

**IN THE COURT OF MS. MANU VEDWAN,
DISTRICT JUDGE-2, NORTH EAST DISTRICT,
KARKARDOOMA COURTS, DELHI**

CS No. 381/2024

Monu Yadav

....Plaintiff

Versus

Suman Aggarwal

.... Defendant

18.03.2025

**ORDER ON APPLICATION UNDER ORDER XXXIX RULE 1 &
2 READ WITH SECTION 151 OF THE CODE OF CIVIL
PROCEDURE MOVED ON BEHALF OF PLAINTIFF.**

1. Vide this order, I shall dispose of an application filed under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure on behalf of plaintiff.
2. It is stated in the application filed under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure that the contents of plaint be read as part and parcel of application. It is stated in the plaint that the plaintiff had purchased a built up portion area measuring 40 square yards, out of 120 square yards, towards northern side, falls in *Khasra* number 1 etc/94, situated in the area of

Village Ghonda, Chuahan Khadar, in the *abadi* now known as *Gali* number 5, Shastri Park, *Illaqa* Shahdara, Delhi, with its roof rights from the defendant, on 24.08.2024 (hereinafter referred to as **suit property**). It is further stated that the property in the aforesaid area are sold/purchased by way of General Power of Attorney, Agreement to Sell, affidavit, Will, receipt and possession letter. Defendant had executed all these documents in favour of plaintiff. It is further stated that the defendant had also delivered the possession of bathroom and one room at ground floor and two rooms at the first floor to the plaintiff which is in the absolute possession of plaintiff. It is further stated that the defendant was using one room as her kitchen at the ground floor in the suit property towards the gate. Therefore, the defendant had delivered only the possession of bathroom and one room at ground floor in the suit property to the plaintiff with the assurance that she would arrange her separate kitchen in her portion. It is further stated that the defendant had also assured the plaintiff that till she arrange her separate kitchen, plaintiff would egress and ingress from the main gate of house therefore, plaintiff and defendant alongwith their family members were using the main gate for their entry and exit.

It is further stated that the plaintiff had purchased an area 12' X 30' and started constructing the partition wall at the width of 12' towards the portion of defendant. It is further stated that the defendant and her family members are using the kitchen by coming into the kitchen from her portion therefore, the wall was raised upto 20 feet in length and 10 feet in the height. It is further stated that the

plaintiff also got repaired the rooms at ground floor and first floor. It is further stated that, on 30.09.2024, defendant and her son asked the plaintiff that if the wall would be complete, they face difficulty in eating food and requested the plaintiff to suspend the construction work of wall for 2-4 days. It is also assured that they would get their kitchen constructed at the earliest. It is further stated that the defendant had told the plaintiff that they would start the construction work of kitchen in *Navratra*, but, they never started the same. Plaintiff had requested the defendant to get construct their kitchen, but, the same was never got constructed by the defendant. On 17.10.2024, plaintiff visited the suit property and found that the main door was locked from inside and it was informed to him by the neighbours that the defendant had left their house alongwith some belongings. It is further stated that it also came into the knowledge of plaintiff that the defendant had taken lacks of rupees of other persons before fleeing away.

It is further stated that the plaintiff had filed the written complaint with the police officials, on 17.10.2024, but, no action was taken on his complaint. It is further stated that the plaintiff is the bonafide purchaser of suit property. It is therefore requested by way of present application filed under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure that an ad-interim ex-parte injunction order be passed in favour of plaintiff and against the defendant thereby restraining the defendant, her agents, attorney, associates, et cetera from selling, transferring, parting with possession, creating any third party interest, raising partition of wall

and dispossessing the plaintiff from the built up suit property, area measuring 40 square yards, out of 120 square yards, towards northern side, in the house number C-105, *Gali* number 5, Shastri Park, *Illaqa* Shahdara, Delhi, to egress and ingress in his portion, till, the final disposal of the suit.

3. On the other hand, reply has been filed on behalf of defendant to the abovesaid application of plaintiff filed under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure in which it is stated that contents of written statement be read as part and parcel of her reply. In the written statement, apart from denying all the allegations made by the plaintiff, it is stated that the defendant is the absolute owner of suit property by virtue of General Power of Attorney, an agreement, both dated 23.03.1984 executed by then owner Smt. Shanti Devi in her favour. It is further stated that since, the date of purchase, defendant is the resident of suit property alongwith her family members. After the death of the husband of defendant, she was entirely dependent upon the mercy of her sons, she being not well educated. It is further stated that, on 15.10.2024, plaintiff had approached the defendant at her residence and informed her that she was searching a room on security basis for a fixed period of five years. Plaintiff was searching room for some commercial purpose and asked the defendant to give the room situated on the East side of property. Thereafter, plaintiff offered an interest free sum of rupees 6,00,000/- to the defendant towards the security amount for the said room situated on the ground floor for a

fixed period of 60 months. It is further stated that the defendant had requested the plaintiff to prepare all the documents as she is not well educated.

It is further stated that. on 24.08.2024, plaintiff had taken the defendant and showed her some documents claiming them to be the security agreement documents. It was also told to the defendant that these documents being legal in nature could not be prepared in Hindi, but, only in English. On the assurance of plaintiff as well as the counsel, defendant had signed upon those documents thinking them to be security agreement. It is further stated that the defendant had pointed out the amount of rupees 60,00,000/- typed in those documents to which plaintiff had submitted that it was just a typographical error. Plaintiff had also assured the defendant that he would get prepared the fresh documents with the right amount mentioned on them and would also make the payment of security amount of rupees 6,00,000/- on that day only. Plaintiff had also assured the defendant that he would destroy those documents with the amount of rupees 60,00,000/- mentioned on them. It is further stated that thereafter, plaintiff neither visited the defendant for the execution of new documents nor paid any amount to her. It is further stated that the plaintiff had misused the security agreement and only after receiving the summons from the Court, defendant came to know about the mischief of plaintiff. Defendant had also filed the complaint before the Commissioner of Police, Deputy Commissioner of Police, North East District, Delhi. It is further stated that the present suit is not maintainable as the requisite Court

fees had not been paid. It is further stated that no concrete evidence regarding the alleged transaction of rupees 60,00,000/- is put forward by the plaintiff. It is therefore requested that the abovesaid application of plaintiff filed under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure be dismissed.

4. I have heard the arguments advanced on behalf of both the parties and have perused the documents filed by both sides.

5. In issuing temporary injunction the tests to be applied are (i) whether the plaintiff has a *prima facie* case, (ii) whether the balance of convenience is in favour of the plaintiff, and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for temporary injunction is disallowed. This Court is required to see *prima facie* case, balance of convenience as well as irreparable loss. While, considering the question of *prima facie*, it is not to be confused with *prima facie* title. What is required is that the plaintiff has to show that he has bonafide raised a substantial question, which needs to be adjudicated at the trial of the suit. The plaintiff is thus required to *prima facie* establish that in the event of non-interference by the Court, it will result in irreparable injury and substantial loss.

6. In issuing temporary injunction the tests to be applied are (i) whether the plaintiff has a *prima facie* case, (ii) whether the balance of convenience is in favour of the plaintiff, and (iii) whether the plaintiff would suffer an irreparable injury if her prayer for

temporary injunction is disallowed. This Court is required to see *prima facie* case, balance of convenience as well as irreparable loss. While, considering the question of *prima facie*, it is not to be confused with *prima facie* title. What is required is that the plaintiff has to show that he has *bona fide* raised a substantial question, which needs to be adjudicated at the trial of the suit. The plaintiff is thus required to *prima facie* establish that in the event of non-interference by the Court, it will result in irreparable injury and substantial loss.

7. Also, while considering irreparable injury comparatively, which of the parties would be put to more or substantial mischief in the event of refusal to grant a temporary injunction and if the Court considers that the subject-matter of the suit must be maintained status quo, then discretion must be exercised in favour of the party seeking temporary injunction, so, that the subject matter of the suit in dispute can be preserved. In the instant case, plaintiff has relied upon the documents that are General Power of Attorney, agreement to sell, affidavit, Will, receipt and possession letter, all dated 24.08.2024, executed by defendant in favour of plaintiff qua the suit property. Thus, it can be said that plaintiff has been able to show *prima facie* case in his favour. Balance of convenience also lies in favour of the plaintiff. Court is also convinced that the plaintiff shall suffer irreparable loss and injury, if interim protection is denied to the plaintiff.

8. Accordingly, in the totality of circumstances, application under Order XXXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure moved on behalf of plaintiff is disposed of as allowed. Both the parties are directed to maintain the status quo in respect of nature, title and possession of the suit property till the further orders.

9. Nothing stated herein above shall tantamount to expression of opinion on the merits of the case.

10. Copy of this order be given *dasti* to Ld. Counsels for both the parties.

(Manu Vedwan)
District Judge-02/North-East,
KKD Courts, Delhi/18.03.2025