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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 30th September, 2024

+ C.R.P. 266/2023, CM APPL. 49546/2023

SMT. MADHU BALA & ANR.Petitioner

Through: Mr. B.D. Sharma, Advocate.

versus

SMT. DEEPIKA ARORARespondent

Through: Mr. Rajeev Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. A Civil Revision Petition under Section 115 of the CPC has been filed on behalf of the petitioners to challenge the Order dated 20.12.2022 vide which the Application under Order VII Rule 11 read with Section 151 CPC filed by the petitioners/defendants, has been dismissed.
2. The respondent/plaintiff had filed a Suit for Possession, Permanent and Mandatory Injunction and Mesne Profits in respect of Plot No.46-47, measuring 50 sq. yds. out of Khasra No.360, situated in the area of Revenue Estate, Deendarpur, Colony known as Deendarpur Extension, New Delhi (hereinafter referred to as the “suit property”). The plaintiff/ respondent had claimed herself to be the absolute owner of suit property by virtue of unregistered Agreement to Sell, General Power of Attorney, Affidavit, etc. all dated 06.12.2004.
3. The petitioners/ defendants filed an Application under Order VII Rule 11 CPC for rejection of the suit on the ground that the respondent had no

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documents or title in her favour. In fact, the petitioners/ defendants had purchased the suit property vide GPA, Agreement to Sell etc. in the year December, 2012 from the erstwhile owner and since then are in possession of the suit property. The electricity connection earlier was in the name of the erstwhile owner Shri Ravinder and after purchase of property, the petitioner No.1 Madhubala had got it changed in her name. Prior to Shri Ravinder the electricity connection was in the name of Shri Suraj Pal.

4. The petitioner/defendant had challenged the title of the plaintiff by asserting that these are all notarized documents and do not create any right, title or interest in favour of the plaintiff. Furthermore, the entire plaint is silent about the date on which the respondent got allegedly dispossessed from the suit property, but has only claimed that she came to know about her loss of possession on 17.09.2015 when she visited the property and found the petitioners in possession. Plaintiff also found that petitioner No.1/defendant had got an Electricity Meter installed in his name. It is asserted that from the averments made in the plaint, it is evident that the plaintiff had never visited the suit property prior to 17.09.2015. The record also reflects that she was never in possession of the suit property.

5. It is claimed that the suit did not disclose any cause of action for which Application under Order VII Rule 11 read with Section 151 was filed for rejection of plaint. However, the Application was dismissed on 20.12.2022. The Review under Order XXXVII Rule 1 CPC was filed by the petitioners, which was dismissed vide Order dated 20.12.2022.

6. Aggrieved by the said Orders, the present Revision Petition has been filed challenging the Order dated 20.12.2022 rejecting the Application under Order VII Rule 11 CPC. Reliance has been placed on the case of Suraj



Lamp Industries Pvt. Ltd. vs. State of Haryana & Anr.

7. *Learned counsel on behalf of the respondent/plaintiff* submits that the respondent has valid documents of purchase of the property dated 06.12.2004. It is further submitted that there are sufficient particulars detailed in the plaint which entitle the respondent to seek recovery of possession.

8. **Submissions heard.**

9. The respondent-plaintiff has filed the Suit for Possession, Permanent and Mandatory Injunction and Mesne Profits in respect of the suit property.

10. The case of the respondent-plaintiff is that he acquired the ownership of the suit property by virtue of GPA, ATS, Affidavits etc., dated 06.12.2004.

11. Before advertiring to the other contentions, it is pertinent to consider whether these documents create any ownership right in favour of the respondent-plaintiff in respect of the suit property.

12. In Rambhau Namdeo Gajre vs. Narayan Bapuji Dhotra, (2004) 8 SCC 614, it was observed that an Agreement to Sell does not create any interest of the proposed vendee in the suit property. As per Section 54 of TPA, 1882 the title in immovable property valued at more than Rs. 100, can be conveyed only by executing a registered Sale Deed. This Section specifically provides that a contract for sale of immovable property is a contract evidencing the fact that the sale of such property shall take place on the terms settled between the parties, but does not by itself create any interest in or charge on such property. Unless a registered document of Sale is executed pursuant to the Agreement to Sell in favour of the proposed transferee, the title of the suit land continues to vest in the original owner



and the property remains in his ownership.

13. The doctrine of part performance can be availed by the proposed transferee against the Transferor or any person claiming under him but not against the third party with whom he does not have any privity of contract.

