

**IN THE COURT OF SHRI SANJAY SHARMA-I
ADDL. DISTRICT JUDGE – 02 (EAST DISTRICT)
KARKARDOOMA COURTS : DELHI**

CS No. 671/2017

Smt. Sunita Aggarwal & ors. Plaintiffs

Versus

Smt. Laxmiraj Vanshi & ors. Defendants

ORDER :

This order shall dispose of an application filed by the plaintiffs under Section 151 CPC and another filed by Smt. Kiran Devi under Order 1 Rule 10 CPC. The plaintiffs have filed the application for directing defendant No. 7 and 8 (EDMC) to demolish the unauthorized construction raised upon the suit property and to file status report. The applicant Smt. Kiran Devi has filed the application for getting impleaded as co-defendant in the present suit. Both the applications have been duly replied by the opposite party.

2. The plaintiffs have filed the present suit for possession , mesne profits, declaration and permanent injunction against the defendants, claiming therein that late Shri Subhash Chand, husband of plaintiff No. 1 and father of plaintiffs No. 2-4 was the allottee and absolute owner of plots No. 141, 142, 143 and 144, B-Block Ghadoli Dairy, Delhi, each measuring 60 sq. yards, which were allotted to him by MCD, Shahdara Zone. It has been alleged that defendants No. 1-6 have trespassed over the said plots and are in illegal and unlawful occupation of the same. Various complaints

made by the plaintiffs to the police and other authorities have gone in vain and hence the present suit.

3. The defendants were served with the summons of the present suit and they filed their respective appearance and also their individual written statements except defendant No. 3 who failed to file the written statement and consequently his defence was struck off vide order dt. 01.6.2018. It is their common defence that late Shri Subhash Chand had sold the suit property which changed many hands and they are bonafide purchasers and in possession of the respective plots having purchased vide GPA, Agreement to Sell etc. of different dates and thus, are in established possession of the respective plots. Another objection which has been taken by them is that the suit is hopelessly time barred. Defendants No. 7 and 8 are EDMC for whom the directions have been sought for demolition of the alleged illegal construction raised by defendants No. 1 to 6 over the suit property. Defendant No. 9 is BSES Yamuna Power Ltd.

4. I have heard Ms. Priyanka Aggarwal - plaintiff No. 2 in person and Shri Ravi Kapoor – Ld. Counsel for the defendants No. 1, 2, 4, 5 and 6 as well as for applicant Smt. Kiran Devi and have carefully gone through the records of the case.

Application under Section 151 CPC :

5. The said application is not maintainable on three counts. Firstly, the Hon'ble High Court of Delhi passed an order in a Writ Petition bearing No. 6638/2018 filed by defendant No. 1 herein against the EDMC wherein the Hon'ble Court directed the said defendant to file a proper representation with the respondent and on receipt of which the competent

authority of EDMC was directed to give a personal hearing and to pass appropriate orders in accordance with law. It was further directed that no further action shall be taken on the impugned demolition order till fresh orders are passed by the competent authority of EDMC after hearing the petitioner (defendant No. 1). Similar is the position regarding the other defendants. A status report was called by this Court from EDMC (defendants No. 7 and 8) regarding the compliance of the said order and it was filed stating therein that personal hearing to the plaintiffs is in process and fresh orders would be passed after its completion. Hence, this Court cannot pass any orders, directing EDMC to carry out demolition.

6. Secondly, as rightly pointed out by Ld. Counsel for the defendants, allowing the application would amount to allowing one of the main prayers in the suit which is for mandatory injunction for demolishing the construction existing on the suit property. Ld. Counsel for the defendants relied upon the judgment in **Metro Marins & anr. Vs. Bonus Watch Co. Pvt. Ltd. & ors. AIR 2005 SC 1444** wherein the Hon'ble Apex Court relied upon its previous decision in **Dorab Cawasji Warden Vs. Coomi Sorab Warden MANU/SC/0161/1990**, wherein it was held that :

“Relief of interlocutory, mandatory injunctions are granted generally to preserve or restore the status quo of the last non-contested status preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against

whom it was granted or alternatively, not granting it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm”.

7. Further, reliance was placed in the judgment in **Mehul Mahendra Thakkar Vs. Meena Mehul Thakkar (2009) 14 SCC 48**, wherein it was held that :

“It is a settled legal position, that by way of interim relief, final relief should not be granted till the matter is decided one way or the other”.

8. The defendants herein have raised claim on the suit land, claiming themselves to be bonafide purchasers and having raised the construction thereupon. In case, demolition orders are passed at this juncture and subsequently, if they succeed to prove their claim, an irreparable loss would be caused to them and also causing great injustice. The defendants are yet to prove their defence. Hence, on this count as well, the application is not maintainable.

9. Thirdly, as per the record placed before this Court by the defendants, the construction on the suit land is an old construction and prior to the year 2007, therefore, the demolition is protected by the National Capital Territory of Delhi Law (Special Provisions) Second Act, 2011 (Special Provisions Act). Hence, in view thereof, the said application is dismissed being devoid of any merits.

Application under Order 1 Rule 10 CPC :

10. The applicant claims to be the owner and in physical possession of Plot No. B-142 B , Ghadoli Dairy Farms, Delhi, since 15.12.2011 having purchased it vide Agreement to Sell, GPA etc. from

one Smt. Sonu Jindal. She has pleaded that the original allottee was late Shri Subhash Chand who transferred his rights in respect of the entire suit property in the year 1992 by executing similar documents and the property, after changing several hands, was purchased by her and therefore, she is a necessary party to the present suit as any order passed in the present suit in respect of the suit property would adversely affect her rights qua the plot in her possession and therefore, she may be permitted to defend the suit. She has placed on record the documents vide which she purchased and came in possession of the said property.

11. The application has been opposed mainly on the ground that she has failed to disclose as to when she came to know about the pendency of the present suit; that she is the wife of defendant No. 3 whose right to file WS has already been closed and therefore, wants to file written statement in the garb of the present application. The factual position as agitated by the applicant in the application has been denied.

12. It is to be appreciated that though the plaintiff has arrayed six different persons as defendants to be in illegal occupation of the suit property but has not specified as to which of the defendant is in possession of which of the plot or part of the four plots. It cannot be disputed that defendant No. 3 was served with the summons of the suit but failed to file written statement within the prescribed period and his defence has been struck off. It is evident from record that no one has appeared for the said defendant till date, may be for the reason that defendant No. 3 is not the actual owner of the plot No. B-142 B and the

applicant might be. In reply, it has been stated that the application has been filed after a lapse of long time of the action taken report filed by SHO PS Gazipur dt. 22.3.2017. Even if it is presumed that the applicant gained knowledge about the pendency of proceedings initiated by the plaintiff in March 2017, still the application is within limitation having been filed on 11.1.2019, in view of Article 137 of the Limitation Act. In any case, if she is in possession of any part of the suit land, her title has to be decided and it would only be to the benefit of the plaintiff.

13. In view thereof, the application of the applicant under Order 1 Rule 10 CPC is hereby allowed and Smt. Kiran Devi is hereby impleaded as defendant No. 10 in the present suit.

14. The plaintiffs are therefore, directed to file amended plaint in consonance with the provisions contained in Order 1 Rule 10(4) CPC, alongwith amended memo of parties and a copy thereof be supplied to each of the defendant including the newly added defendant who shall thereafter file written statement to the same.

*ANNOUNCED IN OPEN COURT
ON 23rd day of January 2019*

(SANJAY SHARMA-I)
Addl. District Judge-02 (East)
Karkardooma Courts, Delhi.