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

Date of Reserve: 25th April, 2025

Date of decision: 04th July, 2025

+ CS(OS) 82/2025 & I.A. 3481/2025

AMIT JAIN & ORS.

.....Plaintiffs

Through: Mr. Kunal Tandon, Sr. Advocate with
Mr. Amandeep Singh, Ms. Natasha
and Mr. Pawan Kant Singh,
Advocates

versus

ANILA JAIN & ORS.

.....Defendants

Through: Mr. O. P. Aggarwal, Advocate for D-
1 to D-3

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present suit has been filed by the Plaintiffs seeking the following reliefs: (i) declaration of joint title/ownership for the Plot No. 56, Block No. Y, Okhla Industrial Area, admeasuring 907.5 Sq. Yards, Delhi –110020 ('suit property') in their favour and against the Defendants; (ii) permanent injunction against the Defendants from asserting any rights in the suit property, from interfering with the peaceful possession of the Plaintiffs and from illegally dispossessing the Plaintiffs.

2. The Plaintiffs and Defendants are family members being descendants of common ancestor i.e., Late Sh. Mandir Das Jain, who had five (5) sons



and four (4) daughters. Late Sh. Jinender Kumar Jain was the husband of Defendant No.1 and father of Defendant Nos. 2 and 3. Late Sh. Vinod Kumar Jain was the husband of Plaintiff No.2 and father of Plaintiff Nos. 3 to 5. Late Sh. Ajay Jain was father of Plaintiff No.1 and Defendant No.4., he was married to Late Smt. Promila Jain.

3. Before the filing of the present suit Sh. Jinender Kumar Jain passed away on 15.05.2021, Sh. Vinod Kumar Jain passed away on 01.10.1987, Sh. Ajay Jain passed away on 15.11.2020 and Smt. Promila Jain passed away on 23.03.2010.

4. This Court considered it fit to examine the plaint on the basis of a demurer and assess the respective contentions of the parties, particularly since it was *prima facie* apparent to this Court that there was no cause of action on the basis of which the suit was filed and infact the same is barred by law. Post the detailed assessment of the case at hand given below, this Court indeed concluded that there was no cause of action in favour of the Plaintiffs and the plaint is barred by law. Therefore, the present plaint ought to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC'). Admittedly no application under Order VII Rule 11 CPC has been filed by the Defendants, but this Court is empowered to resort to Order VII Rule 11 CPC on its own accord and dismiss the plaint if it fails to disclose any cause of action or if the same is barred. (**Re: Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd**¹)

Pleadings in the plaint

5. As per the averments in the plaint, the suit property was allotted to Sh. Jinender Kumar Jain in the year 1974 by Delhi Development Authority

¹ 2022 SCC OnLine SC 1028.



(‘DDA’) and the possession of the suit property was handed over to Sh. Jinender Kumar Jain on 15.10.1974, with a No-Objection Certificate from DDA. It is stated that a perpetual lease deed dated 21.02.1979 qua the suit property was executed in favour of Sh. Jinender Kumar Jain by the President of India.

5.1. Sh. Jinender Kumar Jain is stated to have taken loan for construction of the suit property from Vaish Cooperative Bank.

5.2. It is stated that through an oral arrangement it was decided between Sh. Jinender Kumar Jain, Sh. Vinod Kumar Jain and Sh. Ajay Jain, that investments qua construction of the suit property would be done by Sh. Vinod Kumar Jain and Sh. Ajay Jain. It is stated that the loan availed by Sh. Jinender Kumar Jain for construction of the suit property from Vaish Cooperative Bank was repaid by Sh. Vinod Kumar Jain and Sh. Ajay Jain by 1984, as per the said oral arrangement.

5.3. Sh. Jinender Kumar Jain sold the suit property to Sh. Vinod Kumar Jain and Sh. Ajay Jain vide *unregistered* Agreement to Sell (‘ATS/1982 ATS’), Affidavit, Special Power of Attorney (‘SPA’), Will, all dated 27.07.1982 and vide a *registered* Receipt dated 27.07.1982 (‘Customary Documents/Customary Sale Documents’), for a total sale consideration of Rs. 42,000/-². Later in the plaint it is stated that Sh. Jinender Kumar Jain had actually agreed for sale of the suit property in favour of Sh. Vinod Kumar Jain and Sh. Ajay Jain for a total sale consideration of Rs. 1,60,000/-, which was to be paid in four (4) installments and the amount of Rs. 42,000/- paid at the time of execution of customary documents was the first installment

² Para 15 of the Plaint.



towards the total sale consideration, whereas the remaining amount was to be paid by July, 1982.

5.4. It is stated that physical possession of the suit property was handed over to Sh. Vinod Kumar Jain and Sh. Ajay Jain on 27.07.1982.

