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CS DJ ADJ 300/23
RAHUL Vs. DEEPAK YADAV AND OTHERS

06.11.2023

Present: None for Plaintiff.
Sh. K.C. Tyagi, Ld. Counsel for Defendants
along with Defendants no. 1 to 3.

Matter is pending for arguments on the application
under Order XXXIX R 1 and 2 of CPC.

Medical documents have been filed on behalf of the
Defendant no. 2 and same are taken on record.

None have appeared for the Plaintiff. In the interest of
justice, no adverse order is being passed.

Be awaited for Plaintiff.

**(DIVYANG THAKUR)
ADJ-03/ SOUTH-WEST
DWARKA/ NEW DELHI
06.11.2023 (A)**

At 11:40 AM

At this stage, Sh. Sunil Choudhary, Ld. Counsel for Plaintiff has appeared
before the Court. He has addressed arguments on the application under
Order XXXIX R 1 and 2 of CPC.

Put up for orders at 04:00 PM.

**(DIVYANG THAKUR)
ADJ-03/ SOUTH-WEST
DWARKA/ NEW DELHI
06.11.2023 (A)**

At 04:00 PM

Present: None.

Vide the present order, I would decide the application
under Order XXXIX R 1 and 2 of CPC of the plaintiff restraining the
defendants from creating any third party interest in the suit property during

the pendency of the suit.

The brief facts of the case are that the defendant no.1 is the real brother of the plaintiff and defendant no.2 and 3 are his maternal uncles. It is pleaded that the plaintiff is the owner of the suit property measuring 300 sq. yds. at plot no.15, Khasra no.52/22, Village Mitrau, Gopal Nagar Extn., N-Block, Najafgarh, New Delhi – 110043 as the same was purchased by the plaintiff and his real brother Ramesh Kumar Yadav from one Neelam Kumari Mahajan, who had purchased the same by way of registered sale deed from one person Sh. R.N.Shah. It is further pleaded that the same was purchased by way of usual documents, i.e. GPA, Agreement to Sell etc. by the plaintiff and his brother Ramesh Kumar Yadav also sold his share to the plaintiff by way of GPA, Agreement to Sell etc. Defendant no.1 showed his interest to plaintiff to purchase a half share in the said suit property for a consideration amounts of Rs.37 lacs but plaintiff was not ready to sell to defendant no.1 and thereafter, defendant no.2 requested the plaintiff that he is ready to vouch for defendant no.1 and to sign documents on his behalf, executed GPA, Agreement to Sell etc. in favour of defendant no.2 but as defendant no.1 was not ready to pay the sale consideration, the originals of the documents were returned by defendant no.2 to the plaintiff. Thereafter, defendant no.1 again approached the plaintiff to take the plot of 150 sq. yds on rent and due to family relations, the plaintiff allowed the defendant no.1 and his family to stay in the suit property on rent at Rs.10,000/- per month but the defendant no.1 only paid rent for two months and thereafter, stopped paying the rent.

In reply in the Written Statement filed on behalf of defendants no.1,2 and 3, the defence has been taken up that the plaintiff is barred by estoppel as he has himself admitted that he had sold the property to defendant no.2 and therefore, suit for ejectment and possession is not maintainable. It has been further submitted that the plaintiff himself is having no title in the suit property as he himself has purchased through Agreement to Sell, GPA etc. and the same create no right in favour of the plaintiff, being unregistered and unstamped.

Ld. Counsel for defendant has submitted that the plaintiff himself is not having any title due to the judgment of the Hon'ble Supreme Court in Suraj Lamp. It has been further submitted that the

plaintiff has sold the property to defendant no.2 and has no right, title or interest in the same.

At this stage, only a *prima facie* case has to be seen. The defendants no.1 to 3 are themselves claiming title through the plaintiff and therefore, at least on the face of it, the plaintiff is having a better title as compared to the defendants. The fact that the plaintiff himself has purchased through the GPA and Agreement to Sell would not tilt the case in favour of the defendants, as they themselves are agreement purchasers from the plaintiff. If the plaintiff was to claim any right against the paper owner by way of registered sale deed, then may be the judgment of Suraj Lamp would defeat the claim of the plaintiff but that would not apply in case of the present defendants. Moreover, the defendants are only themselves claiming to be in possession by way of a unregistered Agreement to Sell which has been executed by the plaintiff in favour of defendant no.2.

The plaintiff, therefore, has a *prima facie* case in his favour. On the point of balance of convenience and irreparable injury, the defendants have not been able to place on record any document to show that the sale consideration as mentioned in the documents in favour of defendant no.2 has actually been paid. The defendant no.2 being the agreement purchaser can not pass on the title to any third party.

After examining the facts and circumstances, I find that the application of the plaintiff for restraining the defendants from creating any third party interest should be allowed. Defendants are therefore, restrained from creating any third party interest in the suit property, during the pendency of the suit. The application is disposed off accordingly.

Parties are directed to produce original documents before the Court on the next date of hearing for the purpose of admission-denial of documents and also file affidavits of admission-denial of documents.

Let the matter come up for further proceedings on
26.02.2024.

(DIVYANG THAKUR)
ADJ-03/ SOUTH-WEST
DWARKA/ NEW DELHI
06.11.2023 (A)