



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

%

Judgment Reserved on : 11th January, 2022
Judgment Delivered on : 07th February, 2022

+ CM(M) 537/2019 & CM No. 29207/2019 (for placing on record additional documents), CM No. 8201/2020 (for permission to file documents), CM No. 8203/2020 (for condonation of delay of 7 days in refiling), CM No. 3863/2021(for evidence), CM No. 36780/2021(for permission to file documents), CM No. 38461/2021(for rectification of order dated 20.09.2021), CM No. 38511/2021(for dismissal in limine), CM No. 38513/2021(for condonation of delay of 97 days in refiling two accompanying CMs), CM No. 364/2022 (for rectification/modification of order dated 15.11.2021by R-3)

RAVI KUMAR BAJAJ

..... Petitioner

Through: Mr. Siddharth Yadav, Sr. Advocate
with Mr. Wasim Ashraf and
Mr.Narender Lodiwal, Advocates.

versus

ASHOK BAJAJ & ORS

..... Respondents

Through: Mr. Amit Bhagat & Ms. Arzoo Raj,
Advocates for R-1.

Ms. Gayatri Bajaj, Mr. Siddharth
Bajaj and Ms. Natasha
Bajaj/respondents no. 2, 3 & 4 in
person.

Mr. Shankar Kumar Jha, Advocate
for R-5/L&DO.



+ CM(M) 1168/2021 & CM No. 45595/2021(for condonation of delay in filing), CM No. 45596/2021(for stay)

GAYATRI BAJAJ & ORS.

..... Petitioners

Through: Ms. Gayatri Bajaj, Mr. Siddharth Bajaj and Ms. Natasha Bajaj/petitioners no. 1, 2 & 3 in person.

versus

RAVI KUMAR BAJAJ & ORS.

..... Respondents

Through: Mr. Siddharth Yadav, Sr. Advocate with Mr. Wasim Ashraf and Mr. Narender Lodiwal, Advocates for R-1.
Mr. Shankar Kumar Jha, Advocate for R-5/L&DO.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

[VIA VIDEO CONFERENCING]

CM No. 45595/2021(for condonation of delay in filing) in CM(M)1168/2021

1. For the reasons stated in the application, the same is allowed.

CM No. 45596/2021(for stay) in CM(M)1168/2021

2. The present application has been filed by the petitioner seeking (i) stay of the proceedings in CM(M) 537/2019; and (ii) that the petition being CM(M) 1168/2021 be heard and decided first.



3. Since both the aforesaid petitions, CM(M) 1168/2021 and CM(M) 537/2019 are being heard and decided together, the present application has become infructuous and is disposed of as such.

CM No. 8203/2020 (for condonation of delay of 7 days in refiling) in CM(M) 537/2019

4. For the reasons stated in the application, the same is allowed.

CM No. 29207/2019 (for placing on record additional documents), CM No. 8201/2020 (for permission to file documents) & CM No. 36780/2021(of R-3 for permission to file documents) in CM(M) 537/2019

5. For the reasons stated in the applications, the same are allowed.

CM No. 3863/2021(for evidence) in CM(M) 537/2019

6. This application has been filed for taking evidence to be incorporated at the stage of oral arguments.

7. There is no basis for the reliefs claimed in the present application for taking such evidence in petitions filed under Article 227 of the Constitution of India.

8. Accordingly, the application is dismissed.

CM No. 38461/2021(for rectification of order dated 20.09.2021) in CM(M) 537/2019

9. The present application has been filed by the applicant/respondent no.3 seeking rectification of the order dated 20th September, 2021 passed by this Court.

10. For the reasons stated in the present application, the application is partly allowed in respect of the modifications sought in paragraphs 7(b) and 7(c) of the present application.

11. By the said order, early hearing of CM(M) 537/2019, on an application filed by the petitioner, being CM No.32616/2021, was allowed



by this Court in exercise of its discretion and while taking note of the urgency expressed in the application.

