

\$~42 & 5

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

+ **Date of Decision: 22.7.2019**

% **FAO(OS) 129/2019**

CHUCKLES KOHLI & ORS

..... Appellants

Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr.Lovkesh Sawhney, Advocate.

versus

RAVINDER SINGH

..... Respondent

Through: Mr. Jasmeet Singh with Mr. Saurabh
Tiwari, Advs.

% **FAO(OS) 88/2019**

CHUCKLES KOHLI & ORS

..... Appellants

Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr.Lovkesh Sawhney, Advocate.

versus

RAVINDER SINGH

..... Respondent

Through: Mr. Jasmeet Singh with Mr. Saurabh
Tiwari, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

CAV 721/2019

Learned counsel for the respondent/caveator has appeared. Caveat accordingly stands discharged.

CM APPL. 32401/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

CM APPL.32402/2019

Issue notice. Counsel for the respondent/caveator accepts notice. He fairly does not oppose this application. The same is allowed. Delay is condoned

FAO(OS) 129/2019 & and CM APPL. 32417/2019

1. The present appeal is preferred against the orders dated 26.4.2019 and 20.5.2019 passed by the learned Single Judge in CS(OS) No.1440/2008. The appellants, apart from assailing the said orders, seek exemption from their personal appearance, and a direction that the learned Single Judge may decide I.A.No.4704/2018 preferred by the respondent/plaintiff under Order 39 Rule 2A CPC after considering the reply, and without insisting on the personal appearance of the appellants on the ground that they do not reside in India.

2. We have heard Mr. Sandeep Sethi, learned Senior counsel for the appellants as well as Mr. Jasmeet Singh, learned counsel for the respondent at some length, and proceed to dispose of the present appeal.

3. In sum and substance, the position which emerges from the record, is that an order of injunction was passed on 10.1.2011 in the suit filed by the respondent/plaintiff to seek specific performance of the MOU entered into between the plaintiff and the defendants, restraining the defendants from selling or parting with possession of the suit property. Under the MOU dated 23.12.2005 the appellant/defendant is purported to have agreed to sell his 1/3rd share in the property bearing No. 15, Jor Bagh, New Delhi to the plaintiff. It appears that the possession of the property was with the aunt of the defendants/appellants, namely, Ms. Pamela Manmohan Singh, and under orders of the Court, the said property had been let out to the Iranian Embassy vide orders dated 12.3.1993 passed in Suit No. 238/1989 in I.A No. 1653/1993

4. The respondent/plaintiff moved an application, being I.A No. 7425/2018 under Order 39 Rules 1 and 2 CPC, in CS(OS) 1440/2008 apprehending the breach of the order dated 10.1.2011. That application was taken by the learned Single Judge (Late Hon'ble Mr. Justice Valmiki J. Mehta) on 28.5.2018. The appellants/defendants appeared in the said proceedings, and the order passed by the Court on the said date reads as follows:-

"I.A.No. 7425/2018(U/o 39 R 1 and 2 CPC filed by the plaintiff)

1. This application is misconceived inasmuch as plaintiff already has the benefit of an interim order of status quo with respect to possession and title of the suit property passed on 10.1.2011, and which order is continuing. There is therefore no need for passing another fresh injunction order as there is already an injunction order.

2. This application is disposed of in view of the aforesaid factum of the parties being directed to maintain status quo with respect to possession and title in terms of the order dated 10.1.2011.

I.A stands disposed of.”

5. Pertinently, on the same date i.e. 28.5.2018 - in the suit preferred by Ms. Pamela Manmohan Singh, (which was continued through her legal heirs since she died during the pendency of the suit), I.A 7493/2018 was moved to seek permission to lease out the property No. 15, Jor Bagh, New Delhi. The appellants herein, who are the defendants in the said suit, appeared and gave their no objection to the leasing out of the said property, which had been vacated by the Iranian Embassy, and was in possession of the plaintiff's LR's i.e the LR's of Late Ms. Pamela Manmohan Singh. Soon thereafter, the LR's of Ms. Pamela Manmohan Singh and the appellants entered into a memorandum recording family settlement dated 31.05.2018. In this memorandum recording family settlement, the appellants were described as the first party, whereas the LR's of Late Ms. Pamela Manmohan Singh were described as the second party. There were other parties to this memorandum recording family settlement, who were described as confirming, consenting and compromising parties/ third party. This memorandum, inter alia, recorded “*AND WHEREAS parties of the first, second and third part had discussions between and among themselves and with intervention of family*

and friends had ultimately resolved their disputes and differences in amicable understanding that was orally arrived at amongst them in the month of May 2018”

