

CS SCJ 643/21
Anu Mahajan Vs. Renu Puri

24.04.2023

Present: Sh. Amit Kumar, Ld. Counsel for defendant.

Put up for clarifications, if any/order at 04:00 PM.

(Upasana Satija)
ACJ/CCJ/ARC(W)/24.04.2023

At 11:30 AM

Present: Sh. Hitesh Kumar, Ld. Counsel for plaintiff.

Ld. Counsel for plaintiff has filed judgment in support of his argument.

Put up for clarifications, if any/order at 04:00 PM.

(Upasana Satija)
ACJ/CCJ/ARC(W)/24.04.2023

At 04:00 PM

Order on Application under Order VII Rule 11 CPC

1. The present suit for permanent injunction has been filed by the plaintiff Anu Mahajan against her sister Dr. Renu Puri. It is the case of the plaintiff that she is the sole and absolute owner and in possession of the built up flat i.e. MIG Flat No. 184-C, Second Floor with Scooter Garage, Rajouri Garden, Delhi 110040 (hereinafter referred to as “suit property”) vide a Registered Agreement to Sell dated 29.11.2023 between father of

the plaintiff i.e. Late Sh. Ramesh Chander Malhotra and the plaintiff. It is further stated that the parents of the plaintiff used to live in the suit property as licencees of the plaintiff and plaintiff is in possession of the suit property. It is further stated that after the demise of the parents of the plaintiff, the plaintiff went to the suit property and stayed there for a couple of days. There the plaintiff got infected with Covid 19 and developed symptoms and before leaving the suit property, had put her own lock to secure the premises. However, when she visited the property she found that the lock has been tampered with and there were signs of forceful tress pass. It is further stated that the defendant is claiming to be co-owner of the suit property and said conduct of the defendant has severely damaged the goodwill of the property and plaintiff is facing great difficulties in full enjoyment of the suit property. Accordingly, the plaintiff has filed the present suit claiming a decree of permanent injunction in favour of the Plaintiff and against the Defendant thereby restraining the defendant, her agents, relations and representatives etc. from illegally trespassing or entering into the suit property.

2. Summons of the present suit was served upon the defendants and WS was filed on behalf of the defendant. Alongwith WS, an application under Order VII Rule 11 CPC was filed on behalf of the defendant. In the said application, it is stated that the father of the parties namely Late Sh. Ramesh Chander Malhotra is the original owner of the suit property through a registered sale deed in his favour. The father and

mother of the parties expired intestate on 29.04.2021 and 30.04.2021 respectively and as such the defendant is 50% owner of all the assets left behind by the parents. It is further stated that present suit is not maintainable in the present form as plaintiff was required to file a Suit for Declaration, Partition, possession and not a simplicitor injunction suit. It is further stated that the plaintiff has wrongly valued the suit and has not paid appropriate court fees as the plaintiff is not in possession of the suit property.

3. No reply to said application was filed on behalf of plaintiff. Arguments were advanced by the Ld. Counsels for the parties. Ld. Counsel for petitioner filed judgment of Hon'ble Delhi High Court in the case Hardip Kaur v. Kailash & Anr. (2012) in support of his case.

4. Record perused. Submissions were heard.

5. The absolute title of the plaintiff to the suit property is disputed. The Plaintiff has filed copy of registered agreement to sell; however, said document does not confer any title upon her.

6. Admittedly, Late Sh. Ramesh Chander Malhotra, father of the plaintiff was the owner of the suit property. Both, the plaintiff and defendant are claiming their title through him. Defendant claims to be co-owner of the suit property. The plaintiff has merely stated that she started residing at the suit property after the demise of her parents and before leaving, had put her lock on the suit property. This alone does not show that

the plaintiff is in possession of the suit property. The relief claimed by the plaintiff is on the basis that she is the owner of the suit property; however, Agreement to Sell does not confer any right in the property and it only confers right to get the agreement specifically enforced.

7. Hon'ble Supreme Court in *Anathula Sudhakar v. P. Buchi Reddy* (2008) discussed scope of a suit for prohibitory injunction relating to immovable property. It was held that the general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled:

i) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

ii) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

iii) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession

from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

8. In the present case, the title of the Plaintiff is disputed and Plaintiff is not in possession of the suit property. Since in view of judgment of Hon'ble Supreme Court in Anathula Sudhakar v. P. Buchi Reddy (2008), without seeking the relief of declaration and possession, the present suit for injunction simpliciter is barred by law, the plaint is rejected under Order VII Rule 11.

9. File be consigned to Record Room. Plaintiff is at liberty to file fresh comprehensive suit before competent court.

Announced in open Court

On this 24th day of April, 2023

This Order contains 5 pages

and each page is signed by me.

**(UPASANA SATIJA)
ACJ/CCJ/ARC (WEST)
TIS HAZARI COURTS/DELHI**