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

+ **CS(OS) 736/2022 & I.A. 19766/2022 I.A. 19767/2022**

SHRI RAM CHANDER

.....Plaintiff

Through: Mr. Mohit Ramdeo, Adv. (Through
VC)

versus

SHRI DEVINDER PRAKASH VIJAY & ORS.

.....Defendants

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **10.09.2024**

1. The present suit has been filed for declaration of title, possession, recovery of arrears of rent and permanent injunction.
2. This suit pertains to two properties i.e., (a) property bearing no. 22, measuring 65 sq. yards (16' X 36'), in Khasra No. 20/2, situated in the revenue estate of Village Matiala, Delhi, abadi known as Colony T Bock Extension, Part-I, Uttam Nagar, New Dehi-110059, shown in red in the site plan no. 1 ('**suit property no. 1**'); and (b) Plot No. 20-A, measuring 60 sq. yds. (15' X 36'), in Khasra No. 20/2, situated in the revenue state of Village Matiala, Delhi, abadi known as Colony T Bock Extension, Part-I, Uttam Nagar, New Dehi-110059, shown red in the site plan no. 2 ('**suit property no. 2**').
3. It is stated that suit property no. 1 was purchased by the plaintiff on 18.05.2017 from defendant no. 1 herein, vide unregistered customary documents i.e., GPA¹, ATS², affidavit, possession letter, receipt and Will all

¹ General Power of Attorney

² Agreement to Sell

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dated 08.05.2017.

4. It is stated that likewise suit property no. 2 was also purchased by the plaintiff on 18.05.2017 from defendant no. 2 herein, vide unregistered customary documents i.e., GPA³, ATS⁴, affidavit, possession letter, receipt and Will all dated 08.05.2017.

5. It is stated that for the aforesaid two properties, the plaintiff paid a sum of Rs. 1.02 crores to defendant nos. 1 and 2. It is stated that Rs. 60 lakhs were paid by cheque and Rs. 42 lakhs were paid by cash.

6. It is stated that registration of sale deed(s) was not permissible in the year, 2017 for this neighbourhood and therefore the parties executed the customary document.

7. It is stated that the plaintiff was put in possession of both the properties on 08.05.2017, however, thereafter, plaintiff let out the said properties to defendant nos. 1 and 2 on rent. It is stated that defendant nos. 1 and 2 paid rent until December, 2020 and not thereafter.

8. It is stated that however, subsequently the plaintiff learnt⁵ that suit property no. 2 has been mortgaged by defendant nos. 1, 3 and 4 in favour of defendant no. 5, i.e., Oriental Bank of Commerce [Oriental Bank of Commerce has now merged with Punjab National Bank].

9. It is stated in the plaint that the plaintiff has also learnt that suit property no. 2 is in possession of defendant no. 6 i.e., Union Bank (presumably for a mortgage created by defendant nos. 1, 3 and 4).

10. It is stated that in September, 2022, the plaintiff learnt that defendant no. 5, Bank has initiated recovery proceedings against defendant nos. 1 to 4 before the Debt Recovery Tribunal, Delhi ('DRT') in OA. No. 249/2020 and

³ General Power of Attorney

⁴ Agreement to Sell

⁵ Paragraph 8(iii) of the plaint

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the decree in favour of the Bank stands passed as on 07.09.2022. It is also stated that defendant no. 5, Bank had initiated proceedings under Section 13 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') and has taken over the possession of the suit property nos. 1 and 2.

11. It is stated in the plaint that the title documents w.r.t suit properties deposited by defendant nos. 1 to 4 with the banks (i.e., defendant nos. 5 and 6) are forged and no title flows in favour of defendant nos. 1 to 4 on the basis of the said title documents.

12. In the aforementioned facts, the plaintiff has filed the present suit seeking a declaration that he is the sole and absolute owner of the suit properties on the basis of the customary documents (ATS, GPA, affidavit, possession letter, receipt and Will) executed by defendant nos. 1 and 2 on 08.05.2017. The plaintiff also seeks an injunction restraining defendant nos. 5 and 6 banks from enforcing the sale of the suit properties in the proceedings initiated under the SARFAESI Act. The plaintiff also seeks recovery of possession of the suit properties from defendant nos. 5 and 6 banks. The plaintiff lastly seeks recovery of arrears of rent from defendant nos. 1 and 2 with effect from January, 2021 until the date of handing over of possession by the banks.

