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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% ***Order reserved on: 31.08.2026***
Order pronounced on: 08.09.2026
Order uploaded on: 08.09.2026

\# **CNR No. DLHC010256322023**
\+ RFA (COMM) 134/2023
DHARMENDRA SINGH & ANR .....Appellants
Through: Mr. Shekhar Dasi, Mohd. Talha, Mr. Ayush Dassi, Mr. Deepesh Kasana and Mr. Divyansh Malhotra, Advs.

versus

FAZLU REHMAN .....Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

O R D E R

ANIL KSHETARPAL, J.

1. The present Appeal has been filed by the Plaintiffs (Appellants) assailing the correctness of the Judgment and Decree dated 09.05.2023[1], passed by the learned District Judge (LDJ), Saket Courts Delhi, whereby the plaint seeking specific performance of Agreement to Sell dated 10.05.2019, possession and recovery of money, came to be rejected at the threshold under Order VII Rule 11(d) the Civil Procedure Code, 1908 [hereinafter referred to as 'CPC'].

2. For the sake of convenience, the parties before this Court shall be referred to in accordance with their status before the LDJ.

[1] hereinafter referred to as 'Impugned Judgment'

A. BRIEF BACKGROUND:

3. Pithily put, the parties herein entered into an Agreement to Sell[2] dated 10.05.2019 in respect of a Shop bearing No.113, admeasuring 16 sq. yds. situated at Sabzi Mandi, Okhla, New Delhi[3], for a total consideration of Rs.12,00,000/-. Pursuant to the ATS, a General Power of Attorney, Will, Possession Letter and Receipt were also executed between the parties on 10.05.2019. The entire sale consideration of Rs. 12,00,000/- was paid, and possession of the suit property was delivered to the Plaintiffs.

4. However, since the Defendant was in occupation of the suit property, the parties simultaneously executed a Rent Agreement dated 10.05.2019, whereby the Defendant was inducted as a tenant in the suit property for a period of 11 months commencing from 11.05.2019, at a monthly rent of Rs. 10,000/-. The Rent Agreement further provided for enhancement of rent by 10% upon renewal. Consequently, the physical possession of the suit property remained with the Defendant in his capacity as tenant.

5. Against the aforesaid arrangement, the Defendant initially paid the agreed rent, however, the payment of rent was discontinued from May 2020, on account of the disruption occasioned by the COVID-19 lockdown. Thereafter, the Defendant resumed payment of rent at the existing rate; however, he declined to execute a fresh Rent Agreement or accept the proposed enhancement in rent. Payment of rent was again discontinued from December 2021.

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[2] hereinafter referred to as 'ATS'
[3] hereinafter referred to as 'suit property'

6. Following which, the Plaintiffs terminated the tenancy by way of notices dated 14.03.2022 and 05.04.2022. It was at this stage that the Defendant denied the Plaintiffs' title to the suit property and disputed the efficacy of the documents executed on 10.05.2019, in particular the ATS.

7. Consequently, the Plaintiffs instituted a suit seeking specific performance of the ATS, possession of the suit property and recovery of arrears of rent/use and occupation charges. In response to which, the Defendant filed its written statement, wherein he admitted his signatures on the documents dated 10.05.2019. However, any right or title of the Plaintiffs in the suit property was disputed by him.

8. Thereafter, the LDJ framed a preliminary issue as to, '*Whether the agreement to sell dated 10.5.2019 relied upon by the plaintiffs cannot be looked into for want of registration and insufficiency of stamp? If yes, whether the entire claim of the plaintiffs fails?*'. While answering the aforesaid question, the LDJ *vide* the Impugned Judgment, rejected the plaint under Order VII Rule 11(d) of the CPC having been insufficiently stamped and barred by Section 53-A of the Transfer of Property Act, 1882[4] and Section 17 (1-A) read with proviso to Section 49 of the Registration Act, 1908[5], recording the following conclusion:

> "*9.1. The preliminary issue is decided against the plaintiffs. The agreement to sell dated 10.05.2019 which forms the basis of their right is inadmissible for want of registration and insufficient stamping. The removal of the defect regarding the stamping shall not be sufficient as the document will still be inadmissible for want of*

[4] hereinafter referred to as 'Act of 1882'
[5] hereinafter referred to as 'Act of 1908'

registration. The suit is barred by the provisions of the Transfer of Property Act and Registration Act as discussed above. Therefore, the plaint is liable to be rejected under Order VII Rule 11(d) of CPC."

