
(2013) 08 DEL CK 0419
In the Delhi High Court
Case No : CS (OS) 3559 of 2012

Swarn Kanta Punj

APPELLANT

Vs

Surabhi Gehlot and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Easements Act, 1882 — Section 12, 15

Citation : (2013) 08 DEL CK 0419

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Sanjeev Sindhwani, with Mr. Vikram Saini, for the Appellant; Ramji Srinivasan with Mr. Sumit Gahlawat and Mr T.S. Thakraon, for the Respondent

Final Decision : Disposed Off

Judgement

S. Muralidhar, J.

I.A. No. 1035 of 2013 and 9830 of 2013

1. The Plaintiff has filed I.A. No. 1035 of 2013 under Order XXXIX Rule 1 and 2 CPC to restrain the Defendants from interfering, in any manner, egress and ingress of Plaintiff, her family members, relatives and friends to the premises under her occupation at 12, Kasturba Gandhi Marg, New Delhi ("suit premises") and parking her vehicle in front of/or near the entrance of the suit premises in the open space as detailed in the site plan enclosed with the plaint. The Plaintiff is a senior citizen aged 76 years and is a widow. Her husband Shri Swaran Lal died on 23rd March 1974.

2. It is stated that the suit premises consists of two rooms, side covered verandah, kitchen, toilet/bathroom, store and open courtyard (known as Annexe). It is stated that Shri Chaman Lal was a tenant of Shri Sardar Bahadur Mohan Singh in the suit premises since 1948. The suit premises has a big open space in front and the entrance thereto from the main road and footpath on Tolstoy Marg is through an open passage marked Y-Z in the site plan. It is stated

that after the death of Shri Sardar Mohan Singh, his sons Shri Gurcharan Singh, Shri Rajinder Singh and Shri Jitender Singh became the owners of the suit property by inheritance.

3. Shri Sardar Mohan Singh had filed a petition for eviction of Shri Chaman Lal in the Court of the First Additional Rent Controller on various grounds. The said petition was dismissed on 9th August 1965. It was held that Shri Chaman Lal was living in the said premises as a member of the joint Hindu family along with his brother Shri Swaran Lal, the deceased husband of the Plaintiff, and there has been no sub-letting assigning of the possession of the suit premises. It is accordingly claimed that since 1948, Shri Chaman Lal and his brother's family had been living in the suit premises as tenants. After the death of Shri Swaran Lal, his family members had been in possession and the Plaintiff, i.e., the widow of Shri Swaran Lal has been paying rent to the landlord. After Shri Chaman Lal shifted to Chandigarh, the suit premises continued to remain in possession of the Plaintiff and her children. After the marriage of the children, the Plaintiff continued to live in the suit premises.

4. Enclosed with the plaint are numerous documents to substantiate the claim of the Plaintiff that she remains in possession of the suit premises. Inter alia there is a report of a Local Commissioner appointed (LC) in the Suit No. 440 of 1992 filed by her in 1992 as Plaintiff against the NDMC. A status quo order was passed by the Court in the said suit restraining the NDMC from demolishing the suit premises. During the pendency of the suit, NDMC withdrew its proposed action of demolition.

5. The Plaintiff states that on 13th December 2012 the suit premises were sold by the erstwhile owners to Mrs. Surabhi Gehlot and Ms. Shahista Sindhu, Defendants 1 and 2 herein. It is stated that Defendant No. 1 is the daughter-in-law of Mr. Raj Singh Gehlot, Defendant No. 3 who, according to the Plaintiff, is a builder. The Plaintiff alleges that the Defendants, with the aim of forcing her to vacate the suit premises, started harassing her and creating problems. The Plaintiff alleges that the Defendants want to convert the suit premises (forming of a bungalow at present) into a big commercial-cum-residential complex or a palatial residence.

6. The Plaintiff states that on 14th December 2012, she noted that the Defendants had put up an iron gate at the opening of the passage, leading to the suit premises and which is the only entry point for access from the open space and have also deployed guards who did not open the gate or allow the Plaintiff to enter from the open space and go to her house in the car. When she complained to police, she was told that she could have ingress and egress to the suit premises on foot and that the gate would be opened for that purpose but that the Plaintiff and her relatives would not be allowed to access the suit premises in a car nor their car would be allowed to be parked near the entry door or in the open space outside the suit premises. When the problem could not be resolved, the present suit was filed on 20th December 2012.

7. When the suit was first listed on 21st December 2012, counsel for the Plaintiff informed the Court that she would like to amend the plaint. The case was adjourned to 11th February 2013. In the meanwhile the Plaintiff filed I.A. No. 1034 of 2013 under VI Rule 17 CPC along with the present application (IA 1035 of 2013) filed under Order XXXIX Rule 1 and 2 CPC. Amendment was related to para 14 of the plaint in which the following sub-para was sought to be added:

In this regard, it shall be pertinent to point out here that the plaintiff has been using the open passage for the ingress and egress of her car (firstly purchased in the year 1961) and the open space outside the entrance to her house, for parking of her car, for the last more than 50 years, without any let or hindrance from the owner/landlord (the documents in this regard have been filed on record). As such it has even otherwise culminated into an absolute right in favour of the Plaintiff in view of the provisions of Section 15 of the Indian Easement Act which reads as under:-

15. Acquisition by prescription:- Where the access and use of light or air and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years.

