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

+ **FAO 23/2012**

HARPREET SINGH

..... Appellant

Through Ms Uma, Advocate

versus

MANJU VERMA

..... Respondent

Through Mr Jitin Sahani with Mr Naveen Gaur,
Adv.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

ORDER

% **13.01.2012**

CM 736/2012

Exemption allowed subject to just exceptions.

Application stands disposed of.

FAO 23/2012

1. By way of present appeal, appellant i.e. defendant before the trial court has challenged the order dated 22nd September, 2011 wherein the application filed by the respondent/plaintiff under Order 39 Rule 1 & 2 CPC in a suit filed by her against the appellant/defendant seeking declaration and permanent injunction, has been allowed and appellant/defendant has been restrained from interfering with the peaceful possession of the respondent/plaintiff over the suit property.

2. The factual back ground is as under:-

Respondent herein i.e. plaintiff before the trial court has filed a suit for declaration and permanent injunction against the appellant i.e. defendant before the learned trial court wherein it is alleged that she had purchased the property bearing Janta Flat No.6-A, Ground Floor, JU Block, Pitam Pura, on 22nd August, 2005 for a consideration of Rs.1,80,000/- from one Smt.Nirmala Devi through registered agreement to sell, general power of attorney and an affidavit. It is further alleged that possession of the suit property was transferred to the respondent on 22nd August, 2005. Along with plaint, respondent has also filed original allotment letter of the said property including documents pertaining to subsequent sales before it was allegedly sold to her. It is alleged that property in question was finally sold to her by Smt.Nirmala Devi on 22nd August, 2005. A complete chain of documents has been filed by respondent/plaintiff. Along with the suit, respondent/plaintiff has also filed an application under Order 39 Rule 1 and 2 CPC wherein she has alleged that appellant/defendant had been trying to dispossess her by taking advantage of collusive judgment/decree passed in Suit No.88/2005 wherein she has not been made a party. Respondent/plaintiff has also alleged that she has been in possession of the suit property from the date of purchase i.e 22nd August, 2005.

3. Appellant/defendant had filed reply to the said application wherein he has alleged that he and his father had earlier filed a suit titled Harpreet Singh & Ors Vs. Baldev Raj Bhatia & Others bearing Suit No.88/05 on 19th July, 2005 alleging therein that his father was the original allottee of the suit property and as the father of the appellant was away to his job, in December 1995/January, 1996. a theft was committed in the house in which documents

of the title of the suit property were stolen but his father happened to be there who locked the flat and went to Kanpur. In the year 1999, some anti social elements/property dealers had trespassed into suit property by breaking open the locks. In the year 2005, appellant with his father had filed a suit for possession and mesne profits being Suit No.88/2005 against the alleged trespassers wherein court notice was duly served. The defendant nos. 1 and 2 in the said suit i.e Shri Baldev Raj and Vijay Bhatia had contested the said suit while defendant nos 3 to 5 therein were proceeded ex parte. The said suit was decreed in favour of appellant and his father by the learned Addl. District Judge and against defendants 3 to 5 therein. Further the case of the appellant/defendant is that appellant and his father had filed execution proceedings in respect of aforesaid decree wherein the present respondent had filed objections which were dismissed on 14.1.2011. A revision petition was filed before this court by her against the said order which was lateron withdrawn by the respondent. Thereafter respondent had filed the present suit for declaration and permanent injunction.

4. Learned counsel for the appellant has contended that father of the appellant was the original allottee of the property in question and there is already a decree of possession in their favour in an earlier suit filed by them against the alleged trespassers. In these circumstances, the learned ADJ ought not have passed the impugned order restraining the appellant from interfering in the peaceful possession of the respondent over the suit property till the final adjudication of the suit.

5. The stand of the respondent before the trial court is that appellant has obtained collusive decree and the main defendants therein had not contested the case and that she has also not been made a party to the said suit and the

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said decree is not binding upon her. Her further stand is that she is in possession of the suit property since 22nd August, 2005 and has also got entire chain of documents with her and she is the rightful owner of the suit property.

6. The findings of the trial court in this regard are as under:-

“It is further the case of the plaintiff that plaintiff is having immediate apprehension for dispossession in execution proceedings filed for judgment and decree passed in suit no.88/05. However, the said judgment and decree is whether binding or not can only be decided, if constructive or actual notice was served upon the plaintiff in the said suit. This court has already observed that whether any constructive notice or summons were served upon the plaintiff or not, it can only be seen during the trial.”

7. The learned trial court has further observed that respondent had filed chain of original documents along with the plaint including original allotment letter which was in the name of father of appellant. The relevant findings of the trial court in this regard are as under:-

“Moreover the plaintiff before this court has filed the complete chain of documents and this court has to ascertain the authenticity of these documents which can only be ascertained during trial only. The plaintiff has also filed original documents which is complete chain of property along with original possession letter in favour of Sh.N.J.Singh, i.e. defendant no.2 and thereafter documents were executed by Sh.N.J.Singh in favour of Ms.Sunder Kaur and Ms.Sunder Kaur executed subsequently. In such circumstances, whether these documents were executed in accordance with law or fraudulently, can only be decided during the trial. The fact remains that plaintiff came into possession of the suit property on 22.8.2005 i.e. before passing any ex parte order in the suit no.88/05. This court

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has also to ascertain that when Sh.Nirdosh Kumar and Sh.Suresh Khattar were served prior to December, 2005 and, therefore, at this stage this court cannot reach upon the conclusion that the plaintiff or Smt.Nirmala Devi or Sh.Nirdosh Kumar were having constructive notice of the suit bearing no.88/05, titled as Sh.Harpreet Singh & others Vs. Baldev Raj Bhatia.”

8. The learned ADJ has passed the impugned order after considering rival contentions of the parties and the relevant material on record. There is complete chain of documents on record prime facie showing ownership of the property in favour of the respondent since 22.8.2005 including original letter of allotment of the suit property. It is also admitted position that respondent is in possession of suit property. The real controversy in the matter can be ascertained only after recording of the evidence of the parties. No illegality is seen in the order of the trial court which calls for interference of this court.

Appeal stands dismissed.

C.M.735/2012 (for stay)

In view of the dismissal of the appeal, no further orders are required on the present application. The same stands dismissed.


VEENA BIRBAL, J

JANUARY 13, 2012/ssb