



\$~49

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

+ **W.P.(C) 7860/2024 & CM APPL. 32562/2024 CM APPL.
32563/2024**

RAJ KUMAR AGGARWAL

..... Petitioner

Through: **Mr. Akash Vajpai and Ms. Shweta
Shandilya, Advocates**

versus

SMFG INDIA HOME FINANCE COMPANY LTD & ORS.

..... Respondents

Through: **Mr. Abhay Kakkar and Mr. Ashwani
Kumar, Advocates**

%

Date of Decision: 28th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 32561/2024(for exemption)

1. Allowed, subject to all just exceptions.
2. Accordingly, the present application stands disposed of.

W.P.(C) 7860/2024

3. Present writ petition has been filed under Articles 226 and 227 of the Constitution seeking setting aside of the order dated 24th May, 2024 passed by Debt Recovery Appellate Tribunal ('DRAT') in Misc. Appeal No. 174/2024 as well as the order dated 17th May, 2024, passed by Debt



Recovery Tribunal-II, Delhi ('DRT') in S.A. No. 174/2024, whereby both the tribunals vide their respective orders refused to grant stay of the possession notice dated 16th March, 2024 and auction notice dated 23rd April, 2024 issued by Respondent No.1 – SMFG India Home Finance Company Ltd.

4. Learned counsel for the Petitioner states that the Petitioner herein is in possession of property bearing Plot No. 80 and 80A, Khasra No. 60/7, Mohan Garden, Dwarka ('subject property'), admeasuring 200 sq. yds., for past 12 years. He states that the Petitioner purchased the subject property vide unregistered Agreement to Sell ('ATS') and unregistered General Power of Attorney ('GPA'), both dated 07th July, 2012. He states that the subject property was purchased for a sum of Rs. 10 lakhs and relies upon a cash receipt as the evidence of the payment. He states that in view of the law laid down by the Supreme Court in its decision in ***Ghanshyam v. Yogendra Rathi***¹, the Petitioner has a possessory title in the subject property and the same cannot be put to auction.

4.1. He states that the Respondent No. 1 claims that the subject property had been mortgaged by way of deposit of the title documents and has relied upon a registered sale deed dated 28th May, 1984 purported to have been executed in favour of Respondent No.2 - Sh. Satbir Singh and registered sale deed dated 14th September, 2022, executed by Respondent No.2 - Sh. Satbir Singh in favour of Respondent No. 3 – Sh. Vishab Singh Bharti (i.e., the borrower). He states that upon verification of the record maintained by the concerned Sub-Registrar, the Petitioner has learnt that the copy of the sale

¹ (2023) 7 SCC 361



deed dated 28th May, 1984 deposited with Respondent No. 1 is fake.

5. Learned counsel for Respondent No.1 states that Respondent No.1 had advanced loans to Respondent No. 3 and the subject property had been mortgaged by Respondent No. 3 with Respondent No. 1 as collateral. He states that the loan account was classified as Non-Performing Assets ('NPA') on 05th September, 2023 as Respondent No. 3 defaulted in making payments of the loan.

6. He states that the present petition has become infructuous as the auction stands concluded.

7. He states that the Court of the learned CMM and the Tribunals below have satisfied themselves with respect to the mortgage created in favour of Respondent No. 3. He states that the mortgage had been created on the basis of the registered sale deed dated 14th September, 2022 standing in favour of the Respondent No. 3 (i.e., the borrower). He states that in view of the judgment of the Supreme Court in *Shakeel Ahmed v. Syed Akhlaq Hussain*², no right, title or interest vests in the Petitioner in pursuance to an unregistered GPA and ATS.

8. We have heard the learned counsel for the parties and perused the record.

9. The Petitioner before us is neither the borrower nor the guarantor. The Petitioner however, opposes the sale of the subject property on the basis of an unregistered ATS and unregistered GPA purportedly standing in his name. The Petitioner claims to have purchased the subject property for a consideration of Rs. 10 lakhs presumably paid in cash.

² (2023) SCC OnLine SC 1526 (Paragraph nos. 9 to 14)



10. On the other hand, the Respondent No. 1 has relied upon a registered sale deed dated 14th September, 2022 executed by Respondent No.2 - Sh. Satbir Singh in favour of Respondent No. 3 (i.e., the borrower) as the proof of equitable mortgage created by deposit of title deeds. Respondent No. 1 has also relied upon a previous sale deed dated 28th May, 1984 executed in favour of Sh. Satbir Singh.

11. The DRT-II vide impugned order dated 17th May, 2024 has concluded that the Petitioner herein has failed to prove any valid title in his favour on the basis of the unregistered ATS and GPA. The Tribunal thus, concluded that in the absence of a valid title, the Petitioner herein has no locus to seek an injunction against Respondent No. 1 from proceeding with the auction.

12. The DRAT, similarly, in the appeal filed against the order dated 17th May, 2024, has held that the unregistered ATS and GPA do not vest any right of ownership in favour of the Petitioner herein. And, has similarly held that the Petitioner has therefore, no locus to question the Respondent No. 1's action of advancing the loan to Respondent No. 3 on the basis of the registered sale deed dated 14th September, 2022.

