

(2013) 08 DEL CK 0070

In the Delhi High Court

Case No : IA No. 17541 of 2010 in CS (OS) 2526 of 2010

Sajjan Pal

APPELLANT

Vs

Usha Mehta

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
Evidence Act, 1872 — Section 165

Citation : (2013) 8 AD 709 : (2013) 202 DLT 513

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : A.K. Bajpai and Mr. M.N. Khan, for the Appellant; Pradeep Dewan and Ms. Anupam Dhingra, for the Respondent

Final Decision : Disposed Off

Judgement

Jayant Nath, J.

IA No. 17541/2010 in CS (OS) 2526/2010

1. This is an application filed by the defendant seeking appointment of a Receiver. The accompanying plaint is filed for specific performance of the Agreement to Sell and purchase Flat No. C-105 Sai Baba Co-operative Group Housing Society Ltd., Sector 9 at Plot No. 4, Rohini, Delhi-110055. It is stated by the plaintiff that as per Agreement to Sell dated 7.7.2010 entered into between the plaintiff and defendant for the said flat, the plaintiff was to pay a total consideration of Rs. 25 lacs. Rs. 20 lacs was paid to the defendant through RTGS clearance on 7.7.2010. It is stated that the balance of Rs. 5 lacs was to be paid on or before 7.12.2010. It is stated that defendant failed to reach the office of the Sub-Registrar on 7.12.2010 though the plaintiff was ready and willing to complete his part of contract. It is further stated that at the time of signing the agreement dated 7.7.2010 property was under the tenancy of ICICI Bank limited for 11 months from 1.1.2010 to 30.11.2010. The property was vacated by the bank on 30.11.2010 and thereafter physical possession of the flat was handed

over to the plaintiff by the defendant on 2.12.2010. Hence, it is stated that the entire flat is now in the physical possession of the plaintiff who is residing there with valuable articles. Hence, the present suit for Specific Performance of Agreement to Sell dated 07.07.2010. The defendant has filed her written statement raising extremely serious allegations against the plaintiff. It is stated by the defendant that the plaintiff is part of a gang involved in illegally grabbing properties which are not occupied by their owners and owned by the persons who are not residing in Delhi/India and who do not have the means/might to protect their properties from illegal grabbers. It is stated that the plaintiff in collusion with one Jitender has by exercising fraud and deceit, has taken the possession of the suit property by trespassing into it without the knowledge or consent of the defendant. It is further stated that the Agreement to Sell dated 7.7.2010 relied upon by the plaintiff is a fraud and fabricated document.

2. It is stated that the defendant is a widow and a saintly lady. She is a disciple of Shirdi Sai Baba and is commonly known as Shri Sai Maa. She stays mostly out of Delhi. In February, 2009 it is stated that the defendant let out a portion of the suit property but she continued to occupy one room which had her belongings. It is stated that in the year 1998 the defendant in the process of constructing Shirdi Sai Baba Temple and Aashram at Panipat used to often visit the said town. There she met one Shri Jitender who claimed to be an Advocate. Defendant used to depend upon the said Shri Jitender for various work relating to construction of the Ashram. It is stated that on 6.7.2010 defendant came to Delhi and at the request of Shri Jitender an Agreement to Sell the property for a consideration of Rs. 1.85 crores was agreed to be drawn. On 7.7.2010, before the Agreement was executed a sum of Rs. 20 lacs was transferred to the account of the defendant. The defendant also executed a receipt acknowledging the receipt of Rs. 20 lacs from the plaintiff against Bayana payment for sale of the suit property.

3. It is further pointed out that the plaintiff alongwith Shri Jitender and the defendant alongwith one Vipin Vadhera went to the shop of a property dealer in Rohini. The plaintiff and Shri Jitender sat with the computer typist and got the Agreement to Sell prepared. A draft of the Agreement to Sell on plain paper was first shown to the defendant showing consideration of Rs. 1.85 crores. After the defendant approved the draft the plaintiff and Shri Jitender sat with the computer typist to take the print on stamp paper. After some time, the plaintiff asked the defendant to sign and put a thumb impression on the Agreement to Sell dated 7.7.2010. It was represented that the said agreement was to be executed in duplicate. Believing that the Agreement which was being signed was a true computer reproduction of the draft shown earlier, the defendant put her signatures on both the documents. Likewise, Shri Vipin Vadhera also witnessed the documents. Photocopy of one print of the Agreement drawn on stamp paper was delivered to the defendant which is filed alongwith the written statement. Both the originals were kept by the plaintiff.