5.5. On failure of Sh. Vinod Kumar and Sh. Ajay Jain to adhere to the timeline qua payment of the remaining amount towards sale consideration, Sh. Jinender Kumar Jain vide letter dated 30.07.1983 called upon Sh. Vinod Kumar Jain and Sh. Ajay Jain to pay the remaining amount towards sale consideration. Admittedly, the said payment was not done by Sh. Vinod Kumar Jain and Sh. Ajay Jain and thereafter, the dispute arose between the three.

5.6. It is stated that in 1986 in the presence of friends and family it was agreed between the Sh. Jinender Kumar Jain, Sh. Vinod Kumar Jain and Sh. Ajay Jain that fresh valuation of the suit property will be done and as per the fresh valuation done in March, 1987 the suit property was valued at Rs. 14,00,000/-

5.7. Later that year, Sh. Vinod Kumar Jain passed away on 01.10.1987. It is stated that after his demise M/s VK Jain & Associates was formed with the Plaintiff No.2, Sh. Ajay Jain and Sh. MK Jain (one of the sons of Late Sh. Mandir Das Jain) as the partners of the said partnership firm.

5.8. It is stated that it was agreed between the parties that M/s VK Jain & Associates through Sh. Ajay Jain will pay an amount of Rs. 13,20,000/- as full and final payment towards the purchase of the suit property. It is stated that the said amount was to be paid in installments.

5.9. It is stated that in order to pay the amount of Rs. 13,20,000/- a Registered Lease Deed dated 21.03.1989 was executed between the



Sh. Jinender Kumar Jain and M/s. VK Jain & Associates through Sh. Ajay Jain, whereby it was agreed that an amount of Rs. 22,000/- per month will be paid for five (5) years in lieu of payment of Rs. 13,20,000/- and not as rent. It is stated that said amount of Rs. 22,000/- was paid regularly till 1994. It is stated that thus Rs. 13,62,000/- (Rs. 42,000/- + Rs. 13,20,000/-) was paid as full and final sale consideration towards the suit property.

5.10. It is stated that pursuant to the full and finale payment NOC dated 31.07.1997 was issued by Sh. Jinender Kumar Jain in favour of Late Sh. Vinod Kumar Jain & Sh. Ajay Kumar Jain.

5.11. It is stated that the Plaintiff No.2 on 26.11.2017 registered a complaint with the police informing of the loss of original customary documents.

5.12. It is stated that post the demise of Sh. Jinender Kumar Jain, Defendant Nos. 1 to 3 issued a false and frivolous legal notice dated 20.09.2023 calling upon the Plaintiff No.1 to handover the vacant possession of the suit property to the said Defendants and also for payment of Rs. 7,70,000/- towards arrears of rent w.e.f. 01.11.2020 till 20.09.2023.

5.13. It is stated that pursuant to the said legal notice the Defendant Nos. 1 to 3 got their names mutated in the revenue records on the basis of the *registered* Lease Deed dated 21.03.1989. It is stated that Plaintiffs wrote a letter dated 22.11.2023 informing the DDA regarding Plaintiffs' ownership rights in the suit property basis intestate succession.

5.14. It is stated that Defendant Nos. 1 to 3 have also filed a suit CS (Comm.) No. 281/2024 against the Plaintiff No.1 seeking handover of the suit property and payment of arrears of rent in terms of the registered Lease Deed dated 21.03.1989.



Arguments of the Defendant Nos. 1 to 3

6. Mr. O.P. Aggarwal, learned counsel for the Defendant Nos. 1 to 3 stated that Sh. Jinender Kumar Jain was the sole and absolute owner of the suit property. He stated that after his death Defendant Nos. 1 to 3 inherited the entire suit property.

6.1. He stated that during his lifetime Sh. Jinender Kumar Jain let out the entire suit property to M/s VK Jain Associates through Mr. Ajay Jain vide a registered Lease Deed dated 21.03.1989 at a monthly rent of Rs. 22,000/- per month. He stated that the suit property was let out with sub-letting rights.

6.2. He stated that M/s VK Jain & Associate was dissolved by Mr. Ajay Jain i.e., father of Plaintiff No.1. He stated that thereafter, Plaintiff No.1 took over all the tenancy rights and became the tenant of Sh. Jinender Kumar Jain. He stated that the Plaintiff No.1 has sub-let the suit property to at least three (3) tenants and the portion of the suit property, which is not leased out, is under the possession of the Plaintiff No.1.

6.3. He stated that the Plaintiff No.1 has violated the terms of the *registered* Lease Deed dated 21.03.1989 by not paying the rent w.e.f. 01.11.2021. He stated that Defendant No.1 had issued a notice terminating the contractual tenancy of Plaintiff No.1 on 20.09.2023. He stated that since nothing positive was done by Plaintiff No.1, Defendant No.1 filed CS (Comm.) No. 281/2024 for recovery of possession, ejection, recovery of arrears etc.

