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

Date of decision: 27th February, 2020

+ **CM(M) 1291/2019 & CM APPLs. 39246/2019, 46971/2019**

MAJOR SUDEEP SINGH (RETD) & ANR Petitioners

Through: Mr. Mandeep Singh Vinaik, Ms. Ragini Vinaik, Mr. Shoaib Haider, Mr. Deepak and Ms. Vandhini Dagar, Advocates. (M: 9810001275)
Major Sudeep Singh (Rtd.), in person. (M:9818701170)

versus

VIJAY KUMAR SHARMA & ORS Respondents

Through: Mr. Manish Makhija, Advocate for R-1 & 2. (M:980043363)
Mr. Manish Vashisht, Mr. Manashwy Jha and Ms. Urvi Kapoor, Advocates for R-3 & 4 (M:9873880830) with R-3 in person.
Mr. Karan Sharma, Standing Counsel for SDMC with Mr. Mohit Siwach, Advocate for R-5. (M:9643797717)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This petition has been filed challenging the impugned order dated 16th August, 2019 by which the appeal filed by the Petitioners/Appellants/Defendants before the Id. Additional District Judge (*hereinafter*, "*Appellate Court*") against the Id. Senior Civil Judge's (*hereinafter*, "*Trial Court*") order dated 22nd July, 2019 has been dismissed.
2. One parking slot is in dispute in the present case between the

occupants of the ground, first and second floor of property bearing no. A1/68, Safdarjung Enclave, New Delhi – 110029 (*hereinafter*, “*suit property*”). Respondent Nos.3 and 4 - Mr. Mukesh Jain and Ms. Ritu Jain (*hereinafter*, “*Jains*”) are the owners of the ground floor of the suit property, Respondent Nos.1 and 2 – Mr. Vijay Kumar Sharma and Ms. Anita Sharma (*hereinafter*, “*Sharmas*”) are the owners of the first floor of the suit property and the Petitioners – Major Sudeep Singh (Retd.) and Dr. Shalu Anand (*hereinafter*, “*Singhs*”) are the owners of the second floor of the suit property. On this factual position there is no dispute. The present dispute has arisen in view of the fact that the Sharmas have not been allowed to park their car in the front set-back of the suit property.

3. In view of the fact that the Sharmas were deprived of the parking slot for their car, a suit was filed by them before the Trial Court seeking the following reliefs:

“a. Pass a decree of permanent injunction in favour of the plaintiffs and against the defendants, their assigns, agents, friends, servants, occupants of the second floor directing them to remove the lock put by them on the gate giving access to the centre portion of the driveway earmarked for parking of car of 1st floor owners (Shown in PINK colour in the site plan P-2).

b) Pass a decree of mandatory injunction directing the defendants, their assigns, agents, friends, servants, occupants of the second floor to remove their goods from the centre portion of the driveway earmarked for parking of car of 1st floor owners (Shown in PINK colour in the site plan P-2).

c) Pass a decree of permanent injunction directing the defendants not to block the centre portion of the driveway earmarked for parking of car of 1st floor

owners (Shown in PINK colour in the site plan P-2) and restrain the defendants from interfering in the peaceful use and occupation of this area.

d) Pass any such other further order(s) or directions this Hon'ble court may deem fit in favour of the plaintiffs and against the defendants, in the interest of justice."

4. Along with the suit, an application for interim relief was also filed under Order XXXIX Rules 1 & 2 CPC. In the said application, the Trial Court passed an interim order on 22nd July, 2019, by which it directed the middle gate which was locked to be opened and permitted the Sharmas to park their car in the said slot. The operative portion of the Trial Court's order reads as under:

"9. It is a matter of trial whether the alterations made by the parties in the original sanctioned plan are compoundable or non-compoundable deviations and what further action is required against the deviation. However, keeping in view the entire abovestated facts and circumstances, it is clear that the balance of convenience and prima facie case lies in favour of the plaintiffs and plaintiffs will suffer irreparable loss if their right of car parking is not permitted at this stage. Therefore, application under Order XXXIX Rule 1 and 2 CPC stands allowed and defendants No.1 and 2 are directed to remove the lock from one of the front gates and are also directed to remove all the articles and flower pots lying near the gate, in the space meant for car parking and to clear the space for parking of one car of the plaintiffs. Defendants are restrained from blocking the access of plaintiffs to the car parking space meant for parking of one car of plaintiffs who are owners/occupants of the first floor of the building, till final disposal of the suit."