4. It is stated that on perusal of the copy of the Agreement filed by the plaintiff

with the plaintiff it is now seen and realized by the defendant that the plaintiff acted in collusion with Shri Jitender and has played a fraud upon the defendant, by misrepresenting that both the documents printed on stamp paper were the same as the draft shown to the defendant earlier. By fraudulently deceiving the defendant they have changed the sale figure in one of the agreements which is now in possession and power of the plaintiff. The plaintiff it is stated deceived the defendant to sign the document with a sale figure of Rs. 25 lacs based on which the present suit is filed. Defendant had signed the said agreement believing it to be an exact replica of the draft agreement, a print out of which was taken and shown to the defendant. The defendant has filed along with the written statement a copy of the Agreement to Sell which was handed over to her which shows that the consideration payable is of Rs. 1.85 crores. The said document as per the defendant has been signed by the plaintiff. Hence, it is stated that the Agreement to Sell dated 7.7.2010 relied upon by the plaintiff is a void agreement.

5. It is further stated by the defendant that the defendant informed the plaintiff that she was leaving for Thailand on 8.12.2010 and would be back on 14.12.2010 and would thereafter pursue the matter of conversion of property into freehold. It is stated that the plaintiff on realising that the defendant is not in town, at their back manipulated to open the door of the suit property and illegally made their entry by trespassing into it. It is stated that the original keys of the main entry doors are still with the defendant. It is further stated that after the defendant came back from Bangkok, Jitender made repeated calls to know about conversion of property into freehold. It is stated that Shri Jitender obtained a copy of the conveyance deed from the defendant on the pretext that he was required to convince the buyers that there was no impediment in registration of the Conveyance Deed. It is stated that on 17.12.2012 the defendant was informed by Shri Jitender that plaintiff has trespassed into the suit property. It is stated that police was called but the PCR which came was also mixed up with the plaintiff and left.

6. Based on the above facts the defendant has filed the present application for appointment of Receiver. It is stated that it is inconceivable that the defendant would agree to sell a three bedroom-cum-drawing dining HIG Flat having an area of 1150 sq. ft. for a sale consideration of Rs. 25 lacs whereas the prevalent market value is nearly Rs. 2 crores. It is stated that even in the recently launched 2010 DDA Housing Scheme, a three bedroom flat in a multi-storeyed building in Sector 29 Rohini which flats are still under construction, a tentative cost of Rs. 61 lacs to Rs. 67 lacs has been fixed. It is stated that Sector 29 is still undeveloped. In contrast Sector 9, Rohini is developed and is close to Metro station.

7. Learned senior counsel for the applicant/defendant has submitted that the facts of the case clearly show a fraud on the part of the plaintiff and submits that it is a fit case in which the receiver should be appointed to take into possession the property. He submits that admittedly the plaintiff misled the defendant and

fraudulently by deceit made her sign two agreements containing different considerations and by deceit and wrongful representation took into possession the originals of the agreements. He also points out that on 27.12.2010 an FIR has been lodged against the plaintiff. The original title deeds are still with the defendant. He submits that in any case the sale is not complete and the plaintiff has forcibly taken possession and cannot continue to retain the same. He further submits that given the fact that the plaintiff has by fraud, cheating and other criminal acts trespassed into and fraudulently obtained possession of the suit property, it is clear that the property if it remains in the possession of the plaintiff is in grave danger of being wasted. He further submits that in case the property is wasted serious and irreparable prejudice would be caused to the defendant. He further points out that the defendant has also filed a suit, being CS (OS) No. 2639/2012, against the plaintiff seeking the relief of declaration, recovery of possession and damages of the said property. The said suit is being heard along with the present suit. He relies on Subroto Ghose Vs. Ashok Kumar Gupta, and Parmanand Patel (Dead) by LR. and Another Vs. Sudha A. Chowgule and Others, to submit that in these facts a receiver should be appointed.

