

IA no. 4/2026

in

Ex no. 643/2017

Arun Kumar Aggarwal Vs Suman Tiwari & Anr.

07.03.2026

File is taken up today on the objections filed by the objector/Sh. Jitender Pal Singh.

Present: Sh. M.L. Bajaj, Ld counsel for the objector/Sh. Jitender Pal.

Arguments heard on the objections.
Put up for order at 4.00 PM.

(SHIV KUMAR)
DJ-02 (W)THC:Delhi
07.03.2026

At 4.00 PM

Present: None.

1. Vide this order, I shall decide the objections (IA no. 4/2026) filed on behalf of the objector/Sh. Jitender Pal Singh.

2. It is averred in the objections that the objector/Sh. Jitender Pal Singh had purchased a property bearing no. D-27, Land area, ad measuring 18 ½ square yards (12x14) situated at Punjabi Basti, Baljeet Nagar, New Delhi from JD no.1 / Smt Suman Tiwari by documents i.e. GPA, an agreement to sell, an affidavit, possession letter and a Will, all dated 31.01.2005.

3. It is further averred in the objections that the objector/Sh. Jitender Pal Singh had paid whole consideration amount of Rs. 1,75,000/- to JD no. 1 by cheque bearing no. 249467 dated 01.02.2005 drawn on Bharat Overseas Bank Limited and the said cheque was encashed and the actual physical possession of the property was delivered to the objector at spot in the presence of witnesses.

4. It is further averred that the said property had been purchased by the objector through his mother in law Smt Santosh Kaur. It is further averred that since the objector(NRI) was/is permanently stationed in USA, California, he gave the said property on rent to JD no. 1 by executing a rent agreement dated 06.04.2010 at a monthly rent of Rs. 10,000/- exclusive of any other charges and at the time of execution, JD no. 1 paid to objector rent of one month in advance. It is further averred that Objector had let out the property to JD no. 1 on aforesaid date after receiving possession of the said property in January,2005 from JD no. 1.

5. It is further averred that the suit for recovery titled “ Arun Kumar Aggarwal Vs Smt Suman Tiwar w/o of Sh. Adhya Shnakar Tiwari and Adhya Shankar Tiwari himself” has been filed on 19.04.2014 and the judgement and decree has been passed by Ld. ADJ, West, Delhi on 10.03.2017 in favour of the plaintiff.

6. It is further averred that JD also filed a RFA no 582/2017 titled Suman Tiwari & Anr Vs Arun Kumar Aggarwal, wherein an order had been passed on 03.07.2001 for depositing by appellants

whole of the decretal amount and thereafter the referred Regular First Appeal, it seems was not pursued.

7. It is further averred that the objector had inspected the file on 06.03.2026 by engaging a counsel by his special attorney dated 05.03.2026, Sh. Charanjit Singh, advocate. It is further averred that knowledge regarding pendency of execution and the court was attained by the objector through his mother in law/Smt Santosh Kaur on 25.02.2026.

8. It is further averred that on inspection of the file, it also came to the knowledge of objector through his attorney on 06.03.2026 that after attachment of his afore-referred property as being of JD no. 1, its proclamation of sale under order 21 rule 66 CPC has/had also been ordered and a court auctioneer/Sh. Kanhaiya Lal Choudhary has been appointed for the said purpose. It is further averred that the auction sale is fixed on 09.03.2026 and report has to be submitted to the court on 13.03.2026.

9. It is further averred that similar objections as his earlier had also been filed twice by Shri Rahul and Sh. Pankaj, sons of two Jds in the present execution and only one set of objections has been dismissed by Ld. Predecessor of the Hon'ble Court and the other set of objections yet remains to be decided.

10. It is further averred that both times being sons of JD no. 1 have alleged sale of property belonging to objector, sold by their mother again to them, earlier sold to objector by Jd no. 1. However, on inspection, it is seen that the documents on the basis of which,

JD no. 1 sold the property to the objector, do not find place on record (without which, attachment and sale, it is submitted becomes irregular).

