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

Date of decision: 25th October, 2021

+ **C.R.P. 67/2021 & CM APPL. 31940/2021**

RAJBALA GHILORIA Petitioner

Through: Mr. Yash Vardhan Singh, Advocate
(M: 9667056770)

versus

ASHOK KUMAR SETHI & ANR. Respondents

Through: Mr. Rajat Aneja, Advocate for
Respondent No.1 (M: 8375990985 &
9810727771)

Mr. Chandrashekhar Parasher,
Advocate for R-2 (M: 9811026863)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed challenging the impugned order dated 24th February 2021, passed by the Id. ADJ-03, Central District, Tis Hazari Courts, Delhi, by which the application filed by the Petitioner herein, under Order I Rule 10 CPC has been rejected by the Trial Court.
3. The brief background of the matter is that a suit for partition was filed in respect of the property bearing no. C-2/21, Malka Ganj, Delhi –17 (*hereinafter, “suit property”*) by the Plaintiff in the suit/ Respondent No. 1 herein. Respondent No. 2 herein is the Defendant in the suit. It is the admitted position between the Plaintiff and the Defendant that the Plaintiff owns 1/3rd share of the suit property and the Defendant owns 2/3rd share in the same. However, the case of the Applicant/Petitioner herein is that the

Defendant in the suit has sold his share of the property to the Petitioner. Accordingly, in view of the fact that the interest of the Petitioner could be affected in the said suit proceedings, the Petitioner filed an application under Order I Rule 10 CPC, for impleadment as a necessary party, which has been rejected by the Trial Court. Hence this present revision petition has been filed under Section 115 of the CPC.

4. Mr. Singh, Id. Counsel for the Petitioner submits that in the Written Statement, the Defendant admits the fact that sale has taken place. He places specific reliance on paragraph 13 of the Written Statement filed before the Trial Court, which reads as under:

“That the contents of the para under reply are admitted to the extent that the defendant has already sold his 2/3rd undivided share in the entire 1st Floor with its roof rights (upto sky) in the suit property to one Smt. Rajbala Galoria, W/o Sh. Jai Hind Galoria, R/o 94, Nehru Kutia, Malkaganj, Delhi-07 on 21.03.2018.”

5. Id. Counsel submits that his client's interest would be severely prejudiced if a decree for partition is passed behind his back, inasmuch as he has an interest in the suit property and, therefore, he would be a proper party to the suit.

6. He relies upon the judgment of the Madras High Court in ***C.M.V. Krishnamachari vs M.D. Dhanalakshmi Ammal And Ors. [(1966) 2 MLJ 298]***, where the Court has specifically held that though a suit for specific performance in certain circumstances may be pending, since the Petitioner has an interest in the property, he is entitled to be impleaded in a suit concerning the said property.

7. Mr. Aneja, Id. Counsel appearing for the Plaintiff in the suit, on the other hand, submits that the Petitioner does not have any registered agreement or instrument in his favour. In fact, the Defendant, who is stated to be the vendor of the Petitioner, has stated in the reply to the application under Order I Rule 10 CPC, that the Petitioner was put in possession only for the purposes of carrying out repairs and renovation, and only *bayana* payment was given. The same has also been forfeited as the Petitioner has violated the terms of the Agreement to Sell. He relies upon the following paragraphs of the reply filed by the Defendant in the application under Order 1 Rule 10 CPC before the Trial Court:

“1. That the contents of the para under reply no reply being matter of record.

2. That the contents of para under reply are denied as sated. It is most respectfully submitted that only an agreement to sell was entered into between the applicant and the answering defendant on the payment of bayana for the sale of the share of the defendant in the suit property.

The applicant was put in possession only for the purpose of carrying out repairs and renovation however, the applicant failed to perform her part obligation and arrange payment within the agreed time and hence the bayana payment was forfeited and now she is in unauthorized occupation of the part of the suit property and liable to be evicted from the same. The defendant reserves his right to initiate appropriate legal remedy against the applicant separately.”

8. According to Mr. Aneja, the prayer in the suit in question is for partition and for appointment of a local commissioner to suggest the mode

of partition. He submits that the shares of the two parties to the suit, i.e., the Plaintiff and the Defendant, are admitted as to being 1/3rd and 2/3rd respectively. However, possession of the share of the Defendant is with the Petitioner, who currently is in occupation of some part of the property, pursuant to the Agreement to Sell entered into with the Defendant. He submits that this Agreement to Sell is not valid in law as the same is not registered in terms of the judgement of the Supreme Court in ***Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana (2012) 1 SCC 656***. Further, according to Mr. Aneja, the defense under Section 53A of the Transfer of Property Act, 1882 is also not available to the Petitioner, post the amendment to the said provision in 2001.

