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

+ **CS(OS) 240/2025**

SANJEEV KUMAR BANSAL

.....Plaintiff

Through: Mr. Mayank Wadhwa, Mr. Shorya
Goel, Ms. Muskan Gupta and Mr.
Digvijay Singh, Advocates

versus

PREM BROTHERS INFRASTRUCTURE LLP & ORS.

.....Defendants

Through: None

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Date of Decision: 16.04.2025

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

I.A. 9705/2025 (for exemption)

1. This is an application filed by the plaintiff seeking exemption from filing documents with improper margins, illegible copies, fair and typed copies of the dim documents, which have been filed with the suit.
2. Subject to the plaintiff filing documents with improper margins, illegible copies, fair and typed copies of the dim documents within four weeks from today, exemption is granted for the present.
3. Accordingly, the captioned I.A stands disposed of.

I.A. 9706/2025 (seeking enlargement of time in filing court fees)

4. Learned counsel for the plaintiff states that the court fee has been applied for and will be deposited before the next date of hearing.



5. He states that his statement be taken on record.
6. The statement of the counsel for the plaintiff is taken on record.
7. In view of the above, the plaintiff is directed to deposit the Court fee within one (1) week.
8. The application stands disposed of.

CS(OS) 240/2025 & I.A. 9703/2025, I.A. 9704/2025

9. The present suit has been filed seeking permanent and mandatory injunction against defendant nos. 1 to 3. The prayer clause in the plaint read as under; -

- a) Pass decree of permanent and mandatory injunction in favour of the Plaintiff and against the Defendant No. 1 to 3 thereby restraining said Defendants from creating any third - party interest/right and transferring/alienating the subject property i.e., Apartment No. A-901, Tower A, Krrish Provence Estate Project situated at Village Gwal-Pahari, Tehsil Sohna, District Gurugram, Haryana in the project namely Krrish Provence Estate Project;
- b) Award the costs of the present proceedings including all the ancillary legal expenses incurred in favour of the Plaintiff and against the Defendant No.1 to 7;

Brief facts set out in the plaint

10. It is stated that the plaintiff is a bonafide homebuyer in Krish Provence Estate Project ('Project') situated at village Gwal-Pahari, Tehsil Sohna, District Gurugram, Haryana constructed by Jasmine Buildmart Pvt. Ltd. ('Jasmine Buildmart') through its promoter directors arrayed as defendant nos. 4 to 7. The reliefs sought in the plaint pertains to apartment no. A-901, Tower-A of the Project (subject property).

11. It is stated that the subject property was allotted by Jasmine Buildmart in favour of one Mr. Amit Gupta on 08.08.2011 and the said Mr. Amit Gupta had deposited a sum of Rs. 5.66 crores with Jasmine Buildmart. The said allotment was transferred in favour of the plaintiff on 29.09.2014 for



equivalent consideration of Rs. 5.66 crores and plaintiff was the substituted allottee for the subject property with a letter of substitution issued in his favour.

12. It is stated that the Project came to a standstill leading to litigation between Jasmine Buildmart and several homebuyers before NCDRC¹ in the year 2017.

13. It is stated that CIRP process was initiated against Jasmine Buildmart between 2019-2020 and the matter travelled right up to Supreme Court, with Jasmine Buildmart as well as defendant no. 4 separately undertaking to complete the project within one year from 01.03.2022 and offering possession to the respective homebuyers subject to all demands being timely paid in accordance with the Apartment Buyers Agreement (ABA). It is stated that, however, Jasmine Buildmart and defendant no. 4 failed to comply with the undertaking given by Supreme Court. It is stated that construction of the subject property is not complete even as on date.

14. It is stated that on 28.02.2023 plaintiff received a letter from Jasmine Buildmart and the plaintiff learnt that its allotment had been cancelled vide letter dated 29.10.2022; for non-payment of alleged outstanding amounts. It is stated that plaintiff have not received letter dated 29.10.2022 and have only received the letter dated 28.02.2023. It is stated the plaintiff issued a legal notice dated 05.03.2023 to Jasmine Buildmart calling upon them to withdraw the cancellation letter dated 29.10.2022 and 28.02.2023. It is stated that vide reply dated 28.03.2023, Jasmine Buildmart informed the plaintiff that the allotment of the subject property stands cancelled as per the terms of the ABA and it has been sold to a third party. By this reply,



Jasmine Buildmart stated that plaintiff had failed to make payment of the outstanding dues and take possession; which led to cancellation of the allotment. Jasmine Buildmart also called upon the plaintiff to collect the refund.

