

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

% **Decided on: 12th October, 2017**

+ **CS(OS) 77/2016**

SMT. KAMALA DEY & ORS.

..... Plaintiff

Represented by: Ms. Garima Prashad, Adv.

versus

SMT. DEBOSHREE BISWAS & ANR.

..... Defendant

Represented by: Mr. Adeel Ahmed, Adv. for
D-1.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present suit, the plaintiffs inter alia pray for a decree of permanent injunction in favour of the plaintiffs and against the defendant no. 2 restraining him, his agents, legal heirs, associates etc. from entering or remaining in or upon any portion of suit property being Ground Floor, B-127, Chittaranjan Park, New Delhi – 110019 and from committing any trespass thereupon and/or from in any manner damaging the suit premises and/or from creating any sort of third party charge, interest or lien over the same in any manner.

2. It is the case of the plaintiffs that plaintiff no. 1 is the sole owner of the suit property being B-127, Chittaranjan Park, New Delhi – 110019. Plaintiff no. 1 has been staying on the ground floor of the suit premises

whereas first Floor is occupied by her son Alok Dey (plaintiff No. 2), second floor by her daughter Smt. Nivedita Dutta (plaintiff No.3) and two other daughters namely Smt. Mala Kanwar @ Khela Kanwar (plaintiff No. 4) and Smt. Shampa Ghosh (plaintiff No. 5) have future rights and interest in the suit property.

3. The suit property admeasuring 196 sq. yards was purchased by the husband of the plaintiff No. 1, late Shri Moni Dey vide perpetual lease deed dated 20th September, 1975 and thereafter a house was constructed having ground floor, first floor and barsati second floor. Conveyance deed was executed in favour of late Shri Moni Dey on 14th March, 2000 thereby becoming the exclusive owner of the property.

4. Late Shri Moni Dey passed away on 24th February, 2006 and upon his death plaintiff No. 1 became the sole owner of the entire suit property on a bequeath by the Will dated 11th March, 2004. As per the Will, the entire ground floor of the suit property was to belong to Shri Debdas Dey, son of plaintiff No. 1, after the death of plaintiff No. 1, first floor of the suit property would belong to Shri Alok Dey (plaintiff No. 2) after the death of plaintiff No. 1 and personal possession rights of the second floor of the suit property would first go to Nivedita Dutta (plaintiff No. 3) and her husband and then to the other daughters Mala Kanwar (plaintiff No. 4) and Shampa Ghosh (plaintiff No. 5) without any right to sell, mortgage, gift, lease or otherwise. If the daughters did not want to occupy the second floor, then the same would devolve upon plaintiff No. 2 and Shri Debdas Dey absolutely in equal shares.

5. Shri Debdas Dey passed away on 24th June, 2011. He was survived by his wife Smt. Bubun Dey and his daughter Smt. Deboshree Biswas

(defendant No. 1). Smt. Bubun Dey also passed away on 5th November, 2015.

6. It is averred in the plaint that on 12th February, 2016 around 5.30 P.M., 3-4 persons entered the suit property and started abusing plaintiff No. 1. After sometime, two more persons came and stated that they were sent by Mr. Amit Bidhuri (defendant No. 2). In the meantime, the police came and plaintiff No. 2 talked to defendant No. 2 who stated that he had given a loan of ₹20 lacs to defendant No. 1 and he will recover it from the suit property. Again on 15th February, 2016, some persons forced themselves into the ground floor of the suit property and claimed to be the agents of the defendants. They threatened and abused plaintiff No. 1 and asked her to pay money to defendant No. 2.

7. Summons in the suit were issued to the defendants vide order dated 18th February, 2016 and an ex-parte ad interim order was granted in favour of the plaintiffs and against defendant No. 2 restraining him from entering into or occupying any portion of the ground floor of the suit property. Though the defendants were duly served with the summons in the suit however, defendant No. 2 did not enter appearance and nor did he file any written statement. Thus, defendant No. 2 was proceeded ex parte vide order dated 10th August, 2016. Vide the same order, the suit was decreed against defendant No. 1 in terms of *prayer clause 'a'* to the suit whereby it was noted that defendant No. 1 had no objection to a decree of permanent injunction being passed restraining her, her agents, legal heirs, associates etc. from creating any third party interest, lien or charge in respect of the ground floor or any part of the suit premises and/or from in any manner damaging the suit premises during the lifetime of the plaintiff No.1.

8. Evidence by way of affidavit of Mr. Alok Kumar Dey was tendered vide Ex. PW-1/A. The contents of the plaint were admitted in the aforesaid affidavit. Conveyance deed dated 14th March, 2000 was proved as Ex. PW-1/1, Will of late Shri Moni Dey dated 11th March, 2004 as Ex. PW-1/2, the joint account of plaintiff No. 1 and late Shri Moni Dey in United Bank of India at Chitranjan Park Branch, New Delhi, as Ex. PW-1/4 and the payment receipts of property tax for the year 2014-15 and 2015-16 as Ex. PW-1/5 (colly). Though the death certificate of late Shri Moni Dey was de-exhibited and was marked as Mark A, however there is no dispute about the death of late Shri Moni Dey and his legal heirs inheriting the property in terms of the Will 11th March 2004 as defendant No.1 has already accepted the decree in the suit against her.

9. Considering the evidence on record and the documents filed by the plaintiffs, this court is of the opinion that the suit be decreed in terms of *prayer clause 'b'* to the suit. Consequently, the suit is decreed in favour of the plaintiffs and against the defendant No. 2 in terms of prayer clause 'b'.

10. No order as to costs.

11. Decree sheet be drawn accordingly.

(MUKTA GUPTA)
JUDGE

OCTOBER 12, 2017
'ga/Anu'