8. On the other hand, learned counsel appearing for the plaintiff/non-applicant submits that the contention of the defendant/applicant is misconceived and untenable. It is contended that the plaintiffs are in lawful possession having been handed over possession by the defendant herself in terms of the clauses of the Agreement to Sell. Reliance is placed on Clause 4 of the Agreement to Sell which states that the first party shall hand over vacant physical possession on 2.12.2010. He submits that there is no danger to the property and the plaintiffs cannot be dispossessed. He also states that the real story is that a sum of Rs. 1.2 crores was paid in cash and the agreement to sell that has been filed by the plaintiff represents the cheque amount that was to be paid to the defendant. Hence, it is contended that full consideration has been paid as per market price to the defendant. Learned counsel relies upon Hari Mohan Sharma and others versus Hari Mohan Sharma and Others Vs. CSR Poultry Research and Breeding Farm, and Brig. Sawai Bhawani Singh Vs. M/s. Indian Hotels Company Ltd. and others, to claim that in law no grounds are made out for appointment of a Receiver.

9. In rebuttal, learned senior counsel for the defendant reiterated his submissions and stressed that the contention of the learned counsel for the plaintiff that a sum of Rs. 1.2 crores was paid in cash to the defendant is absolutely false. It is stated that in the present suit that is filed by the plaintiff, no such averment is made in the plaint. The said averment was made for the first time in the written statement filed in CS (OS) No. 2639/2012 that has been filed by the defendant for possession and mesne profits of the suit property. This averment was made for the first time after three years. Hence, it is stated that this is clearly an afterthought. Apart from that, it is stated that there is no evidence of such payment and hence the contention cannot be believed.

10. I will now consider the merits of the rival claims. On 3.2.2011 this Court recorded the Statement of the plaintiff u/s 165 of the Evidence Act. The plaintiff has stated that he is an Advocate practicing in Panipat Courts. He has denied most of the submissions made by the defendant. He, however, admits that possession of the flat was given by him to the defendant on 2.12.2010. He further stated that the defendant, her daughter, Mr. Vipin Vadhera, plaintiff's friends Mr. Pramod and his brother Jitender were present when the possession was given to him. He admits that no document evidencing handing over of possession on 2.12.2010 was signed. He states that the present market value of the flat is about 30 to 35 lacs only. He has denied his signatures on the copy of the Agreement to Sell dated 7.7.2010 which has been produced by the defendant. He further states that he did not insist on taking the original documents of title from the defendant since she had promised to deliver the same at the time of registration of the Sale Deed.

11. In view of the denial of his signatures on the Agreement to Sell produced by the defendant, this Court on 3.2.2011 sent the documents to CFSL, R.K. Puram, New Delhi for comparison of the disputed signatures with the signatures on the plaintiff's Affidavit annexed to the plaint and other such documents.

12. Pursuant to the aforesaid on 31.1.2012 the statement of Mr. Sanjay Sharma the Typist was recorded u/s 165 of the Evidence Act. The said Shri Sanjay Sharma is proprietor of Om Sai Documentation Centre in Rohini and confirmed that both the Agreement to Sell, one produced by plaintiff and one produced by the defendant have been typed by him. He further stated that both the documents were provided by him alone and the documents were prepared on the same date.

13. On the same date the statement of the plaintiff was again recorded who said that he did not recognise Sanjay Sharma the Typist.

14. On the directions of this Court the statement of Shri Bhupinder Singh, Naib Tehsildar in the office of SDM Saraswati Vihar was recorded on 20.7.2012. He brought the stamp vendor Shri Dinesh Rajore's register and confirmed that as per the record at Serial No. 37320 the stamp paper of the denomination of Rs. 50/- was issued in the name of Mrs. Usha Mehta and another stamp paper of the same denomination was issued in favour of Mrs. Usha Mehta appearing at Serial No. 37319.

15. Similarly, statement of Vijay Kumar Aggarwal, Advocate was also recorded on the same date who is purported to have notarised the documents. The said Vijay Kumar Aggarwal has denied that he in any way attested the original Agreement to Sell produced by the plaintiff. He has also denied that the seal used in the said document belongs to him. Similar statement has been made regarding the photocopy of Agreement to Sell produced by the defendant.

16. As stated above on 03.02.2011, this Court had directed that document Ex. C-2 (copy of Agreement to Sell produced by the defendant) be sent to CFSL, R.K.

