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

Date of decision: 17th FEBRUARY, 2026

IN THE MATTER OF:

I.A. 31785/2025

IN

+ **CS(OS) 928/2025**

SURINDER PAL CHAWLA & ANR.Plaintiffs

Through: Dr. Amit George, Mr. Siddhartha Jain, Ms. Rupam Jha, Mr. Kartikay Puneesh, Mr. Adhishwar Suri, Mr. Dushyant Kishan Kaul, Ms. Medhavi Bhatia, Mr. Vaibhav Gandhi, Mr. Bhriugu Pamidighantam, Advs.

versus

PRADEEP PRAKASH SACHDEVDefendant

Through: Ms. N.S. Dalal, Nidhi Dalal, Alok Kumar, Rachana Dalal, Rachana Dalal, Karan Mann, Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

I.A. 31785/2025

1. This Application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 [**"CPC"**] has been filed by the Plaintiffs with the following prayers:

"i) Pass an ex-parte ad-interim injunction against the Defendant thereby restraining him, his employees, agents, attorneys, nominees, assigns, legal heirs, and/or any other persons



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claiming through or under him, from selling, alienating, transferring or creating any third party interest in the Premises being 50% undivided share in Plot No.1, Road No.71, Punjabi Bagh Colony West, New Delhi, admeasuring 444.5 sq. yards (marked in yellow colour in the site plan), which is the subject matter of Agreement to Sell dated 02.09.2022, during the pendency of the present suit.

ii) Pass an ex-parte ad-interim injunction against the Local Commissioner appointed by this Hon'ble Court in CS (O8) No. 548 of 2022 from proceeding with the auction of 50% undivided share of Defendant in Plot No.1, Road No.71, Punjabi Bagh Colony West, New Delhi, admeasuring 444.5 sq. yards (marked in yellow colour in the site plan), which is the subject matter of Agreement to Sell dated 02.09.2022, during the pendency of the present suit.

iii) Pass any other order(s) or direction(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The instant Suit is one for specific performance of the Agreement to Sell dated 02.09.2022 in favour of the Plaintiffs and against the Defendant by directing the Defendant to sell, transfer, convey and execute a proper Sale Deed in accordance with law and to deliver the vacant and peaceful possession of the Property bearing Plot No.1, Road No.71, Punjabi Bagh Colony West, New Delhi, admeasuring 445.5 sq. Years (**marked in yellow colour in the site plan**) [*hereinafter referred to as "Suit Property"*]. By way of the present Suit, the Plaintiffs are also praying for an injunction in



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order to restrain the Defendant from creating third party interest in the Suit Property which is the subject matter of the Agreement to Sell dated 02.09.2022.

3. Shorn of unnecessary details, the facts as stated in the Plaint indicates that the Suit Property belongs to the family of the Defendant. The Defendant is the owner of 50% of the undivided share in the Suit Property. The background of facts can be summarized as under:

a) *Vide* an Order dated 09.08.1976 passed by this Court in an appeal being RFA No. 168 of 1965, the Suit Property was partitioned amongst the following co-owners in equal share as follows:

- (i) Ms. Deepti Sablok & Mr. Deepak Sachdev – ownership and possessory rights with respect to the portion shown in red color in the site plan, admeasuring 444.5 sq. yards;
- (ii) Sh. Shanti Prakash – ownership and possessory rights with respect to the portion shown in yellow color in the site plan, admeasuring 444.5 sq. yards;
- (iii) Smt. Neelima Bhalla – ownership and possessory rights with respect to the portion shown in blue color in the site plan, admeasuring 444.5 sq. yards.

b) In 1995, Sh. Shanti Prakash passed away intestate leaving behind three legal heirs i.e., Smt. Shano Prakash (wife); Pradeep Prakash Sachdev (Son – i.e., the Defendant herein) & Vishal Prakash Sachdev (Son).

c) On 27.11.2006, Punjabi Bagh Cooperative Housing Society Limited executed a registered Sale Deed dated 27.11.2006 in favor of the



