

Civ DJ No.1058/24

Pravesh Vs. University Teachers Co-Operative Group Housing Society Ltd Delhi.

22.05.2025

Present: Sh. Mohit Jangra, Ld counsel for plaintiff.

Sh. Vivek Gaur and Sh. Avinash Mishra, Ld counsels for defendant no. 1.

O R D E R

1. Vide this order, this Court shall decide the application under Order 39 Rule 1 & 2 read with Section 151 CPC moved on behalf of plaintiff.
2. Arguments have already been heard. Record perused.
3. As per case of plaintiff, she is sole and absolute owner and in possession of flat bearing no.94, Duplex comprising of three bed rooms, one drawing dining room, one kitchen, two toilet cum bath with balcony and terrace at second cum third floor in University Teachers' Co operative Group Housing Society Ltd, Saakshara Apartment, Block-A3, Paschim Vihar, Delhi-110063 (hereinafter referred as 'suit property'). It is submitted that defendant no.1 is a Society registered under Bombay Cooperative Societies Act, 1925 and now deemed to be registered under the Delhi Cooperative Societies Act, 1972.

4. It is submitted that one Sh. M.S. Ashraf (uncle of defendant no.2) was the original allottee and member of defendant no.1 since 03.12.1982 having his membership no.125. It is submitted that due to membership of defendant no.1, he was the first owner / original allottee of suit property. It is submitted that Sh. M.S. Ashraf during his lifetime remained bachelor and was not having any child. It is submitted that during his lifetime, he appointed defendant no.2 as his nominee regarding the suit property in the records of defendant no.1.
5. It is submitted that in the later part of his life, Sh. M.S. Ashraf decided to sell out the suit property and accordingly on 12.07.2007, he sold the suit property to plaintiff vide documents i.e. Agreement to Sell, GPA, Receipt of payment of Rs.1,80,000/-, SPA, Affidavit and Will. It is submitted that after sale of suit property, Sh. M.S. Ashraf requested the plaintiff to give the suit property to him on rent and accordingly, an oral agreement of lease was reached between plaintiff and Sh. M.S. Ashraf and he continued to reside in the suit property till his death.
6. It is submitted that after the death of Sh. M.S. Ashraf, plaintiff took over the possession of the suit property and suit property remained under locks and keys of the plaintiff. It is

submitted that in the beginning of 2024, plaintiff came to know that defendant no.2 had issued a letter to defendant no.1, in which, he claimed himself to be the nominee of late Sh. M.S. Ashraf and requested the defendant no.1 to hand over the possession of suit property to him as well as to update his name in the register/ records of defendant no.1 qua suit property in place of late Sh. M.S. Ashraf.

7. It is submitted that after that plaintiff approached the defendants and apprised them about the title documents executed in her favour by late Sh. M.S. Ashraf and in view of the same, defendant no.1 asked the plaintiff and defendant no.2 to reconcile their dispute and apprise the defendant no.1 regarding the ownership of the suit property. It is submitted that after that various meetings took place between plaintiff and defendant no.1, in which, after going through the title documents and confirming about their genuineness, defendant no.2 accepted that late Sh. M.S. Ashraf sold out the suit property to plaintiff and defendant no.2 issued a letter dated 07.08.2024 (attested on 12.08.2024) to defendant no.1, in which he stated that on the basis of documents issued by late Sh. M.S. Ashraf, he is satisfied that plaintiff is the bonafide owner of suit property and also confirmed the possession of plaintiff qua suit property. Defendant no.2 also executed an indemnity bond dated 12.08.2024 whereby absolved defendant no.1 from any future

dispute regarding the suit property.

8. It is submitted that after that in order to remove any technical objection to her title documents, plaintiff also paid Rs.1,16,640/- as deficient stamp duty on agreement to sell dated 12.07.2007 in the office of concerned Collector of Stamps / SDM. It is submitted that plaintiff also made a written representation to the president/ secretary of defendant no.1, whereby made request for issuance of NOC in order to proceed with the process of conversion of suit property from leasehold to freehold in her name.
9. It is submitted that after that on 25.08.2024, the secretary of defendant no.1 after seeking the approval, sanction and permission from the management committee of defendant no.1, issued a no objection certificate (NOC) in favour of plaintiff. It is submitted that plaintiff also deposited the property tax regarding the suit property and after that in the month of October 2024, started carrying out some renovation work in the suit property, however, she was obstructed from doing the same by some anti-social elements and matter/ dispute was assigned to defendant no.1.
10. It is submitted that after that defendant no. 1 and its management committee arbitrarily and without giving any due

intimation/ show-cause to plaintiff, withdrew the NOC dated 25.08.2024 and asked the plaintiff to obtain an order from the Court regarding title of the suit property and till then plaintiff was prevented from repair / renovation in the suit property. It is submitted that plaintiff in order to avoid any unnecessary litigation / conflict with defendant no.1, entered into a conciliation agreement dated 14.11.2024 with defendant no.2, which was arrived in mediation petition no. 556/2024 before Delhi High Court Mediation and Conciliation Centre.

