

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE-03  
EAST DISTRICT, KARKARDOOMA COURTS: DELHI.**

**Presided by : SH. RAJESH KUMAR.**

**Civil Suit No. 818/16**

**SH. VIRENDER SINGH,**

**.....Plaintiff**

**Vs.**

**SHRI HARPAL SINGH  
11.07.2023**

**..... Defendant**

Present:                Shri Mukesh Sharma, Id. counsel for plaintiff.  
                              Shri Swaran Singh, Id. counsel for defendant.

**ORDER ON MAINTAINABILITY**

**1.**            The plaintiff has filed the present suit for possession, recovery of damages/ mesne profit and permanent injunction against the defendant. It is stated in the plaint that defendant-Harpal Singh is the real brother of the plaintiff and has been residing at the second floor, while the plaintiff has been residing at the ground and first floors of the property in question. The plaintiff has purchased a property measuring 11-1/4 sq yards situated at property no. 19/197, Kalyanpuri, Delhi-110091 (hereinafter referred as suit property) for a consideration of Rs.1,20,500/- from the defendant by executing the notarized General Power of Attorney, Agreement to Sell, Receipt all dated 13.10.2003 between the defendant- Harpal Singh and plaintiff and by virtue of said sale documents, the plaintiff has become the

owner of the suit property. It is further stated that at the time of execution of the aforesaid sale document by the defendant in favour of plaintiff, the defendant- Harpal Singh agreed to handover the peaceful and vacant possession of the suit property to the plaintiff within two months. Since the month of December, 2003, the plaintiff has been requesting the defendant to vacate and to handover the peaceful and vacant possession of the said property to him but on each time, defendant- Harpal Singh made one pretext or the other and the plaintiff showed full faith in the defendant. Plaintiff requested the defendant many times to handover the possession but the defendant did not hand over the possession of the suit property. Finally on 13.09.2013, defendant flatly refused to hand over the possession of the suit property to the plaintiff. On 20.09.2013 plaintiff sent a legal notice to the defendant to give vacant and peaceful possession of the suit property but defendant did not hand over the possession and sent frivolous reply. Hence, the present suit is filed by the plaintiff.

2. Written statement was filed by the defendant- Harpal Singh . In the written statement, the defendant contended that suit of the plaintiff is liable to be dismissed as the plaintiff has not come to the court with clean hands. It is also contended by the defendant that on 31.10.2007, suit property (no.19/197, Kalyanpuri, Delhi-91) was got sold out by the plaintiff, when property no. 12/23, Kalyanpuri, Delhi-91 was purchased. Defendant also contends that the plaintiff had also signed the agreement to sell of the suit property.

Defendant also contends that the defendant never executed any GPA in favour of the plaintiff but the same has been forged by the plaintiff. Defendant further denied all other allegations as made in the plaint by the plaintiff, and prayed that suit of the plaintiff be dismissed.

3. Perusal of the record shows that during pendency of the suit, it was submitted by the defendant that suit property has already been sold to one person Suraj. Plaintiff during pendency of the suit filed an application u/o 1 rule 10 r/w section 151 CPC. Written statement on behalf of defendant no.2 Suraj was filed. Defendant-Suraj in his written statement contended that he had purchased the suit property from plaintiff Virender Singh and defendant-Harpal Singh for a total consideration of Rs.5,50,000/- in the year 2007. Defendant no.2-Suraj also stated that in the same year he further sold the suit property to someone for a total consideration of Rs. 6 lakhs but he did not remember the name of the person to whom the suit property was sold. Defendant no.2 also stated that plaintiff had signed the agreement/biyan receipt at the time of sale agreement. Defendant no.2 also contended that the property dealer had first introduced the defendant-Suraj with the plaintiff and defendant no.1 came later on in picture.

4. Defendant-Suraj stopped appearing before the court. During pendency of the suit, it was contended by the counsel for defendant that defendant Harpal Singh is not in possession of the suit property as such present suit for possession, damages/ mesne profit and injunction cannot lie

against him. It is therefore prayed on behalf of the defendant that present suit be dismissed.

5. On behalf of plaintiff, it is claimed that the defendant Harpal Singh executed various transfer documents i.e. notarized GPA, Agreement to Sell and receipt all dated 13.10.2003 in favour of plaintiff qua the suit property and hence the plaintiff has become absolute owner of the suit property. Plaintiff also claims that the defendant no.1 Harpal Singh made false and frivolous averments in his written statement that he sold out the suit property to Suraj (defendant no.2). Plaintiff also claims that defendant no.2 Suraj is in collusion with the defendant no.1 and is acting at the instance of defendant no.1. Plaintiff also stated that defendant no.2 in his written statement stated that he sold the suit property to some other person but surprisingly he did not given name and other particulars of proposed purchaser. Plaintiff also stated that it is not understood as to how a person forget that name of the purchaser to whom he sold the property. It is prayed by the plaintiff that present suit is maintainable.

6. Arguments heard at length on either side.

7. Perusal of record shows that plaintiff has filed the present suit for possession of the suit property, damages and permanent injunction. According to plaintiff, defendant no.1 Harpal Singh his brother and in the year 2003 he sold the suit property to him and notarized transferred documents were also executed in his favour. According to plaintiff, he never received possession of the suit property. Plaintiff claims that

despite repeated requests, defendant-Harpal Singh did not hand over the possession of the suit property. Defendant Harpal Singh stated that plaintiff himself got sold the suit property to defendant no.2 Suraj in the year 2007 and agreement to sell was also signed by the plaintiff. Defendant no.2-Suraj also stated that in the year 2007 he purchased the suit property from plaintiff-Virender Singh and defendant Harpal Singh and agreement to sell was signed by the plaintiff. Defendant-Suraj also stated that in the same year, he further sold the suit property to one person whose name he did not remember. The issue as to whether plaintiff and defendant Harpal Singh sold the suit property to Suraj is subject matter of trial. Defendant-Harpal Singh alongwith the written statement has filed one agreement to sell/ biyana receipt which according to defendant bears signatures/ thumb impression of plaintiff. The issue as to whether this document created any ownership in favour of defendant-Suraj is subject matter of trial. No other documents have been filed in order to show that the suit property was sold to defendant no.2 Suraj. Even defendant no.2 Suraj did not file any document to show that suit property was further sold to some other person. Defendant no.2-Suraj even failed to disclose the name of person to whom the suit property was sold. The defendant-Harpal Singh had also claimed that he never executed any GPA in favour of the plaintiff and same have been forged by the plaintiff. The issue as to whether plaintiff became the owner of the suit property or not is also subject matter of trial. Hence, all the contentions raised by

the defendant-Harpal Singh are subject matter of trial. Hence, there is no merit in the contention of the defendant-Harpal Singh that suit is liable to be dismissed. In view of above, this court is of the view that suit is maintainable.

Put up for admission & denial of documents and framing of issues on 12.09.2023.

(Rajesh Kumar)  
Addl District Judge-03  
East/KKD/Delhi/11.07.2023