



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.06.2025

+ **C.R.P. 159/2018, CM APPL. 30877/2018, CM APPL. 26701/2019 & CM APPL. 49865/2019**

RAJU SARDANA

..... Petitioner

versus

PAWAN ARYA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Akash Vajpai, Adv.

For the Respondent : Mr. Ravi Sharma & Mr. Harish Kishore,
Adv. for R1

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed against the order dated 09.04.2018 (hereafter '**impugned order**') passed by the learned Additional District Judge ('**ADJ**'), West District, Delhi in Civ DJ No. 611272/16 whereby the suit for specific performance filed by Respondent No. 1 was partly decreed in his favour in terms of the compromise arrived at between Respondent No. 1 and Respondent No. 4.



2. It is the petitioner's case that the petitioner through his mother and Respondent No. 4 are co-owners of the property bearing No. 3/28, West Patel Nagar, New Delhi – 110008 admeasuring 200 square yards (hereafter '**suit property**'). On 29.08.2009, the petitioner and Respondent No. 4 entered into a collaboration agreement with Respondent Nos. 2 and 3 for the work of construction (being the basement, ground floor, first floor, second floor and third floor) on the suit property. In accordance with the collaboration agreement, Respondent Nos. 2 and 3 were to complete the work of construction within a period of 12 months. Further, post the completion of the work as stipulated under the collaboration agreement, Respondent Nos. 2 and 3 were to retain the second floor of the suit property.

3. During such time, prior to the completion of construction, Respondent Nos. 2 and 3 entered into an agreement to sell dated 26.11.2009 for selling the second floor of the suit property to Respondent No. 1 who is stated to be the owner of the adjoining property bearing No. 3/27. Respondent No. 1 further connected the second floor of his property with the second floor of the suit property and also took possession of the same. It is the case of the petitioner that Respondent Nos. 2 and 3 failed to carry out the construction work within the stipulated time. It is further the case of the petitioner that since Respondent Nos. 2 and 3 failed to comply with the terms and conditions as stipulated in the collaboration agreement, no right, title or interest with respect to the second floor of the property existed in



favour of Respondent Nos. 2 and 3 for them to alienate any right, title or interest in favour of Respondent No. 1.

4. On 23.05.2011, Respondent Nos. 2 and 3 served legal notice to the petitioner to execute a general power of attorney as regards the second floor thereby transferring ownership to Respondent Nos. 2 and 3 to sell the same. By notice dated 11.06.2021, the petitioner cancelled the collaboration agreement and asked Respondent No. 1 to vacate the suit property. Respondent No. 1 thereafter filed a suit for specific performance being CS (OS) No. 330/2014 praying for a decree of specific performance and a direction to Respondent Nos. 2 and 3 to perform their part of the contract dated 26.11.2009 to execute a registered sale deed in respect of the second floor of the suit property.

5. During such time, the petitioner and his mother also filed a civil suit No. 181/2015 seeking a declaration that the petitioner's mother is the owner of 50% undivided share in the second floor of the suit property and the joint owner of the suit property. Other reliefs such as cancellation of agreement to sell dated 26.11.2009 and decree of possession in respect of 50% undivided share of the second floor of the suit property were also sought. The said matter along with the suit for specific performance preferred by Respondent No. 1 (out of which the present petition arises) were referred to mediation. In the said mediation proceedings, Respondent No. 1 entered into a settlement with Respondent Nos. 2-4 as per which Respondent No. 4, being co-owner of the suit property, agreed to execute a sale deed with respect



to 50% share of the second floor of the suit property in favour of Respondent No. 1. The petitioner was not made a party to the said settlement.

6. By the impugned order, the learned ADJ noted that Respondent No. 4 being the co-owner of the suit property, had the right to enter into a settlement with Respondent No. 1 *qua* her undivided share in the second floor of the suit property. It was noted that the settlement arrived at between the respondents was legal, however, the same was not binding upon the petitioner since he was not a party to the said settlement.

7. Insofar as the claim of the petitioner in respect of the suit property was concerned, the learned ADJ noted that admittedly Respondent Nos. 2 and 3 had entered into a collaboration agreement with the petitioner and Respondent No. 4 on 29.08.2009 for the construction of floors on the suit property. It was noted that admittedly Respondent No. 4 and Smt. Sushila Sardana/petitioner's mother are co-owners of the suit property. It was noted that Respondent Nos. 2 and 3 entered into an agreement to sell with Respondent No. 1 on 26.11.2009 for the sale of the second floor of the suit property to Respondent No. 1 which led to the filing of the subject suit for specific performance of agreement to sell by Respondent No. 1.

8. The learned ADJ noted that the petitioner had already filed a suit seeking cancellation of the said agreement to sell executed by



Respondent Nos. 2 and 3 and the possession of the second floor of the suit property from Respondent No. 1. The learned ADJ noted that in terms of Section 44 of the Transfer of Property Act, 1882 ('TPA'), there existed no bar to sell undivided share of the suit property. It was consequently noted that the contention of the petitioner that Respondent No. 4 being co-owner of the suit property was not entitled to execute sale deed *qua* her portion of the undivided share in the suit property in favour of Respondent No. 1 was without merit.

9. The learned counsel for the petitioner submitted that the learned ADJ erred in passing the impugned order. He submitted that the impugned order is based on an unlawful compromise between the respondents, and is liable to be set aside. He submitted that the learned ADJ failed to take into consideration the fact that the settlement executed between the respondents was a clear act of collusion in order to defeat the interests of the petitioner.

