



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment reserved on: 01.12.2025***Judgment pronounced on: 10.12.2025***

+

FAO(OS) 147/2016 and CM APPL. 18284/2016

DK JAIN (SINCE DECEASED THR HIS LEGAL HEIRS)

.....Appellant

Through: Mr. Ankit Jain, Senior Advocate along with Mr. Siddharth Mullick and Mr. Wish Kesarwani, Advocates.

versus

CS AGARWAL AND ANR

.....Respondents

Through: Mr. Gorang Gupta and Mr. Harsh Gupta, Advocates for R-1
Mr. Arjun Syal, Mr. Raghuvir Kapur and Mr. Sagar Aggarwal, Advocates for R-2.

+

FAO(OS) 148/2016 and CM APPL. 18455/2016

NIRMAL JAIN

.....Appellant

Through: Mr. Ankit Jain, Senior Advocate along with Mr. Siddharth Mullick and Mr. Wish Kesarwani, Advocates.

versus

CS AGARWAL AND ANR

.....Respondents

Through: Mr. Gorang Gupta and Mr. Harsh Gupta, Advocates for R-1
Mr. Arjun Syal, Mr. Raghuvir Kapur and Mr. Sagar Aggarwal, Advocates for R-2.

+

LPA 306/2016 and CM APPL. 18437/2016

NIRMAL JAIN

.....Appellant



Through: Mr. Ankit Jain, Senior Advocate along with Mr. Siddharth Mullick and Mr. Wish Kesarwani, Advocates.

versus

CS AGARWAL AND ANR

.....Respondents

Through: Mr. Gorang Gupta and Mr. Harsh Gupta, Advocates for R-1
Mr. Arjun Syal, Mr. Raghuvinder Kapur and Mr. Sagar Aggarwal, Advocates for R-2.

+ LPA 308/2016 and CM APPL. 18446/2016

DK JAIN

.....Appellant

Through: Mr. Ankit Jain, Senior Advocate along with Mr. Siddharth Mullick and Mr. Wish Kesarwani, Advocates.

versus

CS AGARWAL AND ANR

.....Respondents

Through: Mr. Gorang Gupta and Mr. Harsh Gupta, Advocates for R-1
Mr. Arjun Syal, Mr. Raghuvinder Kapur and Mr. Sagar Aggarwal, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present four Appeals, FAO(OS) 147/2016, FAO(OS) No. 148/2016, LPA No. 306/2016 and LPA 308/2016, assail the correctness of a common judgment dated 15.03.2016 passed by



learned Single Judge in CS(OS) No. 2439/2009 & connected matters [hereinafter referred to as 'Impugned Order'], whereby the learned Single Judge set aside two orders of the Collector of Stamps determining the stamp duty and penalty payable on two Agreements to Sell dated 11.03.2008 executed by the vendors in favour of the present Respondents.

2. Since all four Appeals arise out of the same factual matrix, involve substantially the same parties, and impugn the same Impugned Order, they have been heard together and are being disposed of by this common judgment.

3. The central issue which arises for consideration in this batch of Appeals is whether the Respondents, namely Mr. C.S. Agarwal and Ms. Kavita Agarwal, were liable to pay stamp duty (along with penalty) on the basis of (i) the Agreement-cum-Possession Letters dated 07.08.2006, read conjointly with (ii) the Agreements to Sell dated 11.03.2008. The controversy turns on whether these documents, when examined together in their true legal effect and substance, constitute a transaction falling within the ambit of Article 23A of Schedule I-A of the Indian Stamp Act, 1899 (as applicable to Delhi), thereby attracting stamp duty on an "agreement to sell accompanied by delivery of possession."

STATUTORY BACKDROP

4. By virtue of amendment introduced through Act 48 of 2001, Article 23A was inserted in Schedule I of the Indian Stamp Act, 1899 [hereinafter referred to as 'IS Act'], which reads as under-



“23A. CONVEYANCE IN THE NATURE OF PART PERFORMANCE - Contracts for the transfer of immovable property in the nature of part performance in any Union Territory under section 53A of the Transfer of Property Act, 1882” – Ninety per cent of the duty as a Conveyance (No.23).”

5. In effect, the legislative amendment advances the stage at which substantial stamp duty becomes payable. The payment of 90% of the stamp duty ordinarily leviable on a conveyance deed stands statutorily shifted from the time of eventual execution of the sale deed to the anterior point of execution of an agreement that is in the nature of part performance within the meaning of Section 53A of the Transfer of Property Act, 1882 [hereinafter referred to as ‘TP Act’].

