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

Date of Decision: 21st February, 2018

+ **RFA 279/2017 & CM APPL. 9595/2017**

PUNAM TYAGI

..... Appellant

Through: Mr. Amit Khanna and Mr. Raj Vardhan, Advs. (M:9999444007) with husband of Appellant in person.

Versus

VEENA KAKAR & ORS.

..... Respondents

Through: Mr. Shubhanker Sharda, Advocate for R-1 & 3 with R-3 in person. (M:9958102797)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. Learned counsel for Respondent Nos.1 & 3 is present along with Respondent No.3 in person. Appellant is represented through her husband, who is present in Court. Respondent No.2 has not appeared despite written intimation having been served to him. Respondent No.2 is proceeded ex-parte.

2. Arguments heard. The Appellant is the occupant of the second floor of property bearing no.R-12, South Extension, Part-II, New Delhi-110049. Respondent Nos.1 & 3 are the occupants of the ground floor and Respondent No.2 is occupant of the first floor. The property has a terrace where water tanks of various occupants are located. Due to several disputes, which arose between the parties, the Appellant filed a suit for declaration and injunction praying the following reliefs.

“a. pass a decree of declaration in favour of the Plaintiff and against the Defendants declaring that the Plaintiff has a right to possession over the annexe of 2nd floor of property bearing No. R-12, South Extension, Part - II, New Delhi - 49 as envisaged under the Sale Deed and MOU, dated 22.06.2010;

b. pass a decree of declaration in favour of the Plaintiffs and against the Defendants declaring that the Plaintiff has an unfettered right to access the terrace floor of property bearing No. R- 12, South Extension, Part - II, New Delhi - 49 for the purpose of maintenance of water tank and water supply for her flat;

c. pass a decree in favour of the Plaintiff and against the Defendants directing Defendant No. 1 to accept the balance amount of Rs. 6,50,000.00 towards possession of the annexe of property bearing No. R-12, South Extension Part - II, New Delhi - 49;

d. pass a decree of possession in favour of the Plaintiff and against the Defendants directing the Defendants jointly and severally to hand over the annexe to the 2nd floor of property bearing No. R - 12, South Extension, Part - II, New Delhi - 49;

e. pass a decree of mandatory injunction in favour of the Plaintiff and against Defendant No. 2 directing Defendant No. 2 to hand over keys of the annexe to the 2nd floor of property bearing No. R-12, South Extension, Part -II, New Delhi - 49 to either the Plaintiff of Defendant No. 1;

f. pass a decree of permanent injunction in favour of the Plaintiff and against Defendant No.2 permanently restraining Defendant No.2 from preventing the Plaintiff to access the terrace floor

of property bearing No. R - 12, South Extension, Part - II, New Delhi -49 for the purpose of maintenance of water tank, regulating supply of water to her flat and for installation of additional tank of 1000 Ltrs. for her flat and for installation and maintenance of PNG pipes including maintenance of her property with regard to seepage and / or leakages occurring from wear and tear of the building;

g. pass a decree of mandatory injunction in favour of the Plaintiff and against Defendant No.2 directing Defendant No.2 to permit the Plaintiff of her family members or any person representing her to go to the terrace floor for the purpose of installation of water pipe directly from her water tank (situated at Mumty) to her kitchen and also PNG (Gas) pipeline that has to be drawn from the ground floor to the terrace floor and then to each respective floors through the shaft area of the building;

h. pass a decree of mandatory injunction in favour of the Plaintiff and against Defendant No.2 directing Defendant No.2 to hand over a set of duplicate keys, to the Plaintiff, to the terrace floor and of the door leading to the shaft of the building for the above purposes;

i. pass a decree in favour of the Plaintiff and against the Defendants directing the Defendants to pay to the Plaintiff an amount of Rs. 18,08,000.00 as envisaged above;

j. pass a decree in favour of the Plaintiff and against the Defendants directing the Defendants to pay to the Plaintiff, jointly or severally, interest on the above amount of Rs. 18,08,000.00 @12% p.a. from the date of institution of the present suit till payment; and

k. pass such other or further order / orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

3. The Trial Court has decreed the suit to the following effect:

“As per finding on issue No.1, the suit of the plaintiff is decreed declaring that plaintiff has a right of possession over the annexe of the second floor of the suit property bearing no.R-12, South Extension, New Delhi. As per finding on issue No.2, plaintiff is also entitled to a decree of declaration declaring that she has a right of access to the terrace floor of the suit property for the purpose of maintenance of water tank and water supply to her flat. As per the finding on issue No.3, defendant No.1 is directed to receive Rs.6.5 lacs as balance payment of the annexe from the plaintiff. In case the defendant No.1 fails to take Rs.6.5 lacs from the plaintiff, the plaintiff can deposit Rs.6.5 lacs in the court in the form of Demand Draft in the name of the defendant No.1. The plaintiff is also entitled to take possession of the annexe from all the defendants particularly from defendant No.2, who is in possession of the annexe. Defendant No.2 is directed to permit the plaintiff or her representative to go to the terrace floor for the purpose of maintenance/installation of water pipe in her water tank. The suit of the plaintiff is decreed, accordingly.”

4. Learned counsel for Appellant submits that the only outstanding issue between the parties is with respect to installation of an additional water tank of 1000 Ltrs for the consumption and usage of the family of Appellant, residing on the second floor of the property. The Trial Court has already allowed the access to the terrace for the purpose of maintenance and

installation of the water tank etc. The prayer for the additional water tank installation is not being opposed by the Respondent Nos.1 & 3. Respondent No.2 is not present.

5. It appears that the request for an additional water tank is a reasonable request, considering that the summer months are approaching. This Court ought not to have been seized with disputes such as this in the first place. The installation of an additional tank is for a basic necessity viz., water and the same is liable to be allowed. Appellant is permitted to install the additional water tank of 1000 Ltrs for the usage in her flat on the second floor. However, while installing the said additional water tank, the Appellant shall ensure that no disturbance is caused to the occupants of the other flats and installation is carried out in a peaceful manner.

6. Respondent Nos.1 & 3 undertake not to create any hindrance and to cooperate. Respondent No.2 is directed not to create any hindrance in the installation of the water tank and also to cooperate in the same. The suit is decreed in terms of the order of the Trial Court alongwith the directions passed herein above. No other relief is pressed for.

7. With these additional directions, appeal is disposed of with no order as to costs. All miscellaneous applications also stand disposed of.

PRATHIBA M. SINGH
Judge

FEBRUARY 21, 2018/dk