5. The Appellate Court, vide order dated 16th August, 2019 dismissed the appeal by holding that there is no infirmity in the order of the Trial Court. The observations of the Appellate Court are as under:

“6. Perusal of the sanctioned site plan of the suit property reflects that the front lawn parking has been divided only into two portions with only one gate at the entrance towards the right side. However, at the spot, there are three, 2-door gates of the same design covering the entire front portion of the property which prima facie indicate that these three gates were in existence even prior to the occupation of the second floor by the appellant/defendants no.1 and 2 in September 2013. Besides, it is also indicative of the fact that there are three separate parking spaces. Even if the version of the appellants is accepted to the effect that appellants are having right over the ½ of the total front parking as per their Sale Deed, it appears that appellants never exercised that right. The manner in which the gates were constructed, prima facie, shows that the plaintiffs were using the middle parking space for parking their car. Contention of the appellants/defendants no.1 and 2 that their car can only be parked when parked in a tilted position does not augur well, in view of the fact that the middle 2-door gate which is of the same design as that of the other two gates and indicates that it was in existence even prior to the appellants having occupied the suit property.

7. Further, the question whether the present suit is the fallout of the dispute regarding the alleged construction on the terrace between the parties, is an aspect which can be decided only after full fledged trial but as far as the relief of injunction is concerned, law is well settled that it is an equitable relief and the interim application has to be decided by taking a prima facie view of the matter.

8. The stand of the plaintiffs that plaintiffs are using

the said parking since their occupation in the year 2000 and purported right of the defendants/ appellants who remained silent for the last more than 18 years, which may have its effect on the right of parking itself is another aspect which can only be looked after by the Ld. Trial Court after the full fledged trial.”

6. The Singhs are aggrieved by both these orders. Mr. Mandeep Vинаик, ld. counsel for the Singhs submits that as per the sanctioned plan, parking for the ground floor owners – the Jains, had to be in the rear set-back of the suit property and the front portion of the parking was to be shared equally between the Sharmas and the Singhs. Thus, the Jains had no parking slot in the front set-back. It is submitted that there are various entrances which have been made by the Jains because of which, in effect, the rear passage has been completely blocked. This has resulted in a situation wherein the front parking area is being misused by the Jains for parking of their car when the same is not permissible.

7. On the other hand, Mr. Makhija, ld. counsel for the Sharmas, submits that, in a dispute between the Singhs and the Jains, his clients ought not to be put into difficulty inasmuch as they have enjoyed the parking space since the year 2000 i.e., since the time they purchased the first floor of the suit property. He submits that unfortunately, the Singhs, due to some disputes have locked the middle gate and placed their own plants, etc., in effect blocking access to his clients’ parking space.

8. Insofar as the Jains are concerned, Mr. Manish Vashisht, ld. counsel submits that the suit property originally had a rear passage on which no parking was contemplated at all. Reliance is placed on the sale deed with the predecessor-in-interest of the ground floor to show that the rear passage was

meant for common use of all the parties. Thus, ld. counsel for the Jains and the Sharmas submit that the parking area in the front portion of the suit property was to be used by all three parties for one car each.

9. This Court had initially appointed a Local Commissioner vide order dated 2nd September, 2019. The Local Commissioner has since given her report, wherein the findings are as under:

*“8. **FINDINGS:** In compliance of the order dated 02.09.2019, the undersigned executed the local commission on 21.09.2019 and on the basis of the inspection of the Suit Property as well as analysis of documents, arrived at the following findings:*

(i) As to whether there is any construction over and above what is reflected in the site plans annexed to the sale deeds of the respective floors. If so, to what extent? - Yes, it appears that there is construction over and above what is reflected in the site plans annexed to the sale deeds of the respective floors.

The Front Area - There are 3 gates - implying 3 separate parking areas. However, there is a rather old tree, a bicycle parked and flower pots kept at the middle gate entrance. Thus, as such access to the middle gate seems tough.

Also, the ground floor balcony is extended outside into the parking area and limits the parking area. A staircase has been built in the front driveway leading into the Ground Floor balcony. The extended balcony and staircase do not appear in the site plan.

The Photographs of the front area, as well as the front gates and front balcony are annexed hereto as ANNEXURE-C (Collv.)

(ii) Whether there is any construction in the rear setback of the Suit Property and if so, who is using the said portion? - Yes, there is a construction in the

rear setback area of the Suit Property.

***The Back-Rear** area including the back entrance to the Basement Office appears to be constructed de-hors the approved site plan. At the Suit Premises, as on date, there is an extended construction in the rear area, which is not seen from the site plan. The entry to the rear portion is through a very narrow gate. The rear portion of the Suit Premises is exceptionally unkept and untidy.*

There is an extended balcony in the rear area. The same is used to dry clothes. A staircase has been built in the rear area leading into the Rear Ground Floor balcony. This does not appear in the site plan.

The area below the balcony of the rear area is being used as a quasi-storage. It is used by the Ground Floor Owner. A small portion of the rear area is used by the CA firm to access to their office. This does not appear in the site plan.

*The Photographs of the rear set-back entry as well as steps to CA office and the pictures of the rear balcony are annexed hereto as **ANNEXURE-D (Collv.)**”*

Thus, the Local Commissioner came to the conclusion that there were three gates and three parking slots in the front side. In the rear side of the property, there has been construction beyond the sanctioned plan. Even the balconies have been extended by the Jains both in the front portion and at the back portion of the Ground Floor, as per the Local Commissioner.

