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

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Date of Decision: 14.07.2025+ **C.R.P. 346/2024, CM APPLs. 67691-92/2024**

OMWATI RAGHAV

.....Petitioner

Through: Mr. Rohit Gupta, Advocate

versus

PRAVEEN AWANA

.....Respondent

Through: Dr. Puran Chand and Ms. Shashi,
Advocates**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed by the Petitioner seeking to challenge the Order dated 13.08.2024 passed by the learned District Judge-01, South-East, District, Saket Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application filed by the Petitioner/Defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter referred to as "Application"] has been dismissed.

2. The learned Trial Court, in the Impugned Order, has held that the ground that has been taken by the Petitioner [Defendant before the learned Trial Court] is that the Plaint is bereft of any cause of action and after examining the Plaint, the learned Trial Court found that the cause of action subsists.



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3. Learned Counsel appearing on behalf of the Petitioner submits that the suit is barred since it does not disclose any cause of action. It is further submitted that Plaint has not been properly instituted since the Plaint has been filed based on a General Power of Attorney [hereinafter referred to as “GPA”] and the GPA sales are not valid in terms of the ***Suraj Lamp & Industries Pvt. Ltd v. State of Haryana & Anr.***¹

4. Learned Counsel appearing on behalf of the Respondent/Plaintiff on the other hand submits that the matter is now proceeding for evidence and that there is no infirmity with the Impugned Order. Learned Counsel for the Respondent/Plaintiff further submits that citing the pendency of this Revision Petition, adjournments are being taken by the Petitioner before the learned Trial Court.

4.1 Learned Counsel appearing for the Respondent/Plaintiff also submits that the suit has been filed for possession and permanent injunction in terms of a property bearing No. D/2-257, land measuring 100 sq. yards situated in the area of Block-D-2, Hari Nagar Extension, Jaitpur, Badarpur, New Delhi-110044 consisting Ground Floor, First Floor and Second Floor [hereinafter referred to as “suit property”]. He submits that the suit property falls under the category of unauthorized colonies which are now the subject matter of regularization in terms of the policy of the Government of NCT of Delhi. He submits that in any event, in these colonies, previously, sale deeds were not being registered for transfer of immovable properties for less than the 1000 sq. yards, whereas the current sale is in respect of the suit property which

¹ (2012) 1 SCC 656



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admeasures 100 sq. yards.

5. It is trite law that in an Application filed under Order VII Rule 11 of the CPC, the plaint and averments are to be taken on their face and on a demurer. At this stage, the Court is not entitled to consider the case of defence. In this regard, it is apposite to set out the observations made by the Supreme Court in the case of *C. Natrajan v. Ashim Bai and Anr.*², the relevant extract of which is reproduced herein:

“8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510])”

[Emphasis Supplied]

6. The learned Trial Court examined the Plaint and has held that the case of the Respondent/Plaintiff is a case of possessory rights based on a GPA Agreement to Sell, Affidavit, Receipt and Will, all dated 23.04.2021.

6.1 The learned Trial Court has further held that although the title under these documents would not be perfect, the Plaintiff has possessory rights and thus the suit cannot be dismissed. The relevant extract of the Impugned Order is set out below:

“8. The case of the plaintiff is based upon transfer of possessory interest CS DJ- 682/2022 in the suit property based upon GPA, Agreement to Sell & Purchase, Affidavit, Receipt and Deed of Will, all dated 23.04.2021. Although the said documents do not transfer any title in the suit property to the plaintiff. However, the Hon'ble Supreme Court in the case of

² (2007) 14 SCC 183.



Ghanshyam Vs. Yogendra Rathi (supra) held as follows:

*"9. No doubt, agreement to sell is not a document of title or a deed of transfer of property by sale and as such, may not confer absolute title upon the plaintiff-respondent over the suit property in view of Section 54 of the Transfer of Property Act, 1882, **nonetheless, the agreement to sell, the payment of entire sale consideration as mentioned in the agreement itself and corroborated by the receipt of its payment and the fact that the plaintiff-respondent was put in possession of the suit property in accordance with law as is also established by the possession** memo on record, goes to prove that the plaintiff-respondent is de-facto **having possessory rights over the suit property in part performance of the agreement to sell. This possessory right of the plaintiff-respondent is not liable** to be disturbed by the transferer, i.e., the defendant-appellant. The entry of the defendant-appellant over part of the suit property subsequently is simply as a licensee of the plaintiff-respondent. He does not continue to occupy it in capacity of the owner.*

...

15. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming under him."

*9. A reading of the above extract of the judgment would reveal that although the Agreement to Sell, GPA, etc are not the title documents, however, if after payment of the entire sale consideration, the plaintiff is put in possession of the suit property, the plaintiff could **have possessory rights in the suit property in performance of the Agreement to Sell and the same is not liable to be disturbed by the transferor.***

...

*11. As such, in the present case, documents relied upon by plaintiff show that the consideration amount was received by the defendant by way of Receipt dated 23.04.2021 and the possession of the suit property was handed over to the plaintiff vide Possession Letter dated 23.04.2021. Defendant was allowed to reside in the suit property after the date of the possession letter by way of a licence and does not get inherent right to occupy the suit property. **Thus, what is revealed is that even if the plaintiffs not able to establish his title in the pleadings he has made out cause of action regarding his possessory right and as such, some cause of action***



has been shown in the present plaint which deserves trial and cannot be rejected outrightly at this stage.”

