

18 CS DJ 404-24

G.S. KHURANA Vs. BHAVYA MEHRA

03.03.2025

Present:- Sh. Rohan Sharma, Ld. Counsel for plaintiff.
Ms. Ekta, proxy counsel for defendant through VC.

1. Defendant has filed written statement along with application for condonation of delay on 24.02.2025. Copy has been stated to be supplied. Reply to application be filed at least one week prior to the NDOH.
2. Applications under Order VII Rule 11 CPC and application under Order XXXIX Rule 1&2 CPC are pending for orders.
3. List for orders on the applications at **4 pm**.

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At 4 pm

4. Plaintiff has filed the present suit for permanent injunction restraining the defendants from creating any third party rights, permanent injunction restraining the defendants from trespassing or creating any hindrance or obstruction in the peaceful usage of terrace above second floor of property bearing no. 14 Block D, Pamposh Enclave, New Delhi(herein after called the suit property). The plaintiff claims to have purchased the suit property vide agreement to sell, possession letter, special Power of attorney and Will all dated 17.10.1995 from the then owner of the suit property. It is further claimed that the actual and physical

possession of the suit property was handed over to the plaintiff at the time of execution of documents in his favour. It is claimed by the plaintiff that the suit property is a separate portion of the whole terrace on the property and the servant quarters and water tanks of the other residents of the building is separate from the suit property both having separate entrances. It is claimed that thereafter the father of defendant no. 1 purchased the second floor of the property (without terrace rights) vide registered agreement to sell dated 17.04.2009.

5. It is claimed that plaintiff was in possession of the suit property since 1995 and the defendant no. 1 and his family members used to have quarrels with other co-owners of the building and the plaintiff some times try to mediate and resolve the same. Thereafter, the plaintiff had gone to Amritsar in the first week of March, 2023 and the defendants knowing the absence of the plaintiff took advantage and illegally approached/trespassed on the suit property by breaking open the lock and damaging the door. It is stated that on a complaint of the plaintiff, FIR no. 98/2023 has been registered against the defendants under section 448/34 IPC. Defendant has also filed a case against the other co-owners of the building. However, no interim orders have been passed in that case. On these grounds, the plaintiff has filed the present case for permanent injunction.

APPLICATION UNDER ORDER VII RULE 11 CPC:-

6. The present application has been filed by the defendants for rejection of the plaint on the following grounds:-

(i) That the plaintiff has no locus standi to file the present case and as such the plaintiff does not have any cause of action.

(ii) That the suit is barred by law as the plaintiff has filed a suit for permanent injunction only and without declaration and as such the suit is barred under Order II Rule 2 CPC.

(iii) the suit is barred by limitation as the same is filed after 29 years after the accrual of the cause of action.

7. Ld. Counsel for defendant has submitted that the case of the plaintiff is without any cause of action as the plaintiff has basing his claim on unregistered agreement to sell, possession letter, special Power of attorney and Will and as such these documents do not create any title in favour of the plaintiff. She has relied upon judgment of Hon'ble Supreme Court of India in **Shakeel Ahmad & V Syed Akhlaq Hussain CA No. 1598/2023** to highlight this point. Further, it is submitted that the suit is barred under the provisions of Order II Rule 2 CPC as the plaintiff, despite cloud on his title has filed a suit only for an injunction and not for declaration. It is further claimed that the suit is barred by limitation as the plaintiff claims to have purchase the suit property in 1995 and has filed the case after 29 years, i.e. in 2024. Ld. Counsel for defendant has submitted that if the plaint is read as a whole, it can only be concluded that not only the suit is barred by limitation but it is a vexatious and meritless suit and therefore the plaint is liable to be rejected.

