

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE-05,
SOUTH WEST, DWARKA COURTS, NEW DELHI**

Civil Suit No. 666/19

Vijay Jain

..... Plaintiff

Versus

Neeru Saxena

..... Defendant

ORDER: -

1. Vide this order, I shall dispose of an application u/o 39 rule 1 & 2 CPC moved by the plaintiff.
2. Brief facts necessary of the application are that the plaintiff has filed the present suit for possession, permanent injunction, arrears of rent and damages. It is stated that the husband of the plaintiff and husband of the defendant are known to each other. In the month of August 2017, the defendant was in dire need of money and wanted to sell out her property and requested the plaintiff and her husband to purchase the same. The plaintiff agreed to the same after negotiation. On 30.08.2017, the plaintiff purchased the property from the defendant i.e. entire first floor with roof/terrace rights of built up property bearing No. D-7 (New No. D-17), land area measuring 200 sq. yards i.e. 167.21 sq. meters out of Khasra No. 105/16 situated in the area of Village Palam, Delhi, colony known as Raja Puri, Uttam Nagar, New Delhi-110059 (*hereinafter referred to as "suit property"*). After receiving the amount from the plaintiff, the

defendant executed General Power of Attorney (GPA), Agreement to Sell, Affidavit, Possession Letter, Receipt, Indemnity Bond, Will etc., all dated 30.08.2017 and also handed over the previous original chain of documents of the suit property alongwith vacant peaceful possession to the plaintiff. On the same day, the defendant alongwith her husband requested the plaintiff to let out the suit property on rent to them and after negotiation, the plaintiff agreed to let out the suit property for which a rent agreement was executed between the plaintiff and the defendant. After expiry of previous rent agreement, at the request of the defendant, the tenancy was extended and rent was settled at Rs.22,000/- per month excluding water and electricity charges and a fresh rent agreement was executed between the parties on 26.07.2018 which was duly registered. It is stated that the defendant irregularly paid the rent till March 2019 and thereafter stopped paying the rent despite several requests made by the plaintiff. After expiry of rent agreement on 24.06.2019 and on account of non payment of rent, the plaintiff terminated the tenancy of the defendant vide legal notice dated 28.06.2019 but despite service the defendant failed to vacate the suit property. Hence, the plaintiff has filed the present suit praying a decree of possession of the suit property in her favour, decree of arrears of rent and damages/mesne profits and a decree of permanent injunction to restrain the defendant from selling, alienating, transferring or creating any third party interest in the suit property.

3. Alongwith the suit, the plaintiff has also filed an application u/o 39 rule 1 & 2 CPC which is under disposal seeking ad interim ex-

parte injunction thereby restraining the defendant, her associates, agents, attorneys, executors etc. from selling, alienating, gifting, transferring, mortgaging and creating any third party interest in the suit property during pendency of the suit.

4. The defendant has contested the suit by filing the written statement contending that the plaintiff has relied upon the GPA etc. with regard to her claim of ownership over the suit property but the said documents do not convey any title in the suit property and hence the plaintiff is not entitled to get relief as prayed. It is further contended that the plaintiff has concealed the material facts from the Court that the defendant availed a financial assistance of Rs. 10 lacs from her in the month of August 2017 against which all the title deeds in respect of the suit property were handed over to the husband of the plaintiff including several signed blank documents and cheques which have been misused by the plaintiff by converting the same into GPA etc. and the same are forged and fabricated documents. The defendant has claimed to be sole and exclusive owner of the suit property vide registered sale deed dated 02.06.2011. It is contended that when the defendant could not pay the agreed monthly interest of the loan amount advanced to her by the plaintiff, the husband of the plaintiff approached the defendant in the month of July 2018 and insisted to either immediately pay entire loan amount or to execute suitable documents to ensure the timely payment of interest. Under pressure of repayment of entire loan, the defendant was forced to execute a registered rent deed in favour of the plaintiff dated 26.07.2018 only for 11 months to justify and

secure the loan payment to the plaintiff and it was mutually agreed between the husband of the plaintiff and defendant that the loan amount shall be returned within the validity of the rent deed i.e. on or before 24.05.2019 and since then the defendant used to pay Rs. 22,000/- to the plaintiff towards agreed interest. It is stated that the defendant returned the entire loan amount to the plaintiff within April 2019 i.e. before the expiry of the rent deed and requested the plaintiff and her husband to return all the original title documents of the suit property and cheques taken as security against the loan amount of Rs. 10 lacs but the plaintiff and her husband avoided on one pretext or the other and committed forgery to cheat the defendant. The defendant has denied that she has sold the suit property to the plaintiff or executed the documents GPA etc. in favour of the plaintiff and has claimed that the said documents have been forged and fabricated by the plaintiff. The other contents of the plaint are stated to be wrong and denied and the defendant has prayed for dismissal of the suit.

