

13.09.2023

ORDER

By this order this Court hereby dispose of the application under Order 1 Rule 10(2) r/w Section 151 CPC filed by the applicant namely Fahimuddin.

1. Arguments on the present application was heard on 05.09.2023 and clarification was also sought on 12.09.2023.

2. File perused.

3. An application under Order 1 Rule 10(2) r/w section 151 CPC has been filed on behalf of applicant/intervener namely Fahimuddin. It is stated by the applicant/intervener in the application that he is the absolute owner and in possession of the suit property bearing No.L-93, Gali No.1, Sunder Nagari, Delhi-110093 vide GPA, Agreement to Sell, Receipt, Possession Letter and Deed of Will all dated 15.06.2020. He further states that the suit property was purchased by him from Smt. Rehana w/o Shri Naushad for a valuable consideration of Rs.10,00,000/- (Ten Lakhs only). It is also contended that the plaintiff has executed GPA, Agreement to Sell, Receipt and Deed of Will all dated 14.05.1998 in favour of defendant No.3 and Sharifan in respect of the suit property for a consideration. It is further contended that Sharifan had also executed deed of will dated 14.05.1998 in favour of defendant No.3 in respect of her share in the suit property. It is also contended that Sharifan had expired and after her death defendant No.3 becomes owner of the suit property. It is also contended that on 06.09.2022 the applicant/intervener got information through defendant No.1 regarding the present suit and thereafter he moved the present application before this Court for impleadment as defendant in the present suit.

4. Copy of reply to the said application was filed by the plaintiff thereby specifically denying the contentions of the

application filed by the applicant/intervener. The plaintiff contended that the applicant never had the possession of the suit property and only after receiving the summons, defendant no.1, 2 and 3 joined hands with each other to harass the plaintiff and made forged documents to show the transfer of the suit property in the name of present applicant. It is also stated by the plaintiff that he is the original allottee of the suit property which was allotted to him by the defendant no.4 on lease and as per the status report dated 22.09.2022 filed by defendant no.4 before this Court, the plaintiff is still the recorded allottee of the suit property and the suit property is not transferable/saleable/divisible. The plaintiff rely on the judgment passed by the Supreme Court of India in “Suraj Lamp and Industries Vs. State of Haryana and others” wherein the Apex Court had held that *“Transaction of the nature of ‘GPA Sales’ or ‘SA/GPA/Will transfers’ do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The Court will not treat such transactions as completed or concluded transfers or as conveyance as they neither convey title nor paid any interest in the immovable property.* The plaintiff further averred that the documents in favour of the applicant holds no legal sanity in the eyes of law and the entire chain relied by the applicant does not convey any right, title and interest in the suit property.

5. That the present suit filed by the plaintiff is a suit for declaration/cancellation, possession, permanent injunction and mandatory injunction. As per the suit plaintiff claims to be an allottee and owner of the bearing property No. L-93, Gali No.1, Sunder Nagari, Delhi-110093 which was allotted by DDA vide receipt No.2349 dated 09.05.1983. Plaintiff further averred in the plaint that in the year 1992-1993, on the request of defendant no.2 and 3, the plaintiff allowed them to stay in the suit property on license basis without any monthly rent/usage charges and the plaintiff also specifically disclosed to the defendant no.2 and 3, at the time of

handing over the suit property, that the suit property is being given only for the residential purpose and they have no right, title in the present suit property. The plaintiff further averred in the plaint that he has also executed a will in favour of defendant no.2 and 3. It is further stated in the suit that in the month of August 2020, the plaintiff came to know that the defendant no.2 and 3 had got installed electricity and water meter in their name in the suit property without his knowledge and consent and when plaintiff objected, defendant no.2 and 3 misbehaved with him. It is further stated in the plaint that on 27.09.2020 the defendant no.2 and 3 approached the plaintiff and demanded the allotment letter of the suit property and when the plaintiff refused to hand over the same, then they threatened the plaintiff that they will sell the suit property to defendant no.1 by forging documents. It was also stated in the plaint that on 29.09.2020 the plaintiff also made a complaint to the police as well as to defendant no.4. It is further averred in the plaint that on 05.02.2021 the plaintiff visited the suit property and found defendant no.1 in possession of the same and when the plaintiff asked the defendant no.1 about his capacity and also requested him to vacate the suit property but the defendant no.1 also threatened the plaintiff that he will sell and part with the possession of the suit property to some other person. It is further stated in the plaint that the plaintiff had earlier filed a civil suit for possession and permanent injunction i.e. CS bearing No.160/2021 titled as “Mohd. Ilyas Vs. Shakil Qureshi and others” against the defendant no.1 to 3 before the Ld. District Judge, Shahdara District, Delhi and after filing of the said suit, defendant no.1 to 3 had demolished the entire old structure of the suit property and started raising construction on 26.02.2021 upto four storey building upon the suit property without getting any permission or sanctioned plan from defendant no.4 and 5. It is also stated in the plaint that due to subsequent event of illegal construction, the nature of suit changed and therefore, the plaintiff withdrew the said suit on

dated 27.08.2021 with liberty to file fresh suit and thereafter the present suit was filed against defendant no.1 to 5.

