

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS (OS) No.1548/2009

Date of Decision: August 26, 2010

PAWAN KUMAR GUPTA & ANR. Plaintiffs

Through: Mr. Sanjay Sharawat, Advocate

VERSUS

SHRI MURARI LAL GUPTA Defendant

Through: Nemo.

**% CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH**

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest?

J U D G M E N T

ARUNA SURESH, J.

1. Plaintiffs have filed the present suit for declaration, permanent and mandatory injunction for declaring that Plaintiffs have equal and common right to use and enjoy, without any kind of interference, the common staircase situated on the back side of the property bearing No.71-A forming part of Khasra No.424, situated in Guru Nanak Pura, Laxmi Nagar, Main Vikas Marg, Delhi, as shown Red in the site plan and for restraining him, his legal heirs, etc. from raising any construction or obstruction in the use and enjoyment of

the said common staircase and from illegally interfering with the peaceful use and enjoyment of the said staircase by the plaintiffs for having access to their portion of the property as shown Yellow in the site plan with a mandate to him to enable the plaintiffs to have unrestricted access to their portion of the property.

2. In brief, the facts of the case are that a building comprising of basement, ground floor, first floor and second floor constructed on a Plot of land bearing No.71-A forming part of Khasra No.424, situated in Guru Nanak Pura, Laxmi Nagar, Main Vikas Marg, Delhi, was divided into two main portions right from the basement to second floor and access to all the floors of both portions of the building is provided through the common staircase constructed on back side of the building. The portion shown Yellow in the site plan annexed to the plaint was owned by Shri Jagdish Gupta, real brother of the Defendant. He sold his portion in favour of the Plaintiffs vide Agreement to Sell dated 09.02.1998, 16.03.1998 and 07.04.1998. Subsequently, a registered Sale Deed was executed in favour of the Plaintiffs in pursuance of the said Agreement on 24.06.2009. Plaintiffs had been using the common staircase since the year 1998 when Agreements to Sell were executed. When Plaintiffs visited their property in the first week of July, 2009, they found the attitude of the Defendant changed and thereafter

Defendant started locking the backside gate Mark A in the site plan installed on the common stair case from inside. Plaintiffs found it difficult to get the gate opened from the Defendant from inside as many a times Defendant did not response to their request.

3. In the last week of July, 2009 when Plaintiffs visited their property for the purpose of getting some renovation work done on the second floor, they found the gate installed at the entrance of the backside common staircase locked from inside and it was not opened by the Defendant despite persisted calls. Plaintiffs therefore could not access their property and renovation work could not be carried out. On 04.08.2009 Plaintiffs again visited their property and found the gate locked from inside, which was opened by the Defendant after quite some time. Plaintiffs also noticed that Defendant had started piling / putting articles in the said common staircase on each floor to which Plaintiffs objected. On 12.08.2009 Plaintiffs again visited the property along with labourers for getting the renovation work done but, Defendant did not open the gate despite repeated requests. It was only when, Plaintiffs threatened to call the police, that Defendant opened the said gate. Plaintiffs again noticed that Defendant had put various articles on each floor of the common staircase leaving hardly any space for its user by the Plaintiffs. During talks, it transpired that

Defendant intended to merge half portion of the common staircase falling towards his side with his property on each floor leaving other half portion with the Plaintiffs. Since Defendant did not accede to the request of the Plaintiffs, hence, this suit.

4. Defendant was duly served for 30th October, 2009. As per the record Mr. Rajesh Kumar, Advocate had filed his vakalatnama on behalf of Defendant on 12.09.2009 however, none appeared on behalf of Defendant on 30.10.2009 nor any written statement was filed. Hence, Defendant was proceeded ex-parte.
5. Plaintiffs have filed affidavit of Plaintiff No.1 in evidence, which has been exhibited as Ex.PW-1/A. In his affidavit Plaintiff has proved that they had purchased the basement, ground floor, first floor and second floor with roof rights of the suit property as shown Yellow in the Site Plan Ex.PW/1 vide Agreement to Sell dated 09.02.1998, 16.03.1998 and 07.04.1998 Ex. PW/2 to PW/4 from Jagdish Gupta. At the time of execution of the Agreement to Sell, Jagdish Gupta had also executed Power of Attorneys in respect of the said floors which are proved in evidence as Ex. PW/5 to PW/7. Since thereafter Plaintiffs are in possession of the suit property as owners. Jagdish Gupta through his Power of Attorney, Gian Chand Gupta executed a registered Sale Deed in

respect of the entire suit property. After the execution of the Sale Deed, Plaintiffs in possession of the suit property became its absolute owners. From perusal of the Sale Deed, it is clear that the staircase from backside of the property as shown Red in the Site Plan Ex.PW/1 are the common to be used by both the parties.

6. From the uncontroverted statement of Pawan Kumar Gupta, it is proved that Defendant started locking the gate of the said common staircase and this created problems for the Plaintiffs as they could not have an easy access to their property free from hindrances and also they could not get their second floor renovated. This was done by the Defendant when he came to know that Plaintiffs intended to let out the second floor of the property in suit.
7. It is further proved in evidence that Defendant intended to divide the staircase into two equal shares abutting his property by putting his goods on each floor of the staircase and blocking the easy of the Plaintiffs to their portion and finally on 12.08.2009 when in the presence of the neighbours Defendant disclosed his intention to divide the staircase into two and merge one half portion of the common staircase falling towards his side with his portion of the property on each floor leaving the other half portion for the Plaintiffs. It is clear that if Defendant succeeded in his designs, Plaintiffs would suffer

inconvenience and irreparable loss and injury, as they would not be able to have free access to their own property. After dividing wall is constructed, the utility of the staircase would be minimized. Besides, keeping the gate of the staircase locked from inside by the Defendant had been and would cause unnecessary harassment, inconvenience to the Plaintiffs. Because of unreasonable acts of the Defendant, as discussed above, Plaintiffs are being deprived of their right to use the common staircase to have an access to their respective portions of the property in suit. Defendant cannot be allowed to fulfill his desire to the detriment of the interest of the Plaintiffs, which if allowed would mean encroachment, by the Defendant, of the common staircase. Plaintiffs therefore, have been able to prove their case against the Defendant.

8. As common staircase forming part of their property as per the Sale Deed and their right in the staircase as per their own averments are not disputed by the Defendant, no declaration is required to be granted as prayed. Since balance of convenience lies in favour of the Plaintiffs and they would suffer irreparable loss and injury if the relief prayed is not granted to them, they are entitled to the relief of permanent injunction as prayed.
9. Hence, I hereby pass a decree for permanent injunction in favour of

the Plaintiffs and against the Defendant thereby restraining the Defendant, his legal heirs, representatives, assigns, etc. from raising any construction or obstruction in the use and enjoyment of the common staircase situated in the back side of the property bearing No.71-A forming part of Khasra No.424, situated in Guru Nanak Pura, Laxmi Nagar, Main Vikas Marg, Delhi as shown Red in the Site Plan Ex.PW/1 and from interfering with the peaceful use and enjoyment of the said staircase by the Plaintiffs for having unrestricted access to their portions of the property on various floors as shown Yellow in the Site Plan Ex.PW/1. Defendant is further restrained from locking / bolting the gate of the staircase from any side at the place mark A in the Site Plan. Under the circumstances, no decree for mandatory injunction as prayed is required to be passed because it is prohibitory in nature.

10. There are no orders as to cost. Decree be prepared accordingly. File be consigned to record room.

**ARUNA SURESH
(JUDGE)**

AUGUST 26, 2010
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