



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

% **Date of order : 11th September, 2023**

+ C.R.P. 245/2023
SURESH

..... Petitioner

Through: Mr.Sushil Sharma, Mr.Virendra
Kumar, Mr.Kshitij Vedwal and
Mr.Rakesh Kumar, Advocates

versus

KAMLA DEVI NOTIYAL AND ORS

..... Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 46495/2023 (Exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

C.R.P. 245/2023 & CM APPL. 46496/2023 (Stay)

1. The instant civil revision petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of petitioner seeking the following reliefs: -

"A) Allow the present civil rev. and set aside the impugned order dated 04.07.2023 passed by the LD Trial Court (Central), Tis Hazari Courts, Delhi in the Execution No. 963 of 2017 titled as Kamla Devi V s. Roop Lal and Decree dated 01.10.2016 passed by Ld. ADJ, Central, THC, Delhi in RCA No. 61421 of 2016 (old No.29/15/14) and

B) direction may kindly issued to entertain the objections of petitioner as per law.



C) Pass any other proper and further order which this Hon'ble Court deems fit and proper in the circumstances of the present civil rev. in favour of the petitioner/objector and against the respondents in the interest of justice.”

2. The respondent No. 1 had entered into an agreement to sale with one Late Sh. Roop Lal, for the purchase of plot admeasuring 50 sq. yards situated in Khasra No. 51/1 Burari Extension, Village Burari, Delhi (hereinafter “the suit property”). The respondent No. 1, had filed a Suit for specific performance stating that the possession of the property in question has not been handed over to her.

3. The Trial Court had passed a decree dated 12th November 2014, in favour of the respondent No. 1 which was modified by the Appellate Court vide order dated 1st October 2016, in Civil Suit bearing new RCA No. 61421/2016. The Appellate Court had passed a judgment for specific performance in favour of the respondent No. 1 (decree holder before the learned Execution Court and plaintiff before the Trial Court). Vide the said judgment, the Appellate Court had directed Late Sh. Roop Lal (judgment debtor before the learned Execution Court and defendant before the Trial Court, since deceased) to execute a sale deed *qua* plot admeasuring 50 sq. yards situated in Khasra No. 51/1 Burari Extension, Village Burari, Delhi (hereinafter “the suit property”), in favour of the respondent No.1.

4. Thereafter, the respondent No. 1 filed an execution petition bearing Ex No. 963/17, which is pending for execution of the above said order before the learned Civil Judge – 1 (Central), Tis Hazari Court, Delhi



(hereinafter “Executing Court”). The decree holder i.e., the respondent No. 1 herein, by way of the said execution petition, has already received 37 ½ sq. yards of the Suit Property vide a Sale Deed dated 5th August 2020, executed by Sh. Deepak, who is the legal heir of Late Sh. Roop Lal (since deceased).

5. The delivery of the remaining 12 ½ sq. yards of the Suit Property could not be completed as the petitioner is obstructing to the same. Consequently, the petitioner, i.e., the objector before the learned Executing Court had filed his objection under Order XXI Rule 97 read with Section 151 of the CPC, on 15th February 2023.

6. The petitioner, by way of filing of the said objections had raised his grievances against the above said execution petition on the ground that he is the owner and in possession of the said 12 ½ sq yards which is the part of ‘30 sq. yards including the built up double storey house, situated in khasra No. 51/1 Village Saleempur Mazra Buradi Ext.’ (hereinafter “Property No. 2”), which is also being sought in the said execution proceedings.

7. The objections raised by the petitioner were dismissed vide the impugned order dated 4th July 2023, by the learned Civil Judge – 1 (Central), Tis Hazari Court, in Ex No. 963/17, on the ground that the objections so raised, are without any merits. Being aggrieved by the same the petitioner has approached this Court seeking revision of the impugned order dated 4th July 2023.

8. Learned counsel appearing on behalf of the petitioner submitted that the learned Executing Court has passed the impugned order without considering the entirety of the facts and circumstances of the instant matter.



9. It is submitted that the petitioner had purchased the Property No. 2 from one Sh. Ganesh Mehta vide the General Power of Attorney, Agreement to sale, Affidavit, Possession letter, all dated 1st October 2020 (hereinafter “documents”) and is therefore, the absolute owner and in possession of the Property No. 2.

10. It is submitted that the above said documents have been duly registered in the office of Sub-registrar 1, New Delhi vide registered bearing No. 5681, in book bearing No. 3, volume bearing No. 1726, at page No. 24 to 25.

11. It is submitted that the respondent No. 1 had complete knowledge of the entire construction of the double storey building on the above said land, and in spite of that fact the respondent No. 1 did not implead the petitioner as a party, neither in the suit before the Trial Court, nor in the execution petition before the learned Executing Court. It is further submitted that the respondent No. 1 did not even made any complaint before any authority, against the alleged unauthorized construction.