6. Vide order dated 12.07.2022 the right to file written statement of D-1 to D-3 was closed. Perusal of the record shows that defendant no.5 EDMC/MCD has also filed its written statement thereby stating that on 24.01.2022 the concerned official of the building department had inspected the suit property and it was found that the owner/buyer of the property had carried out unauthorized construction in the shape of ground floor, first floor, second floor, third floor and fourth floor with projection on municipal land on the above said suit property without sanctioned plan by the EDMC/MCD. It is also contended by D-5 that no ongoing unauthorized construction was noticed, no building material was found at the time of inspection and the suit property is presently in occupied condition and therefore, the entire unauthorized construction was booked vide file no.06/B-I/UC/SH-N-2022 dated 25.01.2022 under Section 343 and 344 (1) of DMC Act and a show cause notice was issued to the occupier Shri Shakil Qureshi vide no.17052 dated 25.01.2022. It is further contended that the suit property had been sealed by the D-5 under Section 345-A of DMC Act vide sealing proceedings and further states that an appropriate action shall be taken as per the DMC Act followed by Building Bye Laws in the due course of time.

7. The plaintiff in the present suit claims the possession of the suit property from D-1, D-2 and D-3. The applicant/intervener claims to be in possession of the suit property. The applicant also filed copy of registered GPA, notarised agreement to sell, receipt, registered deed of will all dated 14.05.1998 which were allegedly executed by the plaintiff in favour of D-3 and one Sharifan. The applicant also filed a registered deed of will dated 14.05.1998 executed by Sharifan infavour of Smt. Rehana. The applicant also filed GPA, the agreement to sell, receipt, deed of will and possession letter all dated 15.06.2020 duly notarised. On the basis of these documents, the applicant claims

to be in possession of the suit property and wants his impleadment as party to the present suit and contest the present suit.

8. As per plaint the plaintiff also claims that he has also executed one will in favour of D-2 and D-3. In view of the averments made by the plaintiff in the suit, it can be inferred that the plaintiff might have also executed some documents on 14.05.1998 other than deed of will i.e. registered GPA, notarised agreement to sell and receipt. All the documents executed by the plaintiff in favour of D-3 and Sharifan prior to 24.09.2001 and also prior to the judgment of Apex Court in Suraj Lamp case.

9. It is pertinent to mention that the Hon'ble Apex Court in Suraj Lamp case also held that the observations made in the judgment are not intended to in any way effect the validity of sale agreements and power of attorney executed in genuine transactions. For example, a person may give power of attorney to his spouse, son, daughter, brother, sister or any relative to manage or to execute a deed of conveyance. The relevant paragraphs nos. 24, 25, 26 and 27 of the said judgment is reproduced for facilitation which is as under :

“24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “GPA sales” or “SA/GPA/will transfers” do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the

basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.

25. It has been submitted that making declaration that GPA sales and SA/GPA/will transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularise the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

26. We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/will transactions are not “transfers” or “sales” and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to complete their title. The said “SA/GPA/will transactions” may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularisation of allotments/leases by development

authorities. We make it clear that if the documents relating to “SA/GPA/will transactions” have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed , merely on account of this decision.

27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several State, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding “SA/GPA/will transactions” are not intended to apply to such bonafide/genuine transactions.”

10. Section 202 of the Indian Contract Act also provides that the power of attorney coupled with interest is irrevocable and cannot be revoked/terminated even upon the death of the principal.

11. As per documents filed by the applicant dated 14.05.1998 which were executed by the plaintiff in favour of D-3 and Sharifan prima facie shows that the said GPA was executed for consideration.

12. As per the judgment of Apex Court in Suraj Lamp case, “SA/GPA/will transactions” may also be used to obtain specific performance or to defend possession under Section 53-A of Transfer of Property Act.

13. It is prima facie show that the sale transaction documents dated 14.05.1998 give right to defend possession under Section 53-A of the Transfer of Property Act to the D-3 or his representative or attorney or agent.

14. The Hon’ble Apex Court in Kasturi Vs. Iyyampeumal and others, 2005 (1) Apex Court Judgment 640 (SC): 2005 (2) Civil Court Cases 379 (SC) laid down to two tests to determine as to who is a necessary party in a suit are (a) there must be right to some relief against such party in respect of the controversies involved in the proceedings (b) no effective decree can be passed in the absence of such party.

15. It is settled law that Court can add any person who ought to have been joined as party at any stage of the proceedings either upon or without the application of either party. However, court should satisfied that presence of such party before the Court to effectually and completely adjudicate and settle all the questions involved in the suit to avoid multiplicity of litigation.

16. A necessary party is one who ought to have been joined i.e. a person in whose absence no effective decree at all can be passed. A proper party is one whose presence is necessary to enable the Court

to effectively and completely adjudicate upon and decide all questions involved in the Court.

17. As per the case of the applicant/intervener, he is claiming to be in possession of the suit property which was purchased by him from D-3 for consideration. The contentions raised by the plaintiff in its reply that the documents filed by the applicant are forged and whether the applicant holds any right, title or interest in the suit property, cannot be decided at this stage and the same can only be adjudicated during trial.

18. The suit of the plaintiff is for possession and in view of this Court no effective decree of possession can be passed in absence of the applicant/intervener in the present suit who claims to be in possession of the suit property and also to avoid multiplicity of litigation, this Court deems fit to implead the applicant/intervener as defendant being necessary party to the present suit.

19. The application under Order 1 Rule 10 CPC is hereby allowed and applicant/intervener is impleaded as Defendant No.6 in the present suit.

20. The application is accordingly disposed of.

21. Observations made herein above shall not be tantamount to the merits of the case.

22. The D-6 is directed to file the written statement within thirty days from today with an advance copy to the plaintiff.

23. Put up for filing of written statement, reply and arguments on the application under Order XXXIX Rule 4 read with Section 151 CPC moved on behalf of Defendant No.5 for 17.10.2023.

(Deepanker Mohan)
Additional District Judge-04
Shahdara District/KKD Courts/Delhi
13.09.2023