

**IN THE COURT OF AASHISH GUPTA, DISTRICT JUDGE-01,
NORTH-EAST DISTRICT, KARKARDOOMA COURTS, DELHI**

In the matter of

CS No. 68/19

CNR No. DLNE010008962019

Mr. Satya Pal Singh,
Son of Late Sh. Hari Ram,
R/o- H. No. T-235, Gali No.-3,
Gautampuri, Delhi-110053.

Versus

1. Mr. Bhupendra,
S/o Sh. Ram Charan,
R/o- H. No.-X-97,
Gali No.-13, X Block,
Brahampuri, Delhi-110053.
2. Sh. Gaurav Sharma,
S/o Radhey Shyam Sharma,
R/o- H. No.-X-97, Gali No.-13,
X Block, Brahampuri, Delhi-110053.

Date of institution : 28.02.2019
Reserved on : 20.02.2026
Date of Decision : 17.03.2026

JUDGMENT

Plaintiff's claim

1. Plaintiff is stated to have friendly relations with D-1 and this led him to lend money to D-1 between 2015 and 2016. The money was not repaid.
2. Eventually, in July 2017, D-1 told the plaintiff that he wants to sell property/house bearing No. X-97, Gali No. 13, X-Block, Brahmpuri, Shahdara, Delhi-110053 measuring 67 sq yards (hereinafter referred to as '**suit property**'). The said property is shown in red in the site plan filed with the plaint. This led the plaintiff agreed to purchase the said property from D-1 for a total consideration of Rs. 44,50,000/- and an agreement dated 19.07.2017 was entered between them. The said agreement is hereinafter referred to as '**agreement in question**'.
3. Plaintiff claims that he has paid the entire agreed amount to D-1 and it was agreed between them that the sale deed of the suit property shall be executed after no objection certificates from the concerned departments/authorities are obtained.
4. Plaintiff claims that after the said agreement was made, D-1 requested the plaintiff to allow D-1 to continue to occupy the suit property and thus, on the same date i.e. 19.07.2017 a rent agreement was entered between the parties. The said rent agreement is

hereinafter referred to as '**rent agreement-1**'. The agreed rent is stated to be Rs. 10,000/- per month.

5. Eventually, on 22.06.2018, another registered rent agreement was also entered between plaintiff and D-1 wherein the rent was increased to Rs. 15,000/- per month. This rent agreement is hereinafter referred to as '**rent agreement-2**'. The said rent agreement is stated to have been for a period from 01.07.2018 to 01.07.2021.
6. Plaintiff claims that under the rent agreement-2, rent was paid to him by D-1 till December 2018. But, on 03.01.2019 when he visited the property, he found that D-1 has handed over the possession of the suit property to D-2. The said act of D-1 is stated to be illegal and unauthorised.
7. As per plaintiff, he never gave the property to D-2 on rent or otherwise and thus, D-2 is in illegal occupation of the suit property. Plaintiff claims that he terminated the rent agreement of D-1 vide a legal notice dated 31.01.2019 wherein he demanded the arrears of rent of the month of January 2019 and also asked D-1 to perform the agreement in question.
8. It is the case of the plaintiff that under the agreement to sell, he has already made the entire payment to D-1 and thus, D-1 should be directed to specifically perform the said agreement by executing the necessary sale deed in his favour.

9. Additionally, the relief of possession qua defendants is also sought. Plaintiff has also prayed for a decree of declaration against D-1 that plaintiff is the absolute legal owner of the suit property.
10. In case the above reliefs are denied to the plaintiff, in the alternative, plaintiff wants a decree of Rs. 44,50,000/- be passed in his favour (with interest); with the said money payable by D-1.
11. Plaintiff further prays that in view of the terms of rent agreement-2, D-1 and D-2 should be directed to pay arrears of rent for two months w.e.f January 2019 @ Rs. 15,000/- per month with interest.
12. Plaintiff further prays for a decree of damages/mesne profits @ Rs. 5000/- per day against the defendants.
13. Plaintiff has also sought a decree of permanent injunction restraining the defendants from *inter alia* creating any third party interest in the suit property.