12. Insofar as the rectification sought in the order is concerned with directing the plaintiff to serve the respondents no.2 and 4 of CM No.32616/2021, it is noted in the said order that a joint reply has been filed on behalf of the respondents no.2 to 4. On a query to the respondent no.3 on the said date, whether or not he represents the other respondents, being respondents no.2 to 4, it was only stated by the respondent no.3 that he does not hold a power of attorney to this effect. However, a joint reply to CM(M) 537/2019 was filed by the respondents no.2 to 4.

13. It was in view of the position of parties explained above that the respondent no.3 and the counsel for the petitioner were requested to apprise the respondents no.1, 2, and 4 of the order passed. Therefore, no rectification is warranted in the order dated 20th September, 2021 in respect of paragraphs 7(a) and 7(d) of the application.

CM No. 38511/2021(for dismissal *in limine*) in CM(M) 537/2019

14. No grounds for dismissal *in limine* are made out.

15. Dismissed.

CM No. 38513/2021(for condonation of delay of 97 days in refiling two accompanying CMs) in CM(M) 537/2019

16. For the reasons stated in the application, the same is allowed.

CM No. 364/2022 (for rectification/modification of order dated 15.11.2021by R-3) in CM(M) 537/2019

17. The present application has been filed by the applicant/respondent no.3 seeking, *inter alia*, rectification/modification of the order dated 15th



November, 2021 to the extent that the appearance of the respondents no. 2, 3, and 4 be recorded as appearing in person.

18. For the reason stated in the application, the same is allowed.

CM(M)537/2019 and CM(M) 1168/2021

19. Both the petitions arise out of the same suit bearing CS No.57749/2016 and impugned order, and are therefore, being taken up together.

20. CM(M)537/2019 filed under Article 227 of the Constitution of India impugns the judgment dated 05th December, 2018 passed by the Additional District Judge-05, Patiala House Courts, New Delhi [hereinafter ‘Trial Court’] whereby the application under Section 151 of the Code of Civil Procedure, 1908 (CPC) filed by the petitioner [hereinafter ‘plaintiff’] praying for a direction to the respondent no.5 [hereinafter referred to as ‘L&DO’] to allow conversion of the property bearing No.1, Golf Links, New Delhi [hereinafter ‘suit property’] from leasehold to freehold, has been dismissed.

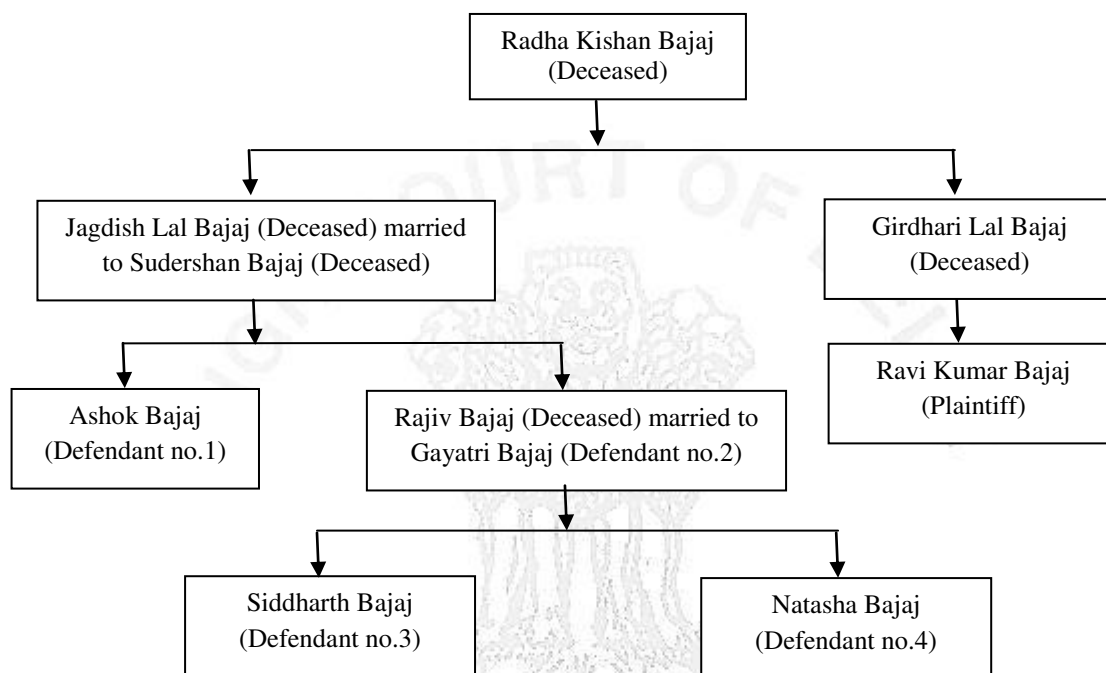
21. CM(M)1168/2021 has been filed under Article 227 of the Constitution of India impugning the orders dated 05th December, 2018 dismissing the application filed on behalf of the petitioners [hereinafter ‘defendants no.2 to 4’] under Order VII Rule 11 of the CPC and order dated 02nd December, 2021 dismissing the review application filed under Order XLVII Rule 1 of the CPC by the defendants no.2 to 4 of the order dated 05th December, 2018.