6.4. He stated that in the written statement filed by the Plaintiff No.1 in the said suit, a plea of sale of suit property *vide* an ATS, SPA, Affidavit, Will dated 27.07.1982 in favour of predecessor(s) of the Plaintiff(s) was taken.

6.5. He stated that all the said documents are photocopy and the original is stated to be lost by the Plaintiff No.1 as per his own averment.



6.6. He stated that the pleas being taken by the Plaintiffs in the plaint are contradictory, as on one hand they contend that they purchased the suit property in 1982 and on the other hand it is stated that they became tenant in the very same property in 1989.

Findings and Analysis

7. This Court has heard the submissions of learned counsels for the parties and perused the record.

8. The Plaintiffs have filed the present suit principally seeking declaration of title in their favour with respect to the suit property at prayer clause (a) and consequent injunctive reliefs at prayer clauses (b) to (d).

9. The Defendant Nos. 1 to 3 have contested the claim of the Plaintiffs both on the question of maintainability as well as on merits. The said Defendants dispute the genuineness of the customary sale documents relied upon by the Plaintiffs in support of the relief of declaration. However, the defense cannot be looked into while considering the matter through the prism of Order VII Rule 11 CPC for rejection of the plaint. It is well settled that at summons stage, the Court is required to only peruse the averments in the plaint, the documents filed with the plaint; and while considering the said averments on a demurer, this Court has to decide whether the plaint discloses any cause of action or is barred by law.

No Cause of Action

10. The declaration of title at prayer clause (a) has been sought on the basis of an *unregistered* ATS, SPA, Affidavit and Will dated 27.07.1982 and a *registered* Receipt dated 27.07.1982 (hereinafter referred to as 'customary documents'). It is averred in the plaint that the originals of these documents are *lost* and the claim for declaration of title is, therefore, based on



photocopy of these documents. The Plaintiffs are in physical possession of the suit property; however, they have disclosed existence of a *registered* Lease Deed dated 21.03.1989 executed by recorded owner i.e., Sh. Jinender Kumar Jain, permitting the said occupation.

11. The Plaintiffs contend that the suit property was proposed to be purchased by their respective predecessors (i.e., Sh. Vinod Kumar Jain and Ajay Jain/proposed Vendees) from the recorded owner i.e., Sh. Jinender Kumar Jain i.e., proposed Vendor (the predecessor of Defendant Nos. 1, 2 and 3) for valid sale consideration, on the basis of the above said customary documents.

11.1. It is averred in the plaint that the 1982 ATS records that the sale consideration was reserved as Rs. 42,000/- which was duly paid and is evidenced by the *registered* Receipt dated 27.07.1982. However, in a material contradiction to the said plea, it is further pleaded that the actual sale consideration agreed was Rs. 1,60,000/- though it is not reflected in the 1982 ATS. It is stated that the balance amount of Rs. 1,18,000/- (i.e., 1,60,000-42,000) remained unpaid and this led to disputes between the proposed Vendees and the proposed Vendor during 1983 to 1987. It is averred that in 1987 the sale consideration was orally revised and enhanced to Rs. 14,00,000/-. It is averred that for making payment of this enhanced amount of Rs. 14,00,000/- a *registered* Lease Deed was executed on 21.03.1989 whereunder the predecessors of the Plaintiffs (i.e., the proposed Vendees) agreed to pay monthly rent of Rs. 22,000/- to the proposed Vendors, which as per the Plaintiffs was actually an installment towards the enhanced sale consideration. It is averred that the said monthly rent was paid between 1989 and 1994 and, therefore, a further payment of Rs. 13,20,000/-



was paid between 1989-1994. It is stated that in this manner total sale consideration of Rs. 13,62,000/- (13,20,000+42,000) was paid by 1994. The plaint is silent with respect to the remaining payment of Rs. 38,000/- towards the alleged sale consideration of Rs. 14,00,000/-.

11.2. The averments in the plaint that the actual sale consideration agreed in 1982 was Rs. 1,60,000/- and not Rs. 42,000/- as recorded in clause (i) of the 1982 ATS, shows that the 1982 ATS relied upon by the Plaintiffs does not reflect the true transaction. The plaint is silent as to the reason for non-disclosure of the agreed consideration of Rs. 1,60,000/- in the 1982 ATS. This Court would have to presume that the intent of the parties was to avoid tax liabilities by suppressing the real consideration amount from the statutory authorities. This suppression makes the 1982 ATS illegal as it is intended to evade taxes and is, therefore, intended to defeat the provisions of law and is against public policy as per Section 23 of the Indian Contract Act, 1872.

