



2024:DHC:8486



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 8th October, 2024**

+ C.R.P. 117/2024 & CM APPL. 18730/2024 (stay)

AMARJIT SINGH KOHLI

.....Petitioner

Through: Mr. Jugal Wadhwa, Mr. Raghav Goyal and
Mr. Rishab Bhalla, Advocates

Versus

ASHOK KUMAR SAPRA

.....Respondent

Through: Mr. Gurmukh Singh Arora, Mr. Abhishant
Kumar and Ms. Aastha Thakur, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The petitioner/defendant has filed Civil Revision Petition under Section 115 of the Code of Civil Procedure (*hereinafter referred to as 'CPC, 1908'*) for setting aside the impugned Order dated 27.02.2024 dismissing his Application under Order VII Rule 11 read with Section 151 CPC in Civil Suit bearing Civil DJ 833/2021.

2. The *respondent/plaintiff/ Sh. Ashok Sapra* had filed a *Civil Suit bearing Civ DJ 833/2021 for Specific Performance of an Agreement to Sell along with alternate relief of Recovery*, wherein it was contended that in the year 1981, he was inducted as a tenant by Smt. Inder Kaur Kohli, the mother of the petitioner/defendant/Sh. Amarjit S. Kohli, at a monthly rent of Rs.250/- p.a. in respect of a shop on the ground floor of property bearing No. H-25, Main Market, Rajouri Garden, New Delhi (*hereinafter referred to as the 'suit shop'*). The plaintiff/respondent claimed that at the time of being inducted as a tenant, he had paid a substantial amount, which was designated

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as '*Pagri Rakam*'. He was assured by the defendant/petitioner that he acknowledges the receipt of consideration amount and that the plaintiff would remain the owner of the property.

3. The plaintiff/respondent further contended that on 06.07.2019, in acknowledgment of the '*Pagri Rakam*' already received by the respondent/petitioner, he orally agreed to execute a Sale Deed, in respect of the Suit Shop in favour of the plaintiff, on payment of an additional sum of Rs.35,00,000/-. On 07.07.2019, the terms of the sale were agreed and it was decided that the plaintiff would pay to the defendant/petitioner, a total sum of Rs.35,00,000/- over a period of four years in a monthly instalment of Rs.25,000/- each, in addition to the monthly rent of Rs.3,000/-.

4. It was further contended that after the total additional sale consideration was paid by the plaintiff, a Sale Deed would be executed in his favour by the defendant. If for some reason, the Sale Deed of the Suit Shop was not executed in favour of the plaintiff, the defendant would acquire another similar Shop in the vicinity and transfer the ownership of the said Shop so acquired in favour of the plaintiff.

5. The revisionist/defendant/Amarjit S. Kohli *herein* has asserted that admittedly, there was no written Agreement to Sell between the parties but the Complaint has been filed on bald assertions and allegations of an Oral Agreement to Sell.

6. The petitioner/defendant has submitted that the plaintiff/ respondent had admittedly been inducted as a tenant in 1981 by his mother and after her demise in the year 2003, the respondent/plaintiff acknowledged him as his landlord and continued to pay the rent regularly. The petitioner/defendant filed an Eviction Petition dated 09.08.2021 against the respondent/plaintiff



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on the ground of *bona fide* requirement. As a counter-blast, the present Suit has been filed by the plaintiff alleging an Oral Agreement to Sell.

7. The revisionist/defendant had claimed in his Application under O.VII Rule 11 CPC that there was no cause of action disclosed in the Plaint by the plaintiff, who was a tenant in the Suit Shop for the last forty years i.e. since 1981. The falsity of the claim is evident from the fact that no such averment of an alleged Oral Agreement to Sell, was made in the Leave to Defend Application, filed by the plaintiff in the Eviction Petition under Section 14(1) (e) of the Delhi Rent Control Act. Subsequently, after about half a month of filing the Leave to Defend, an Application under Section 151 CPC dated 26.10.2021 was filed wherein the plea of an Oral Agreement to Sell was taken for the first time. It was claimed to be nothing but an afterthought. The Leave to Defend as well as the Application under Section 151 CPC, was dismissed by the learned Rent Controller and an Eviction Order dated 05.01.2022 was passed against the respondent *qua* the suit premises.

8. The revisionist/plaintiff then filed a Rent Revision under Section 25-B (8) of the Delhi Rent Controller Act, which is pending disposal before this Court.

9. The revisionist/defendant thus, sought rejection of plaint by asserting that the Suit for Specific Performance of Oral Agreement to Sell and Permanent Injunction filed by the plaintiff/respondent, is without any cause of action and is an abuse of process of law and is not maintainable.

