

**IN THE COURT OF SH. RAMESH KUMAR-II,
ADDITIONAL DISTRICT JUDGE, SHAHDARA
DISTRICT, KARKARDOOMA COURTS:
DELHI**

Civil Suit No.1106/18

In the matter of:-

Sh. Rohtash

.... Plaintiff

Versus

Sh. Ram Niwas & Anr.

.... Defendants

24.08.2023

ORDER

Vide this order, I shall dispose off the application of the plaintiffs under Order 39 Rule 1 & 2 CPC r/w Section 151 CPC for grant of ex parte ad-interim injunction against the defendants thereby directing the defendant no.1, his employee, his representative etc. not to create third party interest or not to illegal construction at property bearing no.143, Gali No.2, Opposite Shiv Mandir, Village-Tahirpur, Delhi-95 which is shown in red colour in site plan.

Brief facts as set up by the plaintiff in the plaint are that he is the owner of property bearing 143, Gali No.2, Opposite Shiv Mandir, Village Tahirpur, Delhi-95, measuring area approx. 65 sq. mtrs. (herein after be referred to as 'suit property'). In the year of 1967, the suit property initially was given by Ram Chander S/o Khacheru R/o Village Tahir Pur, Delhi-95, to the father of the plaintiff as a gift orally and it was a vacant land and after taking the same from Sh. Ram Chander, the construction was raised by the father of the plaintiff from his own funds and accordingly,

two room set were raised in the suit property. It is further averred that suddenly, the mother of plaintiff was expired in the year of 1976 and thereafter, the father of plaintiff became very nerves and then he become a saint (Saadhu) and in the starting month of the year of 1990, the defendant no.1 asked the father of the plaintiff that he is living in a rented house and it was requested the father of the plaintiff that he be permitted to live in the property in question as a license and then the father of the plaintiff being a family member of the defendant no.1 allowed the defendant no.1 to live in the property in question as a license. It is further averred that the elder sister of the plaintiff namely Ramwati who was married and residing at her matrimonial home situated at Modi Nagar, U.P., the plaintiff and his brother namely Ram Singh have been left by the father of the plaintiff at the house of said Ms. Ramwati at Modi Nagar, U.P. because the father of the plaintiff adopted the Samaj of Saadhu. It is further averred that the brother of plaintiff namely Ram Singh had already been expired a long back. Th sisters of the plaintiff also never claim any right of the property in question in this way, the plaintiff is owner of the property in question as no anybody of the family of the plaintiff ever claimed over the property in question. It is further averred that the father of the plaintiff was expired 28.03.1990 leaving behind his LRs i.e, plaintiff and his brother and it was assured by the defendant no.1 to the father of the plaintiff as well as plaintiff including other family members that as and when the property in question will be required by the father of plaintiff, the plaintiff and other family members then the same shall be vacated without any hindrance and condition etc. The plaintiff also continued the license of the defendant no.1

after the death of Late Sh. Tilku Ram. It is further averred that the plaintiff is living for a long time in Balmiki Ashram, Village Tahirpur, Delhi-95 along with his family members but in the month of April, 2018, the plaintiff asked the defendant no.1 to vacate the suit property but the defendant no.1 denied for the same on one pretext or the other and ultimately, plaintiff cancelled the license of the defendant no.1 on the said day of 15.07.2018 and also asked the defendant no.1 if the defendant no.1 did not vacate the suit property then the plaintiff shall claimed the damages from him @ of Rs. 10,000/- P.M. excluding other charges. It is further averred that the defendant no.1 despite of request of the plaintiff did not vacate the suit property and thereafter, in the month of August, 2018, the defendant no.1 demolished the old entire premises situated in the suit property and in the month of September, 2018, the defendant no.1 started to raise a unauthorized construction in the property in question then the plaintiff requested the defendant no.1 not to raise the illegal construction in property in question but the defendant no.1 did not given any response for the same. It is further averred that the defendant no.1 has no right title or interest etc. over the suit property in any way, nor he has any right to raise any construction in the suit property but the defendant no.1 did not given any response for the same and also stated that he has connivance with the local police as well as illaqa concerned officials of EDMC and nobody can stop him from raising illegal construction in the suit property. The plaintiff has requested the defendant no.1 at several times not to continue illegal construction and also to hand over the physical possession of the same to the plaintiff but all in vain and ultimately, the against

