

**IN THE COURT OF SH. RAMESH KUMAR-II,
ADDITIONAL DISTRICT JUDGE-01, SHAHDARA
DISTRICT, KARKARDOOMA COURTS,
DELHI**

Civil Suit No.558/22

In the matter of:-

Tirlochan Kaur

.....Plaintiff

Vs.

Gurmeet Kaur & Ors.

.....Defendants

10.01.2024

ORDER

Vide this order I shall dispose off the application filed by the plaintiff under Order 13 Rule 1 & 8 read with Section 151 CPC read with Section 33 & 35 of Indian Stamp Act for production & impounding of documents relied by defendant no.1 (unregistered as well as unstamped).

The defendant no.1 has filed reply to the present application denying all the assertions made therein and has prayed for dismissal of the said application.

Both the parties have filed their respective written arguments in support of their respective averments.

In written submissions it is contended on behalf of the plaintiff that by way of present application the plaintiff is

seeking direction by this Court against the Defendant No.1 to place on record the Original Documents on the basis of which the Possession and title of the suit Property is claimed and which are annexed on Page 26 to 41 of the written statement, further to Impound both Agreement to Sell dated 13th May-1988, whose photocopy is annexed with written statement on Page 29, 30 and 37, 38, which are unregistered, unstamped and even not notarized, and send it to collector concerned of Revenue Department, Govt. of N.C.T of Delhi, for the purpose of determination of stamp duty/penalty (as envisaged under the Stamp Act). and once the report regarding the stamp duty/penalty liable to be levied on these instruments by the Collector concerned is received by this Court, the Defendant No.1 be directed to pay the same moreover to impound the entire original Documents of Defendant No.1 on the basis of which the Possession and title of the suit Property is claimed and which are annexed on Page 26 to 41 of the written statement, in the Judicial Record till the disposal of the proceedings. It is further contended that the plaintiff who is super senior citizen has filed the present suit for Partition, Separate Possession, Permanent Injunction & Rendition of Accounts against the defendants, and wherein in response to the suit Defendant No.1 has filed her written statement dated 09.12.2022, in which she claimed herself to be the absolute owner of the suit Property on the basis of Unregistered as well as unstamped Agreement to Sell showing the consideration amount of Rs.20,000/-coupled with GPA, Receipt and Will purportedly executed by Late Smt. Gyan Kaur and in a similar fashion another Unregistered as well as unstamped Agreement to Sell coupled with GPA. Receipt and

Will purportedly executed by Late Smt. Prakash Kaur. It is further contended that the Defendant No.1 has relied on the above said documents in support of her claim and filed the photocopy of these take and fabricated documents which have no value in the eye of Law. It is further contended that the documents submitted by Defendant No.1 in her defense are unregistered documents and are bad in the eye of law since these documents must had been registered before the concerned authority being falling under the category of compulsory registration document as per Section 17 of Registration Act-1908, however are not therefore have no value in the eye of law. What it envisages is that when there is a written instrument evidencing a transaction, it must, in certain cases, be registered. Sale deeds, Mortgages, Exchanges, Gifts and Leases under Transfer of Property Act, 1882 are required to be effected only by registered instruments subject to an exception in case of some transactions relating to immovable property of less than 100/- in value. The documents submitted and relied by the Defendant No.1 on the basis of which the ownership title is claimed on the Suit Property is a G.P.A, Agreement to Sell, Will, and Receipt which are admittedly unregistered and unstamped documents and as a well settled law no rights can be claimed under the same. It is further contended that the documents relied and submitted by the Defendant No.1 are barred by virtue of Section 17 of Registration Act-1908 as the Agreement to Sell on which the Defendant No.1 relies and wants to claim his right is an unregistered and unstamped which is against the mandatory requirement of Law. The Defendant No.1 is claiming her rights in property on the basis of unregistered unstamped documents

which is not permissible in view of Judgment of Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr. (decided on 11 October 2011). The legal position regarding any attempt to effect a transfer of title vide Power of attorney has been dealt by Hon'ble Apex Court in Suraj Lamp (supra), wherein it is observed that an immovable property can be lawfully transferred /conveyed only by registered deed of conveyance and transaction in the nature of 'GPA sales or SA, GPA, Wilk transfers" do not convey any title and therefore, they do not amount to any transfer nor they can be recognized as a valid mode of transfer of immovable properties. It is further observed that the Courts shall not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor any interest in an immovable property. The same effect is the Judgment of Hon'ble Supreme Court in Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012 8 SCC 706) which followed the earlier Judgment of Supreme Court in Suraj Lamp. The claim of the Defendant No.1 being the owner of the suit Property on the strength of documents are not registered and stamped. In such circumstances, they cannot be used in evidence of any transaction as per provisions of Section 35 of the Stamp Act which 3 inferdicts the reception of any document in evidence for any purpose if it is insufficiently stamped. The reliance can be placed on catena of Judgments of Hon'ble Superior Courts, Section 33 of the Stamp Act casts a statutory obligation on the authorities to impound such documents which are insufficiently stamped. Since adequate stamp duty on documents relied by applicant have not been placed, the same are liable to be