9. Aggrieved by the above stated findings, the Plaintiffs have approached this Court seeking our indulgence.

B. <u>CONTENTION ON BEHALF OF THE PARTIES</u>:

10. Learned counsel representing the Plaintiff, challenging the Impugned Judgment has made the following submissions:

10.1 It is argued that the LDJ erred in applying Section 17(1-A) of the Act of 1908 read with Section 53-A of the Act of 1882, as the Plaintiffs are not in possession of the suit property but are seeking possession thereof. These provisions protect a transferee already in possession in part performance of a contract and, therefore, have no application where the Plaintiffs claim no such protection.

10.2 It is further urged that the LDJ failed to consider the proviso to Section 49 of the Act of 1908, which permits an unregistered document to be received in evidence in a suit for specific performance, as evidence of part performance under Section 53-A of the Act of 1882, or for a collateral transaction. Thus, registration of ATS was not a mandatory pre-condition for maintaining the suit for specific performance.

10.3 It is his case that the LDJ also erred in rejecting the plaint under Order VII Rule 11(d) of the CPC, as the objection related only to the admissibility of evidence and did not constitute a statutory bar to the suit. Reference in this regard is also made to Section 9 of the CPC, to argue that civil courts have jurisdiction over all suits of a civil nature unless expressly or impliedly barred, and no such bar arose in the present case.

10.4. It has further been stated that the Defendant's admission pertaining to his signature on ATS and the Rent Agreement, shifts the onus onto him to prove that they were signed in blank, a disputed issue that could not have been decided at the threshold without evidence.

10.5 Lastly, it is his case that the LDJ failed to appreciate that Section 3 of the NCT of Delhi (Recognition of Property Rights of Residents in Unauthorized Colonies) Act, 2019 recognizes documents such as ATS, GPA and Will as conferring valid title/ownership, notwithstanding the Act of 1908, Stamp Act, 1899[6] or other rules and regulations.

11. Learned counsel representing the Defendant was not present during the course of final hearing before this Court. However, written submissions dated 01.05.2024 had been filed on behalf of the Defendant. Accordingly, we proceed to consider the submissions contained therein, which are as follows:

11.1 It is the Defendant's case that the Plaintiffs have taken mutually inconsistent pleas in the plaint. On the one hand they claim ownership and delivery of possession pursuant to the ATS, while on the other hand, it is their claim that the Defendant was

[6] hereinafter referred to as 'Act of 1899'

inducted as a tenant and as such is liable to be evicted. Such pleas taken are argued to be 'blowing hot and cold', thereby estopping the Plaintiffs under the doctrine of election from approbating and reprobating the same transaction.

11.2 It is his case that the ATS, being unregistered and insufficiently stamped, required registration under Section 17(1-A) of the Act of 1908, particularly since the Plaintiffs pleaded delivery of possession thereunder. Further, it is stated that the LDJ has rightly impounded the ATS under Section 33(1) of the Act of 1899 and referred it to the Collector of Stamps for adjudication.

11.3 Lastly, it is urged that Section 53-A of the Act of 1882 operates only as a defence and creates no independent enforceable right. Further, under Section 17(1-A) of the Act of 1908, a document relied upon for the purposes of Section 53-A must be registered; an unregistered document has no effect for such purposes.