8. Per contra, Ld. counsel for plaintiff has submitted that at the stage of an application under Order VII Rule 11 CPC

only the averments in the plaint are to be looked at. It is submitted that as per the averments in the plaint, there is no cloud on the title of the plaintiff as no one has ever objected to his title. It is further submitted that the plaintiff received the possession of the suit property in the year 1995 and was in possession of the suit property till March, 2023, when the defendants trespassed upon the suit property and forcibly occupied the same. He submits that as such his suit is based upon title as well as previous possession and the cause of action to file the present suit only arose in 2023 when the defendants encroached upon the suit property.

9. Heard. Perused.

10. The present suit has been filed by the plaintiff for mandatory injunctions with regard to the suit property with the averment that the plaintiff purchased the suit property through customary documents in 1995 and was in possession of the suit property for 29 years till March, 2023, when the defendants forcibly encroached upon the suit property. Thus, the averment of the plaint would show that the suit has been filed on the basis of title as well as possession. Unregistered documents do not give title to the person in the favour of whom they are executed but a case for injunction based upon prior possession can be maintained. As the present case is based upon title as well as possession, it cannot be rejected on the ground that the documents conferring title to the plaintiff are unregistered documents.

11. As far as the issue of limitation is concerned, the claim of the plaintiff is that he was in possession of the suit

property till March, 2023 and the suit has been filed on 06.05.2024. As such, cause of action as per the plaint arose in March, 2023 and the present case being filed within 3 years has to be deemed to be within limitation at this stage.

12. As far as the arguments of defendants with respect to any cloud on the title of the plaintiff, the same would be raised when some claim by the defendant to the title is raised. The same can only be in the form of defense of the defendant and cannot be looked at, at this stage.

13. Thus, none of the grounds taken by the defendant are sufficient to reject the plaint. Consequentially, the present application is dismissed.

APPLICATION UNDER ORDER XXXIX RULE 1&2 CPC:-

14. Along with the suit, the plaintiff has also filed the present application. Multiple opportunities were granted to the defendants to file reply to the said application, but the same has not been filed and as such the application was taken up for arguments.

15. Ld. Counsel for plaintiff has submitted that since the plaintiff has the title of the suit property and was in possession of the suit property for 29 years till 2023, his rights in the suit property need to be protected by way of injunctions as prayed in the present application.

16. Per contra, Ld. Counsel for defendants has submitted that the plaintiff is a property dealer and with the help of local goons is trying to illegally take the possession and title of the suit

property. It is submitted that the suit property was an open terrace at the time of the purchase of the second floor by the predecessor in interest of the defendants and was handed over to the predecessor in interest of the defendants at the time of purchase of the second floor and is in their possession since then. She has submitted that the plaintiff has not made out any prima facie case of grant of injunction. Further, the plaintiff is not a resident or occupant of any of the floors of the building and the balance of convenience would lie in favour of the defendants. On these grounds, prayer of dismissal of the application is sought.

17. Heard. Perused.

18. Thus, what is clear from the plaint and the arguments of the parties is that the defendants are in possession of the suit property as of today. Title as well as prior possession of the plaintiff is denied by the defendants. Thus, this is a triable issue which needs to be decided after evaluation of evidence by way of trial.

19. At this interim stage, the plaintiff has been able to show a prima facie case of his interest in the suit property. However, to obtain a mandatory injunction, a very strong prima facie case is required to be made out which cannot be done by relying upon acquisition of title by an unregistered agreement to sell. Thus, the plaintiff is not entitled to the mandatory injunction of handing over the possession of the suit property to him. However, he has shown some interest in the suit property which needs to be proved by way of trial. As such the right of the plaintiff in the suit property, in case he succeeds in the trial, needs

to be protected.

20. Thus, in view of the above discussion, the parties are directed to maintain status quo as to title, possession and construction of the suit property till the disposal of the case. The present application is disposed of in the above terms.

21. List for arguments on the application for condonation of delay in filing written statement on **30.04.2025**.

(Rahul Bhatia)
DJ-1 (South-East), Saket Court
New Delhi/03.03.2025(sk)