

**IN THE COURT OF SH. GOPAL SINGH CHAUHAN
ADDITIONAL DISTRICT JUDGE-03: WEST DISTRICT
TIS HAZARI COURT: DELHI**

**Civ DJ No. 614/2022
CNR No.DLWT01-006478-2022**

In the matter of :-

- 1. Sh. Jagdip Singh Bedi**
- 2. Sh. Baljit Singh Bedi**

**Both S/o Late S. Harkrishan Singh Bedi &
R/o H.No.16/31, East Patel Nagar,
New Delhi-110008**

.....Plaintiffs

V/s.

**Sh. Kshitij Gupta
S/o Sh. Ram Kishor Gupta
R/o. H.No.16/31, Third Floor,
East Patel Nagar,
New Delhi-110008**

.....Defendant

Order

1. Vide this order I shall dispose off two applications, one u/o VII Rule 10 & 10A r/w sec.151 CPC, filed on behalf of defendant Sh. Kshitij Gupta praying for returning plaint along counter-claim, for re-filing before the Hon'ble High Court and another u/o. XII rule 6 CPC r/w sec.151 CPC, filed on behalf of plaintiffs Sh. Jagdip Singh Bedi and Sh. Baljit Singh Bedi (both brothers) praying for passing decree of possession in respect of the suit property.

2. Facts of case of the plaintiffs, in brief (required to be discussed for disposal of the applications), are as follows- The plaintiffs are absolute owner of three-storey built up property bearing H.No.16/31, East Patel Nagar, New Delhi- 110008, by virtue of gift deed dated 28.04.2001, executed by their father in their favour. In year 2009 the defendant was inducted as a tenant in respect of third floor of the said property (hereinafter referred to as 'suit property') for a period of two years. Later the lease of the defendant was renewed from time to time and last time it got renewed for a period of 11 months from 01.04.2019 to 29.02.2020 with monthly rent of Rs.55,000/-, vide registered lease deed dated 15.04.2019. The said lease deed was expiring on 29.02.2020 but due to COVID-19 pandemic situation, the plaintiffs allowed the defendant to stay in the suit property for a further period of 11 months on the same terms and conditions with monthly rent of Rs.60,000/-. In the first week of January 2021, the plaintiffs verbally requested the defendant to vacate the suit property as the same was required for their residential purpose from February 2021. At that time, the defendant requested the plaintiffs to allow him to stay there for a period of six months i.e. up to July 2021, on the pretext of searching alternate premises. The plaintiffs allowed him to stay there for that period on the basis of month-to-month tenancy. After the aforesaid period the defendant had not vacated the suit property and he had also stopped paying rent to the plaintiffs. At that time the plaintiffs desisted from taking any legal action against the defendant on humanitarian ground with hope that the defendant would keep his promise, however, since he had not vacated the suit property even after expiry of nine months, on 28.04.2022 the

plaintiffs issued a legal notice to him asking him to vacate the suit property on or before 31.05.2022, which got served on 02.05.2023 but even then he had not vacated the property.

3. On being served with summons, the defendant has appeared before the court and filed his written statement. In the written statement although the facts that there was landlord-tenant relationship between the parties and that the last paid rent of the suit property was Rs.60,000/- pm, have been admitted, however, defence is set up that on 06.09.2021 the defendant had entered into a written agreement with plaintiff no.2 to purchase the suit property against total consideration amount of Rs.2.25 crores, that part consideration amount of Rs.25 lakhs was also paid by him to the plaintiff no.2 and that possession of the defendant in the suit property thereafter, was in the capacity of a vendee/ purchaser and not as a tenant.