Defendants' claim

14. D-1 never entered appearance despite service and was eventually, proceeded ex-parte vide order dated 19.11.2019.
15. Only D-2 contested the suit and he claims that the suit property actually belongs to one Yashpal Rawat. D-2 claims that D-2 is a tenant of Yashpal Rawat and therefore, he has legal possession of the suit property.

16. It is pertinent to note that as per a tabulation given in para 4 under the heading 'preliminary objections' of the written statement of D-2, Yashpal Rawat is stated to hold a registered GPA with consideration dated 24.12.2018 in his name qua the suit property. This GPA is stated to have been executed by Bhupender S/o Ram Chand Sharma. This person i.e. Bhupender is D-1.
17. In other words, as per the pleaded case of D-1, Yashpal Rawat traces his title to D-1 only. While plaintiff claims that he has an agreement to sell with D-1 dated 19.07.2017, as per D-2, D-1 executed a registered GPA in favour of Yashpal Rawat on 24.12.2018 and on the basis of said GPA, now Yashpal Rawat is the owner of the suit property and D-2 occupies it as tenant of said Yashpal Rawat.
18. It is pertinent to note that D-2 does not specify in his written statement the time when he was inducted as tenant in the suit property; the rate of rent; or any other terms of the rent agreement between him and Yashpal Rawat. I may note that no document whatsoever has been filed on record by D-2 to substantiate his claim of Yashpal Rawat being the owner of the property or thereafter he being the tenant of Yashpal Rawat.
19. I shall come back to this aspect of the matter in a little while.
20. Additionally, D-2, in his written statement claims that since the agreement to sell in question between plaintiff and D-1 is an

unregistered document, the same cannot be relied upon by the plaintiff in light of Section 53A of Transfer of Property Act, 1882.

Issues framed:

21. After completion of pleadings, following issues were framed in the matter:-

- (i) Whether the plaintiff is entitled to decree of specific performance of contract, as prayed for ? OPP**
- (ii) Whether the plaintiff is entitled to decree of possession, as prayed for? OPP**
- (iii) Whether the plaintiff is entitled to decree of declaration, as prayed for? OPP**
- (iv) Whether the plaintiff is entitled to the recovery of Rs. 44,50,000/- along with interest, in alternative, as prayed for ? OPP**
- (v) Whether the plaintiff is entitled to recovery of arrears of rent, as prayed for ? OPP**
- (vi) Whether the plaintiff is entitled to decree of damages/mesne profits along with interest, if any, and at what rate, as prayed for? OPP**
- (vii) Whether the plaintiff is entitled to decree of permanent injunction, as prayed for? OPP**
- (viii) Relief.**

Evidence led:

22. To prove his case, plaintiff led evidence detailed below:-

S.No.	Particulars of witness	Nature of witness	Documents relied
1.	Satyapal Singh/ PW-1	Plaintiff himself. He tendered is evidence by way of affidavit Ex. PW1/A whereby he reiterated the contents of his plaint.	1. Site plan of the suit property - Ex.PW1/1; 2. Agreement to sell dated 19.07.2017 - Ex.PW1/2; 3. Rent agreement dated 19.07.2017 - Ex.PW1/3; 4. Rent agreement dated 21/22.06.2018 - Ex.PW1/4; 5. Legal Notice dated 31.10.2019 along with postal receipts - Ex.PW1/5 (colly)
2.	Sh. Vijay Kumar/ PW-2	He tendered his evidence by way of affidavit Ex. PW2/A. He supported the case of plaintiff and claimed in his affidavit in evidence that he is witness to the documents executed between the parties i.e. Ex. PW1/2, Ex.PW1/3 and Ex. PW1/4.	
3.	Sh. Gopal Dutt, Record Keeper, Officer of SR-IV Seelampur.	He was a summoned witness. He proved the registration of rent agreement dated 22.06.2018 vide registration No. 1278 dated on 02.07.2018 Ex.PW3/D1 (colly). He also brought the office record of Ex.PW1/4 (i.e. the registered rent agreement between plaintiff and D-1).	

