

. * HIGH COURT OF DELHI : NEW DELHI

+ CS (OS) No.1635/2009

% Judgment decided on : 24.01.2012

Sh. Pushpesh Sinha Plaintiff

**Through: Mr. Rajat Aneja Adv with
Mr. Vaibhav Jairaj Adv**

Versus

Rajiv Batra & Ors. Defendants

**Through : Defendant No.1 *ex-parte*.
Mr. Sachin Gupta, Adv. for legal
heirs of D-2.**

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

1. The plaintiff has filed this suit for declaration and permanent injunction against the defendants above mentioned.

2. The plaintiff states that he is the absolute/exclusive owner of the property bearing No. EA-6, Inder Puri, New Delhi- 110012 admeasuring about 200sq yards (hereinafter referred to as the said property). The said property was purchased from defendant No. 2 i.e. Sri Nand Kishore Batra for a consideration of Rs. 1,00,00,000/- (one crore only)

3. Plaintiff submits that a sale deed was executed in favour of him on 13.04.2009 by defendant No.2. The same was registered at the

office of the Sub-Registrar-IX, New Delhi vide Registration No. 2599 in Additional Book No. I, Volume No. 4,780 from pages 136-143.

4. Plaintiff submits that defendant No. 2 asserted, that the said property was free from all encumbrances, like mortgage, exchange, lease, Decree, Injunctions, disputes, litigations etc etc and also asserted that he is the exclusive and absolute owner of the entire property. Defendant No. 2 claimed that he purchased the said property through a registered sale deed dated 29.05.1962, registered at the Office of the Sub-Registrar-II bearing Registration No. 1862 in Additional Book No. I, Volume No. 214 from pages 179-184.

5. Plaintiff submits that at the time of delivery of possession on 13.04.2009, defendant No. 2 disclosed that some household articles were lying in one of the rooms of the said property and the same would be removed within a few days.

6. Plaintiff states that soon after obtaining possession of the said property, defendant No.1 i.e. Rajiv Batra and the son of defendant No.2, started creating nuisance and illegally asserted his possession in respect of one room in the said property.

7. The defendant No. 1 started harassing the plaintiff. Plaintiff confronted defendant No.2 about the situation and then plaintiff was told that defendant No.1 was always a trouble maker and had been the black sheep of the family. Plaintiff states that the motive of defendant No. 1 became very clear that he wanted to extort some money. Subsequently plaintiff gave defendant No. 1 a considerable amount so

that defendant No. 1 stopped the nuisance and harassment and let him enjoy the peaceful possession of the said property. It is pertinent to mention that defendant No.1 handed over the peaceful possession of the said property against a duly signed receipt dated 23.04.2009.

8. Plaintiff states that he was taken aback to find out that defendant No. 1 has filed a Civil Suit for injunction before the Civil Judge Dwarka, which defendant No.1 undertook to withdraw unconditionally and also undertook that he would not disturb the peaceful possession of the plaintiff.

9. But soon thereafter defendant No. 1 started threatening the plaintiff. The plaintiff lodged a complaint with the local police station at Inder Puri. Plaintiff submits that defendant No.1 did not honour his own undertaking dated 23.04.2009.

10. Plaintiff apprehends and has reasons to believe that defendant No. 1 is a person with criminal intent and that he has a habit of extorting money from innocent persons and also create trouble/nuisance. Plaintiff states that defendant No.1 does not have a good reputation in the area as he remains in the company of anti-social elements.

11. Plaintiff states that he has learnt that defendant No. 1 continued with the suit filed in March 2009 and obtained an interim order dated 15.04.2009 against defendant No.2 and his family members, in regard to one room in the said property.

12. Plaintiff submits that defendant No.1 before the Civil Judge gave a statement that he is not in possession of the suit property and but thereafter filed a contempt petition against the plaintiff. The plaintiff produced the original acknowledgement of defendant No. 1 before the Civil Judge and thereafter the contempt petition was proceeded to be dismissed.

13. The plaintiff proposes that after purchasing the said property he wanted to reconstruct the same with the sanction from the Municipal Authorities and live with his family. But the constant unnecessary hindrances/obstructions from the defendants, was making it difficult for the plaintiff to reside. Hence he is constrained to file the present suit against the defendants.

14. It is pertinent to mention here that after the decease of Sri Nand Kishore Batra, his Legal Representatives have been brought on record, namely Sri Rahul Batra, Sanjay Batra and Smt. Savitri Batra.

15. The defendant No.1 was proceeded ex-parte vide order dated 09.02.2010. The learned counsel appearing on behalf of legal heirs of deceased defendant No.2 is supporting the case of the plaintiff. The learned counsel for the plaintiff has also stated that the suit filed by the defendant No.1 before the Civil Judge has been dismissed in default.

16. Mr Aneja, the learned counsel for the plaintiff, has also referred to the original letter dated 23.04.2009 issued by the defendant No.1. The same reads as under:

“I, Rajiv Batra son of Shir Nand Kishore Batra, hereby voluntarily and of my own free will and without any pressure or coercion or influence of any nature from any quarter whatsoever; hereby hand over and deliver the actual physical possession of the portion occupied by me in the immovable property bearing No.EA-6, Inderpuri, New Delhi, to Shri Pushpesh Kumar Sinha son of Late Dr. R.C. Prasad.

I have removed all my belongings and other household articles from the portion of the suit property occupied by me and henceforth, I have no claim or grievance of any nature against my family members including my father Shri Nand Kishore Batra regarding this immovable property.

I also undertake to withdraw the civil suit filed by me against my family members as also the local SHO of PS Inderpuri before the Court of Learned Civil Judge, which is now listed on 02.05.2009.

I have also been adequately compensated in cash by Shri Pushpesh Kumar Sinha and I have no further claim in respect of the immovable property bearing No.EA-6, Inder Puri, Delhi.

I acknowledge and recognize the exclusive ownership of Shri Pushpesh Kumar Sinha son of late Dr. R.C. Prasad, who purchased this property from my father Shri Nand Kishore Batra vide registered sale deed dated 13.04.2009 for a total sale consideration of Rs. 1 crore. I have been left with no claim whatsoever and I undertake not to claim any share from the said property.”

17. The learned counsel for the plaintiff states that in view of the above said facts and circumstances, since the other defendants have

no objection for grant of relief claimed by the plaintiff and the defendant No.1 has already been proceeded *ex-parte*, no further inquiry is called for. He submits that in view of the admission made by the defendants, the suit of the plaintiff is liable to be decreed under the provision of Order 12 Rule 6 CPC as no written application is required under the mandates of the said provision.

18. After having considered the entire gamut of the case and having gone through the documents placed on record, the suit of the plaintiff is accordingly decreed in terms of prayer (a) of the plaint which reads as under:

“A. It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to pass a Decree for Declaration in favour of the Plaintiff and against the Defendants thereby declaring the plaintiff to be the exclusive and absolute owner of the suit property bearing No.EA-6, Inder Puri, New Delhi-110 012 on the basis of the registered Sale Deed dated 13.04.2009 executed in his favour”

19. The plaintiff would also be entitled for the cost of the suit from the defendant No.1, who is also restrained from causing any interference, obstruction or nuisance in the peaceful enjoyment of the suit property by the plaintiff. Decree be drawn accordingly. The suit and pending applications are disposed of.

MANMOHAN SINGH, J.

JANUARY 24, 2012