

(1997) 09 DEL CK 0095
In the Delhi High Court
Case No : Suit No. 1290 of 1996

Anita Shinh (Chauhan) and Another

APPELLANT

Vs

Kedar Nath and Others

RESPONDENT

Date of Decision : 27-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1997) 70 DLT 41

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : D.R. Mahajan, Kamlesh Mahajan and Sandeep Sethi, for the Appellant;

Judgement

K.S. Gupta, J.

(1) This order will govern the disposal of I.A. Nos. 4924/96, 8868/96 and 9193/96.

(2) I.A. No. 4924/96 under order 39, Rules 1 and 2 read with Section 151, Cpc has been filed by the plaintiffs alleging that Sunil Chauhan, husband of plaintiff No. I and father of minor plaintiffs 2 and 3, was the owner of 1 /3rd share in house No. 6199, Gali No. 1, Block No. 1, Karol Bagh Along with defendants 1 and 2. Defendants have threatened the plaintiffs to leave the second floor portion of the aforesaid house to enable them to sell it to a third party. Defendants have no right to alienate the house. It was prayed that by issue of an ad interim injunction defendants be restrained from disturbing the peaceful possession of the plaintiffs over the second floor portion of aforementioned house. Defendants are further sought to be restrained from alienating, mortgaging or parting with possession of the house.

(3) Defendants have contested the application by filing a joint reply. It is alleged that defendants 1 and 2 are the absolute owners of the house. Sunil Chauhan did not have 1 /3rd share therein. It is denied that the defendants held out any

threat to the plaintiffs or asked them to leave the house much less to sell it. It is not denied that the plaintiffs are in occupation of the second floor portion of aforesaid house No. 6199.

(4) At the outset it may be stated that Sh. Sandeep Sethi appearing for the defendants conceded that in view of the statement made by him on August 30, 1996 as well as the stand taken in para 3 of the written statement, defendants have no objection to the grant of prayer as made in Clause (a) of para 9 of this I.A. However, to contention advanced by Sh. Sethi was that the plaintiffs are not entitled to the grant of relief as claimed in Clause (b) as the defendants 1 and 2 are the absolute owners of aforesaid house No. 6199. In support of this statement my attention was drawn to the copies of the lease deed dated January 4, 1971, challan in regard to payment of ground rent dated June 18, 1996 and receipt of property tax dated July 15, 1996 placed on the file by the defendants. First two documents go to show that the lease of the land comprised in aforesaid house No. 6199 was granted by the D.D.A. in favor of defendants 1 and 2 and it is they who have been paying ground rent thereof to the D.D.A. Said receipt dated July 15, 1997 indicates that the house in question is assessed to property tax by the Corporation in the names of defendants 1 and 2. plaintiffs have not filed any document whatsoever in regard to deceased Sunil Chauhan being owner to the extent of 1/3rd share in the house Along with defendants 1 and 2. That be so, plaintiffs cannot be said to have made out even a prima facie case for grant of the relief claimed in above Clause (b). I.A. is, Therefore, allowed only to the extent that pending suit the defendants would not disturb the possession of the plaintiffs over the second floor portion of aforesaid house No. 6199. Ex-parte interim order dated May 23, 1996 stands modified accordingly.

(5) In I.A. No. 8868/96, out of the many reliefs claimed by the plaintiffs only the relief seeking direction to the defendants to put up a door at the second floor on the staircase leading to the top floor on the house in question was pressed before me. In regard to this relief it is alleged that defendant No. 3 came to the top floor of the house Along with his three friends and there they started drinking and using abusive language. For making use of the accommodation on the second floor it is necessary that a door is put on the staircase leading to the top floor which should be opened and closed only by the plaintiffs.

(6) In the reply it is stated that the defendants dry their clothes and during load-shedding take refuge to the top floor. It is emphatically denied that defendant No. 3 went to the top floor of the house with three of his friends or indulged in drinking and using abusive language as alleged. It is stated that defendant No. 3 is a teetotaler and defendants need free access to the top floor and obstruction thereto is likely to seriously prejudice them.

(7) On September 30, 1996 following order was passed in aforesaid I.A. 8868/ 96 by my learned predecessor :

"Be listed for arguments on 9.12.1996. In the meantime, defendants shall not

cause obstruction to the entry to the plaintiff and the members of her family in the premises in question. If the plaintiff wants to install any door she may do so at her own costs but without prejudice to the rights and contentions of defendants and their entry to the terrace shall not be obstructed in any way. plaintiff may procure two keys of the lock of the door, if any, affixed by her. One key of the door shall be handed over to the defendants."

(8) Feeling aggrieved defendants filed I.A. No. 9193/96 and by the order dated October 3, 1996 operation of the aforementioned order was suspended with direction to the parties not to cause any obstruction to each other in using the staircase from ground floor to the top floor portion.

(9) Admittedly defendant No. 2 is the father while defendant No. 1 is the grandfather of deceased Sunil Chauhan. Defendant No. 3 is the brother of the said deceased. Site plan of the aforesaid house No. 6199 is placed on the file. During the course of arguments a suggestion was thrown that plaintiff No. 1, for making proper use of the accommodation on the second floor may put up a door at the entrance of the passage in between the store and the kitchen as shown in the site plan but the suggestion was not acceptable to her. If a door is put in the staircase at the opening on the second floor as claimed by the plaintiffs, same is likely to deprive the defendants who are admittedly in occupation of the accommodations on the ground and the first floor of the house, the use of the top floor by them. How can defendants 1 and 2, who are prima facie the owners of the house in question be deprived of the use of the top floor thereof by the plaintiffs ? plaintiffs thus must be held to also not made a Prima facie case for seeking direction to the defendants to put up a door on the second floor and balance of convenience too is not in plaintiffs favor nor would they suffer any irreparable injury if the injunction prayed for is not granted to them. Both the I.As. are disposed of accordingly and the order dated October 3, 1996 is vacated.