11. It is further averred that before ordering proclamation for sale was it not necessary to proceed against Jds under order 21 rule 37 & 38 CPC, for detaining them in Civil Prison.

12. It is further averred in the objections that the following questions needs to be determined, in these objections:

1. As to whether a calculated fraud has been committed by Jds themselves or in collusion with the decree holder.

2. As to whether from 31.10.2005 till date or during the pendency of this execution, who was/is the owner of the property, under proclamation of sale on 09.03.2026.

3. the natural conclusion in such circumstances would be, if the objector is held to be the owner of the property, would there not be cause to him an irreparable loss and irremediable injury.

4. Till such questions are determined, would till then, auction fixed on 09.03.2026 is not liable to be kept in abeyance.

13. Arguments heard. Case file perused.

14. The present objections has been filed by Sh. Jitender Pal Singh through his Special attorney/Sh. Charanjit Singh/Id. Advocate. With the objections, photocopy of SPA in favour of Sh. Charanjit Singh and photocopies of GPA, agreement to sell, affidavit, possession letter, Will, all dated 31.01.2005 has been attached. These documents have been executed by Smt Suman Tiwari/JD no. 1 in favour of Sh. Jitender Pal Singh S/o Sh. Gurdev Singh (objector).

15. With the objection, photocopy of rent agreement dated 06.04.2010 has also been attached and this rent agreement has been executed between the objector/ Sh. Jitender Pal Singh and Jd no. 1/Smt Suman Tiwari.

16. These documents relate to property bearing no. D-27, Land area, ad measuring 18 ½ square yards (12x14) situated at Punjabi Basti, Baljeet Nagar, New Delhi.

17. Id counsel for the objector has not produced the originals of abovesaid documents. It is submitted that the originals are lying with the objector in USA and will be produced on the NDOH.

18. The present execution has been filed by the DH against the Jds on 06.07.2017 and order regarding attachment of the property of JD no. 1 i.e. P-1534, Gali no. 15, Baljit Nagar, Punjabi Basti,

New Delhi (hereinafter to be referred as “ property in question”) has been passed on 07.06.2023. The property in question has been attached by the bailiff on 09.01.2024 in accordance with the order passed by the court on 04.12.2023. The property in question has been ordered to be sold by way of public auction, firstly vide order dated 09.04.2024 and thereafter, vide order dated 14.01.2026 and the date of sale of the property in question is 09.03.2026.

19. It is pertinent to mention that earlier, objections were filed by Sh. Rahul Tiwari and Sh. Pankaj Tiwari claiming to have purchased the property in question from JD no. 1 through GPA, agreement to sell, Will, affidavit of sale and a receipt and said objections were dismissed by the court, vide order dated 07.06.2023.

20. Now, the objector/Sh. Jitender Pal Singh is claiming that he has purchased the property in question from JD no. 1 through GPA, agreement to sell, Will, affidavit and possession letter.

21. In a judgment titled ***Suraj Lamp & Industries Pvt Ltd Vs State of Haryana & Anr Special Leave Petition (CE) no. 13917 of 2009, Hon'ble Supreme Court*** has held as follows:

“Scope of an Agreement of sale”

“11. Section 54 of TP Act makes it clear that a contract of sale, that is, agreement of sale does not, of itself, create any interest in or charge on such property. This Court in Narandas Karsondas v. S.A. Kamtam and Anr (1977) 3 SCC 247, observed:

A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of Transfer of property Act. See Rambaran

Prosad v. Ram Mohit Hazra [1967]1 SCR 293 The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein."

"In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in section 5 of Transfer of Property Act is used in the wider sense of conveying ownership... ..that only on execution of conveyance ownership passes from one party to another...."

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A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of Transfer of property Act. See Rambaran Prosad v. Ram Mohit Hazra [1967]1 SCR 293 The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein."

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In Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra (2004 (8) SCC 614)this Court held:

"Protection provided under Section 53A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed

transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed in service against a third party."

It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

12. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53A of TP Act). According to TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter."

22. In a judgment titled ***Shakeel Ahmad Vs Sayed Akhlaq Hussain Civil Appeal No 1898 of 2023, Hon'ble Supreme Court*** has held as follows.