11.3. Also, in these facts, on a bare reading of the averments in the plaint it is apparent that the transaction as recorded in the 1982 ATS even as per the plaint became disputed in 1983 after disputes arose between the proposed Vendees and the proposed Vendor. As per the plaint, the sale consideration was orally revised and enhanced to Rs. 14,00,000/- in 1987. The value of the sale consideration is the most essential term in an ATS. The plea that sale consideration was revised in 1987 evidences that terms of 1982 ATS had been abandoned.

11.4. Pertinently, the Plaintiffs admits that in 1989 the predecessors of the Plaintiffs (i.e., the proposed Vendees) entered into a *registered* Lease Deed with predecessors of the Defendant Nos. 1, 2 and 3 (i.e., the proposed



Vendors), wherein there is no reference to the 1982 ATS or the related documents. In this *registered* Lease Deed, the proposed Vendees acknowledged the subsisting ownership of the proposed Vendor. Admittedly, rent under the *registered* Lease Deed was paid to the proposed Vendor continuously after 1989 and infact evidence of payment of rent till 2004-05 is reflected in the ITRs of Sh. Ajay Jain filed with the plaint.

In view of the *registered* Lease Deed dated 21.03.1989, the assertion in the plaint that Late Sh. Ajay Jain and Late Sh. Vinod Kumar Jain [predecessor of the Plaintiff(s)] occupied the suit property as a proposed purchaser/owner in pursuance of the 1982 ATS is contrary to the contemporaneous documents as available with statutory authorities, filed by the Plaintiffs with this plaint.

11.5. Moreover, the submission of the Plaintiffs that the payment of monthly rent of Rs. 22,000/- under the *registered* Lease Deed was allegedly towards installment of sale consideration is again a plea impermissible and inadmissible in law. The plaint fails to explain the justification for paying sale consideration camouflaged as rent. Presumably, this would have also been done to avoid tax liability. This modus of payment of sale consideration is not permissible in law and, therefore, on a demurer cannot be accepted by the Court as legal proof of payment of sale consideration. This Court, therefore, on bare reading of the plaint finds no merit in the submission that payment of Rs. 13,20,000/- paid towards rent between 1989 and 1994 under the *registered* Lease Deed was towards sale consideration.

11.5A. In the facts noted above i.e., 1982 ATS does not reflect the true transaction (ii) 1982 ATS has abandoned by parties in 1987; and (iii) there is no legal proof of payment of sale consideration, this Court is of the opinion



that plaintiff fails to disclose cause of action for maintaining relief of declaration of title.

11.6. In this background of admitted disputes between the proposed Vendor and proposed Vendees with respect to non-payment of sale consideration which arose in 1983 and subsequent execution of *registered* Lease Deed of 1989, the absence of the original 1982 ATS and the remaining documents (of 1982) relied upon by the Plaintiffs assumes significance and makes the claim of title by the Plaintiffs in the plaint highly unreliable. The 1982 ATS (which is but a photocopy) is thus, shrouded in doubt.

Maintainability of relief of Declaration of title by Plaintiffs on the basis of Unregistered Customary Documents

12. Notwithstanding the aforesaid observations qua the doubtful existence of the 1982 ATS and the finding on the illegality of the transaction reflected in the 1982 ATS, in the opinion of this Court, the customary sale documents relied upon by the Plaintiffs do not entitle the Plaintiffs to seek a declaratory title in law, as such customary documents do not create any title in favour of the proposed Vendees in law. This is well settled and, in this regard, it would be pertinent to refer to judgment of the Supreme Court in **Shakil Ahmed v. Syed Akhlaq Hussain**³, wherein the Supreme Court has reiterated that no right/title/interest in an immovable property can be created or transferred in favour of a proposed buyer without a registered document as contemplated in Section 54 of the Transfer of Property Act, 1882 ('TP Act'). In this judgment the Court negated the claim of proprietorship in the immovable property made by the plaintiff therein based on similar customary documents. The Supreme Court referred to its earlier judgments starting

³ (2023) 20 SCC 655.



from **Suraj Lamps & Industries Pvt. Ltd. v. State of Haryana**⁴, **Ameer Minhaj v. Deirdre Elizabeth (Wright) Issar**⁵ and **Paul Rubber Industries Private Limited v. Amit Chand Mitra**⁶ to hold that no ownership rights were created in favour of a plaintiff on the basis of such customary documents. The relevant portion of the judgment reads as under:

“5. The learned counsel for the appellant made the following submissions:

5.1. The Court below erred in decreeing the suit for possession and mesne profits on the basis of unregistered documents namely Agreement to Sell, Power of Attorney, Affidavit and a Will.

.....

8. On the other hand, learned counsel for the respondent submitted that all the documents relied upon by the respondent as basis for the suit were the customary documents and they conferred full title on the respondent to be the owner of the property in question and, therefore, he can maintain the suit.

