

(2002) 11 DEL CK 0052

In the Delhi High Court

Case No : IA 10118 of 1997 in Suit No. 400 of 1997

Smt. Sneh Lata Mathur

APPELLANT

Vs

Shri Brij Raj Bahadur and Others

RESPONDENT

Date of Decision : 11-11-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 10, 151
Hindu Succession Act, 1956 — Section 23
Urban Land (Ceiling and Regulation) Act, 1976 — Section 45

Citation : AIR 2003 Delhi 259 : (2003) 66 DRJ 763 : (2003) 2 RCR(Civil) 192

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : Sandeep Sethi, for the Appellant; Defendant No. 1 in person, Sanjay Jain, for Defendant No. 2, P. Banerjee, for Defendant No. 3 and Nalin Tripathi, for Defendants 4, 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

R.C. Chopra, J.—This order shall dispose of plaintiff's application under Order 39 Rule 1 and 2 read with Section 151 of the CPC for injunction directing the defendants to permit the plaintiff to occupy and use the portion referred to as House No. II in the site plan attached with the plaint in respect of Suit property No. 14, Jamuna Road, Civil Lines Delhi.

2. The facts relevant for the disposal of this application, briefly stated, are that the plaintiff is a widow aged about 87 years. The defendant No. 1 is her brother, defendants No. 2 and 3 are her sisters. Defendant No. 4 is the daughter of defendant No. 1 and defendant No. 5 is the husband of defendant No. 4. According to the plaintiff the suit property was inherited by her father Sardar Bahadur in the course of a partition with his brothers and after the death of her father and mother the suit property has developed upon the plaintiff and defendants 1, 2 and 3 in equal shares. They, Therefore, are co-owners of the suit property having 1/4 share each. The suit property is comprised of three built up

structures. The largest built up portion located almost in the centre of the property, having about 8 rooms, is shown as House No. 1 in the site plan and is in possession and occupation of defendant No. 1. Till the death of the their mother they were residing in the said House No. 1 but thereafter because of the temperamental nature and misbehavior of defendant No. 1, the plaintiff and defendant No. 2 found it difficult to stay with defendant No. 1 and as per a family arrangement the plaintiff and defendant No. 2 rebuilt and renovated and thereafter shifted to House No. II. The defendant No. 2 is also a widow aged about 70 years. It is pleaded that in the year 1976 Urban Land and Ceiling Act 1976 was promulgated and in terms there of prescribed statements were filed before the Competent Authority in which the plaintiff as well as defendant No. 1, 2 and 3 were described as co-owners of the suit property having 1/4 share each.

3. The plaintiff alleged that defendant No. 4, the daughter of defendant No. 1 was married in the year 1996 to defendant No. 5 but within a month of her marriage, she came back with her husband and started living with defendant No. 1. The plaintiff was told that the defendant No. 5 was building a house in Faridabad which was on the verge of completion and defendants 4 and 5 would shift as soon as their house is completed. However, after a few days of her return defendant No. 4 started having verbal exchanges with her father, defendant No. 1, and as such there was unpleasantness in the house. Since defendant No. 4 were very close to the plaintiff and defendant No. 2, who were her aunts, she requested them to permit her and her husband to reside in one room in House No. II for a couple of months till the completion of their house in Faridabad. Out of love and affection, this request was allowed and defendants No. 4 and 5 started living in a part of House No. II. It later on, however, transpired defendants No. 4 and 5 had come to live in the suit property permanently and intended to eject the plaintiff and defendant No. 2 from their portion. The plaintiff repeatedly requested defendants No. 4 and 5 shift to their own house but they started increasing their occupation and restricted the space available to plaintiff and defendant No. 2. Defendants 4 and 5 came to the level of threatening the plaintiff and defendant No. 2.

4. The plaintiff alleged the defendants No. 4 and 5 started harassing the plaintiff and defendant No. 2 with the object of throwing them out of House No. II although they were co-owners of the suit property and defendants 4 and 5 were merely trespassers. The defendant No. 2 filed a suit No. 2911/1996 for the portion in which a Local Commissioner was appointed. The Local Commissioner visited the suit property and the report shows as to how the plaintiff and defendant No. 2 were being harassed by defendants 1, 4 and 5. The plaintiff claimed a declaration that the suit property had already been partitioned and the plaintiff was entitled to 1/4 share therein and a decree of permanent injunction restraining the defendants 1, 4 and 5 from interfering with or obstructing in any manner with the plaintiff's peaceful use, occupation and enjoyment of the suit property. It was also prayed that a Local Commissioner be appointed to inspect the property and suggest the mode of settlement by metes and bounds