22. Judgment was reserved in the present petitions on 11th January, 2022 and subsequently, an application, being CM No.3468/2022, was moved by the defendants no.2 to 4 to file written submissions. Pursuant to the said



application being allowed, written submissions have been filed by the plaintiff and the defendants no.2 to 4.

23. To understand the relationship between the parties, it may be useful to refer to pedigree:



24. Brief facts, to the extent necessary for deciding the aforesaid petitions, are set out below:

24.1 The plaintiff along with his deceased uncle, Jagdish Lal Bajaj purchased the suit property vide Sale Deed dated 25th April, 1964. The property was mutated in the joint names of the plaintiffs and Jagdish Lal Bajaj and two independent houses were constructed on the said property. Eastern side of the plot has a house in possession of the plaintiff, whereas western side of the plot is in the occupation



of the defendants no.2 to 4. Both houses have separate gates for ingress and egress.

- 24.2 Jagdish Lal Bajaj expired in November, 1976 and was survived by his wife, Sudershan Bajaj and two sons, being respondent no.1, Ashok Bajaj [hereinafter 'defendant no.1'] and Rajiv Bajaj. It is the case of the plaintiff that a Memorandum of Agreement (MoA) was executed on 17th December, 1993 between the plaintiff and the legal heirs of Jagdish Lal Bajaj and acting on the said MoA, the plaintiff and Sudershan Bajaj filed a joint application for conversion of the suit property into freehold. However, the conversion could not go through.
- 24.3 Sudershan Bajaj passed away in the year 2006 and subsequently, Rajiv Bajaj passed away in 2009, leaving behind the defendants no.2 to 4 as his legal heirs.
- 24.4 It was the case of the plaintiff that the defendants were not cooperating with the plaintiff and were not willing to convert the property from leasehold to freehold. It is further stated that the defendants were neither paying ground rent, nor house tax towards their portion of the property to the L&DO. The plaintiff approached the L&DO for conversion of the said property in March-April, 2013. However, the L&DO informed the plaintiff that conversion can only be done if all the parties jointly approached the L&DO.
- 24.5 The suit from which the present petitions arise was filed in December, 2013 on behalf of the plaintiff seeking the following reliefs:



“A. Pass a decree of declaration that the Memorandum of Agreement dated December 17, 1993 is binding upon the plaintiff and defendant nos. 1-4;

B. Pass a decree of Mandatory injunction thereby directing defendant nos. 1 - 4 to execute any/all documents in the office of defendant no. 5, jointly along with the plaintiff, for the purposes of mutation and conversion from leasehold to freehold property bearing municipal no.1, Golf Links, New Delhi;

C. Pass a decree of Mandatory Injunction thereby directing the defendant nos. 1 - 4 to pay all charges to defendant no. 5 for mutating the western portion (marked in red in the Map) in their favour;

D. Pass a decree of Mandatory Injunction thereby directing the defendant nos. 1 - 4 to pay all charges to defendant no.5, jointly along with the plaintiff, for conversion of property bearing municipal no. 1, Golf Links, New Delhi from leasehold to freehold;

E Pass a decree of Permanent Injunction thereby restraining the defendant nos. 1 - 4 from selling, alienating, transferring, creating third party rights and/ or parting with possession of the western portion (marked in red in the Map) till the western portion of the property bearing municipal no.1, Golf Links, New Delhi is mutated in their joint names and converted into freehold;”

24.6 The suit was filed initially before this Court. However, due to increase in pecuniary jurisdiction, the suit was transferred to Patiala House Courts vide order dated 19th January, 2016.

