

CS119/23

SUBHASH GUPTA Vs. KUNTESH AND ORS

29.10.2024

Present: Ld. Counsel for plaintiff.
Sh. M.A. Khan, Sh. Pradeep Kumar Kasana, Ms. Pallavi Singh and Ms. Shivani Agarwal, Ld. Counsel for defendant No. 1 with D-1.
None for D-2 and D-3.

1. In para (22) of order dated 07.08.2024, there is a typographical error wherein in the last line of the said paragraph, reference is made to 'D-2 and D-2' which in fact should have been 'D-2 and D-3'. The same being a typographical error is corrected accordingly.
2. Arguments on application U/O XXXIX Rule 2A CPC moved by plaintiff heard.
3. It is the case of the plaintiff that despite there being an injunction order dated 07.08.2024, D-1 has changed the physical structure of the suit property. Plaintiff has placed on record various photographs of the relevant period and also of the period after 07.08.2024 in support of the said contention.
4. On the other hand, Counsel for D-1 has also filed his reply alongwith photographs resisting the aforesaid application.
5. Arguments heard. Record perused.

6. Prima-facie, I am of the opinion that D-1 is in breach of the order dated 07.08.2024 whereby, she was restrained in the following manner:-

“21. Thus, in my humble opinion, the present application is liable to succeed and accordingly, defendant no. 1 is restrained from creating any third party interest in suit property as described in para 2 of the plaint. D-1 is further restrained from parting with possession of the suit property or changing the physical structure of the suit property which exists as on date.”

7. A bare perusal of the aforesaid shows that D-1 was directed to maintain status- quo with respect to the physical structure of the property. But, from the photographs placed on record by the plaintiff and D-1, it is apparent that D-1 has essentially changed the external facade of the property and also the internal interiors of the property. No document has been placed on record by D-1 to show that the facade or the interiors which exist today were existing on 07.08.2024. On the contrary, plaintiff has placed on record date-wise photographs to show how the facade and the interiors of the suit property have been changed by D-1 after passing of the injunction order dated 07.08.2024.
8. It was argued before this Court that D-1 had understood the order to mean that she cannot breakdown the external walls of the property and was free to run any commercial activity from the suit property after carrying out changes/renovation in the property.
9. It is pertinent to note that in the reply filed by D-1 (to the application U/O XXXIX Rule 2 A CPC), D-1 does not dispute the fact that after the injunction order of 07.08.2024, certain

renovation work, change of facade and some interiors have been changed by her. This is the exact case of the applicant that despite there being directions of this Court that there shall be no 'change in the physical structure of the suit property' extensive changes have been made by D-1 by removing the external tin shade outside the suit property (as is evident from the photographs placed on record by the plaintiff); by getting installed glass doors on the suit property; and also by carrying out comprehensive interiors inside the suit property. Even the basic facade of the suit property has been changed.

10. I may note that even the interiors of the suit property which existed on 07.08.2024 (based on photographs placed on record by plaintiff) are substantially different from what exists today (based on photographs placed on record by D-1).

11. Thus, it is evident from the photographs placed on record by the plaintiff as compared with those placed on record by D-1 that the physical structure of the suit property which existed on 07.08.2024 has now been changed by D-1 and therefore, she is in complete breach of the said order.

12. The argument of the Counsel for D-1 that she understood the order dated 07.08.2024 in particular manner holds no water. In case D-1 was in doubt about the interpretation of the order in question, nothing prevented her from approaching this Court for clarification. It appears that after the injunction order dated 07.08.2024 was passed, suddenly D-1 woke up to get extensive changes in the physical appearance of the property such that its look completely changed from what existed on 07.08.2024. The argument that she did not break down the external walls and

therefore, there is no change in the physical structure of the property does not impress this Court. What essentially the order dated 07.08.2024 laid was that the physical structure i.e. its appearance which exist on that day should be maintained by the parties. It may be noted that D-1 never appeared to argue against the injunction on 07.08.2024 despite opportunity and had suffered the order *in absentia*. Soon thereafter, she appears to have changed the entire physical appearance of the property by breaking down the tin shade existing outside the suit property; installing glass gates on the entrance of the suit property; installing outdoor tiles outside the property and carrying out extensive interior work in the suit property. Plaintiff herein is claiming to be the registered owner of the suit property and thus, he is aggrieved by the change made to the suit property by D-1.

13. Admittedly, as per the photographs placed on record by plaintiff, as on 07.08.2024, it appears that the suit property was lying in disuse initially with one outdoor stall only existing outside the suit property with the suit property lying locked. No apparent commercial activity was running there on or around 07.08.2024. Thereafter, it appears that D-1 carried out extensive renovation etc. so as to start utilizing the suit property for commercial activity by changing the entire appearance of the property.

14. It was argued before this Court that even prior to 07.08.2024, D-1 was carrying out commercial activity from the suit property. This is disputed by plaintiff. Be that as it may, fact of the matter remains that D-1 is in breach of the order dated

07.08.2024 in letter and spirit. Even if it is taken, for the sake of argument that D-1 was running any commercial activity from the suit premises, still, by virtue of order dated 07.08.2024, D-1 could not have changed the physical structure/appearance of the property in question without permission of the Court. In case, she wanted to do so, she could have very well sought orders from this Court.

15. At this stage, Counsel for D-1 seeks time, on instructions, to restore the physical structure of the suit property as it existed on 07.08.2024.

16. Let the same be done within 3 weeks from today and compliance affidavit be filed before this Court.

17. Whether any action U/O XXXIX Rule 2 A CPC is required to be taken against D-1 or not, the same shall be decided on the basis of compliance made by D-1, based on undertaking given by her Counsel, on her instructions, as noted above, on next date of hearing.

18. Let D-1 appear in person on next date of hearing.

19. D-1 has moved an application for rejection of plaint U/O VII Rule 11 CPC. Copy supplied.

20. To come up for further proceedings on 10.12.2024. Dasti to parties.

Aashish Gupta
DJ-01/NE/KKD/DELHI
29.10.2024