12. It is submitted that the learned Executing Court failed to appreciate the fact that the Property No. 2 is the residential premises of the petitioner, wherein, he resides with his family. The said property is situated on a separate plot which is independent from the suit property and the same is evident from the chain of documents annexed with the instant petition.

13. It is submitted that as per the chain of documents, the Property No. 2 was carved out of the total area of the vacant plot admeasuring 100 sq. yards and upon which the suit property and the Property No. 2 is situated. The said



vacant plot was divided into several separate plots and a plot admeasuring 30 sq. yards, carved out of the total 100 sq. yards, was purchased by the petitioner. The same is evident from the below mentioned chart –

Dated	Seller	Purchaser	Area in sq. yds
22.11.2004	Suresh Kumar Tyagi S/o Sh Rajender Tyagi	Manoj Kumar Tyagi S/o Subhash Chand Tyagi	100
23.11.2007	Manoj Kumar Tyagi S/o Subhash Chand Tyagi	Kishan Pal Tyagi S/o Jai Bhagwan Tyagi	100
19.02.2014	Kishan Pal Tyagi S/o Jai Bhagwan Tyagi	Pradeep Kumar Gupta S/o Jai Bhagwan Gupta	100
10.06.2014	Pradeep Kumar Gupta S/o Jai Bhagwan Gupta	Ganesh Mehta S/o Satya Narayan Mehta	60
01.10.2020	Ganesh Mehta S/o Satya Narayan Mehta	Suresh S/o Bani Singh	30

14. It is submitted that since the petitioner is in peaceful possession of the Property No. 2, the encroachment by the respondent No. 1 on the 12 ½ sq. yards' portion which is the part of the petitioner's Property No. 2, is illegal and in contravention to the settled legal principles.

15. It is, therefore, submitted in view of the foregoing submissions that the instant petition may be allowed and the impugned order be set aside.

16. Heard learned counsel appearing on behalf of the petitioner and perused the material available on record.

17. Before delving into the analysis of the issues involved in the instant petition, it is prudent to recapitulate the facts herein.

18. The respondent No. 1 had filed an appeal before the Appellate Court vide Civil Suit bearing new RCA No. 61421/2016, against the order dated 12th November 2014, passed by the Trial Court. The Appellate Court by way of modification of the order dated 12th November 2014, passed a judgment dated 1st October 2016, in favour of the respondent No. 1. By way of the



said judgment, the Appellate Court had directed Late Sh. Roop Lal (since deceased) to execute a sale deed *qua* the suit property, in favour of the respondent No.1. Subsequently, the respondent No. 1 filed an execution petition bearing Ex No. 963/17, seeking execution of the above said judgment before the learned Executing Court. The decree holder i.e., the respondent No. 1 herein, by way of the said execution petition, received 37 ½ sq. yards of the Suit Property vide a Sale Deed dated 5th August 2020, executed by one Sh. Deepak, who is the legal heir of Late Sh. Roop Lal. The delivery of the remaining 12 ½ sq. yards of the Suit Property remained pending since the said area is a part of the Property No. 2 which is in possession of the petitioner.

19. It is the case of the petitioner that he had purchased a 30 sq. yards plot which was carved out of the total 100 sq. yards' vacant plot and that he built a double storey structure thereto. It is submitted that he had purchased the same vide the General Power of Attorney, Agreement to sale, Affidavit, Possession letter, all dated 1st October 2020, from one Sh. Ganesh.

20. It has been contended on behalf of the petitioner that the said 12 ½ sq. yards which the respondent No. 1 is claiming, is part of the petitioner's Property No. 2. Since he is the owner and in possession of the Property No. 2 by virtue of the above said documents, the respondent No. 1 cannot encroach and claim upon the petitioner's property as the same is against the settled principles of law. In view of the said, the petitioner had had filed his objection under Order XXI Rule 97 read with Section 151 of the CPC, before the learned Executing Court and the same was dismissed vide the



impugned order dated 4th July 2023, in execution petition bearing Ex No. 963/17. The relevant paragraphs of the impugned order are reproduced hereunder:

“5. Rule 97 of Order XXI of Cl-C provides that where the holder of a decree for possession of immovable property is resisted or obstructed by 'any person' from obtaining possession of the property, he may apply complaining to the Court of such resistance or obstruction. Order XXI Rule 97 of CPC conceives of cases where delivery of possession to the decree holder is resisted by any person. 'Any person', as aforesaid is wide enough to include even a person not bound by the decree. Rule 101 of Order XXI of CPC further provides that all questions including relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 shall be determined by the Court dealing with the application and not by way of a separate suit. This Court being the Executing Court has to adjudicate the issues relating to the right, title and interest in the suit property. 7. In clear terms, it has been ruled by Hon'ble Supreme court that documents, other than a duly registered conveyance deed executed as per law, do not create any interest in any immovable property. It has also been directed that courts shall not treat SA/GPA/WILL transfers as concluded transfers. In the present set of facts, objector has relied upon GPA, SPA, Agreement to sell, Affidavit. It is also pertinent to note that none of them is registered except the Will. Therefore, plain reading of the excerpt from the judgment referred above conveys that the objector cannot claim title of ownership on the basis of these documents.