9. It was also submitted that there was a prohibition of registration of documents of transfer/conveyance with respect to the area where the property in question is situate and, therefore, the transfers affected under the customary documents was sufficient to confer title on the respondent. It was also submitted that the judgment in the case of Suraj Lamps & Industries Pvt. Ltd. v. State of Haryana, which was of the year 2011, had prospective application and would not have any bearing on the title of the respondents which came to him under the customary documents executed in the year 2008 much prior to the judgment in the case of Suraj Lamps & Industries (supra).

10. Having considered the submissions at the outset, **it is to be emphasized that 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

⁴ (2012) 1 SCC 656.

⁵ (2018) 7 SCC 639.

⁶ 2024 SCC OnLine SC 5316.



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.

11. **Law is well settled that no right, title or interest in immovable property can be conferred without a registered document.** Even the judgment of this Court in the case of Suraj Lamps & Industries (supra) lays down the same proposition. Reference may also be made to the following judgments of this Court: **(i). Ameer Minhaj v. Deirdre Elizabeth (Wright) Issar (ii). Balram Singh v. Kelo Devi (iii). Paul Rubber Industries Private Limited v. Amit Chand Mitra**

12. The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property. Once this is the settled position, the respondent could not have maintained the suit for possession and mesne profits against the appellant, who was admittedly in possession of the property in question whether as an owner or a licensee.

13. The argument advanced on behalf of the respondent that the judgment in Suraj Lamps & Industries (supra) would be prospective is also misplaced. **The requirement of compulsory registration and effect on non-registration emanates from the statutes, in particular the Registration Act and the Transfer of Property Act.** The ratio in Suraj Lamps & Industries (supra) only approves the provisions in the two enactments. Earlier judgments of this Court have taken the same view.”

(Emphasis supplied)

12.1. Pertinently, in the aforesaid judgment, the Supreme Court at paragraph ‘9’ also noted the submission of the plaintiff therein that the customary documents were executed in Delhi as per prevalent practice due to restriction on transfers by registration of conveyance in the said area. The Supreme Court expressly rejected the said contention of the plaintiff therein and unequivocally held that even restrictions on registration of documents cannot be overcome by a party and no transfer of title would be effective in the absence of registered documents as contemplated under Section 54 of the TP Act.



12.2. A co-ordinate bench of this Court in **Ripu Daman Haryal & Anr. v. Miss Geepta Chopra**⁷, similarly rejected a plaint where the proposed vendee filed a suit for declaration for title based on customary sale documents and failed to pray for specific performance, in view of Section 54 of the TP Act. The relevant portion of the said judgment reads as under:

“

14. The question to be considered is, as to whether the plaint is liable to be rejected under Order 7 Rule 11(d) CPC being barred by limitation as the contention of the defendants is that according to the averments made by the plaintiffs themselves the cause of action accrued to them on 29.03.1996 when the agreement to sell was executed and in any case it was stated to have arisen in their favour on 02.04.1999 on account of the death of Late Shri Joginder Nath Bharadwaj. Though reference is made to the date 2.1.2009, the day they are allegedly dispossessed and the date 5.2.2009 when they contend that the defendants were puncturing the terrace. It has been contended that as a matter of fact the plaintiffs are seeking specific performance of an agreement dated 29.03.1996 on the basis of which they are purported to have purchased the property. Supporting documents dated 11.06.1996 are relied upon by them for this purpose. It has been contended that admittedly the plaintiffs are not in possession and the suit has been filed after an expiry of 13½ years by camouflaging the present suit for specific performance as a suit for declaration while as they ought to have filed a suit for specific performance within 3 years of accrual of the cause of action. It has been further contended that even if it is assumed that the present suit for declaration could be filed, the suit is not maintainable because in effect they ought to have claimed the consequential relief of specific performance, as they do not have the title to the property and they will have to first perfect the same. Reference is made to Section 34 of the Specific Relief Act which lays down that a suit for declaration would not be maintainable if a party omits to claim the consequential relief. It is contended that even a suit for declaration is to be filed within three years and in case the plaintiffs are claiming to have become owner on the basis of the Will made by Late Shri Joginder Nath Bharadwaj which was duly registered even then the declaration ought to have been sought within three years.

.....

⁷ 2011 SCC OnLine Del 2656.



26. A reading of the aforesaid two provisions together would clearly show that no right or title or interest in any immovable property passed on to the purchaser until and unless the document is duly registered. In the instant case, the plaintiffs of their own admission have stated that they have purchased the terrace of the first floor vide agreement to sell dated 29.03.1996 which is not a registered document. First of all, the said document in question is an agreement to sell and not a sale document as is sought to be claimed by the plaintiffs. **Even if it is assumed to be a sale document, as it has been contended by the plaintiffs, even then the document being an unregistered document cannot be taken cognizance of, therefore, the contention which is sought to be made by the learned counsel for the plaintiffs that there is a distinction between the sale and the mode of sale may be right but the fact remain that the right or title or interest in the immovable property does not pass on to the plaintiffs until and unless they seek specific performance of the said agreement on the basis of the aforesaid documents...**

.....

