

## Sh. Jitender Singh vs Sh. Uday Bhan on 31 January, 2023

IN THE COURT OF Ms. NIHARIKA KUMAR SHARMA  
ACJ CUM CCJ CUM ARC (NORTH), ROHINI COURTS, DELHI.

RC ARC

In the matter of :-

Sh. Jitender Singh,  
S/o Sh. Shiv Bahadur Singh,  
R/o 205/1, Pocket A-3,  
Sector -7, Rohini, Delhi - 110085.

VERSUS

1. Sh. Uday Bhan
2. Sh. Sunil Kumar
3. Sh. Subhash  
All sons of Late Sh. Hari Lal,  
R/o S-514, Mangol Puri,  
J. J. Colony, Delhi - 110083
4. Sh. Rattan Singh,  
S/o Sh. Ram Chander,  
R/o S-514, Second Floor,  
Mangol Puri, J. J. Colony, Delhi - 110083

Date of Institution	10.02.2010
Date for reserve for order	27.10.2022
Date of Final Order	31.01.2023

Judgment

Application for eviction of tenant under section 14(1)(a) & 14(1)(b) of Delhi Rent Control Act, 1958

1. RELIEF SOUGHT- An order for recovery of possession of the premises No. S-514, Ground Floor, First Floor and Second Floor more particularly shown in red Colour in the Site-Plan annexed with the present petition in favour of the Petitioner and against the Respondents. It is further prayed that the Respondent also may be directed to hand over the vacant peaceful physical possession of the property in question. Cost of the petition also be awarded in favour of the Petitioner and against the Respondent in the interest of justice.

2. FACTS OF THE CASE-

Brief facts as culled out from the petition are that the petitioner is owner and landlord of the property bearing No. S-514, Mangol Puri, J.J. Colony, Delhi-83, which was purchased from Sh. Subash S/o Late Sh. Hari Lal, R/o S-514, Mangol Puri, J.J. Colony, Delhi-83, and the documents like GPA dated 05.04.2006, receipt a sum of Rs. 1 lac dated 05.04.06, agreement to Sell and purchase dated 05.04.2006, Possession Letter and Affidavit dated 05.04.2006 were executed by the erstwhile, owner in favour of the Petitioner, being the absolute owner of the property in question, as his two brothers namely Sh. Uday Bhan and Sh. Sunil the Respondent No.1 & 2 herein relinquished their respective shares in favour of the Respondent No.

3. The Relinquishment Deed was registered vide registration No.5114 in Addl. Book No.1, Vol. No. 6 on pages 34 to 35 on 19.10.05 registered before Sub-Registrar-VI (C) Saraswati Vihar, Delhi. The Respondent No.1 approached the petitioner to permit them to stay at the suit property as his tenant at monthly rent of 2,500/- payable in advance on or before 7th day of each month with effect from 05.06.06 to 04.02.2007 and the petitioner allowed him to remain as tenant and an agreement was executed, which was further renewed by the Petitioner at their request on the same terms and conditions with effect from 05.02.07 to 05.11.2007. The rent agreement was executed on 25.09.2007 between the Petitioner and Respondent No.1 to 3.

That the Respondent No.1-3 stopped to make the payment of rent to the premises in question with effect from 01.10.2007. The Petitioner approached the Respondents No. 1 to 3 and asked for making the payment of rent in November 2007, but the Respondents No.1 to 3 did not pay the rent to the Petitioner for the premises in question hence having no other alternate, the Petitioner got issued the Legal Notice in this effect on 17.12.2007, which was duly served upon the Respondent No.1 to 3. The copy of the Legal Notice 17.12.2007 is annexed herewith. Hence, the present petition.