C. <u>ANALYSIS</u>:

12. Heard learned counsel representing the parties and with their able assistance perused the paperbook.

13. At the outset, it may be noted that the rejection of plaint by LDJ under Order VII Rule 11(d) of the CPC proceeded on two broad findings: *firstly*, that the ATS was compulsorily registrable under Section 17(1-A) of the Act of 1908 read with Section 53-A of the Act of 1882, and being unregistered, could not be looked into; and

secondly, that the ATS was insufficiently stamped, and even upon curing the stamp deficiency, would remain inadmissible for want of registration. Both limbs of this reasoning, in the considered view of this Court, do not withstand scrutiny.

Re: Non-registration

14. Insofar as registration of ATS is concerned, we do not find merit in the interpretation placed by the LDJ on Section 53-A of the Act of 1882 and Section 17(1-A) read with Section 49 of the Act of 1908. In this regard, a reference may be made to the Division Bench Judgment of the Punjab and Haryana High Court in ***Ram Kishan and Anr. v Bijendra Mann alia Vijendra Mann and Ors***[7], wherein the Court was dealing with an issue as to whether an unregistered agreement to sell accompanied by delivery of possession or executed in favour of a person already in possession, could form the basis of a suit for specific performance.

15. The Court while examining the aforesaid provisions, held that following the Registration and Other Related laws (Amendment) Act, 2001[8], an agreement falling within the scope of Section 53-A of the Act of 1882 is compulsorily registrable under Section 17(1-A) of the Act of 1908. Consequently, an unregistered agreement cannot be relied upon to claim the protection of part performance under Section 53-A of the Act of 1882.

16. However, the Court clarified that non-registration does not bar a

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[7] 2012 SCC OnLine P&H 19839

[8] hereinafter referred to as 'Amendment Act of 2001'

suit for specific performance. In particular, the proviso to Section 49 of the Act of 1908, which also came to be introduced by way of Amendment Act of 2001, expressly permits an unregistered document to be received in evidence as proof of a contract in a suit for specific performance. Thus, while an unregistered agreement cannot be relied upon to claim the protection under Section 53-A, it may nevertheless form the basis of a suit for specific performance and be received in evidence for proving the contract.

17. Accordingly, it was held by the Court that an unregistered agreement to sell involving part performance or possession can form the basis of a suit for specific performance and can be admitted in evidence, but it cannot be used to obtain the protection available under Section 53-A of the Act of 1882. Thus, in view of the judgment and findings rendered in ***Ram Kishan*** *(Supra)*, the reliance placed by the LDJ on non-registration as a bar to the present suit is misplaced.

Re: Insufficiency of stamping

18. The second limb of the Impugned Judgment, proceeding on the premise of ATS being insufficiently stamped, thereby making it inadmissible even upon curing the stamp deficiency for want of registration, also does not withstand scrutiny. Inasmuch as insufficiency of stamping, by itself, cannot furnish a ground for rejection of plaint under Order VII Rule 11(d) of the CPC.

19. The LDJ in the Impugned Judgment appears to have conflated three distinct concepts: *(i)* the admissibility of an instrument in evidence; *(ii)* the curability of a defect relating to stamp duty; and *(iii)*

the maintainability of the suit itself. These concepts operate in different statutory fields and cannot be treated as interchangeable for the purposes of Order VII Rule 11(d) of the CPC.

20. The LDJ while coming to the conclusion highlighted under paragraph no.8, has relied upon ***State of A.P. v P. Laxmi Devi***[9], to hold that the payment of duty is mandatory under Section 33 of the Act of 1899. However, the reliance so placed by the LDJ is misplaced, inasmuch as the Supreme Court therein, was not examining the mandatory nature of stamp duty, rather the mandatory impounding of an instrument, if brought before the concerned authority.

21. In the ordinary course, an instrument found to be insufficiently stamped is required to be impounded under Section 33 of the Act of 1899, for further adjudication and recovery of the deficient duty. However, this Court is of the view that relegating the Plaintiffs to that route would serve no purpose and would only occasion avoidable delay.

