

27.05.2024

File taken up today as 25.05.2024 was declared holiday on account of General Election 2024 vide order no. 02/I-G-4/Genl-/DHC dated 03.05.2024 by Hon'ble High Court of Delhi.

Present: Sh. Syed Ajmal Hassan, Ld Counsel for plaintiff with
plaintiff.
Sh R.B Singh, Ld Counsel for defendant.

- 1) Arguments on application under Order XXXIX Rule 1 & 2 CPC heard.
- 2) Records perused.
- 3) In the present application, plaintiff inter-alia wants an interim-injunction against the defendant restraining him from creating any third party interest etc in the suit property.
- 4) Briefly stated, it is the case of the plaintiff that he is the owner of the property consisting of **second floor bearing no. E-20/5, Gali no.8, Subhash Vihar, North Ghonda, Delhi-110053**. He claim ownership based on notarized GPA, agreement to sell etc dated 08.02.2022. He claims to have purchase the said property from one Chand Malik. It is pertinent to know that subsequently, as per plaintiff, on 08.08.2022 the said Chand Malik also executed a registered GPA in favour of the plaintiff qua the suit property. Again, it may be noted that plaintiff has placed on record a chain of documents beginning from 15.04.1971 to show that he has the complete chain of title of the suit property.
- 5) It is his case that on 03.03.2022, defendant came to the property on the pretext of taking it on rent and thereafter refused to

leave the same and started claiming that he is the owner of the said property. Vide this suit, plaintiff wants possession of his property and a declaration that he is the owner.

- 6) *Per contra*, defendant claims that the suit of the plaintiff is bundle of lies and in fact he is the owner of the property having purchase the same on the basis of an agreement, GPA etc dated 28.09.2021. It is his claim that the property being claimed by the plaintiff is actually property located on **second floor bearing no. E-20/8, Gali no.8, Subhash Vihar, D Block, Village Ghonda Gurjan Khadar, Shahdara, Delhi**. He claims that he is having water and electricity connections in his name thus the story of the plaintiff that defendant approached him for taking the suit property on rent is false. He relies upon his agreement to sell, GPA etc dated 28.09.2021.
- 7) It is pertinent to note that the documents relied upon by the defendants were purportedly executed by one Mohd Anjum on 28.09.2021. In turn, the said Mohd Anjum purportedly had an agreement to sell dated 07.09.2021 (executed by one Chand Malik) in his favour. **It was admitted before this court by the counsel for the defendant that the said Anjum only had that agreement to sell dated 07.09.2021 in his favour and no GPA/Will etc was executed by Chand Malik in favour of Anjum.**
- 8) Again, the said Chand Malik, in turn, had another agreement to sell executed by one Shahid Malik dated 06.02.2021 in favour of Chand Malik.
- 9) **It means that as per the defendant, the property claimed by him was actually the property of Shahid Malik who then entered**

into an agreement to sell dated 06.02.2021 in favour of Chand Malik. Admittedly, the said Shahid Malik did not execute any GPA, Will etc in favour of Chand Malik. As noted above, the said Chand Malik then entered into an agreement to sell dated 07.09.2021 in favour of Anjum. It was then that Anjum entered the documents dated 28.09.2021 (being relied upon by the defendant as his title documents).

10) Now, presuming that Shahid Malik, as per defendant, was the owner of the property claimed by the defendant and he only executed an agreement to sell dated 06.02.2021 in favour of Chand Malik, Chand Malik cannot not become owner of the said property on the basis of only an agreement to sell dated 06.02.2021. Now if that be the case, the documents executed by Chand Malik in favour of Anjum (another agreement to sell dated 07.09.2021) and thereafter by Anjum in favour of the defendant shall have no value in eyes of law as no title passed from Shahid Malik at all in favour of Chand Malik and/or Anjum or to the defendant. It means, even if I take a prima facie view of the documents placed on record by the defendant, it is difficult to say that he has some right, title or interest in the suit property based upon the documents relied upon by him.

11) I am conscious of the fact that while deciding an application under Order XXXIX Rule 1 & 2 CPC, it is for the plaintiff to make out a case of injunction in his favour based on three settled principles. This brings me to the case of the plaintiff. As noted above, plaintiff has placed on record his title chain beginning from 15.04.1971.