30. **Further in the agreement to sell itself it has been envisaged that in case any of the contracting parties, namely, the plaintiffs and the defendants do not adhere to the terms and conditions of the agreement to sell dated 29.03.1996, the aggrieved party have an option to go for a specific performance.** In the instant case, the plaintiffs having been aggrieved admittedly ought to have filed a suit for specific performance and not a suit for declaration as has been done by them. In this regard, I agree with the submissions made by the learned counsel for the defendants that the plaintiffs have camouflaged the present suit by filing a suit for declaration so as to escape the period of limitation which is admittedly three years in respect of suit for specific performance in terms of Article 54 of the Limitation Act. The learned counsel for the defendants has rightly cited **N.V. Srinivasa Murthy v. Mariamma (Dead)** where the Apex Court has upheld the rejection of a plaint because the party had omitted to claim the relief warranted on the facts of the case only with a view to get around the bar of limitation. Also, in case titled **Hardesh Ores (P) Ltd. v. Hede and Company** the order of rejection of plaint was upheld by the Apex Court after observing that the plaint is to be read as a whole for the purpose of arriving at such a conclusion, has been fully complied with in the instant case.....

”

(Emphasis supplied)

In the facts of this case, the plaint is silent as to the reason for the Plaintiffs' predecessors not seeking execution of a sale deed in their favour in 1994, after the revised sale consideration allegedly stood paid.



12.3. Another Co-ordinate Bench of this Court in the case of **Wg. Cdr. (Retd.) Sh. Yeshvir Singh Tomar v. Dr. O.P. Kohli**⁸, held that even if one of the customary documents is registered, the same would not confer rights in the nature of ownership in the property and the plaintiff cannot maintain a suit for declaration of title. The Court held that the plaintiff has to seek specific performance on the basis of the customary documents. The relevant portion of the said judgment reads as under:

“ 2. This is a suit for declaration and possession filed by the plaintiff in which ownership rights are claimed in the suit property admeasuring 4 Bighas and 3 Biswas in Khasra Nos. 1800/4 (0-14), 1802/1 (1-11), 1802/2 (1-18) along with all super structures/house situated at DLF Farms in revenue estate of Chattarpur, Tehsil Hauz Khas, New Delhi.

3. Plaintiff claims ownership rights on the basis of an Agreement to Sell, Power of Attorney, Will etc. dated 06.11.2006. Admittedly, the document being the Agreement to Sell is an unregistered document and does not bear the requisite stamp duty under Article 23A of the Indian Stamp Act, 1899 as applicable to Delhi.

5.In view of the above, since the Agreement to Sell in question is an unregistered and unstamped Agreement to Sell, no rights can be claimed under the same. What cannot be directly done cannot be indirectly done and a power of attorney, merely because it is registered, will not confer rights in the nature of ownership in the property....

6. In view of the aforesaid position, I put it to the counsel for the plaintiff that why this Court should unnecessarily dismiss the present suit and it would be preferable if a correct suit for specific performance be filed, however, counsel for the plaintiff states that the case be decided on merits. 7. In view of the aforesaid settled position of law, this suit is not maintainable by virtue of Section 53A of the Transfer of Property Act read with the amended Article 23A of the Indian Stamp Act as applicable to Delhi as the Agreement to Sell is unregistered and unstamped and the Power of Attorney besides not entitling the plaintiff to indirectly achieve what cannot be directly achieved is also not stamped on the value of the conveyance deed as required by Article 48 (f) of the Indian Stamp Act as applicable to Delhi.”

(Emphasis supplied)

⁸ 2015 SCC OnLine Del 10834.



12.4. In the case of **Hemant Verma v. Mithilesh Rani**⁹, a learned Single Judge of this Court held that relief of declaration of title qua customary sale document i.e., ATS is not maintainable in absence of relief of specific performance being sought. The relevant paragraph of the said judgment is as under:

“28. Plaintiff claims right which were in favour of B.R. Luthra in the suit property by virtue of the agreement to sell dated 2nd July, 2007, registered memorandum of understanding dated 9th October, 2007, general power of attorney dated 9th October, 2007, registered special power of attorney dated 22nd April, 2008 and the receipts in relation to the payments made. Even according to the plaintiff, the suit property was agreed to be purchased for a total sale consideration of Rs. 1.25 crores out of which only Rs. 13 lakhs odd payment has been made. Thus, the plaintiff even as per his own case has paid only 1/10th of total sale consideration and not the complete sale consideration. Though plaintiff claims to have paid further amount, however, there is no material in regard to the fact that B.R. Luthra had received full consideration. **Further, without seeking the relief of specific performance of the agreement to sell dated 2nd July, 2007, the relief of declaration of ownership of the suit property as sought by the plaintiff is not maintainable.**”

