

13 CS 942/23

ZUBAIR AHMAD Vs. AFZAL AHMAD AND ANR

23.07.2024

At 11:28am

Present: Sh. I.A. Khan, Ld. Counsel for the plaintiff along with plaintiff in person.
Sh. Devender Kumar, Sh. G.S. Mavi, Sh. Virender Kasana, Ms. Renu Bala and Sh. Prashant Mohan, Ld. counsels for the D-1 along with D-1 in person.
None for D-2.

WS and reply to stay application on behalf of D-1 filed on 18.07.2024. Copy supplied.

None has appeared on behalf of D-2.

No WS has been filed on behalf of D-2 till date despite opportunity granted.

In view of the circumstances, **right of D-2 to file WS stands closed and he is proceeded exparte in the present matter.**

Plaintiff is at liberty to file replication to WS of D-1, if any within 15 days from today with an advance copy to D-1.

Plaintiff and D-1 are directed to file their respective affidavits of admission and denial of documents within 30 days from today with an advance copy to other side.

Parties are directed to produce original documents and file proposed issues on the NDOH.

Parties are directed to appear in person on the NDOH.

At this stage, Ld. counsel for plaintiff presses his application under Order XXXIX Rule 1 and 2 CPC.

(2)

Ld. counsel for D-1, on instructions submits that D-1 is in possession of portion of the property bearing no.1185, situated at Gali no.39, Jafrabad, Delhi, specifically shown in red colour in the site plan annexed with the plaint at page no.78. He further submits that D-1 and his family members are using common latrine and bathroom adjacent to the room (Afzal room) shown in the site plan at page no.78 of the plaint. He further submits that D-1 is also in possession of one kitchen at the first floor which is surrounded by washroom in three space in East, washroom in West, store room in North and kitchen in South mentioned in the site plan at page no.78 of the plaint. He on instruction further submits that D-1 has no intention to create any third party, right or interest on the portions occupied by him during the pendency of the present suit.

Ld. counsel for plaintiff submits that D-1 has correctly stated about the portions of suit property occupied by D-1 which are also mentioned in the site plan. It is further submitted that if D-1 is not restrained from selling or creating any third party right or interest in the portions of suit property occupied by him, then it will cause irreparable loss and injury to plaintiff.

Ld. counsel for plaintiff submits that D-2 along with family members is also using one room and kitchen at the second floor of the suit property and common latrine and bathroom at the first floor of the suit property. He further submits that the property/shop bearing no.12-B/148, situated at Vijay Mohalla, Near Shahid, Jama Masjid, Maujpur, Delhi, ad-measuring 50 sq. yards is in possession of D-2. He further submits that D-2 is intending to create third party right or interest in the portion occupied by him and further requests to pass an interim injunction against defendants and in favour of plaintiff.

(3)

In view of the submissions & contentions made in the application, defendants are restrained from selling or creating any third party right or interest in the portions of the suit properties occupied by them/qua the ownership and possession of the portions of the suit property occupied by them during the pendency of the present suit.

Application under Order XXXIX Rule 1 and 2 CPC is accordingly disposed off.

At this stage, Ld. counsel for D-1 submits that D-1 wants to explore the possibility of settlement in the present matter and requests this court to refer the present matter in the Mediation Centre.

Ld. Counsel for plaintiff, on instructions submits that plaintiff has no objection, if present matter be referred to the Mediation Center SHD/KKD/Delhi.

In view of the submissions, matter is referred to Mediation Center SHD/KKD/Delhi for **31.07.2024 at 12:30pm** and before this court for report on **19.10.2024**.

Put up for report from the mediation, if any and completion of pleadings, admission and denial of documents and framing of issues on **19.10.2024**.

(Deepanker Mohan)
District Judge-04
Shahdara District/KKD Courts/Delhi
23.07.2024