Puram, Delhi for comparison of the disputed signatures at point G on first page and point F on the second page and point C on the third page, (also referred to in the report of CFSL as Q1, Q2 and Q3) with the signatures of the plaintiff on plaintiff's affidavit annexed to the plaint, in replication dated 21.01.2011, on vakalatnama dated 13.12.2010 and specimen signatures of the plaintiff as obtained in Court on 3.9.2011.

17. The Government of NCT of Delhi has filed FSL and CFSL Reports on 27th August, 2012 in a sealed cover. With the consent of the parties after the arguments were heard and the judgment was reserved the sealed cover has been broken and I have perused the reports filed.

18. FSL had to give an opinion as to whether the questioned signatures on Ex. C-2, the agreement to sell filed by the defendant is signed by the plaintiff. CFSL in its report dated 02.06.2011 opined that the question signatures at mark Q1 to Q3 (that is the signatures of the plaintiff on Ex C-2 i.e., Agreement to Sell produced by the defendant) are the Xerox copy of the signatures in which the line quality cannot be studied properly and for thorough scientific examination and opinion, the original of the Xerox copy might be sent. A fresh report has also been received from the FSL Rohini dated 23.11.2011. The said report also has not been able to throw light on the authenticity of the signatures of the plaintiff on the agreement to sell filed by the defendant inasmuch as the report states that it is not possible to express any opinion on the same.

19. However, the Central Forensic Science Laboratory, Hyderabad has also filed an examination report of the hard disc that was recovered from the typist i.e. Sanjay Sharma of Om Sai Documentation Centre. As per status report dated 03.01.2012 filed by EOW, Crime Branch Delhi, the hard disk was seized from Mr. Sanjay Sharma, the typist and sent for examination to the said CFSL. The said Laboratory has been able to access the data pertaining to the Agreement to Sell which are under dispute in the present Suit. At page 13 of the report is one Agreement to Sell between Smt. Usha Mehta, defendant and Shri Sajjan Pal plaintiff which shows total sale consideration of Rs. 25 lacs. At page 16 of the report is a print out of the second Agreement to Sell between the said two parties which shows the consideration amount as Rs. 1.85 crores.

20. A perusal of the above facts would prima facie show the following:-

(i) Two agreements to sell have been typed on 7.7.2010 at Sai Documentation Centre, one indicating a sale consideration of Rs. 25 lacs and the second indicating a sale consideration of Rs. 1.85 crores. This is clear from the report of the Central Forensic Science Laboratory which confirms that two Agreements to Sell indicating the said two different considerations are available in the hard disc of Om Sai Documentation Centre. This is also apparent from the statement of Mr. Sanjay Sharma, Proprietor of Om Sai Documentation Centre, which is recorded on 31.1.2012.

(ii) The Naib Tehsildar affirmed that on that date two stamp papers were bought

in the name of the defendant Mrs. Usha Mehta bearing Sl. No. U323520 and U323519. The original Agreement to Sell dated 7.7.2010, which has been placed on record by the plaintiff is on Stamp Paper No. U323520. The photocopy of the Agreement to Sell placed on record by the defendant is on Stamp Paper No. U323519. This further fortifies the contention of the defendant that on the said date two Agreements to Sell were signed and that the photocopy of one of such Agreement to Sell showing a sale consideration of Rs. 1.85 crore was given to the defendant. The second agreement to sell shows a sale consideration of Rs. 25 lacs.

(iii) The plaintiff has forcibly taken vacant physical possession of the suit property. This is clear from the statement of the plaintiff recorded on 3.2.2011 where the plaintiff categorically states that no document evidencing handing over possession to him on 2.12.2010 was signed. The story as narrated by the plaintiff is clearly a concocted story. Even as per the case of the plaintiff, on that date a sum of Rs. 5 lacs was still payable by him to the defendant. Why would the defendant hand over vacant physical possession without receipt of the balance consideration stated to be payable. The plaintiff further claims himself to be an Advocate. He would clearly understand implications of taking over physical possession of an immovable property without any documentation whatsoever.

(iv) The Notary Public Shri Vijay Kumar Agarwal has denied having attested the two Agreements to Sell.

