



\$~2

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

+ **RFA 38/2020**

IRFAN SAIFI

S/o Md. Ramjane,
R/o House No. 98, Village - Sirodhan,
PO: Mathrawali, PS-Dholana,
District-Hapur (UP).

.....Appellant

Through: Ms. Surabhi Mahajan, Advocate

versus

1. **ASHOK BIDHURI**

S/o Sh. Bhuie,
R/o H. No. Bhangar Mohalla (Bhangar Chowk),
Village-Madanpur Khadar,
PO Sarita Vihar, New Delhi.

2. **SH. KAMAL CHAUHAN**

S/o Sh. Ranjit @ Khuda
R/o Chauhan Mohalla,
Village- Madanpur Khadar,
PO Sarita Vihar, New Delhi.

3. **MD. SHAHZAD**

S/o Noor Mohammad @ Fatwa
R/o H. No.C-49, Gali No.6, Block-C,
Near Samosa Chowk,
Madanpur Khadar Extn. Pt-I,
PO Sarita Vihar, New Delhi.

.....Respondents

Through: Appearance not given.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



ORDER

13.03.2026

%

1. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) has been filed on behalf of the Appellant against the Judgment dated 27.09.2019, whereby *the Suit of the Plaintiff for Declaration, Injunction and Possession* in respect of Suit Property admeasuring 300 square yards with built up construction situated in Khasra No. 731, Revenue Estate of Madanpur Khadar (*hereinafter referred to as the "Suit Property"*), ***has been dismissed on a preliminary issue about the maintainability of the Suit.***
2. As per the Plaintiff/Appellant, he is the owner of the Suit Property having purchased the same from one Rasheed S/o Babu *vide* notarized GPA, Agreement to Sell, Deed of Will, Possession Letter and Payment Receipt, *etc.*, all dated 13.07.2013. Rasheed in turn, had purchased the property from Mahabir Singh S/o Muse Ram *vide* two documents, one for 200 sq. yards, and another for 100 sq. yards, through registered GPA, Agreement to Sell, Will and receipt, all dated 03.02.2000.
3. The Plaintiff stated that he had been residing in his native village and used to frequently visit the Suit Property. On 01.01.2014 when he came to the property to have a picnic party. However, on 03.01.2014 between 6.30 a.m. and 7.00 a.m., the Defendants came with *gundas* and forcibly entered into the property. The Police was called and Defendant No. 4 asked the parties to come to the Police Station. Later, the Plaintiff came to know that Defendants No. 1 and 3 had forged documents in respect of the Suit Property and were trying to sell the same.
4. *The Plaintiff thus, filed the Suit bearing No. 11056 of 2016 (initially*



the case had been filed before this Court bearing Suit No. C.S.(O.S.) No. 426 of 2014 but had thereafter been transferred to the District Court) for Declaration to be declared as the owner of Suit Property; Decree of possession against the Defendants, and also for injunction to restrain the Defendants from creating the third-party interest in the Suit Property.

5. The Defendants in their **Written Statement**, took the *preliminary objection* that the Suit is not maintainable as Plaintiff is neither the owner nor in possession of the Suit Property. He has no *locus standi* as the documents on the basis of which he is claiming title over the Suit Property, were forged and fabricated, as well as being unregistered, have no value in the eyes of law.

6. A further objection was taken that the Suit was *bad for misjoinder of parties as Defendant No.2 and Defendant No.3 had no concern with the dispute*. The Plaintiff had also *not approached the Court with clean hands* since Defendant No.1 had purchased the Suit Property from Pushp Lata *vide* notarised GPA, *etc.*, on 30.12.2013, who in turn had purchased it from Mahabir Singh *vide* registered documents dated 15.05.2000.

7. **On merits**, all the averments made in the Suit, were denied.

8. In the **replication**, the Plaintiff reaffirmed and reiterated that it being an unauthorised colony, there are no fixed plot numbers, of which the advantage is being taken by the Defendants.

