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

+ CS(OS) 579/2010

% ***Judgment Delivered on: 22.03.2012***

SUNITA Plaintiff

Through : Mr.Sunil Malhotra, Adv.

versus

VIRENDER KUMAR SHARMA & ANR Defendant

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit for permanent injunction.
2. Plaintiff claims himself to be the owner of the property measuring 358 sq. yds. comprising out of Khasra No.38 (new address as MCD no.399, Khasra No.38, Gali number 2, Village Dabri, New Delhi, situated within the limits of old Lal Dora (1908-1909) of Village Dabri, P.O. Palam, New Delhi.
3. While issuing summons in the suit and notice in the application under Order XXXIX Rules 1 & 2 CPC, defendants were directed to maintain status quo with respect to title and possession of the suit property. In the order dated 20.8.2010 this Court had observed that defendant no.1 in the written statement filed by him had averred that he does not wish to dispossess the plaintiff from the suit property except in accordance with law and a suit for possession, being CS(OS) 108/2010, has been filed in the Court of Sh.Arun Bhardwaj, Additional District Judge, at Dwarka. In view of the stand taken by defendant no.1, suit was decreed in terms of the prayers (a) and (b) of the plaint with respect to defendant no.1 on 7.10.2010. Defendant no.2 was duly served. As despite service neither

Vakalatnama nor written statement has been filed on behalf of defendant no.2, defendant no.2 was proceeded *ex parte* on 18.10.2011. Time was granted to the plaintiff to file affidavit by way of evidence. Plaintiff has filed the affidavit by way of evidence of Mr.Rakesh Kumar Bhanwala (PW-1), which is exhibited as Ex.PW-1/1.

4. In the affidavit PW-1 has deposed that plaintiff is the owner and in possession of the built up property measuring 358 sq. yards, comprising out of Khasra No.38 (new address as plot no.207, Khasra No.38, Gali No.2, Village Dabri, New Delhi, situated within the limits of Lal Dora (1908-1909) of Village Dabri, PO Palam, New Delhi. Site plan of the property along with the location plan has been exhibited as Exhibit PW-1/A. This witness has further deposed that the name of the owners have changed in the Exhibit PW-1/A on the North-West side of the property from the Sale Deed dated 10.2.2006 due to transfer of rights by virtue of the family settlement dated 15.4.2008 arrived at between defendant no.1 and defendant no.2 along with other family members. He has also deposed that he is the lawful Power of Attorney holder of the plaintiff, Smt.Sunita, w/o Sh.Paramjeet Deswal, appointed vide General Power of Attorney dated 12.3.2010 *inter alia* to file any suit, complaint, petition, revision, written statement and applications, pertaining to any matter of the said property and to sign and verify affidavits and to do any and/or other acts necessary in relation to the said property in the court of law or before any authority. Copy of the General Power of Attorney has been exhibited as PW-1/B. This witness has also deposed that the plaintiff has purchased the above property from defendant no.2 vide registered Sale Deed dated 10.2.2006 duly registered vide registration no.1947, Book No.1, Volume No.2627, pages 79 to 84 before the Sub-Registrar IX, New Delhi, for a total sale consideration of Rs.4,90,000/- (Rs.Four Lakhs

Ninety Thousand only), amount duly paid vide cheque bearing No.179901 drawn on Punjab National Bank, Anta Dist. Jind (Haryana), the receipt of which was duly acknowledged by defendant no.2 and the physical possession of the suit property was handed over to the plaintiff at the time of the receipt of the entire sale consideration and registration of the sale deed is in favour of the plaintiff and the plaintiff has been in continuous and uninterrupted physical possession of the suit property since 10.02.2006 without any interference from anybody except the defendant no.1, who alleged himself to be the owner of the part of the suit property since 24.12.2009 after a lapse of three years and ten months from the date of execution of the Sale Deed of the property. A certified copy of the Sale Deed dated 10.2.2006 has been exhibited as Exhibit PW-1/C. PW-1 has further deposed that defendant No.1 has express notice of the fact of the possession of the said property by him in pursuance of the registered Sale Deed Dated 10.02.2006, which is evident from the fact that the Defendant No.1 lodged an F.I.R dated 04.05.2006 u/s 154 Cr. P. C with Dabri Police Station against Sh. Vinod Kumar Sharma in respect of Property admeasuring 250 sq. yds. comprising out of Khasra No.38, Village Dabri, adjoining the property of the Plaintiff and defendant No.1 did not dispute the Plaintiff's ownership and possession in relation to the suit property. A copy of F.I.R. dated 04.05.2006 has been exhibited as EXHIBIT PW1/D.

