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

Reserved on : 20th October, 2016

Decided on : 8th March, 2017

+ **FAO(OS) 150/2015 & CM Nos. 5860/2015 (for stay) & 17825/2015 (under Order 41 Rule 2 for placing on record additional grounds)**

SAROJ AGGARWAL & ANR Appellants

Through: Mr. Amit Sibal, Sr. Adv. with
Mr. Tejas Karia, Mr. Akhil Anand
& Mr. Siddharth Agarwal, Advs.

versus

SHAKUNTALA AGGARWAL Respondent

Through: Mr. Rajesh Gupta, Mr. Harpreet
Singh Mr. Pranjal Saran, Advs.

CORAM:

**HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

J U D G M E N T

% **INDIRA BANERJEE, J.**

1. This appeal is against an order dated 19/03/2015 passed by the Ld. Single Judge, in an application filed by the respondent, being the defendant, in the Partition Suit being CS (OS) No. 617 of 2011 under Section 151 of the Code of Civil Procedure whereby the learned Single

Judge granted permission to the respondent to occupy the 1st floor of the property being No. 12 Road No. 42 West Punjabi Bagh, New Delhi, hereinafter referred to as the suit property.

2. The appellants, being the plaintiffs in the Suit, and the respondent being the defendant in the said suit, are registered owners of the suit property, their shares being 74% and 26% respectively. The suit property has jointly been mutated in the joint names of the appellants and the respondent.

3. In 1991, the appellants and the respondent purchased the suit property along with one Mr. Sanjay Aggarwal, through separate registered deeds of conveyance. The appellants, the respondent and the said Mr. Sanjay Aggarwal are all members of the same family.

4. At the time of purchase of the suit property, there was only an old structure thereat. In July 2009, the appellants, the respondents and Mr. Sanjay Aggarwal agreed to demolish the old existing structure at the suit premises and jointly construct a new residential building thereat so that the family members could reside together at the suit property.

5. It was agreed that the proposed building would comprise a basement, ground floor, first floor and second floor, with provision for constructing the third floor.

6. The four owners had agreed that the basement would be used by all the owners, the ground floor and the second floor would be used by the

plaintiffs and Mr. Sanjay Aggarwal would have the right to construct the third floor.

7. Pursuant to the understanding between the appellants, the respondent and Mr. Sanjay Aggarwal, an architect was engaged for preparation of building plan and supervision of construction. The building plan was sanctioned on 17.09.2009.

8. In June 2001, Mr. Sanjay Aggarwal gifted his share in the suit property to the appellant No.1 by execution of a registered deed. The name of the appellant No.1 was also mutated in place of Mr. Sanjay Aggarwal.

8. It is alleged that an understanding had been arrived at between the appellants and the respondent that construction would be carried out at the suit property by the respondent and her husband, the cost of which would be shared equally by the appellants and the respondent.

9. It, however, appears that disputes and differences arose between the appellants and the respondent regarding rendition of accounts of construction and the appellants allegedly requested the respondent and her husband to stop further construction and also asked for partition.

10. The appellants claim that the appellants who owned approximately 74% of the area in the suit property have always been in joint possession of the suit property.

11. The appellants thus instituted the suit, for partition, for a decree of permanent injunction restraining the respondent from continuing with construction at the suit property and a decree of permanent injunction restraining the respondent from transferring, alienating or otherwise creating third party rights in respect of the suit property.

12. In the suit, the appellants filed an interlocutory application for an interim injunction under Order 39 Rules 1 and 2 of the Civil Procedure Code, restraining the respondent from alienating, transferring or creating any third party right in the suit property and also an interim injunction restraining the respondent inter alia from carrying on construction at the said premises.

13. By an ex parte order dated 14/03/2011, the learned Single Bench restrained the respondent from parting with possession of any part of the suit property or from creating any third-party interest in the suit property until further orders. The learned Single Bench also directed the respondent not to occupy any part of the suit property without the prior permission of the Court. By an order dated 17/04/2011. Learned Single Bench restrained the respondent from carrying on any construction at the suit premises until further orders.

14. On 07/01/2014, the interlocutory application filed by the appellants was heard along with an application being IA No. 7826/2011 filed by the respondent under Order 39 Rule 4 of the CPC for vacating the ex parte

interim order passed on 14/03/2011. After hearing the parties, the interim order passed on 14/03/2011 was made absolute till the final disposal of the suit. The respondent was restrained from creating any 3rd party right or interest in the suit property in any manner whatsoever. The respondent was also directed not to occupy the suit premises. However, the injunction restraining the respondent from carrying out further construction at the suit property was vacated with the clarification that the construction would not create any special equity in favour of the respondent.