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8. Although documents such as GPA, SPA, Agreement to Sell etc. cannot be discarded altogether but these documents are not proof of ownership of the immovable property. In this regard it is pertinent to examine the following observations of the



*Hon'ble High Court of Delhi in **Haraip Kaur VS. Kailosn 193(2012) DLT 16**, wherein the Hon'ble High Court had imparted higher pedestal to an Agreement to sell in case the same has been executed along with General Power of Attorney and other connected documents accompanied with payment of consideration. In the said judgment, it was held:*

"The agreement to sell of itself may not create any interest in the property under Section 54 of the Transfer of Property Act, 1882 but the agreement along with the payment of the entire sale consideration, handing over of the possession, execution of the receipt, affidavit, Will, indemnity bond and irrevocable General Power of Attorney create "an interest in the property" within the meaning of Section 202 of the Contract Act. "

9. It is notable that Section 202 of the Indian Contract Act, 1872 bars termination of agency to the prejudice of agent in case an interest has been created in favour of the agent unless there is an express contract to the contrary. However, in the above referred judgment, it was also held:

"The purchaser would though not be the classical owner of the suit property as would an owner hi: under a duly registered sale deed, but surely, he would have better rights/entitlement of possession of the suit property than the plaintiff. A right to possession of an immovable property arises not only from (j) complete ownership right in the property but having a better title or a better entitlement/right to the possession or the properly titan qua the person who is in actual physical possession thereof."

10. This judgment also does not deviate from the settled position of law qua requisite documents for ownership and merely refers to better rights and entitlement to the possession in certain cases. By and large, by now it is intelligible that the documents relied upon by the objector have per se no legal



force for the purpose of ownership. The decree holder who relies on registered Sale Deed dated 05.08.2020, has a better title to the suit property than the objector who relies on documents such as GPA, Agreement to Sell etc. Hence, the case of the objector fails purely on the parameters of law.

*11. Ld. Counsel for objector has relied on the judgment in **Sarvinder Singh and Another vs. Vipul Tandon Ex.P. 95/2018 decided on 14.07.2022**. The aforesaid citation is of no help to the case of the objector as the facts in the said case are different from the facts of the present case. In the Instant case, the objector is claiming title to the suit property on the basis of GPA, ATS, Will etc. which have been executed after the passing of decree dated 01.10.2016 and after the execution of Sale Deed dated 05.013.2020 in favour of decree holder.*

12. It is clear from the aforesaid discussion that the objections raised by the objector Mr. Suresh are without merits and the same deserves dismissal. Hence dismissed.

21. Upon perusal of the above said order, it is observed that the learned Executing Court had dismissed the objection filed by the petitioner after examining the averments and documents annexed with his objections. The learned Court in its impugned order has stated that the petitioner could not prove his ownership *qua* the Property No. 2 and as per the settled law, the documents relied upon by him, such as the General Power of Attorney, Agreement to Sell, GPA etc. do not entitle him to any ownership. It further drew a comparison between the petitioner and the respondent, thereby, stating that the respondent No. 1 has a better title by virtue of a registered sale deed dated 5th August 2020, in her favour. In pursuance to the said observations and after relying upon judgments, the learned Court reached to



the conclusion that the objections, so raised, do not hold any merits and hence, dismissed.

22. At this juncture this Court deems fit to discuss the settled principles of law.

23. For the purposes of adjudication of the instant petition, it is necessary to realise that the question herein, is to first determine whether the petitioner is entitled to the reliefs he had sought before the learned Court below and only after such determination, it could be adjudicated whether his objections are valid or not. Since the petitioner has relied upon the General Power of Attorney, Agreement to sale, Affidavit, Possession letter, all dated 1st October 2020, this Court will, at the outset, decide whether such documents confer the ownership of the Property No. 2 upon the petitioner which will eventually decide the objections raised by him.

24. This Court is of the view that a transfer of an immovable property by way of sale can be effected only by a deed of conveyance. In the absence of a deed of conveyance, which must be duly stamped and registered as required by law; no right, title or interest in an immovable property can be transferred.