10. However, the Application under O.VII Rule 11 CPC was dismissed *vide* Order dated 27.02.2024 by Ld. Additional District Judge by observing that while deciding an Application under Order VII Rule 11 CPC, Court has to see only the averments of the plaint and perusal of plaint shows that



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cause of action is made out in the present suit as it is no more *res-integra* that suit for Specific Performance of an oral Agreement to Sell, is maintainable.

11. Aggrieved by the dismissing his Application under Order VII Rule 11 CPC, the Petitioner/ Defendant has challenged the Impugned Order on the ground that the Order of the learned ADJ, is cryptic and has not considered the grounds taken by the defendant for rejection of the Suit. The learned ADJ has failed to appreciate that in fact, the plaintiff/respondent was a tenant in the suit premises since 1981 and the plea of alleged Oral Agreement to Sell without any written Contract is untenable.

12. The learned ADJ has also failed to note that the respondent was a tenant in the Suit premises since 1981 and his present Suit is nothing but a counter-blast to the Eviction Petition filed against him on 09.08.2021. Furthermore, the mother who was the original owner and had inducted the plaintiff as a tenant in 1981, died in 2003 and the present Suit has been filed after 18 years of her death by contending that the alleged '*Pagri Rakam*' was part of the sale consideration. Moreover, the plea of alleged '*Pagri Rakam*' is vague as there is no amount specified in the Plaint. Furthermore, the Suit is hopelessly barred by Limitation from the date of payment of alleged '*Pagri Rakam*'. The Judgments of *Ashwani Kumar vs. Aditya Manohar Bhide & Ors.*, MANU/DE/2808/2021 and *Devender Singh vs. Malik Buildcon Pvt. Ltd.*, 2018 SCC OnLine Del 10920, have been wrongly relied upon by the learned ADJ.

13. The revisionist/defendant has relied upon *Irmeet Singh Kohli & Ors. vs. Ashok Kumar Batra & Anr.*, MANU/DE/2857/2017 wherein similar facts as in hand, were considered. The tenant had filed a Suit for Specific



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Performance by alleging an Oral Agreement to Sell as a counter-blast to the Eviction Petition. The Suit was rejected by observing that the Suit for Specific Performance had been filed only after the Eviction Petition had been filed against the plaintiff. It was held to be clearly a case of counter-blast and the averments made in the Plaint, were held to be frivolous and completely make believe. The Suit of the plaintiff was held to be an attempt to derail the Eviction Petition and was rejected.

14. It is further submitted that the Suit for Specific Performance on an Oral Agreement to Sell is no longer maintainable after the Amendment Act of 2001 in the Registration Act, Transfer of Property Act and the Stamp Act. After the amendment in the aforesaid Laws, any document with respect of creation of a right in any manner in immovable property of more than Rs.100/- requires compulsory registration and on the basis of an Oral Agreement to Sell, no over ownership rights can be claimed in a property.

15. The Supreme Court of India in the case of S.P. Chengalvaraya Naidu (dead) by LRs vs. Jagannath (dead) by LRs & Ors., MANU/SC/0192/1994 held that the principle of '*finality of litigation*' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. A person whose case is based on false facts has no right to approach the Court. Similar observations have been made by the Hon'ble Supreme Court of India in the Cases of T. Arivanandam vs. T. Satyapal, MANU/SC/0034/1977 and I.T.C. Ltd. vs. Debts Recovery Appellate Tribunal, AIR 1988 SC 634; T. Murlidhar vs. P.V.R. Murthy, CS(OS) 1397/2009 (Single Bench); RFA (OS) 115/2014 (DB), SLP 8733/2015; Kaushal Aggarwal vs. Ashok Malhotra & Ors., MANU/DE/1556/2009; Badar Makhmoor (Senior Citizen) vs. Hakim Zillur Rehman, CM(M)



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No.1009/2012; Balram Singh vs. Kelo Devi, MANU/SC/1241/2022 and Shiv Kumar vs. Sumit Gulati, RSA 417/2015, to submit that the provision of Order 7 Rule 11 CPC, must be read purposefully and the Suit, which is without cause of action and is barred by Law, must be rejected at the outset.

16. It is, therefore, submitted that the Suit of the plaintiff did not disclose any cause of action and the Application under Order 7 Rule 11 CPC, has been wrongly rejected by the impugned Order. Hence, the present Revision Petition may be allowed and the Suit of the plaintiff is rejected.