14. The scope of Agreement to Sell and the right, title and interest which are created under an Agreement to Sell was explained by the Apex Court in *Suraj Lamp and Industries Private limited vs. State of Haryana* (2012) 1 SCC 656. It was held that the Agreement to Sell coupled with other documents namely Special Power of Attorney, General Power of Attorney, is only a transaction of transfer or Sale and cannot be treated as a complete sale or conveyance. They may continue to be treated as existing Agreement to Sell and nothing prevents the affected parties from getting registered deeds of Conveyance to complete their title. These documents may even be used to obtain Specific Performance or to defend possession under Section 53A of the TPA, 1882 or may also be used to apply for regularization of allotments/leases by Development Authorities. However, the Agreement to Sell independently continues to be only an Agreement and does not create any valid transfer of ownership in the suit property.

15. In *Rekha Nankani vs. Kulwant Singh Sachdeva and Ors.* (2009) 107 DRJ 282, this Court observed that if a property was bound by the Agreement of the owner/vendor, then merely because the vendor had transferred the property, the transferee shall not acquire rights better than that of the vendor and shall be subject to the liability of the vendor. Similar observations were made by the High Court of Allahabad in *Smt. Ram Peary vs. Gauri and Ors.*, AIR 1978 All 318.

16. In the light of the aforesaid judgments, it is abundantly clear that mere



ATS, GPA etc., would not create any title in the nature of ownership of the suit property by virtue of which the respondent-plaintiff could have filed a Suit for Possession against the third party.

17. Pertinently, the respondent-plaintiff has not been able to place any document to show that he had come into the possession of the suit property, pursuant to the aforementioned documents. Admittedly, the respondent-plaintiff is not in possession of the suit property as he has claimed that when he visited the suit property on 17.09.2015, he found the locks of the suit property broken into which the appellants herein had trespassed. To claim that the suit property was ever in his possession, the respondent-plaintiff has failed to produce any document which may be by nature of electricity and water bill, Aadhar Card of any other such document in support thereof. There are only bald assertions made that the respondent-plaintiff had got the possession of the suit property by virtue of ATS, GPA, etc.

18. Having observed that there is no right, title or ownership right created in respect of the suit property and the respondent-plaintiff cannot maintain a Suit for possession against a third party on the basis of the ATS, etc. At best, such documents may enable a person to seek protection of possession against the person who has executed these documents in his favour under S.53A TPA, but the plaintiff has also not been able to show that he was ever in possession of Suit property.

19. The essential conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53A of the TPA, 1882 have been explained by the Apex Court in Shrimant Shamrao Suryavanshi vs. Pralhad Bhairoba Suryavanshi (2002) 3 SCC 676 which



are:

- “1. There must be a contract to transfer for consideration of any immovable property;*
- 2. The contract must be in writing, signed by the transferor, or by someone on his behalf;*
- 3. The writing must be in such words from which the terms necessary to construe the transfer can be ascertained;*
- 4. The transferee must in part-performance of the contract take possession of the property, or of any part thereof;*
- 5. The transferee must have done some act in furtherance of the contract;*
- 6. The transferee must have performed or be willing to perform his part of the contract.”*

20. Section 53 of the Transfer of Property Act only protects the possession of a person and does not create any title or ownership in the property. Unfortunately, the respondent-plaintiff is admittedly not even in possession of the suit property and Section 53A of the Transfer of Property Act can also not be invoked in his favour.

21. Learned counsel for the appellants-defendants has rightly contended in the Application under Order VII Rule 11 of the Code of Civil Procedure, 1908, that there is no cause of action disclosed in the Plaintiff.

22. The respondent-plaintiff has not been able to establish his title superior to the appellants-defendants to be able to claim the recovery of possession. There is no cause of action disclosed by the respondent-plaintiff in the Plaintiff.

23. The present revision petition is allowed and the impugned Orders i.e., impugned Order dated 20.12.2022, whereby the Application under Order



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VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 filed by the appellants-defendants has been dismissed and the impugned Order dated 09.08.2023, whereby the Review Application filed by the appellants-respondents seeking review of the Order dated 20.12.2022 has been dismissed, are set aside and the Suit of the respondent-plaintiff is rejected.

24. Accordingly, the present petition is disposed of.

NEENA BANSAL KRISHNA, J

SEPTEMBER 30, 2024

va/S.Sharma

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Signing Date: 04.10.2024
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