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

Date of decision: 14th May, 2025

+ **CS(OS) 306/2025 & I.As. 12215-20/2025**

NASIR

.....Plaintiff

Through: **Mr. D. Hasija, Ms. Prachi Hasija and
Mr. Dev Hans Kasana, Advocates**

versus

ASHWANI KUMAR WADHWA AND OTHERSDefendants

Through: **Mr. Anil Hooda, Mr. Satendra Singh,
Advocates for D-1 & D-2
Mr. Ajay Sharma, Advocate for D-
4.1, 4.2 and 4.3**

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present suit has been filed by the plaintiff seeking partition as well as seeking permanent and mandatory injunction against the defendants with respect to the land admeasuring 4 bighas and 16 biswas, comprised in Khasra Nos. 548/1 (3-12) and 550/2 (1-4), situated in village Satbari, Tehsil Mehrauli, New Delhi ('suit property').

2. The plaintiff states that the suit property was owned by Sh. Hakumat Rai.

2.1 He states that after the demise of Sh. Hakumat Rai on 03.04.1994, the property devolved upon his widow, three daughters and four sons.

2.2 He states that Sh. Hakumat Rai's widow and daughters executed a



registered relinquishment deed dated 15.11.2010 in favour of the four sons thereby establishing the joint ownership of the four sons.

2.3 He states that the fourth son, Sh. Kamal Wadhwa, passed away in 2024 leaving behind his Class-I legal heirs, who have been arrayed as defendant nos. 4.1, 4.2 and 4.3.

2.4 He states that the suit property, for ease of convenience, was divided by the sons of Sh. Hakumat Rai into two portions. The said portions have been identified as portion 1 and portion 2.

2.5 He states that portion 1 came to the share of defendant nos. 1 and 2 while portion 2 came to the shares of defendant no. 3 and the family of late Sh. Kamal Wadhwa.

2.6 He further states that this delineation in the property was carried out by oral partition between the four sons in the year 2009.

2.7 He states that the plaintiff herein has entered into an unregistered Agreement to Sell ('ATS') dated 09.04.2025 with defendant nos. 1 and 2 for portion 1 and, a part payment of Rs. 50,00,000/- had been made to defendant nos. 1 and 2.

2.8 He states that the balance amount of Rs. 8 crores is due and payable to defendant nos. 1 and 2 and it has been agreed between the parties that the said amount will be paid on or before 31.10.2025.

2.9 He states that however, defendant nos. 1 and 2 handed over the actual physical possession of portion 1 to the plaintiff by virtue of the unregistered ATS dated 09.04.2025 and there is also a separate possession receipt evidencing the same.

2.10 He states in the plaint that, despite having relinquished possession, defendants nos. 1 and 2 have now begun demanding additional payments



and have threatened the plaintiff by interfering with his possession.

2.11 He states that defendants nos. 1 and 2 are attempting to trespass into portion 1 of the suit property and are making efforts to dispossess the plaintiff.

3. This Court has heard the counsel and perused the record.

4. The suit has been filed by affixing a court fee of Rs. 20 on the plea that the plaintiff (a prospective purchaser) is in possession of portion 1 of the suit property in furtherance of an unregistered ATS dated 09.04.2025.

5. The suit has been filed for the following reliefs: -

“(i) pass a **decree of partition** being land admeasuring 4 bighas and 16 biwas, comprised in Kharas No.548/1 (3-12) and 550/2 (1-4), situated in village Satbari, Tehsil Mehrauli, New Delhi and separate possession of portion-1 of the suit property in possession of the plaintiff and portion-2, in joint possession of the defendant Noland the defendants Nos.4.1 to 4.3;

(ii) pass a decree of **mandatory injunction** in favour of the Plaintiff and against the Defendant Nos. 1 and 2 thereby **directing the Defendant Nos. 1 & 2 to execute the Sale Deed as per the terms and conditions enumerated in the Agreement to Sell dated 09.04.2025** which is still valid and subsisting; and

(iii) pass a **decree of permanent injunction** in favour of the Plaintiff and against the Defendants thereby restraining the Defendants from either directly and/or through their agents, representatives, employees, assigns etc. **from entering or trespassing or interfering in the peaceful possession, use and enjoyment of portion-1** of the suit property in separate possession of the Plaintiff.”

(Emphasis Supplied)

6. In the facts of this case the plaintiff claims to be a prospective purchaser in possession of the suit property relying upon an unregistered ATS dated 09.04.2025 along with a receipt evidencing handing over of possession. At the outset, it is observed that the unregistered ATS dated



09.04.2025 purporting to handover physical possession of the immovable property is inadmissible in the light of Section 17(1)(A) of the Registration Act, 1908, which mandates that such an agreement, must be registered to be legally enforceable for invoking Section 53A of the Transfer of Property Act, 1882 ('TP Act'). This Section was inserted by amendment in 2001 and corresponds with amendments made in TP Act. The Section 17(1)(A) reads as under: -

“17(1)(A): The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.”

7. In view of the fact that the ATS dated 09.04.2025 is unregistered, the plaintiff cannot rely upon the said ATS for establishing its possession of the suit property and for resisting its dispossession by invoking Section 53A of the TP Act. The Section 53A of TP Act after its amendment in 2001 reads as under:-

“53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that 2***, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the



transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

8. It is the intent of Section 17(1)(A) of the Registration Act that if the parties to an ATS intend to exchange possession of the immovable property, such an ATS is to be compulsorily registered. It is only after the ATS is registered that the prospective purchaser is entitled to defend its possession against the transferor/seller and any other person claiming through the transferor.