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Parties as per the Order dated 09.08.1976. In this Sale Deed, the portions were marked as follows:

- (i) Portion in Yellow – LRs of Late Smt. Shanti Prakash – each had equal undivided $1/3^{\text{rd}}$ share;
- (ii) Portion in Red –Registered in ownership of Ms. Deepti Sablok & Mr. Deepak Sachdev; and
- (iii) Portion in Blue – Registered in ownership of Smt. Neelima Bhalla.

d) On 29.06.2022, Smt. Shano Prakash died intestate and her $1/3^{\text{rd}}$ undivided share in the yellow portion of the Suit Property devolved in equal share to the surviving LRs – Pradeep Prakash Sachdev (Son – i.e., the Defendant herein) & Vishal Prakash Sachdev (Son) and these two became the absolute owners.

4. It is stated by the Plaintiffs that on the death of Smt. Shano Prakash, the $1/3^{\text{rd}}$ share of Smt. Shano Prakash in the Suit Property was divided in equal share between the LR's i.e., Pradeep Prakash Sachdev (Defendant herein) and Vishal Prakash Sachdev who is Defendant's brother and thereafter, the Plaintiffs purchased the 50% share of the Defendant in the Suit Property *vide* an Agreement to Sell dated 02.09.2022 for a total consideration of Rs.5,20,00,000/-. The Agreement to Sell records that a sum of Rs.25,00,000/- has been paid and the remaining 4,95,00,000/- will be paid in the manner as prescribed in the schedule of payment in the Agreement to Sell. However, in the Plaint, it is stated that the Plaintiffs have paid a sum of Rs.75,00,000/- to the Defendant.

5. It is the case of the Plaintiffs that after entering into the Agreement to Sell, the Defendant filed a Suit being CS(OS) 548/2022 before this Court for



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partition of the Suit Property which came in the share of Late Smt. Shanti Prakash, by suppressing the execution of Agreement to Sell entered into between the parties and the receipt of payment furnished by the Plaintiff pursuant thereto.

6. It is stated in the Plaint that the Defendant also suppressed the factum that the Plaintiffs had also purchased the other portions of the Plot No.1, Road No.71, Punjabi Bagh Colony West, New Delhi, thereby having become owners of the entire plot.

7. Material on record indicates that *vide* an Order dated 11.05.2023, a Coordinate Bench of this Court in CS(OS) 548/2022 passed a preliminary decree declaring that Defendant and his brother – Vishal Prakash Sachdev are the owners of 50% share each in the Suit Property. The Plaint also indicates that *vide* Order dated 05.08.2024 passed by a Coordinate Bench of this Court in CS(OS) 548/2022, a Local Commissioner was appointed to ascertain as to whether the Suit Property can be partitioned by metes and bounds and if not, then both the Defendant and the Co-owner i.e., the brother of the Defendant, had the option to bring a prospective buyer of the Suit Property. It is stated that the Plaintiffs after coming to know about the said Order dated 05.08.2024, approached the Defendant for giving a proposal before the Local Commissioner for the purpose of purchasing the share of the co-owner i.e., brother of the Defendant, in the Suit Property.

8. It is stated that since a partition by metes and bounds could not take place, this Court *vide* Order dated 06.05.2025 in CS(OS) 548/2022, directed that a public auction for the sale of the Suit Property be held, which led to issuance of a Legal Notice dated 27.08.2025 by the Plaintiffs to the Defendant, seeking specific performance of the Agreement to Sell dated



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02.09.2022. It is stated that the Defendant replied to the said Legal Notice on 02.09.2025 and thereafter on 08.10.2025, refusing to execute the Sale Deed, on the ground that the Suit Property which is now being put to auction is likely to fetch a sum of Rs.15 crores, which is much more than the amount specified in the Agreement to Sell, which led to the filing of the present Suit by the Plaintiffs.