(v) One also cannot help noticing that in the initial suit that was filed by the plaintiff, in December, 2010, there is no averment in the plaint that apart from the payment through bank of Rs. 20.00 lakh any cash has been paid by the plaintiff to the defendant. However, in the written statement that is filed by the plaintiff in the suit filed by Ms. Usha Mehta, being CS (OS) No. 2639/2012 (defendant in CS (OS) 2639/2012), which is filed on 30.1.2013, a specific averment is made that a sum of Rs. 1.2 crores was paid in cash by the plaintiff to the defendant. Clearly the plaintiff is changing stands at his convenience. This claim is made after a gap of 3 years and seems to be a desperate attempt to cover up.

21. The cumulative effect of the above statements and documents are that the defendant/applicant has made out a strong prima facie case in her favour. Prima facie there appears to be an egregious fraud perpetuated by the plaintiff on the defendant. Clearly, there is merit in the contention of the defendant/applicant that on 07.07.2010, she was, by deceit, misrepresentation and fraud, made to sign an agreement to sell which mentions the wrong consideration. This was done first by showing her a draft agreement which contained the correct agreed consideration amount and when the final print out on the stamp paper was taken, she was misled to believe that the final print out is a replica copy of the draft that had just previously been shown to her.

22. The issue now comes as to whether a receiver should be appointed in the

facts and circumstances of the case. Order XL Rule 1, CPC reads as follows:-

1. Appointment of receivers-(1) Where it appears to the Court to be just and convenient, the Court may by order-

- (a) appoint a receiver of any property, whether before or after decree;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to possession, custody or management of the receiver; and
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

23. Reference may be had to the judgment of this High Court in the case of Deepak Ansal Vs. Ansal Properties and Industries Limited and Another, In para 21 of the judgment, the Court has referred to the five principles which are described as the Panch Sadachar of courts exercising equity jurisdiction in appointing receiver, which read as follows:

1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute. It is a sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding.

2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit.

3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only, the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm.

4) An order appointing a receiver will not be made when it has the effect of depriving a defendant of a "de facto" possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss

and the person in possession has obtained it through fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be "in medio" that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less "in medio" is sufficient to vest a Court with jurisdiction to appoint a receiver. Otherwise a receiver should not be appointed in super cession of a bona fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.

5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to the Court with clean hands and should not have disentitled himself to the equitable relief by laches, delay, acquiescence etc.

24. Coming back to the facts of this case, clearly the defendant has a strong prima facie case in her favour and there is every likelihood of her succeeding in the present suit and in the accompanying suit. Given the conduct of the plaintiff, it is but obvious that there is a strong possibility that when faced with the prospect of losing this litigation, he would take steps to expose the property to danger and loss and is likely to act in a manner which would gravely prejudice the rights of the defendant in the suit property. Property is clearly exposed to grave danger and likelihood of loss.

25. Reference may also be had to the judgment of the Delhi High Court in the case of Subroto Ghose versus Ashok Kumar Gupta and Others, (supra) where this Hon"ble Court in paragraphs 13 and 20 (relevant portion) held as follows:-

13. In the facts and circumstances of the case, the learned counsel for the defendants appears to have rightly decided not to say anything on the merits of the case. Prima facie, on merits, the defendants have nothing to say. The arguments on behalf of plaintiff proceed on the basis of the record and the record speaks volumes about the conduct of the defendants and it is not easy or at least at this stage possible to justify the conduct of the defendants. The allegations against the defendants prima facie show that it is a case of grabbing another's property through illegal means. Defendants 2 to 5 prima facie appear to have hatched a criminal conspiracy to grab the suit property by preparing false and fabricated documents. They have defiled the sanctity of the official records by seeking mutation of the suit property firstly in favour of defendant no. 1 and thereafter in favour of defendants 2 and 3 on the basis of false and fabricated documents. Their acts have led to falsification of official records. They have forcibly occupied the suit property and prevented the plaintiff from use and

enjoyment thereof.

....