### 3. OBJECTIONS TAKEN BY THE RESPONDENT-

The property bearing no. S-514, Mangolpuri, Delhi is a Govt. property (under M.C.D.) and the same is allotted to the people who are residing in Jhuggies. The parents of the respondent nos.1, 2 and 3 were residing in jhuggies and therefore the same was allotted in the name of the father of the respondents. As per terms and conditions made by the Govt at the time of allotment that the father of the respondents neither sell nor let out the said property at any point of time. It is also mentioned that the property can not be transferred and sold out being a govt. property. That the petitioner is neither the landlord nor the owner of the property and he cannot claim ownership right on the basis of unregistered documents which was prepared by fraud and misleading the poor and illiterate respondents. The respondents were called by the petitioner to execute a loan agreement as the respondent has taken loan from the petitioner, the loan amount was Rs. 2,50,000/- (Rs. Two lakh fifty thousand only) and the respondent already return loan alongwith interest to the petitioner. The petitioner by fraud took the signature of the respondents on some blank papers and also some on blank stamp papers by saying that he prepared a loan agreement. That there is no agreement (rent) executed by the respondents at any point of time but the petitioner tried to made a forged agreement by putting forcibly the signature of the respondent no.1. That the petitioner was never in possession of property bearing no. S-514, Mangolpuri, Delhi at any point of time and the petitioner has not approached before the Court with clean hands and hence the petition of the petitioner is liable to be

dismissed.

The present application has been made under clause (a) and (b) of subsection (1) of section 14 of Act 59 of 1958 which reads as follows:

14. Protection of tenant against eviction.--(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely: --

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in section 106 of the Transfer of Property Act, 1882 (4 of 1882);

(b) that the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;

8. In the light of the provisions of clause (a) and (b) of sub-section (1) of section 14 of Act 59 of 1958, following points fall for the determination of this court, namely The cause of action for eviction on the ground of non payment of rent and sub- letting without permission thus consists of the following facts: (i) Petitioner is the owner / landlord of the suit property (ii) Relationship of landlord and tenant; (iii) sub- let, assigned or otherwise parted with the possession of the whole or any part of the premises (iv) premises let out by the tenant without obtaining the consent in writing of the landlord (v) Existence of arrears of rent legally recoverable on the date of notice of demand. (vi) Service of notice of demand in the manner provided in section 106 of the TPA and (vii) Failure of the tenant to pay or tender the whole of the arrears of rent legally recoverable from him within two months of the date of service of notice

4. ANALYSIS OF THE EVIDENCE As far as deciding as to who is the owner of the tenanted premises, the law is settled that cases under DRC, landlord/owner is not required to prove his/her absolute ownership of the tenanted premises. Landlord is only required to show that his legal position on the suit property is more than that of a tenant. The suit will not get defeated for the imperfectness of the title. Reliance is placed upon the judgment passed by Hon'ble Delhi High Court in PlastiChemicals Company v. Ashit Chadha and Anr 114 (2004) DLT 408, 2004 (76) DRJ 654. It says that if a landlord is able to show by producing a document of his ownership on record, landlord is deemed to have discharged his burden of ownership vis-a-vis the Rent Control Act and such a document can at best be challenged by the heirs of the owner and not by the tenant. Similarly, in the case of Ramesh Chand v. Uganti Devi cited as 157 (2009) Delhi Law Times 450 it has been held by

the Hon'ble Delhi High Court in para no. 7 that "It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the court is that the landlord had been receiving the rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under section 14(1)(e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord." It is also well settled preposition of law that "for the purpose of Section 14(1)(e) of the DRC Act, a landlord is not supposed to prove absolute ownership as required under Transfer of Property of Act. He is required to show only that he is more than a tenant". Similar analogy of ownership is taken as far as cases under other provisions of DRC are concerned. In the present case as well, the issue of ownership for the purpose of section 14(1)(a) and 14(1)(b) DRC will be decided .

As far as possession of the suit property is concerned, the petitioner got examined PW2-Vinod Pandey S/o Vasudev Pandey. The witness concurred that the petitioner purchased the suit property from Sh. Subash and upon the request of the petitioner, who used to reside in the suit property to look after and manage the affairs of the suit property as it was lying vacant since the date of its purchase. Witness stated that he remained in possession from 05.04.2006 - 02.06.2006 and vacated and handed over the peaceful possession to the petitioner on 02.06.2006. In cross examination witness admitted that he was never the tenant of the petitioner. It is important to note that if the evidence of PW2 is to be taken as it is, it shows that the petitioner was allegedly in the possession of the suit property for some time however despite that the petitioner has no document to show that he was in the possession of the same. No document is filed with respect to the transfer of basic necessities like electricity and water connection in his name. The fact of possession of the suit property with the petitioner is not sufficiently deduced from the evidence of this witness.