17. **The respondent/plaintiff has filed a written synopsis** wherein it is reiterated that a substantial '*Pagri Rakam*' had actually been paid by the respondent/plaintiff, to the mother of the revisionist in part-payment of creation of ownership rights in the Suit shop. Subsequently, the revisionist had agreed to execute the Sale Deed in favour of the respondent/plaintiff, on payment of Rs.35,00,000/- in the monthly instalments of Rs.25,000/- along with the rent of Rs.3,000/- per month. Despite having received the substantial amount, the petitioner/defendant has become dishonest and has turned turtle. He filed a false and frivolous Eviction Petition under Section 14(1) (e) of the Delhi Rent Control Act read with Section 25-B (8) of Delhi Rent Controller Act, as a counter-blast. In fact, the respondent/plaintiff since beginning intended to purchase the Suit Shop for which he had performed all his duties under the Contract for Agreement to Sell but it is the petitioner/defendant, who has failed to do so and has concealed the amounts that have been taken from him aside from the rent. Though, the Rent Controller has passed an Eviction Order against the respondent/plaintiff but in the Appeal, the said Eviction Order has been stayed in favour of the respondent, in the light of the averments of the plaintiff of an Oral



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Agreement to Sell in his favour. It is claimed that the present Petition has no merit and is liable to be dismissed.

18. The respondent/plaintiff has further explained that the amended Registration Act, 1908, Stamp Act and Transfer of Property Act, does not have any application to the present case, which is based on an Oral Agreement to Sell. The amendment only requires that if any document of Agreement to Sell is executed then it requires compulsory registration. Contract for Agreement to Sell comes under the ambit of Section 14, 17(2)(v) of the Registration Act and is, therefore, not required to be registered. Section 49 of the Registration Act for the same reason, does not apply to such transaction. Section 53-A of the Transfer of Property Act as well as Article 48 of the Stamp Act, are not applicable to the transaction.

19. The Punjab and Haryana Court in the Case of Sukhwinder Kaur vs. Amarjit Singh, C.R. No. 2616/2011 has settled the Law, which is applicable to the present Case. In the case of Vinod Kumar & Anr. Vs. Ajit Singh, (2013) 138 DRJ 324, the similar aspects have been considered by this Court and it has been held that an Agreement to Sell is not required to be registered. Similar are the observations made in the case of Rishi Raj & Ors. vs. Rakesh Yadav & Ors., RFA 700/2016 & CM APPL. 44927/2017. It is further submitted that an Oral Agreement to Sell is permissible under the Law as has been held by this Court in the Case of Nanak Builders and Investors Pvt. Ltd. vs. Vinod Kumar Alag, AIR 1991 Delhi 315 and by the Apex Court in the case of Aloka Bose vs. Parmatma Devi & Ors., Civil Appeal No(s) 6197/2000. The Suit of the plaintiff discloses a cause of action and therefore, the Application under Order VII Rule 11 CPC has been rightly rejected. The Judgments relied upon by the defendant/revisionist, are



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not applicable to the facts in hand.

20. In the end, it is submitted that a trial is required to prove the averments of the plaintiff/respondent. Therefore, there is no infirmity in the impugned Order dated 27.02.2024 and the present Revision Petition is liable to be dismissed.

21. **Submissions heard and record perused.**

22. The *plaintiff-respondent/Ashok Kumar Sapra* had filed a ***Suit for Specific Performance of an Oral Agreement to Sell*** and in the alternative ***for recovery of the amounts*** that have been paid by him under the said Oral Agreement to Sell.

23. Thus, the basic question is whether the plaintiff can sustain his ***Suit for Specific Performance*** on the basis of an Oral Agreement to Sell.

24. It is a settled proposition of law and is no longer *res integra* that for determination of an Application under Order VII Rule 11 of CPC, 1908, it is only the averments made in the Plaint which can be considered.

25. In the present case, the plaintiff had asserted that an *Oral Agreement to Sell* entered was into with the defendant/petitioner herein on 07.07.2019, whereby while taking into account a huge 'Pagri Rakam' that had been paid by the plaintiff in 1981 at the time taking the suit premises on rent, the sale consideration was agreed to be Rs. 35,00,000/- to be paid initially in monthly instalment of Rs.25,000/- and the entire amount to be paid in a period of four years.

26. *The validity of Oral Agreements to Sell is well-settled.* In the case of *Aloka Bose* (Supra) the Apex Court observed that an Agreement of Sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase for an agreed consideration on agreed terms and the same



can be oral or reduced to writing. It would have the same binding value as a written agreement if it contains the essentials detailed in Section 10 of the Indian Contract Act, 1872. Similar observations were made in the case of Amit Mondal (Supra).

27. The main contention of the respondent is that the provisions of amended Transfer of Property Act, Registration Act and Stamp Act, now mandate a registered Agreement to Sell, thereby making the Oral Agreement to Sell not tenable under the Law.

28. For this, reference may be made to Section 49 of the Registration Act, 1908 which reads as under: -

“Section 49. Effect of non-registration of documents required to be registered.