20. The next question is what should be the appropriate order to be passed in the facts and circumstances of the case. The facts noted above show that the present is not a routine case of a suit for possession filed by an owner against a licensee after expiry of the licence period. It is also not a case of possession of property being sought from a person whose possession though initially authorized, has become unauthorized on the day of institution of the suit. It is a case of grabbing of a valuable immovable property through criminal acts. It is a very serious matter where the defendants 1 to 5 have prima facie indulged in criminal conspiracy, fraud, fabrication of documents, collusion and deceit knowingly and intentionally using false and fabricated documents to falsify public records. Such blatant acts deserve to be dealt with through strong and effective measures. The defendants cannot be permitted to continue to enjoy the fruits of their illegal acts. They do not deserve to remain in possession of the suit property even for a single day any further. It will be a travesty of justice to ask the plaintiff to wait till the final decision of the suit when a decree for possession may be ultimately passed. In the facts and circumstances of the case, I feel it eminently, just and convenient to appoint a Receiver to take possession of the suit property and to manage the same. I appoint Shri B.R. Ahuja, Advocate (retired Joint Registrar of this Court) as the Receiver with respect to property in suit i.e. 5, Ring Road, New Delhi (Khasra No. 312, Village, Kilokri, Delhi). The Receiver will take physical possession of the entire property.

26. The facts of the present case warrant an Order as passed by this Court in the aforementioned case of Subroto Ghose versus Ashok Kumar Gupta and Others.. This is also a case where Suit for possession has been filed by the owner not on grounds of any expiry of license period. It is not a case where possession of property is sought from a person who came into possession through any authorized means. There appears prima facie a clear case of grabbing of valuable immovable property through fraud, deceit and other criminal acts.

27. The reliance of learned counsel for the plaintiff on the judgment of this Court in Hari Mohan Sharma and others versus CSR Poultry Research & Breeding Farm (supra) is of no relevance. That case turns on the facts of the case inasmuch as the Court recorded a finding that a plausible defence has been raised in the Suit for specific performance. That Suit pertained to a Suit for specific performance against the defendant. It was during pendency of the Suit the plaintiff had filed an application for appointment of a Receiver for handing over possession of the property to the plaintiff as the plaintiff had paid Rs. 1.01 crores as sale consideration to Punjab & Sind Bank, who had a decree against the defendant and the defendants were allegedly trying to hand over possession to somebody else. Similarly, reliance of the learned counsel for the plaintiff on the judgment of the Hon'ble Supreme Court in the case of Brig. Sawai Bhawani Singh Vs. M/s. Indian Hotels Company Ltd. and others, is also misplaced. That was a case where

pursuant to an agreement the respondent had come to possession of the suit property for running the business of the Hotel. The respondent had filed a suit for perpetual injunction to restrain the appellant from interfering with his possession and running of the business. The appellant had filed an application for appointment of a Receiver. It was in the facts of the case that the Hon''ble Court had declined to appoint a receiver.

28. In my view, this is a fit case for appointment of a Court Receiver to take over the custody of the suit property. The entire case of the plaintiff appears to be based on falsehood, fraud and fabrication of documents. It is a clear case of grabbing of valuable immoveable property through criminal acts. Such blatant acts deserve to be dealt with strongly and effectively. The plaintiff cannot be permitted to enjoy the fruits of their illegal acts. Such a continuance done by the plaintiff would be a travesty of justice inasmuch as adjudication of the suit is likely to take some time. As stated above, there is also a danger of the property being wasted away. Very clear and cogent grounds are made out to appoint a Receiver. This is a fit case for exercise of discretion to appoint a receiver. In view of the above, the present application is allowed. Mr. S.K. Trikha (Mobile No. 9910038801), retired Assistant Registrar of this Court, is appointed as a Receiver to take possession of the suit property. He will be entitled to evict any person who is found in physical possession of the suit property. He will properly and securely lock up the suit property. His fee for the time being is fixed at Rs. 75,000/- to be paid by the defendant. Depending upon the necessity, he may carry out physical inspection of the suit property at such regular intervals that he deems just and proper. He will take all necessary steps to preserve and protect the property. All out of pocket expenses shall also be borne by the defendant. The Receiver will file his first report within three months. Subsequent reports may be filed as necessary. The concerned SHO of the area shall ensure appropriate police protection to the Receiver, if so required, for carrying out directions as stated in the present order. Application is accordingly disposed of.

CS (OS) 2526/2010

List before the Joint Registrar for further proceedings, along connected case CS (OS) 2639/2012 on 30th September, 2013.