PW3 - Sh. Dashrath s/o Sh. Dukhran Ram - The witness stated himself as a near relatives of respondent no.1 as respondents are his maternal uncle. Petitioner was also known to me. Witness stated that respondent was searching for a property and was having the knowledge that respondent no. 1 -3 were selling the suit property. He proposed the petitioner to purchase the same. Both respondent no.1-3 and the petitioners entered into the sale agreement and respondent no. 3 sold the property to the petitioner and entire deal took place in presence of PW3. After two months of the deal respondent no.1-3 approached PW3 to approach the petitioner to request him to let it out to the suit property for a short period. He approached the petitioner accordingly and petitioner agreed. A rent agreement was prepared in his presence from 05.06.2006 - 04.02.2007 at a monthly rent of Rs. 2500/- and petitioner handed over the suit property to respondent no. 1-3. In cross examination, PW3 stated that Uday Bhan is not his real maternal uncle and he belongs to his maternal grandmother village. Further, witness denied all the suggestions put to him during the cross examination.

It is the case of the petitioner that he purchased the suit property from the respondent Sh. Subash S/O late Sh. Hari Lal, by way of GPA dated 05.04.2006, receipt of one lakh dated 05.04.2006,

agreement to sale and purchase dated 05.04.2006 and possession letter and affidavit dated 05.04.2006. Sh. Subash was the absolute owner of the suit property at the time of execution of the aforesaid documents as his brothers i.e. Sh. Uday Bhan and Sh. Sunil, have relinquished their respective shares in the suit property in favour of Sh. Subash Kumar vide relinquishment deed dated 19.10.2005 which is a duly registered document. Hence, petitioner is an exclusive owner of the suit property. On the other hand, ownership of the petitioner is disputed by the respondent no.1-3 on the ground that the suit property is a government land and allotted to persons residing in jhuggis and there is no right to sale or let out the property to anyone. It was allotted to the late father of the respondents Sh. Hiralal. As per the terms and conditions of the government, father of the respondents have neither sold or let out the suit property during his lifetime at any point of time. The respondents have got examined RW5 Sh. Manohar Lal, UDC, DUSIB, DELHI. The witness produced the record of plot no. S-514, Mangolpuri, Delhi. As per the statement, no application for transfer of the plot is received in the office and as per the record, the plot is in the name of Sh. Hira Lal S/o Sh. Rampat. Upon cross examination, witness stated that there is no information regarding the death of Sh. Hira Lal is placed on record and no application regarding mutation is filed. The testimony and the document produced by the witness is not disputed by the respondent. It is a public document and the averments made by the respondents regarding the ownership of their father Late Sh. Hira Lal with respect to the suit property is confirmed with these documents. Hence, as per the government record, the suit property still in the name of father of the respondents.

Therefore, as far as the ownership is concerned, there are two types of documents. GPA dated 05.04.2006, receipt of one lakh dated 05.04.2006, agreement to sale and purchase dated 05.04.2006 and possession letter and affidavit dated 05.04.2006, filed by the petitioner in support of his ownership on the suit property. Possession slip RW5/1 placed on record by RW5, as per the government record, father of the respondent is still the allottee of the plot. As far as the documents of the petitioner is concerned, law is settled that GPA, WILL, Agreement to sale do not confer any title on the person in whose favour they are executed. These documents being unregistered and unstamped documents cannot transfer title in an immovable property as per Section 54 of the Transfer of Property Act, 1882. Section 54 of the Transfer of Property Act defines sale of an immovable property and reads as under: "Sale" defined "Sale" is a transfer of ownership in exchange for a price paid or promised or partpaid and partpromised. Sale how made - Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upward or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale - A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. Thus, in view of provisions contained in section 54 of the Transfer of Property Act, which clearly provide that title in an immovable property value of which is Rs. 100/ or upwards can be transferred only by a registered document. The documents on the basis of which plaintiff is claiming ownership over the suit property being unregistered and unstamped documents cannot be said to be a valid sale transfer documents and the suit property cannot be said to be legally transferred/sold by virtue of these documents.

Furthermore, the Hon'ble Supreme Court in its judgment in Suraj Lamp & Industries (P) Ltd. vs. State of Haryana has declared that an immovable property can be transferred/conveyed only by deed of conveyance/sale deed duly stamped and registered as required by law and by no other means. The relevant paras of the said judgment are reproduced herein under: Scope of Power of Attorney:<sup>13</sup> A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of any agency whereby the guarantor authorizes the guarantee to do the acts specified therein, on behalf of guarantor, which when executed will be binding on the guarantor as if done by him (see Section 1A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee."