6. The scheme is clear: once a transferee enters or continues in possession of immovable property in pursuance of such an agreement, the transaction attains a degree of completeness which, in the eyes of the Legislature, warrants stamp duty commensurate with the real substance of the transfer. Article 23A of the IS Act therefore serves as an anti-evasion measure, ensuring that the transfer of possession, an incident closely associated with ownership, does not occur without corresponding fiscal incidence. It is within this statutory framework that the competing claims in the present Appeals must be evaluated, particularly the question whether the Agreement-cum-Possession Letter dated 07.08.2006, when read with the Agreements to Sell dated 11.03.2008, attracts the requirement of payment of stamp duty under Article 23A of the IS Act.

FACTUAL MATRIX

7. In order to comprehend the issues involved in the present cases,



relevant facts in brief are required to be noticed.

8. The dispute concerns the second and third floors of property No. K-15, Hauz Khas Enclave, New Delhi [hereinafter referred to as 'suit property']. It is the case of the Plaintiffs that the suit property was originally agreed to be purchased jointly by Sh. C.S. Agarwal and Sh. D.K. Jain, who were on amicable terms and intended to acquire different portions of the same premises for themselves and their respective family members. The understanding between the parties, as reflected from the material placed on record, was that:

- i. Basement, ground, first floors of the suit property would be purchased by Sh. C.S. Agarwal in the name of his wife Smt. Kavita Agarwal.
- ii. Second floor of the suit property would be purchased by Sh. D.K. Jain in the name of his wife Smt. Nirmal Jain.
- iii. Third floor of the suit property would be purchased by Sh. D.K. Jain in his own name.

9. Stamp papers for execution of the sale deeds were purchased accordingly. However, before the transaction could be completed, Sh. D.K. Jain allegedly expressed his inability to arrange his share of the funds and requested Sh. C.S. Agarwal to step in and purchase the entire suit property by paying the balance sale consideration on his behalf as well. It is the case of the Appellants that Shri C.S. Agarwal agreed to bear the remaining consideration. Consequently, on 04.08.2006, the vendor executed three Sale Deeds as originally agreed, namely – Basement, Ground and First Floors of the suit



property in the name of Smt. Kavita Agarwal; Second Floor in the name of Smt. Nirmal Jain and; Third Floor in the name of Sh. D.K. Jain.

10. In accordance with the above arrangement, Smt. Nirmal Jain and Shri D.K. Jain, on 07.08.2006, executed two documents described as *Receipts-cum-Possession Letters*, wherein they allegedly acknowledged receipt of a substantial portion of the sale consideration and recorded that possession of the second and third floors had been handed over to the Respondents. These documents were followed by two separate *Agreements to Sell* dated 11.03.2008, one executed by Smt. Nirmal Jain and the other by Shri D.K. Jain, in favour of Smt. Kavita Agarwal and Shri C.S. Agarwal, confirming the earlier transaction and agreeing to execute sale deeds in their favour.

11. Subsequently, Smt. Kavita Agarwal and Sh. C.S. Agarwal filed two suits for specific performance of the *Agreements to Sell*. Whereas Smt. Nirmal Jain and Sh. D.K. Jain filed two suits for grant of decree of possession of Second and Third Floors, respectively. During the pendency of those suits, the Court, by orders dated 12.12.2013 and 18.12.2013, directed the *Agreements to Sell* to be impounded and sent to the Collector of Stamps for determination of the stamp duty payable and any penalty. In compliance with the aforesaid, the Collector of Stamps passed two separate orders dated 20.03.2015 assessing the deficient stamp duty at Rs.18,00,000/- in each case and imposing a penalty of Rs.90,00,000/- on Smt. Kavita Agarwal and Sh. C.S. Agarwal each on the ground of alleged deliberate evasion of the stamp duty.



12. The orders of the Collector were challenged before this Court by filing writ petitions which were tagged with the suits for purposes of hearing.

13. By the Impugned Order dated 15.03.2016, the learned Single Judge held, *inter alia*, that in view of the first proviso to Section 49 of the Registration Act, 1908, a suit for specific performance is maintainable even if the Agreement to Sell is unregistered. The Court then recorded that the Respondents, Sh. C.S. Agarwal and Smt. Kavita Agarwal, had not invoked or sought the benefit of the doctrine of part performance under Section 53A of the TP Act. Proceeding on that basis, the learned Single Judge concluded that the question of stamping of the Agreements to Sell had to be examined strictly in accordance with the provisions of the Stamp Act, without recourse to Section 53A considerations, and consequently set aside the orders of the Collector dated 20.03.2015 and recalled the impounding directions.

