

**IN THE COURT OF MS. POOJA JAIN:
ADDITIONAL DISTRICT JUDGE-03: EAST:
KARKARDOOMA COURTS: DELHI.**

CS No. 49/23

Mohd. Zahid & Ors.

.....Plaintiffs

Versus

Harun & Ors.

.....Defendant

ORDER

1. An application filed by the plaintiffs under Order 39 Rule 1 & 2 r/w section 151 CPC is pending adjudication today.
2. Factual matrix of the present case is that the suit property bearing No. 38-A, measuring about 90 to 110 sq. yds., New Ganesh Park, Rashid Market Khureji Khas, Delhi-110051 near Chandar Nagar (Silver Park) Illaqa, Shahdara, Delhi part of khasra no.19/2 (hereinafter called as the suit property), initially belonged to the father of the plaintiffs no. 1 to 7 and father of plaintiff no.8 and they were in joint possession thereof by virtue of gift deed. Thereafter a dispute regarding suit property arose between the father of plaintiff no.1 to 7 and father of plaintiff no.8 which was decided by the arbitral tribunal in terms of arbitral award. The father of the plaintiffs expired on 26.06.2022 leaving behind his legal heirs. It is further averred that the defendants are unauthorized trespassers in the suit property and have raised unauthorized construction at the suit property without any sanctioned plan. Despite requests, the defendant failed to handover the vacant and peaceful possession of suit property to the plaintiff.

The plaintiff sent legal notice dt. 13.12.2022 to the defendants to handover the peaceful and vacant possession of suit property. Despite the service of legal notice, the defendants have neither handed over the possession of suit property nor they have replied to the legal notice. Hence the present suit. It is therefore prayed that an ad-interim injunction may be granted in favour of the plaintiff and against the defendant thereby restraining defendants and their heirs/successors, associates, agents, attorneys etc. from disposing off, alienating and creating any third party interest in the suit property till the disposal of the suit.

3. Reply to the application is filed by the defendant and it is submitted that suit of the plaintiffs is liable to be dismissed being time barred as it has been filed after 50 years. It is submitted that defendants had purchased the suit property from late father of the plaintiff no.1-7 and late father of plaintiff no.8 on 25.11.1985 and the late father of the defendants had constructed the property in question with his own hard earned money built upto ground, first and second floor. Defendants also contributed their hard earned income on the construction of the house. It is further submitted that during the lifetime, the father of the plaintiffs have not filed any suit against the defendants who are residing peacefully alongwith the family members for the last about 50 years. Defendants are brothers residing from their birth alongwith mother namely Mehroon Nisha aged 70 years in the property in question. Plaintiffs failed to file the correct site plan of the suit property. The electricity meters, gas connections etc. of the suit property are in the name of the defendants. Even the Adhar Card, PAN Card, Ration Card, Election Card, School documents of the children of the defendants and their family members are from the suit property. The land claimed is thickly populated area and consisted of more than 200 houses, occupied by peoples and they are residing and enjoying the property. It is further

submitted that the arbitration award is of dt. 07.12.1983 and father of the defendants has purchased the property on 25.11.1985 after paying the consideration amount to Late fathers of the plaintiffs who had executed documents in favour of the father of the defendants. It is further submitted that defendants are the legal owner of the suit property and is in possession for the last 50 years. It is submitted that suit of the plaintiff is not maintainable and is fabricated and manipulated just to harass the defendants and to extort money. Thus it is prayed that suit of the plaintiffs is liable to be dismissed with heavy cost and also the present application is without merit and is liable to be dismissed with heavy cost.

4. I have heard arguments made by the Ld. Counsels for both the parties and perused the record.

5. It is the admitted fact that plaintiffs are not in possession of suit property and suit property is in exclusive possession of Defendants. Father of plaintiff no. 1-7 and father of plaintiff no.8 were admittedly the co-owners of the suit property. The stand of Defendants is that father of defendants purchased the suit property from the fathers of plaintiffs on 25.11.1985 by virtue of documents i.e. agreement to sell, general power of attorney, receipt and will and since then the defendants are in possession of the suit property. The documents in support of same have been filed by them. It is clear that electricity meter of suit property are in the name of defendant no.2 and ration card, Adhar cards, voter ID cards etc. of their family members are showing the address of suit property as their residential addresses. The defendants have placed all these documents to show their long and continuous possession from the date of purchase.

6. Another aspect which is to be seen is that prima facie Plaintiffs are not in possession of the suit property. The entire plaint of the Plaintiffs does not aver that when and how the defendants have entered into the

possession of the suit property. The Plaintiffs in their plaint have alleged that defendants unauthorizedly trespassed in the suit property and raised unauthorized construction over the suit property, however, they have not stated any details suggesting the manner and date/time/year of trespassing by the defendants in the suit property. It is also pertinent to note that the plaintiffs have not averred about the steps if any taken by them when the defendants trespassed and raised unauthorized construction over the suit property. In the absence of such averment, prima facie possession of the plaintiffs, at any point of time cannot be attributable to him. There is no document even remotely having filed by plaintiffs to show that they were ever in possession of the suit property in any manner.

7. In order to succeed in an Order XXXIX Rule 1 and 2 application, the plaintiff has to satisfy the trinity test of prima-facie case, balance of convenience and irreparable loss. The Plaintiffs claim that they being legal heirs of co-owners of the suit property are entitled for possession, damages, mesne profits, permanent and mandatory injunction of the suit property. The plaint contains mere bald averments and allegations as to the trespassing by the defendants in the suit property without any details , specifically when there is not even an averment to this effect in the plaint that how and when the defendants trespassed in the suit property.

8. Thus, present is a case where plaintiffs admit his dispossession and denial of enjoyment of suit property which is claimed by Defendants to be their exclusive property from 25.11.1985 on the strength of agreement to sell, general power of attorney, receipt and will in their father's favour and exclusive enjoyment of the same. In such circumstances, the question arises that can the plaintiffs be allowed to put fetters on the right of defendants in respect of the suit property. Prima facie, the matter does not seem to be in favour of plaintiffs.

9. A bare perusal of plaint demonstrates that though plaintiffs state to be the legal heirs of co-owners from whom the defendants are alleging to have purchased the suit property, he has not placed any material evidence to show possession at any point of time in the same and not mentioned any details regarding trespassing by the defendants.

10. Having stated so, the circumstances indicate that balance of convenience is also not in favour of plaintiffs, the interim relief prayed by plaintiffs in such circumstances deserves dismissal. The interim relief so prayed therefore stands declined.

In view of the same, the present application u/o 39 rule 1 & 2 r/w section 151 CPC is hereby dismissed. Nothing contained herein shall tantamount to have any bearing on the merits of the case.

**Announced in the open Court
Dated : 16.10.2023**

**(POOJA JAIN)
Additional District Judge:03
East, KKD Courts, Delhi**