according to the respective shares to the parties. A decree of possession was also claimed in respect of House No. II, with defendant No. 4 and 5, in respect of portion occupied by them. On the same grounds an I.A. Was filed and interim injunction was prayed. In the course of arguments of application it was admitted by learned counsel for the plaintiff that during the pendency of suit the plaintiff and defendant No. 2 had been forced to live with their friends and relatives on account of misbehavior of defendants No. 4 & 5 and as such, interim mandatory injunction be issued directing defendants No. 4 & 5 to vacate house No. II of suit property.

5. The defendant No. 1 filed a written statement and reply controverting the pleas raised by the plaintiff. He disputed the share of the plaintiff in Suit property and also pleaded that he was in exclusive possession thereof along with his wife, two daughters and son-in-law. He denied that the plaintiff and defendants No. 2 and 3 were in possession of any portion of the suit property. It was pleaded that defendant No. 1 and was the only male heir who had inherited the suit property and since it was the only dwelling house of defendant No. 1 the plaintiff had no right to claim partition thereof in view of Section 23 of the Hindu Succession Act, 1956. It was also pleaded that the suit was liable to be stayed u/s 10 of the CPC in as much as the defendant No. 2 had already filed a suit for partition. It was stated that the plaintiff was a resident of 6, Kirpa Narain Marg, Delhi and defendant No. 2 was residing at Flat No. 8-A, 9, Raj Narain Marg. Defendant No. 3 was stated to be a resident of Apartment No. 70, Qutab View Apartment, New Mehrauli Road, New Delhi. It was pleaded that the plaintiff being the sister of defendant No. 1 had been coming and staying with him and as such some of her clothings were being stored in the suit property by defendant No. 1. It was denied that the plaintiff had allowed defendant No. 4 and 5 to occupy the so called House No. II and stated that as a matter of fact defendant No. 4 had been residing there since her childhood and after her marriage her husband also came there to reside with her. It was stated that defendants No. 4 and 5 had been residing in the said portion of dwelling house of defendant No. 1 as members of family with his consent and permission and the plaintiff and other sisters of defendant No. 1 have no concern whatsoever with them. It was denied that any settlement between the plaintiff and defendant No. 1 was arrived at under which separate portions were occupied by the plaintiff and defendant No. 2. It was stated that the plaintiff had only one son who is settled in USA. It was pleaded that in the year 1995, the plaintiff had shifted to R.K. Puram, New Delhi and, got her ration card also transferred there. In the year 1996 she shifted to 6, Kripa Narain Marg, Delhi and since then she has been residing there. However, she used to visit defendant No. 1 and stay with him in the suit property. Defendant No. 2 was also stated to be living with her husband who was posted most of the time abroad and after retirement of her husband the defendant No. 2 Along with her husband came to stay with defendant No. 1 in the suit property and being a sister and on account of love and affection defendant No. 1 allowed them to stay there but never in their own right. It was stated that no exclusive portion of suit

property was ever given by defendant No. 1 to his sisters and entire property always remained in his use and occupation. It was admitted that statements under Urban Land Ceiling Act were filed by the plaintiff and defendants No. 1, 2 and 3 before the competent authority. Defendant No. 1 had merely stated that the plaintiff and defendants No. 2 and 3 had inherited 1/4 share from the share of their deceased mother but he never gave any statement or confirmation that his sisters had 1/4 share each in the entire property. It was added that a rectification application u/s 45 of the Urban Land Ceiling Act had already been filed by him. It was denied that defendant Nos. 4 and 5 had occupied House No. II without any permission or consent of plaintiff and defendant No. 2 or that they were trespassers. It was pleaded that defendants 4 and 5 were living there with the permission of defendant No. 1 who was the owner in possession of the suit property. It was added that plaintiff and defendant No. 2 were never in physical possession of any portion of the suit property except that some belongings of the plaintiff were kept in the residential dwelling house which had been described as House No. II. Regarding the report of Local Commissioner appointed in S.No. 2911/96, it was stated that the said Local Commissioner was appointed ex parte and taking advantage of the appointment of said Local Commissioner the plaintiff and defendant No. 1 tried to barge into a House No. II of suit property.

6. The defendants No. 2 and 3 filed their written statements supporting the plaintiff. However, defendants No. 4 and 5 filed their written statement supporting the case as set up by defendant No. 1 and pleaded that they were living in the premises in question with the consent and permission of defendant No. 1.

