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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 520/2023**

YOGESHWAR KUMAR SABHARWALAppellant
Through: Mr. Rahul Gupta and Mr. Shekhar
Gupta, Advocates

versus

VIJAY KUMAR SABHARWAL (THROUGH LRS) AND ANR.

.....Respondents

Through: Ms. Tamali Wad, Senior Advocate
with Mr. Varyam Pandey, Advocate

+ **RFA 104/2024**

YOGESHWAR KUMAR SABHARWALAppellant
Through: Mr. Rahul Gupta and Mr. Shekhar
Gupta, Advocates

versus

VIJAY KUMAR SABHARWAL THROUGH ITS LRS MRS
MADHU SABHARWAL & ORS.Respondents

Through: Ms. Tamali Wad, Senior Advocate
with Mr. Varyam Pandey, Advocate

CORAM:

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

25.02.2025

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[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 10850/2025 (for urgent hearing/stay) in RFA 520/2023

CM APPL. 10846/2025 (for urgent hearing/stay) in RFA 104/2024

1. Since I had to sit in the Division Bench in pre-lunch session, arguments on these applications commenced but had to be deferred for post-lunch session. Now in this post-lunch session, the matter has reached at 3:50 pm and learned counsel for appellant seeks adjournment as he has to rush to attend a cremation. Learned counsel for respondents in all fairness



does not object and assures that on the date fixed before the execution court, her counsel before the execution court shall seek adjournment.

2. For convenience, it is recorded that the present appeals challenge judgments and orders of recovery of possession of the immovable property and of mesne profits. Broadly speaking, the case set up by the present respondent (plaintiff) before the trial court was that the subject property as a vacant land was allotted to one Ghulam Ali, who sold the same through agreement to sell and registered general power of attorney to the present respondent, who paid the entire sale consideration and constructed over that plot; and thereafter, his parents and siblings including the present appellant (defendant) occupied the said property as permissive users; but while the respondent was settled in Canada, the appellant fraudulently got executed and registered a perpetual lease deed of the subject property in his name on the basis of documents executed in favour of the respondent, so the respondent filed the suit for cancellation of the registered perpetual lease deed and recovery of possession and mesne profits. On the other hand, the case set up by the appellant before the trial court was that Ghulam Ali sold the subject property to father of the parties and it is father of the parties who paid the entire sale consideration and cost of construction, so it was a family property.

3. The learned trial court laid strong emphasis on Ex.PW-1/20 (*pdf* 76) and noted the admissions recorded in that document by the present appellant.

4. The arguments advanced today on behalf of appellant are that on the date of execution of the sale transaction between Ghulam Ali and the present respondent, as alleged in the suit, the present respondent was minor in age



and had no source of earnings; that a family settlement dated 26.06.2003 was executed between the parties, which included the subject property and that would show the nature of the property as family property and in this regard the trial court fell in error by rejecting the family settlement on the ground that it was not proved, ignoring order dated 19.01.2018 whereby production of the original family settlement was done away with; and that after death of father of the parties, which occurred on 10.12.1994, the parties executed a memorandum of partition Ex.DW-1/2 which included floor wise division of the subject property, but the learned trial court wrongly discarded this document on the ground that it was not a registered one, though according to the appellant it could be read atleast for collateral purposes and even otherwise, it not being an instrument but a memorandum, it was not compulsorily registrable.

5. It is in furtherance of the above arguments that both sides shall address on the next date.

6. Relist on 16.04.2025.

7. In the meanwhile, keeping in mind the nature of relationship between the parties, the matter is also referred to Mediation Centre, Delhi High Court where both sides shall appear personally or virtually on 05.03.2025.

GIRISH KATHPALIA, J

FEBRUARY 25, 2025/tp

Click here to check corrigendum, if any