

(2022) 01 DEL CK 0057

In the Delhi High Court

Case No : Civil Suit (OS) No. 329 Of 2021, Miscellaneous Application No. 8577 Of 2021

Kidar Nath Babbar & Anr.

APPELLANT

Vs

M/S. Baba Ventures Pvt. Ltd

RESPONDENT

Date of Decision : 07-01-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 2 Rule 2

Citation : (2022) 01 DEL CK 0057

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : Rakesh Kakar, Anil Kher, Sandeep Thukral

Judgement

Asha Menon, J

1. This order will dispose of the application moved by the plaintiffs in their suit for possession, seeking interim restraints on the defendant.

2. The case of the plaintiffs is that they are the owners of property, i.e., Eastern side of plot No.B-19 Okhla Industrial Area, Phase-L, New Delhi,

admeasuring the area of 22811 sq. feet (2125.64 sq. ms). It is their case that on 10th April, 1985, a Perpetual Lease Deed was executed in the name

of the National Cooperative Consumer Federation of India Limited (NCCF) in respect of the property i.e., B-19 Okhla Industrial Area, Phase-1, New

Delhi admeasuring area of 5634.38 sq.yards (4710.7 sq. mtrs.) On 14th October, 1996, NCCF entered into an agreement of Collaboration agreement

for the development of the said property i.e. B-19, Okhla Industrial Area, Phase-I, New Delhi with M/s. Devika Builders Private Limited M/s DBPL).

As per the collaboration agreement both decided to share the plot of land and building on 50:50 basis. NCCF took the possession of its share, towards

the West side of the Plot B-19 i.e. adjoining Plot B-20 Okhla Industrial Area Phase-1, New Delhi whereas M/s DBPL took the possession of the

Eastern portion of the B-19 Okhla Industrial Area Phase-1, New Delhi i.e. adjoining to Plot B-18 Okhla Industrial Area Phase-1, New Delhi. The plot

was also vertically divided in the middle in a North-South access by a straight line, and the two portions were numbered B-19 (A) situated on the

Western side belonging to NCCF and B-19 (B) situated on the Eastern side belonging to M/s DBPL.

3. Subsequently, i.e., on 3rd July, 2009, DBPL sold their portion measuring 2483.73 sq. meters, to the plaintiffs and executed a Sale Deed through their

Attorney Sh. Hanwant Rai Suri. After purchasing the plot, Plaintiffs came to know that their portion i.e. Plot B-19(B) was falling short of the

measurements given in the Sale Deed as the angle which existed towards the plot No. B-18 by 22'4" Feet was missing. The plaintiff No.1

requested the Delhi Development Authority for a proper and accurate demarcation of the plot of the plaintiffs. On 23rd September, 2009 the official of

the DDA after due inspection reported that the plot of the plaintiffs on one side, i.e. Eastern side was less by 22'4" Feet in comparison with the

original site plan.

4. The plaintiffs, therefore, filed Writ Petition No.5089/2013 for a writ of Mandamus directing the DDA to make the proper demarcation of the

premises but the same was withdrawn. Thereafter, Plaintiffs filed Civil Suit No.683/2013 (old) i.e., CS NO.51123/2016, titled as Kidar Nath Babbar &

Anr. Vs DDA & Ors. for mandatory and permanent injunction. A Local Commissioner was appointed by the learned Senior Civil Judge on 02nd

January, 2014 to inspect the properties i.e. B-19 and B-18 Okhla Industrial area Phase-1 and report about the construction of the boundary wall etc.

pursuant to the demarcation. A detailed report was filed by the Local Commissioner on 4th January, 2014 recording that the plot area of the plaintiffs

was less by 380.78 sq. yards which was under the possession of the defendant. However, the suit was dismissed vide order dated 6th August, 2018

on the ground that without possession, the injunction suit was not maintainable. The appeal was also dismissed by the learned ADJ (South-East), Saket

Courts on 20th January, 2020. Thereafter, the present suit has been filed.

5. Mr. Rakesh Kakar, learned counsel for the plaintiffs has submitted that the land

encompassed in the angular portion reflected in the original site

plan had been amalgamated into their plot by the defendant. This was also evident from the fact that the plot area of B-18 was around 1.5 acres

whereas as per the DDA records no plot between B-26 to B-18 had an area of 1.5 acres. Thus it was clear that the defendant was in the possession

of excess area and the plaintiffs were entitled to the possession of the area that had been taken away from them. Hence, it was submitted that the

interest of the plaintiffs be protected by means of an interim order restraining the defendant from transferring or creating third party interests in the

encroached portion as shown in red in the site plan.