7. Smt. Kamini Bahadur widow of deceased Arun Bahadur, the only son of defendant No. 1, was impleaded as defendant No. 6 who filed a written statement supporting the case of defendant No. 1. The plaintiff filed replications to the written statements of the defendants reiterating the pleas raised in the suit.

8. I have heard learned counsel for the plaintiff and learned counsel for the defendants. I have gone through the records.

9. According to the learned counsel for the plaintiff, the plaintiff has succeeded in prima facie proving on record that she as well as defendants 1, 2 and 3 are co-owners/co-shares of suit property to the extent of 1/4 each and it is also prima facie established on record that till about 1996 the plaintiff and defendant No. 2 were in possession of the portion shown as House No. II in the suit property. It is submitted that defendants 4 and 5 who are the daughter and son-in-law of defendant No. 1 occupied some portion of said House No. II with the permission and consent of plaintiff and defendant No. 2 and thereafter started misbehaving with them and ultimately succeeded in compelling them to move out of the said house. The plaintiff as well as defendant No. 2 who are quite old were not in a position to face the defendants No. 4 and 5 and other family members of defendant No. 1. Referring to Section 23 of Hindu Succession Act, learned counsel

for the plaintiff submits that although a female co-sharer in respect of only dwelling house occupied by a male member, may not seek partition still the proviso to Section 23 of the Act itself very clearly provides that in case a female heir is a daughter, she shall be entitled to a right of residence in the dwelling house only if she is unmarried or has been deserted or has separated from her husband or is a widow. It is contended that a plaintiff being a widow is entitled to stay and reside in the suit property and as such a good case for issuance of mandatory injunction is made out directing defendants 4 and 5 to move out of House No. II and allow the plaintiff and defendant No. 2 to stay therein. It is also argued that the defendants No. 4 and 5 are trespassers in the portion, in the portion, which was in occupation of the plaintiff and defendant No. 2, and in case they have no other place to stay they may live in the portion occupied by defendant No. 1 who is father of defendant No. 4.

10. On the other hand learned counsel for defendants 1 and defendants 4, 5 and 6 have argued that the present suit is not maintainable and is liable to be stayed in terms of Section 10 of the CPC in as much as defendant No. 2 has already filed a suit No. 2911/96 for partition of the suit property. It is also argued that the plaintiff and defendant No. 2 were living with defendant No. 1 in the suit property with his permission and consent being sisters and were never in exclusive possession of House No. II as alleged. It is also argued that defendant's No. 4 and 5 have settled possession of House No. II can be dispossessed only in accordance with law and no mandatory injunction can be issued as it would amount to decreeing, the suit filed by the plaintiff.

11. The first and foremost question to be considered is as to how and on what principles the Courts should exercise discretion in the matter of grant or refusal of ad interim mandatory injunctions. Learned counsel for the plaintiff relying upon a judgment of the Supreme Court of *Dorab Cawasji Warden Vs. Coomi Sorab Warden and others*, and a recent judgment given by Hon'ble Mr. Justice A.K. Sikri, a learned Single Judge of this Court in IA. No. 4970-71/2000 and IA. No. 268/2000 in Suit No. 1103/2000 titled *Sukarma Rani Kapoor v. Om Prakash Kapoor and Ors.* has vehemently argued that in cases of exceptional and undue hardship, a plaintiff may be granted relief of interim mandatory injunction even with a view to restore status quo ante so that a plaintiff who is found to be wronged does not continue to suffer till the final disposal of the suit. He also relies upon a judgment of the Apex Court in the case of "*Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*", to contend that in a case where an interim relief of temporary injunction cannot be covered under Rules 1 & 2 of Order 39 CPC, the Court may invoke its inherent powers u/s 151 of the CPC for issuing an appropriate temporary injunction to do equity and uphold the interests of justice. Learned counsel for the defendants No. 1, 4 and 5 have also relied upon the same judgment reported in *Manohar Lal's* case (*Supra*) to contend that it is not a fit case for grant of interim mandatory injunction in favor of the plaintiff as prayed. It is also argued by learned counsel for the defendants that grant of interim relief in the present case would amount to decreeing the entire suit and

as such, the relief as prayed, cannot be granted. In this regard, reliance is placed upon the judgment of the Supreme Court "P.R. Sinha and Ors. v. Inder Krishan Raina and Ors." reported in (1996) 1 SCC Page 681.

