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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve : 16.09.2009

Pronounced on : 18.09.2009

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CS (OS) 570/2008

VIJAY LAXMI PANDEY

..... Plaintiff

Through: Ms. Kamlesh Mahajan, Advocate.

versus

K.S. PANDEY & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

HON'BLE MR. JUSTICE S.RAVINDRA BHAT, J.

1. The plaintiff seeks a decree for permanent and mandatory injunction against the defendants, from dispossessing, her, or disturbing her possession in respect of the suit property, C-180/A, Defence Colony, New Delhi.
2. The brief facts, necessary for this judgment are that the plaintiff claims to be the owner of the suit property, by registered sale Deed dated 17-9-2002 (Ex. PW1/1) and in possession of ground floor and basement floor of the said property. In addition the plaintiff relies on Exb. PW1/2, a site plan, to show her entitlement and possession.

3. The Defendant No.1, states the plaintiff is her husband- as well as of Defendant No.2 (the former's first wife). The defendant Nos. 3 and 5 are the first defendant's sons, through the second defendant; Defendant Nos. 4 and 6 are the wives of the third and fifth defendants, respectively. The plaintiff claims having married the Defendant No.1 in 1981. It is stated that one son, Santosh Pandey was born from the said wedlock; he is presently studying in Pune. It is contended that soon after marriage, plaintiff and defendant No.1 went to Bhopal and thereafter returned to Delhi and stayed at A-44, Defence Colony, New Delhi for two years. Thereafter, the couple shifted to another accommodation in Lajpat Nagar and stayed there for another two years.

4. The plaintiff alleges having completed a "Skin Treatment Course" successfully, in 2001. It is claimed that the first defendant purchased C-180/A, Defence Colony, in 2000; it was later converted from leasehold to freehold. The plaintiff avers to starting a Skin Treatment Centre exclusively for ladies, from the basement floor of the suit property. She relies on Electricity Bill Ex. PW1/3-4A, Ex. PW1/5, Passport Ex. PW1/6, and Driving Licence Ex. PW1/7 to support her claim for possession.

5. The plaintiff says for the last approximately six months, the first defendant neither visits the ground floor of the premises, nor do other family members talk to her or her son and on the contrary, they are attempting to discomfit them, in the said property. It is argued that the first defendant wants the plaintiff to involve the other

defendants in her Skin Treatment Centre, since the Defendant Nos. 3 & 5 are engaged in petty consultancy jobs.

6. It is alleged that the second defendant intervened in the matter and requested the plaintiff that since she was doing extremely well in her business, she (the plaintiff) should pay some monthly amount to the Defendant No.1, which, it is stated, is being done. A copy of the plaintiffs' statement of account is marked Ex. PW1/8. It is alleged that when the defendants' greed increased, the plaintiff decided to sell the property and requested the first defendant to give her the originals of the property, after which he stated avoiding her on one pretext or the other. It is submitted that the plaintiff became aware that the property had been mortgaged, when she was shocked. According to her, the signatures were obtained without her awareness that the property would be mortgaged.

7. It is contended that on 29.01.2008, the defendants stormed into the house of the plaintiff, threatening that in case she did not involve the defendants in her Skin Treatment Centre as partners and that they would leave no stone unturned and ensure that Centre is closed down and that they are further threatening the deponent that she would be thrown out of the house along with her son. It is claimed that the plaintiff sought intervention of the first defendant's mother, and this led to a semblance of normalcy. It is averred that on 19.03.2008, the Defendants No.1, 2, 3 and 5 aggressively

barged into her house at approximately 9.45 p.m and threatened her with dire consequences if she did not agree to include them as partners in her Centre.

8. The plaintiff entreated the defendants not to disturb her, as her son was undergoing the pressure of Board Examinations and his last exam was on 29.03.2008. It is submitted that the plaintiff requested the defendants not to disturb them. It is alleged that the Defendant no.1, tried to slap the plaintiff but her son managed to help and save her. It is stated that he requested the defendants to leave immediately or the police would be sent for. The defendants left but kept threatening that she and her son would have to face dire consequences soon.