24.7 The said suit was contested by the defendants no.2 to 4 by filing a joint written statement. The suit was also contested by the L&DO by filing a separate written statement. Defendant no.1 also filed his written statement, stating, *inter alia*, that the defendant no.1 (i) does not object to reliefs A to D sought in the suit filed by the plaintiff; (ii)



is ready and willing to pay charges for mutation and conversion from leasehold to freehold in respect of his share in the suit property; (iii) is ready and willing to execute all relevant documents for the purpose of mutation and conversion from leasehold to freehold of the suit property; and, (iv) has no objection to the MoA being declared as binding on the parties to the suit.

- 24.8 An application under Order VII Rule 11 of the CPC was filed on behalf of the defendants no.2 to 4 seeking dismissal of the suit, which was contested by the plaintiff by filing his reply.
- 24.9 An application was also filed on behalf of the plaintiff under Section 151 of the CPC seeking following reliefs:

“A. Permit the applicant to pay charges to defendant no. 5 for and on behalf of himself (plaintiff) and defendant nos. 1 – 4 for conversion of property bearing no, 1, Golf Links, New Delhi from leasehold to freehold, as determined by defendant no. 5;

B. Direct that the payment of such charges by the plaintiff shall be without prejudice to his rights and contentions vis a-vis the defendants and also while reserving his right to recover the same, from defendant nos. 1 - 4;

C. Direct defendant no. 5 to carry-out conversion from leasehold to freehold and mutation of property bearing no.1, Golf Links, New Delhi in names of plaintiffs and defendants, respectively;

D. Pass any other or further order, as this Hon’ble Court may deem fit and proper.”

- 24.10 The said application was also contested by the defendants by filing their reply.



24.11 Vide the impugned order dated 05th December, 2018, both the aforesaid applications, viz., application filed under Order VII Rule 11 of the CPC filed on behalf of the defendants no.2 to 4 and application under Section 151 of the CPC filed on behalf of the plaintiff, were dismissed.

24.12 The defendants no.2 to 4 filed a review application against the dismissal of the application under Order VII Rule 11 of the CPC. The said review application filed on behalf of the defendants was dismissed by the Trial Court vide order dated 02nd December, 2021.

25. Submissions were advanced by the defendant no.3 in the present petitions, which were adopted by the defendants no. 2 and 4.

26. With the aforesaid factum narration, I now proceed to deal with both the petitions.

27. CM(M)1168/2021 deals with the dismissal of the application under Order VII Rule 11 of the CPC filed on behalf of the defendants no.2 to 4 as well as the dismissal of the review application filed under Order XLII Rule 1 read with Section 114 of the CPC seeking review of the order dated 05th December, 2018. The application under Order VII Rule 11 of the CPC filed on behalf of the defendants no.2 to 4 was premised on the following contentions:

- (i) The execution of the Memorandum of Agreement dated 17th December, 1993 was disputed by the defendants.
- (ii) The suit of the plaintiff was barred by limitation.
- (iii) There is no right of the plaintiff to get the property converted into freehold and hence, the suit is without any cause of action.



(iv) The suit is barred under Section 34 read with Section 41(h) of the Specific Relief Act, 1963.

28. Vide the impugned order dated 5th December, 2018 the application of the defendants no.2 to 4 under Order VII Rule 11 of the CPC was dismissed by the Trial Court holding/ observing that:

- (i) While deciding an application under Order VII Rule 11 of the CPC, only averments made in the plaint are to be seen and not the defence raised in the written statement.
- (ii) Whether the suit is barred under limitation is a mixed question of law and fact, which can only be determined in a Trial Court.
- (iii) Validity and effect of the Memorandum of Agreement dated 17th December, 1993 cannot be determined at this stage.
- (iv) Defendants no.2 to 4 have not denied the joint ownership with the plaintiff of the suit property.
- (v) In view of the fact that the suit has been filed for declaration and injunction, the bar under Section 41(h) of the Specific Relief Act, 1963 does not apply.
- (vi) It is settled law that under Order VII Rule 11 of the CPC a plaint cannot be rejected in part.
- (vii) The judgments filed on behalf of the defendants no.2 to 4 have been examined and are not applicable in the facts of the case.