23. The aforesaid witnesses were duly cross-examined by Ld. Counsel for defendants. No other witness was examined by the plaintiff and thus, PE was closed.
24. It is pertinent to note that despite opportunity, D-2 did not lead any evidence and thus, DE was closed.
25. I have heard Ld. counsel for the parties and perused the material available on record.

Analysis and findings

26. Based on the evidence led before this court, the issue-wise finding in the matter is as under :

Issue No. (I), (ii), (iii), (iv) and (vii)

- (i) Whether the plaintiff is entitled to decree of specific performance of contract, as prayed for ? OPP
- (ii) Whether the plaintiff is entitled to decree of possession, as prayed for? OPP
- (iii) Whether the plaintiff is entitled to decree of declaration, as prayed for? OPP
- (iv) Whether the plaintiff is entitled to the recovery of Rs. 44,50,000/- along with interest, in alternative, as prayed for ? OPP
- (vii) Whether the plaintiff is entitled to decree of permanent injunction, as prayed for? OPP

27. All the aforesaid issues are inter-connected and are thus taken up together.
28. Plaintiff has claimed in his evidence that he entered into an agreement to sell Ex. PW1/2 with D-1 whereby he agreed to purchase the suit property by paying consideration of Rs. 44,50,000/-. As per the said agreement (filed in original on record), plaintiff paid the entire sale consideration to D-1. The said agreement is dated 19.07.2017 and is a notarized document.
29. Counsel for the plaintiff argued that the testimony of plaintiff as well as the agreement Ex. PW1/2 has gone unrebutted and unchallenged by D-1 as D-1 never appeared before the Court to give his version of events. It is argued that D-2 is admittedly not a party to the said agreement or witness to the same. Thus, it was submitted on behalf of Counsel for plaintiff that considering the unrebutted and unchallenged testimony of plaintiff, plaintiff is entitled for decree in his favour.
30. On the other hand, Counsel for D-2 argued that the agreement in question is an unregistered document. He argued that as per the agreement, possession of the suit property was purportedly given by D-1 to plaintiff. If the same is true, as per Counsel for D-2, the said agreement should have been registered and since it is not, the said document should not be read in evidence. Counsel for D-2 conceded that D-2 is neither a witness to the transaction or the agreement or party thereto.

31. In my humble opinion, the argument that the agreement in question was compulsorily registrable is incorrect. Under Section 17 (1A) of Registration Act, 1908, the effect of non-registration of an agreement to sell coupled with possession is only that such unregistered agreement shall have no effect for the purposes of Section 53A of the Transfer of Property Act 1882. The said provision i.e. Section 17(1A) of the Registration Act, 1908 does not mandate that each and every agreement to sell between the parties requires compulsory registration. The effect of non-registration is only to the effect that the benefit of Section 53A of Transfer of Property Act, 1882 cannot be availed by the transferee if the transferor or any person claiming under him wants to enforce any right qua the property. Section 53A of Transfer of Property Act 1882 encapsulates the principle whereby, by way of part performance *inter alia* possession has been given to the transferee, a registered agreement to sell would allow the transferee to resist the transferor or any person claiming through him from seeking back possession or other rights as provided under the agreement.
32. Thus, even if the agreement in question is unregistered, the same shall not mean that plaintiff cannot rely upon it to seek specific performance of the same agreement and enforce it against D-1.
33. As already noted, D-2 is neither a witness to the transaction nor to the agreement. The entire testimony of plaintiff qua payment of sale

consideration to D-1 and eventual entering of agreement Ex. PW1/2 between plaintiff and D-1 has gone unrebutted and unchallenged.

