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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 460/2021 & I.A. Nos. 4937/2022 & 12499/2021.**
SUMAN SAWHNEY & ORS. Plaintiffs

Through: Mr. Rajiv Verma, Advocate.

versus

PANKAJ SAWHNEY Defendant

Through: Ms. Affifa Atiq, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
11.05.2022

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I.A. No. 12497/2021 (u/ Order XXXIX Rule 1 & 2 r/w Section 151 of the Code of Civil Procedure, 1908 [hereinafter "CPC"] seeking grant of ex parte ad interim injunction),

I.A. No. 12498/2021 (u/ Order XXXIX Rule 1 & 2 r/w Section 151 of CPC seeking grant of ex parte ad interim mandatory) and

I.A. No. 13321/2021 (u/ Order XXXIX Rule 4 of CPC seeking vacation of the status quo Order dated 24th September, 2021)

1. By way of the above-captioned suit, the Plaintiff, *inter alia*, seeks permanent injunction and partition of following properties [*hereinafter collectively referred to as "suit properties"*]: -

- (a) House/ Property No. 7726-28, Ward No. XV, Gopal Bhawan, Ram Nagar, Paharganj, Delhi-110055 [*hereinafter "Paharganj Property"*], and
- (b) Property No. 299, Ambika Vihar, near Paschim Vihar, New Delhi-110087 [*hereinafter "Ambika Vihar Property"*].



2. The case of the Plaintiff is that Paharganj Property is jointly owned by: (a) her deceased husband viz. Mr. Pramod Sawhney, and (b) her brother-in-law viz. Mr. Pankaj Sawhney (Defendant), by virtue of a Sale Deed registered as document No. 1248, Book No. 1, Volume No. 9933 at pages No. 41 to 46 registered with Sub-Registrar-III on 07th March, 2000. As regards, Ambika Vihar Property, claim of ownership is through late Mr. Pramod Sawhney, who was bequeathed a portion of Ambika Vihar Property under Will dated 10th December, 2006 and Will dated 10th December, 1997 of late Mr. Bansi Lal Sawhney (father of late Mr. Pramod Sawhney and Mr. Pankaj Sawhney) [*hereinafter collectively referred to as “Wills”*].

3. Ms. Affifa Atiq, counsel for the Defendant submits that the Wills relied upon by the Plaintiffs are disputed and are forged. She is, however, unable to give any response *qua* the Sale Deed in respect of Paharganj Property. In the application seeking vacation of injunction, it is contended that late Mr. Bansi Lal Sawhney, is also survived by three daughters namely Ms. Chandra Kanta Sethi, Ms. Manju Suri and Ms. Madhu Goel. The Plaintiffs have approached this Court without making full and requisite disclosure of pendency of the partition suits [as detailed in I.A. No. 13321/2021] filed by the above-named sisters, which are pending consideration before the Trial Court. It has also been contended that Plaintiffs have never been in possession of Ambika Vihar Property and there is no documentary proof to prove their possession. Under the garb of Order dated 24th September 2021, the Plaintiffs have put locks even on the portion which was lying locked. By falsely alleging to be in possession of first floor



of the Ambika Vihar Property, Plaintiffs have obtained an order to enter the said portion. The said property is in fact an ancestral property and not only of the Plaintiffs and Defendant, but also of daughters of late Mr. Bansi Lal Sawhney who are claiming a share therein under partition suits, referred above.

4. The Court has heard the counsel for parties. The instant suit is, *inter alia*, seeking partition and injunction of the suit properties, and there is a serious dispute regarding title. Therefore, during pendency of the suit, parties must maintain status *quo* regarding the title and possession of the afore-mentioned suit properties.

5. However, the controversy regarding possession of the Ambika Vihar Property needs to be resolved. *Vide* Order dated 24th September, 2021, the Court passed an *ad interim ex-parte* injunction directing the parties to maintain status *quo* regarding title and possession of both the suit properties and Plaintiff's ingress and egress to the first floor was protected. Relevant portion of the said order reads as under: -

“8. Till the next date of hearing, the parties shall maintain status *quo* in respect of the title and possession of the suit properties i.e.. House No. 299, Ambika Vihar, Near Pashchim Vihar, New Dethi-110087 and House No. 7726-28, Private No. 1 & 3, Ward No. XV, Gopal Bhawan, Ram Nagar, Pahar Ganj, Delhi-110055, and the defendant shall not prevent the ingress and egress of the plaintiffs to the first floor and roof through the main gate of the suit property at Ambika Vihar.”

