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

% Date of Decision: 13.07.2018

+ **CS(OS) 438/2017 and IA No. 10581/2017**

SMT. URMILA DEVI

..... Plaintiff

Through Mr.Bharat Bhushan Gupta, Adv.

versus

SHRI VINOD KUMAR AND OTHERS

..... Defendants

Through Ex parte

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This suit is filed for perpetual and prohibitory injunctions and damages under section 37(2), 38 and 40 of Specific Relief Act, 1963. The plaintiff states that she is the absolute owner of the property measuring 300 sq.yards out of Khasra No. 317/214 in Village Mukundpur, Delhi-110042. The suit has been filed through her nephew/Special Attorney, namely, Sh. Sahib Singh Chauhan. It is pleaded that the defendants have no connection with the property and are part of land mafia who are trying to grab the property of the plaintiff.

2. As per the plaintiff, she has bought the suit property from Sh. Jai Bhagwan by virtue of registered General Power of Attorney (GPA), Agreement to sell, Affidavit, Receipt, Registered Will all dated 09.09.1996. Physical possession of the property was also handed over to her.

3. The plaintiff is said to be residing in Tehsil Deoband, District Saharanpur,U.P. She has also executed a GPA in favour of Ms.Meenakshi, daughter of Prof. J.D.Arya and her nephew, Sh. Sahib Singh Chauhan. It is pleaded that Sh. Jai Bhagwan was the owner of 400 sq. yards. He had

bought this 400 sq. Yards from a couple of buyers. 200 sq. yards was bought from Smt.Bimbla Rani vide GPA, registered Will and Receipt dated 22.07.1996. Sh. Nand Kishore sold another 200 sq.yards to the said Jai Bhagwan on 22.07.1996 vide GPA, registered Will and Receipt. Hence, Jai Bhagwan became the owner of 400 sq. yards out of which 300 sq.yards was sold to the plaintiff.

4. It is pleaded that the plaintiff has been in continuous and regular possession of the suit property since 1996. In 1997, the plaintiff constructed a boundary wall and gates on both sides of the plot with one chappar. In March 2014, she built a pucca room having T-Iron with stone slabs, a septic tank, toilet, bathroom and installed a new hand pump. She also allowed Smt.Pooja to live as a tenant in a portion of the suit property.

5. Defendant No.1 is said to have with mala fide intentions to grab the suit property hatched a conspiracy with the help of the local police. On 30.03.2014, defendant No.1 made a false complaint to the police alleging that the plaintiff had played a fraud on him and broke open the lock. The said complaint was withdrawn by the defendant. Thereafter, in 2016 the defendants again started harassing and threatening, the plaintiff and the tenant. For taking forcible possession, they have committed criminal trespass number of times. Hence, the present suit seeking a decree of perpetual injunction to restrain the defendants from forcibly and illegally dispossessing the plaintiff and her tenant from the suit property. Damages of Rs. 97 lakhs are also sought on account of mental agony and harassment suffered by the plaintiff.

6. The defendants entered and filed their written statement. In the written statement, it is pleaded that defendant No. 1 is the owner and is in

possession of the suit land. It is pleaded that the chain of documents produced by the plaintiff clearly shows that she does not have any title to the land in question as the dimensions/boundaries given in the documents do not support the claim of the plaintiff. It is stated that the dimensions/boundaries given in the documents produced by the plaintiff clearly establish that the property allegedly purchased by the plaintiff is entirely different from the property mentioned in the suit. It is further stated that the suit property is under the ownership of defendant No. 1 and not the plaintiff.

7. On 12.03.2018, this court had noted that the defendants had stopped appearing and also not filed affidavit of admission/denial. Defendants were proceeded ex parte and the plaintiff was permitted to file affidavit by way of evidence. The plaintiff has filed affidavit by way of evidence of four witnesses i.e. PW-1 to PW-4. PW-1/Sahib Singh Chauhan, the Special Attorney of the plaintiff in his affidavit sought to prove the title documents of the plaintiff. The documents executed by Sh.Jai Bhagwan in favour of the plaintiff have been marked as Ex.PW-1/16 to Ex.PW-1/26. It has been pleaded that the plaintiff is the lawful, actual and bona fide purchaser of the suit property having purchased the same from the said Sh.Jai Bhagwan. He has also pointed out that the plaintiff constructed the boundary wall, the gates and one cottage. The plaintiff also permitted one Sh.Brahm Singh, neighbour of the plaintiff to use a portion of the suit property for a milk dairy. Subsequently, the plaintiff also got electricity connection in the suit land on 22.05.2014 and allowed Smt. Pooja to enter the property as a tenant. He has also pointed out various attempts of the defendants to dispossess the plaintiff. PW-2/Sh.Brahm Singh, husband of the plaintiff has also filed his affidavit by way of evidence and has confirmed the execution of Power of

Attorney in favour of Sh.Sahib Singh Chauhan. PW-3/Smt. Pooja Sharma the tenant has also filed her affidavit by way of evidence and has confirmed that she has been residing as a tenant in the property of the plaintiff since June 2014. She has also confirmed that in another portion of the property a person Brahm Singh is running a milk dairy and keeps his buffalos. Sh.Brahm Singh has also filed his affidavit by way of evidence and has confirmed that he has been residing in the neighbourhood with his family for many decades. He confirms that 300 sq. yards plot is owned by the plaintiff and she has been in continuous and regular possession of the property since 1996. He confirms that he was permitted in October 1996 to use a part of the property for dairy purpose and keeping buffalos.

8. There is no evidence to rebut the plea of the plaintiff. In my opinion, based on the unrebutted evidence, the plaintiff has made out a case that she is the owner of the suit property I may also note that the document relied upon by the plaintiff were executed prior to the judgment of the Supreme Court in *Suraj Lamp and Industries Private Limited vs. State of Haryana and Another*, AIR 2012 SC 206.

9. Accordingly, I pass a decree in favour of the plaintiff and against the defendants in terms of prayer clause (a) of the plaint. The plaintiff shall also be entitled to costs.

10. Regarding damages, no such damages have been shown to have been suffered by the plaintiff. Hence, no damages are awarded.

11. The suit is decreed in the above terms. All pending applications also stand disposed of.

JAYANT NATH, J

JULY 13, 2018/rb