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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA 520/2023 & CM APPL. 33847/2023, CM APPL. 10850/2025
YOGESHWAR KUMAR SABHARWALAppellant
Through: Mr. Shekhar Gupta, Mr. Rahul Gupta,
Ms. Mansha Gupta and Mr.
Raghvendra P. Rao, Advocates.

versus

VIJAY KUMAR SABHARWAL (THROUGH LRS) AND ANR.
.....Respondents
Through: Ms. Tamali Wad, Sr. Advocate with
Mr. Arjun Sehgal, Mr. V. Pandey and
Ms. Palak Garg, Advocates for
Respondent No.1.

+ RFA 104/2024 &, CM APPL. 10846/2025
YOGESHWAR KUMAR SABHARWALAppellant
Through: Mr. Rahul Gupta, Mr. Shekhar Gupta,
Ms. Mansha Gupta and Mr.
Raghvendra P. Rao, Advocates.

versus

VIJAY KUMAR SABHARWAL THROUGH ITS LRS MRS
MADHU SABHARWAL & ORS.Respondents
Through: Ms. Tamali Wad, Sr. Advocate with
Mr. Arjun Sehgal, Mr. V. Pandey and
Ms. Palak Garg, Advocates for
Respondent No.1.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **13.08.2025**

CM APPL. 10047/2024 in RFA 520/2023

By way of the present application filed under Order XLI Rule 5
read with section 151 of the Code of Civil Procedure 1908 ('CPC'),
the appellant/applicant seeks stay of operation of impugned



judgement and decree dated 21.04.2023 passed by the learned Additional District Judge, South West District, Dwarka Courts, New Delhi.

2. The court has heard Mr. Shekhar Gupta, learned counsel appearing for the appellant and Ms. Tamali Wad, learned senior counsel appearing for respondent No.1, at length.
3. The essence of the submissions is that the suit property - bearing No. 21, Satya Niketan, New Delhi - was held by respondent No.1 on the basis of an Agreement to Sell and a General Power of Attorney dated 20.12.1963 executed in favour of respondent No.1 by the original owner, one Mr. Ghulam Ali.
4. Furthermore, since respondent No.1 was ordinarily residing in Canada, the said respondent had granted a General Power of Attorney dated 16.07.1988 to his father; and after the demise of his father on 10.12.1994, respondent No.1 executed another General Power of Attorney dated 09.12.1998 in favour of the appellant, who is his brother.
5. Furthermore, a family settlement dated 27.12.1994, titled 'Memorandum of Partition' was signed between the members of the family, followed by another family settlement dated 26.06.2003 titled 'Agreement'; and it is based on the second family settlement dated 26.06.2003 that the appellant is claiming his ownership over the suit property.
6. Additionally, the appellant is also citing a Perpetual Lease Deed dated 14.07.2005 executed in his favour by the Municipal Corporation of Delhi ('MCD'), claiming that pursuant to what was agreed upon



between the members of the family *vide* Agreement dated 26.06.2003, the appellant was entitled to, and did, obtain a perpetual lease in respect of the suit property in his favour.

7. However, Ms. Wad, learned senior counsel appearing for respondent No. 1 contends, that first and foremost, *vide* Agreement to Sell dated 20.12.1963 the original owner had transferred all his rights and titles in the suit property in favour of respondent No.1; and thereafter, *vide* a General Power of Attorney dated 09.12.1998, respondent No.1 had *only* appointed the appellant as his attorney to act *for and on his behalf*; and therefore, the appellant could not have got Perpetual Lease Deed dated 14.07.2005 executed by the MCD *in his own name* (*i.e.*, in the name of the appellant).
8. Insofar as Agreement dated 26.06.2003 is concerned, Ms. Wad argues, that that document is not a memorandum of family settlement; but is a document which *inter alia* purports to transfer ownership rights in the suit property by respondent No.1 in favour of the appellant; but that document is neither registered nor was it acted upon. It is also submitted, that as recorded in the impugned judgment, the said agreement was not even produced in original before the learned trial court. Furthermore, Ms. Wad argues, that the consideration of Rs. 20 lacs referred in agreement dated 26.06.2003 was never paid to respondent No.1.
9. Learned senior counsel submits, that the above position stands admitted by the appellant (DW-1) in his cross-examination dated 31.05.2022.



10. In the circumstances, it is argued, that though the appellant may have continued in use and occupation of the suit property, he was never entitled to *ownership* of the suit property; and Perpetual Lease deed dated 14.07.2005 has accordingly been obtained from the MCD by fraud.
11. Ms. Wad also submits, that it is to be noted that in application dated 25.05.2005, whereby the appellant applied to the Deputy Director, Slum & J.J. Department, M.C.D., Vikas Kuteer, New Delhi for grant of lease hold rights in respect of the suit property, there was no reference whatsoever to Agreement dated 26.06.2003.
12. Upon a *prima-facie* view of the matter, it is directed that the impugned judgement and decree dated 21.04.2023 shall remain *stayed*; and the appellant shall not be ousted from the possession of the suit property, *till the next date of hearing before this court*.

CM APPL. 33861/2023 in RFA 520/2023 (additional evidence)

13. Issue notice.
14. Mr. Arjun Sehgal, learned counsel appears on behalf of the respondents on advance copy; accepts notice; and seeks time to file reply.
15. Let reply to the application be filed within 06 weeks; rejoinder thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.
16. Re-notify on 04th November 2025 before the learned Joint Registrar for completion of pleadings in the application.
17. List before court thereafter.



CM APPL. 8127/2024 (stay) in RFA 104/2024

18. Mr. Gupta submits, that they do not wish to press the present application *at this stage*.
19. In view of the above, it is clarified that there is *no stay* of operation of impugned judgement and decree dated 09.11.2023 passed in CS DJ No. 516979/2016 which relates to grant of *mesne profits* in relation to the suit property.

RFA 520/2023

RFA 104/2024

20. Re-notify on 04th November 2025 before the learned Joint Registrar.

ANUP JAIRAM BHAMBHANI, J

AUGUST 13, 2025

V.Rawat