

## **T.S. No. 1094 of 2018**

**Order no. 29**

**05.09.2019**

Both parties take steps through their respective Ld. Advocate. Today is fixed for order with regard to the injunction application u/O 39 Rule 1 and 2 read with Sec. 151 of the CPC filed by the plaintiff, Bimla Devi Jaiswal on 24.08.2018.

Accordingly, the record is taken up for the same.

On last occasions, I have heard the both sides at length.

Plaintiff by this petition has stated that she has filed the suit for declaration, and permanent injunction in respect of mainly B schedule property i.e. one room measuring about 700 sq. ft. in the ground floor in the premises no. 243/2M, A.P.C. Road, Kolkata –700006.

Plaintiff in her application has stated inter alia that A schedule property i.e. suit premises 243/2M, A.P.C. Road is a land admeasuring about 6 cuttah 12 chattak 65 sq. ft. along with five storied building erected upon it.

It is further stated that the entire suit premises was owned by Smt. Duija Devi Shaw since deceased. She was the paternal aunt of the husband of present plaintiff namely Ram Kishan Jaiswal. Duija Devi during her lifetime by executing Will bequeathed the entire suit property to the plaintiff. Plaintiff obtained probate on 30th March 2014. Duija Devi during her lifetime sold out some of the flats in a five storied building and the plaintiff also sold out some flats to the intending purchaser.

It has been further stated that Duija Devi and Bimla Devi though sold flats but did not sell the roof of the five storied building and some portion in a premises save except the common passages so far as may be reasonably necessary for the beneficial enjoyment and occupation of the flat by the owners who have purchased the same.

It is further stated that at the time of registration of Deed of Conveyance, the plaintiff reserves the exclusive right, title, interest and possession over the ground floor and also at the roof of the suit premises.

It is further stated that petitioner and erstwhile owner Duija Devi in total sold out 12 flats to the respondents and entire ground floor comprise of super built area is 2,800 sq. ft. Out of which the front portion ground floor area of 1,000 sq. ft. was kept in exclusive possession of the plaintiff and she

still owner of the said portion of the ground floor.

The disputes relates to ground floor of the schedule A property more-fully described in schedule B property. It is further stated that plaintiff is at present staying at premises no. 243/2H, A.P.C Road and her daughter Durga Jaiswal is staying at 4th floor being a flat nos. 2 and 3 in A schedule property.

It is further stated that petitioner on 20th March 2016 granted license for 700 sq. ft. of room in the ground floor for 36 months for running a bike showroom to M/s, Siliguri Riders on certain conditions stipulated in the agreement including payment of license fee. But that M/s, Siliguri Riders, in course of running their business, was prevented, obstructed and disturbed by the respondents as other flat owners since 2nd week of July 2018 and was continuing. In the meantime M/s, Siliguri Riders informed and communicated the matter by a letter dated 01.08.2018 to the plaintiff and her daughter. Even 6th August 2018 when plaintiff went to met with her daughter at the suit premises, she requested to the respondents not to take any steps to disturb the M/s, Siliguri Riders but respondent threatened to the present petitioner they would break open the wall of the said show-room and will make necessary construction to erect the water pipe in the ground floor of the said property and even on next date petitioner again was prevented to ingress and egress to the suit property.

Then the plaintiff has come to the court for getting lawful redress by filing the instant suit and prays for order of temporary injunction restraining the respondents and/ or their men, agents and servants from disturbing the right, title, interest, and peaceful possession in respect of the entirety of the ground floor as described in B schedule of the plaint and further prayed for restraining the respondents and/or their men, agents or servants from making any construction at any portion at the ground floor of the property including property as mentioned in schedule B.

In support of her claim, she has annexed various documents like probate, Will, Deed of Sales between Duija Devi and some respondents, Deed of Sales between Bimla Devi and some respondents, copy of sanctioned plan, letter of M/s, Siliguri Riders and the order of regulation of unauthorized construction and sketch map after regularization of sanctioned plan.

Respondents on the contrary have strongly raised objection in writing against the prayer of injunction made by the plaintiff. Ld. Lawyer for

the respondents has stated inter alia that previous owner Duija Devi Shaw and present plaintiff Bimla Devi Jaiswal have soled out the twelve flats to the respondents along with common passages as per rules and provisions of the prevailing law like West Bengal Apartment of Ownership Act and there is nothing left as exclusive right, title, interest and possession of the vendors herein plaintiff. So, there is no question of preventing the plaintiff for the enjoyment of the ground floor of the suit premises.

