

13.01.2025

Present: Shri Mukesh Sharma, Id. Counsel for plaintiff through VC.
Sh. Mordwaj Tiwari, Id. Counsel for defendant a/w
defendant.

Replication is filed on behalf of plaintiff. The same is taken on record. Copy is supplied.

There is an application u/o 39 rule 1 & 2 r/w Section 151 CPC is pending for adjudication.

Arguments have already been heard.

Order on IA u/o 39 rule 1 & 2 r/w Section 151 CPC.

It is submitted that plaintiff has filed the present suit for declaration declaring that the defendant has no right, title, interest etc qua shop No.4 & 8, S-557, Heera Complex, Main Road, School Block, Shakarpur and S-562, School Block, Shakarpur, Delhi and also for a decree of permanent injunction in favour of plaintiff and against the defendant restraining him from threatening or approaching the plaintiff or any his family members. It is further submitted that plaintiff has instituted in a Civil Suit pending before Hon'ble High Court of Delhi bearing CS (OS) 400-24, Manak Chand Tyagi Vs. Vijay Lakshmi Tyagi & Ors., seeking permanent injunction against the family members of the defendant regarding the property of his late father Sh. Karam Chand Tyagi which was bequeathed by him by way of a registered Will dated 23.04.2014 duly registered before sub-registrar bearing registration number 2267 in Book No. 3 Vo. No. 1101 at page 32 to 33. It is further

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submitted that defendant is son of paternal brother of plaintiff and threatened the plaintiff and his family members as well as tenants of plaintiff. It is further submitted that plaintiff is in continuous physical, exclusive, peaceful, uninterrupted and undisputed possession of the said properties. It is further submitted that on 04.07.2024, defendant trespassed into the suit properties illegally and without any authorization. Defendant trespassed into the plaintiff's property situated at S-562, School Block, Shakarpur, Delhi-92, took unauthorized photos of rented out shops, forcefully threw out the tenants in the said shops and threatened tenants who have taken on rent the shop no. 4 & 8, Heera Complex, Main Road, School Block, Shakarpur and even demanded rent from them even though he is neither the owner nor in possession of the property. It is further submitted that when the tenants refused to pay the rent to him, he tried to again forcibly throw them out of their shops. The terrified tenants then called the plaintiff who went to the spot and asked him to leave the property immediately. Plaintiff's daughter had filed police complaint against defendant at P.S. Shakarpur. It is therefore requested that ad-interim injunction be granted restraining the defendant from threatening the plaintiff, his family members or his tenants situated at Shop No. 4 & 8, S-557, Heera Complex, Main Road, School Block, Shakarpur and restraining the defendant from trespassing into the property of the plaintiff situated at S-562, School Block, Shakarpur, Delhi & Shop No. 4 & 8, S-557, Heera Complex, Main Road, School Block, Shakarpur. Hence, the present application.

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Reply to the application has been filed by the defendant. It is submitted that defendant disputed and denied all the averments and submission in the manner alleged or at all, made in the present plaint in its entirety. It is further submitted that nothing contained in the plaint may be deemed to be admitted for mere lack of traverse. It is further submitted that plaintiff is a habitual litigants and spoiled the entire family relation by filing false and frivolous police complaints. It is further submitted that suit properties were purchased by grandmother of defendant and father of defendant has equal right as plaintiff in the suit properties. It is further submitted that property is not in exclusive possession of the plaintiff but both the shops are in possession of the tenant namely Print State India and Balaji Cyber Cafe & Balaji Telecom. It is further submitted that father of defendant has joint ownership right in the said shops. It is further submitted that plaintiff cannot restrain other joint owner from visiting or getting or receiving the rent from the tenants. It is further submitted that present suit is not maintainable and plaintiff has no cause of action to file the present suit. It is further submitted that plaintiff has no locus standi to file the present suit. Therefore, it is requested that present application be dismissed.

Heard. Record perused and considered.

Order 39 Rule 1 CPC

Order 39 Rule 1 of the CPC empowers courts to grant temporary injunctions in the following circumstances:

1. **Property in Dispute:** Where any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree.
2. **Damage to Property:** Where the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors.
3. **Breach of Contract:** Where the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

Order 39 Rule 2 CPC

Order 39 Rule 2 deals with the injunction to restrain the repetition or continuance of a breach. It provides that in any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.

Prerequisites for Granting Temporary Injunction

The courts consider several factors before granting a temporary injunction. These include:

1. **Prima Facie Case:** The applicant must establish that there is a bona fide dispute and a strong case in their favor. It does not mean proving the case beyond doubt but showing that there is a serious question to be tried.

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2. Irreparable Injury: *The applicant must demonstrate that they will suffer irreparable harm or injury if the injunction is not granted. This injury must be such that it cannot be adequately compensated by damages.*

3. Balance of Convenience: *The court must be satisfied that the balance of convenience lies in favor of the applicant. This means that the inconvenience caused to the applicant by refusing the injunction would be greater than the inconvenience caused to the respondent by granting it.*

4. No Delay or Laches: *The applicant must approach the court without undue delay. Any unreasonable delay in seeking the injunction may result in the denial of relief.*

In the present case, plaintiff has alleged that he is in possession of the above said suit properties. He further alleged that late Sh. Karam Chand Tyagi has executed a Will dated 23.04.2014 concerning the suit properties in favour of plaintiff. Plaintiff has further alleged that defendant is threatening the plaintiff, his family members and his tenants and has tried to trespass in the suit property. It is pertinent to mention here that plaintiff is in the possession in the suit properties and is relied upon a Will dated 23.04.2014 to show his right, title and possession in the suit property which is subject matter of trial and same shall be decided during trial and after recording of evidence from both side. It is pertinent to mention here that plaintiff has seeking interim injunction against the defendant who is son of brother of plaintiff. Present suit is at initial stage and pleadings are to be completed and issues are also yet to

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be framed. Trial will take a long time. Matter is now before the court. In view of above, considering the facts and circumstances of the present case, to avoid multiplicity of proceedings, to protect the suit properties, the present application is being disposed off with the following order:

ORDER

Application u/o 39 rule 1 2 r/w Section 151 CPC is allowed. Defendant is restraining from threatening the plaintiff, his family members or his tenants and from trespassing in the suit property situated at Shop No. 4 & 8, S-557, Heera Complex, Main Road, School Block, Shakarpur, Delhi.

A status quo be maintained by parties in respect of property bearing no. S-562 School Block, Shakarpur, Delhi till final disposal of the present case.

Put up for admission & denial of documents and framing of issues on 10.02.2025.

(Pooja Jain)
District Judge-03/NB
East/KKD Courts/Delhi
13.01.2025