34. Even as per the defence of D-2, D-1 has the original title to the suit property. It may be recalled that as per a tabulation given in para 4 under the heading 'preliminary objections' of the written statement of D-2, Yashpal Rawat is stated to hold a registered GPA with consideration dated 24.12.2018 in his name qua the suit property. **This GPA is stated to have been executed by Bhupender S/o Ram Chand Sharma. This person i.e. Bhupender is D-1.**
35. **In other words, as per the pleaded case of D-1, Yashpal Rawat traces his title to D-1 only.** Thus, as per D-2's pleaded case, D-1 is the original owner of the suit property.
36. If that be the case, plaintiff is entitled to a decree of specific performance against D-1. With D-1 having received the entire sale consideration from plaintiff, he is liable to be directed to perform the agreement Ex.PW1/2 dated 19.07.2017 in favour of plaintiff.
37. Once the said agreement is performed by execution of sale deed in favour of plaintiff, consequentially, plaintiff shall become the owner of the suit property and the possession thereof shall have to be given to plaintiff by D-1.
38. Now, as far as defence of D-2 is concerned, D-2 never stepped in the witness box to prove his defence. He neither produced any witness to show the basis of his claim that Yashpal Rawat is the

owner of the suit property or that he occupies the suit property as tenant of Yashpal Rawat.

39. While plaintiff claims that he has an agreement to sell with D-1 dated 19.07.2017, as per D-2, D-1 executed a registered GPA in favour of Yashpal Rawat on 24.12.2018 and on the basis of said GPA, now Yashpal Rawat is the owner of the suit property and D-2 occupies it as tenant of said Yashpal Rawat.
40. This purported registered GPA in favour of Yashpal Rawat was neither filed on record nor any witness was summoned to prove it.
41. It is pertinent to note that D-2 does not specify in his written statement the time when he was inducted as tenant in the suit property; the rate of rent; or any other terms of the rent agreement between him and Yashpal Rawat. I may note that no document whatsoever has been filed on record by D-2 to substantiate his claim of Yashpal Rawat being the owner of the property or thereafter he being the tenant of Yashpal Rawat.
42. Thus, there is no evidence on record to suggest that D-2 has any right, title or interest in the suit property. Thus, he in any case, is liable to handover the possession of the suit property to the plaintiff.
43. With D-1 liable to specifically perform the agreement in question i.e. Ex.PW1/2 in favour of plaintiff and with D-2 having no right, title or interest in the suit property, both the defendants or any person claiming through or under them are liable to be permanently

restrained from creating any third party interest or transferring or alienating the suit property.

44. Accordingly, issue No. (i), (ii), (iii) and (vii) are decided in favour of the plaintiff. Since, the above issues have been decided in favour of the plaintiff, issue No. (iv) whereby plaintiff had sought alternate relief of recovery of sale consideration from D-1 becomes redundant.

Issue No. (v) and (vi)

(v) Whether the plaintiff is entitled to recovery of arrears of rent, as prayed for ? OPP

(vi) Whether the plaintiff is entitled to decree of damages/mesne profits along with interest, if any, and at what rate, as prayed for? OPP

45. Plaintiff wants recovery of rent from defendants on the ground that plaintiff and D-1 had a registered rent agreement i.e. rent agreement-2 Ex. PW1/4 whereby D-1 agreed to pay a rent of Rs. 15,000/- per month to plaintiff w.e.f. 01.07.2018 to 01.07.2021.

46. Plaintiff claims that when he visited the suit property on 03.01.2019, he found that D-1 had handed over the possession of the suit property to D-2. A legal notice dated 30/31.01.2019 Ex. PW1/5 is stated to have been served on D-1 and D-2 calling upon them to vacate.