5. I have heard the Ld. Counsel for the parties and perused the record carefully.
6. It is not in dispute that the defendant was the owner of the suit property vide registered sale deed dated 02.06.2011. The plaintiff has claimed to have purchased the suit property from the defendant on 30.08.2017 vide GPA etc. The plaintiff has also claimed that the defendant had handed over the possession of the suit property alongwith original chain of documents to her on 30.08.2017. The plaintiff has also placed on record the copy of GPA, Agreement to

Sell, Affidavit, Receipt, Possession Letter, Indemnity Bond, SPA, and Will all dated 30.08.2017 executed by the defendant in her favour. The defendant has not disputed the fact that the original title documents were handed over by her to the plaintiff. Although the defendant has disputed the factum of sale of the suit property to the plaintiff vide aforesaid documents. Rather she has taken a plea that she had taken a loan of Rs. 10 lacs from the plaintiff and at that time she had handed over original title documents alongwith some blank signed papers and cheques to the husband of the plaintiff as security against the said loan which have been later on misused by the plaintiff by converting the same into GPA etc. However, the defendant has not placed on record any such loan agreement by which it could be gathered that the plaintiff had advanced a loan of Rs. 10 lacs to the defendant. It does not prima facie appeal to the reason that the plaintiff would advance a loan of Rs. 10 lacs to the defendant without any loan agreement or any writing to the said effect.

7. The plaintiff has also claimed that after sale of the suit property, the defendant requested her to let out the same on rent to her as she was running a school for which a rent agreement was executed on 26.07.2018 which was duly registered before the Sub Registrar on 08.08.2018. It is further claim of the plaintiff that the defendant irregularly paid the rent till March 2019 and thereafter stopped to make the payment of rent and hence she terminated the tenancy of the defendant. The defendant has not disputed the execution of the rent deed with the plaintiff on 26.07.2018 which was

duly registered before the Sub Registrar on 08.08.2018, though the defendant has given a different version for execution of the said rent agreement. She pleaded that since the plaintiff was pressurizing her to pay the entire loan amount immediately which she was not in a position to pay, therefore to secure the loan amount and interest thereon, she executed the rent agreement in favour of the plaintiff. The defendant has also claimed that she has also paid the entire loan amount before the expiry of rent deed i.e. within April 2019, however the defendant again has not placed on record anything to suggest that she has paid the alleged loan amount of Rs. 10 lacs as claimed by her in the written statement.

8. In view of above, there are rival contentions of the parties as the plaintiff has claimed to have purchased the suit property from the defendant by virtue of GPA etc. all dated 30.08.2017 and thereafter to let out the same to the defendant vide rent agreement dated 26.07.2018, while the defendant contended that she had taken a loan of Rs. 10 lacs against which she had handed over the original documents of the suit property alongwith some blank signed papers and cheques to the plaintiff as security which have been misused by the plaintiff. These are the contentious issues which can be decided only after trial. However, by placing on record the copy of GPA, Agreement to Sell, Affidavit, Receipt, Possession Letter, Indemnity Bond, SPA, and Will all dated 30.08.2017 and registered rent deed dated 26.07.2018 executed by the defendant in her favour and in the absence of any document placed on record by the defendant in support of her claim made in the written statement

and to rebut the claim of the plaintiff, the plaintiff has been able to make out a prima facie case in her favour. Balance of convenience also lies in favour of the plaintiff because in case the defendant succeeds in transferring the suit property in favour of third person, it will lead to multiplicity of litigation between the parties and a great prejudice shall be caused to the plaintiff who is claiming to have purchased the suit property for a valid sale consideration for which the plaintiff cannot be compensated in terms of money. Hence, during pendency of the suit, the suit property is liable to be preserved. Accordingly, the application moved by the plaintiff is allowed and the defendant is restrained from selling, alienating, gifting, transferring, mortgaging or creating any third party interest in the suit property during pendency of the suit.

9. Nothing stated herein shall tantamount to my expressions on the merits of the case.

**Announced in open Court
on 12th February, 2020**

**(Balwant Rai Bansal)
Addl. District Judge-05 (South-West)
Dwarka Courts, New Delhi**