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

Decided on: 1st July, 2019

+ CM(M) 957/2019

ATUL KUMAR GUPTA & ORS

..... Petitioners

Through: Mr.Anunaya Mehta &
Mr.Akshay Deep Singhal,
Advocates

versus

MITTHAN LAL AGGARWAL & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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CM APPL. 28851/2019

Exemption allowed, subject to all just exceptions.

The application is disposed of.

CM(M) 957/2019 & CM APPL. 28852/2019 (interim relief)

1. This petition under Article 227 of the Constitution of India is directed against an order dated 31.05.2019, passed by the Additional District Judge-08, Central, Tis Hazari Courts, Delhi in RCA No.58/2019 [*Atul Kumar Gupta & Ors vs. Mitthan Lal Aggarwal & Ors*].

2. By the impugned order, the learned Additional District Judge has issued notice in an appeal filed by the petitioners against an order of the Trial Court dated 22.04.2019. The Trial Court allowed an application filed by the respondents herein under Order VII Rule 11 of the Code of Civil Procedure, 1908 [“CPC”] and thus rejected the plaint in the suit filed by the petitioners. The grievance of the petitioners is that while issuing notice in the appeal, the Appellate Court has declined their prayer for *ex-parte* interim injunction, restraining the respondents from interfering and obstructing the peaceful living and enjoyment of the suit property [16/15, Alipur Road, Civil Lines, Delhi-110054].

3. In view of the fact that notice has been issued in the appeal before the learned Additional District Judge and the controversy raised before this Court concerns the petitioners’ entitlement to an *ex-parte* order, I do not consider it necessary to issue notice in this petition, which can be disposed of at this stage.

4. The petitioners are the plaintiffs in the suit before the Trial Court. They are the parents and brother of one Ankit Gupta. Respondent No.3 is the wife of Ankit Gupta and respondent Nos.1 & 2 are her parents. The respondents Nos. 4, 5 & 6 are the brother, sister-in-law and uncle of the respondent No.3 respectively. The case made out in the plaint is that the suit property is owned exclusively by Smt.Kiran Devi, the mother of petitioner No.1, and the petitioners have been residing in the suit property for several years. Respondent No.3 entered into the suit property as a consequence of her marriage with Ankit Gupta, which took place on 05.06.2015. The relationship between the respondent No.3, her husband and his family was fraught

from the outset, and the respondent No.3 and her husband set up an independent residence six months after their marriage, in January, 2016. However, it is contended that the respondents have thereafter sought to interfere with the petitioner's possession of the suit property and have created several situations of entering into the property, shouting slogans, quarrelling, and threatening the petitioners. Respondent No.3 is also alleged to have entered into the suit property on 03.07.2016, forcibly, and resided there until 14.07.2016, after which she has lived with her parents.

5. During the pendency of the suit, an *inter-partes* interim order dated 22.08.2016 was passed by the Trial Court to the following effect:

*“It has not been denied by defendant no.3 that FIR No.175/16 at PS Civil Lines is registered on the complaint of defendant no.3 where defendant no.3 has admitted that she had been residing with her husband Sh. Ankit at Gurgaon and thereafter her entrance in the suit property i.e. property bearing no. 16/15, Alipur Road, Civil Lines, Delhi-54 is opposed/interfered. In her affidavit supported with the application filed under The Protection of the Women from Domestic Violation Act, 2005, defendant no.3 has mentioned her address as H.No. 133, Gagan Vihar, Main Preet Vihar, Delhi-51. Thus, it can be safely inferred that defendant no. 3 is neither residing nor in possession of the property bearing no. 16/15, Alipur Road, Civil Lines, Delhi-54 and further for her admission that she had been residing with her husband who has been impleaded as defendant no.7 in the present case is still residing at Gurgaon, **this court is of the opinion that forcible entry or any sort of hindrance/interference/ obstruction in the peaceful***

living and enjoyment of residence of plaintiff at property no. 16/15, Alipur Road, Civil Lines, Delhi-54 and further raising of Slogans or holding Dharna/Assembly with in the radius of 500 meters of this property by defendants should be restrained till the next date of hearing. Hence, it is directed accordingly.”

6. Mr.Anunaya Mehta, Advocate appearing for the petitioners states that the aforesaid interim order was continued by the Trial Court with the only modification [by order dated 30.03.2017] that the defendant No.3 was permitted to enter into the suit property for the purposes of investigation in FIR No.175/2016 lodged by her in Police Station-Civil Lines. Although the respondents challenged the order dated 22.08.2016 before the learned Additional District Judge, Mr.Mehta submits, on instructions, that the said appeal was withdrawn. The order dated 22.08.2016, therefore, bound the parties until 22.04.2019, when the Trial Court allowed the respondents’ application for rejection of the plaint.

7. The respondents had sought rejection of the plaint on the ground that the suit was not maintainable in the Civil Court by virtue of Explanation (d) to Section 7(1), read with Section 8, of the Family Courts Act, 1984, which provides that “*a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship*”, shall be within the exclusive jurisdiction of the Family Court. While issuing notice on the appeal of the petitioner against this order, the learned Additional District Judge has observed that there are arguable points in the appeal but has found no ground for passing any *ex-parte* order in favour of the petitioners.

