

CS no. 2344/2016

Smt. Mamta V/s. Smt. Geeta and ors.

06/06/2017

Pr.:- Sh. Tilak Raj Sangra, counsel for plaintiff.
D-1 with counsel Sh. Pankaj Chauhan.

Ld. counsel for plaintiff pressed for disposal for plaintiff's application under Order XXXIX Rule 1 & 2 CPC.

I have heard the submissions of Ld. counsel for parties on plaintiff's application under Order XXXIX Rule 1 & 2 CPC and perused the case file.

Order on application

under Order XXXIX Rule 1 & 2 CPC of plaintiff

1. The facts set up by the plaintiff in her plaint are that D-2 to D-4 are her real brothers, whereas D-1 is the wife of D-2. Plaintiff claimed that property bearing no. A-2/318, Nand Nagri, Illaqa Shahdara, Delhi-110093 is built up upto three storey belongs to her mother Smt. Sheela, who expired on 17/01/2016. Plaintiff alleged that after death of her mother, a family settlement was arrived between her and defendant no. 2 to 4 and the aforesaid property came in her share and therefore, defendant no. 2 to 4 executed GPA, agreement, affidavit, possession letter, Will and no objection in her favour on 22/03/2016. Plaintiff alleged that after death of her mother, D-1 came from Nagloi (where she was residing with her husband) and she started residing on the ground floor of the aforesaid property (herein after referred as 'suit property'). D-1 subsequently called her mother and she also residing with her. Plaintiff claimed that brother of defendant no. 1 came

and threatened and also demanded rent from her tenants. Plaintiff claimed that inspite of her various requests, defendant no. 1 failed to hand over the vacant peaceful possession of the suit property, so she served a legal notice dated 04/05/2016 thereby called defendant no. 1 to hand over the physical possession of the suit property. Plaintiff alleged that inspite of service of notice, defendant no.1 failed to hand over the physical possession of the suit property, so she claimed damages @ Rs.3,000/- per month hence plaintiff filed suit for possession and for damages.

2. The plaintiff alongwith suit has filed the aforesaid I.A praying for following relief:-

“Pass an ex-parte ad-interim injunction order in favour of the applicant/plaintiff and against the defendant no. 1, thereby restraining the defendant no. 1 from her agents, servants, employees, etc. etc., who so ever purported to be acting on behalf of the defendant no. 1 from giving possession, transferring any portion or part with the possession of any portion of the premises and also handing over, transferring, mortgaging or to deliver the possession or to create any third party interest in any manner in the premises A-2/318, Ground Floor, Nand Nagri, Delhi 110093, till the final disposal of the main suit, in the interest of justice.”

3. Defendant no. 1 contested the suit by filing written statement stating therein that she was married to defendant no. 2 on 07/02/2007. She admitted that her mother-in-law was the owner of the whole property. She also claimed that her mother-in-law was the owner of property bearing no. G-48, Nagloi, admeasuring 50 sq. yds. Plaintiff alleged that behaviour of defendant no. 3 and 4 and their wives were not good towards her and therefore, her mother-in-law purchased the property comprises suit property and therefore, she alongwith her husband and

children used to reside mostly in the suit property. Defendant no.1 alleged that defendant no. 3 and 4 came on the suit property on 29/02/2015 and tried to forcibly enter in the same so she called 100 number. Police official came there and took her signature on some blank paper. Defendant no.1 claimed that her husband is not mentally fit and he was not found so he approached Nand Nagri police station and gave complaint on 09/03/2016, but police did not take any action. Defendant no. 1 claimed that plaintiff is not the owner of the suit property and the documents placed on record by plaintiff have no value in the eyes of law. On merit, defendant no.1 denied the contents of plaint and prayed for dismissal of suit.

4. Defendant no. 2 to 4 stopped appearing before the court hence they were proceeded ex-parte vide order dated 03/01/2017.

5. It is not in dispute that the owner of the entire property comprising suit property was Smt. Sheela, the mother of plaintiff and D-2 to D-4. It is also not in dispute that defendant no. 1, who is wife of D-2 is in possession of the suit property. Plaintiff claimed that the suit property came into her share after death of her mother. Whereas defendant no. 1 claimed that she was allowed to live in the suit property, or the same is still the joint property but the fact remains that mother of plaintiff and defendant no. 2 to 4 was the owner of the suit property which is in possession of defendant no. 1. So it is matter of trial whether suit property came into the share of plaintiff after death of her mother.

6. During course of arguments, Ld. Counsel for defendant no.1 stated D-1 is in possession of ground floor of the suit property and she is ready to give statement that she will not create any kind of third party interest in her portion till the

disposal of the suit.

7. Separate statement of defendant no.1 is recorded in regard to submissions made by her counsel.

8. Ld. Counsel for plaintiff stated that the aforesaid application of plaintiff be disposed off in term statement of defendant no. 1 recorded in court.

9. In view of above and considering the facts and circumstances of the case and statement made by defendant no. 1 and also submissions made by Ld. Counsel for plaintiff, aforesaid application of plaintiff is disposed off with following order:-

Order

The I.A filed by the plaintiff under Order XXXIX Rule 1 & 2 CPC is allowed. Defendant no.1 is restrained to create third party interest in the ground floor of the suit property till the disposal of the suit.

Be put up for replication, admission-denial of documents and framing of issues on 21/09/2017.

(RAVINDER SINGH)
Addl. District Judge (Shahdara),
Karkardooma, Delhi. 06/06/2017.