1. This witness has deposed that to the best of his knowledge the nephew of defendant no.1, namely, Sh Sandeep Gaur, has also lodged an F.I.R bearing no 830/06, P.S Dabri, against Sh.Vinod Kumar Sharma, where the name of the Plaintiff has been specifically mentioned. The address given by defendant no.1 and his nephew in respective complaints lodged by them is the same which implies that defendant no.1 and his nephew reside in the same house, and further not only defendant no.1 has express notice

of the fact of the ownership and possession of the Plaintiff in the suit property but he had notice through his nephew as they both reside in the same house and carry on business jointly. The above said F.I.R contains the allegations that the defendant no.2 by misrepresentation sold the property to the Plaintiff vide Sale Deed dated 10.02.2006. The said allegations have been withdrawn at the instance of defendant no.1 against the defendant no.2 in view of the family settlement dated 15.04.2008 executed by defendant no.1 & 2 alongwith other family members. This witness has also mentioned that the above said FIR has also been duly recorded in the family settlement 15.04.2008. The withdrawal of the allegations clearly shows that the allegations regarding forgery and cheating has been withdrawn thereby admitting the correctness of the sale deed in favor of the Plaintiff. A copy of F.I.R. bearing No.830/06 has been exhibited as EXHIBIT PW1/E. This witness has further deposed that defendant no.1 was not forcibly and illegally dispossessed from the suit property by his brother, namely, Sh. Vinod Kumar Sharma, since 1999 which is apparent from the fact that defendant no.1 never filed a suit for possession, which was a recourse available to him when he was allegedly dispossessed from the properties, however now, the defendant no.1 has become active in claiming the properties of which the plaintiff is lawful owner in possession as a bonafide purchaser. In the family settlement dated 15.04.2008 entered into between the defendant no.1 and defendant no.2 alongwith other family members, it has been categorically mentioned that by virtue of the said Family Settlement Deed dated 15.04.2008 the Defendant No.1 got only property measuring 250 sq. yds to the exclusion of all the properties situated in Khasra No. 38, Village Dabri, Delhi. Further the property measuring 230 sq. yds alleged to have been purchased by Defendant No.1 from Om Prakash does not form part of the

property sold by defendant no.2 to the Plaintiff, which is evident from the plan filed in various proceedings before the court by defendant no.1. Copy of the family settlement deed amongst the family members and registered with the sub-registrar has been marked as EXHIBIT PW1/F. This witness has also deposed that the plaintiff has been enjoying continuous, uninterrupted and peaceful physical possession of the property being the bonafide purchaser as owner since 10.2.2006 and has been in use and occupation of the same.

2. PW-1 has further deposed that Sh Vinod Sharma had handed over to him a copy of the declaration dated 13.07.1999 in favour of defendant no.2 signed by defendant no.1 in respect of the property measuring 230 sq. yds when the plaintiff called upon Sh. Vinod Kumar Sharma to clarify the position with respect to the notice dated 24.12.2009 issued on behalf of defendant no.1. In the said declaration it has clearly been declared by defendant no.1 that he has transferred all his rights, title and interest in favour of Sh.Vinod Kumar Sharma, defendant no.2; that he has no interest in the property measuring 230 sq. yds., approximately, which is a part of Khasra No. 38; and in future, he or his legal heirs shall not claim or demand in respect of the said property as mentioned in the said declaration. A copy of declaration has been marked as Mark - A. PW-1 has also deposed that the Assistant Commissioner of Police has submitted a Status Report in W.P.C. No.271/2008 filed by Sh.Vinod Kumar Sharma in which it has been stated that as “ *Sh. Vinod Kumar Sharma, the present petitioner has filed a Civil Suit NO.176/2006 in the court of Sh. V. K. Yadav, Ld. ADJ, Tis Hazari Courts, Delhi in respect of the property No.C-25, New Krishna Park, Dauli Piao, Vikaspuri, New Delhi. The Complainant, Respondent No.2 Sh. Sandeep Gaur has filed a written reply as Defendant No.2 in the said suit wherein he has stated that in the*