15. It is stated that plaintiff filed a consumer complaint bearing no. 59/2023 against Jasmine Buildmart before NCDRC challenging the said cancellation. NCDRC issued notice on 20.04.2023 and directed Jasmine Buildmart not to create any third-party rights in the subject property. It is stated that Jasmine Buildmart filed its reply disclosing that the subject property already stood sold to defendant no. 1 after due cancellation of the plaintiff's allotment.

16. It is stated that the plaintiff filed an application for amendment in view of the subsequent sale of the subject property by Jasmine Buildmart in favour of defendant no. 1. The amendment application was allowed on 15.01.2024.

17. It is stated that CIRP was admitted against Jasmine Buildmart on 05.03.2024 and the plaintiff filed its claim in the category of financial creditor as a homebuyer; and the plaintiff's claim of Rs. 10.082 crores was admitted by the IRP. It is stated that plaintiff sought a clarification from the IRP with respect to the status of allotment and/or ownership of the subject property from the IRP as per its records. It is stated that IRP vide e-mail dated 13.04.2024 confirmed to the plaintiff that the subject property was reflected in the name of defendant no. 1 in the records and IRP also shared a copy of the conveyance deed dated 20.02.2023 with the plaintiff, on 10.05.2024.

¹ National Consumer Disputes Redressal Commission



18. It is stated that plaintiff filed an application before NCDRC for impleading defendant no. 1 on 23.08.2024, which was allowed. It is stated that, however, NCDRC deleted defendant no. 1 from the array of parties vide order dated 20.03.2025

19. It is stated that on 20.12.2024, the plaintiff received a copy of an application filed by the IRP before NCLT under Sections 43 and 66 of the Insolvency and Bankruptcy Code, 2016 pertaining to the PUF²E Transactions. It is stated that in the PUF²E report filed with the said application it was recorded that defendant no. 1 along with promoters of Jasmine Buildmart has illegally got 7-8 properties in its name, and three units have been further disposed of.

20. It is stated that the present suit has been filed seeking a limited relief against defendant no. 1 and its designated partners i.e., defendant nos. 2 and 3 to restrain them from creating any third-party interest or rights in the subject property located at Gurugram till the plaintiff has an opportunity to seek appropriate remedy qua the conveyance deed dated 20.02.2023 executed in favour of defendant no. 1. It is stated at paragraph no. 84 of the plaint that plaintiff is in the process of filing an application before NCLT to seek direction for reserving its rights to initiate proceedings for cancellation of the conveyance deed after the completion of the CIRP proceedings. It is stated at paragraph no. 86 that no relief for cancellation of the sale deed is being sought as there is a moratorium against Jasmine Buildmart.

Submissions on behalf of the plaintiff

² Preferential, undervalued, fraudulent and extortionate transactions



21. Learned counsel for the plaintiff states Jasmine Buildmart is under a moratorium. He states that the sale deed in favour of defendant no. 1 is for a sale consideration of Rs. 5.15 crores whereas the plaintiff has paid Jasmine Buildmart a sum of Rs. 5.62 crores. He states that thus the sale deed is undervalued.

21.1. He states that as per the PUFER report, it substantiates the pleas of the plaintiff that transactions between defendant no. 1 and Jasmine Buildmart are not arm's length transactions.

21.2. He states that the only relief sought from the Court is prayer clause (a) of the plaint i.e. to injunct defendant nos. 1 to 3 from creating third-party interest in the subject property until the plaintiff can file appropriate proceedings for cancellation of the sale deed.

Findings

22. This Court has heard the submissions of the plaintiff.

23. The plaintiff admits that the only substantial relief sought in the plaint is prayer (a). The said prayer is only against defendant no. 1. Defendant nos. 2 and 3 are the designated partners of defendant no. 1 and, therefore, the relief is not qua them but defendant no. 1 only. The plaintiff has no locus to challenge the conveyance deed dated 20.02.2023 executed by Jasmine Buildmart in favour of defendant no. 1, because as on date the status of the plaintiff is of a cancelled allottee, who is entitled to refund of the amounts deposited from Jasmine Buildmart.