And where support from one person's land or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years.

The right, to such access and use of light or air, support, or other easement, shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

8. The Court allowed the above amendment by its order dated 22nd January 2013 and summons were directed to be issued to the Defendants returnable for 11th February 2013. The Defendants appeared through counsel and accepted notice and undertook to file the written statement before 4th February 2013. In the present application again notice was accepted by the Defendants. The earlier application (IA 23279 of 2012) under Order XXXIX Rule 1 and 2 CPC was dismissed as withdrawn.

9. The Defendants did not file a written statement but filed I.A. No. 5932 of 2013 under Order VII Rule 11 CPC and notice was directed to be issued therein on 12th April 2013. Earlier on 2nd April 2013, the Defendants sought time to place on record a copy of the sale deed under which Defendants 1 and 2 purchased the property of which suit premises forms part.

10. Arguments on IA. No. 5932 of 2013 under Order VII Rule 11 CPC were heard and reserved on 24th May 2013. Meanwhile Plaintiff filed an I.A. No. 9830 of 2013 praying for an early decision in I.A. No. 1035 of 2013. On 4th July 2013,

the Court required the Defendants to instruct their counsel to make a statement on the interim relief prayed for by the Plaintiff.

11. On 8th July 2013, the Court dismissed I.A. No. 5932 of 2013. It was held that from the averments made in the plaint, it could not be said that the plaint did not disclose any cause of action. The Court held that the question whether the Plaintiff had been parking her car outside the premises in her occupation as a matter of right and under the terms of lease shall be decided after trial during which both sides had led evidence in support of their respective stands. It was held that a bare reading of the plaint "does not show that the plaintiff is claiming a decree of injunction simply on the ground that she has acquired easementary right of parking her car outside the premises under her occupation as a tenant. That is an alternative plea and whether or not she would succeed on that plea is also a matter to be decided after trial." The application was dismissed with costs of Rs. 10,000.

12. The Court has heard the submissions of learned counsel for the parties. Despite an adjournment granted for that purpose, the Defendants were not prepared to make any statement as regards the interim reliefs sought by the Plaintiff.

13. In the written statement filed by the Defendants, it is not denied that the Plaintiff is in occupation of the suit premises. All that is said is that she has not filed any document to show the alleged tenancy or a right of car parking having been granted to the Plaintiff. It is stated that the right to access can by no stretch of imagination be said to allow access to the car of the Plaintiff to be parked at the suit premises. It is stated that the Defendant No. 3 is not an owner of the property. No relief can be granted against him as he is not a proper party to the suit.

14. Many of the points raised in the written statement were also urged in the application under Order VII Rule 11 CPC which was dismissed by a detailed order dated 8th July 2013. A similar plea by the Defendants has been rejected on the ground that the said issues could be decided only at trial after evidence.

15. Mr. Ramji Srinivasan, learned Senior counsel/appearing for the Defendants, has placed reliance on a decision in Chapsibhai Dhanjibhai Danad Vs. Purushottam, to urge that the existence of an easementary right in terms of Sections 12 and 15 of the Easements Act, 1882 is a question of fact. It is further contended that easement by prescription was the assertion of a hostile claim over another man's property. The person who asserts an easementary right must prove that he had the consciousness to acquire the property which was not his own. Where he is unable to prove such consciousness, he cannot prove the acquisition of an easementary right by prescription.

16. As already noticed, the question whether the Plaintiff has been parking her car in the suit premises is a matter of evidence. At present the landlords admittedly are not in occupation of the suit premises. No inconvenience would be

caused to them if the Plaintiff continues to park her single car in front of the suit premises in her occupation.

17. Mr. Sanjeev Sindhvani, learned Senior counsel appearing for the Plaintiff, on instructions, stated that during the pendency of the suit the Plaintiff will park her single car in front of the suit premises and will not make any separate claim to the said parking space in the event that the Defendants succeeded in obtaining orders for her eviction from the suit premises in accordance with law.

18. In the considered view of this Court, the above statement made on behalf of the Plaintiff is sufficient to protect the interests of the Defendants, if any. It will always be open to the Defendants to resort to such remedies as may be available to them in accordance with law to regain the possession of the suit premises. In that event, the Plaintiff is thereby required to vacate the suit premises, the statement made on her behalf that she will not lay any claim to the parking space will bind her. If and when she surrenders the suit premises, she will surrender the said parking space as well. In other words, as long as the Plaintiff continues in occupation of the suit premises, unless evicted in accordance with law, she will be entitled to park one car in front of/or near the entrance of the suit premises in the open space as detailed in the site plan enclosed with the plaint. She will be entitled to bring in and take out her car through the main gate for that purpose.

19. This order will remain in force during the pendency of the suit. Nothing said in this order will influence the final decision in the suit.

20. The applications are disposed of in the above terms.

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21. List on 18th December 2013 for admission/denial before the Joint Registrar. By that date, the parties will file their affidavits by way of admission/denial and produce the originals of the documents relied upon by them respectively. To be listed in Court on 12th February 2014 for framing of issues.