year 1999 when the joint property was divided amongst brothers, it was mutually and verbally agreed by and between brothers that the property C-25, New Krishna park , Dhauli Piao, Vikaspuri, New Delhi. therein shall vest jointly in the name of Late Sh. Ajay Sharma and Sh. Virender Kumar Sharma (Complaint a FIR No.438/2006, PS Dabri). It was mutually and verbally agreed that all other property situated at Village Dabri, New Delhi shall vest in name of Sh. Vinod Kumar Sharma and Ashok Kumar Sharma....”

3. It is further deposed by PW-1 that after the purchase of the property the plaintiff rented a part of the suit property shown as Red in the plan to M/s Gautam Products since December 2007 vide Agreement which has been renewed from time to time and received the rent through cheques for the tenanted portion of the suit property, the suit property as shown in the plan has now been rented to Adwel Racking System since March 2011. It is further deposed that defendant no. 1 since the 3rd week of December 2009 for the first time started alleging that the said property has been sold to the plaintiff by defendant no. 2 who had no authority, right, title or interest to sell the same. It is next deposed that a legal notice dated 24.12.2009 was served upon the plaintiff for the first time since 10.02.2006 after purchase of the property on behalf of defendant no.1 through his Advocate, Sh.Rohtas Kumar Sharma, wherein it was vaguely alleged that defendant no.1 is owner of some portion of the property and without specifying the area and called upon him to vacate the property and pay damages for use and occupation of the same. A copy of Legal Notice has been exhibited as EXHIBIT PW1/G. It is next deposed that the plaintiff on 9.1.2010 through her counsel sent a reply to the legal notice dated 24.12.2009, served upon her on behalf of defendant no.1, and called upon the defendant no.1 to withdraw the notice under reply as all the

allegations made in the said notice were false and fabricated. No further communication to the said reply was received by the Plaintiff. It is also deposed that on 9.1.2010 the plaintiff also wrote a letter to defendant no. 2 thereby informing him about the legal notice served upon her by defendant no. 1, through his Advocate, Sh. Rohtas Kumar Sharma, calling upon the petitioner to vacate some portion of the suit property and further alleging himself as the owner of some of the portions of the suit property and to pay damages/mense profit for use and occupation of the property purchased by him from Defendant No. 2. The Plaintiff further wrote to defendant no.2 that the allegations made in the legal notice dated 24.12.2009 are serious in nature and called upon defendant no.2 to clarify his stand with respect to the said notice and inform the Plaintiff accordingly. PW-1 has also deposed that defendant no.2 met him on receipt of the letter dated 09.01.10 and reiterated that he was the absolute owner in possession of the suit property on the date of execution of sale deed dated 10.02.2006. The Plaintiff had further been given a chain of the title on an affidavit dated 10.02.2006 in respect of the suit property. It is stated by Defendant No.2 in the affidavit that he clubbed the property measuring 250 sq. yds., 100 sq. yds. and 8 sq. yds., which became 358 sq. yds. and sold the same to the Plaintiff, he has declared the chain of title in respect of property measuring 250 sq. yds. as the defendant no.2 has purchased a piece of land measuring 250 sq. yds. out of Khasra No.38 situated in the Village Dabri from Sh.Ashok Kumar Sharma who had purchased the same from Sh. Raj Kumar. The Defendant No.2 has further stated in the affidavit that he has purchased 100 sq. yds. out of Khasra No.38 situated at Village Dabri from Ramesh Kumar Sharma and Sh.Ramesh Kumar Sharma from Sh. Sanjeev Bajaj and Rajiv Bajaj and Sh. Sanjeev Bajaj and Sh. Rajiv Bajaj from Sh. Om Parkash S/o Sh. Man

Singh and Sh. Om Parkash purchased above mentioned land from Sh. Munni Ram who is the actual owner of the land measuring 100 sq. yds. Defendant No.2 has further stated in the affidavit that a piece of land measuring 8 sq. yds. was purchased from Sh. Ashok Kumar Sharma and Sh.Ashok Kumar Sharma purchased the land measuring 8 sq. yds. from Sh.Rishal Singh. (Copy of the Chain of the affidavit dated 10.02.2006 has been exhibited as Exhibit PW-1/H.

