

(2010) 11 DEL CK 0094

In the Delhi High Court

Case No : I.A. No. 10202 of 2006 in CS (OS) No. 1759 of 2006

Shri Tilak Raj Ahuja

APPELLANT

Vs

Shri Mahesh Chander Ahuja

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Citation : (2010) 11 DEL CK 0094

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Atul Bandhu and Karan Ahuja, for the Appellant; Anupam Gupta, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This is an application seeking interim injunction restraining the Defendant, his associates, servants, employees, etc. from causing any interference, disturbance and hindrance in the peaceful enjoyment of the roof of the suit property during pendency of the suit.

2. The parties to the suit are brothers, being sons of late Sh. Harbans Lal Ahuja and late Smt. Chanan Devi. Late Sh. Harbans Lal Ahuja was the owner of property No. J-13/9, Rajouri Garden and Z-127, Loha Mandi, Naraina. It is alleged in the plaint that after death of Sh. Harbans Lal Ahuja, Smt. Chanan Devi, mother of the parties, had relinquished her 1/3rd share in property No. J-13/9, Rajouri Garden, left by Sh. Harbans Lal Ahuja, in favour of the plaintiff, thereby making him owner of 2/3rd share in the aforesaid property. The plaintiff has now sought partition of property No. J-13/9, Rajouri Garden, New Delhi.

3. The Defendant has contested the suit and opposed the application. The Defendant has denied the alleged relinquishment by late Smt. Chanan Devi in favour of the plaintiff and has alleged that the plaintiff has fabricated the document in this regard. On merits, it has been admitted that the plaintiff is residing on the ground floor of House No. J-13.9, Rajouri Garden, whereas the

first floor of the aforesaid property is in the possession of the Defendant. As regards roof of the property, it is alleged that the same is in the possession of the Defendant, who had raised construction of the first floor of the property out of his personal income and resources.

4. Admittedly, the plaintiff is in possession only of the ground floor of the suit property. The possession of the first floor admittedly is with the Defendant and the lock on the roof also is of the Defendant. As regards the roof of the house, admittedly the keys of the door leading to the roof is with the Defendant. This clearly shows that the roof of the house, at present, is in exclusive possession of the Defendant. Since the plaintiff is not in physical possession of the roof of the house, there can be no question of granting any prohibitory injunction restraining the Defendant from interfering with the possession/joint possession of the plaintiff with respect to the roof of the house.

5. As far as the ground floor of the property is concerned, the learned Counsel for the Defendant very clearly undertakes that the Defendant will not interfere with the possession of the plaintiff with respect to the ground floor of the suit property in any manner. Moreover, no interim injunction with respect to the ground floor portion of the suit property has been sought by the plaintiff.

6. In view of the undertaking given by the learned Counsel for the Defendant, no injunction order is required to be passed with respect to the ground floor of the suit property.

7. Since the plaintiff is not in possession or even joint possession of the roof, there can be no question of granting any injunction restraining the Defendant from interfering with the possession of the plaintiff with respect to the roof.

The application stands disposed of accordingly.

Any observation made in this order shall not affect the decision of the suit in any manner.