raising the illegal construction in the suit property, the plaintiff made a written complaint to the concerned EDMC officials on 27.11.2018 i.e. complaint made to the defendant no.2 but neither the defendant no.1 stopped from raising the illegal construction nor the defendant no.2 taken any action against the illegal construction raised by defendant no.1 in the suit property. The defendant no.1 still is raising the illegal construction unauthorized, illegally continuously without getting the sanction site plan from the defendant no.2 as well as without getting the permission of the plaintiff. Hence, the present suit.

The defendant no.1 has filed his written statement thereby taking preliminary objections that the plaintiff is not the owner at any point of time of the suit premises and the plaintiff neither having any right, title or interest over the suit property, nor in possession of the suit property at any point of time, hence the present petition is liable to be dismissed with heavy cost. It is further stated that the wife of the defendant No.1 is the actual and exclusive owner of the suit premises and the defendant No.1 is residing in the suit premises for a long period of more than 50 years without any hindrance and obstructions from any corner or authority as husband of owner and in possession, and each and every right, title and interest is in favour of the wife of defendant No.1 over the suit property and all the family of the defendant No.1 is residing in the suit premises since the birth of the children of defendant No.1, hence the present suit is liable to be dismissed with heavy cost. It is further stated that the defendant No.1 mutated the suit property in his own name after receiving NOC from his wife from the Municipal Corporation of Delhi and the concerned authority also issued assessment notice against the

defendant No.1 on 24.10.1994 and thereafter the defendant No.1 is continuously paid the property tax to the concerned department as owner and in possession of the suit property, hence the present plaint is liable to be dismissed with heavy cost. It is further stated that the defendant No.1 also taken a caste certificate as owner and in possession on dated 23.06.1979 and thereafter verifying the fact, addresses, identity, possession, etc. the concerned authority/Deputy Commissioner issued the caste certificate in the name of the defendant No.1 at the address of above said suit property and legal heirs of the defendant No.1 also obtained their caste certificate, educational and other relevant documents at the same address, as such the defendant No.1 is in continuous possession along with his family and permanent residing at the said address, hence the present suit is liable to be dismissed. It is further stated that the defendant No. 1 also installed electricity connection on 24.03.1986 and water connection from Delhi Jal Board on 27.01.1988 as owner and in possession of the suit property and also taken various other Government benefits, hence the present suit is liable to be dismissed with heavy cost. It is further stated that the plaintiff filed the present suit without any cause of action, and locus standi, and the plaintiff has not made the parties properly in the present suit and the present suit is liable to be dismissed for non-joined and mis-joinder of the parties. It is further stated that the plaintiff has not attached any document regarding the suit property as well as his claim, or prayer clause of the plaint and the plaintiff prepared a flimsy story to grab the property of the defendant No.1 with malafide intention and ill motive, filed the present suit which is liable to be dismissed with heavy cost. It is

further stated that the plaintiff is seeking relief for declaration from this Court and mentioned in para No.3 of his plaint that in the year 1967 the property in question is initially was given by Ram Chander to the father of the plaintiff as orally gift, which shows the knowledge of the plaintiff, hence the present suit is time barred case and hence liable to be dismissed. It is further stated that the plaintiff wants to raise the dispute in the property of the defendant No.1 and put the pressure upon the defendant No.1 and wants to extort money from the defendant No.1, after denial by the defendant No.1 the plaintiff lodged the complaint dated 27.11.2018 to East Delhi Municipal Corporation and with his ill motive made as a party of EDMC in the present suit without any cogent reason. Hence the present suit is liable to be dismissed.