13. In our considered opinion, the Petitioner herein has failed to make out any ground for interference in the present writ petition. The Supreme Court in the judgment of *Shakeel Ahmed* (supra) has categorically held that the bundle of customary documents comprising ATS, GPA, Will, affidavit and receipt do not confer any valid title on the holder of these documents. The Supreme Court has held that the holder of such documents does not have any legally enforceable right to approach the Court of Law on its basis. The relevant portion of the said judgment read as under:



“8. On the other hand, learned counsel for the respondent submitted that all the documents relied upon by the respondent as basis for the suit were the customary documents and they conferred full title on the respondent to be the owner of the property in question and, therefore, he can maintain the suit.

9. It was also submitted that there was a prohibition of registration of documents of transfer/conveyance with respect to the area where the property in question is situate and, therefore, the transfers affected under the customary documents was sufficient to confer title on the respondent. It was also submitted that the judgment in the case of *Suraj Lamps & Industries Pvt. Ltd. v. State of Haryana*¹, which was of the year 2011, had prospective application and would not have any bearing on the title of the respondents which came to him under the customary documents executed in the year 2008 much prior to the judgment in the case of *Suraj Lamps & Industries* (supra).

10. Having considered the submissions at the outset, **it is to be emphasized that irrespective of what was decided in the case of *Suraj Lamps and Industries* (supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.**

11. **Law is well settled that no right, title or interest in immovable property can be conferred without a registered document.** Even the judgment of this Court in the case of *Suraj Lamps & Industries* (supra) lays down the same proposition. Reference may also be made to the following judgments of this Court:

(i). *Ameer Minhaj v. Deirdre Elizabeth (Wright) Issar*

(ii). *Balram Singh v. Kelo Devi*

(iii). *Paul Rubber Industries Private Limited v. Amit Chand Mitra*

12. The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property. Once this is the settled



position, the respondent could not have maintained the suit for possession and mesne profits against the appellant, who was admittedly in possession of the property in question whether as an owner or a licensee.

*13. The argument advanced on behalf of the respondent that the judgment in Suraj Lamps & Industries (supra) would be prospective is also misplaced. **The requirement of compulsory registration and effect on non-registration emanates from the statutes, in particular the Registration Act and the Transfer of Property Act.** The ratio in Suraj Lamps & Industries (supra) only approves the provisions in the two enactments. Earlier judgments of this Court have taken the same view.*

14. In case the respondent wanted to evict the appellant treating him to be a licensee, he could have maintained a suit on behalf of the true owner or the landlord under specific instructions of Power of Attorney as landlord claiming to have been receiving rent from the appellant or as Attorney of the true owner to institute the suit on his behalf for eviction and possession. That being not the contents of the plaint, we are unable to agree with the reasoning given by the High Court in the impugned order.

(Emphasis Supplied)

14. In fact, the documents relied upon by the Petitioner herein in the absence of registration and stamping are inadmissible in law. In the absence of registration, the ATS cannot be relied upon by the Petitioner in legal proceedings for protecting its possession of the suit property. In this regard, reference may be made to Section 17 of the Registration Act, 1908 and more specifically Section 17(1)A therein read with Section 53-A of the Transfer of Property Act, 1882. Therefore, the present writ petition at the behest of the Petitioner is not maintainable for determining the title of the subject property. In fact, the Petitioner himself has no valid legal title in the subject property and therefore, cannot maintain the present proceedings to challenge the mortgage created in favour of Respondent No. 1 or to resist the auction.

15. The reliance placed by the Petitioner on the judgment of **Ghanshyam** (supra) is not applicable to facts of this case, as in the said matter, the disputes arose between the transferor and the transferee and the Supreme



Court held that since admittedly, the transferor had put the transferee in possession of the property, the transferor could not thereafter resist the possession of the transferee. Further, even in this judgment, the Supreme Court, however, clarified that customary documents cannot be recognised to confer any valid legal title in favour of the transferee. The relevant portion of the said judgment reads as under:

“14. In connection with the general power of attorney and the will so executed, the practice, if any, prevalent in any State or the High Court recognising these documents to be documents of title or documents conferring right in any immovable property is in violation of the statutory law. Any such practice or tradition prevalent would not override the specific provisions of law which require execution of a document of title or transfer and its registration so as to confer right and title in an immovable property of over Rs 100 in value. The decisions of the Delhi High Court in Veer Bala Gulati v. MCD [Veer Bala Gulati v. MCD, 2003 SCC OnLine Del 345 : (2003) 104 DLT 787] following the earlier decision of the Delhi High Court itself in Asha M. Jain v. Canara Bank [Asha M. Jain v. Canara Bank, 2001 SCC OnLine Del 1157 : (2001) 94 DLT 841] holding that the agreement to sell with payment of full consideration and possession along with irrevocable power of attorney and other ancillary documents is a transaction to sell even though there may not be a sale deed, are of no help to the respondent-plaintiff inasmuch as the view taken by the Delhi High Court is not in consonance with the legal position which emanates from the plain reading of Section 54 of the Transfer of Property Act, 1882.”

(Emphasis Supplied)

16. We accordingly, find no merit in the present petition and the same is dismissed along with the pending application.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 28, 2024/msh/aa