14. SUBMISSIONS ON BEHALF OF THE APPELLANTS

14.1 Learned Senior Counsel appearing on behalf of the Appellants submitted that the Impugned Order suffers from fundamental legal infirmities. It was contended that the learned Single Judge erred in recalling the orders impounding the Agreements to Sell dated 11.03.2008 in the absence of any application by the parties to the suits, and without granting an opportunity of hearing to the Appellants. Learned counsel emphasized that the impounding of the Agreements by the Joint Registrar on 16.12.2013 was a judicial order



passed in the course of proceedings, which, in the absence of challenge, had attained finality and could not be lightly set aside.

14.2 It was further submitted that the orders dated 20.03.2015 passed by the Collector of Stamps were reasoned and speaking orders rendered in exercise of statutory and quasi-judicial powers under the Indian Stamp Act, upon due consideration of the material placed before the authority. It was argued that the Collector had recorded specific findings regarding the applicability of Article 23A, the liability to pay 90% stamp duty at the stage of execution of the Agreement to Sell, and the failure of the Respondents to furnish any explanation for non-payment of the requisite duty, despite grant of adequate opportunity. It was contended that the learned Single Judge, while setting aside the Collector's orders, did not advert to these findings, nor to the statutory scheme governing determination of deficient stamp duty and imposition of penalty, thereby rendering the Impugned Order legally unsustainable.

14.3 Learned counsel also contended that the principle of finality of orders, particularly in the context of impounding directions and assessments by the Collector of Stamps, ought to have been respected. It was further urged that recalling or setting aside such orders without proper application, notice, or opportunity of hearing would result in miscarriage of justice and cause prejudice to the Appellants, who had a direct and substantial interest in the correctness and legality of the orders passed by the Collector of Stamps.



15. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

15.1 *Per contra*, learned counsel appearing on behalf of the Respondents submitted that the Impugned Order is perfectly valid and does not call for any interference. It was emphasized that, upon a reading of paragraph 6 of the Impugned Order, it is evident that the orders were passed with the consent of the parties' counsel and, therefore, the Appellants cannot, in law, challenge the same. It was submitted that the Appellants' grievance is misconceived and arises merely from a desire to delay the proceedings. Moreover, the main aggrieved party, the Collector of Stamps, has not challenged the Impugned Order to date.

15.2 Learned counsel submitted that the learned Single Judge correctly noted that the Respondents had not sought the benefit of Section 53A of the TP Act, for part performance in the suits. It was reiterated that the plea of part performance under Section 53A can only be invoked as a shield by a transferee in possession, and not as a sword to claim any independent right or to evade statutory duties. Reliance was placed on the decisions in ***Patel Natwarlal Rupji v. Kondh Group Kheti Vishayak***¹ and ***CIT v. Reliance International Corpn. (P) Ltd.***². Learned counsel submitted that, in any event, the Respondents had expressly disclaimed any reliance on Section 53A of the TP Act, as duly recorded in paragraph 4 of the Impugned Order.

15.3 Learned counsel further contended that the Agreements to Sell, in the absence of any invocation of Section 53A, were not required to

¹ (1996) 7 SCC 690

² (1994) SCC OnLine Del 798



be stamped under the IS Act. It was submitted that Section 3 and Schedule I of the IS Act do not impose a liability to pay stamp duty on an agreement to sell, and that the Hon'ble Supreme Court in *State of Rajasthan v. Khandaka Jain Jewellers*³ has clearly distinguished between an agreement to sell and a sale, holding that stamp duty is payable on sale, not on prior agreements.

ANALYSIS & FINDINGS

16. This Court has considered the submissions advanced by learned counsel representing the parties at length and, with their able assistance, perused the paperbook along with the record of the suits. The orders passed by the learned Single Judge on 12.12.2013 and 18.12.2013, as well as the order passed by the Joint Registrar on 16.12.2013, are interlocutory in nature and were passed during the pendency of the suits. Interlocutory orders, by their very nature, are amenable to recall, modification, vacation, or variation. Consequently, the first submission of learned counsel for the Appellants, challenging the correctness of these interlocutory orders, lacks merit.

17. Moreover, impounding of the two Agreements to Sell was for the purpose of assessing the deficient Stamp Duty and Penalty while enabling the Plaintiffs to pay the same. Once the amount of Stamp Duty and Penalty was assessed which was challenged in the writ petition, the purpose of impounding was over. However, this Court finds that the learned Single Judge erred in setting aside the orders passed by the Collector of Stamps, particularly without fully

³ (2007) 14 SCC 339



considering the statutory provisions under the IS Act, the factual matrix of possession and agreements, and the potential for evasion of stamp duty.

18. Under Article 23A of the IS Act, as inserted by Act 48 of 2001, 90% of the stamp duty payable on a conveyance deed becomes payable at the stage when a contract for the transfer of immovable property, in the nature of part performance under Section 53A of the TPA, is entered into. For convenience, Section 53A of the TP Act is reproduced hereunder:-

“[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, 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.]”

