

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 17.10.2011

+ CS(OS) 808/2010

NIRMAL BHALLA

..... Plaintiff

Through:

Mr. Ashish Bhagat, Adv.

versus

KAVITA BHALLA

..... Defendant

Through: Mr. Vikas B. Pakhidden, Adv.
for D-1.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in Digest? | No |

V.K. JAIN, J. (ORAL)

1. This is a suit for recovery of possession, mandatory injunction in respect of the the second floor of property No.4/54, Malviya Nagar, New Delhi. The case of the plaintiff is that she purchased the second and third floor of property No. 4/54, Malviya Nagar, New Delhi, from Smt. Laxmi Devi by virtue of an Agreement to Sell, General Power of Attorney

and Will all executed on 6th January, 1993. Defendant No.2 is the son of the plaintiff whereas defendant No.1 is her daughter-in-law, being the wife of defendant No.2. It is alleged in the plaint that defendant No.2 shifted from the suit property in August, 2007 and started living separately along with defendant No.1. In January, 2010, the defendants persuaded the plaintiff to allow them to return to the suit property and accordingly they came back to the suit property and started living there. It is alleged that defendant No.1 was forcing the plaintiff to transfer the suit property in her name and when the plaintiff refused to do so, she filed complaint against the plaintiff alleging maltreatment and harassment for dowry. It is further alleged that defendant No.2 again decided to leave the plaintiff and shifted to a rented accommodation in Paryavarn Complex, IGNOU Road, New Delhi, in April, 2010 along with all his belongings and accordingly both the defendants left the suit property in April, 2010 and went to live in a rented accommodation. It is also alleged that on 12th April, 2010, the plaintiff was informed that defendant No.1 was breaking the locks and doors of the second floor in order to get entry into the same. When the plaintiff

returned to the house, she found that defendant No.1 along with her two elder sisters had broken upon locks and doors and they were trying to break the remaining locks. The plaintiff informed the Police but no action was taken by them. Since then defendant No.1 has not gone back from the suit premises and continues to live there. The plaintiff has now sought possession of the suit property comprising the second floor of property No. 4/54, Malviya Nagar, New Delhi, and has also sought mandatory injunction directing the defendants to deliver the peaceful and vacant possession of the aforesaid premises. She has also sought a permanent injunction restraining the defendants from threatening her and restraining them from being in the near vicinity of the suit property.

2. Defendant No.2 did not come forward to contest the suit. Defendant No.1 did not file written statement within prescribed period and filed IA 9519/2010 for condonation of delay in filing the written statement. That application was allowed by this Court vide order dated 22.07.2010, subject to payment of Rs.25,000/- as costs. The order passed by this Court on 22nd July, 2010 was challenged by defendant No.1 before Division Bench of this

Court. The appeal filed by her, being FAO(OS) 501/2010 was, however, dismissed by a Division Bench on 9th August, 2010. IA 16577/2010 was thereupon filed by the plaintiff for striking off the defence of defendant No.1. The right of defendant No.1 to file the written statement was closed vide order dated 3rd March, 2011. Right of defendant No.2 to file written statement was also closed on that date. The plaintiff, however, was directed to file affidavit by way of evidence to satisfy the Court with respect to merit of her case.

3. In her affidavit by way of evidence, the plaintiff has affirmed, on oath, the case set up in the plaint and has stated that she is the sole owner and in possession of the second floor of property No. 4/54, Malviya Nagar, New Delhi by virtue of Agreement to Sell, General Power of Attorney and Will executed by Laxmi Devi in her favour which are Ex.PW-1/3 to 6. In her affidavit by way of evidence, the plaintiff has stated that there was no contribution from any of her children in purchase of the suit property. She has further stated that defendant No.2, who is her elder son has taken separate dwelling on rent and is living there with his children, whereas defendant No.2 continues to live on

second floor of the suit property without her husband. She has further stated that the defendants had shifted from suit property in August, 2007, to a rented accommodation. According to her, in January, 2010, the defendants persuaded her to allow them to return to the suit property to which she reluctantly agreed on account of her love for defendant No.2. The defendants accordingly shifted to the suit property on 31st January, 2010 and started living there. She has alleged that the behavior of defendant No.1 did not improve even thereafter and she continued misbehaving and ill-treating her, so as to force her transfer of suit property in her name. She has further stated that defendant No.2 again decided to leave her and, therefore, took a house in Paryavarn Complex, IGNOU Road, New Delhi, on rent in April, 2010. Defendant No.1 also moved out of the suit property to a rented accommodation along with defendant No.2 though much against her wish. On 12th April, 2010, she was informed by someone that defendant No.1, with the help of some people, was breaking the locks and doors on the second floor of the suit property. When she rushed back to the house, she found that defendant No.1 along with her two sisters had broken upon the locks and doors

and they were trying to break the remaining locks too. She called the Police but again no action was taken. Thereafter, defendant No.1 did not return to her husband and has been living in the suit property as a rank trespasser.

4. I see no reason to disbelieve the unrebutted testimony of the plaintiff. Vide Agreement to Sell Ex.PW-1/3, Power of Attorney Ex. PW-1/4 and Will Ex.PW-1/5, the plaintiff purchased the second and terrace floor of property No. 4/54, Malviya Nagar, New Delhi from Smt. Laxmi Devi. Since the second floor of the suit property as also is terrace is owned exclusively by the plaintiff, the defendants have no right to continue to live in any part of the aforesaid property against her wish and without her permission. The testimony of the plaintiff would show that both the defendants vacated the suit property initially in August, 2007 and then again on 1st April, 2010. The possession of defendant No.1 in the suit property, therefore, is absolutely illegal and unauthorized. The plaintiff, therefore, is entitled to a mandatory injunction directing defendant No.1 to remove herself along with all her belongings from property No. 4/54, Malviya Nagar, New Delhi. She is also entitled to an injunction restraining the

defendants from entering the suit property without her prior permission.

ORDER

A decree for mandatory injunction is hereby passed in favour of the plaintiff and against defendant No.1 directing defendant No.1 to remove herself along with all her belongings, from the second floor of property No. 4/54, Malviya Nagar, New Delhi, within six weeks from the date of this order. A decree for permanent injunction is also passed restraining the defendants from entering the second floor of property No. 4/54, Malviya Nagar, New Delhi, without prior written permission of the plaintiff. In the facts and circumstances of the case, there shall be no order as to costs.

Decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

OCTOBER17, 2011
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