12. After considering the submissions made by learned counsel for the parties and going through the judgments relied upon by them, this Court is of the considered view that grant of interim mandatory injunction in appropriate cases is permissible and is not a totally forbidden relief. The only requirement is that interim mandatory injunctions should not to be granted lightly as the object of interim measures ordinarily is to maintain status quo as on the date of the filing of the suit. However, in a case of exceptional hardship and with a view to do complete justice, the Court may come to the rescue of a the party by ordering status quo ante so that during the long drawn trial of the suit, one party is not made to suffer and the other permitted to enjoy the fruits of his illegal acts. The Court, however, has to ensure that the plaintiff has a strong prima facie case in his favor and should be further satisfied that in case the interlocutory mandatory injunction is not granted, the plaintiff would suffer extremely irreparable injury which cannot be compensated in terms of money. No straight jacket formula or hard and fast rule can be laid down for the exercise of discretion in such matters but one thing can be safely said that an interim mandatory injunction to restore status quo ante should be granted rarely and only in cases of exceptional nature in which on account of highhandedness of a defendant the Courts conscience compels it to disturb the status quo which has come about on account of infraction of law. The argument that the interim relief would tantamount to decreeing the whole suit and as such cannot be granted can be taken care of by moulding the interim relief and attaching certain conditions thereto so that in case the suit happens to fail, the relief granted to the plaintiff through an interim order can be withdrawn and the parties may be put back to the same position in which they were on the date of the grant of such a relief. Such interim relief should be granted in rare cases of exceptional nature and the Courts are not totally precluded from issuing such interim reliefs.

13. With this legal overview, let this Court consider as to whether the plaintiff has succeeded or not in establishing a strong prima facie case in her favor which is a pre-requisite for grant of any ad interim injunction. The plaintiff's case, briefly stated, is that the suit property at 14, Jamuna Road, Delhi was owned by her grandfather who expired in 1950. In the year 1958, the father of the plaintiff also expired. In the year 1972, a partition between the brother and sisters was brought about but division by metes and bounds was deferred. The suit property had three built up structures described in Paras 7, 8 & 9 of the plaint. These are referred to as House No. I, II & III and are shown as such in the Plan attached with the plaint. Till the death of the plaintiff's mother in the year 1976, the plaintiff and defendant No. 2 were also residing in the main house, i.e., House No. I along with defendant No. 1 but thereafter, the defendant No. 1 became temperamental and started indulging in shouting and intimidating them as a result of which the plaintiff and defendant No. 2 started living in House No. II,

which they got repaired and renovated at an expense of about Rs. 4 lacs. In this portion, the daughter and son-in-law of defendant No. 1, who are defendants No. 4 & 5, came to stay on a temporary basis on the pretext that their own house was under construction at Faridabad. The plaintiff and defendant No. 2 allowed them to stay there but one day when plaintiff came back after staying with a friend for a few days they refused to allow her to stay in the said portion. Prima facie case in favor of the plaintiff regarding her right to live in this portion stands established on record firstly on account of the fact that she as a legal heir, the daughter of late Sardar Bahadur, had inherited this property along with defendants No. 1, 2 & 3 and as such, is a co-owner thereof to the extent of 1/4th share. It is shown on record that even returns were filed by the parties under Urban Land Ceiling Act which reflected this position and as such, the plea of defendant No. 1 cannot be accepted that the plaintiff and defendant No. 2 or defendant No. 3 have no share in the suit property and he alone is the exclusive owner thereof.

14. Not only co-ownership, the plaintiff has established on record a strong prima facie case regarding her possession also in respect of House No. II, by placing on record numerous documents which show that the plaintiff as well as defendant No. 2 had been living in the said House No. II of the suit property since long. Pension Payment Order, a letter from MTNL in the name of husband of defendant No. 2, Ration Card, Telephone Bills, House Tax Bill, Electricity Bills in the name of defendant No. 2, Passport of the plaintiff, Pass Book in the name of plaintiff's son, Gas connection in the name of the plaintiff, Death Certificate of the husband of the defendant No. 2 and Electoral Card satisfactorily establish on record that the plaintiff and defendant No. 2 have been residing in the suit property since long. The plea of defendant No. 1 that they were residing at some other places and were only visiting him occasionally being sisters is a patently false plea for the reason that the sisters visiting the house of their brothers do not come to acquire such a large number of important documents suggesting their regular residence and possession of the house. No sister can have a Gas connection in her name at the address of her brother's house if she is only an occasional visitor to his place. Similarly Passport, Bank Accounts, Death Certificates, Telephone Bills, House Tax Bills, DVB Bills, Ration Cards etc. cannot be obtained and acquired by any casual and occasional visitor. It is, Therefore, prima facie shown on record that the plaintiff and defendant No. 2 have been residing in the suit premises for years together but the defendant No. 1 with the help of defendants No. 4 and 5 had made it impossible for them to live in House No. II and thereafter, started raising a plea that they were never residing there.