10. He submitted that the petitioner, undisputedly, through his mother, is the co-owner to the extent of 50% of the undivided share of the second floor of the suit property. He submitted that the compromise arrived at between the parties is contrary to the intent of Section 44 of the TPA. He submitted that since the suit property had not been demarcated, Respondent No. 4 was precluded from transferring her share to Respondent No. 1. He submitted that the same would prejudice the interests of the petitioner. He consequently submitted that the impugned order be set aside.



11. The learned counsel for Respondent No. 1 submitted that the impugned order is reasoned and warrants no interference by this Court. He submitted that in terms of Section 44 of the TPA, there is no bar on the co-owner to sell undivided share of the suit property.

Analysis

12. The petitioner is essentially aggrieved that the learned ADJ upheld the settlement entered into between the respondents and decreed the suit for specific performance filed by Respondent No. 1 against Respondent No. 4 in terms of the settlement arrived at between the parties whereby Respondent No. 4 agreed to sell her 50% undivided share in the second floor of the suit property to Respondent No. 1. It is contended that since the suit property had not been demarcated, Respondent No. 4 was precluded from selling 50% of her share in respect of the second floor of the suit property in terms of Section 44 of the TPA. It is further contended that same would prejudice the rights and interests of the petitioner in respect of the 50% undivided share owned by the petitioner's mother, and the civil suit filed by them.

13. Before delving into the correctness of the impugned order, it is pertinent to examine Section 44 of the TPA. The same reads as under:

“44. Transfer by one co-owner.—Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest,



and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred. Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.”

14. Section 44 of the TPA provides for the right of the co-owner to transfer his share in the joint property. In doing so, Section 44 provides that where one or more of the co-owners of an immoveable property transfer their share or any interest in such property, the transferee acquires in respect of such share or interest and as far as necessary, the transferor's right to joint possession or other common or part enjoyment of the property. It is however pertinent to note that while Section 44 of the TPA provides that a person cannot transfer a right greater than he himself has [Ref: **Ramdas v. Sitabai : (2009) 7 SCC 444**], the same does not preclude the co-owner from transferring his share in the joint property only for the reason that the same is unpartitioned/undivided.

15. In that respect, the Hon'ble Apex Court in the case of **Kartar Singh v. Harjinder Singh and Others : (1990) 3 SCC 517** observed as under:

“6. As regards the difficulty pointed out by the High Court, namely, that the decree of specific performance cannot be granted since the property will have to be partitioned, we are of the view that this is not a legal difficulty. Whenever a share



in the property is sold the vendee has a right to apply for the partition of the property and get the share demarcated. We also do not see any difficulty in granting specific performance merely because the properties are scattered at different places. There is no law that the properties to be sold must be situated at one place. As regards the apportionment of consideration, since admittedly the appellant and respondent's sister each have half share in the properties, the consideration can easily be reduced by 50 per cent which is what the first appellate court has rightly done.”

16. Additionally in the case of **Nasib Kaur v. Col. Surat Singh: (2013) 5 SCC 218**, the Hon'ble Apex Court observed that the unpartitioned share in joint property can be sold by the joint holder prior to partition. It was however noted that the interest so acquired by the transferee would be the same as that held by the transferor and that the same would be subject to final determination in partition proceedings.

17. In the present case as well, the petitioner is essentially aggrieved that the suit for specific performance preferred by Respondent No. 1 was decreed in favour of Respondent No. 1 in terms of the compromise between Respondent No. 1 and Respondent No. 4 whereby Respondent No. 4 agreed to sell her 50% undivided share in respect of the second floor of the suit property to Respondent No. 1. It is contended that the same could not have been done without there being a demarcation of the suit property.

18. It is not disputed that Respondent No. 4 is a co-owner in respect of 50% share of the suit property. In terms of the dictum of the



Hon'ble Apex Court in *Nasib Kaur v. Col. Surat Singh* (*supra*) and *Kartar Singh v. Harjinder Singh and Others*(*supra*), Respondent No. 4 is not precluded from transferring her interest in the joint property prior to the partition. In that light, the learned ADJ rightly noted that there was no bar under Section 44 of the TPA to sell undivided share in the suit property. Consequently, the learned ADJ rightly noted that Respondent No. 4 being the co-owner of the suit property, had the right to enter into a settlement with Respondent No. 1 *qua* her undivided share in the second floor of the suit property. Further, since the petitioner was not a party to the said settlement, the learned ADJ rightly noted that the settlement was not binding on him. The same, in the opinion of this Court, is well founded and does not merit any interference by this Court.

19. Much emphasis has been placed by the petitioner on the fact that the settlement entered into by Respondent No. 4 in respect of her share in the second floor of the suit property would prejudice the civil suit filed by the petitioner since the property has not been partitioned. As discussed above, Section 44 of the TPA does not put an embargo on the sale by the co-owner of the unpartitioned/undivided share in joint property prior to the partition. Even otherwise, it is pertinent to note that the petitioner and his mother have filed a civil suit seeking declaration that the petitioner's mother is the owner of 50% undivided share in the second floor of the suit property and the joint owner of the suit property. The said prayer for declaration will not be affected only



because Respondent No. 4 sold her interest in respect of the second floor of the suit property. The same, thus, in the opinion of this Court would not affect the rights of the petitioner in the suit property or cause any prejudice to the petitioner.

20. Upon a consideration of the totality of facts and circumstances, this Court does not find any infirmity so as to warrant an interference with the impugned order, and the same cannot be faulted with.

21. The present petition is accordingly dismissed. Pending applications also stand disposed of.

AMIT MAHAJAN, J

JUNE 11, 2025