29. In CM(M)537/2019, the plaintiff has impugned the order dated 5th December, 2018 to the extent that the IA No.14109/2015 filed under Section 151 of the CPC by the plaintiff seeking, *inter alia*, conversion of the suit property from leasehold to freehold, has been dismissed.



30. The Trial Court while dismissing the application filed by the plaintiff under Section 151 of the CPC observed/held that:

- (i) Defendants no. 2 to 4 have raised serious objections to the claim of the plaintiff for conversion of the suit property;
- (ii) The relief of conversion is also the final relief in the suit and granting this relief would mean granting the final relief;
- (iii) The plaintiff is free to pay the conversion charges to L&DO at his own risk;
- (iv) The judgment of *Surendra Pal Singh Vs. Ravindra Pal Singh*, (2014) SCC OnLine Del 2959 relied upon by the plaintiff is not applicable to the facts of the present case.

31. Subsequently, the review application filed on behalf of the defendants no.2 to 4 against dismissal of the application under Order VII Rule 11 of the CPC, was dismissed by the impugned order dated 02nd December, 2021 by the Trial Court by observing that there is no discovery of new or important facts and that there is no mistake or error apparent on the face of the record. It was further observed that there was no merit in the contention of the defendants no.2 to 4 that the judgments cited by them were not considered while passing the order dated 05th December, 2018 as it has specifically been recorded in the said order that the Court has gone through the judgments as well as the written submissions. The contention of the defendants no.2 to 4 that since the relevant paragraphs of the said judgments have not been reproduced in the order would imply that the same have not been considered by the Trial Court was rejected. Accordingly, review application was dismissed with costs of Rs.25,000/-.



32. While advancing arguments in CM(M)1168/2021 before this Court, the defendant no.3 appeared in person and the defendants no.2 and 4, being his mother and sister respectively, were also present through video conferencing in the hearing. Defendants no.2 and 4 adopted the arguments advanced by the defendant no.3. The same submissions that were made before the Trial Court have been reiterated, viz.:

- (i) The suit, as filed by the plaintiff, is not maintainable as the suit should have been filed for specific performance of the Memorandum of Agreement dated 17th December, 1993. Reliance has been placed in this regard on the judgment of the Supreme Court in *Atma Ram vs. Charanjit Singh*, (2020) 3 SCC 311.
- (ii) There are several contradictions in the plaint.
- (iii) False statements have been made in the plaint and the plaintiff as well as his counsel have committed perjury.
- (iv) The suit is barred on the grounds of limitation.
- (v) The plaintiff has approached the court with unclean hands.

33. The said petition has been opposed by the senior counsel appearing on behalf of the plaintiff by contending that:

- (i) no false allegations have been made in the plaint;
- (ii) unsubstantiated allegations have been made on behalf of the defendants No.2 to 4 against the plaintiff as well as the counsel;
- (iii) the defendants no.2 to 4 have filed more than 26 judgments in support of their contentions and the Trial Court is not expected to deal with all the said judgments in the impugned order;



- (iv) there is no requirement for the plaintiff to file a suit for specific performance and the suit has been correctly filed seeking a declaration that the agreement dated 17th December, 1993 is binding; and
- (v) the suit is not time barred.