15. The report dated 13.12.1996 given by the Local Commissioner appointed in Suit No. 2911/1996 also speaks volumes about the highhandedness of defendants No. 1, 4 & 5 qua the plaintiff and defendant No. 2 both of whom are old ladies. When the Local Commissioner reached the spot, the defendant No. 2 opened the door of the House No. II where she was staying but defendant No. 4 threw all sorts of tantrums to obstruct the Local Commissioner and make it

difficult for her to execute the commission. Para 2 of the report of the Local Commissioner shows tat plaintiff as well as defendant No. 2, in spite of obstructions by defendant No. 4 and locking of some portions by her, took the Local Commissioner to different rooms in the said portion and opened their cupboards with their respective keys. Their belongings were found there and even the Gas connection installed in the said portion was found in the nature of the plaintiff. Electricity Bills were in the name of defendant No. 2 and various envelops addressed to plaintiff and defendant No. 2 were also found there. In Para 3 of the report, the Local Commissioner clearly observed that the said cottage seemed to be exclusively used by the plaintiff and defendant No. 2. However, the defendant No. 4 declared that the said House was belonging to her which was blatant lie. The defendant No. 4 being a married daughter of defendant No. 1 has no independent right, title or interest in the suit property. The documents mentioned in the foregoing paras, report of the Local Commissioner and the facts and circumstances of the case make out a strong prima facie case in favor of the plaintiff to the effect that the plaintiff and defendant No. 2 were living in the House No. II of suit property, but by practicing fraud the defendants No. 4 and 5 first got themselves accommodated in this portion and thereafter, pushed them out by making it impossible for them to stay there. It was an act of treachery against the two old and aged ladies aimed at depriving them of their rights in the suit property. This Court must mention here itself that defendants No. 4 & 5 are strangers to the suit property qua the plaintiff and had became trespassers in House No. II of the suit property as soon they were asked to vacate it. The defendant No. 4 being the daughter of defendant No. 1, could have stayed in the portion occupied by her father defendant No. 1 but she and her husband had to business to occupy the portion of their aunts and then refuse to leave and then create circumstances compelling their aunts to quit. All this appears to be at the behest of defendant No. 1 who is trying to usurp the entire property to the exclusion of his sisters.

16. The defendant No. 1 is not only denying and disputing the plaintiff's possession on false and frivolous grounds but has also raised a plea that in view of Section 23 of Hindu Succession Act, the plaintiff cannot seek partition of the suit property as it is the only dwelling house of defendant No. 1. Section 23 of the Hindu Succession Act, 1956 lays down that "where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling -house wholly occupied by members of his or her family, then, notwithstanding anything contained in the Act, the right of any such female heir to claim partition of the dwelling--house shall not arise until the male heirs choose to divide their respective shares therein". The defendant No. 1, however, ignores that Section 23 itself gives a right of residence in such a house to female heir if she is the daughter and is unmarried or has been deserted or has been separated from her husband or is a widow. In the present case, the plaintiff and defendant No. 2 are admittedly widows and as such, Section 23 of Hindu Succession Act enjoins upon the Court

to enforce their right of residence in the suit property.

17. The plea of defendant No. 1 that he has already filed a rectification application before the concerned authorities under the Urban Land Ceiling Act to plead that the plaintiff and his other sisters are not co-owners or that the report of the Local Commissioner cannot be looked into, as objections against it are still pending, is devoid of force because at this stage this Court is examining the pleas raised by the parties on a prima facie basis only. Not only the statements filed by the parties under Urban Land Ceiling Act, the report of the Local Commissioner but various other documents available on record show that the plaintiff and defendant No. 2 were living in the suit property till about the filing of the suit and were in peaceful possession of House No. II thereof. Thus, this Court is of the considered view that a strong prima facie case to show that the plaintiff and defendant No. 2 were living and were in possession of House No. II of the suit property is made out. It is also prima facie shown on record that defendants No. 4 & 5 with the permission of plaintiff and defendant No. 2, moved into this House No. II on the pretext that the house of defendant No. 5 was being constructed at Faridabad and they would shift as soon as the said house is complete, but later on, they made the lives of plaintiff and defendant No. 2 miserable and resorted to all sorts of tactics to throw them out of their portion. The possession of defendants N. 4 & 5, Therefore, is in the nature of trespassers in House No. II and they have no right to stay therein without the consent of plaintiff and defendant No. 2.