4. Regarding transaction of the aforementioned agreement to sell, purportedly executed between the plaintiff no.2 and the defendant, the claim of the defendant, mentioned in the written statement-cum-counter-claim, is as follows- In August, 2021 Sh. Mohandeep Singh Bedi, son of plaintiff no.1, got implicated in a criminal case and at that time the plaintiff no.1 had sought financial help from the defendant to meet legal expenses, etc. On 01.09.2021 the plaintiff no.2 had approached the defendant with request to arrange amount of Rs.25-30 lakhs within a few days. The defendant had promised to arrange Rs.5-10 lakhs and had given Rs.2 lakhs, which were available with him, to the plaintiff no.2 on the same day. On 02.09.2021 in afternoon the plaintiff no.2 had again approached the defendant and had requested for some more money on urgent basis. After the defendant had asked

the plaintiff no.2 about his provision for repayment of the money, he had offered to sell the suit property to the defendant against consideration amount of Rs.2.1 crores without any roof rights. The defendant had refused the said offer as he was not interested to purchase the property without roof rights. Thereafter, on 04.09.2021, the plaintiff no.2 called the defendant for final negotiation on the price and after long discussion they both had agreed to the terms that the suit property would be sold against consideration amount of Rs.2.25 crores along with 1/3rd roof rights. The defendant had agreed to pay an amount of Rs.3 lakhs on the same day and to arrange for Rs.20 lakhs by or before 06.09.2021. It was also agreed that the plaintiffs would apply for freehold of the suit property latest by 31.01.2022 and provide proof of the same to the defendant, that the defendant would make another part payment of Rs.25 lakhs after the plaintiffs would provide the proof of applying for the freehold, that the balance amount of Rs.1.75 crores would be paid within three months from the day when the suit property is converted to freehold and that the plaintiffs would not claim any rent from September 2021. On 06.09.2021, the plaintiff no.2 had prepared an agreement to sell containing the aforementioned terms on Rs.100/- stamp paper. From 03.11.2021 the defendant got engaged in nursing his elderly mother who suffered a heart-attack at home-town in Hathras, U.P. Later she was admitted in BLK & Max Hospitals, New Delhi, for surgery procedure. The defendant remained busy with his mother until 23.11.2021 and unfortunately she had expired on 24.11.2021 (During arguments Ld. counsel for the defendant has clarified that due to mistake in the plaint instead of 'mother', 'father' got mentioned). The grief

stricken defendant had performed post death rituals of his mother and related works till mid of January 2022. In the meantime, the defendant constantly remained in touch with the plaintiffs. During the same period, the plaintiff no.2 called the defendant and conveyed their condolences once again and asked him if he could get the original agreement to sell dated 06.09.2021 to get it signed by the plaintiff no.1. The defendant arranged the agreement to sell through his servant Khokan Dey, who was present in the suit property, however, by mistake along with the original agreement, he also gave copy thereof which was kept in the same envelope. When the defendant returned from his native place on 09.12.2021, he asked the plaintiff no.2 to return the agreement to sell to which he has pleaded that despite his efforts upto that point of time, he could not convince the plaintiff no.1 for the aforesaid deal. In January, 2022 the defendant conveyed his willingness to make the promise payment and enquired about the status of freehold application on which the plaintiff no.2 started making excuses and at his behest Sh. Mohandeep Singh Bedi started making unreasonable demands by raising the sale consideration to Rs.2.75 crores and that too without any roof rights.

5. In replication to the written statement the plaintiffs have vehemently denied the aforementioned claim of the defendant.

6. In the present matter along with written statement a counter-claim has been filed on behalf of the defendant for seeking relief of specific performance of the aforementioned purported agreement to sell in respect of the suit property, which has been registered separately and has been listed along-with the present matter. The counter-claim was filed before this Court by

valuing it at Rs.2 crores. During the proceedings thereof, an application u/o VI Rule 17 CPC has been filed on behalf of the counter-claimant/ defendant mainly stating that the counter-claim is based on agreement to sell whereby consideration amount of the property was fixed at Rs.2.25 crore, hence, the valuation of the counter-claim ought to have been according to that, however, by mistake the valuation was done at Rs.2 crore.

