

(2013) 02 DEL CK 0407
In the Delhi High Court
Case No : CS (OS) No. 1146 of 2007

Preetinder Singh Thapar

APPELLANT

Vs

Shri Hardeep Singh Thapar and Others

RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, 151

Citation : (2013) 3 AD 503 : (2013) 199 DLT 263

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Abhijat with Ms. Liza Baruah, for the Appellant; Varun Goswami, Advocate for D-4, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.

I.A. No. 12271/2012 (by the plaintiff u/O XXXIX R-2A r/ 2 Section 151 CPC)

1. The present application has been filed by the plaintiff stating inter alia that the defendant No. 4 is in gross disobedience of the ad interim ex parte order dated 18.6.2007 and he is liable to be punished by way of detention in civil prison. Counsel for the plaintiff states that the plaintiff has instituted the accompanying suit against the defendants praying inter alia for a decree of declaration that the Sale Deed dated 16.1.2003 is null and void, for preemption, permanent injunction, etc.

2. The case of the plaintiff is that he is a co-owner of the suit premises along with the defendants No. 1 & 2 by virtue of a Conveyance Deed dated 25.5.1971 executed by the Ministry of Rehabilitation, and the defendant No. 1 had illegally and without any notice to him, sold the second floor along with the roof rights of the suit premises to the defendant No. 3 on 16.1.2003 and the defendant No. 3 had in turn sold the said property to the defendant No. 4 by executing a Sale

Deed dated 23.4.2007.

3. Counsel for the plaintiff submits that by virtue of the aforesaid Sale Deed, the defendant No. 4 claims to have purchased the second floor with the roof rights therein, but the parking space on the ground floor was not a part of the sale transaction and the said space had remained in the exclusive use and occupation of the plaintiff. It is submitted that the present application has been necessitated on account of the fact that prior to the plaintiff and his wife going out of town on 24.5.2012, they had parked their car at the residence of a relative but on their return on 28.5.2012, the plaintiff had discovered that the defendant No. 4 had surreptitiously trespassed into the suit premises and illegally parked his own car in the parking space. The plaintiff claims to have lodged a complaint against the defendant No. 4 with PS Malviya Nagar on 29.5.2012, alleging forcible possession/trespass.

4. Counsel for the plaintiff states that a bare perusal of the purported Sale Deeds executed by the defendant No. 1 in favour of the defendant No. 3 and by the defendant No. 3 in favour of the defendant No. 4, would reveal that there is no mention therein of the car parking space and the defendant No. 4 cannot claim a right to park his car in the space available on the ground floor. He therefore states that the defendant No. 4 is in gross violation of the ex parte ad interim order dated 18.6.2007 and is liable to be punished for breach of the said order.

5. On the other hand, counsel for the defendant No. 4 vehemently opposes the present application and states that the same has been deliberately filed by the plaintiff immediately after an earlier application filed by him under Order XXXIX Rule 2A CPC, registered as I.A. No. 14186/2009 came to be dismissed vide order dated 16.9.2011. He submits that in the aforesaid application also, the plaintiff had claimed violation of the status quo order dated 18.6.2007 by the defendant No. 4. But the said application was turned down by the aforesaid order, wherein the Court had observed that keeping paying guests on the second floor of the suit premises which was under the occupation of the defendant No. 4, would not tantamount to creating any third party interest. He points out to the Sale Deed dated 23.04.2007 to state that in terms of the said deed, he is entitled to the entire second floor with the roof rights, which includes all the rights in common entrances, common facilities and amenities provided therein and the same would include the parking space on the ground floor. He further states that it is necessary to peruse the averments made by the plaintiff in I.A. No. 7088/2007, filed under Order XXXIX Rule 1 & 2 CPC, so as to understand the context in which the aforesaid status quo order had been passed.

6. Lastly, counsel for the defendant No. 4 relies upon the documents filed by the plaintiff along with the plaint under the index dated 7.5.2008, particularly, a certified copy of the Partition Deed dated 17.11.2000 executed between the plaintiff and his siblings, through their power of attorney on the one hand, and the defendant No. 1 on the other hand, whereunder the parties had agreed that the plaintiff would become the owner of the ground floor and the first floor of the

suit property and the defendant No. 1 would become the owner of the second floor with the roof rights of the suit property.

7. Counsel for the defendant No. 4 submits that his client had come upon the aforesaid document only after he had purchased the second floor along with the roof rights of the suit premises from the defendant No. 3. The defendant No. 4 had then discovered that defendant No. 1 had mortgaged the suit property to a bank and later on when he was confronted with the said mortgage deed, defendant No. 4 had no option but to settle the dispute with the bank by paying a sum of Rs. 20.00 lacs for the release of the property. Thereafter, the bank had discharged the mortgage deed by executing a Deed of Assignment dated 26.3.2010, enclosed with the list of documents filed under index dated 5.10.2010. He states that the aforesaid Partition Deed dated 17.11.2000 executed by the plaintiff and his siblings including defendant No. 1, was a part of the documents that were furnished by the plaintiff and the defendant No. 1 to the bank and another document filed with the bank was a NOC issued by the plaintiff in favour of the defendant No. 1, to enable the latter to seek a loan from the bank in respect of the second floor and the terrace of the suit premises.