15. In an appeal being FAO (OS) 84/2013 against the said order dated 07.01.2013, a Division Bench of this Court passed an order dated 15/02/2013 modifying the impugned order dated 07/01/2013 by giving liberty to the respondents to complete the 1st floor of the suit property strictly in accordance with the directions contained in the order dated 15.02.2013. The respondent was expressly directed not to carry out any further construction except to the extent permitted by the said order of the Division Bench.

16. The appellants filed an application being IA No. 1538/2014 complaining that the respondent had violated the order dated 15/02/2013 by raising additional construction over and above what had been permitted by the order dated 15/02/2013. On the other hand, the respondent filed an application being IA No. 7147/2014, seeking orders permitting the respondent to occupy and use the suit property.

17. By an order dated 08.07.2014, a Single Bench of this Court appointed a local Commissioner to visit the suit premises and submit a report of the status of the construction existing at the suit premises as on the date of the aforesaid order. The local Commissioner was directed to take photographs of the suit property. The respondent was, however, not permitted to occupy the suit premises.

18. The local Commissioner appointed by the Single Bench inspected the said premises and submitted a report of the things which had been done. The report reveals that basement, 1st floor, 2nd floor and terrace existed and plastering and facade for the entire building had been done from outside.

19. On 8.3.2015 the appellants filed an application being IA No. 5717/2015 seeking orders restraining the respondent from interfering with the right of the appellants to complete the construction and finish the ground floor and 2nd floor of the suit property.

20. On 12.3.2015, a learned Single Bench of this Court referred the parties to mediation. While the mediation was pending, the application filed by the appellants being I.A. No.5717/2001 was taken up for consideration on 19.03.2015 along with the application of the respondent for preponement of the date of hearing and for permission to occupy and use the suit property being I.A. No.24907/2014 and other related applications.

21. After hearing the parties the Learned Single Bench permitted the respondent to use and occupy the first floor of the suit property, observing that since the respondent had been permitted construction and completion of the first floor without any special equity in his favour, the logical sequitur would be to let the first floor be put to use in terms of the plaint, with the rider that such use and occupation would not create any special equity in favour of the respondent.

22. The Learned Single Bench permitted the respondents to use the first floor without any obstruction to the appellants. However, the respondent was restrained from creating any third party rights in the suit property. There were also other consequential directions. The respondent (possibly wrongly stated as plaintiff by reason of a typographical error) was not to occupy or use the basement floor, ground floor or the second floor of the suit property. There were other consequential directions protecting the interests of the respective parties.

23. Mr. Amit Sibbal appearing on behalf of the appellant submitted that the respondent had carried on construction of the second floor in violation of orders of Court. The respondent No.2 was in contempt. The respondent No.2 ought to have been directed to purge himself of contempt before his prayer for occupation could have been considered. The respondent No.2 ought not to have been given permission to occupy the first floor.

24. It is true, as argued by Mr. Amit Sibbal, that any action in violation of an order of Court is a nullity. The construction of the second floor appears to have been in violation of an order of Court and not construction of the first floor.

25. In any case the question of whether the respondent was in contempt or not had to first be adjudicated before the respondent could be required to purge herself of contempt.

26. Whether the respondent had constructed the second floor in violation of orders of Court or not, would have to be decided in appropriate contempt proceedings. Moreover, irrespective of any subsequent order permitting the respondent to occupy the first floor, the Court might penalize the respondent for contempt of its earlier restraint order.

27. The injunction on the respondent was in respect of the second floor. If the construction of the second floor were to found contumacious, the construction could even be directed to be demolished at the cost of the respondent.

28. The learned Single Bench passed an equitable order having regard to the admitted case as made out in the plaint by the appellant that it had been agreed that the respondent could occupy the first floor.

29. The respondent is the owner of 26% share in the suit property. There was an agreement that the respondent would occupy the first floor.

The respondent had been permitted to carry out construction of the first floor. The equitable relief of permitting the respondent to occupy the first floor does not call for interference.

30. Mr. Sibal's argument that the impugned order is in violation of Section 343 of the Delhi Municipal Corporation Act, 1956 cannot also be sustained. The learned Single Bench has not waived the requirement of Completion Certificate and the permission of the Single Bench is obviously subject to issuance of Completion Certificate in respect of the first floor. The right of the Municipal Corporation to take action in case of any contravention of the provisions of the Delhi Municipal Corporation Act or the Rules framed thereunder has not been affected.

31. For the reasons discussed above, the appeal is dismissed.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

MARCH 08, 2017/ n