8. Mr.Mehta submits that the interim order dated 22.08.2016 had been in operation for more than two years until 22.04.2019. He points out that the respondent No.3, even as the wife of the grandson of the owner of the suit property, had stopped residing in the property from January, 2016, except for the brief period from 03.07.2016 to 14.07.2016, during which it is alleged that she forcibly entered the property. She has not resided in the property thereafter. This position, according to Mr.Mehta, is admitted in the written statement filed in the suit.

9. Respondent No.3 has filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005, which has also been placed on record. The reliefs claimed therein, as far as residence orders under Section 19 of the Family Courts Act are concerned, are as follows:-

“(ii) Residence order under section 19:

Based upon the peculiar facts and circumstances of the case, the petitioner seeks kind indulgence of this Hon'ble Court for the following relief.

- a. Restrain the respondents from alienating/disposing and creating any short of encumbrances in the shared house at 16/15, Anand Vilas, Civil Lines, Delhi.*
- b. Restrain the respondent no.1 from renouncing his rights in the moveable and immoveable properties/assets which are owned/shared and possessed by him.*
- c. Direct the respondents to allow the petitioner or her representative to have custody/access to her personal affects/goods, Istridhan and other assets lying in the lastly shared house of the respondents 16/15, Anand Vilas, Civil Lines, Delhi.*
- d. Direct the respondents to secure same level or accommodation (consisting of two bed rooms) for the*

petitioner at Delhi and/ or pay the market rent of Rs.30,000/= per month to the petitioner.

It is evident that the respondent No.3 has not sought any order permitting her to enter into or reside in the suit property with the family or her husband.

10. The merits of the appeal, relating to the jurisdiction of the Civil Court in the present suit is pending before the Appellate Court, and I do not consider it necessary to enter into a detailed discussion regarding the same. However, in support of his argument that the petitioners have a good *prima facie* case in the appeal, Mr.Mehta submits that Explanation (d) to Section 7(1) of the Act, does not include within its purview a suit filed by the family members of one of the parties to the matrimonial relationship in respect of the property which is within their exclusive ownership. He relies upon the judgment of a learned Single Judge of this Court in *Manita Khurana vs. Indra Khurana*, AIR 2010 Del 69, wherein this Court has followed the judgments of the Kerala High Court and the Bombay High Court and held as follows:

“17. I respectfully agree with the Division Bench of the Kerala High Court and the view aforesaid of the Bombay High Court. The claim of a third party to a marriage even if she be the mother of one of the spouses cannot be adjudicated before the Family Court and to the prejudice, on the aspects noted herein above, as to procedure, appeal, limitation, of such third party. It may be noted that the respondent/plaintiff in the present case is claiming absolute title to the property not as the representative or trustee of the husband of the petitioner/defendant and/or through the husband of the

petitioner/defendant but in her own capacity as the widow and nominee of her deceased husband. It is also significant that though the petitioner/defendant is admitted to have been inducted into the suit premises owing to the marriage with the son of the respondent/plaintiff but that is not the cause of action for the suit. The cause of action for the suit is the refusal of the petitioner/defendant to vacate the house of which the respondent/plaintiff claims to be the exclusive owner. Merely because certain facts leading to the cause of action referred to the marital relationship of the petitioner/defendant would not make the suit as one in circumstances arising out of a marital relationship. The language of Clause (d) of Section 7 is peculiar. The words 'circumstances arising out of marital relationship' do not qualify the words 'suit or proceeding' but qualify words 'order or injunction'. Thus, the order of injunction sought from the court has to be in circumstances arising out of marital relationship. The order sought in the present case of eviction of the petitioner/defendant and of recovery of mesne profits from the petitioner/defendant does not arise out of a marital relationship but arises out of exclusive ownership claimed by the respondent/plaintiff of the property and the occupation thereof by the petitioner/defendant without authority and/or after the authority has ceased."

11. Having heard Mr.Mehta, I am of the view that the petitioners have made out a case for the grant of an *ex-parte* injunction. The *prima facie* case in their favour is established by reference to the aforesaid judgment. The balance of convenience also lies in permitting the petitioners to enjoy peaceful possession of their property, in which it appears that respondent No.3 has not resided

since July, 2016 at the very latest, and in which she has not even claimed an order of residence in proceedings under the Protection of Women from Domestic Violence Act, 2005. The fact that the interim order dated 22.08.2016, passed by the Trial Court had been made after hearing both the parties and [except for the modification referred to hereinabove] bound the parties during the pendency of the suit before the Trial Court, i.e., for a period of over 2 ½ years, is also of utmost relevance in this regard.

12. In the facts and circumstances aforesaid, the present petition is allowed and it is directed that the order dated 22.08.2016, as modified by order dated 30.03.2017, passed by the Trial Court, shall continue to bind the parties. It is made clear that the observations contained in this order are only for the purpose of deciding the petitioners' entitlement to an *ex-parte* order and will not prejudice the parties in the suit or the appeal. The respondents shall also be at liberty to apply for vacation/modification of this *ex-parte* order before the Appellate Court, where the matter is listed on 22.07.2019, which may be considered on its own merits. The petitioners shall comply with the provisions of Order XXXIX Rule 3 of the CPC within three days from the date of this order.

13. The petition is allowed in the aforesaid terms.

14. A copy of the order be given *dasti*, under the signature of the Court Master.

PRATEEK JALAN, J.

JULY 01, 2019

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