

(1997) 09 DEL CK 0073

In the Delhi High Court

Case No : Interim Application No's. 505 and 2701 of 1997 and Suit No. 110 of 1997

J.N. Luthra

APPELLANT

Vs

S.N. Luthra

RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 35 Rule 1

Citation : (1997) 70 DLT 788

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : P.N. Kumar and S.K. Luthra, for the Appellant;

Judgement

K.S. Gupta, J.

(1) plaintiff has filed suit for prohibitory & mandatory injunctions alleging J.C. Luthra, father of both the parties, had seven children -4 sons and 3 daughters. In 1954, J.C. Luthra got built house No. 151, Golf Links, New Delhi. In September, 1979, he expired and as desired by him ground floor portion of the said house, one garage and two servant quarters on the first floor fell to the share of M.M.S. Luthra, elder brother of the plaintiff while the remaining portion, of the house was to be shared jointly by the plaintiff and the defendant. Other legal heirs were adequately compensated by aforesaid J.C. Luthra. It is alleged that under an oral mutual agreement between the plaintiff and defendant, defendant was to occupy the entire second floor and one bedroom and a bath located adjacent to the staircase on the first floor of the house. Remaining portion of the first floor was to be occupied by the plaintiff. plaintiff was residing in a Government accommodation allotted to his wife in Bapa Nagar and in January, 1993, he had to vacate that accommodation and to shift to the first floor portion which fell to his share. Defendant on coming to know about shifting by the plaintiff, expressed his desire that the second bedroom and a bath on the first floor be given to him against one bedroom and bath on the second floor. To

keep unity and peaceful atmosphere, plaintiff acceded to that demand of the defendant. It is further alleged that when the plaintiff was about to shift, the defendant again changed his mind and came forward with another proposal that the drawing & dining rooms on the first and second floors be partitioned and both the parties should get one portion each thereof. plaintiff had no other alternative but to consent for the proposal. On 26.12.1996, plaintiff left for Kuwait to join his wife. In his absence, defendant started making additions & alterations in the common Verandah on the front side shown in white colour in the site plan annexed with the plaint thereby depriving the plaintiff of the ingress and egress to the portion of the house as shown in blue colour in the site plan. On being informed by his son Rajesh Luthra about the additions and alterations the plaintiff came to Delhi on 13th January, 1997, to sort out the issue. Defendant by removing the windows of the drawing & living room on the front side want to fix them on the front of the Verandah. He further intends to cover the Verandah by fixing window panes in order to have to exclusive possession over the common Verandah.

(2) In the suit, is No. 505/97 under Order 39, Rules 1 & 2 read with Section 151, Cpc was filed by the plaintiff seeking ad interim injunction and by the order dated 17.1.1997, defendant was directed to maintain status quo in the meantime.

(3) In the written statement defendant has not denied that House No. 151, Golf Links was owned by J.C. Luthra. It is alleged that as per the Will dated 11.5.1970 executed by him, first floor with barsati, one garage and one set of servant quarter on the two garages is to belong in equal charges to the plaintiff and the defendant. plaintiff has glazed the back Verandah behind the room in his occupation. He also got built a balcony unauthorisedly. It is emphatically denied that there has been any oral agreement dividing the aforesaid portion of the house as alleged. It is stated that the front Verandah is in exclusive possession of the defendant and glazing thereof would not cause any inconvenience to the plaintiff. Verandah is being glazed solely with a view to prevent the area from getting dusty. It is alleged that the plaintiff can easily have a separate access direct from the staircase to the living room by opening a door.

(4) Defendant has sought the vacation of the status qua order dated 17.1.1997 by filing is No. 2301 /97 under Order 39, Rule 4 read with Section 151, CPC on the pleas taken by him in the written statement.

(5) Contention advanced by Mr. S.K. Luthra appearing for the defendant was that in the past plaintiff glazed the rear Verandah which is bigger in size compared to the front Verandah besides unauthorisedly constructing a balcony. Area in occupation of the plaintiff is more compared to the defendant. Therefore, according to him, in equity defendant who is in exclusive possession of the front Verandah, is entitled to have the same glazed. Needless to repeat that in the written statement defendant has denied that there had been any division by metes & bounds of the portions of the house which fell to the share of the parties to the suit as per the Will dated 11.5.1970 as alleged by the plaintiff. According

to the defendant, portions in respective occupation of the parties are on account of availability of accommodation at the time they came to occupy the same.

(6) In the plaint and also the rejoinder plea taken by the plaintiff is that the front Verandah is in common occupation of both the parties which plea is supported by the fact that the entrance to the living room on the first floor adjacent to the staircase admittedly in occupation of the plaintiff is, through the front Verandah. Thus, there being serious disputes about the nature of the occupation/possession of the parties over the front Verandah and division of the house by metes & bounds, the defendant cannot be allowed to glaze the front Verandah and use the area thereof to the exclusion of the plaintiff. Factum of the plaintiff being in occupation of a bigger area or having glazed the rear Verandah have no relevance whatsoever in the matter. plaintiff has thus made out a prima facie case for grant of ad interim injunction prayed for obviously, balance of convenience is also in his favor and he is likely to suffer irreparable injury if the interim injunction is not granted to him.

(7) For the foregoing discussion, IA. No. 505/97 is allowed to the extent that pending suit, defendant will not make any additions or alternations in the front Verandah of aforesaid house No. 151. Order dated 17.1.1997 stands modified accordingly. is No. 2701/97 is dismissed.