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CS 181/25
Aekta Jain Vs. Divas Walia

11.09.2025

Present : Sh. Hitesh Bhardwaj, Ld. counsel for plaintiff.
Sh. Ashwani, Ld. Counsel for defendant (through
VC).

1. Today, the matter is fixed for order on application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) filed on behalf of the plaintiff. The Ld. Counsel for the parties have already advanced their argument on the aforesaid application.

2. The present suit is a suit for declaration and permanent injunction filed by the plaintiff against the defendant in respect of the built-up *upper ground floor* of the property bearing no. 101 measuring area 98 sq. yards, out of khasra no. 25 to 53, situated in the layout plan of Guru Ram Dass Nagar, Laxmi Nagar in the area of village Khureji Khas, Illaqa Shahdara, Delhi-110092 (hereinafter referred to as “suit property”). The present suit has been filed by the plaintiff through her Special Power Attorney Smt. Mala Jain vide SPA dated 09.03.2025. Smt. Mala Jain also happens to be the mother-in-law of the plaintiff. Copy of notarized Special Power of Attorney dated 09.03.2025 in favour of Smt. Mala Jain is placed on record.

3. It is averred on behalf of the plaintiff that the plaintiff is the absolute owner of the property bearing no. 101 measuring area 98 sq. yards, out of khasra no. 25 to 53 situated in the layout plan of Guru Ram Dass Nagar, Laxmi Nagar in the area of village Khureji Khas, Illaqa Shahdara, Delhi-110092 by virtue of the registered Gift Deed dated 24.09.2019 registered on 30.04.2019 executed by her husband Sh. Shashank Jain in her favour. It is further averred that the aforesaid built up property is in actual physical possession of the plaintiff except the second floor. The second floor of the aforesaid property is in possession of the defendant's father and his family members.

4. In the present suit, the plaintiff has prayed for a declaration of the sale deed registered vide registration no. 2024/5/I/5528 in book no. I, Vol. no. 3510, page no. 33 to 52 dated 09.07.2024 executed in respect of the suit property as invalid and null and void ab initio and illegal by averring that the sale deed has been executed in favour of the defendant by impersonating a third person as Smt. Mala Jain used a fake Aadhar card and a PAN card. Plaintiff has also prayed for a permanent injunction in favour of the plaintiff and against the defendant, restraining the defendant from claiming himself to be the owner of the property and also from creating a third-party interest in the suit property.

5. It is also stated on behalf of the plaintiff that the Aadhar card and PAN card, as mentioned in the registered sale deed dated 09.07.2024 in favour of the defendant, are not of Smt. Mala

Jain. It is further averred that Smt. Mala Jain was not in India at the relevant time when the sale deed was executed and registered in favour of the defendant on 09.07.2024, as she had been visiting the plaintiff in the USA on 24.05.2024 and returned to India on 20.11.2024. It is further submitted that Smt. Mala Jain has never been the owner of the suit property, nor was she ever conferred any power to transfer the suit property by its owner, i.e., the plaintiff. It is further submitted that the SPA, on the basis of which the present sale deed has been executed, does not confer power on Smt. Mala Jain to execute the sale deed in favour of the defendant in respect of the suit property.

6. It is further averred that if the defendant manages to create a third-party interest in the suit property, the plaintiff shall suffer irreparable loss which cannot be compensated in terms of money, as the present suit shall become infructuous.

7. The defendant contested the suit by filing a written statement as well as a reply to the application under Order XXXIX Rule 1 and 2 of CPC. It is averred on behalf of the defendant that Smt. Mala Jain approached the respondent with the intention to sell the property no. 101, *second floor*, measuring 98 sq. yds, situated within khasra no. 25 to 53, as per layout plan of Guru Ram Dass Nagar, Laxmi Nagar in the area of village Khureji Khas, Illaqa Shahdara, Delhi-110092 asserting ownership of the said property and presented ownership document in her name to the defendant in evidence of title; that

the defendant had agreed to purchase the aforesaid property for a total consideration of Rs. 20,05,000/- from Smt. Mala Jain, and following negotiations regarding the suit property, Smt. Mala Jain consented to the transaction; however, she stipulated one condition before the defendant, that the entire amount for the suit property must be paid in cash; that the defendant, having acknowledged and accepted this condition, agreed to proceed with the transaction accordingly; that the defendant has arranged the aforesaid amount of Rs. 20,05,000/- in cash for the purchase of the suit property, and a portion of this amount has been sourced by the defendant from family and friends to facilitate the transaction.