19. Section 53A of the TP Act is, therefore, attracted when possession of the property is delivered in part performance of the contract, or the transferee, already in possession, continues in possession while performing obligations under the contract. It serves



as a protective mechanism for transferees who have taken possession, preventing transferors from asserting rights inconsistent with the contract.

20. In the present case, Smt. Kavita Agarwal and Sh. C.S. Agarwal were in possession of the second and third floors of the suit property pursuant to a receipt-cum-possession letter dated 07.08.2006. This possession continued even after the two Agreements to Sell dated 11.03.2008 were executed. Although the Agreements to Sell stipulate that delivery of possession would occur at the time of execution of the sale deed, the Respondents have, in fact, been in continuous possession from 07.08.2006. Consequently, the Respondents were liable to pay 90% of the stamp duty payable on the conveyance deed at the stage of execution of the Agreements to Sell, in accordance with Article 23A of the IS Act.

21. The Collector of Stamps, upon examination, concluded that an attempt was made by the Respondents to evade payment of stamp duty and that they failed to furnish any satisfactory explanation despite opportunities being granted. The Court notes that while the Respondents had argued, and the learned Single Judge observed, that they did not seek to rely on Section 53A of the TP Act in the suits for specific performance, the reality of delivering of possession under the receipt-cum-possession letter cannot be ignored. The legal effect of continuous possession triggers the statutory obligation under Article 23A of the IS Act, regardless of whether the Respondents invoked Section 53A of the TP Act as a shield in the proceedings.



22. From the material placed on record, it is evident that the Respondents, Smt. Kavita Agarwal and Sh. C.S. Agarwal, made only a nominal payment of stamp duty, amounting to Rs. 50/- each, on the two Agreements to Sell dated 11.03.2008. The Collector of Stamps, upon undertaking a detailed assessment in compliance with this Court's direction, has determined that the total stamp duty payable on each Agreement to Sell was Rs. 18,00,000/-, thereby leaving a deficiency of Rs. 17,99,950/- in each case. The conduct of the Respondents, in seeking to treat the Agreements to Sell, despite delivery of possession under the receipt-cum-possession letter dated 07.08.2006, as mere agreements requiring minimal stamp duty, clearly amounts to an attempt to evade payment of stamp duty at the stage of execution of the Agreements to Sell, even though such liability was statutorily attracted under Article 23A of Schedule 1A.

23. At the same time, it must be acknowledged that the Respondents would, in any event, have been liable to pay the requisite stamp duty at the time of execution of the sale deed upon decree of the suit. The legal obligation to bear stamp duty was thus inevitable; it was only the stage of payment which stood brought forward by virtue of the statutory scheme post-amendment. In these circumstances, the remaining issue for consideration is confined to the imposition and quantum of penalty under Section 35 of the IS Act.

24. Section 35 of the IS Act, particularly Proviso a, empowers the competent authority to direct payment of the deficient stamp duty together with a penalty extending up to ten times the amount of such deficiency. However, the imposition of penalty is upto ten times of the



amount of deficient stamp duty. The Supreme Court has consistently held that the competent authority must exercise such discretion judiciously, keeping in view the overall facts and equities of the case. Reference in this regard may be made to the decisions in *Peteti Subba Rao v. Anumala S. Narendra*⁴, *Gangappa and Another v. Fakkirappa*⁵ and *Trustees of H.C. Dhanda Trust v. State of Madhya Pradesh and Others*⁶. Considering the peculiar facts here, particularly that the Respondents would have been liable to pay the same stamp duty at the stage of registration of the sale deed, this Court is of the view that the ends of justice would be adequately met if the Respondents are directed to pay, as penalty, an amount equivalent to the deficient stamp duty determined by the Collector.

CONCLUSION

25. Accordingly, all four Appeals are partly allowed, and the Impugned Order dated 15.03.2016 passed by the learned Single Judge stands modified to the extent indicated above. The learned Single Judge is now requested to proceed with the suits after the Plaintiffs deposit the amount of stamp duty and penalty in the light of this judgment.

26. This order is passed in view of the fact that the amendment under Article 23A was relatively recent at the relevant time and may not have been in the notice of the Respondents or their counsel. Moreover, the Respondents would, in any case, have been liable to

⁴ (2002) 10 SCC 427

⁵ (2019) 3 SCC 788

⁶ (2020) 9 SCC 510



2025:DHC:11098-DB



pay the stamp duty at the stage of registration of the sale deed, and therefore, the likelihood of evasion is minimal.

27. All the pending applications stand closed.

ANIL KSHETARPAL, J.

GIRISH KATHPALIA, J.

DECEMBER 10, 2025/sp/pal