into unregistered Agreements for transfer of one Flat but was now seeking restraint on the entire Suit Property. Secondly, without the petitioner being a party to the suits, his 75% share in the Suit Property was being adversely impacted. In this regard, the contention of the learned counsel for the respondent No.1/plaintiff that if the petitioner is aggrieved, he should implead himself as a party to the suit, has weight. The title of the petitioner to the Suit Property is not complete till the Certificate of registration is issued. Since the Sub-Registrar will not be able to proceed further till the court issues directions, the petitioner can await the result of the suits or he can implead himself as a party and raise all these questions before the learned Trial Court to seek a modification of the orders passed in applications under Order XXXIX Rules 1 & 2 CPC.

26. The petitioner is challenging the right of the respondent No.1/plaintiff to any relief on grounds based on law as well as facts. These cannot be determined in these proceedings, where the only question that needs to be considered is whether the impugned orders are erroneous. This court cannot find any error in the impugned orders insofar as it has restrained the Sub-Registrar from proceeding further in the matter of registration of the Sale Deeds as it is but a necessary

corollary to the restraint on the respondents No.2 to 5/defendants No.1 to 4 from creating third party interests in the Suit Property. None of them appear to have challenged the said order though it is clearly impacting them. The petitioner, without being a party, has no locus to challenge the impugned orders so far as it restrains the respondents No.2 to 5/defendants No.1 to 4 from creating third party interests in any manner in the Suit Property.

27. The petitions thus, are found to be without merit and are accordingly dismissed.

28. The judgment be uploaded on the website forthwith.

**(ASHA MENON)
JUDGE**

September 10, 2021
pkb

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