(Emphasis supplied)

12.5. Similarly, in **Rajan Singh v. Roshan**¹⁰ this Court held that agreement purchaser acquires no right/title/interest in the concerned property and the said purchaser merely gets a right to seek specific performance thereof. It was further held that a suit seeking declaration of title based on customary sale documents, instead of seeking specific performance of such documents, is not maintainable in law, and such a suit for declaration is not liable to be entertained by the Court. The relevant paragraphs read as under:

“15. I also do not find any ground to review or re-consider my decision in Bishan Chand supra, that Suraj Lamps and Industries Pvt. Ltd. supra is

⁹ 2021 SCC OnLine Del 1523.

¹⁰ Give correct citation of DHC



retrospective in operation. Rather, Suraj Lamps and Industries Pvt. Ltd. supra itself in paragraph 26 records that it merely declares the law as existing and has not declared any new law. The counsel for the plaintiff has also been unable to show any law under which the plaintiff, merely by having an agreement to purchase of an immovable property in his favour, can become the owner of the said immovable property.

16. Agreement purchasers do not have any right in the property/land agreed to be purchased. The Court, as far back as in **Jiwan Das v. Narain Das, AIR 1981 Del 291** held that **an Agreement to Sell does not create any right in the property to which it pertains and merely gives a right to the agreement purchaser to seek specific performance thereof. It was further held that no rights in immovable property are created, even on passing of decree for specific performance and till in execution thereof a Sale Deed is executed.**

17. Thus, the suit, insofar as for the relief sought of declaration of ownership on the basis of General Power of Attorney, Will, Agreement to Sell and Affidavit of Possession, even post amendment sought, including by way of the aforesaid two applications, does not lie and no suit therefor can be entertained and/or set in motion.”

(Emphasis supplied)

13. The aforementioned consistent position of law since 1981 leaves no doubt that a plaintiff who relies upon an ATS as well as other customary documents to justify its possession of the immovable property, does not acquire ownership rights in the said property on the basis of the said ATS and, therefore, has no title to the said property. To acquire title, the plaintiff, who holds the ATS has to seek specific performance against the defendant seeking execution of a sale deed as contemplated under Section 54 of the TP Act, in accordance with law. The plaintiff cannot overcome this requirement of law by seeking a relief of declaration.

14. In the facts of this case, learned senior counsel appearing for the Plaintiffs during oral submissions fairly stated that the relief of specific performance has not been prayed for consciously as the said relief would be barred by limitation today i.e., in 2025.



15. Upon perusal of the plaint, it is evident that as per the pleas, the cause of action for seeking specific performance arose in favour of the predecessors of the Plaintiffs on 30.07.1983 when the proposed Vendor issued a letter demanding payment of the outstanding sale consideration. The cause of action also arose in 1994 when as per the Plaintiffs the enhanced sale consideration stood paid. The plaint is however silent on the reasons for not seeking specific performance and fails to explain the continuing payment of rent to the proposed Vendor (i.e., Sh. Jinendra Kumar Jain) as reflected in the ITRs AY 2004-05. In the facts of the present case, it is apparent that Plaintiffs have camouflaged the reliefs in present suit to overcome the bar of limitation which admittedly in a suit for specific performance is governed by Article 54 of the Act of 1963 is three (3) years. In fact, the 1982 ATS relied upon by the Plaintiffs records that in case the Vendor fails to perform its duties, the Vendees can take resort to Court for completion of transaction and to get a sale deed registered, which essentially could have been achieved by seeking specific performance of the customary sale documents.

16. In view of the settled position of law qua Section 54 of TP Act, the relief of declaration of title at prayer clause (a) of the plaint based on customary documents including 1982 ATS is without any cause of action and barred by law, hence the plaint is liable to be rejected.

17. The Plaintiffs reliance on the judgment of **C. Mohammad Yunus v. Syed Unnissa & Ors.**¹¹, **Daya Sing & Anr. v. Gurudev Singh**¹², **Gouranga Sahu & Ors. v. Bhaga Sahu & Anr.**¹³ and **Ramesh Chand v. Suresh**

¹¹ 1961 SCC OnLine SC 135.

¹² (2010) 2 SCC 194.

¹³ 1974 SCC OnLine Ori 68.



Chand & Anr.¹⁴ is misplaced. In the said judgment the Court was considering Article 58 Act of 1963 and Section 202 of the Contract Act, 1872 and considering the issue of when the right to sue first accrues to a plaintiff for seeking the relief of declaration. However, this Court has already held that relief of declaration prayed for in this plaint is barred in law and the appropriate relief which the plaintiff ought to have prayed for on the basis of customary document is the relief for specific performance which is governed by Article 54 of the Act of 1963.

