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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 342/2023**

AKSHAY KUMAR JAIN

..... Plaintiff

Through: Mr. Rajeshwer K. Gupta and Ms.
Neetu Shukla, Advocates

versus

SAROJ JAIN & 2 ORS.

..... Defendants

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% **26.05.2023**

I.A. 10439/2023 (Exemption)

Subject to the plaintiff filing the clear, original and legible/typed copies of any dim documents on which the plaintiff may seek to place reliance, within four weeks from today, exemption is granted for the present.

The application is disposed of.

CS(OS) 342/2023

1. The instant plaint for possession, rendition of accounts, *mesne* profits and injunction has been filed on behalf of plaintiff seeking the following reliefs:-

“a) pass a decree of possession in favour of the plaintiff and against the defendants directing them to handover peaceful & vacant possession of the suit property i.e. Basement, Ground and Third Floor Portion of the property No. 69-F, Gautam



Nagar, New Delhi;

b) pass a decree of mesne profits in favour of the plaintiff and against the defendants directing them to pay Rs.7,55,000/- (Rupees Seven Lacs Fifty Five Thousand only) and further to pay Rs.5,000/- per day from the date of filing the suit till the vacant peaceful possession of the suit property i.e. Basement, Ground and Third Floor Portion of the property No. 69-F, Gautam Nagar, New Delhi, is handed over to the plaintiff;

c) pass preliminary decree directing the defendants to render true and correct accounts in respect of the rents realized/recovered by them from the tenants in respect of the portions of the property of the plaintiff i.e. Basement, Ground and Third Floor Portion of the property No. 69-F, Gautam Nagar, New Delhi;

d) pass a final decreed of accounts directing the defendants to make payment of the amount received by them from tenants as rent or otherwise in respect of portions of the property of the plaintiff i.e. Basement, Ground and Third Floor Portion of the property No. 69-F, Gautam Nagar, New Delhi;

e) the Local/Court Commissioner may kindly be appointed with directions to realize the rents from the various tenants of the suit property i.e. Basement, Ground and Third Floor Portion of the property No. 69-F, Gautam Nagar, New Delhi, which may be kept in a bank account and or further directions may be issued to the Ld. Local/Court Commissioner to disburse the money to the plaintiff and with such further directions as may be deemed necessary by the Hon'ble Court;

f) pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining them, their agents, tenants, servants, administrators, heirs, assigns, authorized attorneys and licensees etc. from selling, disposing of, creating third party(ies) interests by way selling or mortgaging etc. or in any manner whatsoever or from changing



the tenants or changing the nature of the suit properties by way of construction, addition, alteration or modification etc. in any form whatsoever, in respect of the suit property being Basement, Ground and Third Floor Portion of the property No. 69-F, Gautam Nagar, New Delhi;

g) award costs of the proceedings in favour of the plaintiff and against the defendants throughout; AND

h) Pass such other or further orders and relief may kindly be granted in favour of the plaintiffs as may be deemed necessary in the facts and circumstances of the case.”

2. Learned counsel appearing on behalf of plaintiff submitted that plaintiff's grandfather purchased a property being No. 69-F, measuring 176 sq. yds., out of Khasra No.107, situated at Gautam Nagar, New Delhi - 110049. It is submitted that Sh. Jagan Nath Jain had three sons namely Sh. Arun Kumar Jain, Sh. Anil Kumar Jain and Sh. Naresh Kumar Jain and there was settlement between the parties about the division of the immovable property of Gautam Nagar, New Delhi, which was reduced in writing on 12th October, 1998. It is further submitted that the father of the plaintiff Sh. Anil Kumar Jain died on 4th February, 1999 hence, document dated 12th October, 1998 was unauthenticated not being a registered document to convey the rights and title in the immovable property in favour of the parties, thereto, Sh. Jagan Nath Jain in his lifetime, executed his last and final registered Will dated 6th May, 2004 after revoking all his previous Wills, as per which plaintiff had rights and title in Basement, Ground, Third and Fourth Floor of middle portions of the property.

3. Learned counsel appearing on behalf of plaintiff submitted that the defendant No.1 is the second wife of plaintiff's father, who has occupied the



entire property in the absence of the plaintiff, with deceitful intention. The defendant No. 1 also filed a suit for permanent injunction against the plaintiff with his incorrect address with an application for injunction to restrain the plaintiff not to contact any party for sale of property and to ask for any rent from the tenants, he was proceeded *ex-parte*. It is further submitted that the suit was decided against defendant No.1. The plaintiff, in the meanwhile, took possession of 4th Floor of the subject property on 23rd September, 2012 without knowledge of the said suit.

4. Let the plaint be registered as a suit.
5. Issue summons in the suit.
6. The written statement(s) shall be filed within thirty days from the receipt of summons. Along with the written statement(s), the defendants shall also file affidavit of admission/denial of the documents of the plaintiff.
7. Liberty is given to the plaintiff to file replication(s), if any, within thirty days from the receipt of the written statement(s). Along with the replication(s) filed by the plaintiff, affidavit of admission/denial of the documents of the defendants be filed by the plaintiff.
8. List before the Joint Registrar on 25th July, 2023 for completion of service and pleadings.
9. List before the Court on 10th October, 2023.

I.A. 10438/2023 (u/O-XXXIX R-1 & 2 of CPC)

1. The instant application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of applicant/plaintiff seeking the following reliefs:-

“a) pass *ad-interim ex-parte* order thereby restraining the



defendants directing them, their agents, servants, assigns, administrators and authorized representatives etc. from letting out, alienating, selling, mortgaging or changing the tenants & nature and structure of the property in any manner by addition, alteration or renovation of Basement, Ground and Third Floor portions of the property No. 69-F, Gautam Nagar, New Delhi, in any manner till the disposal of the suit by this Hon'ble Court;

b) after passing ad-interim ex-parte injunction order as above, the same may kindly be made absolute till the disposal of the suit by this Hon'ble Court, New Delhi-II0019; AND

c) pass any other and further order and relief be granted to the plaintiff against the defendants as this Hon'ble Court may deem fit and proper under the circumstances of the case.”

2. Learned counsel appearing on behalf of applicant/plaintiff submitted that the defendants have already indulged in illegal practice by inducting and changing tenants on routine basis and also meeting with the property dealers to create third party interests and to part with possession by selling or mortgaging or alienating the suit property illegally and unauthorizedly. It is submitted that the defendants are trying hard to usurp the legitimate rights and interests of the plaintiff in the suit property i.e. Basement, Ground and Third Floor Portion of the property No. 69-F, Gautam Nagar, New Delhi, and have contacted several dealers to create third party interests by way of disposing the same in any manner whatsoever. It is further submitted that the defendant No.1 is still in furtherance of negotiation with the prospective buyers through property dealers or direct sale as such it is just expedient in the interest of justice to protect the rights of the plaintiff by way of an ad-interim *ex-parte* injunction order which may be passed by this Court.



3. Heard.
4. On filing PF within a week, issue notice to the defendants through all permissible modes, returnable before the Joint Registrar on 25th July, 2023.
5. List before the Court on 10th October, 2023.

CHANDRA DHARI SINGH, J

MAY 26, 2023

Dy/db

[Click here to check corrigendum, if any](#)