

(2000) 12 DEL CK 0017

In the Delhi High Court

Case No : FAO (OS) No.282 of 2000 and C.M. 1384 of 2000 (Cross Objections)

E.C.E. Industries Ltd.

APPELLANT

Vs

E.C.E. House and another

RESPONDENT

Date of Decision : 20-12-2000

Acts Referred:

Citation : (2001) 3 AD 599 : (2001) 3 CivCC 439 : (2001) 4 RCR(Civil) 57

Hon'ble Judges : Mukul Mudgal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr.S.K.Misra, Mr.Anil Kumar, for the Appellant; Mr.P.K.Seth, for the Respondent

Judgement

Devinder Gupta, J.—The order passed on 19.7.2000 by learned Single Judge in IA.2309 of 2000 in suit No.283 of 1994 is under challenge in this appeal by defendant/appellant No.1. The plaintiff/respondent has also filed cross objections.

2. By the impugned order, the defendant/appellant was directed to maintain status quo with respect to the space as shown as EFGH in plan annexure-P1 attached to the application and was further restrained from creating third party interest in respect to space ABCD.

3. The defendant/appellant has challenged the impugned order, inter alia, on the ground that learned Single Judge acted with material irregularity in exercise of his jurisdiction in proceeding to pass an order with respect to that part of the property, which is not the subject matter of the suit. Being beyond the scope of the suit no order of restraint ought to have been put on the appellant. Learned counsel for the appellant also questioned the legality and validity of the impugned order even on merits urging that absolutely no right, title or interest vests in favor of the plaintiff/respondent concerning any part of the property shown within points ABCD or within points EFGH in plan (Annexure-P1).

4. Learned counsel for the plaintiff/respondent on the other hand has not only tried to support the impugned order but has prayed that in addition to the relief

granted by learned Single Judge, the order further deserves to be modified by allowing the full reliefs as claimed in the application thereby restraining the appellant from changing the status quo of the property shown within points ABCD in annexure-P1 attached to the application.

5. Learned counsel for the parties took us through the entire record.

6. The suit originally was instituted on 31.1.1994 by the plaintiff, which is an Association of 24 Apartment owners in E.C.E.House (Main Ground Floor) 28, Kasturba Gandhi Marg, New Delhi, being a society registered under the Societies Registration Act, 1860. The plaint was amended twice. The last amended plaint was filed on 5.5.1995.

7. It is alleged in the plaint that defendant No.1 has allotted/sold and transferred to its members 24 Apartments (office flats) on the ground floor of the main building known as "ECE House", total covered area of which is 10146 sq.ft. There is an open space measuring approximately 4400 sq.ft. in front of the apartments, which is appurtenant to these apartments and is shown in red colour in the plan annexed to the plaint as Annexure-P1. In addition there is also another open space described as green in Annexure-P.1 annexed with the plant, used as garden, appurtenant to these apartments, which too belongs to the members of the plaintiff association. Defendant No.1 allotted/sold and transferred the aforesaid apartments in favor of different members of the plaintiff's association inclusive of proportionate area in the passage and W.C. together with all manners of rights, liberties, easements and appurtenance right after Realizing full sale consideration. The open space shown in red and as green in Annexure-P1 is compulsorily to be left unbuilt under the building bye-laws. Under the Delhi Apartment ownership Act, 1986, the common areas and the facilities belong jointly to all the apartment owners. In this back ground the plaintiff has in the amended plaint prayed for the following reliefs:-

"(i) to pass a decree for recovery of Rs.20,94,591.00 (Rupees twenty lacs ninety four thousand five hundred ninety one only) in favor of the plaintiff and against the defendants;

(SIC)ii to declare that defendant no.1 has ceased to have any right/interest etc. in the aforementioned open space shown in red colour in the plan annexed hereto as Annexure-P.1 and it is only the plaintiff which is entitled to deal with it and receive charges in respect of the open space shown in red colour in the plan annexure P-1 from the defendant no.2 at the aforesaid rate of Rs.60,276.00 p.m. till 31.3.1996 (the currency of the agreement) and thereafter to deal with it in any manner whatsoever in accordance with law;

(iii) to pass a decree for permanent injunction in favor of the plaintiff and against the defendant no.1 restraining defendant no.1 from Realizing any charges whatsoever in respect of the space shown in red colour in the plan annexure-P.1 from the defendant no.2 and interfering in any manner with the exclusive rights of the plaintiff and its members in respect of their apartments and their right to

lease their apartments and the said open space lying appurtenant to their apartments. The defendants be also restrained by way of permanent injunction from encroaching upon the open space including the open space (green) referred to above and/or any part thereof in any manner whatsoever and be prohibited from putting any boarding and/or creating any blocked thereon of any nature whatsoever;

(iv) to direct defendant no.1 not to interfere in the administration of the affairs in relation to these apartments and the property appertaining thereto and the management of common areas and facilities pertaining to these apartments by the plaintiff which is the association of all the apartments owners of ECE House (Main Ground Floor) and further the defendant no.1 be directed to remove the hoarding which has been illegally put by it on the open space (green) referred to above;

(v) to direct defendant no.1 to get the apartment deeds of the different owners, members of the plaintiff association, registered with the Registrar in accordance with relevant provisions of Delhi Apartment ownership Act, 1986."