"10. Having considered the submissions at the outset, it is to be emphasized that of irrespective of what was decided in the case of Suraj Lamps and Industries(supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At

best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.)

“14. In case the respondent wanted to evict the appellant treating him to be a licensee, he could have maintained a suit on behalf of the true owner or the landlord under specific instructions of Power of Attorney as landlord claiming to have been receiving rent from the appellant or as Attorney of the true owner to institute the suit on his behalf for eviction and possession. That being not the contents of the plaint, we are unable to agree with the reasoning given by the High Court in the impugned order.”

23. In a judgment titled as **“Ghanshyam Vs Yoginder Rathi, 2023 livelaw (SC) 479, Hon'ble Supreme Court of India** has held as follows:

*“14. In connection with the general power of attorney and the Will so executed, the practice, if any, prevalent in any state or the High Court recognizing these documents to be documents of title or documents conferring right in any immovable property is in violation of the statutory law. Any such practice or tradition prevalent would not override the specific provisions of law which require execution of a document of title or transfer and its registration so as to confer right and title in an immovable property at over Rs. 100/- in value. The decisions of the Delhi High court in the case of **Veer Bala Gulati Vs Municipal Corporation of Delhi and Anr** following the earlier decision of the Delhi High Court itself in the case of **Asha M. Jain Vs. Canara Bank and Ors** holding that the agreement to sell with payment of full consideration and possession along with irrevocable power of attorney and other ancillary documents is a transaction to sell even though there may not be a sale deed, are of no help to the plaintiff-respondent inasmuch as the view taken by the Delhi High Court is not in consonance with the legal position which emanates from the plain reading of Section 54 of the Transfer of property Act, 1882. In this regard, reference may be had to two other decisions of the Delhi High Court in **Imtiaz Ali Vs Nasim Ahmed and G. Ram Vs. Delhi Development Authority** which inter-alia that an agreement to sell or the power of attorney are not*

*documents of transfer and as such the right title and interest of an immovable property do not stand transferred by mere execution of the same unless and document as contemplated under Section 54 of the Transfer of Property Act, 1882, is executed and is got registered under Section 17 of the Indian Registration Act, 1908. The decision of the Supreme Court in **Suraj Lamp & Industries Pvt. Ltd. Vs State of Haryana & Anr.**” also deprecates the transfer of immovable property through sale agreement, general power of attorney and will instead of registered conveyance deed.”*

“15. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferer or any person claiming under him.”

24. In view of abovesaid judgments, it is settled position of law that GPA, Agreement to Sell, possession letter and affidavit do not confer any right, title or interest to the objector/Sh. Jitender Pal Singh, in the property in question. At the best, on the basis of agreement to sell, the objector could have filed the suit for specific performance of agreement to sell. The agreement to sell is of dated 31.01.2005 but till date, no such suit has been filed. Till date, the sale deed/conveyance deed of the property in question is not in the name of the objector. It is also settled law that Will operates after the death of the testator/testatrix and during the life time of testator/testatrix, the beneficiary of the Will cannot claim any right, title or interest in the property bequeathed by way of Will.

25. It is also pertinent mention that the court has ordered for the sale of property bearing no P-1534, Gali no. 15, Baljit Nagar, Punjabi Basti, New Delhi whereas the documents produced by the objector are of the property bearing D-27, Land area, ad measuring 18 ½ square yards (12x14) situated at Punjabi Basti, Baljeet Nagar, New Delhi.

26. In view of the foregoing judgments and discussions, it is held that at present, on the basis of abovesaid documents, the objector cannot claim any right, title or interest over the property in question. There is no valid reason for stalling the auction sale, which to be conducted on 09.03.2026. This court does not find any merit in the objections of the objector and the IA no. 4/2026 stands **dismissed**. *Application under Section 5 of Limitation Act stands disposed off accordingly.*

Put up on date already fixed i.e. 13.03.2026.

(SHIV KUMAR)
DJ-02 (W)THC:Delhi
07.03.2026