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

+ CM(M) 1165/2016 & CM Nos.42452-54/2016

NARESH GUPTA Petitioner

Through Mr.Rohit Nagpal, Advocate

versus

R.C AGGARWAL & ORS Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **20.12.2016**

CM Nos.42453-42454/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) 1165/2016 & CM No.42452/2016(stay)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 05.07.2016 by which the appellate court passed an injunction in favour of respondent Nos.1 and 2 restraining the petitioner and other respondents from restricting the egress or ingress of respondent Nos.1 and 2 to the stilt area where the parking space is constructed and to the back portion. Respondent Nos.1 and 2 was granted right to access the said back portion during the reasonable hours, i.e. between 10.00 am to 7.00 p.m. during the pendency of the suit.
2. The petitioner has bought the first floor from respondent Nos.1 and 2 vide sale deed dated 11.05.2016 in relation to the property at K-22, Green

Park Extension, New Delhi. Respondent Nos.1 and 2 filed a suit seeking decree of permanent injunction against the petitioner and respondent Nos.3 to 6.

3. The trial court dismissed the injunction application. The appellate court in appeal, however noted that clause 14 of the sale deed executed in favour of the petitioner provides that respondent Nos.1 and 2 are entitled to continue to use stilt area for ingress and outgress to their adjoining property and hence passed the aforesaid injunction order.

4. I have the learned counsel for the petitioner.

5. The learned counsel for the petitioner submits that respondent Nos.1 and 2 have no rights in the property having sold the area to the petitioner and respondent Nos.3 to 6. Hence, they have no right to enter the stilt parking area. He further submits that the area of which, respondent Nos.1 and 2 have been granted right to access, actually belongs to MCD and respondent Nos.1 and 2 have no right or interest over the same. He submits that the said respondent Nos.1 and 2 are creating nuisance in the rear side. When it was put to the learned counsel for the petitioner as to what nuisance is being created, he has mentioned that in late night they consume alcohol.

6. Clause 14 of the Sale Deed dated 11.05.2012 reads as follows:

“That The Vendor is fully entitled to continue to use of the stilt area for ingress and outgress to his property adjoining (Northern side) of Property No.K-22, Green Park, New Delhi without restriction, claim, hindrance and objection by the owners/occupants/lessee of the said building.”

7. In view of the above, it is clear that the said respondent Nos.1 and 2 while selling the property to the petitioner had carved out rights to themselves

in relation to the back portion of the property/stilt area.

8. In view of the above, the appellate court has rightly concluded that for the purpose of interim injunction, the petitioner cannot obstruct respondent Nos.1 and 2 to access the area behind the suit property.

9. On the other issue, it is for the concerned municipal corporation to take steps to re-possess the property if it owns it. The present suit was filed by respondent Nos.1 and 2 and in view of clause 14 of the sale deed, the suit cannot be converted into a title suit between respondent Nos.1 and 2 and the concerned municipal corporation. Admittedly, respondent Nos.1 and 2 have physical possession of the area of which they seeking access.

10. I may also note that the injunction order was passed in favour of respondents No.1 and 2 is limited to give access to the said respondent Nos.1 and 2 within a reasonable time frame, i.e. between 10.00 am to 7.00 p.m. The petitioner 's apprehensions of respondent Nos.1 and 2 creating mischief there are misplaced. In any case, if respondent Nos.1 and 2 misuse the injunction order passed in their favour, the petitioner would be liberty to approach the trial court for appropriate directions in that regard.

11. There is no reason to interfere with the impugned order. The petition is accordingly dismissed.

JAYANT NATH, J

DECEMBER 20, 2016/v