9. He relies upon the judgment of the Supreme Court in ***The Greater Bombay Cooperative Bank Limited v. Mr. Nagaraj Ganeshmal Jain [2017 (15) SCC 316]***, and judgment of this Court in ***Sunil Kapoor v. Hemant Singh and Others [CM(M) No.1215/2007, decided on 29th January 2010]*** in support of his argument that a mere Agreement to Sell, which is not registered, does not create or confer any rights to the vendee, as the suit for partition is between registered co-owners.

10. Mr. Parasher, Id. Counsel, appearing for the Defendant submits that the Defendant is contesting the suit for specific performance which has been filed by the Petitioner herein, post the impugned order being passed. The said suit being ***CS DJ 246/21*** titled ***Rajbala Ghiloria v Gurucharan Singh Pahwa***, is stated to be pending before the ADJ-03, Central, Tis Hazari Courts. The stand of the Defendant in this suit for specific performance is that the amount which was paid as *bayana* by the Petitioner stands forfeited.

11. Heard Id. Counsel for the parties.

12. The Petitioner's case in the present revision petition is that he has purchased 2/3rd of the property from the Defendant in the suit, and accordingly he ought to be impleaded under Order I Rule 10 CPC, in the suit for partition. The fact that the Respondent has a 2/3rd share in the suit property is not in dispute in these litigations.

13. The question that arises is as to whether, the Petitioner would be a necessary or proper party in the present suit pending between the Plaintiff and the Defendant. The application under Order 1 Rule 10, has been rejected by the Trial Court by holding that the suit is between the Plaintiff and the Defendant and not with the Petitioner, and therefore she is not a necessary party. The Trial Court, in the impugned order, has held:

“The plaintiff has filed the present suit for partition and possession qua the suit property and he has claimed his share to the extent of 1/3rd only. The plea of the defendant is that he had purchased the remaining 2/3rd share of the suit property vide agreement to sale dated 04.03.2011 and applicant has also staked her claim in that share only on basis of agreement to sale entered with the defendant and defendant has admitted that he entered into agreement to sale qua his share with the applicant. The crux of the matter is that applicant is deriving her interest in the suit property on the basis of agreement entered with the defendant which is not the direct and substantial question in the present suit and whatever remedy he has, that is against defendant only and qua his share only. In view of the same, I held that presence of the applicant is not necessary for proper adjudication of the case since she has independent right to pursue the said remedy. In view of the aforesaid facts and circumstances, the application in

hand is dismissed. The application is accordingly disposed of.”

14. A perusal of the judgment of the Supreme Court in ***The Greater Bombay Cooperative Bank (supra)*** clearly shows that an Agreement to Sell which is not registered would not give the Petitioner a right to claim ownership in the property. The Supreme Court in the said judgment relied upon the rationale rendered the Supreme Court in ***Suraj Lamp (supra)*** and held:

“Immoveable property can be transferred only by a Registered document. There can be no transfer of any right, title or interest in any immoveable property except by way of a registered document. In this behalf we may make reference to the judgment of this Court in Suraj Lamp & Industries (P) Ltd. v. State of Haryana (2012) 1 SCC 656, wherein it was held as follows.

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted Under Section 53A of TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of

immoveable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter.

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24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/will transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.

16. This Court clearly held that an agreement to sell which is not a registered deed of conveyance would not meet the requirements of Section 54 and 55 of the Transfer of Property Act. With respect to Section 53A of the Transfer of Property Act, it is well settled that the same can only be

used as a defense in proceedings initiated by the transferor or by any person claiming under him.”

15. Even the Delhi High Court in ***Sunil Kapoor (supra)*** has held that an Agreement to Sell executed in favour of the Petitioner, being unregistered, would not give a right to the petitioner to be recognized as the owner of the property. The relevant portion of the said judgment reads:

*“11. A mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondents/plaintiffs are found to have agreed to sell the property, the petitioner/defendant would not get any right to occupy that property as an agreement purchaser. This Court in ***Jiwan Das Vs. Narain Das*** AIR 1981 Delhi 291 has held that in fact no rights enure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed. Thus in law, the petitioner has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in his favour.”*

16. Mr. Singh, Id. Counsel for the Petitioner has placed reliance on the judgment of the Madras High Court in ***C.M.V. Krishnamachari (supra)*** to argue that in the said case the Court had held that such a Petitioner ought to have been impleaded as a supplemental defendant to the suit proceedings by exercising powers under Order I Rule 10(2) CPC. The Petitioner in the said case, did not claim to be a necessary party to the suit. The Madras High Court, in the said judgment had noted the following fact:

“It is not claimed that the petitioner is a person who ought to have been joined as a necessary party to the suit, and the only question is whether he could be

impleaded as a party whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle the questions involved in the suit.”