7. In the application u/o VII Rule 10 & 10A r/w sec.151 CPC, mainly it is stated that the counter-claim filed by the counter-claimant/ defendant is for specific performance of agreement to sell dated 06.09.2021, consideration amount of which is Rs.2.25 crores, therefore, this court cannot entertain the suit and the counter-claim as the same are beyond its pecuniary jurisdiction and it is urged that the plaint in the present matter along-with the counter-claim, be returned as per provision u/o VII rule 10 & 10A CPC so that the same i.e. both the matters, can be refiled before the Hon'ble High Court. In this regard judgment of Hon'ble High Court of Delhi in case 'M/s. Raj and Associates & Ors vs. Videsh Sanchar Nigam Limited & Anr.' 2009 MANU/DE/0499/2009, has been relied upon wherein it was observed-

'3. The issue therefore is that when the valuation of a suit plaint is less than the pecuniary jurisdiction as required for filing a suit in this court, is the suit liable to be transferred to the appropriate court of pecuniary jurisdiction or has the suit plaint to be retained in this court and be consolidated with the counter claim filed by the defendant No.1. We are of the view that the present appeal deserves to be allowed for the reasons stated hereinafter.

Therein it was further observed-

5. Reading of sub-Rule 2 of Order 8 Rule 6-A clearly shows that a final judgment has to be pronounced by the court on both the original suit claim and the counter claim filed in such suit. Clearly therefore, a common judgment can only be passed if both the suit and the counter claim are heard and disposed of together. The legislative intention is therefore clear that the suit and the counter claim have to be tried by the same court. The object is to give a quietus with respect to the suit claim and the counter claim which are related to each other so as to finally bind the parties with respect to all the connected issues by a common judgment’.

8. In reply to the application filed on behalf of the plaintiffs, the aforementioned plea has been strongly opposed.

9. In present context another judgment of Hon'ble High Court of Delhi in case 'Shri Ram Dass Malik vs. Shri Raja Badami & Ors.', in TR.P.(C) 63/2022, is relevant to be considered wherein it was held-

‘14. At the outset, this Court is not convinced with the arguments of the learned counsel for the petitioner. First and the foremost the proviso to Order 8 Rule 6A CPC specifically provides that the counter claim filed by the respondent shall not exceed the pecuniary limit of the jurisdiction of the Court.

15. I consider that the counter claim filed by the defendant, being beyond pecuniary jurisdiction of the Court, is not maintainable, as even been mentioned by this Court in Dr. Pritesh Kumar Singh (supra) relying upon “Gurbachan Singh v. Bhag Singh” (1996) 1 SCC 770 that the counter claim or the damages cannot exceed the pecuniary jurisdiction of the Court. It is also a cardinal principle that the jurisdiction of the Court trying the suit cannot be ousted by taking stand in defence i.e. by way of filing counter claim/set-off/damages in excess to the pecuniary jurisdiction of that court.

16. The judgments cited by the learned counsel for the petitioner are respectfully distinguished on the facts and circumstances of the case.

In ‘Raj & Associates & Anr (Supra), the facts were totally different. In the case, the initial pecuniary jurisdiction was valued at Rs. 9, 70, 417/- which was much below the pecuniary jurisdiction of Rs.20,00,000/- at that particular time. Later on, the counter claim was filed which was valued at around Rs.30,00,000/-. The Court taking into account, the peculiar facts and circumstances, allowed both the suit and the counter claim be tried by this Court. Similarly, the facts in Dr. Pritesh Kumar Singh (Supra) are also distinguishable. In this case also the damages for claim and in the counter claim, the respondent petitioner sought the damages which were beyond the pecuniary jurisdiction of the learned Trial Court.

17. In the present case, the respondent-plaintiff has filed a suit for recovery of possession claiming the petitioner to be the tenant, the petitioner herein set up a case that in fact, he had entered into an oral agreement to sell for a sum of Rs.2,75,00,000/- out of which Rs.40,00,000/- has been paid.

18. I consider that therefore the judgments as cited by the learned counsel for the petitioner are distinguishable. This Court is of the view that there is no ground to allow the transfer petition. Hence, the present petition along with pending application is dismissed’.