8. The Court has heard the submissions of the counsels for the parties and considered the documents referred to by both sides. Before examining their respective submissions, it is relevant to peruse the contents of the interim application filed by the plaintiff, i.e., I.A. No. 7088/2007, wherein the interim order dated 18.6.2007, breach whereof is claimed by him, came to be passed.

9. In para 4 of the aforesaid application, the plaintiff had averred that the defendant No. 4 had started undertaking some unauthorized and illegal construction over the second floor of the suit premises and had the intention to raise a third floor as well. It was further averred that the suit property was jointly owned by the plaintiff and the defendants No. 1 & 2 and no partition thereof had taken place till the said date and therefore, the plaintiff had a pre-emptory right to purchase the defendant No. 1's share therein. Thus, the plaintiff had prayed for the relief of status quo with regard to the title, possession, use, enjoyment of the suit premises as on the said date. Secondly, the plaintiff had sought directions against the defendant No. 4, for restraining him from raising any construction on the second and third floor of the suit premises or from hindering or obstructing the plaintiff from having access to the roof of the second floor where water tanks are installed and the car parking on the ground floor, where his cars were parked, which he alleged were in his exclusive possession.

10. Vide order dated 18.6.2007, an ad interim ex parte order was passed whereby defendant No. 4 was directed to maintain status quo in respect of the title, possession and status of property bearing No. A-78, Malviya Nagar, Delhi. The aforesaid order was subsequently modified, vide order dated 15.10.2008, by granting permission to the defendant No. 4 to complete the work on the existing structure by carrying out the interior and wood works of the portions which had already been constructed by him. However, the aforesaid application was not

disposed of finally and is still pending adjudication.

11. A query has been posed to the learned counsel for the plaintiff as to how the plaintiff had made an averment in para 4 of the application that the suit property had not been partitioned till the date of institution of the suit, to which counsel for the plaintiff replies by referring to para 10 of the plaint wherein the plaintiff has averred that the aforesaid Partition Deed is a forged document. However, it is conceded that despite the fact that the plaintiff had sought leave to amend the plaint on two earlier occasions and permission was duly granted to him, he has failed to seek any relief of declaration to the effect that the said Partition Deed is invalid. It is further stated by learned counsel on instructions from the plaintiff, that the NOC, which defendant No. 4 claims was given by the plaintiff to the bank from whom the defendant No. 1 had raised a loan by mortgaging the second floor of the suit premises, had not been executed by the plaintiff. He states that the said document has been forwarded to the FSL for obtaining a report in an FIR lodged by the defendant No. 4 against the plaintiff and the defendant No. 1, which is still awaited.

12. Having regard to the fact that though the plaintiff had sought two fold reliefs in I.A. No. 7088/2007, and the Court had confined the ex parte ad interim order dated 18.6.2007 to the prayer clause (a) alone by directing the defendant No. 4 to maintain status quo in respect of the title, possession and status of the suit property, it would be a little too farfetched for the plaintiff to claim at this stage that the second relief prayed for in the said application stood automatically granted in his favour by virtue of the aforesaid order. Further, at this stage, the Court is skeptical about the stand taken by the plaintiff in IA 7088/2007 vis-?-vis the averments made by him in the plaint, more so when he has chosen not to seek any relief of declaration in respect of the registered Partition Deed dated 17.11.2000 placed on record by the defendant No. 4, though it is his stand that it is a forged document. As noted above, the plaintiff had approached the Court on two earlier occasions to seek amendments to the plaint, which were so granted, but for reasons best known to him, he has not added a material prayer in the relief clause with respect to the partition deed.

13. In view of the aforesaid facts and circumstances, the court is not persuaded to hold that the defendant No. 4 is in breach of the ad interim ex parte order dated 18.6.2007, for initiating any proceedings against him u/s 2A of Order XXXIX of CPC. In any case, the suit has already been taken to trial and is now listed on 5.4.2013, for recording the plaintiffs evidence. When the suit is finally decided, the issue pertaining to the car parking space on the ground floor of the suit premises shall also be set at rest. In such circumstances, the Court is not inclined to entertain the prayer made in the application, which is resultantly turned down and the application is dismissed. Needless to state that the observations made hereinabove are confined to the relief prayed for in the present application and shall not be treated as an expression on the merits of the suit, which is pending trial.