34. Impugning the aforesaid order of the Trial Court, which dismissed the application filed by the plaintiff under Section 151 of the CPC, the senior counsel appearing on behalf of the petitioner submitted that:

- (i) The defendants no.2 to 4 have not been paying their share of the ground rent to the L&DO and have also not been paying their share of the property tax to the North Delhi Municipal Corporation (NDMC). In this regard, attention of this Court is drawn to paragraph 9 of the para-wise reply contained in the written submission filed on behalf of the defendants no.2 to 4;
- (ii) The conversion charges payable in respect of the aforesaid property have risen sharply over a period of time, from a sum of Rs.35,00,000/- the conversion charges now payable are in excess of Rs.1,00,00,000/-;
- (iii) It would be in the interest of all the parties if the aforesaid property is converted from leasehold to freehold;
- (iv) Plaintiff is willing to pay the entire amount for conversion to L&DO including the share of the defendants and all that is required of the defendants is to sign the necessary form and carry out the other formalities in this regard, which the defendants have refused;
- (v) The predecessor in interest of the defendants no.2 to 4, Rajiv Bajaj had duly signed the conversion application filed on behalf of the parties in 1999 (page 86 of the electronic file). Therefore defendants cannot have any objection to the conversion of the property;



- (vi) In view of the fact that the interest of the plaintiff is intertwined with that of the defendants' and the conduct of the defendants no.2 to 4 is prejudicial to the joint interest of the plaintiff and the defendants, plaintiff has every right to preserve his interest by seeking conversion of the property from leasehold to freehold;
- (vii) In the event that the defendants are unwilling to sign the conversion forms and/or carry out the other formalities thereof, a Court Commissioner can be appointed. In this regard reliance has been placed on the judgment in ***Surendra Pal Singh Vs. Ravindra Pal Singh***, (2014) SCC OnLine Del 2959.

35. Counsel appearing on behalf of the L&DO contends that as per the policy of the L&DO, all the parties have to approach the L&DO jointly and pay the appropriate charges for the conversion of the suit property. Even if the conversion charges are paid by one party, conversion cannot be granted until the necessary forms are signed by all the parties who are joint owners.

36. It has been contented on behalf of the defendant no.2 to 4, that (i) co-owner of the property without consent of the other co-owners cannot convert his property from leasehold to freehold; and (ii) conversion is the final relief in the suit and cannot be granted at an interim stage.

37. During the course of the hearing on 7th January, 2022, the senior counsel, on instructions, stated that the plaintiff is willing to pay/deposit:

- (i) the entire charges for conversion of the suit property from leasehold to freehold shall be paid by the plaintiff without claiming any part thereof from the defendants no. 2 to 4,
- (ii) up-to-date statutory dues including property tax in respect of the



entire suit property shall be paid by the petitioner without claiming any part thereof from the defendants no. 2 to 4;

38. On the basis of the above, it was submitted on behalf of the plaintiff that the plaintiff is willing to give up all other reliefs claimed in the suit if the suit is decreed in terms of prayer B. The above-noted proposal made on behalf of the plaintiff is also reiterated in the written submissions filed by the plaintiff in CM(M) 537/2019 after conclusion of the hearing.

39. The defendants no.2 to 4 sought time from this Court to consider the aforesaid proposal made on behalf of the plaintiff, however, on 11th January, 2022, the said proposal was rejected by the said defendants by stating that the aforesaid payments by the plaintiff in respect of the share of the defendants no.2 to 4 would entail liabilities under the Income Tax Act, 1961. It was further submitted that the plaintiff has not been fair to the defendants no.2 to 4 in the past and therefore, the defendants no.2 to 4 do not wish to cooperate.

40. It was stated on behalf of the defendants no.2 to 4 that the matter be referred to mediation, however, the offer for mediation was rejected on behalf of the plaintiff by stating that nothing fruitful would come out of the mediation in view of the rigid stand taken by the defendants no.2 to 4.

41. I have considered the submissions made on behalf of the parties and perused the record of the case.

42. On a pointed query put to the defendants no.2 to 4 by the Court that whether they have paid the statutory dues towards their share of the property, the defendants no.2 to 4 refused to answer. On a further query from the Court to the defendants no.2 to 4 that what would be the prejudice caused to the defendants no.2 to 4 if the plaintiff is willing to pay their entire



charges towards the conversion of the suit property to freehold, the said defendants stated that as co-owners, the defendants no.2 to 4 cannot be forced to seek conversion of their property from leasehold to freehold.

