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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 2nd September, 2019

+ FAO 293/2019 & CM No. 33312/2019

PHILOMENA GERVASE & ANR. Appellants

Through: Mr. Sanjay Mishra, Mr. Prabhu Singh & Mr. Nitesh Singla,
Advs.

versus

RAVIN MEHRA & ANR. Respondents

Through: Mr. Rajiv Garg, Mr. K.K. Aggarwal, Ms. Gayatri Aggarwal & Mr. Ayush Aggarwal, Advs. for R-1. Mr. Sanjeev Sagar, Standing counsel with Ms. Nazia Praveen, Adv. for R-2/DDA.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The appeal at hand is by the plaintiff whose prayer for *ad interim injunction* has been declined by the civil court.
2. On the strength, *inter alia*, of documents in the nature of Agreement to Sell, Special Power of Attorney (SPA), General Power of Attorney (GPA), Will, Receipt etc. all dated 24.02.1999, purportedly executed by the original allottee Prem Nath Mehra (late father of the first respondent), the first appellant claims to be the owner of property described as Pocket-R(U) Block, flat no. 379 (ground floor), MIG flat, Pitampura, Delhi (the subject property), it

concededly being a property developed by second respondent i.e. Delhi Development Authority (DDA). It appears Prem Nath Mehra (original allottee) had died on 08.02.2008. On the basis of application moved by the first respondent (son of the original allottee), DDA executed a conveyance deed in respect of the subject property in his favour on 16.01.2012. On the strength of the said conveyance deed, the first respondent brought the eviction case on ground of *bona fide* need under Section 14 (1) (e) of Delhi Rent Control Act, 1958, against the appellants before additional rent controller inasmuch as the subject property concededly was earlier given by the original allottee on lease in favour of the appellants, in the year 1989, the said lease being governed by the rent restriction law on account of the contractual rate of rent. An eviction order was passed, the challenge where to in the revisional jurisdiction to this Court remained unsuccessful. Though it is the case of the appellants that a special leave petition has been preferred against the said decision in the rent control proceedings, presently pending before the Supreme Court, there is concededly no interim protection granted.

3. A civil suit was filed on 10.01.2019, in which prayer was made, *inter alia*, for certain declaratory reliefs, the appellants asserting their right, title and interest in the subject property, claiming that the conveyance deed granted by the DDA in favour of the first respondent is null and void. In the course of proceedings in the said civil suit, an application was also moved under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), seeking *ad interim injunction* from selling, parting with, alienation, creation of any third party

interest in respect of the subject property, as also a restraint order against interference with the possession thereof. The said application was dismissed by the additional district judge, by order dated 16.07.2019 on the file of the civil suit (CS no. 53/2019) primarily on the basis of observation that no *prima facie* case had been made out. The present appeal under Order XLIII CPC challenges the said order dated 16.07.2019 of the additional district judge.

4. The appellants' prime contention is that the original documents conferring title in the subject property on the original allottee were also handed over to the first appellant at the time of execution of agreement to sell along with connected documents. It is also their contention, on the basis of documents, evidencing such payments, that they had passed on the sale consideration to the extent of Rs. 2.70 lakhs to the original allottee in two instalments. They also rely on an authority letter dated 07.03.2005 purportedly executed by the original allottee, representing a further arrangement with the first appellant as to payment of the remaining dues to DDA which payments, if made by the first appellant (with whom there was an agreement to sell), were liable for "*deduction/adjustment*". The appellants rely on further payments made by them to DDA on account of conversion charges, misuse charges and remaining consideration towards allotment, it totaling to an amount of about Rs. 1.35 lakhs.

5. The contention of the first respondent while resisting the suit essentially has been that no such documents were executed by his predecessor- in-interest nor any payments received by him.

6. In the above facts and circumstances, during the course of hearing, it was fairly conceded that the documents on which the appellants rely will have to be tested at trial. With this, the first respondent also submitted an undertaking that he would not execute the eviction order obtained from the rent controller against the appellants till the civil suit is decided, his insistence, however, being that the appellants be called upon to deposit, in the court, requisite *mesne profits/damages*. The first respondent while making this concession and prayer also requested that directions may be given for expeditious trial and early decision on the suit so that he (first respondent) who holds the conveyance deed is not deprived of the enjoyment of his property for indefinite period of time. It was submitted that the first respondent will fully cooperate with the trial court in securing an earlier adjudication.

7. The learned counsel for the appellants while fairly conceding that it is his burden to prove the genuineness of the documents on the basis of which title is claimed, as also adduce evidence of payment of consideration to the original allottee (partly by way of adjustment of the amounts paid to DDA), also agreed that there ought not be an unconditional stay. While pressing for interim protection, he submitted that the appellants are ready and willing to deposit in the court, the *mesne profits* equivalent to the prevalent market rate of rent. He further submitted, on instructions from the first appellant, who is present in person with him in the Court, that the appellants would cooperate with the trial court for early decision of the case. Rather, he

himself suggested that the case may be decided within six months given the cooperation of both sides.

8. The counsel for the appellant also submitted an undertaking that in case the appellants fail to prove their case in the civil suit they would immediately hand over the vacant possession of the suit premises to the first respondent honouring the eviction order.

9. Against the above backdrop, the counsel on all sides upon being asked came up with a joint submission that the prevalent market rent of such property as at hand in the area where it is located, may be taken as Rs. 25,000/- per month.

10. In the above facts and circumstances, with the consent of both sides, it is directed that the eviction order passed in favour of the first respondent against the appellants herein in rent control case (no. 50/2017) by the rent controller (for North West District at Rohini) will not be executed against the appellants till a final decision is taken in the civil suit (CS no. 53/2019) from which the present appeal arises, this subject to following conditions:-

- (1) The appellants shall be obliged, jointly and severally, to deposit with the trial court an amount of Rs. 25,000/- per month w.e.f. 1st January, 2019, month by month, as user charges during the pendency of the above-mentioned suit.
- (2) The arrears on account of above direction for and upto September, 2019, will be deposited with the trial court within four weeks hereof.
- (3) Compliance with the condition of deposit of user charges for the current period beginning with October, 2019 will be

made on or before 7th of each consecutive month, month by month.

(4) The amounts so deposited will be put in auto renewable fixed deposit receipts taken out from a nationalised bank and will be liable to be released in terms of the decision that is taken in the suit to the party that succeeds.

(5) In case of any default in deposit of arrears, or monthly user charges, the stay against execution shall stand vacated by virtue and force of this order, it not requiring any further application to be moved.

11. The trial court is requested to proceed with the case expeditiously and decide it at the earliest, preferably within a period of six months from the date next fixed before it.

12. Both sides shall remain bound by the submissions and undertakings, as recorded above.

13. With the above directions, the impugned order of the trial court stands vacated. The above directions will be treated as substituting the decision taken by the trial court on the application under Order XXXIX Rules 1 and 2 CPC.

14. Needless to add, nothing observed herein, will be treated as final expression of opinion on merits by this Court.

15. The appeal and the application filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 02, 2019/nk