[Emphasis supplied]

7. A perusal of the Application shows that although the Petitioner/Defendant has taken several grounds in the Application, none of these grounds suffice for an order under Order VII Rule 7 of the CPC. It is apposite to extract paragraphs of the Application below:

“2) That the present suit is not maintainable as neither the plaintiff has any *Locus standi* to file the present suit and also, the present suit has been filed on the basis of the false and frivolous averments with absolutely nothing on record to support their allegations of the plaintiff. **The suit of the plaintiff is liable to be dismissed upon the following, among other grounds:**

A. **That the suit of the plaintiff is not maintainable as the plaintiff has suppressed material facts from the Hon'ble court and has not come to the Hon'ble court with clean hands.** The plaintiff had filed this false, fabricated, frivolous and vexatious plaint against the answering defendant and facts constituting the present plaint are suppressio-vari and suggestion falsi to waste the precious time of this Hon'ble Court and to cause mental torture, pain, agony and suffering to the answering defendant.

B. That the above said suit is filed by the **plaintiff only to unnecessary harass the answering defendant and to extort money out of the pocket** of the answering defendant dishonestly and fraudulently with ulterior motive and therefore, above suit deserve dismissal.

C. That the suit of the **plaintiff is false, frivolous and vexatious and the same is liable to be dismissed** after awarding the exemplary cost under section 35-A of CPC.

D. That the **plaintiff is alleging ridiculous claims without having any cause of action as no act** has been done by the answering defendant which has violated any right of the plaintiff.

E. That the suit of the plaintiff deserves dismissal under Order VII Rule 11 as the basis for which the plaintiff had shown **the cause of action has ever arose in favour of the plaintiff** and against the



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answering defendant to file the present suit. Further, the Plaintiff does not have any locus standi to file the present case.

F. That the present suit is not properly instituted. The plaintiff had instituted the present suit claiming that the, sale had been made by the defendant through, GPA which as per the law is not the valid sale. That is, any sale made through the General power of Attorney is not valid. The Supreme Court in Suraj lamp & Industries Pvt. Ltd. Versus State Of Haryana & Anr. 2011 SC had categorically stated that the GPA is not an instrument of transfer when it comes to right; title and interest in an immovable property. Thus, if the property has been purchased through the execution of the GPA and not by the way of the registered sale deed, then the buyer will not be considered the legal owner of the property. Thus, no cause of action has ever arisen in favour of the plaintiff and thus, deserves dismissal of the suit.

[Emphasis Supplied]

7.1 As stated above, paragraph 2A to E do not fall under any of the sub-Sections of Order VII Rule 11 of the CPC. So far as paragraph 2F is concerned i.e. that the GPA sale is not valid in terms of the **Suraj Lamp** case, it would be a plea which, at best, can be considered to be a defence of the Respondent, thus not amenable to adjudication at this stage.

8. An examination of the Complaint as filed shows a cause of action subsists. The suit as has been filed by the Respondent/Plaintiff is for possession, permanent injunction and mandatory injunction based on the documents executed by the Respondent/Plaintiff with the Petitioner/Defendant. It is the case of the Respondent/Plaintiff that a sale consideration in the sum of Rs. 45 lacs have also been paid and possession of the suit property was transferred. Subsequently, the Petitioner/Defendant requested for permission to reside in the suit property in view of the COVID pandemic and has not vacated thereafter. The Respondent/Plaintiff has also filed documents in



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support of the sale. Thus, a clear cause of action subsists.

9. It will also be apposite, in the circumstances of the present case to examine Section 53A of the Transfer of Property Act, 1882 [hereinafter referred to as "TP Act"]. Section 53A of the TP Act provides a "shield" for a transferee (buyer) of immovable property who has taken possession based on a contract, even if the transfer is not formally completed or registered. It prevents the transferor (seller) from ejecting the transferee from the property if the transferee has performed their part of the contract or is willing to do so. Section 53A of the TPA reads as follows:

"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 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."

[Emphasis Supplied]

9.1 The Supreme Court in *Nanjegowda and Anr. v. Gangamma & Ors.*³, held that for a party to take shelter under Section 53-A, following conditions

³ (2011) 13 SCC 232



are required to be fulfilled:

- (i) The contract should have been in writing signed by or on behalf of the transferor;
- (ii) The transferee should have obtained possession of the immovable property covered by the contract;
- (iii) The transferee should have done some act in furtherance of the contract; and
- (iv) The transferee has either performed his part of the contract or is willing to perform his part of the contract.

9.2 The relevant extract of the *Nanjegowda & Anr.* case is set out herein below:

“9. From a plain reading of the aforesaid provision, it is evident that a party can take shelter behind this provision only when the following conditions are fulfilled. They are:

(i) The contract should have been in writing signed by or on behalf of the transferor;

(ii) The transferee should have got possession of the immovable property covered by the contract;

(iii) The transferee should have done some act in furtherance of the contract; and

(iv) The transferee has either performed his part of the contract or is willing to perform his part of the contract.

A party can take advantage of this provision only when it satisfies all the conditions aforesaid. All the postulates are sine qua non and a party cannot derive benefit by fulfilling one or more conditions.”

[Emphasis Supplied]

10. As stated above, the Respondent/Plaintiff has in the plaint averred that he has purchased the suit property by entering into an Agreement to Sell dated 23.04.2021 for a sale consideration of Rs.45 lacs which has been paid to the Petitioner/tenant and that possession of the suit property was also



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transferred in terms of Agreement to Sell. Thus, and in view of the provisions of Section 53A of the TP Act, rights have accrued in favour of the Respondent/Plaintiff would also require adjudication. Thus, the suit as filed by the Respondent/Plaintiff does disclose a cause of action and cannot be dismissed at the threshold stage.

11. In view of the above, this Court finds no infirmity with the Impugned Order.

12. The Petition is, accordingly, dismissed. All pending Applications also stand closed.

13. It is however clarified that this order has been passed without prejudice to the rights and contentions of the parties which are left open to be agitated before the learned Trial Court.

14. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 14, 2025

g.joshi /pa