9. The formal issues were framed on 19.09.2016 as under:

(i) 'Whether Plaintiff is entitled to Decree of declaration of ownership in respect of Suit property, bearing no. Plot measuring 300 Sq. yards (Size 60 ft x 45 ft), with built up one room and boundary wall situated at Kanchan Kunj, Madanpur Khadar, Extn. Part-II, falling in Khasra no.



731 in Revenue State of Madanpur Khadar? OPP.'

(ii) Whether Plaintiff is entitled for the Decree of Possession of Suit Property? OPP.

(iii) Whether Plaintiff is entitled for Permanent Injunction thereby restraining the Defendants for selling, transferring and creating any third party interest in the abovesaid of the Suit Property? OPD.

(iv) Whether the Suit of the Plaintiff is liable to be dismissed as it is based on forged and fabricated documents in respect of the Suit Property? OPD.

(v) Whether the Plaintiff has no cause of action against the Defendants in filing the present Suit? OPD.

(vi) Relief.

10. Issue No. 1 was treated as a preliminary issue.

11. The learned District Judge, on the basis of record and after hearing the arguments, *concluded that the documents on the basis of which the Plaintiff is claiming to be an owner, cannot be looked into against the Defendant and therefore, the issue of maintainability of the Suit was decided against the Plaintiff and was dismissed.*

12. *Aggrieved by the said dismissal of the Suit, the present Appeal has been filed.*

13. The grounds of Appeal are that the Judgment is bad in law and on facts and is liable to be set aside. No fair chance has been given to the Plaintiff to adduce the evidence to prove its case in accordance with law.

14. It has not been appreciated that the Appellant who is a poor village carpenter, had paid Rs.12 lakhs as consideration for purchase of Suit Property. It has also not been considered that the site plan filed by the Defendants/Respondents is entirely different from the one filed by the



Appellant. It has not been appreciated that the Appellant has been forcibly dispossessed from the Suit Property by the Respondents, in collusion and connivance with the Police officials. The Appellant has been deprived of the Suit Property which legally belonged to him, by the Respondents by illegal and foul means. The facts and circumstances have not been correctly appreciated. *Hence, the prayer is made that the impugned Judgment be set aside.*

15. The learned Counsel for the Appellant has essentially argued on the similar lines as the grounds stated in the Appeal. It is submitted that the Appellant had come into possession of the Suit Property by virtue of Agreement to Sell, *etc.*, dated 14.07.2013. The Respondents are claiming the superior title on similar documents dated 30.12.2013. There is a discrepancy in the description of the property and the site plan. The Plaintiff was in legitimate possession of the Suit Property, though was illegally dispossessed on 03.01.2014. His documents of title being prior to that of the Respondents, he is entitled to the declaration; and at least protection of the possession as sought in the Suit.

16. Learned Counsel for the Respondents, who has appeared on an advance Notice, stated that the original owner from whom the Plaintiff as well as the Respondent has purchased the property is Mahabir. The Plaintiff/Appellant claimed that the property was sold by Mahabir to Rasheed from whom the Plaintiff has purchased the property by virtue of GPA, Agreement to Sell, *etc.*, dated 14.07.2013.

17. However, according to the Defendants, Mahabir Singh had sold the property to Pushp Lata from whom it has been purchased by the Defendants on 30.12.2013. It is asserted that the documents of the Respondents confer a



valid title on him and he is in possession by virtue of these documents and he cannot be dispossessed. It is further submitted that there are no substantial grounds of challenge raised in the terms of the Appeal and it is liable to be dismissed.

Submissions heard and record perused.

18. Plaintiff / Appellant has filed the *Suit seeking Declaration of ownership, Injunction and Possession* in respect of the Suit Property, on the basis of Agreement to Sell, GPA, Will and Receipt dated 14.07.2014, having purchased the property from one Rasheed, who had purchased the property through GPA, *etc.* on 03.02.2000 from Sh. Mahabir Singh.

