

**IN THE COURT OF MOHD. FARRUKH: ADDL. DISTRICT
JUDGE SOUTH-WEST DISTRICT: DWARKA COURTS:
NEW DELHI**

Suit No. 392/17

In the matter of:

Sh. Hem Chand Jain Plaintiff

Versus

Sh. Baljit Singh & Anr. Defendants

ORDER:

1. Vide this order, I shall dispose of the application u/O. 39 Rule 1 & 2 CPC filed on behalf of the plaintiff seeking interim relief of direction to the defendant no.1 to pay the damages @ Rs. 10,000/- per month w.e.f 13.07.2015 onwards towards use and occupation charges and also restraining him from parting with the possession of the plot nos. 3-4, Roshan Mandi, Najafgarh, Masoodabad, New Delhi-110043 (hereinafter referred to as the suit property).

2. Brief facts shorn of unnecessary details for the disposal of the present application are that the plaintiff has filed the suit seeking possession of the suit property as well as decree of permanent and mandatory injunction alongwith damages and mesne profits averring inter-alia that he is the co-owner of the suit property and defendant no.2 is the caretaker of the same. It is averred that plot nos. 3-4 and 5-6 were purchased by the father of the plaintiff Dewan Chand Jain by virtue of two registered conveyance deeds dated 13.07.1960 against consideration from its erstwhile owners. His father expired on 21.10.1981 and by virtue of his registered Will, the plaintiff and his two brothers became the sole and absolute owners of the suit property. It is further averred that defendant no.1 is the land grabber and property broker and claiming ownership on the basis of unregistered documents in his favour allegedly executed by one Balkishan Julka on the basis of forged sale deed dated

05.01.1985 from one of the original owner Sh. Roshan Lal. It is claimed that the said sale deed is illegal and fabricated as Roshan Lal, the alleged executant of the sale deed dated 05.01.1985 has already expired on 04.01.1985. It is averred that Roshan Lal was not competent to sell the suit property as he had already perpetually leased the subject plots vide perpetual lease deed dated 03.09.1948 to one M/s. Desh Hit Company which was owned by five persons who thereafter transferred the suit property to Sh. Sumer Chand Jain by virtue of duly registered sale deeds dated 05.11.1948 and 26.11.1948. It is averred that defendant no.1 has nothing to do with the subject plot and is not the co-owner of the same and only the LR's of Dewan Chand are the owners of the same and thus, on the basis of the aforesaid averments, the plaintiff has filed the present suit for possession, mandatory and permanent injunction and damages and mesne profits.

3. On the summons of the suit having been served, defendant no.1 has filed his written statement contending inter-alia that the documents on the basis of which, the plaintiff is claiming title and interest in the property are false and fabricated and the sale deeds dated 13.07.1960 do not confer any right, title or interest in the suit property in favour of Dewan Chand Jain, the father of the plaintiff. It is contended that the purported sale deeds are only to transfer leasehold rights in the suit property and creates no title or ownership in favour of Dewan Chand Jain. It was denied that the erstwhile owner of Roshan Lal has passed away on 04.01.1985 as contended by the plaintiff. It was submitted that the said sale deed has been executed on 29.12.1984 and the same had been presented before the Sub-Registrar concerned on 31.12.1984 and Roshan Lal appeared before the Sub-Registrar. It was further submitted that even in the investigation in case FIR no. 777/14 dated 27.11.2014 involving execution of sale deeds by Roshan Lal, it is revealed that Roshan

Lal died on 14.01.1985 and not on 04.01.1985 as contended by the plaintiff. It is submitted that the plaintiff is the true and lawful owner and is in legal possession of the suit property having purchased it from its erstwhile owner Balkishan Julka vide sale documents i.e. agreement to sell, GPA, Receipt, all dated 18.04.1991 and thus, would pray for dismissal of the suit.

4. I have heard the arguments on the application under Order 39 Rule 1 & 2 CPC and perused the entire material available on record.

5. It is no longer res integra that while deciding an application under Order XXXIX Rule 1 and 2 CPC the Court must apply the following three established tests of prima facie case, balance of convenience and whether the plaintiff would suffer an irreparable loss and injury if an injunction is declined. It is also a well established principle that while deciding an application for

injunction the Court must not deal with the matter as if it were finally deciding the suit. It is also a well established principle that the Court must also consider as to whether grant of injunction is likely to cause inconvenience to the defendant.

6. Principles laid down for grant of interlocutory injunction have been discussed by the Hon'ble Supreme Court in **Hindustan Petroleum Corpn. Ltd. v. Sriman Narayan & Anr.** (2002) 5 SCC 760. Relevant paragraphs of the judgment read as under:--

“7. It is elementary that grant of an interlocutory injunction during the pendency of the legal proceeding is a matter requiring the exercise of discretion of the court. While exercising the discretion the court normally applies the following tests:

- (i) whether the plaintiff has a prima facie case;
- (ii) whether the balance of convenience is in favour of the plaintiff; and
- (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed.

“8. The decision whether or not to grant an interlocutory

injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where "the balance of convenience" lies.

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17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised" in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as a prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

7. It would also be useful to refer to the pronouncement of Hon'ble Supreme Court in **Gujarat Bottling Co. Ltd. v. Coca Cola Co., AIR 1995 SC 2372** wherein the Hon'ble Supreme Court observed thus:-

"47. In this context, it would be relevant to mention that in the

instance case GBC had approached the High Court for the injunction order, granted earlier, to be vacated. Under Order 39 of the Code of Civil Procedure, jurisdiction of the Court to interfere with an order of interlocutory or temporary injunction is purely equitable and, **Therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature, the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief. His conduct should be fair and honest. These considerations will arise not only in respect of the person who seeks an order of injunction under Order 39 Rule 1 & 2 of the Code of Civil Procedure,** but also in respect of the party approaching the Court for vacating the ad interim or temporary injunction order already granted in the pending suit or proceedings.”

8. In the instant case, the plaintiff has filed the present suit claiming himself to be the owner of the suit property on the basis of registered Will executed by his father Dewan Chand who stated to have purchased the suit property from its erstwhile owner by virtue of two registered conveyance deeds dated 13.07.1960. Bare perusal of the documents placed by plaintiff on record showing the ownership of the suit property by erstwhile

owners, it is revealed that the erstwhile owners were having perpetual lease in their favour and that even the said perpetual lease was for the construction of mandi, quarters, houses, well etc. One of the clauses of the documents further provides that the executant or sub-lease or holder, if failed to construct any building upon this land within five years, then that lease deed would stand cancelled. The plaintiff in his plaint has not averred whether the construction as per the perpetual lease deed has been completed. It is well established that a person cannot transfer a better title than one has. In the instant case, when the erstwhile owners were only having a lease and that too a conditional lease in their favour, they could not transfer a better title in favour of the father of the plaintiff.

9. In view of the aforesaid discussions, the plaintiff is not entitled to the equitable relief of injunction as the plaintiff has not been able to show *prima facie* case in his favour and also the

balance of convenience is not on his side and no irreparable injury shall be caused to the plaintiff and thus, the application filed by the plaintiff U/o 39 Rule 1 and 2 CPC is dismissed.

10. Needless to state, the observation made hereinabove are confined to the decision of this application under Order 39 Rule 1 & 2 CPC and shall not be treated as an expression on the merits of the case set up by the plaintiff or the objections taken by the defendants.

Dictated & Announced in the
open Court on 19.09.2017

(MOHD. FARRUKH)
Addl. District Judge/South-West
Dwarka District Courts: New Delhi

This order containing 10 signed pages