- 12) The document dated 15.04.1971 is the registered sale deed qua 500 sq yards of land and was executed by Amar Singh/Ram Singh in favour of Nanda Devi Bisht. Said Nanda Devi Bisht then sold 300 sq yards of the said property to one Abdul Aziz on 12.11.2003. It appears that some family settlement took place between the children of Abdul Aziz and thereafter 75 sq yards of the land held by Abdul Aziz was given to Naseeruddin (one of the sons of Abdul Aziz). This was on 10.11.2005.
- 13) Thereafter, Naseeruddin gave the said property to Shahid Malik (this person being the same Shahid Malik who purportedly signed an agreement to sell in favour of Chand Malik and through whom defendant claims) on 25.01.2021. Then Shahid Malik sold the said property to Chand Malik (again the same Chand Malik through whom defendant claims) on 30.01.2022. Thereafter, said Chand Malik sold the property to the plaintiff on 08.02.2022.
- 14) All the said documents (except the sale deed referred above) were GPA, agreement to sell etc.
- 15) Now, as noted above, the plaintiff has placed on record the aforesaid chain to show that he was in the possession of the suit property. The title of the plaintiff flows from one Shahid Malik through whom defendant also claims. But while the document of defendant is only an agreement to sell in favour of one Chand Malik, the plaintiff chain of document shows that Shahid Malik executed a number of documents i.e. GPA/agreement to sell/Will along with possession etc in favour of Chand Malik. It means that the documents of plaintiff in

comparison to that of the defendant show that the case of the plaintiff, prima facie appears to be on a better footing than the defendant.

16) Again, on one hand, I have a chain of document beginning from 1971 in favour of the plaintiff while on the other hand, prima facie, the documents of the defendant do not appear to confer any title of any nature in their favour.

17) At this stage, I may note as per the plaintiff, defendant has trespassed into the property on 03.03.2022 on the pretext he would like to have the property on rent. Now if, prior to 03.03.2022, prima facie plaintiff had the title chain in his favour, in my humble opinion, plaintiff has been able to make out the prima facie case in his favour. He has placed on record various electricity bills up till 30.05.2022 to show that Naseeruddin (through whom he claims) was having an electricity meter in the suit premises and thus, it gives credence to his arguments that he is having some right, title or interest in the suit property and it appears that, prima facie, he was in possession of the suit property till 03.03.2022. It is pertinent to note that defendant has not placed on record any document to show that he was in possession of the suit property since 2021. In fact, the property tax receipts/water and electricity documents placed on record are of dates after 03.03.2022. It gives further credence to the plaintiff's case.

18) In my opinion, considering the documents placed on record by the plaintiff and keeping in mind the legal lacunae in the title documents of the defendant and also the fact that defendant has not placed on record any document to show his possession

prior to 03.03.2022, balance of convenience also lies in favour of the plaintiff.

- 19) Again, considering the case of the plaintiff, the loss suffered by him, in case, injunction is not granted in his favour shall be irreparable. This is because, in case defendant is not enjoined, in the manner prayed, it may lead to multiplicity of proceedings to the prejudice of the plaintiff, which should be prevented in the facts of the case.
- 20) Accordingly, in my humble opinion, the present application is liable to be allowed. Accordingly, defendant, his associates, agents etc are hereby restrained from creating any third party interest in the suit property i.e. **Second Floor of property bearing no. E-20/5, Gali no.8, Subhash Vihar, North Ghonda, Delhi-110053** by either selling or eliminating it in any manner including by mortgage, transfer, letting out or parting with the possession of the same till the pendency of the suit.
- 21) Before parting with this order, I may note that while plaintiff claims that the suit property is **Second Floor of property bearing no. E-20/5, Gali no.8, Subhash Vihar, North Ghonda, Delhi-110053**, as per defendant, the same property is actually **Second Floor of property bearing no. E-20/8, Gali no.8, Subhash Vihar, North Ghonda, Delhi-110053**.
- 22) In other words plaintiff claims that the suit property is actually bearing no. **E-20/5** but the defendant claims that the same is **E-20/8**.
- 23) Now what is the actual number of the said property shall be decided after trial and the same should not detain this

court at this stage. This is because, there is no dispute qua the identity of the property between the parties. Both the parties are setting up title on the same property but referring the same property with different numbers. **That being the case, it is clarified that the property in possession of the defendant is the suit property qua which the aforesaid injunction order has been passed against the defendant.**

24) Nothing stated in this order shall be treated to be an expression on the merits of the case or treated as a finding of fact. The facts stated herein or any opinion made is only for the purposes of deciding the present application. With the said directions, the application is disposed off. Dasti be given to the parties.

25) To come up for admission-denial of documents and framing of issue on 24.08.2024.

Aashish Gupta
DJ-01/NE/KKD/DELHI
27.05.2024