8. There is no dispute amongst parties that on an earlier application filed under Order 39 Rules 1 and 2 C.P.C. status quo has been directed to be maintained with respect to the area shown as red and also as green in the plan (Annexure-P.1) attached to the plaint. There is no other separate plan filed with the plaint, even after the plaint was amended. Second application (IA.No.2309/2000) was filed by the plaintiff on 6.3.2000 annexing therewith copy of the same plan. However, in the said application reliefs have been prayed with respect to some other portion of the property, which has been delineated by points ABCD and also for a smaller portion therein shown as EFGH. In the said application the plaintiff prayed for an order of injunction restraining defendant no.1 from encroaching upon the rear open space shown by letters ABCD in plan Annexure-P1 and from carrying on any construction activity on any part of the rear space referred to by points EFGH in the said plan.

9. In reply defendant No.1, in addition to opposing the application on merits, specifically took a plea that this area for which injunction has been prayed is not a part of the suit property.

10. Considering the respective stand of the parties, learned Single Judge while deciding the application observed that the plaint does not make reference to the portion ABCD. Despite noticing this fact learned Single Judge proceeded to pass the impugned order with respect to portions ABCD and EFGH.

11. In para 11 of the application, the plaintiff has laid foundation for grant of temporary injunction for the area shown within points ABCD and EFGH, which admittedly is located at the rear of the property. It is alleged that in addition to the area shown as red and green in the plan Annexure-P.1 attached to the plaint; there is also some open space in the rear appertaining to the said flats, which is compulsorily to be left unbuilt under the building bye-laws. Under the Delhi

Apartment ownership Act, 1986, the common areas and facilities belong jointly to all the apartments owners. The common areas and facilities as defined in the said Act include parking areas and also the land on which such building is located and garden, appurtenances belonging to the land and the building easements, storage spaces, fire escapes and exists, power and light switch rooms, installations, stairs and stairways etc. Except for making such averments in the application no effort has been made by the plaintiff to incorporate this area as part of the plaint. Thus the relief prayed for is for a part of the property, which is not subject matter of suit.

12. To the above submission of the plaintiff made in para 11 of the application, defendant No.1 specifically denied that the said portion was the one over which the plaintiff had any right, title or interest. The reply stated:

"There have been constructed portions on the ground floor of main building including urinal, electric switch room and fire escape exit, however, neither they can be termed appurtenant to the alleged flats of the members of the plaintiff nor the plaintiff can claim any rights therein. The constructed portion EFGH as shown by the plaintiff is not correct according to the dimension. The area ABCD is not a common area and the plaintiff does not have any rights therein. The allegation that the defendant No.1 has no right and/or interest therein is incorrect. Neither under the agreements to sell executed with different persons who have been allotted spaces on the ground floor nor in any other manner it can be inferred that the area of the back ABCD is a common area and only the allottees of spaces on the ground floor have the exclusive rights nor such inferences can be drawn either in facts and/or in law in respect of construction portion EFGH. The allegation that the defendant No.1 has no right or interest therein is denied in the facts and circumstances. The allegation is false to the knowledge of the plaintiff. The plaintiff has been filing false applications with a view to prejudice this Hon'ble court and carry out illegal and unauthorised construction in connivance with defendant No.2 who had been inducted as a tenant."

13. Needless to add that the area shown by points EFGH is also located within points ABCD at the rear of the property. The plaint is accompanied with a plan annexure-P1 wherein no reference has been made to the rear portion of the property and we may say so that rightly learned Single Judge pointed out that the portion ABCD is not at all referred to in the plaint. Yet learned Single Judge proceeded to pass restraint order against the defendant for a property, which is not subject part of the plaint. Power of the Court to grant injunction is limited only with respect to the property, which is the subject matter of the suit and cannot be extended beyond that. Courts will have only jurisdiction to pass such orders of interim measures by which an endeavor is made to preserve the subject matter of the suit. It cannot extend to a property, which is outside the plaint. May be that the plaintiff may be having some rights with respect to some other portions of the property, which is now shown in IA.2309 of 2000 but not

referred to in the plaint, but in this suit the plaintiff could not have claimed relief thereto. Nowhere in the entire pleadings in the suit we were shown any such right asserted by the plaintiff with respect to the part of the property for which impugned order has been passed. As such learned Single Judge was not justified in granting injunction so as to operate for a property outside the suit. On this score alone the impugned order will be liable to be set aside.

14. Consequently, the appeal is allowed. Impugned order is set aside. IA.2309/2000 is dismissed. Resultantly, cross objections (CM.1384/2000) are also dismissed as infructuous.

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