8. It is further averred that on 08.07.2024, the defendant approached Smt. Mala Jain for the purchase of the suit property. In response, Smt. Mala Jain executed a Sale Deed in favor of the defendant, which was duly registered under Registration No. 2024/5/1/5528 in Book No. 1, Volume No. 3510, Pages 33 to 52, on 09.07.2024, at the office of the Sub-Registrar, Preet Vihar, East Delhi. The execution of the Sale Deed took place in the presence of witnesses Shri Vishal and Shri Nitesh Kumar. Prior to registration, the defendant made the payment of Rs. 20,05,000/- in cash to Smt. Mala Jain. After the execution of the Sale Deed between Smt. Mala Jain and the defendant, Smt. Mala Jain failed to deliver possession of the suit property to the defendant and did not return the amount received for the

transaction. Furthermore, Smt. Mala Jain is no longer present in the local area of the defendant, rendering her untraceable.

9. Submissions heard. Record perused.

10. The plaintiff has alleged forgery and fraud against the defendant in execution of the impugned sale deed dated 09.07.2024 by impersonating Smt. Mala Jain, before concerned Sub-Registrar. The said allegation are based on averment that that the so called power of attorney holder Smt. Mala Jain was not physically present in India on the date of execution and registration of the impugned sale deed as she was in the USA during the relevant period. The plaintiff has filed a copy of the passport of Smt. Mala Jain in support of her contention. Further, the plaintiff has also asserted that the Aadhar and PAN numbers mentioned in the impugned sale deed do not belong to Smt. Mala Jain and the plaintiff filed the record Aadhar card and PAN card of Smt. Mala Jain, which bear Aadhar and PAN numbers different from those mentioned on the impugned sale deed. Furthermore, the special power of attorney dated 11.04.2019 on the basis of which the defendant alleges that the Smt. Mala Jain executed the sale deed in question in favour of the defendant, does not authorise Smt. Mala Jain to execute the sale deed on behalf of the plaintiff in respect of the suit property in favour of any person. Moreover, it is seen that in the written statement, the defendant claims that the entire payment was made in cash, whereas the impugned sale deed recites that the payment of Rs.

20,05,000/- was made by way of cheque bearing no. 078464 dated 05.07.2024.

11. Further, the defendant claims Smt. Mala Jain approached him with intention to sell the property no. 101, *second floor*, measuring 98 sq. yds, situated within khasra no. 25 to 53, as per layout plan of Guru Ram Dass Nagar, Laxmi Nagar in the area of village Khureji Khas, Illaqa Shahdara, Delhi-110092, asserting ownership of the said property and presenting ownership document in her name to the defendant in evidence of title. The said claim of the defendant appears to be not tenable on several grounds. Firstly, the impugned sale deed was executed for the *upper ground floor* of the said property, not for the second floor. Secondly, in view of the fact that the impugned sale deed mentions Ms Aekta Jain as the owner of the property and Smt. Mala Jain as her attorney, therefore, there is no question of Smt. Mala Jain presenting documents of her ownership to the defendant. Thirdly, the defendant failed to provide any details about the papers presented by the Smt. Mala Jain in support of her assertion of ownership of the suit property. Moreover, in the written statement, the defendant admits that the Smt. Mala Jain failed to deliver possession, whereas in the sale deed in question, it is mentioned that the vendor has delivered peaceful and vacant possession of the suit property.

12. For the foregoing facts and circumstances of the present case, the plaintiff has a prima facie case in her favour. The

balance of convenience also lies in favour of the plaintiff. Further, if the defendant is not restrained from creating a third-party interest in the suit property, irreparable loss shall be caused to the plaintiff. and the same shall result in multiplicity of litigation and multiplicity of parties.

13. Therefore, the court is of the view that the suit property needs to be preserved till the pendency of the present suit. **Hence, the instant application under Order XXXIX Rule 1 and 2 of CPC stands allowed,** and the defendant, his legal heirs, agents, attorneys, representatives, family members, etc., are restrained from transferring, alienating, selling, creating third-party interest of any manner in respect of the suit property till the pendency of the present suit. Further, the defendant, his legal heirs, agents, attorneys, representatives, family members, etc., are also restrained from interfering with the plaintiff's possession of the suit property till the pendency of the present suit.

14. Put up for filing of affidavit of admission/denial of the documents and framing of issues on **29.10.2025**.

Nothing stated herein is tantamount to the expression of opinion on the merits of the present case.

(SOMITRA KUMAR)
DJ-06,EAST/ KKD COURTS
DELHI/11.09.2025 (s)