13. Learned counsel for the plaintiff has relied upon the judgment of the Supreme Court in **Mardia Chemicals Limited v. Union of India**⁶ and judgment of the Coordinate Bench of this Court in **Tajunissa and Another v. Vishal Sharma and Others**⁷ to contend that the present suit is maintainable and is not barred under Section 34 of the SARFAESI Act.

14. This Court has considered the submissions of the learned counsel for

⁶ (2004) 4 SCC 31

⁷ 2022 SCC OnLine Del 18

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the plaintiff and perused the record.

15. The relief of declaration of title (of ownership) sought by the plaintiff in the present suit on the basis of the customary documents i.e., unregistered GPA, ATS, affidavit, possession letter, receipt and Will is without any basis in law. The Supreme Court in **Shakeel Ahmad v. Syed Akhlaq Hussain**⁸ has held that customary documents do not confer any valid title on the holder of these documents. The Supreme Court further held that the holder of these documents does not have any legally enforceable rights to approach the Court of law. The relevant portion of the 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*, 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**

⁸ 2023 SCC OnLine SC 1526
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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.

(Emphasis Supplied)

16. Similarly, Supreme Court in the judgment of **Balram Singh v. Kelo Devi**⁹ as well held that a party, who holds an unregistered agreement to sell, cannot maintain a relief for permanent injunction against the defendants without seeking the substantive relief for specific performance. The relevant paragraph 6 read as under:

“17. Having conscious of the fact that the plaintiff might not succeed in getting the relief of specific performance of such agreement to sell as the same was unregistered, the plaintiff filed a suit simplicitor for permanent injunction only. It may be true that in a given case, an unregistered document can be used and/or considered for collateral purpose. However, at the same time, the plaintiff cannot get the relief

⁹ 2022 SCC OnLine SC 1283
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indirectly which otherwise he/she cannot get in a suit for substantive relief, namely, in the present case the relief for specific performance. Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell, more particularly when the defendant specifically filed the counter-claim for getting back the possession which was allowed by the learned trial Court. **The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed.** The plaintiff cannot get the relief by clever drafting.”

(Emphasis Supplied)

17. The appropriate relief, which the plaintiff can seek on the basis of these customary documents, is only against defendant nos. 1 and 2 and for specific performance so as to cause the defendant nos. 1 and 2 to execute a registered sale deed with respect to the suit properties in his favour in accordance with law. In this regard, it would be relevant to refer to judgment of the Supreme Court in **Suraj Lamp and Industries Private Limited v. State of Haryana and Another**¹⁰. However, the plaintiff has elected not to seek the substantive relief of specific performance. The relief of declaration of title sought under prayer clause (A) is not maintainable in law in view of the law laid down by the Supreme Court in **Shakeel Ahmad** (supra) and is therefore without any cause of action.

18. The plaintiff in the plaint itself has admitted that the possession of the suit properties is with defendant no. 5 and defendant no. 6 respectively in pursuance to the proceedings initiated by the said banks under the SARFAESI Act. The plaintiff in the suit has not averred any fraud by the secured creditor i.e., defendant no. 5 or defendant no. 6 on the plaintiff and therefore, the reliance placed by the plaintiff on the judgment of **Mardia Chemicals Limited** (supra) and **Tajunissa and Another** (supra) is not



attracted in the facts of this case. In both those cases, the Court carved out an exception only in the circumstance where the fraud was alleged to have been committed by the secured creditors i.e., the banks. The relief in the present suit of the plaintiff *qua* defendant nos. 5 and 6 banks is therefore also barred under Section 34 of the SARFAESI Act.

19. In view of the judgment of the Supreme Court in **Shakeel Ahmad** (Supra) and therefore, the relief of injunction and possession sought by plaintiff of the basis of the customary documents against defendant nos. 5 and 6 banks in prayer clause (B) and (C) is without any cause of action

20. The plaintiff in the suit has lastly sought at prayer clause (D) recovery of arrears of rent of Rs. 2,20,000/- against defendant nos. 1 and 2 till the date of recovery of possession. It is admitted in the plaint that the whereabouts of defendant nos. 1 and 2 are unknown. No agreement of lease evidencing relationship of landlord-tenant between the parties has been filed on record. It appears that the said claim is also based on the customary documents dated 08.05.2017, which documents as noted above cannot form the basis of any legally enforceable rights. Accordingly, the said relief is also without any cause of action.

21. Though the suit has been pending since 08.11.2022, no summons in this suit has been issued till date.

22. The suit is accordingly rejected under Order VII Rule 11 (a) and (d) of Code of Civil Procedure, 1908.

23. All pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 10, 2024/hp/MG

¹⁰ (2012) 1 SCC 656 [para 26]
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