6. In the Written Statement of the defendant various preliminary objections have been taken, including the maintainability of the suit under Order II

Rule 2 CPC on the ground that instead of withdrawing the earlier suit bearing Civil Suit No.683/2013 (old), the plaintiffs could have amended the said

suit to incorporate the relief of possession. It was also submitted by the learned counsel for the defendant that the NCCF and the DDA were

necessary parties to the present suit. It was urged by the learned counsel that no case for grant of interim relief was made out in as much as the

plaintiffs own document records that the plot size could be smaller than what is detailed in the Sale Deed. It was submitted that the defendant had

purchased the plot No.B-18 in the year 2006 and when the plaintiffs had purchased their portion in 2009, the wall was already in existence. Thus, what

was in possession of DBPL had been transferred to the plaintiffs and they could not claim anything more.

7. It was also submitted that a dispute had arisen when the allottee of the plot No.B-18 M/s Pictures Varnishers Paints and Chemical Industries

Limited had requested the DDA sometime in the year 1979-80 for fixing boundary pillars of the plots and during site verification it was found that the

allottee of plot No.B-19 (NCCF) had encroached upon the adjoining plot B-18 by extending their boundary wall by 21â??-9â?? feet in the front side

and 6â??-6â?? feet from the rear. This dispute was thereafter resolved. The DDA itself initiated action for removal of the unauthorized encroachment

of plot B-18 Okhla Industrial Area Phase-1 way back in 1981. A demarcation had also been effected to mutual satisfaction of the original owners,

namely, NCCF and M/s Pictures Varnishers Paints and Chemical Industries

Limited. Thus, it was submitted that the claim of the plaintiffs that the defendant was in possession of excess land had no truth in it and the application be dismissed.

8. In order to be entitled to interim protection, the plaintiffs have to disclose a prima facie case in their favor. They have to show that the balance of convenience tilts in their favour. The plaintiffs must also show what irreparable harm & injury would be caused to them in the absence of interim protection.

9. On the question of a prima facie case, on the basis of the submissions made and the documents placed on record no such prima facie case has been disclosed. The original allottees of the plot B-19 was NCCF. It was between NCCF and the previous allottees of plot No.B-18 that a dispute arose

where the accusation was that it was the NCCF i.e. the predecessor in interest of the plaintiffs that had encroached the area allotted to M/s Pictures

Vanishers Paints and Chemical Industries Limited i.e. predecessor of the defendant. Documents placed on the record by the defendant show that M/s

Picture Varnishers Paints & Chemicals Industries Limited had complained to the DDA about the encroachment over Plot-18, as allotted to them.

Apparently, it was after much effort that NCCF finally agreed to fresh demarcation, when they were threatened with cancellation of their allotment, if

they did not remove the encroachment over B-18. Execution of Lease Deed in their favour was also kept in abeyance. The NCCF was found to have

encroached 21' x 9' in the front side and 6' x 6' in the rear of property bearing No.B-18.

10. Whether the angular portion in the original site plan was the subject matter of the subsequent settlement reached in 1981 between them, will be a

matter of evidence. In the event the terms of settlement show that the NCCF was permitted to retain the encroached land, evidence would be

required to show when if at all, the predecessor in interest of the defendant encroached B-19, and if so to what extent. Evidence will be required to

show whether the plaintiffs predecessor in interest took any steps against such encroachment and what those steps were. At this stage, no clear right

of the plaintiffs to claim any portion of B-18 is disclosed. If after trial such right to a defined portion is established, possession could be given. Thus, no

irreparable harm or injury will be caused to the plaintiffs if no interim injunction

is issued. The plaintiffs have come into the property subsequent to the defendant. Certain issues that arose between their predecessors were settled mutually. Therefore, the balance of convenience tilts in favour of defendant.

11. In these circumstances, no interim relief can be granted to the plaintiffs, the application i.e. I.A.8577/2021 is accordingly dismissed. It is noted that nothing in this order shall tantamount to an expression on the merits of this case.

12. List on 7th April, 2022 for framing of issues.

13. The order be uploaded on the website forthwith.