43. On the basis of the factual narration as well as submissions made on behalf of the parties, the position that emerges is that the property in question is jointly owned by the plaintiff and the defendants no.1 to 4, though the superstructures built thereon have been in separate occupation of the parties. It is also borne out from the record as well as from the submissions of the parties that the defendants no.2 to 4 have not been paying their share towards the ground rent. Admittedly, the property in question is a leasehold property and is subject to terms and conditions of the lease, which includes a right of forfeiture in favour of the lessor, L&DO upon non-fulfillment/violation of terms and conditions of the lease or violation of term and conditions of the lease, including non-payment of ground rent. Besides, there are various restrictions in the usage of the property. Therefore, there is imminent danger to the property inasmuch as the lease of the property may be forfeited if the defendants no.2 to 4 do not pay their share of the ground rent or other statutory dues. It would undoubtedly be in the interest of the plaintiff and the defendants that the suit property is converted from leasehold to freehold.

44. There is merit in the contention made on behalf of the plaintiff that the interest of the plaintiff is intertwined with that of the defendants and the conduct of the defendants no.2 to 4 is prejudicial to the common interest of the plaintiff and the defendants. Therefore, the plaintiff has every right to preserve his interest by seeking conversion of the property from leasehold to freehold. Senior counsel for the plaintiff has placed reliance on the



judgment of this Court in *Surendra Pal Singh* (supra). The relevant observations of the Division Bench are set out below:

“23. As far as the objection to the empowerment of the Court Commissioner to take steps on behalf of the appellant-defendant for conversion of leasehold rights in the land underneath the property into freehold is concerned, the same is yet another instance of the appellant-defendant taking frivolous pleas to somehow or the other, delay/defer partition. Though the counsel for the appellant-defendant also agrees that such conversion is in the benefit of the parties but still contends that the choice thereof is of the appellant-defendant and the appellant-defendant is entitled to refuse the same in his absolute discretion.

24. We are unable to agree. The appellant-defendant is not the sole/absolute owner of the property. The interest of the appellant-defendant in the property is intertwined with that of the respondent-plaintiff. The appellant-defendant in such a situation does not have a right to act in whimsical fashion to the prejudice of other co-owner of the property. The learned Single Judge has rightly noticed that, whether for partition by metes and bounds or for partition by sale and sharing of sale proceeds, it is beneficial for both the parties to have the said leasehold rights converted into freehold. The reasoning therefor is not far to fathom. The perpetual lease deed prohibits the parties from assigning the same, without permission of the lessor L&DO and even if such permission is to be granted, the same is to be subject to payment of 50% of the unearned increase charges to the L&DO and which charges are much more than the conversion charges.”

45. Even though the present judgment was in the context of a partition suit, the ratio of the said judgment would be squarely applicable in the facts and circumstances of the present case. In the present case also, the defendants no.2 to 4 have taken irrational pleas to oppose the conversion of the property into freehold, even though the plaintiff is willing to bear the



entire charges for the same. The defendants cannot take an irrational stand which prejudices the rights of the co-owners of the suit property.

46. In fact, the defendants no.2 to 4 do not dispute that conversion of the property would be in the benefit of the parties. In paragraph 2 of the written statement filed by the defendants no.2 to 4, the said defendants have acknowledged the right of conversion of the suit property from leasehold to freehold as a continuing right of the owners/co-owners. The only plea taken by the defendants no.2 to 4 in the written statement as well as the present petitions, to oppose conversion of the property, is that a co-owner of the property cannot be forced to convert his property from leasehold to freehold. But the aforesaid submission fails to take into account that the defendants no.2 to 4 are not the sole/absolute owners of the suit property and their interest is intertwined with that of the plaintiff. Therefore, this arbitrary stand taken by the defendants no.2 to 4 interferes with the right of the remaining co-owners to enjoy the suit property. Undisputedly, a co-owner has the right to perfect his title in respect of the suit property. It cannot be denied that it is beneficial for all parties for the suit property to be converted from leasehold to freehold. In the present case, the defendants no.2 to 4 are getting the benefit of their share of the suit property being converted into freehold without any cost to them. There is also merit in the submission of the senior counsel for the plaintiff that the conversion charges over a period of time have risen significantly and are likely to increase in the near future.