6. In so far as property No.15 Jorbagh, New Delhi is concerned, this memorandum, inter alia, recorded:

“1. That it had been agreed that parties of the first part and parties of the second part shall divide the properties mentioned hereinabove in the following manner:

a)

b) Entire 1/3rd share of Late Dr. Raseel Kohli in Property No. 15 Jorbagh shall devolve on parties of First part and as a result following shall be the owners of 15 Jorbagh, New Delhi after the present Memorandum is executed:

i) Party of the first part – 2/3rd share (1/3rd share as owner which is undisputed and 1/3rd share of Dr. Raseel Kohli inherited by party of first part as per these presents);

ii) Party of the second part – 1/3rd share as already owned and which is undisputed.

c)

2.

3.

4.

5. That the parties had also mutually agreed in the said settlement that first party would have 2/3rd share in 15, Jor Bagh, New Delhi whereas second party while retaining its 1/3rd share in 15, Jor Bagh, New Delhi has been in uninterrupted possession and continues to retain possession of said property pursuant to orders passed by Hon'ble Delhi High Court in this regard. The First Party acknowledges the pre-existing right of the said possession of the Second Party of the aforesaid property pursuant to orders passed by Hon'ble Delhi High Court. The Second Party would also continue to exercise its exclusive right to lease/ let/ license/ renew the lease and/ or otherwise deal with the property. The proceeds of mesne profits/ rent/ license fee after adjustment of expenditure/ outgoings/ applicable taxes had been agreed to be shared between first and second party in the ratio of 2:1 respectively. ”

7. It appears that the respondent/plaintiff learnt of the fact that the defendant had dealt with the property, and consequently, moved the application under Order 39 Rule 2A CPC, being I.A No. 4704/2018. This application was taken up by the Court on several dates, including on 18.2.2019. The Court observed in paras 5 and 6 in the said order as follows:-

“5. Though there is merit in the contention of the counsel for the defendants that agreement to sell and power of attorney do not change the title but the settlement agreement entered into by the defendants with other co-owners, permitting the co-owners to change the possession of the property from that as on 10th January, 2011, is definitely a violation of the order of status quo. Though, the counsel for the defendants stated that this was also subject to the orders of the court and while passing which, the

court was aware of the order of the status quo in this suit but again, has nothing in this respect. Neither the reply to this application has been filed, for which opportunity was given on 25th October, 2018 nor have the costs been paid.

6. *The defendants are directed to appear in person before the Court on the next date of hearing and are further burdened with costs of Rs.25,000/-. If costs imposed on 25th October, 2018 and imposed today are not paid, at least one week before the next date of hearing, consequences shall follow.” (emphasis supplied)*

8. Thus, it would be seen that so far as the consent given by the appellants to transfer of possession to a tenant is concerned, the same was viewed as violation of the order of status quo passed on 10.1.2011 in the respondent/plaintiff's suit.

9. On 1.4.2019, the learned Single Judge, apart from, restraining the payment of rent to the defendants, on the statement of the defendants' counsel, listed the matter on 26.4.2019 for appearance of all the defendants. The defendants were warned that if they do not appear, consequences shall follow.

10. The defendants however did not choose to appear even on 26.4.2019, despite they being advised by their counsel to so appear. Consequently, the impugned order came to be passed, wherein, inter alia, the Court observed as follows:

“8. There is no option but to direct the Ministry of External Affairs, Government of India to take appropriate action in accordance with law for ensuring the presence of the defendants No.1,3 & 4 namely (i) Mr. Chuckles Kohli S/o Late Shri K.V.Kohli R/o B-98, Defence Colony, New Delhi; (ii) Mrs. Pixie Kauble @

Tixy D/o Late Major K.V.Kohli R/o B-98, Defence Colony, New Delhi; and, (iii) Mishka Kohli D/o Late Major K.V.Kohli R/o B-98, Defence Colony, New Delhi

9. *A copy of this order be given dasti under the signatures of the Court Master to the counsel for the plaintiff for serving the same on the Ministry of External Affairs and for following up the matter with them and the counsel for the plaintiff is also granted liberty to furnish all further particulars which may be required by the said Ministry for taking appropriate steps in terms of this order.”*

11. The aforesaid direction was, however, kept in abeyance on the representation made before the Court that the defendants had been advised to settle the matter, and the defendants were agreeable that they would make an endeavour to settle the matter. Defendants, however, did not arrive at any settlement, and did not appear before the Court on 20.5.2019 when the second impugned order was passed.

