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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CM(M) 802/2022 & CM APPL. 35507/2022, CM APPL. 35508/2022

PUJA RAY ..... Petitioner  
Through: Mr. Simarpal Singh Sawhney  
and Mr. Sidhant Juyal, Advs.

versus

DHANRAJ & ORS. .... Respondents  
Through: Mr. Shourya Dasgupta, Adv. for  
Mr. Shadan Farasat, ASC for R-5

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**J U D G M E N T ( O R A L )**  
**17.08.2022**

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1. This petition under Article 227 of the Constitution of India takes exception to order dated 15<sup>th</sup> July 2022 passed by the learned Additional District Judge (“the learned ADJ”) in CS 1764/2018 (*Puja Ray v. Dhanraj*).

2. The impugned order reads thus:

“IN THE COURT OF ADJ-07, SOUTH-EAST DISTRICT,  
SAKET COURTS, DELHI  
Presided by:- Mr. Jay Thareja, DHJS

CS No.1764/18

Ms. Puja Ray v Sh. Dhanraj

15.07.2022



Present: Sh. Siddhant Juyal, Ld. Advocate for the plaintiff alongwith plaintiff.

Sh. Onkar Pandey and Sh. Brijesh Kumar Kushwaha, Ld. Advocate for the defendants no.1 to 3 alongwith defendant no.1.

Sh. Manoj Kumar and Sh. Divyendu Sorayan, Ld. Advocates for the defendant no.4 alongwith defendant no.4.

The mediation settlement dated 23.03.2022 has been perused. As per clause 6 of the said mediation settlement, the plaintiff is suppose to become the owner of the suit property, after the defendant no.4 (her husband) gets Rs.75,000/- from the defendant no.1 and the sum of Rs.1,75,000/- from the plaintiff. The defendant no.4 has already received Rs.75,000/- from the defendant no.1. The plaintiff is yet to pay the sum of Rs.1,75,000/- to the defendant no.4. The plaintiff is carrying the said money by way of a DD. The record shows that the sale deed dated 11.07.2017 qua the suit property is in the name of the defendant no.4. *The transfer of title qua the suit property from the defendant no.4 to the plaintiff, cannot happen by way of a decree passed by this Court. It has to happen by way of an instrument, duly stamped and registered as per the provisions of the Stamp Act, 1899 and the Registration Act, 1908.* Before the plaintiff pays the sum of Rs.1,75,000/- to the defendant no.4, the parties are directed to file a draft copy of the said instrument. List on 02.08.2022.

(JAY THAREJA)  
ADJ-07, South-East District, Saket Courts, Delhi  
15.07.2022”

(Emphasis supplied)

3. Mr. Sawhney submits that the view expressed by the learned ADJ in italicised words in the impugned order dated 15<sup>th</sup> July 2022 is contrary both to statute and precedent. In his submission, the learned ADJ ought to have directly decreed the suit in terms of the settlement



between the parties and was completely misdirected in holding that a duly stamped and registered instrument was necessary for transferring title in respect of the suit property.

4. The facts, in brief.

5. The petitioner is the wife of Respondent 4. Respondents 1 to 3 are builders, who are stated to have approached the petitioner with the proposal to sell a flat situated at RZ-111-D, First Floor, Back Side, Gali No. 14, Khasra No. 520, Tughlakabad Extension, New Delhi-110019 (“the suit property”).

6. According to the petitioner, by an oral agreement, Respondents 1 to 3 agreed to sell the suit property to the petitioner for a consideration of ₹ 9,00,000/- lakhs, of which, consequent to payment of ₹ 1,50,000/- lakhs on 27<sup>th</sup> March 2015, possession of the suit property was taken over by the petitioner.

7. The petitioner alleged, in the plaint instituted by her, that repeated requests to Respondents 1 to 3 to execute a sale deed, on the petitioner’s paying the remaining sale consideration, fell on deaf ears.

8. It is also averred in the petition that, on 22<sup>nd</sup> September 2015, the Respondents 1 to 3 issued a general power of attorney in the name of the petitioner, but that Respondent 4 is in possession thereof.

9. In August 2018, the plaint avers, the petitioner came across an



electricity bill in respect of the suit property which was in the name of Respondent 4. In view of the fact that despite payment of the entire sale consideration, Respondents 1 to 3 had not executed the sale deed in favour of the petitioner as per the oral agreement dated 15<sup>th</sup> March 2015, the petitioner galvanized the learned Trial Court by filing CS 1764/2018 (*Puja Ray v. Dhanraj*).