10. The situation in the present matter is squarely covered by the abovementioned case law in 'Shri Ram Dass Malik' (Supra), wherein judgment relied upon on behalf of the defendant in 'Raj & Associates & Anr' (Supra) has been distinguished on the facts and circumstances of the case, as in the present matter also the defendant is tenant under the plaintiff and he has filed a counter-claim claiming that the plaintiff has entered into an agreement to sell with him in respect of the suit property.

11. In judgment rendered by Hon'ble Supreme Court in case titled 'Gurbachan Singh vs Bhag Singh & Ors.', 1996 AIR 1087, which is also referred in the abovementioned case law in 'Shri Ram Dass Malik' (Supra), it was held-

‘Further limitation was that the counter-claim should not exceed the pecuniary limits of the jurisdiction of the court. In other words, by laying the counter claim pecuniary jurisdiction of the court cannot be divested and the power to try the suit already entertained cannot be taken away by accepting the counter claim beyond its pecuniary jurisdiction’.

12. As aforementioned, in the present matter the counter-claim was filed by valuing it at Rs.2 crores and now on behalf of the counter-claimant/ defendant plea is made that the counter-claim is based on agreement to sell whereby consideration amount of the property was fixed at Rs.2.25 crore, hence, the valuation of the same ought to have been according to that, however, by mistake its valuation was done at Rs.2 crore. From this it is clear that the counter-claim was entertained by this court due to the aforesaid mistake as had it been properly valued at Rs.2.25 crore, in view of proviso to Order VIII Rule 6A(1) CPC the same could not have been entertained by this court being beyond its pecuniary jurisdiction.

13. Moreover, in view of the aforementioned proposition of law it is clear that merely because of the fact that a counter-claim may have to be returned as its valuation goes beyond the pecuniary jurisdiction of this Court, the jurisdiction of this court to entertain the main suit is not ousted, therefore, the plaint in the main suit cannot be returned along-with the counter-claim. Hence, the application u/o VII Rule 10 & 10A r/w sec.151 CPC **is being dismissed.**

14. In the application u/o XII Rule 6 CPC it is urged that order for handing over possession of the suit property be passed against the defendant. Therein mainly it is stated that in the written statement the defendant has admitted the relationship of landlord

and tenant, the last paid rent to be Rs.60,000/- per month and the receiving of the legal notice dated 28.04.2022 regarding termination of the tenancy.

15. Reply to the application was not filed on behalf of the defendant despite sufficient opportunity and learned counsel for the defendant has addressed oral arguments.

16. In order to pass a decree of possession in respect of a tenanted premises, three factors are required to be considered. Firstly, existence of landlord and tenant relationship. Secondly, the tenancy is not protected under the provisions of Delhi Rent Control Act or in other words, rent of the tenanted premises to be more than Rs.3,500/- pm. Thirdly, the tenancy has been terminated.

17. As aforementioned, in the written statement the landlord and tenant relationship between the parties and the fact that the rent of the suit property was more than Rs.3500/- pm, have been admitted by the defendant. Admittedly, last written agreement between the parties was dated 15.04.2019 whereby the tenancy in respect of the suit property was extended for a period of 11 months from 01.04.2019 to 29.02.2020. In the written statement in para no.9 of reply on merits it is contended that due to the execution of the agreement to sell dated 06.09.2021 the lease deed was terminated in September, 2021 and in para no.13 thereof receiving of the legal notice dated 28.04.2022 of the plaintiffs, by the defendant, is admitted. The said notice can be considered a valid notice for termination of the tenancy as per provision u/s 106 of Transfer of Property Act. Moreover, it is settled proposition of law that filing of suit also serve as a notice of termination of tenancy. Also as per provision u/s 111(g) of

Transfer of Property Act, a lease of immovable property determines by forfeiture in case the lessee renounces his character as such by claiming title in himself. Hence, it is evident that the lease of the defendant had stood terminated. Now the issue which needs to be determined is as to whether after termination of the tenancy the defendant has a right to retain/continue to remain in possession of the suit property.