25. In the landmark judgment of *Suraj Lamp & Industries (P) Ltd. (2) v. State of Haryana*, (2012) 1 SCC 656, the Hon'ble Supreme Court had categorically observed that a power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is merely a creation of an agency, whereby, grantee is authorised by a grantor, to do acts, as specified therein. The same is



revocable and terminable at any time unless it is made irrevocable in a manner which is known to law. The Hon'ble Court further observed that a contract of sale such as an 'agreement to sale', which is not a registered deed of conveyance, does not fulfil the prerequisites as mentioned in Sections 54 and 55 of the Transfer of Property Act, 1882 (hereinafter "the Act"). The above said provisions of the Act expressly declare that a contract of sale does not, by itself, create any interest in, or charge on, the property. The relevant paragraphs of the aforementioned judgment are reproduced herein:

"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 the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the 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 immovable 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.

20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable



at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

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23. Therefore, an SA/GPA/will transaction does not convey any title nor creates any interest in an immovable property. The observations by the Delhi High Court in Asha M. Jain v. Canara Bank [(2001) 94 DLT 841] , that the “concept of power-of-attorney sales has been recognised as a mode of transaction” when dealing with transactions by way of SA/GPA/will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/will transactions are some kind of a recognised or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognise or accept SA/GPA/will transactions as concluded transfers, as contrasted from an agreement to transfer, are not good law.

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 recognised 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 recognised as deeds of title, except to the limited extent of Section 53-A 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.



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26. 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 agreements of sale. Nothing prevents the 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 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities. We make it clear that if the documents relating to “SA/GPA/will transactions” have 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.

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding “SA/GPA/will transactions” are not intended to apply to such bona fide/genuine transactions.”



26. The above said judgment laid down the principles in regard to the adjudication of cases arising out of the dispute related to the General Power of Attorney and Sale Deed *qua* an immovable property. The said principles have been further followed by the Hon'ble Supreme Court and High Courts in a catena of judgments including *Shiv Kumar v. Union of India*, (2019) 10 SCC 229 and *G.T. Girish v. Y. Subba Raju*, (2022) 12 SCC 321. In view of the same, this Court is of the considered view that an agreement to sell which is not a registered deed of conveyance would not meet the requirements of Sections 54 and 55 of the Act.

27. In view of the above stated judgments, this Court has serious objections to the sustainability of the averments made on behalf of the petitioner, who is claiming ownership over the property No. 2 by placing reliance upon the General Power of Attorney and other such documents mentioned hereinabove.

28. It is held that the learned Executing Court rightly construed that, since the prerequisites laid down by the Hon'ble Supreme Court have not been met, the General Power of Attorney dated 1st October 2020, and other documents do not entitle the petitioner with any rights or title or interests with respect to the Property No. 2. In pursuant to the said observation, the learned Court decided to dismiss the objections raised by the petitioner being devoid of any merits.

29. This Court upholds the observation of the learned Court, wherein, it held that the respondent No. 1 has a better title to the suit property than the



petitioner since the respondent No. 1 holds a registered sale deed dated 5th August 2020, in her favour which was executed even before the petitioner's General Power of Attorney dated 1st October 2020 and other documents.

30. This Court is primarily inclined towards the view taken by the learned Executing Court since the preliminary question raised by this Court which was to determine the entitlement of the petitioner is decided in negative, in the manner that the title of respondent No.1 is better than that of the petitioner.

31. The present petition has been filed under Section 115 of the CPC, thereby, seeking revision of the impugned order. It is a settled law that under Section 115 of the CPC, this Court has to look only into the issue of the jurisdiction of the Court below in deciding any application and not to go into the merits of the case. The mere fact that a decision of the Court below is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity. Only those matters are to be allowed under the revisional jurisdiction of the High Court, wherein, there has been an irregular exercise, or non – exercise, or the illegal assumption of the jurisdiction by the Court below. Therefore, in the instant petition, this Court does not find any infirmity in the impugned order as has been alleged by the petitioner.

32. In view of the above discussion of facts and law for the purposes of adjudication of the instant revision petition, the petitioner has not been able to make out a case which requires interference of this Court with the impugned order by way of exercising the revisional jurisdiction under



Section 115 of the CPC.

33. This Court finds no error in the impugned order dated 4th July 2023, passed by the learned Civil Judge – 1 (Central), Tis Hazari Court, in execution petition bearing Ex No. 963/17, and the same is hereby, being upheld.

34. Accordingly, this petition is thus, dismissed being devoid of any merits. Pending applications, if any, also stand dismissed.

35. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 11, 2023

Dy/ryp/av

Click here to check corrigendum, if any