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

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*Date of decision: 7.2.2017*

+ CM(M) 885/2013

MOHD TAHIR AND ORS

..... Petitioner

Through

Mr.S.D.Ansari and Mr.I.Ahmed,  
Advocates

Versus

NADIM-UR REHMAN AND ANR

..... Respondent

Through

Mr.S.N.Gupta, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J. (ORAL)**

1. The present petition is filed under Article 227 of the Constitution of India seeking to impugn the order dated 18.7.2013 passed by the appellate court dismissing the appeal filed by the petitioners challenging the stay order passed by the trial court.
2. The respondent filed a suit for permanent and mandatory injunction to restrain the petitioners from selling, mortgaging, alienating or creating any third party interest in the suit property being Flat No.M-162, Azad CGHS Limited, IP Extension, Delhi. Alongwith the suit the respondent filed an application under Order 39 Rules 1 and 2 CPC.
3. The trial court by its order dated 3.5.2011 restrained the petitioners from forcibly dispossessing the respondent from the suit property and from selling, mortgaging, alienating or creating third party interest in the property. The trial court noted that the respondent is the son of petitioner No.2 and the

brother of petitioner No.1. Petitioner No.2 the father was allotted the flat. It was noted that the respondent and petitioner No.1 purchased the flat from the father by registered agreement to sell dated 4.8.2010 and other relevant documents for a sale consideration of Rs.9,15,000/-. The trial court noted various documents produced by the respondent and came to a prima facie conclusion that the respondent is in possession of the suit property. Accordingly, the injunction order was passed.

4. The petitioner thereafter filed an appeal before the appellate court. The appellate court vide impugned order dated 18.7.2013 noted that there is no infirmity in the order of the trial court and dismissed the appeal.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioner strenuously urges that even as per the case of the respondent petitioner No.1 his brother is a co-owner of the property. He relies upon judgment of the Nagpur Bench of the Bombay High Court in ***Prakash S.Akotkar and others vs. Mansoorbha Gulabkha and others, AIR 1996 Bombay 36*** to contend that there could be no injunction passed by the court in favour of a co-owner against another co-owner of the same property. He strenuously urges that the petitioner is in possession of the suit property and the impugned order has wrongly come to a conclusion. Learned counsel relied upon a communication dated 25.5.2011 allegedly addressed to the Office of Sub Registrar by the respondent where the said respondent states that the petitioner No.2 Shri Anis-Ur-Rehman did not hand over possession of the entire flat to him after the sale and insisted that the tenant should be given time to relocate. He also relies upon letter dated 18.4.2011 allegedly written to the Secretary of the Housing Society whereby he had withdrawn the NOC submitted with the society. It was strenuously

urged that the petitioner No.2 is the father and had only given the property to his son to reside and the son has misused the said privilege.

7. I will first deal with the issue of the prima facie findings recorded by the trial court that the respondent is in possession of the suit property. A perusal of the said order dated 3.5.2011 of the trial court would show that the trial court has relied upon the documents furnished by the parties. It noted that the petitioners have furnished only some photographs and a set of sale documents. No documents regarding the possession has been furnished. On the other hand, the respondent has produced several documents showing the possession of the suit property such as cylinder delivery receipt, customer enrollment form of Airtel for installation of broadband connection and various documents received by the respondent through courier which bear the address of the respondent of the suit property. Based on this and taking into account that no document has been produced by the petitioner the trial court concluded that prima facie the respondent is in possession of the suit property.

8. Learned counsel for the respondent has also pointed out to paragraph 8 of the written statement filed by the petitioner where the petitioner has stated that the respondent obstructed the entry of petitioner No.2 in the flat and he made a police complaint. Implicit in this observation he submits is the fact that the respondent was in physical possession. There is merit in the said submission. In paragraph 8 of the written statement, petitioner No.2 noted that petitioner No.2 tried to enter the suit property but the respondent obstructed the same and a written complaint was filed with the police but no action has been taken. It is implicit that petitioner No.2 could not enter the flat.

9. I may also note that the petitioner admits execution of documents like agreement to sell, receipt, possession letter, general power of attorney, five special power of attorneys, four affidavits, indemnity bond, Will etc., some of which documents are registered. In fact alongwith his written statement he has filed the counter-claim where a decree of declaration is sought for cancelling and declaring the said instruments as null and void and inconsequential. Hence, execution of the registered documents is admitted. These documents manifest that the petitioner has executed documents intending to sell the property to the respondent/petitioner No.1.

10. The reliance of the petitioner on documents like the communication to the Sub Registrar dated 25.5.2011 and the communication dated 18.4.2011 do not in any manner help the petitioner. As far as the letter dated 25.5.2011 is concerned, it merely reiterates that Shri Anis-Ur-Rehman did not hand over possession of the entire flat and insisted that the tenant be given time to relocate. It, however, further goes on to state that the respondent managed to get the property vacated from the tenant. Similarly, letter dated 18.4.2011 does not hold the petitioner to show prior possession.

11. Keeping in view the above facts, in my opinion, there is no infirmity in the impugned order and the conclusions reached that the respondent prima facie is in possession of the suit property.

12. I may deal with the next submission of the learned counsel for the petitioner regarding the judgment of the Nagpur Bench of the Bombay High Court in ***Prakash S.Akotkar and others vs. Mansoorkha Gulabkha and others (supra)***. That was a case in which the court held that the co-owner has an interest in the whole property and every parcel of it and possession of the joint property of one co-owner is in the eyes of law possession of all of them.

However, it has also been noted that the above proposition holds unless ouster is proved. Hence, where one of the co-owners is completely ousted from the property, the co-owner in possession can apply for injunction against the co-owner who has been ousted.

13. It is clear that the argument of learned counsel for the petitioner is unacceptable. It is not possible to contend that in case one co-owner is in exclusive possession of the joint property, to the complete exclusion of other co-owners, then any co-owner can physically intrude into joint property or try and grab possession of any portion of the said property. Any such legal position, if accepted, would lead to utter chaos where there is a dispute between co-owners.

14. There are no reasons why this court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India should interfere with the concurrent findings and orders passed by the trial court and the appellate court. The present petition is without merits and is dismissed. All pending applications, if any, also stand disposed of.

**(JAYANT NATH)**  
**JUDGE**

**FEBRUARY 07, 2017**

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