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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.888 of 2009 & C.M. Appl. No.11958 of 2009

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08.02.2010

MAMTA GUPTA

.....Petitioner

Through: Ms. Geeta Luthra, Senior Advocate with
Mr. Abhishek Agarwal, Advocate.

Versus

SUNIL JINDAL

.....Respondent

Through: Mr. H.S. Arora, Advocate.

Date of Reserve: 19th January, 2010

Date of Order: 8th February, 2010

JUSTICE SHIV NARAYAN DHINGRA

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

J U D G M E N T

1. By this petition under Article 227 of Constitution of India, the petitioner (defendant before the trial court) has assailed order dated 20th April, 2009 passed by Senior Civil Judge confirming order of the Civil Judge on an application under Order 39 Rules 1 & 2 CPC made by the respondent. It is submitted by the petitioner that both the courts below passed the orders ignoring the material facts and the documents, though the respondent had no *prima facie* case.

2. The facts relevant for the purpose of deciding this petition are that Mr. Sunil Jindal (respondent herein), who is brother-in-law (brother of husband of the petitioner) of Mrs. Mamta Gupta (petitioner herein) filed a suit for permanent injunction against the petitioner and her husband and others alleging therein that he was in possession of second

floor of the property No.B-5/29, Sector 7, Rohini with terrace rights. The petitioner and other defendants were related to him and were residing in first floor of the property as licensees but due to *mala fide* intention they filed criminal case against him and harassed him. They disconnected water connection and when he applied for separate water connection for second floor, they did not allow plumber to install the new water connection. The police of Police Station Rohini at the behest of defendants also tried to stop him from installing new water connection. He, therefore, wanted the court to issue a permanent injunction restraining defendant from obstructing him in installing new water connection and obstructing him from ingress and egress to the second floor.

3. The stand of the petitioner before courts below was that the plaintiff, Mr. Sunil Jindal had sold out the property in question by executing General Power of Attorney, Agreement to Sell, Will, Receipt of payment of money, etc. All original documents were in possession of the petitioner. Since the plaintiff was closely related to respondent, he prevailed upon the petitioner for handing him over original documents on the plea that he needed them for some use and would return them in 3-4 days. After the documents were handed over to him, he became dishonest. He did not return the documents and thereafter tried to forcibly occupy the second floor. A complaint of trespass was lodged against the respondent since he put his lock over the doors of the second floor where goods of the petitioner were lying. It is submitted that the plaintiff/respondent never lived at B-5/29, Sector 7, Rohini. He was resident of C-132, Prashant Vihar, Delhi. This premises at Rohini had been sold by him to the petitioner, Mrs. Mamta Gupta.

4. Learned Civil Judge after considering the documents filed by both the parties observed that the plaintiff had *prima facie* case in his favour showing his possession on second floor of the property and issued an order that the defendant, i.e., the petitioner

herein shall not interfere in his possession or stop him from the entrance to second floor of the property. The learned Senior Civil Judge before whom appeal came upheld the order.

5. It is submitted by counsel for the petitioner that a Local Commissioner was appointed by the High Court on 3rd March, 2006 in a revision petition filed by the petitioner. The Local Commissioner had visited the premises on 4th March, 2006 and inspected first and second floor of property No.B-5/29, Sector 7, Rohini. His report was very material to consider the *prima facie* possession of the second floor and this report was ignored. When the Local Commissioner visited second floor, he found that the second floor was lying locked. It was stated by the petitioner that this lock was put by the respondent (plaintiff before the trial court) in place of the lock of the petitioner. The Local Commissioner peeped inside the second floor through broken window pane and found that the second floor was in bad shape. The window panes were broken, switch boards were hanging, there was a thick layer of dust all over the goods and both the doors of second floor were lying locked and the petitioner had alleged that these locks were put by the plaintiff forcibly after committing trespass and a criminal complaint was filed. The Local Commissioner also went to *barsati* and found that *barsati* was in possession of the petitioner.

6. It is further submitted that the trial court and the first appellate court ignored the fact that the respondent was not using the premises. The premises was lying locked because the plaintiff succeeded in obtaining an injunction order. The respondent had sold out the premises to the petitioner and he wanted to get installed separate water and electricity connection, etc., so as to usurp the premises. It is submitted that the trial court could have at the most asked the parties to maintain status quo instead of allowing the

plaintiff/respondent herein to get fresh water connection and other amenities installed in the premises which belonged to the petitioner.

7. It is undisputed fact that both the parties are staking claim of ownership over the property and both the parties are closely related to each other. A case of trespass of the property has been filed at the instance of the petitioner against the respondent which was pending trial. It is also undisputed that the report of the Local Commissioner shows that there was a thick layer of dust over the articles lying in the second floor which itself shows that second floor was not in use and occupation of the plaintiff/respondent herein. It seems after locking the premises in order to possess it, the respondent (plaintiff before the trial court) had not opened it and never used it. It is also not disputed that the residential address of respondent is that of 10/3, Shakti Nagar or 24/8, Shakti Nagar, Nagia Park where the respondent has been served by this court. The petitioner has also placed on record the assessment order of house tax which shows that it was the petitioner who was in possession of first and second floor of the property with roof rights. The assessment order is with effect from 25th August, 1985 to 1st April, 1997 which shows that second floor was added sometime after the year 1997. The house tax receipt also shows that it is the petitioner who had paid property tax in respect of the entire property. The trial court and appellate court ignored the report of the Local Commissioner and other material document.

8. I consider that it would have been more appropriate if the trial court had only directed maintaining status quo between the parties without giving a relief to the plaintiff of occupying the second floor and creating further troubles in view of the charges of trespass made by the defendant. While considering an application under Order 39 Rules 1 & 2 CPC, the court has not only to ensure *prima facie* case but has to consider balance

of convenience and irreparable loss. All the three aspects must be present together. Looking at the documents, the balance of convenience was in favour of the defendant, petitioner herein, who had placed on record documents showing that the possession was earlier with the defendant and was trespassed by the plaintiff. The plaintiff (respondent herein) was not going to suffer irreparable loss in case of denial of injunction and an order of status quo only should have been passed since the plaintiff was not living at the premises and the premises was lying locked. Merely based on the documents of ownership without considering the conduct of the person of visible trespass and getting the premises, locked it was not proper to pass an order of permitting the plaintiff to use the premises.

9. I, therefore, allow this petition to the extent that the parties shall maintain status quo and the premises of second floor shall remain locked till the suit of the plaintiff was decided on merits.

SHIV NARAYAN DHINGRA J.

FEBRUARY 08, 2010
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