impounded as per the provisions of Section 35 of Stamp Act as well as Order XIII Rule 8 of C.P.C. It is further contended that the Hon'ble Apex Court in *Suraj Lamp (supra)* is retrospective in nature and not perspective which has been dealt in the Judgment of Hon'ble Delhi High Court in *Bishan Chand Vs Ved Prakash* decided on 14th Sep-2018 and various other Citations therefore the defense of the Defendant is just a moonshine defense that the said Judgment is Prospective and retrospective. It is further contended that the documents are unauthentic and suspicious in nature and there is a strong possibility of further misuse of said documents as to defeat the right of the Plaintiff and therefore, if the documents are left in the custody of Defendant No.1, there is a reasonable apprehension that the Defendant No.1 may misuse these documents hence it is necessary and imperative to impound the original documents on judicial record till the disposal of the suit. It is further contended that Section 33 of the Stamp Act casts a statutory obligation on the concerned authorities to impound such documents which are insufficiently stamped since adequate stamp duty on documents relied by Defendant No.1 have not been placed and therefore these documents are liable to be impounded as per the provisions of Section 35 of the Act. It is further contended that no prejudice shall be caused to the Defendant No.1 if the original documents are produced and filed before this Court and being impounded for the purpose of determination of stamp duty/penalty (as envisaged under the Stamp Act) by the Collector concerned as well as be further impounded by this Court in the Judicial Record during the pendency of the proceedings, in the interest of justice. Therefore, it is requested to allow the present

application, in the interest of justice.

On the other hand, it is contended on behalf of defendant no.1 in written submissions that defendant no.1 is the absolute owner of the suit property through title documents i.e. Notarized GPA, Will, Receipt and Agreement to sell dated 13.05.1988 and all the above said documents were executed in the year 1988 and the documents prior to 2001 were need not be compulsorily registered which was exempted by judgment passed by the Supreme Court of India in Suraj Lamp & Industries Pvt. Ltd Vs State of Haryana & Anr. (2012) 1 SCC 656, wherein it was held that outlawed GPA/Will/Agreement to Sell as means of conveyance of properties. It is further contended that the judgment has a prospective effect so as not to disturb earlier transactions. It is also held that the documents, even though they are not registered, would confer title and ownership to the extent that Defendant No.1 could enjoy possessory rights in the suit property. It is further contended that defendant no.1 filed photocopy of the original documents and whenever the court directs to produced original document will produced the same. It is further stated that the defendant no.1 in her defense filed unregistered documents and are not bad in the eye of law since these documents executed in the year 1988 not compulsorily registered before the concerned authority not failing under the category of compulsory registration document as per Section 17 of the Registration Act, 1908. It is further stated that the claim of the defendant no.1 being the owner of the suit property on the strength of the documents and by virtue of which the title is claimed are legal documents not barred by any law therefore can be used in evidence of any transaction. It is further contended

that the Indian Registration Act, 1908 does not make notarized general power of attorney and will compulsorily registerable. As per proviso to Section 49, of the Registration Act, 1908 an unregistered Agreement to Sell can be received as evidence, therefore no barred on any of the documents of the defendant no.1 therefore all can be used in evidence. It is held in the Judgment of the Supreme court case titled R. Hemalatha Vs. Kasthuri (Civil Appeal no.2535/2023@SLP (C) No.14884/2022 that allows unregistered sale agreement to be received in evidence. It is further contended that documents submitted and relied by the plaintiff by virtue of which the partition is claimed in unregistered Will which is executed prior to the Will of the defendant no.1 and a Will can be changed as many time as the testator wants to. Once a fresh Will is made, the previous one stands revoked. However, the defendant no.1 is the absolute owner of the suit property through title documents i.e. notarized GPA, Will, receipt and agreement to sell dated 13.05.1988 and all the above-said documents were executed in the year 1988 and the documents prior to 2001 were need not be compulsorily registered which was exempted by judgment passed by the Supreme Court of India in Suraj Lamp (supra) wherein it was held that outlawed GPA/Will/Agreement to sell as means of conveyance of properties. The judgment has a prospective effect so as not to disturb earlier transactions. It is also held that documents, even though they are not registered, would confer title and ownership to the extent that defendant no.1 could enjoy possessory rights in the suit property.