**10.** During the pendency of the proceedings before the learned ADJ, the petitioner and the Respondent 4 entered into a settlement via mediation, which reads thus:

“1. It is agreed between the parties in lieu of all claims of the plaintiff with respect to permanent alimony/maintenance/dowry articles/jewellery etc. and marriage expenses of daughter namely Ms. Jyoti Ray, the defendant no.4 has no objection to transfer the property bearing no. RZ-111-D, First floor, Back side, Gali no. 14 comprised in Khasra No. 520, Tughlakabad Extn. New Delhi 110019 (hereinafter referred to as the Built Property) in the name of plaintiff by Way of decree by the court.

2. It is agreed between the parties ie, the plaintiff, defendant No.1 and defendant no. 4 that the plaintiff will become the absolute owner of the suit property and defendant no.4 will not claim any right over the suit property.

3. That the plaintiff has agreed to pay a sum of Rs.1.75,000/- to the defendant no.4 within a period of 4 months from the signing of present settlement.

4. That the defendant no.1 has agreed to pay a sum of Rs.75,000 to the settlement defendant no.4 within 2 months from the signing of the present settlement.

5. That the aforesaid amounts will be transferred to the bank account of defendant no.4 which is in the name of



Narayan Rai, A/c no. 308700100201093, IFSC Code PUNB0308700. That the obligation of plaintiff to pay a sum of Rs.1,75,000/- will arise only after the defendant no.1 has paid the sum of Rs.75,000 in para no. 4 and further the defendant no.4 agrees to intimate the plaintiff in writing about the receipt of the payment of Rs.75,000/- from the defendant no.1.

6. That after the receipt of aforesaid amounts; the defendant no.4 will not have any right over the suit property. It has been agreed by the defendant no.4 that he has relinquished all his rights over the suit property.

7. That defendant no.4 has agreed to vacate the suit property within the period of 15 days after receiving the aforesaid amounts.

8. It has been agreed between the parties, that there is no chance of re-union between plaintiff and defendant no.4, and they will part their ways by seeking decree of divorce by mutual consent.

9. It has been agreed between plaintiff and defendant no.4 that plaintiff/Puja Ray shall not claim any maintenance / permanent alimony/Stidhan etc. in future from defendant no.4.

10. It is also agreed between the parties that they will file the first motion petition for mutual divorce within 6 months from signing of the present settlement.

11. It is also agreed between the parties that they will file second motion within stipulated period, as per law.

12. That the daughter namely Jyoti Ray is 21 years old and it has been agreed between the parties that custody of Jyoti Ray shall remain with the Plaintiff/Puja Ray and she will bear all the expenses of Ms. Jyoti Ray including education and marriage expenses. However, defendant no.4 shall have visitation rights.

The rights of daughter of parties Ms. Jyoti Ray shall not be effected by this settlement.



13. It is also agreed by plaintiff and defendant no.4 that they will not file any civil/criminal case pertaining to their marriage/maintenance and shall also not claim any right over the properties of each other subject to fulfilment of terms and conditions of the present settlement.

14. It is agreed that in pursuance to present settlement; both parties shall request Ld. Referral Court to pass consent decree in the present suit or court may pass any appropriate order in the light of present settlement. This settlement has been voluntarily arrived at between the parties with their own free will and without any force, pressure or coercion and both the parties are bound by the terms and conditions mentioned herein above.”

The aforesaid settlement agreement was forwarded by the learned Mediator to the court of the learned ADJ where the matter was pending.

11. Following thereupon on 15<sup>th</sup> July 2022, the learned ADJ has proceeded to pass the impugned order, by which the petitioner is aggrieved.

12. The essential case of the petitioner, as expounded by Mr. Sawhney, is that, as ₹ 75,000/- already stands paid to Respondent 4 by Respondent 1, and the petitioner was carrying a demand draft for ₹ 1,75,000/- lakh for payment to Respondent 4, the petitioner had carried out its obligations under the settlement agreement and that, therefore, the learned ADJ ought to have decreed the suit straightway in terms of the settlement agreement.



13. He submits that, as the settlement agreement recorded the consent of Respondent 4, consequent on receipt of the aforesaid amounts, to transfer the suit property in the name of the petitioner, such transfer could have been straightway effected *vide* compromise decree to be passed by the court in terms of the settlement agreement, and no separate registered instrument of transfer was required to be executed. In support of his submission, Mr. Sawhney placed reliance on Section 17(1)(e)<sup>1</sup> read with Section 17(2)(vi)<sup>1</sup> of the Registration Act, 1908 and the judgment of the Supreme Court in *K. Raghunandan v. Ali Hussain Sabir*<sup>2</sup>.