This position is time and again is reiterated in various judgments. In the case of Joginder Kumar Goyal vs Government Of NCT Of Delhi & Ors. on 17 May, 2016 passed by Hon'ble Delhi High Court as well it was stated, "We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of „GPA sales or „SA/GPA/WILL transfers do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA Sales."

However, as far as possession right is concerned , it was explained in the case of Shri O.P. Aggarwal & Anr. vs Shri Akshay Lal & Ors. on 15 March, 2012 passed by Hon'ble Delhi High Court. No doubt, documents such as Agreement to Sell, Power of Attorney, Will etc do not strictly confer ownership rights as a sale deed, however, such documents create certain rights in an immovable property, though which are strictly not ownership rights but definitely the same can be construed as entitling the persons who have such documents to claim possession of the suit property inasmuch as at least the right to the suit property would stand transferred to the person in whose favour such documents have been executed. Hence, it is very clear that merely on the basis of the documents presented by the parties, they cannot claim a title over the suit property.

The respondent have raised several objections on the legality of the documents however the same is not dealt in the present case as the court does not have the jurisdiction to decide the title of the parties but only to see if the petitioner is having a better title on the suit property within the ambit of DRC Act. Further, absolute ownership over the suit property by virtue of relinquishment deed is also not dealt with as it pertains to deciding the exclusive right of Sh. Subash Kumar to sell the suit property to the petitioner which also pertains to deciding the title of Sh. Subash over the suit property. As per the record of the government, the father of the petitioner is the original allottee of the suit property and there is no change as on date. Further, there is no mutations and no

application regarding change of names in the record. Hence, petitioners through the father have better right and title on the suit property as compared to the respondent. Burden of proof to prove to show that petitioner is the rightful owner or have the better title on the suit property is that of the petitioner and considering the material on record, petitioner has not been able to discharge the same. Hence, the petitioner could not prove his ownership on the suit property. 4.1 Whether there exists a landlord tenant relationship between the petitioner and the respondent?

The same can be proved by the admission of the tenant, rent receipts issued by the landlord or by proving a rent agreement. In the present case, neither the rent receipt nor the rent agreement is filed. In the present case, there is no rent receipts. A rent agreement allegedly to be executed between the petitioner and respondent is placed on record. The respondents have denied execution of this rent agreement willingly. As per the version of the respondent he was forced to sign this document. Be that as it may, the onus of proof to prove this document is upon the petitioner. The petitioner have placed on record the original of said rent agreement.

The petitioner stated during his cross examination that he do not have any document related to the possession. Hence, it is not clear as after allegedly purchasing the property whether the petitioner was in the possession of the suit property at all.

Petitioner stated in his cross examination that the first rent agreement was executed on 05.06.2006 however it was destroyed thereafter upon renewal of tenancy, fresh rent agreement was prepared. The petitioner has not elaborated as to how and when the first rent agreement got destroyed. It is also unusual as there was never a copy made of the same. Petition is silent on the fact if the copy of the same was proved to the respondent. Further, it is also silent as to who was the tenant in the rent agreement. It is not disclosed if the first agreement was notarized. Hence, this statement raises suspicion on very existence of such rent agreement. With respect to the second rent agreement the petitioner did not get the notary examined who notarized the rent agreement on the ground that he do not remember the details of the notary who prepared the rent agreement. The respondent Subash has denied his signatures on the rent agreement. No steps are taken by the petitioner to show that signature was obtained without coercion. Hence, there is no sufficient proof to show that the rent agreement is a genuine document. Further, if it is taken as it is, it is not clear from the documents and the facts on record as to when the possession of the tenanted premises was handed over and since when the tenancy began. Further there is not even a single proof to show payment of the rent. Considering the discussion above, this court is of the opinion that the petitioner has not been able to prove any fact to show the existence of a landlord tenant relationship between the parties

(iii) sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises- Burden of proof to prove the sub letting is upon the petitioner.

Exact date of sub letting is not stated in the petition. None of the witnesses of the petitioner have stated anything specific as to when and to whom the sub-letting was done by there respondent. There is nothing on record placed by the petitioner to prove the act of sub-letting.

FINAL ORDER Considering the averments and evidence led, the petitioner has not discharged this burden of proof. Hence, the suit stands dismissed.

File be consigned to the record room. Parties to bear their own cost. Announced in the Open Court on 31.01.2023 (NIHARIKA KUMAR SHARMA) ACJ/CCJ/ARC (North), Rohini Courts, Delhi