18. As aforementioned, the defence of the defendant is that after execution of the purported agreement to sell his possession in the suit property was in the capacity of a vendee/ purchaser. From overall reading of the written statement-cum-counter-claim the claim of the defendant appears to be that up to the time of execution of the purported agreement to sell dated 06.09.2021 he had paid total amount of Rs.25 lakhs to the plaintiff no.2 as part consideration. In this regard it is stated that out of the said amount, Rs.2 lakhs were paid on 01.09.2021 and Rs.3 lakhs were paid on 04.09.2021, however, it is not clearly mentioned as to when were Rs.20 lakhs paid. Also it is not specifically mentioned that as to whether the said amount was paid by bank/ electronic transfer or cash and that if the amount was paid in cash whether or not any separate receipt was obtained from the plaintiff no.2. No receipt has been placed on record on behalf of the defendant. As per relevant provisions of the CPC, the defendant was supposed to file all documents along with the written statement on which he rely for his defence.

19. The defendant has also claimed that the plaintiff no.2 had demanded the original agreement to sell dated 06.09.2021 from him on the pretext of getting it signed from the plaintiff no.1 and that he had arranged the same through his servant who by

mistake along with the original agreement had also given copy thereof which was kept in the same envelope. However, it is not the case of the defendant that along with the agreement and its copy any receipt regarding the payment of the money, had also been given to the plaintiff no.2, hence, it can be inferred that no receipt was there. From the overall facts on record it can also be inferred that the claim of the defendant is that the aforesaid amount of Rs.25 lakhs was paid in cash.

20. During the proceedings of the present matter on behalf of the plaintiffs it has been informed that the defendant always used to pay the rent to the plaintiffs through bank/ electronic transfer and in this regard affidavits of the plaintiffs have been placed on record wherein the details of the payment of the rent was mentioned and along with that statements pertaining to bank accounts of the plaintiffs have been annexed. The factum of payment of the rent by bank/ electronic has not been disputed by the defendant. When the defendant had been paying the rent through bank/ electronic transfer it is highly improbable that he would have given huge amount of Rs.2 lakhs, Rs.3 lakhs and Rs.20 lakhs (total Rs.25 lakhs) to the plaintiff no.2 in cash and that too without obtaining any receipt from him.

21. As per the story of the defendant, the purported agreement to sell was entered into only between him and the plaintiff no.2 and the plaintiff no.1 was not party to it. It appears to be strange that when the defendant knew that the plaintiff no.1 was also co-sharer in the suit property, why had he not insisted him to join the deal at that time and how come he became ready to pay consideration amount of Rs.25 lakhs only to the plaintiff

no.2 when he had been paying rent to both the plaintiffs separately.

22. As aforementioned, the defence of the defendant is that after the execution of the purported agreement to sell, his possession in the suit property was in the capacity of a vendee/purchaser. In this context the following given provisions of Transfer of Property Act and Indian Registration Act are relevant to be taken into consideration-

Section 53A of Transfer of Property Act provides, ‘53A. *Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that 2 ***, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.*

Section 17 of Indian Registration Act provides, ‘17. *Documents of which registration is compulsory.—*

(1) x x x

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001(48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

(2) x x x

23. In the present matter the defendant is clearly claiming protection as per the provision u/s 53A of Transfer of Property Act. In the given situation, for the sake of argument even if it is assumed that the defendant had entered into the agreement to sell and had also paid part consideration amount of Rs.25 lakhs, even then this does not confer a right on him to retain/ continue to be in possession of the suit property as it is not his case that the purported agreement to sell got registered, hence, in view of provision u/s 17(1A) of Indian Registration Act, his aforementioned defence is not legally tenable on its face itself.

24. In view of above discussions, the application u/o XII Rule 6 CPC, is being allowed and claim of the plaintiffs regarding possession of the suit property is allowed in their favour. The defendant is hereby directed to handover vacant and peaceful possession of the suit property i.e. H.No.16/31, 3rd Floor, East Patel Nagar, New Delhi- 110008, to the plaintiffs.

25. Preliminary decree be prepared accordingly.

Announced in the open court.

(GOPAL SINGH CHAUHAN)
ADJ-03, WEST/DELHI
02.08.2024