4. PW-1 has further stated that on 9.01.2010 the defendant no. 1 threatened that he would break open the locks of the portion of his property, which is lying vacant and further threatened that he would take forceful possession of the suit property and any interference by the plaintiff would result in dire consequences. PW-1 has further deposed that defendant no.1 has further threatened the Plaintiff that he would break the back wall of the said property which is adjacent to his property and forcibly take the possession of the said property. It is next deposed that Plaintiff is the bonafide purchaser and owner of the property and has been enjoying the continuous physical possession of the property since 10.02.06 being the lawful and absolute owner purchased by her vide Registered Sale deed 10.2.2006. This witness has also deposed that the defendant no.1 had threatened the plaintiff with forcible dispossession on 10.03.10 alongwith his son and 2-3 unknown associates, claiming themselves to be from Pollution Control Department, but when PW-1 asked for their Identity Card, they left the suit property without showing their Identity Cards. Again on 19.03.10 at 4.30 PM the defendant no.1 alongwith his son and 2-3 unknown associates threatened the plaintiff and told him to leave the possession of the suit property or they would get his family eliminated. A complaint was filed with S.H.O., Police Station, Dabri by the

Deponent. Copy of the complaint dated 19.03.2010 has been exhibited as Exhibit PW1/I.

5. PW-1 has also deposed that defendant no. 1 and his son visited the property on the night of 23.03.2010 and threatened the chowkidar to vacate the premises otherwise he would face dire consequences, which was intimated to him by the Chowkidar on 24.03.10 mornings. PW-1 has further deposed that plaintiff is the purchaser and owner in possession of the said property and she is being harassed by the defendants and thus they should be restrained from dispossessing the plaintiff from the property. It is further deposed that as per the Family Settlement dated 15.04.2008 entered into between defendant no.1, defendant no.2 and other family members, it has been mutually agreed and settled that the defendant no.1 has no other property in Khasara No.38, Village Dabri, except the property mentioned in clause 2 (a) of the Family Settlement which reads as “ (2) Shri Virender Kumar Sharma in view of the above mentioned settlement shall be the owner with exclusive rights and control to the exclusion of all other parties to the following properties “Property B” i.e described in the site plan annexed herewith and marked as “Annexure A” and the boundaries thereof marked in Green Colour including the personal and private rasta/passage for this property as shown in Blue Colour . All rights, titles, interest, concession, licenses, permits electric, telephonic and water connection and any other rights of easement, goodwill leases and ownership rights in properties would now vest in the second party i.e Virender Kumar Sharma”. Further more as mentioned in clauses 13 and 15 of the said family settlement, it has also been agreed by and between the parties that in future nobody from the family would claim any property in court of law except for the properties that has come to his share. He has also deposed that present suit has been filed for redressal of

just, bonafide and legitimate grievance, dispute, and in exercise of the legal rights of the Plaintiff against Defendant No. 1 & 2.

6. I have heard counsel for the plaintiff and also perused the plaint and the evidence led by plaintiff by way of affidavit. The evidence of the plaintiff has gone unrebutted. The plaintiff has filed a copy of the Sale Deed dated 10.2.2006 Exhibit PW-1/C to show that she is the lawful owner of the suit property. The plaintiff has also placed on record copies of FIR including FIR 830/2006, Exhibit PW-1/E. Learned counsel for the plaintiff has also placed reliance on the documents executed by defendant no.2 in favour of the plaintiff and also the Family Settlement dated 15.4.2008, Exhibit PW-1/F.
7. I have also carefully perused the declaration dated 13.7.1999 made by defendant no.1 in favour of defendant no.2, by which defendant no.1 has admitted that he has no right title and interest in the suit property. In view of the evidence and documents placed on record, the present suit is decreed in terms of prayers (a) and (b) of the plaint. The plaintiff shall not be dispossessed by the defendant except by following due process of law. Decree sheet be drawn up accordingly.

G.S.SISTANI, J

MARCH 22, 2012

msr