Thus, the Madras High Court has, in the above decision permitted the presence of the person, by impleading as a *supplemental* defendant. The said direction reads:

“28.....He is impleaded only for the limited purpose of (a) establishing that the property is the separate property of his vendor, the first defendant, or alternatively (b) for suggesting to the Court that without prejudice to the interest of the plaintiffs the property agreed to be sold may be allotted to the share of the first defendant, so that in a separate suit of his own he can either obtain specific performance or enforce a charge under Section 55(6)(b) against the property in the hands of the first defendant after a final allotment in the partition suit

29. For all these reasons I set aside the order of the trial Court and direct that the petitioner be impleaded as a supplemented defendant.”

Further, the present case is slightly distinguishable from the facts in **C.M.V. Krishnamachari (supra)** as the said judgment was passed prior to the judgment of the Supreme Court in **Suraj Lamp (Supra)** wherein it was held that no unregistered document can be used to determine ownership or legitimate sale of property. The Supreme Court in **Suraj Lamp (supra)** had recognized the said principle and rendered it prospectively applicable by holding:

“16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance.

Transactions of the nature of ‘GPA sales’ or ‘SA/GPA/WILL transfers’ do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property.

They cannot be recognized as deeds of title, except to the limited extent of [section 53A](#) of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.

17. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

18. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/WILL transactions are not ‘transfers’ or ‘sales’ and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as

existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under Section 53A of Transfer of Property Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/WILL transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision."

17. Accordingly, given the fact that the Agreement to Sell was entered into by the Petitioner herein on 21st March 2018, post the judgment in ***Suraj Lamp (supra)***, wherein the Supreme Court clearly held that an unregistered Agreement to Sell cannot be the basis of claiming ownership, the said Agreement to Sell cannot, in law, be a ground or the basis for the impleadment of the Petitioner in a partition suit.

18. A suit for partition has to be adjudicated between the co-owners of the property. Since the rights of the Petitioner, if any, are yet to be determined in the suit for specific performance which is pending before the Trial Court, the Petitioner cannot claim a right to be impleaded, in the suit for partition. Thus, the Trial Court is not at fault, in holding that the suit for partition would have to be adjudicated only between the co-owners.

19. This Court however agrees with the spirit of the rationale in ***C.M.V. Krishnamachari (supra)***, especially because the Petitioner herein claims to have paid more than a sum of Rs. One Crore as in terms of the Agreement to Sell dated 21st March 2018.

20. On a query put to the Counsels, it is confirmed that the subject suit for partition being **CS DJ No. 1330/2018** titled **Ashok Kumar Singh vs. Gurcharan Singh Pahwa**, and the suit for specific performance filed by the Petitioner being **CS DJ 246/21** titled **Rajbala Ghiloria v Gurucharan Singh Pahwa**, are pending before the same Court, i.e., Central District, Tis Hazari Courts, New Delhi. Since both the suits are in respect of the same suit property and broadly involve the same parties, the following directions are issued:

- i) Both the suits being **CS DJ No. 1330/2018** titled **Ashok Kumar Singh vs. Gurcharan Singh Pahwa** and **CS DJ 246/21** titled **Rajbala Ghiloria v Gurucharan Singh Pahwa** shall be listed before the same ADJ, at the Tis Hazari Courts, so that the said Court is conscious of the pendency of the specific performance suit, while deciding the suit for partition.
- ii) Both the suits shall proceed independently for trial.
- iii) However, prior to passing of any decree of preliminary decree of partition or physical division by metes and bounds, or any other directions which may affect the possession of the Petitioner being disturbed, the Petitioner herein who has filed the suit for specific performance and is in possession of some part of the suit property, shall be allowed to make his submissions so that the relief to be granted in the partition suit, is balanced in accordance with the law.

21. With these observations, the petition is disposed of. All pending applications are also disposed of. Let a copy of the present order be sent to

the Id. District Judge, Central District, Tis Hazari Courts, so as to list both the suits before the same ADJ.

22. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

OCTOBER 25, 2021

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