9. The plaintiff states that the defendants openly threatened her that in case the police were to be called by her, he (the said defendant no.1), being a very “connected” would “manage” the police. The plaintiff states having complained to the police. It is alleged that the said first defendant complained, in writing, to the Municipal Corporation of Delhi (MCD). This, it is stated led to the MCD sealing the premises, and later, the plaintiff got approval to continue with skin treatment clinic. On 25.02.2009, the defendant No.1, barged into the plaintiff’s house and started abusing and assaulting her; when the plaintiff tried to call the police, the first defendant not only snatched the phone but also started physically beating her.

10. It is averred that thereafter with great difficulty, the deponent managed to call the police; the latter got the plaintiff's medical check-up which showed that the plaintiff had contusions on the back 10x10 cm, superficial abrasion 2x1 cm on clausal aspect of right and left for arm mark "A". The plaintiff relies on her medical examination by CMOs a copy of which is produced as Mark "B". the plaintiff also relies on Mark C, the complaint to the Defence Colony Police. It is alleged that on 25.02.2009 the first defendant undertook and assure, before the SHO Defence colony that he would not keep any relationship with the plaintiff or fight with her.

11. The plaintiff, thus claims entitlement to a decree for permanent injunction against the defendants not to dispossess her from the suit property bearing C-180/A, Defence Colony, New Delhi half Basement and half ground floor. She also claims mandatory injunction against the defendants not to enter in her portion or to interfere in the peaceful use and occupation of the suit property. In addition, the plaintiff says that she is entitled to a decree for permanent injunction against the defendants restraining them from entering the skin clinic run by her.

12. The order sheet discloses that though the defendants did not enter appearance, though they were served with summons. The court recorded this on 9-4-2009; the defendants did not apply to participate proceedings. They were, therefore, set down *ex-parte*. The plaintiff, therefore, led evidence, by way of affidavit, and also marked the documents.

13. The above discussion shows that the plaintiff alleges to be in possession of the suit premises, for long; at least since 2002. The registered sale Deed dated 17-9-2002 (Ex. PW1/1) has been produced; the plaintiff also relies on a sketch plan (Ex. PW-1/2). She relies on Electricity Bill Ex. PW1/3-4A, Ex. PW1/5, Passport Ex. PW1/6, and Driving Licence Ex. PW1/7 to support her claim for possession. It is contended that the defendants have sought to disturb her possession, and threatened her. She relies on the testimony of her son, PW-2, to corroborate the allegations. She also relies on PW-3, who answered the court's summons, to produce the police records. They include Ex. PW-3/1 and Ex. PW-3/5.

14. On an overall consideration of the facts, it is held that the plaintiff has been able to establish that she has some interest in respect of the suit property. The sale deed recites that she has interest in respect of 600 sq. feet of basement, and a portion (700 sq. feet) of the ground floor. However, some documents – notably electricity bills, and statement of accounts, state her address to be the basement of the property. The copy of passport and driver's license, however mention the ground floor. No certified copy of municipal records were however, produced. Curiously, copies of the complaints made to the police did not mention anything about the alleged attack on her by the defendants, or the threats held out by them. The complaint, placed on the record, mentions about threat held out by someone on the telephone, that if she did not withdraw the claim against the defendant, in respect of the property, she would be harmed.

15. In view of the above discussion, the court holds that the plaintiff has been able to show possession in respect of some portion of the property, though not the whole of it; she has, however, not been able to establish that all the defendants are threatening dispossession. The pleadings and affidavit emphasize more about the first defendant's role. In these circumstances, the plaintiff is held entitled to a decree for permanent injunction, restraining the first defendant from dispossessing, or in any manner disturbing the plaintiff's possession, in respect of the portions of the suit property, which are under occupation by her, in the basement of C-180/A, Defence Colony, New Delhi.

16. The suit is decreed in the above terms. No costs.

I.A. Nos.3860/2008 & 3009/2009

No further orders are required to be passed in these applications in view of the judgment passed today in suit. The applications are disposed of as such.

September 18, 2009

(S.RAVINDRA BHAT)
JUDGE