It is further submitted by them that plaintiff and previous vendor on receiving the consideration amount have sold out the entire ground floor through common passage to the flat owners and thereby they have no right to possess exclusively the 700 sq. ft. of showroom as alleged in the front portion of the ground floor and resultantly plaintiff's prayer for injunction shall be rejected as she has no land left in the suit premises. In support of their claim they have also filed all relevant sale deeds and sanctioned plan.

I have carefully gone through the plaint, injunction application of the plaintiffs and also the objection thereto. I have also carefully gone through all the annexures filed by the confronting parties in their respective support and their claim.

It reveals that the suit property was originally belonged to Jamuna Prasad Shaw who by way of Will bequeathed this property to his wife Duija Devi Shaw. In a suit property there is a five storied building comprised with a number of self contained flats. Duija Devi Shaw during her lifetime sold out some of the flats to the respondents. Thereafter, Duija Devi Shaw through her last Will of 07.10.2013 bequeathed the suit premises along with five storied building to Bimla Devi Shaw. without prejudice to the right, title and interest of the purchaser of the several flats already sold out. Bimla Devi has also sold out some of the flats to the respondents and in total Bimla Devi Jaiswal and Duija Devi Shaw sold out 12 self contained flats to the respondents.

Now, I have to consider whether the entire suit premises have been sold out by the plaintiff through the Deed of Sale in faovur of the 12 flat owners by way of common passage. For solving that question, it is to be mentioned first that each and every deed of sale executed by Duija Devi Shaw and also Bimla Devi Shaw speaks and shows that both the vendors reserved their exclusive rights of the roof of the suit premises. It is meant that roof of the suit premises of five storied building has not been sold out. Even a Deed of

Sale between Duija Devi Shaw and Sri Tulsi Das Roy dated 25th June 2003 in page 9 of the bottom portion states **“provided that purchaser will have no right of access to or use of the roof over the top floor which will remain the exclusive property of the vendor as well as no car two wheeler parking space is provided to the purchaser in the ground floor or the common passage by the vendor. “**

This proviso mutatis-mutandis used in all other deed of sale execute by the Duija Devi Shaw and Bimla Devi Jaiswal as vendor .

It is also fact that in each and every schedule of the deed of sale in favour of respondents there is a provisions of common passage in the ground floor as well as in the upwards floor, provisions for using the staircase, drainage, sewerage and sanitary fittings, water pipes, overhead tanks, underground reservoir etc.

After going through the sanctioned plan along with letter for unauthorized regulation of sanctioned plan including sketch map after regularization, it is revealed that in a ground floor of the suit premises there is a existence of one shop-room measuring 40ft X 12 ft. and the same exists since 1970 and after new construction that has been rehabilitated and used for business purpose.

But on meticulously going through the rituals of all the deed of sale it has not been reflected that the plaintiffs being a vendor has sold out that shop in a ground floor of the suit premises to any of the respondent or that has been left for common use by the flat owners. So, it is meant that shop-room is till possessed and owned by the plaintiff.

It should not be left out to mention that the suit premises is totally admeasuring about 6 cuttachs 12 chattack 65 sq. ft. including a five storied building standing thereon and entire ground floor 6 cuttachs 12 chattack 65 sq. ft. is equal to 4925 sq. ft. as carpet area but as per claim by the plaintiff the super built-up area of entire ground floor comes under 2800 sq. ft. Out of which 1000 sq. ft is a front portion of the ground floor. But from the regularized sketch map along with letter of regularization of unauthorized construction in a sanctioned plan supports the existence of shop-room in a ground floor measuring about 40 ft. X 12 ft. and the same apparently owned and possessed by the plaintiff.

If that be so, then plaintiff has the right to enjoy, possess that shop-

room in the ground floor.

Therefore, in the light of the discussion above, I am of the opinion that the plaintiff is entitled to get the order of injunction in respect of B schedule property i.e. 700 sq. ft of shop-room in the suit premises by way of allowing the application under Order 39 Rule 1 and 2.

Hence, it is

**Ordered**

that the respondents and their men, agents and servant, or assignees are hereby restrained from disturbing the peaceful possession of the plaintiff in respect of property in the ground floor as described in schedule B of the plaint and their men, agents and servant, or assignees are hereby further restrained from making any construction at any portion in the property in the ground floor mentioned in Schedule B of the plaint with effect from this day to till the disposal of the suit.

Accordingly the application under Order 39, Rule 1 & 2 CPC stands disposed of on contest.

To 17.09.2019 for hearing injunction application dated 07.07.2019 filed by the defendant no. 12.

Dictated & corrected by me:

Judge

Judge