47. In view of the submission of the senior counsel appearing on behalf of the plaintiff that the plaintiff is giving up all the reliefs sought in the suit except for prayer B, the scope of the present petitions is confined to whether or not the relief sought in prayer B of the suit can be granted. I propose to



deal with the application under Order VII Rule 11 of the CPC filed on behalf of the defendants no.2 to 4 in relation to prayer B in the suit. The only contentions raised in the application under Order VII Rule 11 of the CPC qua prayer B are that (i) the said relief is barred by limitation; and, (ii) the plaint does not disclose if there is a right in favour of the plaintiff or an obligation on the defendants to get the suit property mutated or converted from leasehold to freehold. The other grounds raised in the application under Order VII Rule 11 of the CPC become irrelevant once the relief claimed in the suit is confined to prayer B.

48. There is a right in favour of a co-owner to perfect his title in respect of a property jointly owned by him and therefore, seek conversion from leasehold to freehold and mutation of the property. This right is a continuing cause of action. Therefore, the bar of limitation would not apply. Therefore, no grounds are made out in terms of Order VII Rule 11 for rejection of plaint.

49. In light of the fact that the plaintiff is confining the relief sought in the suit to prayer B and giving up all other reliefs, and in light of the submissions of the parties noted above, in my view, there is no requirement for the parties to lead evidence on this limited issue.

50. For proper administration of justice, a view must be taken to minimize rather than exacerbate litigation. This Court, in exercise of jurisdiction under Article 227 of the Constitution of India, is not only acting as a court of law but also a court of equity. Article 227 of the Constitution of India confers this Court with the power to pass suitable directions so as to further the ends of justice and uproot injustice. In this regard, reference may be made to the judgments in ***Ramesh Chandra Sankla & Ors. Vs. Vikram***



Cement & Ors., (2008) 14 SCC 58 and *State Vs. Navjot Sandhu*, (2003) 6 SCC 641.

51. Therefore, this Court deems it appropriate to call for the file of the suit itself from the Trial Court and decree the suit of the plaintiff in terms of prayer B.

52. Accordingly, the suit is decreed in respect of prayer B in the suit.

53. The petition is disposed of with the following directions:

- (i) Plaintiff shall pay the entire applicable charges to the L&DO, including the share of the defendants no.2 to 4, for the mutation and conversion of property bearing No.1, Golf Links, New Delhi from leasehold to freehold, without seeking any right to claim any refund thereof from the defendants no.2 to 4.
- (ii) Plaintiff shall pay up-to-date property tax and statutory dues in respect of the aforesaid property, including the share of the defendants no.2 to 4 for the portion occupied by the defendants no.2 to 4, without seeking any right to claim any refund thereof from the defendants no.2 to 4. However, the plaintiff shall not be liable to pay any future dues in respect of the share of defendants no.2 to 4 in the suit property.
- (iii) In view of the refusal of the defendants no.2 to 4 to sign the relevant applications for the conversion of the aforesaid property and from complying with the necessary formalities in that regard, this Court appoints Ms. Gurmeet Bindra, Advocate (Mobile No. 9810155549) as the Local Commissioner, who shall sign the requisite forms and carry out all other formalities/acts in respect of mutation and conversion of



the suit property from leasehold to freehold in consultation with the defendants no.2 to 4.

- (iv) Parties shall cooperate with the Local Commissioner in carrying out all the necessary formalities of the mutation and conversion of the suit property.
- (v) The fee of the Local Commissioner is fixed at Rs.1,25,000/- plus out of pocket expenses and shall be borne by the plaintiff.
- (vi) Upon payment of the requisite mutation and conversion charges by the plaintiff and the Local Commissioner signing the requisite forms and carrying out all the formalities/acts on behalf of the defendants no.2 to 4 for mutation and conversion of the suit property from leasehold to freehold, the L&DO shall carry out the conversion of the suit property from leasehold to freehold and mutation in the names of the plaintiff and the defendants respectively.

54. Decree sheet be drawn.

FEBRUARY 07, 2022

dk/sakshi

AMIT BANSAL, J.

न्यायमेव जयते