

(2018) 03 DEL CK 0397

In the Delhi High Court

Case No : Civil Revision Petition No. 38 Of 2018, Civil Miscellaneous Application No. 9405, 9406 Of 2018

Rajiv Bhatnagar

APPELLANT

Vs

Ish Bhatnagar

RESPONDENT

Date of Decision : 12-03-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 11

Citation : (2018) 03 DEL CK 0397

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : Amit Aggarwal, Vidhi Goel, Vinod Kapoor

Final Decision : Dismissed

Judgement

R.K.Gauba, J

1. The petitioner and the respondent herein are brother and sister to each other, they being locked in more than one litigation respecting property which concededly was originally owned by their predecessor-in-interest. The petitioner herein had earlier instituted suit (CS (OS) No.617/2013) which was filed on the original side of this court wherein he sought relief of the partition of the properties - moveable and immoveable besides other reliefs in the nature of declaration, injunction - prohibitory and mandatory and rendition of accounts. The present proceedings relate to a subsequent suit (CS (OS) No.910/2015, new No.CS No.10408/2016) which was instituted by the respondent against the petitioner for relief of recovery of possession, mesne profits/damages for use and occupation of the premises which is part of the estate involved in the previous suit. The petitioner (defendant of the said suit) had sought rejection of the said plaint by moving an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 which was dismissed by the additional district judge by order dated 05.01.2018. The present petition seeks to assail the said order.

2. In the previous suit instituted by the petitioner, inter alia, seeking partition, an interim injunction order was granted in his favour by order dated 05.04.2013 whereby the defendant of the said suit, i.e., the plaintiff in the present suit (the respondent) was restrained from alienating, encumbering or parting with possession of property, i.e. I-12, Jangpura Extension, New Delhi, she also being restrained from dispossessing the plaintiff of the suit, i.e. the petitioner from the portion in his occupation or from disconnecting the electricity or water supply. It is the submission of the petitioner that the said ad interim injunction order continues to operate till date.

3. The suit instituted by the respondent herein is based on her claim that she is the absolute owner of the aforementioned property, the title therein having been transferred to her by a gift deed executed and registered by the father of the parties. The validity of the said registered gift deed is questioned by the petitioner herein.

4. The ground on which the petitioner sought rejection of the plaint of the second suit filed by the respondent herein primarily were that in the face of the aforementioned ad interim injunction operating in the first suit which was instituted by him, no cause of action contrary to such restraint order could have been claimed or pressed. It was also his contention that the plaint merits rejection since the factum of such ad interim injunction order was not disclosed in the plaint by the respondent.

5. To say the least, the contentions in the application under Order VII Rule 11 CPC are wholly misconceived and frivolous. An ad interim injunction order is intended primarily to protect the subject matter or the interest of the parties while their rival claims are adjudicated upon. Such ad interim injunction cannot operate to the effect that a party otherwise entitled be restrained from prosecuting his interest in accordance with law. The omission on the part of the respondent to mention the existence of an ad interim injunction order in these circumstances is also inconsequential.

6. The learned trial court has taken an appropriate view on the application, which does not call for any interference.

7. The petition is thus dismissed in limine with costs of Rs.20,000/- to be deposited with Delhi High Court Legal Services Committee within a week.

8. Pending application also stands disposed of.