47. It is plaintiff's case that after service of the said notice, the occupation of suit property by defendants became unauthorised and therefore, they are liable to pay damages @ Rs. 5000/- per day to plaintiff.
48. In my humble opinion, both the issues under consideration are liable to be decided against the plaintiff.
49. As per plaintiff, own case, he only had an agreement to sell Ex.PW1/2 with D-1. Under Section 54 of Transfer of Property Act, 1882, an agreement to sell/contract of sale, of itself, does not create any right, title or interest in the property covered under the said agreement. Thus, Ex. PW1/2 shall not create any right, title or interest in the suit property (except the right in favour of plaintiff to sue for specific performance) which could then give the capacity/right to plaintiff to induct any tenant in the same property. In other words, on the strength of the said agreement, plaintiff could have rented back the same property to D-1 (the original owner and the person executing Ex. PW1/2 in favour of plaintiff).
50. Under Section 105 of Transfer of Property Act, a lease of immovable property is defined **as transfer of a right to enjoy such property to the transferor by the transferee.** Thus, for a lease to come into being, there should be some right available in the immovable property with the transferor which then is given to the transferee for consideration. But, as noted above, the agreement to sell cannot, of itself gives any right in the property to the person holding the

agreement to sell. Thus, Ex. PW1/2 did not give any right to the plaintiff in the suit property which could then be transferred to D-1.

51. Simply put, Ex. PW1/4 is not a lease agreement in the eyes of law as plaintiff was not having right which he could transfer to D-1 by virtue of the said agreement and therefore, plaintiff never became the landlord of D-1 under the said agreement. If that be the case, plaintiff cannot be allowed to recover any arrears of rent from D-1.

52. As far as D-2 is concerned, the plaintiff himself claims that D-2 is not his tenant. If the same is true, plaintiff cannot recover any arrears of rent from D-2.

53. Thus, the entire claim of plaintiff for recovery of rent qua each of the defendants is liable to fail.

54. As far as question of recovery of damages/mesne profits is concerned, the same is also liable to fail. Since plaintiff did not have right, title or interest in the suit property (except the right to sue for specific performance), he cannot argue that till specific performance is given to him and a sale deed is executed, occupation of the suit property by either of the defendants would entitle him to any recovery of money on account of said occupation. Till the title of the suit property goes from D-1 to plaintiff (which shall take place on execution of sale deed in favour of plaintiff), D-1 would have legal possession of the suit property. Plaintiff claims that D-1 wrongly inducted D-2 in the property and gave possession to D-2.

Presuming the same to be true, D-1 would be within his rights to do so and plaintiff cannot cry foul in this regard.

55. Thus, the entire claim of the plaintiff seeking recovery of damages/mesne profits from each of the defendants is also liable to fail.

56. Accordingly, both the issues under consideration are decided against the plaintiff.

Relief:-

57. In view of the above, plaintiff is held entitled to following reliefs:-

- (i) Plaintiff is entitled to a decree of specific performance of agreement to sell dated 19.07.2017 Ex.PW1/2 against D-1 with D-1 liable to execute the sale deed in favour of plaintiff qua suit property i.e. property bearing No. X-97, Gali No. 13, X-Block, Brahmpuri, Shahdara, Delhi-110053 measuring 67 sq yards. The said property is shown in red in the site plan Ex. PW1/1.
- (ii) After the said sale deed is executed, defendants or any person claiming through or under them would be liable to handover the possession of the above described property to plaintiff.
- (iii) After the said sale deed is executed, plaintiff shall become the absolute legal owner of the said property.

(iv) Defendants or any person claiming through or under them are permanently restrained from transferring, alienating or creating any third party interest in the said property.

(v) Costs of the present suit are awarded to the plaintiff which shall be recovered jointly and severally from the defendants.

58. Let a decree sheet be prepared accordingly.

59. The site plan Ex. PW1/1 and agreement to sell Ex.PW1/2 shall form part of decree.

**Announced in the
open Court on 17.03.2026**

**Aashish Gupta
District Judge-01, North-East District,
Karkardooma Courts, Delhi**