11. It is submitted that by virtue of said Conciliation Agreement, any dispute regarding the ownership of suit property between plaintiff and defendant no.2 was resolved and defendant no.2 recognized the rights of plaintiff and waived off all his rights in the suit property. It is submitted that plaintiff presented the said agreement to defendant no.1 and sought restoration / re-issuance of the NOC and defendant no.1 on 08.12.2024 held an emergent general body (EGB) meeting and without going into the legal tenability of the conciliation agreement arrived at the conclusion that said agreement does not confer / resolve the issue of titleship of the suit property and reiterated that plaintiff should obtain her title to the suit property from a Court of law. Feeling aggrieved, present suit has been filed by plaintiff against defendants seeking the relief of declaration and permanent injunction.

12. In application u/o 39 Rule 1&2 r/w Section 151 CPC, plaintiff has specifically prayed that defendants and their agents be restrained from interference in the peaceful possession, enjoyment and use of the suit property by plaintiff or her family members. It is also prayed that they be also restrained from interference in carrying out the remaining renovation work in the suit property by plaintiff. It is also prayed that they be also restrained from forcibly entering into the suit property.
13. In pursuance of the suit, summons were issued to defendants and both defendants have filed their separate written statements.
14. Defendant no. 2 has admitted the case of plaintiff, however, defendant no.1 has strongly objected the prayer of plaintiff and denied her case.
15. In its written statement, although defendant no.1 has admitted that late Sh. M.S. Ashraf was the registered allottee and member of defendant no.1 and was a bachelor and initially he got entered the name of defendant no.2 as his nominee, however, defendant no. 1 further took the plea that during his lifetime, he never disclosed that he had sold the suit property to anyone. It is submitted that late Sh. M.S. Ashraf continued to occupy the suit

property till his death. It is submitted that NOC was obtained by playing fraud with the secretary of defendant no.1 and when this fact was brought to the knowledge of managing committee, said NOC was withdrawn vide letter dated 08.10.2024 and plaintiff was asked to obtain orders from the Court. It is submitted that documents relied upon by plaintiff are unregistered documents.

16. This Court is of the considered view that while deciding any interim application u/o 39 Rule 1&2 CPC, the Court has to see three material ingredients :-

- (i) Prima facie case
- (ii) Balance of convenience
- (iii) Irreparable injury

17. This Court is of the considered view that it is admitted on behalf of all the parties that original allottee of the suit property was Sh. M.S. Ashraf, who has passed away. It is also admitted that during his lifetime, he remained bachelor. It is also admitted that defendant no.2 was nominee of late Sh. M.S. Ashraf in respect of suit property. This Court is of the considered view that defendant no. 2 has admitted the case of plaintiff and now the dispute is between plaintiff and defendant no.1. Plaintiff is claiming that suit property has been sold out to him by late Sh. M.S. Ashraf on 12.07.2007 and he is relying upon the documents i.e. Agreement to Sell, GPA, Receipt of Payment,

SPA, Affidavit and Will. On the other hand, defendant no. 1 has taken the plea that during his lifetime, Sh. M.S. Ashraf never disclosed that he had sold out the suit property.

18. This Court is of the view that perusal of record shows that plaintiff has filed on record the photocopies of documents i.e. Agreement to Sell, GPA, Receipt of Payment, SPA, Affidavit and Will. Persusal of said documents shows that same were executed by late Sh. M.S. Ashraf in favour of plaintiff in respect of suit property and total consideration amount of Rs.1,80,000/- were received by Sh. M.S. Ashraf. Perusal of record shows that although none of said document is a sale deed / conveyance deed, however, by way of GPA (General Power of Attorney) various powers were given to plaintiff by Sh. M.S. Ashraf and as consideration amount was received by Sh. M.S. Ashraf, so said GPA (General Power of Attorney) is with consideration. This Court is of the further view that although an attorney or agency is terminated by the death of principal (giver) of the same, however, in case of attorney / agency / authority with consideration, same is not terminated even by death of the principal (giver). The law in this regard is clearly mentioned under Section 201 and 202 of the Indian Contract Act, 1872.

19. This Court is of the considered view that in view of the above documents in favour of plaintiff and the legal provision as

above stated, prima-facie case is shown in favour of plaintiff and balance of convenience also lies in favour of grant of interim relief to plaintiff as if same is not granted, irreparable injury shall be caused to plaintiff. Accordingly, defendant no.1 and its agents are restrained from interference in the peaceful possession, enjoyment and use of the suit property by plaintiff or her family members. They are also restrained from interference in carrying out the remaining renovation work in the suit property by plaintiff. They are also restrained from forcibly entering into the suit property. These directions shall remain in force till the disposal of the present suit. Accordingly, this application is disposed of.

However, nothing mentioned hereinabove shall tantamount to expression of opinion on the merits of the case.

Matter be put up for replication, admission/ denial of documents and framing of issues on **18.09.2025**.

Announced in the open Court
on this 22nd day of May, 2025.

(Dharmender Singh)
District Judge-01, (West)
Tis Hazari Courts, Delhi