

10 Counter Claim 21/23
RENU SINGH Vs. AJAY KUMAR PARASHAR

25.11.2023

Both regular steno are no leave, however, only one substituted steno has been provided.

Present: Sh. Shreshtha Kumar (through VC), Ld. Counsel for Counter Claimant.
SPA of non-Counter Claimant.
Sh. GD Sharma (through VC), Ld. Counsel for non-Counter Claimant.

Replication to WS filed on behalf of counter claimant on 17.11.2023. Copy supplied.

Matter is fixed for admission/denial of document, framing of issues and argument on application under order 39 rule 1 and 2 CPC.

Arguments heard on pending application under order 39 rule 1 and 2 on behalf of both the parties.

Briefly stated, *suit for declaration, possession, permanent injunction and arrears of rent/damages* filed by the plaintiff/non-counter claimant vide **CS No. 30/2023** with respect to the *property bearing number 27, out of Khasra no. 16/14, situated at village Nangli, Sakrawati, Delhi, now known as Arjun Park (Block B), Najafgarh, New Delhi, admeasuring 50 sq. yards* (herein after referred as 'suit property'). It is averred that plaintiff/non-counter claimant is exclusive owner of suit property by virtue of documents executed by defendant/counter claimant in favour of plaintiff/non-counter claimant on 26.11.2015. It is further averred that although possession letter was issued in favour of plaintiff/non-counter claimant but defendant/counter claimant sought time to hand over physical possession of

the suit property to the plaintiff/non-counter claimant but taken the suit property on rent subsequently but, defaulted in payment of rent as well as refused to vacate the suit premises. Hence, suit is filed.

Per contra, Ld. Counsel for defendant/counter claimant submits that he never executed any of above document in favour of plaintiff/Non-counter claimant with respect to the suit property and he is the owner as well as in actual possession of the suit property since beginning. Accordingly, present counter claim filed for *declaration and permanent injunction* against the plaintiff and his husband as counter claimants.

Submissions heard. Record perused.

Ld. Counsel for both parties fairly conceded to the fact that physical possession of suit property is with the defendant/counter claimant.

Considering the facts and circumstances of the present case, this court is of the considered opinion that all three ingredients i.e. *prima facie case, balance of convenience and irreparable loss* i.e. required for the purpose of interim injunction are satisfied. **Accordingly, application under Order XXXIX Rule 1 and 2 CPC is disposed off.** Non-counter claimant are restrained to create any third party right of the suit property during pendency of present suit.

Pleadings are complete. Ld. Counsel for both parties submit that admission/denial of document may be dispensed with. In terms of the pleadings between the parties following issues are framed:

1. *Whether GPA, Agreement to sell and purchase, possession letter, affidavit, receipt, Deed of Will dt. 26.11.2015 with respect to property no. RZ-B-27, near Gyan Bharti School, Arjun Park, Najafgarh, Delhi-110043 (hereinafter referred as 'suit property') to be declared as null and void? OPP*

2. *Plaintiff is entitled for decree of mandatory and permanent injunction as prayed for? OPP*
3. *Whether plaintiff is entitled for the cost of the suit ? OPP*
4. *Relief.*

No other issue arises or pressed for.

Put up for PE on **30.03.2024**.

Let list of witnesses be filed by the both parties within 15 days, with advance copy to opposite side. The copies of evidence by way of affidavit of the witnesses be supplied to opposite side at least 15 days prior to the NDOH.

At this stage, Ld. Counsel for both parties submitted that main suit i.e. **CS No. 30/23** be combined with **counter claim no. 21/23** as subject matter of suit property is similar in both matters.

In view thereof, **CS No. 30/23** is combined with **Counter claim no. 21/23** for the purpose of evidence whereby evidence shall be lead in **CS no. 30/23** as per the issues framed in both matters and same shall be read as an evidence on behalf of the parties in each matter.

(SHILPI M JAIN)
ADJ-05 (SW)/Dwarka Courts
New Delhi: 25.11.2023