9. It is the contention of the learned Counsel appearing for the Plaintiffs that the reason given by the Defendant in his reply to the Legal Notice is completely dishonest, by which the Defendant seeks to wriggle out of his obligations under the Agreement to Sell dated 02.09.2022. It is submitted that in the Agreement to Sell, the Defendant agreed to sell his share of the Suit Property for a sum of Rs.5,20,00,000/- and he cannot now be permitted to back out from the same merely because the Suit Property is likely to fetch a sum of Rs.15,00,00,000/-. It is further argued that since the Plaintiffs have purchased the share of the Defendant, auction of the Suit Property must be stayed and no third-party interest could now be created in the Suit Property. It is also stated that the Plaintiffs also moved an application under Order I Rule 10 of CPC in CS(OS) 548/2022, however, the same was withdrawn with liberty to file a fresh Suit.

10. Learned Counsel for the Plaintiffs also places reliance on Section 44 of the Transfer of Property Act, 1882 [“TPA”], which provides for the right of a co-owner to transfer his share in the joint property which means that where one or more of the co-owners of an immoveable property transfer their share or any interest in such property, the transferee acquires in respect of such share or interest and as far as necessary, the transferor’s right to joint possession or other common or part enjoyment of the property. In this



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regard, the learned Counsel for the Plaintiffs also places reliance upon a judgment passed by a Co-ordinate Bench of this Court in Raju Sardana v. Pawan Arya, (2025) SCC OnLine Del 4565.

11. Heard the learned Counsel appearing for the Plaintiffs and perused the material on record.

12. A reading of the Complaint discloses that the Plaintiffs were well aware of the fact that the share of Late Smt. Shanti Prakash is now being divided between the two brothers i.e., Pradeep Prakash Sachdev (Defendant herein) and Vishal Prakash Sachdev. The shares in the Suit Property were yet to be demarcated and an Agreement to Sell was entered into between the Plaintiffs and the Defendant.

13. The share of Late Smt. Shanti Prakash has been directed to be sold by way of the public auction by a Coordinate Bench of this Court in CS(OS) 548/2022. In the event of sale of the Suit Property in auction, the Plaintiffs would be entitled to 50% of the amount received by way of such sale, in accordance with Section 44 of TPA. The Plaintiffs, therefore, cannot at this juncture assert their right on a specific portion of the Suit Property which is yet to fall in the share of the Defendant himself and pray for restraining the Defendant from creating any third-party interest in the Suit Property.

14. It is trite law that the remedy of specific performance is purely an equitable remedy and it is for the Court to decide whether to grant or not to grant the remedy of specific performance. In the event that the Suit of the Plaintiffs fails, the Plaintiffs can also be compensated by money in lieu of the remedy of specific performance. However, without the portion of the Suit Property being available to the Defendant which is yet to be identified and



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demarcated, the remedy under Order XXXIX Rules 1 & 2 of the CPC which the Plaintiffs are now claiming cannot be granted.

15. As regards the judgment of the Co-ordinate Bench in Raju Sardana (supra) which has been passed on the basis of Section 44 of TPA, this Court is of the opinion that the same cannot be made applicable to the facts of the present case because even if Section 44 of TPA is to apply, the Plaintiffs, at best, would step into the shoes of the Defendant, and will be entitled only to the share of the Defendant alone and nothing more than that, as the Defendant is entitled to only his 50% share in the Suit Property, the transfer of which is not barred. This is, in any event, subject to the restriction as well as the right to pre-emption in accordance with any other law which is enforceable for the time being, for instance, Section 4 of the Partition Act, 1893, which gives a right of pre-emption.

16. This Court is, therefore, not inclined to grant the interim relief as prayed for by the Plaintiffs in the present Application.

17. It is always open for the Plaintiffs to participate in the auction and purchase the Suit Property *in toto* and adjust equities with the Defendant, which the Plaintiffs are entitled to.

18. The application stands, accordingly, dismissed.

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19. List before the Ld. Joint Registrar on 13.04.2026.

SUBRAMONIUM PRASAD, J

FEBRUARY 17, 2026

S. Zakir