

(2008) 11 DEL CK 0199

In the Delhi High Court

Case No : CMI 5 of 2008

Narinder Pal Kaur Chawla

APPELLANT

Vs

Setia Buildwell Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 11-11-2008

Acts Referred:

Citation : (2008) 11 DEL CK 0199

Hon'ble Judges : Pradeep Nandrajog, J;J.R. Midha, J

Bench : Division Bench

Advocate : M.C.Dhingra and Party in perso, for the Appellant; Ehtesham Hashmi, for Saleem Ahmed, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the petitioner.

2. On 4.11.2008 Trial Court Record was requisitioned through a special messenger.

3. The Trial Court Record is available and the same has been perused by us.

4. It is urged by learned Counsel for the petitioner that the petitioner challenges the impugned judgment and decree dated 15.7.2007 limited to the relief of injunction granted against the petitioner restraining her from blocking the passage leading to the first floor of property bearing No. A-447, Defence Colony, New Delhi and the terrace of the second floor above.

5. Learned Counsel for the petitioner concedes that the petitioner is not in possession of the said portion of the property in question in respect whereof injunction has been issued against her, but states that after the plaintiff obtained an interim injunction in the suit on 14.11.2007, under the garb of the interim order, the plaintiff dispossessed the petitioner from the portions of the property in question in respect whereof injunction has been granted against her.

6. It is urged by learned Counsel for the petitioner that the petitioner was in

possession of the entire first floor as also the terrace of the second floor of property No. A-447, Defence Colony, New Delhi when the suit was filed by respondent No. 1.

7. Relevant facts are that property No. A-447, Defence Colony, New Delhi was a plot of land owned by the L and DO. Perpetual lease hold rights were granted by L and DO in favour of one Prem Chander Chawla who sold the same to Gurbachan Singh Chawla vide sale deed dated 7.12.1958. Pursuant to the sale deed, mutation was effected in the record of L and DO recording that perpetual lease hold rights were transferred in favour of Gurbachan Singh Chawla. Gurbachan Singh Chawla is none else other than the late father-in-law of the petitioner.

8. The petitioner is the second wife of the son of Gurbachan Singh Chawla and his wife Joginder Kaur.

9. The petitioner and the son of Joginder Kaur and Late Gurbachan Singh Chawla are involved in a matrimonial litigation which appears to be extremely emotive and acrimonious.

10. On the death of Gurbachan Singh Chawla, his legal heirs i.e. his wife, his son and two daughters joined in an action before the L and DO which resulted in L and DO accepting Joginder Kaur to be the surviving legal heir of the deceased under a will dated 28.4.1973 stated to have been executed by Gurbachan Singh Chawla.

11. Vide sale deed Ex.PW-1/2 dated 16.5.2007, Joginder Kaur sold the property in question to respondent No. 1 i.e. the plaintiff of the suit, recording therein that a two and a half storey building was constructed on the plot and that physical possession of the garage on the ground floor, the first floor and the terrace on the second floor was handed over to the purchaser i.e. the plaintiff.

12. Suit was filed by the purchaser as plaintiff, who, after narrating the aforesaid facts in the plaint, pleaded that the petitioner was occupying the second floor of the property in question and she attempted to obstruct the egress and ingress of its tenant by locking the common passage where-from entry was effected into the first floor of the property as also the terrace of the second floor.

13. A decree of injunction was prayed for to restrain the petitioner from putting a lock on the common passage leading to the first floor and the terrace of the second floor.

14. The petitioner filed a written statement stating that she was in occupation of the first floor as also the terrace on the second floor. She alleged that the sale of the property by her mother-in-law was a deep-rooted conspiracy.

15. On the pleadings of the parties various issues were framed; the main issue being whether the petitioner had a right to lock the common passage and prevent/block ingress of the plaintiff to the suit property. Other issues were

technical issues and in respect thereof learned Counsel for the petitioner has not questioned the legality of the decree against the petitioner.

16. In view of the fact that Gurbachan Singh Chawla had title to the suit property under the sale deed dated 7.12.1958 and the fact that on his death his legal heirs consented to his wife being accepted as the perpetual lessee by L and DO, the obvious finding had to be that Joginder Kaur W/o Late Gurbachan Singh Chawla was competent to execute the sale deed Ex.PW-1/2. We note that the petitioner did not seriously question the execution of the sale deed and fought the battle on the issue of possession of the first floor and the terrace of the second floor.

17. On the evidence on record the learned Trial Judge has returned a finding in favour of the plaintiff.

18. The evidence of the plaintiff on the issue of possession was the testimony of Mr. Surender Kumar Setia a Director of the plaintiff. The evidence of the petitioner was her testimony and the testimony of Narender Vats, Ahlmad from the Court of a learned Metropolitan Magistrate in Delhi and the evidence of a police official pertaining to DD Entry No. 23-A dated 9.7.2007.

19. The evidence of the witness of the plaintiff and that of the petitioner is nothing but a word of mouth v. a word of mouth. Each reiterating their version.

20. The record of learned Metropolitan Magistrate and DD Entry aforementioned merely shows a dispute on possession and hence nothing of substance turns on the said evidence.

21. But, what breaks the deadlock in favour of the respondent i.e. the plaintiff and against the petitioner is an order dated 21.4.2004 (at page No. 741-743 of the Trial Court Record) passed by Hon"ble Supreme Court in Civil Appeal No. 2606/2004 recording as under:

As the legal right of the second wife to claim maintenance under the Act and its quantum are hotly contested issues in the main case, we refrain from expressing any opinion on merit of the claims and contentions of the parties. For the purpose of fixing appropriate amount of interim maintenance, we may assume that the financial position of husband is such that he can easily pay a sum of Rs. 1,500/- per month as interim maintenance without disturbing the right of separate residence provided to the wife at the second floor of the husband's premises.

The appeal, therefore, is partly allowed by increasing the amount of interim maintenance to Rs. 1,500/- per month which shall be payable at the above rate from the month of May, 2004 until decision of the main case pending under the Act on the original side of the High Court. It is made clear that the High Court shall decide the main case on merits uninfluenced by orders passed for fixing interim maintenance.

22. The order afore noted clearly records the admitted position that towards her right of residence, the petitioner was in occupation of the second floor of the husband's premises. We note that the husband's premises referred to his none else other than property No. A-447, Defence Colony, New Delhi. The same has been broadly referred to as the husband's premises though really speaking the same belongs to the mother of the husband of the petitioner.

23. No worthwhile contention has been urged at the hearing today. We note that repeatedly learned Counsel for the petitioner is being hampered by the petitioner in making submissions because the petitioner keeps on speaking and insisting that the sale was an act of fraud to defeat her rights. In this connection we may note that the learned Trial Judge has taken the precaution to direct the plaintiff not to eject the petitioner or take possession of the second floor of the property from her without following the due process of law.

24. We find no merits in the appeal.

25. The appeal is dismissed.

26. No costs.