12. The submission of Mr. Sethi, learned senior counsel for the appellants is that since the appellants were not in actual physical possession of the property, which was in possession of Ms. Pamela Manmohan Singh, and thereafter her heirs, there is no violation of the order of status quo with regard to possession (dated 10.01.2011) inasmuch, as, the appellants have not parted with possession of the said property to any third party. According to him, the breach of the order would have taken place, only if the appellants were in possession of the suit property when the order was passed in the respondent's suit on 10.1.2011, and if they had parted with possession thereof to a third party on their own. He further submits that the direction issued by the learned Single Judge to the Ministry of External Affairs,

Government of India, to take appropriate action in accordance with law for ensuring presence of the defendants no. 1,3 and 4 before the Court is contrary to the decision of this Court in the case of **Arjun Prakash Vs. Shyam Sahani and Ors.** in FAO (OS) 210/2017 decided on 1.8.2018. He specifically places reliance on para 74 which reads as follows:-

“74. Before parting with this case, one more serious legal issue must be noted. An order directing seizure impounding of a passport is an extremely serious matter. There must be strict compliance with the requirements of law. The legislature has enacted the Passports Act, 1967 which provides for all matters relating to issuance, suspension, impounding as well as revocation of passports. It prescribes the authorities competent to do so and the procedure to be followed by them. Sub-section (3) of Section 10 enumerates as many as eight contingencies in which a passport can be impounded, and, in our view, no court may, by judicial fiat, impound, confiscate, or even detain, the passport, of an Indian citizen, on any other ground. If the circumstances set out in Section 10 of the Passports Act, 1967 are satisfied, and warrant an order in respect of a passport issued to a party, the court would be entirely within its authority to draw the attention of the competent authority to the same directing it to so proceed in the matter.”

13. On the other hand, it is pointed out by Mr. Jasmeet Singh, learned counsel for the respondent, that the conduct of the appellants was clearly contemptuous inasmuch, as, the appellants-on the same date on which the respondent's application for injunction was listed before the learned Single Judge (i.e. 28.05.2018), proceeded to give their consent to the letting out of the property to a third party in the suit preferred by Ms. Pamela Manmohan Singh. He further submits that rather than acting themselves to specifically

deal with the physical possession of the property, the appellants permitted the legal heirs of Ms. Pamela Manmohan Singh to part with its possession to a third party, namely, a tenant. He has also drawn our attention to the nature of the agreement entered into between the legal heirs of Ms. Pamela Manmohan Singh, namely, Sh. Jasmohan Singh on the one hand, and the tenant M/s BI WVERLY Pvt. Ltd. which shows that major chunk of the rent has been taken as lumpsum in advance.

14. Having heard the learned senior counsel for the appellants as well as learned counsel for the respondent/caveator and perused the record, we are not inclined to interfere with the impugned orders passed by the learned Single Judge. It appears *prima facie*, to us that the appellants-who are sitting abroad, appear to have breached the orders passed in the suit preferred by the respondent/plaintiff by permitting the legal heirs of Ms. Pamela Manmohan Singh to part with possession of the property by giving their consent on 28.5.2018 in CS(OS) 238/1989. Pertinently, they are beneficiaries of the said letting since they are entitled to receive a portion of the rent. Without their consent, the possession could not have been parted by Sh. Jagmohan Singh to a tenant.

15. Contempt proceedings are in the nature of quasi criminal proceedings, and the contemnor if found guilty, is also liable to face civil imprisonment. Thus, the direction issued by the learned Single Judge requiring the appellants/defendants to personally remain present is not illegal or beyond the scope of the power of the Court while dealing with an application under Order 39 Rule 2 A CPC.

16. So far as reliance on *Arjun Prakash (supra)* is concerned, we find that the learned Single Judge has not issued any direction for impounding the passports of the appellants, and the directions issued by him are in general terms. Therefore, the said decision does not come to the aid of the appellants.

17. In view of the above, there is no merit in the appeal. Dismissed.

FAO(OS) 88/2019

18. In view of the order passed in FAO(OS) 129/2019, this appeal does not survive, and the same is dismissed.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

JULY 22, 2019

ib/jitender