14. To my mind, the contention is completely misplaced.

15. Indeed, if such a contention were to be accepted, it would result in a piquant situation in which transfers of immovable property could

<sup>1</sup> 17. Documents of which registration is compulsory.—

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been examined on or after the date on which, Act 16 of 1864, or the Indian Registration Act, 1866 (20 of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into force, namely –

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(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

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(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property :

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(2) Nothing in clauses (b) and (c) of sub-section (1) applies to –

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(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; ...



be made by bypassing the requirement of execution of a registered instrument of transfer as required by the Transfer of Property Act and the Registration Act. If A desires to transfer immovable property to B, all that is required is that B moves a civil court, suing A for the said purpose and a settlement is arrived at between the parties evincing the intent of A to transfer the property to B. If Mr. Sawhney's submission is to be accepted, without any instrument of transfer such as a sale deed, the court could directly, by decree, transfer the property from A to B.

16. I am unaware of any law which permits this.

17. In ground B in the petition, it has been stated that "it is a well settled law that the transfer of title of a property can be done through settlement agreement or compromise by way of a court decree".

18. To a query from the court as to the "well settled law" in this regard, Mr. Sawhney has placed reliance on ***K. Raghunandan***<sup>2</sup>.

19. Transfer of immovable property is governed by the Transfer of Property Act, 1882 ("the TP Act"). Transfer of ownership of immovable property in exchange for a price paid, or promised, constitutes "sale" as defined in Section 54 of the TP Act, which further provides that transfer of immovable property, of the value of over one hundred rupees, can only be effected by a registered

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<sup>2</sup> (2008) 13 SCC 102



instrument.<sup>3</sup> The circumstances in which registration of instruments is necessary and circumstances in which such registration is exempted are set out in Section 17 of the Registration Act. There is no clause in Section 17 which permits transfer of immovable property by way of a court decree instead of a registered instrument of transfer.

**20.** The reliance, by Mr. Sawhney, on Section 17(1)(e)<sup>1</sup> read with Section 17(2)(vi)<sup>1</sup> of the Registration Act is, *ex facie*, misconceived.

**21.** Section 17(1) sets out the documents which are required compulsorily to be registered. Of the said documents, clause (e) covers “non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.”

**22.** Section 17(2) sets out the circumstances in which Section 17(1)(b) & 17(1)(c) would not apply. It does not carve out any exemption from Section 17(1)(e)<sup>1</sup>.

**23.** That apart, Section 17(2)(vi)<sup>1</sup> excepts from the applicability of clauses (b) and (c) of 17(1), “any decree or order of a court except a

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<sup>3</sup> **54. “Sale” defined.**—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

**Sale how made.**— Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.



decree or order expressed to be made on a compromise and comprising immovable property other than that of which is the subject matter of suit or proceedings”.

24. On a plain reading, it is apparent that Section 17(1)(e)<sup>1</sup> and Section 17(2)(vi)<sup>1</sup> apply to circumstances relating to registration of decrees or orders passed by the court.

25. In the present case, we are not concerned with registration of any decree or order passed by the court. Nor does the impugned order dated 15<sup>th</sup> July 2022 of the learned ADJ refer to registration of any decree or order.

26. As such, I fail to understand how the petitioner can seek to derive any capital from Section 17(1)(e)<sup>1</sup> or Section 17(2)(vi)<sup>1</sup> of the Registration Act.

27. Equally misguided, and for the same reason is, in my opinion, the reliance placed by Mr. Sawhney on the judgment in *K. Raghunandan*<sup>2</sup>. The issue before the Supreme Court in that case was whether a compromise decree was required to be registered and whether if a compromise decree was not registered, a claim could be made on the basis of such an unregistered decree.

28. As already noted hereinabove, the present case does not involve any question of registration of any compromise decree. All that the learned ADJ has held is that if the immovable property in question



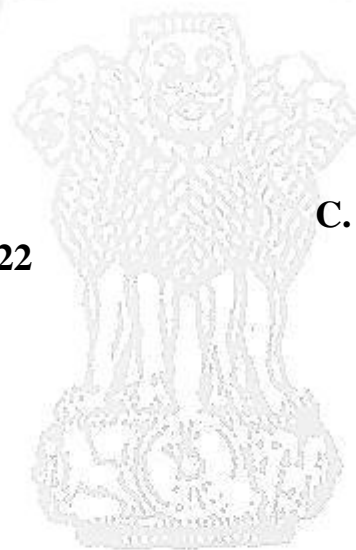
was required to be transferred under the terms of settlement, such transfer could be effected only by way of an instrument duly stamped and registered as per the provisions of the Stamp Act and the Registration Act.

**29.** This view, according to me, is perfectly correct, valid and does not call for any interference at all.

**30.** The petition is accordingly misconceived and is dismissed in *limine*.

**AUGUST 17, 2022**  
*dsn*

**C. HARI SHANKAR, J.**



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