9. In the facts of this case, since the ATS is unregistered, in view of Section 17(1)(A) of Registration Act read with Section 53A of TP Act, the Plaintiff cannot maintain this suit for permanent injunction for protecting its possession against its vendors i.e., defendant nos. 1 and 2. Thus, prayer clause (iii), seeking relief of permanent injunction, is barred in law.

10. It is trite law that the right to seek partition is an incident of ownership. The plaintiff herein is admittedly not the owner of the portion 1 of the suit property. The plaintiff is merely an intended purchaser of the suit property. A party claiming rights under an ATS does not qualify as the owner of the property within the meaning of Sections 54 and 55 of the TP Act. This is in accordance with the law established by the Supreme Court in **Suraj Lamp & Industries (P) Ltd. V. State of Haryana¹**, wherein it was held that an unregistered ATS does not fulfill the requirements of Sections



54 and 55 of the TP Act and thus does not confer title or transfer interest in immovable property, and states that an agreement of sale, with or without possession, is not a conveyance. The relevant part of the judgment reads as under:

“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.”

(Emphasis Supplied)

11. The said position of law was reiterated by the Supreme Court in **Shakeel Ahmed v. Syed Akhlaq Hussain²**, wherein it was held that no title to immovable properties can be transferred through an unregistered ATS. Even if registered, these documents do not confer title but may allow only for a claim of specific performance. The relevant part of the judgement reads as under:

“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**

¹ (2012) 1 SCC 656

² 2023 SCC OnLine SC 1526



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”

(Emphasis Supplied)

12. For this reason, in the considered opinion of this Court, the unregistered ATS dated 09.04.2025 that has been executed in favour of the plaintiff do not confer with him any title or ownership of the suit property so as to entitle him to seek partition of the immovable property from the co-owners before acquiring full interest. Therefore, the relief of partition sought at prayer clause ‘i’ is without any cause of action. (Re: **Ms. Rema Gupta v. Mahinder Lal**³)

13. The plaintiff claims to be a purchaser under ATS dated 09.04.2025 and therefore, the plaintiff, as per the judgment of the Supreme Court in **Shakeel Ahmed (supra)**, only has a right to seek specific performance of the ATS dated 09.04.2025.

14. Learned counsel for the plaintiff states that the plaintiff has not sought for the relief for specific performance in this suit as the time for performance is postponed till 31.10.2025.

15. The aforesaid submission of the plaintiff is contradicted with the relief sought at prayer clause (ii). It is evident that the relief of the mandatory

³ 2024 SCC OnLine Del 1737 at para 74.



injunction pleaded in prayer clause 'ii', based on an unregistered ATS dated 09.04.2025 seeking a direction to defendant nos. 1 and 2 to execute a sale deed, is merely camouflage to indirectly obtain the relief that would otherwise be unavailable in a substantive claim, such as specific performance. For seeking a direction to defendant nos. 1 and 2 to execute a sale deed, plaintiff has to seek the relief of specific performance which is governed by Chapter II of Specific Relief Act, 1963 ('Act of 1963'). The plaintiff as a prospective purchaser has to satisfy the Court with respect to its readiness and willingness and with respect to the enforceability of the ATS on the touchstone of the provisions set out in Chapter II. The relief of direction to a vendor to execute sale deed cannot be claimed by way of a mandatory injunction which is governed by Chapter VIII of the Act of 1963. The counsel for the plaintiff was unable to explain the basis of this relief of mandatory injunction and thus, prayer clause (ii) is not maintainable.

16. This Court further notes that the plaintiff, who is merely a purchaser under the ATS dated 09.04.2025 has instituted the suit by assessing the value of the suit property at Rs. 8.50 crores to bring the suit within the pecuniary jurisdiction of this Court; however, the plaintiff has assessed the court fee at Rs. 20. The said affixation is incorrect. The plaintiff has failed to pay ad-valorem court fee on the value of the suit property affixed to the plaint considering he is seeking reliefs vis-à-vis the suit property. The entire plaint appears to be intended against defendant no. 3 who is a co-owner in the suit property. However, since the plaint itself is being rejected on the grounds that it is not maintainable in law, no directions for making good the deficiency of the court fee is made out. In the event, if plaintiff files an appeal, he would be liable to pay ad-valorem court fee or the value of Rs.



8.50 crores.

17. This Court would also like to observe that this suit was first listed before this Court on 13.05.2025 in third supplementary list on an urgent mentioning before the Hon'ble the Judge-In-Charge (Original Side) and this matter was taken up at 4:00 P.M.

18. It appears that the Hon'ble the Judge-In-Charge (Original Side) was led to believe that there was an imminent threat to dispossession of the plaintiff by defendant nos. 1 and 2 as pleaded in the plaint.

However, counsel for defendant nos. 1 and 2 had entered appearance yesterday as well as today and they confirm that they are not interfering with the possession of the plaintiff. So also, defendant nos. 4.1 to 4.3 entered appearance and denied interfering in plaintiff's possession.

19. This leaves an impression on the Court that the real intention of the plaintiff was to get an ex-parte relief against defendant no. 3 and there was never any real threat from defendant nos. 1 and 2.

20. The plaintiff has approached the Court with unclean hands and the intent was to actually obtain injunction orders against the co-owners i.e., defendant no. 3 and defendant no. 4.1. to 4.3. The suit is dismissed with cost of Rs. 50,000/- to be paid to Delhi High Court Bar Association⁴ ('DHCBA') within two (2) weeks.

21. The pending applications, hereby, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

MAY 14, 2025/rhc/AM

Click here to check corrigendum, if any

⁴ DHCBA Cost A/c No. 15530110179338, UCO Bank, Delhi High Court.