6. Subsequently, on an application filed by the Defendant under Order XXXIX Rule 4 of CPC [i.e., I.A. No. 13321/2021], the Court *vide* Order dated 08th October, 2021, directed as under: -



“5. In view of the application moved under Order XXXIX Rule 4 CPC and the submissions of the learned counsel for the plaintiffs that the door at premises bearing No.7718-7728, Ward No. XV, Gopal Bhawan, situated at Ram Nagar, Pahar Ganj, New Delhi 110055, has now been locked, the status quo be maintained by both parties, till the next date of hearing.”

7. The above extracted Order notes the lock put on the Paharganj Property. However, it is pointed out that the lock has actually been put on the Ambika Vihar Property and there is inadvertent mistake in the said Order and an application for correcting the same was filed immediately when the error was noticed.

8. Be that as it may, Mr. Rajiv Verma, counsel for Plaintiffs has argued that under the afore-noted Wills – first floor and 50% of terrace rights *qua* Ambika Vihar Property belong to late Mr. Pramod Sawhney, whose share has now fallen into the hands of the Plaintiffs (jointly). Mr. Verma argues that the Plaintiffs are in possession of the afore-said portion. However, since their possession was being disturbed and ingress and egress to the above-said portion of the Ambika Vihar Property was being restrained by the Defendant, the Plaintiffs were constrained to approach this Court by way of the present suit. However, despite the status *quo* Order dated 24th September, 2021, Plaintiffs presently cannot take benefit of the protection order as the Defendant has put a lock on the door leading to first floor of the said property. On 1st, 4th, 5th & 7th October, 2021, the Plaintiffs attempt to go to the first floor could not be accomplished. They found that the main entrance door was lying open, but the wooden door at ground floor, which used to always remain open, was locked by the Defendant. This was done deliberately to prevent Plaintiffs’ ingress and egress to their first floor and



terrace of the said property. Mr. Verma further contends that the terrace has been in common use since 1991 and nevertheless, the Defendant has no right to lock the passage to the same. He further contends that the access to the said property was restricted by the Defendant despite the 1st status *quo* Order dated 24th September, 2021, taking advantage of the fact that the Plaintiffs do not reside in the said property.

9. For this reason, the Plaintiffs have also filed I.A. 4937/2022 seeking contempt action against the Defendant. Mr. Verma further argues that in terms of the subsequent status *quo* Order dated 08th October, 2021, the Plaintiffs access to the first floor is now restrained as the said order also makes a mention of the lock on the door of Ambika Vihar Property (wrongly mentioned as Pahar Ganj Property).

10. In order to restrain the Defendant from interfering with Plaintiff's possession, the critical question to be determined is whether the Plaintiffs have *prima facie* demonstrated to be possession of the first floor of Ambika Vihar Property, particularly as on the date of 1st status *quo* Order dated 24th September, 2021. This can be discerned from the documents on record. The Mutation Letter dated 18th July, 2003 written by Mr. Pankaj Sawhney (Defendant) addressed to the Dy./ Asst. Assessor and Collector, Municipal Corporation of Delhi [**"MCD"**], reads as follows: -

"Sub:- MAUTATION/ SUB-DIVISION OF GROUND FLOOR 50% ROOF RIGHTS OF BUILT UP PROPERTY NO. 299, AMBIKA VIHAR, NEW DELHI-110087 IN THE NAME OF SHRI PANKAJ SAWHNEY S/O. LATE BANSI LAL SAWHNEY R/O. 299, AMBIKA VIHAR, NEW DELHI-110087



Respected Sir,

It is a humble request that I have acquired/inherited Ground Floor with 50% ROOF RIGHTS OF BUILT UP PROPERTY No. 299, Ambika Vihar, New Delhi-110087 from my father Shri Bansilal Sawhney S/o. Shri Ram Chand Sawhney R/o. 299, Ambika Vihar, New Delhi-110087 who was the absolute owner of the above said property and who had expired on 20/06/2002.

I am submitting all required relevant documents in this regard and also undertake to indemnify the MCD against all losses, changes, claims and expenses etc.

So I request your good honour please to mutate the above said property in my name in the record of MCD House Tax Deptt. regarding making payment to property cases only.