19. On the other hand, Respondents were also claiming ownership in the Suit Property on the basis of similar set of documents i.e. GPA, Agreement to Sell, *etc.*, having purchased the property from Pushp Lata on 30.12.2013, who had in turn, purchased the property from Sh. Mahabir Singh on 15.05.2000.

20. What thus, emerges from these rival documents of Appellant and Respondents, is that both have allegedly purchased the Suit Property on the basis of Agreement to Sell, GPA *etc.* and both trace their chain of ownership from Mahabir Singh. The Documents placed on record further reflect that *Mahabir Singh purchased this property from Shiv Ram*, through GPA dated 15.04.1999.

21. Pertinently, in none of these two chains of documents, is there any mention about who was the original owner or allottee of the Suit Property. There being no complete chain of documents; neither the Appellant nor the Respondents have any conventional document of Sale Deed in their favour,



in their respective chain of documents of ownership.

22. The next question is what is the evidentiary value of these documents, executed in favour of the Plaintiff /Appellant and whether they create any ownership right in respect of the Suit Property in favour of the Appellant. The first document relied upon by the Appellant, is Agreement to Sell dated 14.07.2013, but it needs no reiteration that mere Agreement to Sell may confer the right to get a Sale Deed executed or to seek Specific Performance of Agreement to Sell, but *per se*, it does not create any right, title or interest in the Suit property, in favour of the Appellant / Plaintiff.

23. Likewise, *Receipt and GPA, etc.* may only be auxiliary documents in respect of Agreement to Sell creating a right of getting a Sale Deed executed, but they do not create any ownership right in favour of the Plaintiff / Appellant and no Declaration of ownership on the basis of these documents, can be made in favour of the Appellants.

24. **Section 54 of the Transfer of Property Act, 1882** (*Hereinafter referred to as "TPA"*) provides that any transfer of ownership rights in any Suit Property, can only be by way of Registered Sale Deed.

25. In this regard, learned District Judge has rightly relied upon Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr., SLP (C) No.13917/2009, wherein it has been held that sale of an immovable property can only be *vide* registered documents. Only legal proceedings, in which the unregistered documents can be relied upon, are for Specific Performance of contract, as per the amended Registration Act. Recognizing such a transaction as that of Sale, would be ignoring the laws of the land and accepting illegal / fraudulent transactions against the exchequer, as requisite stamp duty has not been paid.



26. In the present case, as has been noted above, the same plot of land has been exchanging hands from one party to other, on the basis of Agreement to Sell, Receipt, *etc.*, without there being any legal basis and without establishing as to who is the legal owner of the Suit Property and whether indeed any of the prior GPA Holders had any ownership right in the Suit Property. It may be a hard case, where Plaintiff / Appellant may have entered into some transaction, but the same is not in accordance with law and he cannot take benefit of such documents.

27. Defendants may also be having similarly inchoate documents, but it is the Plaintiff herein, who is claiming right, title and interest in the Suit Property. *Learned District Judge has rightly held that the Plaintiff cannot be held entitled to Declaration of ownership and this relief was rightly declined.*

28. The next question, which may be of significance, *is the right of protection of possession on the basis of these documents.* Section 53A TPA recognizes the protection of possession, on the basis of these documents. However, in order to claim protection, requisite documents through which an interest is asserted to be created in the Suit Property, has to be necessarily registered.

29. Unfortunately, in the present case, neither the Agreement to Sell nor Receipt are registered and therefore, no benefit of Section 53A TPA can be claimed by the Appellant. Even otherwise, it is the admitted case of the Appellant that he is not in possession of the Suit Property. He claims that he was forcibly dispossessed on 04.01.2014 for which, he had even made a Complaint to the Police. *Once he has lost the possession, he is not even entitled to protection of Possession or Permanent Injunction, when he has*



no documents of title / ownership in his favour.

30. Learned District Judge has rightly, dismissed the Suit of Plaintiff / Appellant.

31. There is no merit in the Appeal, which is hereby, dismissed along with pending Applications.

NEENA BANSAL KRISHNA, J.

MARCH 13, 2026/N/R