The defendant no.2 has also filed its written statement thereby taking preliminary objections that the present suit is not maintainable as the plaintiff has not served the statutory notice u/s 477/478 of DMC Act to the answering defendant prior to filing the present suit, hence the present suit is liable to be dismissed. The present suit is also not maintainable as no cause of action ever arose in favour of the plaintiff and against the answering defendant, as such suit is liable to be dismissed. It is further stated that the suit property was inspected by the concerned J.E. of Building Department on 03.01.2019 and found the ongoing unauthorized construction in the shape of ground floor and raising first floor which was booked vide file no. 03/B-I/UC/SH-N/2019 dated 03.01.2019 and accordingly show cause notice vide no.14740 dated 03.01.2019 was issued to the owner/occupier and on non receipt of satisfactory reply of show

cause notice, the demolition notice vide no 16127 dated 14.01.2019 was issued to the owner/occupier to demolish the unauthorized construction itself within 06 days. it is further stated that the answering defendant further undertakes to initiate appropriate action as per DMC Act and on direction of this court. It is further stated that the plaintiff has not come to the court with clean hands and has suppressed the material facts from the court and as such the present suit is liable to be rejected.

The defendant no.1 and 2 both have filed separate reply to the application of the plaintiff under order 39 rule 1 and 2 CPC denying all the assertions made therein and have prayed for dismissal of the said application.

During the course of arguments, ld. counsel for plaintiff argued and submitted that the defendant no.1 was living in the property in question as a licensee which was given to him in the year 1990 by the father of the plaintiff who was expired on 28.03.1990 living behind his LRs i.e. plaintiff and his brother. He further submitted that the license of the defendant no.1 was terminated by the plaintiff on 15.07.2018 but in the month of September, 2018, the defendant no.1 started to raise unauthorized construction in the suit property and the plaintiff requested him not to raise unauthorized construction in the suit property but all in vain. He further submitted that status quo order was passed by Ld. Predecessor court on 21.01.2019, but the defendant no.1 did not honour to the order and violated the same and there is an apprehension that the defendant no.1 further also can raise unauthorized construction above to second floor in violation of DMC Act. Therefore, the restraining order is necessary to be passed against the defendant no.1 so that the defendant no.1

could not raise further unauthorized construction in the suit property. Accordingly, a prayer was made on behalf of the plaintiff to allow the present application, in the interest of justice.

Per contra, ld. counsel for defendant no.1 argued and submitted that the plaintiff is neither the owner nor in possession, neither having any right, title or interest over the suit property of the defendant no.1 at any point of time, whereas the wife of the defendant no.1 is the actual, exclusive, lawful owner of the suit property and defendant no.1 is residing therein for a long period of more than 50 years without any hindrance and obstructions from any corner or authority as husband of owner and in possession and having each and every right, title and interest in favour of wife of the defendant no.1. He further submitted that defendant no.1 mutated the suit property in his own name after receiving the NOC from his wife from the MCD and concerned authority also issued assessment notice against the defendant no.1 on 24.10.1994 and thereafter, the defendant no.1 is in continuously paid the property tax to the concern department as owner and in possession of the suit property and he and his family members also took cast certificate, educational and other relevant documents which show continuous possession alongwith family. He further submitted that defendant no.1 also installed electricity meter and water connection from concerned departments on 24.03.1996 and 27.01.1988 respectively as owner. He further submitted that the plaintiff filed the present suit without any cause of action, locus standi and without any balance of convenience and even he has not made proper party in the present suit and therefore, the present suit is liable to be dismissed for non-joinder and mis-joinder of the parties. He

further submitted that the plaintiff has not filed any document regarding the suit property as well as his claim or prayer clause of the plaint, nor filed any document qua his possession, ownership, title and interest and other rights and has not filed any prima facie document in his favour, hence the present application is liable to be dismissed with heavy costs.

Ld. counsel for plaintiff as well as ld. counsel for defendant no.1 have filed written arguments in support of their respective averments.

I have heard the arguments and also perused the record including written arguments filed on behalf of plaintiff and defendant no.1.