Thanking you,

Yours faithfully

sdf

(PANKAJ SAWHNEY)

S/O. LATE BANSILAL SAWHNEY

R/O. 299, AMBIKA VIHAR,

NEW DELHI-110087 ”

11. A similar request was made on the same date [i.e., 18th July, 2003] for mutation by late Mr. Pramod Sawhney, which reads as under: -

“Sub:- MUTATION/ SUB-DIVISION OF FIRST FLOOR 50% ROOF RIGHTS OF BUILT UP PROPERTY NO. 299, AMBIKA VIHAR, NEW DELHI-110087 IN THE NAME OF SHRI PRAMOD SAWHNEY S/O. LATE BANSILAL SAWHNEY R/O. 299, AMBIKA VIHAR, NEW DELHI-110087

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I am submitting all required relevant documents in this regard and also undertake to indemnify the MCD against all losses, changes, claims and expenses etc.



So I request your good honour please to mutate the bove said property in my name in the record of MCD House Tax Deptt. regarding making payment to property cases only.

Thanking you,

*Yours faithfully
sdf*

*(PRAMOD SAWHNEY)
S/O. LATE BANSI LAL SAWHNEY
R/O. 299, AMBIKA VIHAR,
NEW DELHI-110087"*

12. A perusal of the afore-noted documents indicates that the Defendant has claimed ownership and inheritance only in respect of ground floor and 50% of roof/ terrace rights in Ambika Vihar Property and also acknowledged late Mr. Pramod Sawhney's ownership over the first floor and 50 % of roof/ terrace of the said property. This division and ownership of respective portions was claimed by the brothers in line with the bequest under the Wills that is now disputed.

13. The share of late Mr. Pramod Sawhney, the Plaintiffs have subsequently applied for and obtained mutation in their respective names.

14. Although the mutation in the records of MCD cannot be a conclusive proof of title, however, the same demonstrates that the brothers viz. late Mr. Pramod Sawhney and Mr. Pankaj Sawhney, accepted their rights of inheritance *qua* Ambika Vihar Property in terms of the Wills. There is thus, a strong presumption of exclusivity of possession in respect of Ambika Vihar property in favour of the Plaintiffs and Defendant, as per the above mutation letters.



15. Mr. Kumar has also drawn the attention of this Court to various photographs annexed with the plaint and other documents, to show that the first floor is in their possession. Such documents are in the nature of bills, property tax receipts, LPG connection issued in the name of Plaintiff No. 1 *qua* the Ambika Vihar Property, etc. Although Plaintiffs do not permanently reside in the Ambika Vihar Property, however, their possession of the first floor of the said property is thus *prima facie* established and therefore, access thereto, by virtue of the lock in place by the Defendant, cannot be restricted. The Defendant has also filed documents to depict their possession of the Ambika Vihar Property which, however, do not establish possession of the first floor. That said, the effect of the suit of partition filed by the sisters of the parties will have to be examined at a later stage and that cannot be a ground to deny the injunction prayed for by the Plaintiffs.

16. Initially, *vide* Order dated 24th September 2021, Defendant was directed not to prevent Plaintiffs' ingress and egress to the first floor and roof/ terrace through the main gate of the Ambika Vihar Property. This position has been altered by virtue of the subsequent Order dated 08th October 2021, when the Court noted about the lock on the door leading to the first floor, although as observed above, the said Order wrongly describes the property. Considering the above facts and circumstances, it is directed that while the parties shall continue to maintain status *quo* in respect of the suit properties; *qua* Ambika Vihar Property, it is directed that the Plaintiffs' possession of the first floor and right to ingress and egress shall not be disturbed or interfered with by the Defendants during the pendency of the



present suit. The Defendant shall keep open the main entrance gate and also the door leading to the first floor so as to allow the Plaintiffs to access the same at all times. *Insofar* as the terrace rights are concerned, both the parties shall have access to the same. In case there is a lock on the entrance/ door to the terrace, the key thereof shall be with both the parties.

17. With the above directions, the present applications are disposed of.

CS(OS) 460/2021

18. List before the Ld. Joint Registrar for completion of pleadings on the date already fixed i.e., 30th May, 2022.

19. List before the Court after completion of pleadings, for framing of issues and consideration of the contempt application.

SANJEEV NARULA, J

MAY 11, 2022

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(corrected and released on 15th May, 2022)