18. Learned counsel for defendant No. 1 has vehemently argued that present suit is liable to be stayed u/s 10 of the CPC and as such, no interim relief can be granted. It is submitted that before the filing of the present suit itself, the defendant No. 2 had filed a Suit No. 2911/1996 and since the plaintiff is also seeking partition she has a right to raise her pleas in the said suit only and not by way of filing a separate suit. After considering the submissions made by learned counsel for the parties, this Court is of a prima facie view that the present suit has been filed by the plaintiff primarily against defendants No. 4 & 5 who are not parties to the partition suit filed by defendant No. 2 and the major thrust of the present suit is to restrain the defendants No. 1, 4 & 5 from obstructing the plaintiff in the matter of enjoyment of the portion in her possession which has already been partitioned between the plaintiff and defendants No. 1, 2 & 3. The controversies in the two suits may be similar but are not substantially the same as in the earlier suit the plea is for the partition of the property whereas in the present suit the plea being raised by the plaintiff is that the partition has already taken place. Moreover, before considering the question of the stay of the present suit u/s 10 of the Code of Civil Procedure, this Court is well within its powers to consider the prayer for issuance of an interim relief and a plea raised u/s 10 of the CPC cannot preclude the Court from disposing of an application under Order 39 Rule 1 & 2 read with Section 151 of the Code of Civil Procedure. Similar view was taken by Mysore High Court of Kerala High Court in the judgments "Baburao Vithalrao Sulunke v. Kadarappa

Prasappa Dabbannavar and Anr." reported in AIR 1974 Mys 63 and V.R. Balakrishnan Nadar Vs. R. Velayudhan Nadar and Others, . It appears that the present suit may be consolidated and tried together with the earlier partition suit filed by defendant No. 2 but it does not appear that the present suit would be liable to be stayed.

19. The plaintiff who is an aged widow appears to be living here and there after her ouster from House No. II in the suit property by defendants No. 4 & 5 at the behest of defendant No. 1 who is enjoying the entire property to the exclusion of his sisters. In case the plaintiff's prayer for directing the defendants No. 4 & 5 to permit the plaintiff and defendant No. 2 to stay there peacefully is not allowed, the plaintiff would suffer irreparable loss/injury in as much as in spite of having a share in the suit property, which belong to her late father, the plaintiff would be at the mercy of others in the matter of spending the autumn of her life. Section 23 of the Hindu Succession Act bestows a valuable right upon the plaintiff in the matter of residence in the ancestral property which deserves to be enforced by issuing appropriate directions. In case the plaintiff is not in a position to have the benefit of residing in her own property during her last days of life, no amount of compensation in terms of money would be adequate. Therefore, this Court is of the considered view that it is the duty of this Court to undo blatantly illegal and wrongful act of defendants No. 1, 4 & 5 in throwing the plaintiff and defendant No. 2 out of the suit property. The balance of convenience is also in favor of the plaintiff who is shown to have been residing in suit property since long but was dispossessed there from by practicing deceit. In view of her extreme old age, the plaintiff cannot be left to wait for the final decision of the suit permitting the defendants No. 4 & 5 to enjoy her property in spite of the fact that they are shown to be acting in an illegal and highhanded manner. Restoration of status quo ante, Therefore, is fully called for under the facts and circumstances of the present case.

20. In the result, the application is allowed and an ad interim mandatory injunction is issued to defendants No. 4 & 5 directing them to vacate House No. II of the suit property within 15 days and allow the plaintiff and defendant No. 2 to occupy the said portion and live there peacefully. This mandatory injunction is made conditional to the effect that the plaintiff and defendant No. 2 would file and undertaking with this Court within 15 days binding themselves, their successors as well as their legal heirs to vacate House No. II in case the suit filed by the plaintiff fails or some orders are passed directing them to vacate the suit premises. The defendants No. 1, 4 & 5 are further restrained from obstructing or interfering with the plaintiff's occupation of House No. II of the suit property till the final disposal of suit.

21. Nothing stated herein shall be taken as an expression of opinion on the merits of the suit as observations made herein are tentative only.