To succeed in an application under Order 39 Rule 1 & 2 CPC, the plaintiff has to prove three ingredients:

- 1 That he has a prima facie case in his favour.**
- 2 That balance of convenience lies in favour of the plaintiff.**
- 3 That if the injunction is not granted the plaintiff shall suffer irreparable loss or injury.**

8 The Hon'ble Supreme Court in **Kashi Math Samsthan v. Srimad Sudhindra Thirtha Swamy** 2010 AIR (SC) 296 held that:-

"it is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of

convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted."

In the present case, as far as prima-facie case is concerned, a perusal of the record shows that the plaintiff claimed himself to be the owner of the suit property and he further claimed that defendant no.1 was a licensee in the suit property and his license has already been canceled by the plaintiff on 15.07.2018. According to the plaintiff, in the year 1967 the suit property was given to the father of plaintiff by Sh. Ram Chander S/o Sh. Khacheru R/o Village Tahirpur, Delhi as a oral gift. The stand taken by the defendant no.1 is that the suit property was purchased by his wife from one Sh. Nanak Chand S/o Sultan.

The defendant no.1 has claimed ownership over the suit property vide GPA dated 01.07.1991 A perusal of GPA reveals that there is no mentioning of property number therein. The address is mentioned in GPA as Village Tahar Pur, Shahdara, Delhi-95. The plaintiff has also placed on record copy of death certificate of his father Tilku Ram wherein their address is also mentioned Village Tahar Pur, Delhi-95. The plaintiff has also placed on record property tax receipt dated 05.12.2018 in respect of property bearing no. H.No.143, Opp. Shiv Mandir, Village Tahirpur, Delhi-95 i.e. suit property, showing that he had paid the house tax of the suit property from 2004-05 to 2018-19. Further more, despite directions of the court the defendant no.1 has not

filed original documents of suit property, rather he only filed colour copies of the same. Therefore, the authenticity of the said documents is still in dispute. Even otherwise the said documents do not prove at this stage the defendant no.1 is the rightful owner of the suit property. The factum with respect to ownership of the suit property can only be decided after leading evidence by both the parties. Therefore, this court is of the opinion that in order to preserve the suit property for just decision of the case, it would be appropriate if injunction is granted in favour of the plaintiff.

Therefore, in view of abovesaid discussions, defendant no.1, his employee, his representative etc. are hereby restrained not to create any third party interest and from raising illegal construction in the suit property i.e. property bearing no.143, Gali No.2, Opposite Shiv Mandir, Village Tahirpur, Delhi-95, till the disposal of this suit.

It is also pertinent to mention here that vide order dated 21.01.2019 Ld. Predecessor had directed to maintain status quo qua the property in question. The said order still has not been vacated, despite that the defendant no.1 raised unauthorized construction in the suit property. It has transpired from the record that a status report dated 15.05.2019 has been placed on record by MCD/defendant no.2 in respect of suit property bearing no.143, Gali No.2, Opposite Shiv Mandir, Village Tahirpur, Delhi, stating therein that after the following due process of law the demolition order, in respect of illegal construction in suit property, was passed on 23.01.2019. Defendant no.2 also filed another status report dated 31.05.2019 in respect of suit property, stating therein that "further action shall be taken as per DMC Act in due course of time". Since the defendant no.1 raised

unauthorized construction in the suit property, hence, the concerned department of MCD is directed to demolish the illegal/unauthorized construction raised by the defendant no.1 in the suit property and report before this court be filed on or before next date of hearing.

It is made clear that nothing herein mention would tantamount to expression of opinion on the merit of the case.

Copy of this order be sent to the Commissioner of MCD for necessary action and compliance.

Application is accordingly disposed off.

(Typed to the dictation directly, corrected and pronounced in open court on 24.08.2023).

(RAMESH KUMAR-II)
ADDL. DISTRICT JUDGE-01
SHAHDARA DISTRICT
KARKARDOOMA COURTS
DELHI