No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882),] to be registered shall—

*(a) affect any immovable property comprised therein, or
(b) confer any power to adopt, or*

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

*[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) [,3*** or as evidence of any collateral transaction not required to be effected by registered instrument.]”*

29. From the proviso to Section 49 of the Registration Act, 1908, it is evident that though an unregistered Agreement to Sell may not be considered for protection of the possession pursuant to part performance of



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an unregistered Agreement to Sell as provided under Section 53A Transfer of Property Act , but an Oral Agreement to Sell continues to be relevant and admissible as evidence for the purpose of specific performance of an Oral Agreement to Sell.

30. Similar observations have been made by the Apex Court in the recent case of R. Hemalatha v. Kashthuri, (2023) 10 SCC 725 wherein it was held that as per *the proviso of Section 49 of the Registration Act, 1908*, an unregistered document affecting immovable property may be required by the Registration Act or the Transfer of property Act to be registered, but it may be received as evidence of an oral Contract for Sale of Property, in a suit for Specific Performance under *Chapter 2 of the Specific Relief Act, 1977*. Thus, an unregistered Agreement to Sell shall be admissible as evidence in a suit of Specific Performance under the proviso of S.49 which created an exception to the first part of section 49.

31. Similarly, in the case of Sukhwinder Kaur vs. Amarjit Singh, C.R. No. 2616/2011 decided by the High Court of Punjab and Haryana on 12.01.2012, it was observed that where the plaintiff seeks protection of his possession on the basis of an unregistered Agreement to Sell, he would not be able to do so under Section 53A of the Transfer of Property Act, 1882 which got amended in the year 2005. However, an oral Agreement to Sell, of which specific performance is sought, is not impacted by the Amendment of Registration Act, 1908 which pertains only to Section 53A of the Transfer of Property Act, 1882. The corresponding amendment in the Schedule to Specific Relief Act which requires payment of a Stamp Duty, is also in this context. A reference was made to *proviso to Section 49 of the Registration Act, 1908* which makes it abundantly clearly that an Oral Agreement to Sell



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itself does not create any right and title to the property unless the Sale Deed is executed and that oral Agreement to Sell do not require registration.

32. Similar observations were made by a coordinate Bench of this Court in *Vinod Kumar* (Supra).

33. In the case of *Rishi Raj* (Supra), the issue which arose before a Coordinate bench of this Court was whether the plaintiff cannot seek specific performance of unregistered documents. Reliance was placed on *Sukhwinder Kaur* (Supra) and it was observed that there is a fundamental difference as to whether a sale is to be recognized merely on the basis of an Agreement to Sell, Power of Attorney, Will etc., and a case where specific performance is sought based on an unregistered Agreement to Sell. In the latter case, the party is seeking the Court's intervention to conclude the sale transaction, which had commenced with the Agreement to Sell. The Sale is yet to take place. In the case of an Agreement to Sell there are two categories viz., one wherein simultaneously with the execution of the Agreement, possession of the property is handed over and one in which no possession is handed over. If the Agreement to Sell is not accompanied with possession of the property, then the same does not require registration. If the Agreement is accompanied with possession, then possession is capable of being protected under Section 53A of the TP Act. However, for the same to be recognised as a sale, it would have to be registered, in view of the amendments carried out in Sections 17(1A) of the Registration Act and 53A of the TP Act. Thus, it was concluded that *specific performance of an unregistered agreement to sell can be sought when possession of the property has not been handed over*. The observations in *Devender Singh* (Supra) were also on similar lines. Therefore, an Oral Agreement to Sell is



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tenable under law, if proved by the plaintiff.

34. It is, therefore, evident that the plea of Oral Agreement to Sell dated 07.07.2019 of the plaintiff requires evidence to be proved.

35. The cause of action in respect of the Oral Agreement to Sell is, therefore, disclosed in the Suit.

36. The *second aspect* which also needs mention is that the plaintiff has specifically averred that he commenced making payment of Rs. 25,000/- per month from December, 2019 along with monthly rent of Rs. 3,000/- and this cash payment of Rs. 25,000/- was duly acknowledged by the defendant on the back of Rent Receipts. The plaintiff has filed the documents bearing the signatures of the defendant acknowledging the payment of Rs. 25,000/- per month upto August, 2021, when the Suit got filed. Again, it is a matter of evidence whether such payments were made by the defendant and whether the suit premises were towards the part sale consideration. His prayer in the Suit in the alternative, is for refund of the money paid by him to the defendant. The Suit for this alternative prayer, cannot be said to be without any cause of action.

37. *The learned Additional District Judge has, therefore, rightly concluded that the Complaint discloses the cause of action and dismissed the Application under Order VII Rule 11 of CPC, 1908.*

38. In view of above, there is no merit in the present Revision Petition which is hereby dismissed along with the pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER, 8, 2024/RS