I have heard Ld. Counsel for applicant and Plaintiff, perused the application and looked into the entire record. From

perusal of the Order XIII Rule 1 & 8 CPC, it is crystal clear that the parties shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with the Plaint or written statement.

Adverting to the facts of the present matter, the record reveals that in response to the suit, Defendant No.1 has filed her written statement dated 09.12.2022, in which she claimed herself to be the absolute owner of the suit Property on the basis of Unregistered as well as unstamped Agreement to Sell showing the consideration amount of Rs.20,000/- (Twenty Thousand Only) coupled with GPA, Receipt and Will, purportedly executed by Late Smt. Gyan Kaur and in a similar fashion another Unregistered as well as unstamped Agreement to Sell coupled with GPA, Receipt and Will purportedly executed by Late Smt. Prakash kaur. Defendant No.1 has relied on the above said documents in support of her claim and filed the photocopy of these documents which certainly have no value in the eye of Law.

The Defendant No.1 claims to be in Possession of the suit property and is also claiming her rights in property on the basis of unregistered unstamped documents which is not permissible in view of Judgment of Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr (decided on 11th October 2011). The legal position regarding any attempt to effect a transfer of title vide Power of attorney has been dealt by Hon'ble Apex Court in **Suraj Lamp (supra)**, wherein it is observed that an immovable property can be lawfully transferred /conveyed only by registered deed of conveyance and transaction in the nature of 'GPA sales or SA, GPA, Will transfers' do not convey any title and therefore, they do not amount to any transfer nor they can be recognized as

a valid mode of transfer of immovable properties. It is further observed that the Courts shall not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor any interest in an immovable property.

As a settled law, the Judgment of Hon'ble Apex Court in *Suraj Lamp (supra)* is retrospective in nature and not perspective which has been dealt in the recent Judgment of **Hon'ble Supreme Court in the case of "Shakeel Ahmed Vs Syed Akhlaq Hussain, Civil Appeal No. 1598/2023, decided on 1st Nov-2023**, and earlier by Hon'ble Delhi High Court in **Bishan Chand Vs Ved Prakash decided on 14th Sep-2018** and various other Citations therefore the defense of the Defendant No.1 that the said Judgment is Prospective and retrospective is not sustainable.

To the same effect is the Judgment of Hon'ble Supreme Court in **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012 8 SCC 706)** which followed the earlier Judgment of Supreme Court in *Suraj Lamp (supra)*.

The defendant has placed reliance on the judgment of Hon'ble Supreme Court in case title **R. Hemalatha Vs. Kasthuri, Civil Appeal No.2535/2023, decided on 10.04.2023** contending that this ruling allows unregistered sale agreement to be received in agreement. I am not agree with this contention of Ld. Counsel for defendant no.1 as Hon'ble Supreme Court has held that an unregistered agreement to sell can be admitted as an evidence of contract in a suit for specific performance, whereas the present suit is for partition. Therefore, the judgment relied upon by Ld. Counsel for defendant no.1 has no application to the

facts of the present case.

The instant suit is *for PARTITION, SEPARATE POSSESSION, PERMANENT INJUNCTION & RENDITION OF ACCOUNTS* filed by Plaintiff against her daughters. The documents on the strength of which the Defendant No.1, who is daughter of Plaintiff, has claimed her ownership are not registered and stamped. In such circumstances, they cannot be used in evidence of any transaction as per provisions of Section 35 of the Stamp Act which interdicts the reception of any document in evidence for any purpose if it is insufficiently stamped. On this aspect reliance is placed upon the judgments in case title **Tirupati Developers Vs. State of Uttarakhand 2013 (9) SCC 332; M/s SMS Tea Estate P. Ltd. Vs. M/s Chandmari Tea Co. P. Ltd, 2011 (14) SCC 66; Leelamma Samuel Vs. Francis and Haryana State Electronics Development Corporation Ltd. Vs. Mrs. Shashi Kapoor & ors.**

Section 33 of the Act casts a statutory obligation on the authorities to impound such documents which are insufficiently stamped. Since adequate stamp duty on documents relied by applicant have not been placed, the same are liable to be impounded as per the provisions of Section 35 of the Act.

In these circumstances, the present application of the Plaintiff is allowed and the Defendant No.1 is directed to place on record original documents relied by her in the written statement and of whose photocopy is annexed, on next date of hearing and the said documents are directed to be impounded for the purposes of determination of the stamp duty/penalty (as envisaged under the Stamp Duty Act) by the Collector concerned till further orders.

Application is disposed off accordingly.

(Typed to the dictation directly, corrected and pronounced in open court on 10.01.2024).

**(RAMESH KUMAR-II)
ADDL. DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI**