

Case No. 577865/16

06.12.2016

Present: Plaintiff no. 1 with counsel for both the plaintiffs Sh. Harish Dua.
Sh. Praveen Kumar, counsel for defendants no. 1 & 2.
Sh. Sanjay Kumar-JE for defendant no. 3 with counsel
Sh. Vikas Gupta.
Sh. H. L. Verma, counsel for defendant no. 4.

An affidavit is filed on behalf of the defendant no. 4. It is taken on record and considered accordingly. It is mentioned in the said affidavit that the oldest record pertaining to the erection of the pillar at the spot is not available with the TPDDL. It is, however, submitted vide this affidavit that since the day of erection of electric pole at the spot in question they have not been removed till date and it remained in the same position as that were on the date of erection.

At the stage, it has been submitted on behalf of the defendant no. 3 that whatever encroachment was around the electric pole and on the public property, has been removed. The submissions made on behalf of the defendants no. 3 & 4 shall be considered accordingly as per law.

An application under Order 39 Rules 1 & 2 CPC is taken up and arguments are heard.

It is stated on behalf of the plaintiff vide this application that defendants are raising illegal construction over the spot in question and are trying to sell, transfer, alienate or part with possession or create third party interest with regard to the suit property in question.

Defendants no. 1 & 2, on the other hand, has submitted that whatever construction on the spot as on date, has been completed and no fresh construction is being carried out on the spot in question as on date. It is further stated that they shall not carry out any fresh construction from today during the pendency of the suit nor shall sell, transfer, alienate, part

with possession or create third party interest with regard to the suit property in question during the pendency of the suit.

Arguments heard at length from both the sides. Record is also perused thoroughly.

Considering the submissions made on behalf of defendants no. 1 & 2 themselves, the application under Order 39 Rules 1 & 2 CPC is allowed and defendants no. 1 & 2 are restrained, during the pendency of the suit, from raising any construction or from selling, transferring, alienating, parting with possession or from creating third party interest with regard to the suit property in question bearing Municipal No. WZ-54, Srinagar, village Shakurpur, Delhi, shown in red and blue colour in the site plan filed with the plaint.

In terms of these observations, the application filed under Order 39 Rules 1 & 2 CPC is disposed of.

Pleadings are complete. Admission/denial of the documents not conducted. Following issues are framed for consideration of evidence:

1. Whether the suit filed by the plaintiff is not maintainable due to mis-joinder and non-joinder of the parties? OPD.
2. Whether the suit filed by plaintiff is not maintainable as defendant no. 2 is the owner of the suit property in question vide partition deed dated 24.01.2001.
3. Whether the plaintiff is entitled for decree of possession of the suit property in question, as prayed for? OPP.
4. Whether the plaintiff is entitled for decree of permanent injunction restraining the defendants, their agents etc. from selling, alienating transferring, parting with possession or creating third party interest with regard to the suit property in question, as prayed for? OPP.
5. Whether the plaintiff is entitled for decree of mandatory injunction for unauthorized use and occupation @ Rs. 10,000/- per month from the date

of filing of the suit till the possession is handed over? OPP.

6. Whether the plaintiff is entitled for decree of mandatory injunction directing the defendants, their agents etc. to remove their illegal and unauthorized encroachment on the public land made by them? OPP.

7. Whether the plaintiff is entitled for decree of permanent injunction restraining the defendants, their agents etc. from raising construction over the suit property in question? OPP.

8. Any other relief.

No other issue arises or pressed for.

Matter be put up for PE on **24.04.2017**.

List of witnesses, affidavits and documents, if any, be filed within 15 days from today. Parties are directed to appear before the court for supplying advance copies of the affidavits and documents on **16.01.2017**.

(Prashant Kumar)
ADJ-04(NW)/Rohini Courts
Delhi/06.12.2016