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

+ **FAO 358/2013**

PRAVEEN KUMAR

..... Appellant

Through: Mr. Prag Chawla, Advocate

versus

SHOBHA DEVI & ANR

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

11.08.2015

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1. This appeal is directed against order dated 13.05.2013, passed by the trial court, on an application filed by the applicant/plaintiff under Order 39 Rule 1 and 2 of the CPC.

1.1 By virtue of the said order, the trial court has confirmed the interim order dated 03.03.2012, whereby status quo was ordered in respect of ground floor portion of the property described as plot no.L-1/53, located in khasra 61/5, situate in Budh Vihar, Phase-I, Delhi – 110086 (in short the property).

1.2 By the very same order, however, the appellant/plaintiff's prayer with regard to putting in place, a restraint, on the respondent no.1/defendant no.1 qua impediment caused in the ingress and egress of the first floor portion of the said property, was declined. The rationale provided in the impugned order, is that, the prayer made, was, beyond the scope of the main suit.

2. To be noted, the appellant/plaintiff's action is in the nature of a suit for possession and permanent injunction in respect of the ground floor portion of the said property.

3. Mr. Chawla, who appears for the appellant/plaintiff concedes that in the written statement filed by respondent no.1/defendant no.1, a defence has been taken that said party is in possession of not only the ground floor but also the first floor portion of the aforementioned property.

3.1 It is, however, Mr. Chawla's contention that the relief prayed for in the interlocutory application, to the extent it is declined, would flow from the prayer made in the suit with regard to the ground floor portion of the aforementioned property.

4. Mr. Chawla has drawn my attention to paragraph 4 of the plaint wherein, the stand taken by the appellant/plaintiff is that he along with defendant no.2 and other members of the family are residing in the first floor of the aforementioned property. The fact that respondent no.1/defendant no.1 was in possession of ground floor of the suit property is mentioned in paragraph 2 of the plaint.

5. Having regard to the above, it is quite clear that the action instituted by the appellant/plaintiff is confined only to the ground floor portion of the aforementioned property. The suit does not concern the first floor portion of the aforementioned property. That being said, both the appellant/plaintiff and respondent no.1/defendant no.1 claim to be in possession of the first floor portion of the said property. I am further informed by Mr. Chalwa that the ingress and egress to the first floor is from the ground floor. This aspect is not found mentioned in the impugned order.

5.1 Mr. Chawla having realised this says that for the moment he would be quite satisfied if this court were to say that the observations made with regard to the right to ingress and egress to the first floor portion of the said property would not come in the way of the final determination which is to be made in the suit.

5.2 According to me, the observations made in the impugned order can only be construed as prima facie in nature and these cannot effect the final determination in the suit.

6. The appeal is accordingly disposed of with a direction that the observations made with regard to the prayer made in the application filed by the appellant/plaintiff under Order 39 Rule 1 & 2 CPC, in respect of ingress and egress to the first floor portion of the aforementioned property will not impact the merits of the said case.

RAJIV SHAKDHER, J

AUGUST 11, 2015

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