22. In this regard, a reference is made to proviso (a) to Section 35 of the Act of 1899, which itself constitutes the Court, being the authority before whom the instrument is sought to be acted upon, as competent to receive the instrument in evidence upon the insufficient stamp duty being made good together with the prescribed penalty.

23. In view thereof, the appropriate course of action to be adopted by the LDJ was to direct payment of the deficit stamp duty and penalty as a condition for admissibility, rather than embarking upon

[9] (2008) 4 SCC 720

the separate impounding procedure contemplated under Section 33(1) of the Act of 1899.

24. Reference in this regard is made to the judgment of Supreme Court in ***Avinash Kumar Chauhan v Vijay Krishna Mishra***[10], and ***Omprakash v. Laxminarayan***[11], both of which recognise that the requirement of instruments being duly stamped can be satisfied by payment made before the Court itself, by virtue of it being an authority to receive a document in evidence. Thus, the implication which follows therefrom is that not every instrument necessarily needs to be routed through external adjudicatory mechanisms, particularly, when the Court also have the authority to do so.

25. Turning now to the determination of quantum, the ATS, undisputedly, involves delivery of possession pursuant to the ATS. Article 23-A of the Schedule-I to the Act of 1899, as applicable to Union Territories, provides that 90% of the stamp duty payable on a conveyance covered under Article 23 is leviable, where such conveyance is in the nature of part performance of a contract for transfer of immoveable property, which reads as under:-

"ARTICLE 23-A

CONVEYANCE IN THE NATURE OF PART PERFORMANCE

Description of Instrument	*Proper Stamp-duty*
[Art. 23A. CONVEYANCE IN THE NATURE OF PART PERFORMACNE. *Contracts for the transfer of immoveable property in the*	*Ninety per cent of the duty as a Conveyance (No.23)]*

[10] (2009) 2 SCC 532
[11] (2014) 1 SCC 618

nature of part performance in any Union territory under section 53A of the Transfer of Property Act, 1882 (4 of 1882)	

NOTES

Agreement for sale contemplating delivery of possession is compulsorily registerable under clause (b) to sub-section (1) of s. 17 of the Registration Act, 1908."

26. In the present case, the ATS falls within the definition of a conveyance in the nature of part performance, as it records delivery of possession upon payment of entire sale consideration. Further, a set of documents namely, a GPA, Will, Possession Letter and Receipt were also executed. The Plaintiffs do not dispute that the possession was delivered pursuant to ATS.

27. The aforestated set of documents are executed in order to avoid execution of the Sale Deed and avoiding the corresponding liability to pay stamp duty. It is for this reason that the Amendment Act of 2001 was introduced, while making such Agreement for Sale, contemplating delivery of possession, to be compulsorily registerable.

28. In the present case, the suit is found to be maintainable on the basis of the unregistered ATS solely on account of proviso to Section 49 of the Act of 1908. However, the Act of 1899 does not provide for any such exception from payment of stamp duty. In fact, the total payment of stamp duty remains the same. In order to ensure that the proper stamp duty is paid, the incidence of 90% of the stamp duty payable on the Conveyance Deed is shifted from the date of Conveyance Deed to date of Agreement to Sell, which is in the nature of conveyance evidencing delivery of possession for the purposes of

part performance. Hence, in the present case, the Plaintiffs is found liable to pay amount equivalent to 90% of the total stamp duty payable at the time of execution of the ATS.

29. The Plaintiffs before this Court being a male and a female jointly, the applicable rate of stamp duty is the concessional rate prescribed for jointly held immovable property by a man and woman, in terms of the Schedule-I to the Act of 1899 as substituted by the Indian Stamp (Delhi Amendment) Act, 2007. The relevant amendment, insofar as it pertains to Article 23, reads as under:

"ARTICLE 23

CONVEYANCE

Description of Instrument	*Proper Stamp-duty*
[Art. 23 CONVEYANCE *[as defined by section 2(10)], not being a TRANSFER charged or exempted under No.62.* *Exemption* *Assignment of copyright under the Copyright Act, 1957, Section 18* *Co-Partnership-Deed, See Partnership (No.46)*	*Three percent of the consideration amount set forth in the instrument.* *Further reduced to two percent in respect of individually/jointly held Immovable property by woman/women (Provided that in cases of jointly held immovable property, the reduced rate of stamp duty shall apply only to the share(s) held by woman/women)]*

30. The aforesaid provision makes it clear that the concessional rate of stamp duty applies only to the share held by a woman in a jointly held immovable property. In the present case, since the respective shares of the Plaintiffs have not been specified, their respective shares are taken to be equal, i.e., 50% each, for the purpose of computation

of stamp duty. Accordingly, such Duty is chargeable at the rate of 3% on the 50% share held by the Plaintiff No.1 and at the concessional rate of 2% on the 50% share held by the Plaintiff No.2, totalling upto 5%.

31. Thus, on the sale consideration of Rs. 12,00,000/-, the stamp duty payable works out to Rs. 60,000/-. Against which, stamp duty of only Rs. 50/- affixed on the ATS stands paid, resulting in a deficiency of Rs. 59,950/-.

32. Insofar as the imposition of penalty is concerned, reference may be made to the judgment of the Supreme Court in ***Peteti Subba Rao vs. Anumala S. Narendra***[12], wherein after interpreting Section 35 of the Act of 1899, it was held that a Court, while performing the functions of authority under the aforestated provision, does not have a discretion to reduce penalty. Consequently, the Plaintiffs are made liable to pay penalty equivalent to ten (10) times the deficient stamp, which shall be a pre-condition for proceeding with the suit.

33. However, we may also note that the Supreme Court in ***H.C. Dhanda Trust vs. State of Madhya Pradesh and Ors.***[13], while considering the scope of the power of Collector under Section 40(1)(b) of the Act of 1899, held that the Collector has a discretion to impose a penalty not exceeding ten (10) times the deficient stamp duty. Accordingly, the Plaintiffs, upon depositing the deficient stamp duty along with the penalty as directed hereinbelow, may file an appropriate application before the Collector seeking refund of any part of the

[12] 2000 LawSuit(SC) 1869
[13] 2020 (9) SCC 510

penalty in terms of Section 40(1)(b) of the Act of 1899. The said application shall be considered by the Collector independently and in accordance with law, having regard to the principles laid down by the Supreme Court in ***H.C. Dhanda Trust*** *(Supra)*.

34. Before parting, I must also acknowledge the valuable assistance rendered by Sister Judge Manmeet Pritam Singh Arora, with whom I discussed the matter. She was kind enough to share with me various judgments passed by the Supreme Court that were of assistance in deciding the issue.

D. OPERATIVE DIRECTION:

35. Thus, in view of the foregoing discussion, this Court directs the Plaintiffs to deposit the deficient stamp duty of Rs. 59,950/-, together with a penalty of Rs. 5,99,500/-, before the LDJ, within a period of one (01) month from today, whereupon the ATS shall stand admitted in evidence and suit would continue to proceed. However, the matter shall be forwarded to the Competent Collector for determination of the Plaintiffs entitlement, if any, to refund any part of the penalty in terms of Section 40 of the Act of 1899, in exercise of her/his discretionary power and in light of the principles laid down in ***H.C. Dhanda Trust*** *(Supra)* without affecting the progress of the pending suit.

E. CONCLUSION:

36. In view of the foregoing discussion, the Impugned Judgment and Decree dated 09.05.2023 passed by the LDJ is hereby set-aside. Consequently, the present Appeal is allowed, the suit is restored to its

original number and remanded to the LDJ for disposal in accordance with law. All contentions of the parties on merits are left open.

37. Learned counsel representing the Plaintiffs/Appellants is directed to appear before the LDJ, within a period of two weeks from the date of this Order, for further proceedings in accordance with law.

38. Pending application(s), if any, shall also stand disposed of.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 08, 2026
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