Relief of Permanent Injunction sought at prayer clause (b) (c) and (d)

18. This brings the Court to the maintainability of prayer clauses (b), (c) and (d) of the plaint.

19. The Plaintiffs have sought permanent injunction against Defendant Nos. 1, 2 and 3 for restraining them from, *firstly*, asserting any rights in the suit property on the basis of *registered* Lease Deed dated 21.03.1989. *Secondly*, the Plaintiffs have also sought an injunction against Defendant Nos. 1, 2 and 3 from interfering in the Plaintiffs possession and enjoyment of the suit property. *Lastly*, the Plaintiffs have sought an injunction against Defendant Nos. 1 to 3 from illegally dispossessing the Plaintiffs.

19.1. In the plaint the Plaintiffs have disclosed that Defendant Nos. 1, 2 and 3 have instituted a commercial suit i.e., CS (Comm.) No. 281/2024 on 10.04.2024, which is pending adjudication before the District Court at Saket. The said suit has been filed by the Defendants after serving a legal notice dated 20.09.2023 on the Plaintiff No. 1 calling upon him for handing over possession and arrears of rent.

¹⁴ ILR (2012) V Delhi 48.



19.2. It is thus apparent that Defendant Nos. 1, 2 and 3 have initiated due process of law for seeking recovery of possession of the suit property from the Plaintiffs by approaching the Court of competent jurisdiction. In these facts, no injunction can be granted against Defendant Nos. 1, 2 and 3 from pursuing their remedies in law.

19.3. The action of Defendant Nos. 1, 2 and 3 in instituting a civil suit does not give any cause of action to the Plaintiffs to maintain these prayers for injunction.

19.4. The Plaintiffs in the plaint have made no averment whatsoever, averring about any instance which led them to believe that they might get dispossessed (without due process) at the behest of the Defendant Nos. 1 to 3 or that their possession of the suit property has been interfered with by the said defendants.

19.5. Therefore, the reliefs for injunction sought for at prayer clauses (b), (c) and (d) are also without any cause of action.

19.6. In addition, to the fact that, the Plaintiffs have no ownership rights in the suit property on the basis of the 1982 ATS and the customary documents. The Supreme Court in the case of **Balram Singh v. Kelo Devi**¹⁵ in similar facts was dealing with a situation wherein the plaintiff/proposed buyer sought for permanent injunction against the defendant/proposed seller therein. In the said case the Supreme Court held that plaintiff/buyer cannot be granted the relief of permanent injunction seeking to restrain the proposed seller from recovering possession. The relevant portion of the said judgment held as under:

“17.However, at the same time, the plaintiff cannot get the relief indirectly which otherwise he/she cannot get in a suit for substantive

¹⁵ 2022 SCC OnLine SC 1283.



relief, namely, in the present case the relief for specific performance. **Therefore, the plaintiff cannot get the relief even for permanent injunction on the basis of such an unregistered document/agreement to sell, more particularly when the defendant specifically filed the counter-claim for getting back the possession which was allowed by the learned trial Court.** The plaintiff cleverly prayed for a relief of permanent injunction only and did not seek for the substantive relief of specific performance of the agreement to sell as the agreement to sell was an unregistered document and therefore on such unregistered document/agreement to sell, no decree for specific performance could have been passed. The plaintiff cannot get the relief by clever drafting.”

(Emphasis supplied)

20. Thus, similarly if the facts of the present case are considered on the touchstone of the above-mentioned judgment, the Plaintiffs cannot maintain the reliefs of permanent injunction against Defendant Nos. 1 to 3, who are pursuing legal remedies.

21. Before parting this Court would like to observe that the Plaintiff No.1 was served with legal notice for recovery of possession in 2023, the summons in the CS (Comm.) No. 281/2024 filed by the Defendant Nos. 1, 2 and 3 in 2024. The Plaintiffs did not approach this Court at that stage, instead the Plaintiffs filed written statement in the said suit and it is only when the Defendant Nos. 1 to 3 herein filed an application under Order XII Rule 6 CPC on the basis of the admission of Plaintiffs herein in the said suit, the Plaintiffs have moved before this Court by filing this suit seeking the above-mentioned relief. The intent of the Plaintiffs to scuttle the proceedings in CS (Comm.) No. 281/2024 and application under Order XII Rule 6 CPC is apparent. This Court is also of the opinion that the present proceedings are thus not *bona fide*.



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22. In view of the aforesaid analysis and findings, the plaint stands rejected under Order VII Rule 11 (a) and (d) of CPC for being without cause of action and barred by limitation.

23. Pending applications, if any, stand disposed of.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

JULY 04, 2025/SK/hp

Click here to check corrigendum, if any