24. To maintain a challenge to the conveyance deed dated 20.02.2023 executed by Jasmine Buildmart in favour of defendant no. 1, the plaintiff has to seek a declaratory relief that the cancellation notice dated 29.10.2022 is bad in law and seek a specific performance of its ABA (**Re: Sangita Sinha**



v. Bhawna Bharadwaj³). The plaintiff admittedly has not sought any of these reliefs in the suit. In fact, the plaintiff has also not sought any of these reliefs against the IRP before the NCLT.

25. The plaintiff has challenged the termination of its allotment by Jasmine Buildmart by cancellation notice dated 29.10.2022 before the NCDRC. In the said proceedings, the plaintiff after impleading defendant no. 1, has conceded to their deletion vide order dated 20.03.2025. The reasons for consenting to the deletion of defendant no. 1 is not set out in the plaint. Since the substantive issue as regards validity of the termination of the allotment is pending in NCDRC, the plaintiff cannot maintain a suit without the cancellation notice dated 29.10.2022 being set aside.

26. In the facts of this case, after the issuance of cancellation notice dated 29.10.2022, as per PUFER report⁴, the subject property was allotted on 07.11.2022 to defendant no. 1 and consideration was also received by Jasmine Buildmart. Further, the conveyance deed dated 20.02.2023 of the subject property also stood executed in favour of defendant no. 1. The plaintiff as per its own admission has knowledge of the said sale since 28.03.2023, when it was served with reply to its legal notice and the reply in the NCDRC proceedings.

27. In these facts, in the considered opinion of this Court, the present suit claiming simplicitor injunction against defendant no. 1 who is the recorded title holder of the subject property is not maintainable, since there is a serious dispute or cloud over the plaintiff's title and it requires examination of complex questions of law and facts. The plaintiff has no crystallised title,

³ 2025 SCC OnLine SC 723 dated 04.04.2025

⁴ Internal page 97-98 (and pdf page 668-669)



rights in the subject property so as to maintain a challenge to the rights of defendant no. 1 by filing a suit simplicitor for injunction. (**Re: Naseema Begum v. Mohd. Javed**)⁵. The Supreme Court in **The Correspondence, RBANMS Educational Institution v. B. Gunashekar & Anr.**⁶ in similar facts has rejected a similar plaint seeking relief of injunction filed by a plaintiff, who was similarly claiming rights, as a proposed transferee against the subsequent purchaser of the property. The Supreme Court held that the proposed transferee cannot maintain a suit for injunction against a third-party, who is an owner or in possession. The relevant portion of paragraph 15.1 reads as under: -

“15.1.....Therefore, unless and until the sale deed is executed, the purchaser is not vested with any right, title or interest in the property except to the limited extent of seeking specific performance from his vendor. An agreement for sale does not confer any right to the purchaser to file a suit against a third party who is either the owner or in possession, or who claims to be the owner and to be in possession. In such cases, the vendor will have to approach the court and not the proposed transferee.”

28. Furthermore, it would also be relevant to refer to the judgment passed by Supreme Court in the landmark case of **Anathula Sudhakar v. P. Buchi Reddy**⁷ which summarises the position with respect to suit for prohibiting injunction. The relevant extract reads as under: -

“21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of

⁵ 2017 SCC OnLine Del 9406 at para 7

⁶ 2025 INSC 490

⁷ (2008) 4 SCC 594



possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in *Annaimuthu Thevar* [*Annaimuthu Thevar v. Alagammal*, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”



29. Since the suit has been dismissed on the grounds of maintainability, the issue of territorial jurisdiction of this Court has not been deliberated upon, though learned counsel for the plaintiff had relied on proviso to Section 16 of the Code of Civil Procedure, 1908 ('CPC') to contend that the suit is maintainable, even though the subject property is located in Gurugram, Haryana.

30. In view of the aforesaid findings this Court is of the view that the plaint does not disclose any cause of action to grant relief of permanent and mandatory injunction to the plaintiff. Accordingly, the present suit is not maintainable in law and is, therefore, dismissed.

31. I.A. 9703/2025 and I.A. 9704/2025 are dismissed.

MANMEET PRITAM SINGH ARORA, J

APRIL 16, 2025/mt/ms