10. This Court has heard the ld. counsel for the parties. The parties are also present today. The only dispute at this stage is in respect of the parking space for the Sharmas. The Local Commissioner’s report points out that the Jains may be using the ground floor beyond what is permissible. However, the question is as to whether the Sharmas can be deprived of their parking

slot.

11. There are three gates in the front side of the property. One on the left, one on the right and one in the middle. The Court has perused the photographs. The right parking slot is being used by the Singhs. The extreme left slot is being used by the Jains. The middle gate is locked and on a small elevated platform, there are some pots and plants which have been kept. Mr. Vinaik, ld. counsel, after taking instructions, submits that the pots and plants do not belong to his client, however, the platform on which the pots/plants are placed belongs to him. In view of some disputes with the other owners, the Singhs had asserted their rights as per their sale deed, for 50% of the parking area and allegedly locked the middle gate, which had led to the filing of the present suit by the Sharmas. The reliefs prayed for in the present suit are as under:

“a.) issue a suitable, writ, order or direction, quashing the order dated 16.08.2019, passed by the Ld ADJ, Saket Court in Appeal being MCA no. 25 of 2019, and quashing and setting aside the order dated 22.07.2019 passed by the Court of trial court, Senior Civil Judge, Saket Courts.

b.) pass such other and further orders as this Hon'ble Court may consider fit and proper necessary in the interest of justice.”

12. A perusal of the photographs attached by the Local Commissioner show that the suit property has a front access which has three gates. Clearly, three cars can be parked in the said front passage. The dispute has arisen because the middle gate has been locked and plants/pots have been placed in front of the middle gate. The contentions raised by the Singhs that there is violation of the sanctioned plan by the Jains cannot be gone into at this stage

as it would require evidence to be led. The rear setback in the suit property is being used by the Chartered Accountant, who is accessing the basement through a rear passage which also has motors for water-pumping etc. From the photographs placed on record by the Local Commissioner, it is not clear as to whether a driveway can, in fact, be made in the rear passage at all.

13. The sanctioned plan, which has been placed on record by Mr. Mandeep Singh Vinaik, ld. counsel, definitely shows that there was a rear passage with a parking area at the back and the front area was to be shared between the owners of the second and first floor. However, the exact time-period in which this rear passage has stopped being used for parking is not clear at this stage. The actual building is definitely a departure from the sanctioned plan, however, the Jains point to the South Delhi Municipal Corporation's (*hereinafter*, "SDMC") report which shows that the SDMC is of the opinion that at this stage it cannot be said that the entire building is not sanctioned or that the coverage at the back is not sanctioned.

14. Ld. Counsel for the SDMC relies upon the fresh status report dated 12th March, 2019 filed before the Trial Court in compliance of the Trial Court's order dated 19th February, 2019 to submit that on inspection of the suit property it was found that after the demolition of the objectionable portion of the suit property, it had become eligible for regularization. It was further observed that while the sanctioned plan only provides for one gate, there are three gates in the front set-back of the property, however, the same was considered a matter of mutual consent amongst the floor owners and not a violation of prevailing Building Bye Laws.

15. Under these circumstances, the only question is what should be the interim arrangement between the parties during the pendency of the suit.

16. At present, trial is ongoing in the suit. Though the sale deeds allot one parking slot to each floor owner, the question is *where* should all three parties be entitled to park their respective cars. The Sharmas purchased the first floor in 2000, the Jains purchased the ground floor in 2010 and the Singhs purchased the second floor in 2013. Thus, the initial occupants of the building were the Sharmas. Accordingly, the Sharmas cannot be deprived of their parking space/ slot when, admittedly, the only dispute being raised by the Singhs is between them and the Jains.

17. Under these circumstances, while leaving open the question as to whether the entire property ought to be brought in accordance with the sanctioned plan or whether some aspects can be regularised as per the SDMC's report, the interim arrangement which has permitted the Sharmas to occupy the middle driveway by opening the gate seems to be an equitable solution at this stage. The Singhs, in terms of the sale deed executed between them and the builder/earlier owner, are enjoying the parking in the right side of the suit property. Since this Court is only considering the application under Order XXXIX Rules 1 and 2 CPC, the orders of the Trial Court and the Appellate Court seem to be just and fair. The question as to whether there is a violation of the sanctioned plan and whether directions would be liable to be passed in respect thereof, would be gone into in the trial. The Singhs, who are the second-floor owners, are permitted to raise the issue of violation of the sanctioned plan by the Jains at the stage of final arguments.

18. It is clarified that the observations in this order as also in the impugned orders are for a *prima facie* adjudication of the matter and shall not bind the final adjudication of the suit.

19. With these observations, the petition is disposed of, upholding the interim arrangement put in place by the trial court. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 27, 2020

dj/T

(Corrected and released on 6th March, 2020)

