

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

% **Date of decision: 4th March, 2020.**

+ **CS(OS) 534/2016**

ASKARAN AGARWALA & ORS **.... Plaintiffs**

Through: Mr. Jayant Mehta, Ms. Aarushi Tiku,
and Mr. Raghav Pandey, Advs.

Versus

ASWAJIT SINGH & ORS. **..... Defendants**

Through: Mr. Sanjiv Bahl, Mr. Eklavya Bahl
and Ms. Apoorva Bahl, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiffs, namely (i) Askaran Agarwala, (ii) Radha Agarwala, (iii) Atul Agarwala, (iv) Sunangala Agarwala and (v) A.K. Agarwala HUF, have instituted this suit against three defendants, namely (a) Aswajit Singh, (b) Tanya Singh and (c) IPE Global Services Pvt. Ltd., for the following reliefs:

“(a) Issue a permanent injunction to restrain the defendants from obstructing or hindering the plaintiffs and their agents and guests from using all common facilities and common areas of the suit property bearing No.54 situated at Block-S, Panchshila Park, New Delhi-110017 and the building standing thereupon, including the use of the south west entrance to the Basement floor and restraining the defendants from obstructing or interfering in any manner in the exercise by the plaintiffs of their common rights, interests, easements and privileges in respect of the Suit Property;

(b) Issue a mandatory injunction directing the defendants to remove steel gate installed in front of south west entrance of the basement floor in the common area of the plot bearing 54, situated at Block-S, Panchshila Park, New Delhi-110017; to remove the generator and the servant quarters erected on the south-west side driveway of the said plot;

(c) Issue a declaration that the plaintiffs have the right to use the common areas of the property No.S-54, Panchshila Park, New Delhi-110017; and,

(d) Pass a decree of costs in the present proceedings in favour of the plaintiffs and against the defendants.”

2. The suit came up first before this Court on 21st October, 2016, when summons thereof were ordered to be issued. The pleadings have been completed and the suit, ripe for framing of issues, came up before this Court on 8th January, 2020, when finding that the dispute between the parties was only with respect to the use of the South-West Driveway in property No.S-54, Panchshila Park, New Delhi-110017, it was proposed that the dispute be resolved amicably and the counsels fairly reciprocated and certain suggestions were exchanged in the Court and the matter adjourned to enable the counsels to confer with their clients and to resolve other acrimonious situations, even of beyond the scope of the suit, to enable the parties to cordially enjoy the property.

3. The undisputed position is that while the plaintiffs are the owners of basement and ground floor of the property, the defendants are the owners of the first and second floors of the property. The property has two Entrance Gates and two Driveways.

4. The counsels, on 8th January, 2020, were heard with reference to the site plan filed by the plaintiffs and on which, in today's date, for identification, Ex.C-1 has been put. It is the case of the plaintiffs that the plaintiffs have an exclusive right to use of Entrance Gate at point A and to the Driveway in front thereof at point 'B' on Ex.C-1. It is further the case of the plaintiffs that the defendants have a right to use Gate at point 'C' and the Driveway in front thereof at point 'D' on Ex.C-1 but the plaintiffs have a right to access the said Driveway D from the basement through the common staircase at point 'E' in Ex.C-1.

5. The counsel for the plaintiffs states that the basement in the property in the ownership of the plaintiffs has access, both from Driveway B and Driveway D in the property; the plaintiffs instituted this suit claiming that the defendants had deprived the plaintiffs from accessing the basement through Driveway D and from using the common staircase for going from the basement to Driveway D, by installing a steel door at the level of the ground floor in front of the staircase coming from basement towards Driveway D.

6. It is the case of the defendants that the plaintiffs do not have any right to Gate at point 'C' or to the Driveway D in Ex.C-1 and the access to the basement of the plaintiffs is only from Gate-A and Driveway B.

7. On 8th January, 2020, it was proposed that to maintain cordiality and peace and neighbourly relations, the plaintiffs confine the access to their basement from Gate at point 'A' and Driveway at point 'B', save in emergency, when egress and ingress from the basement is not possible through the staircase towards Driveway at point 'B' in Ex. C-1.

8. The counsel for the plaintiffs today states that the plaintiffs are agreeable thereto but for emergencies, it is apposite that the plaintiffs also have with them a key to the steel door installed by the defendants at the level of ground floor, in front of staircase going to basement as well as to the door from Driveway at D, to the common staircase, at point 'F'.

9. The counsel for the defendants states that the defendants are reluctant to hand over the keys, to the steel door and to the door at point 'F', to the plaintiffs, inasmuch as the plaintiffs are themselves not residing in the ground floor and the basement and the same are lying vacant and are visited only by employees or agents of the plaintiffs; it is stated that the access to the upper floors of the defendants is through Gate-F and the security of the defendants may be breached if the keys so sought by the plaintiffs fall in wrong hands. To allay the apprehensions, of the plaintiffs, without the keys, in emergency, not having any access from the basement to Driveway at point 'D', it is stated that the defendants have a 24 hours staff and the defendants themselves would be interested in protecting the property where they are residing. It is further stated that the possibility of the steel door of the door at point 'F' being not opened in the case of emergency, does not arise. Undertakings to the Court are offered.

10. The counsel for the plaintiffs states that the plaintiffs also offer undertaking to keep the duplicate keys securely.

11. As would be obvious, the parties have amicably agreed to the steel door and the door at point 'F' remaining closed at all times; save in emergency, when ingress and egress from basement to Driveway at point 'B' being not possible. The only difference which remains between the

parties is, that the plaintiffs, while agreeing to the steel door and the door at point 'F' remaining closed and the plaintiffs not using the same, save in emergencies, desire a duplicate key for opening the said doors in emergencies, and to which the defendants are not agreeing citing security reasons, since from the said doors, anybody, including through the basement, can approach the first and second floors of the property which the defendants are using as their residence.

12. It is not deemed apposite that the aforesaid minor difference comes in the way of the suit being disposed of as otherwise amicably agreed. I am told that the parties otherwise enjoy a cordial relationship and exchange pleasantries.

13. The insistence of the plaintiffs on duplicate keys to the doors providing access in emergencies from the basement to Driveway at point 'D' in Ex.C-1, is not found to be reasonable (i) considering that the plaintiffs are not residing in/using the ground floor and the basement of the property; and, (ii) considering the apprehensions of the defendants who are residing on the first and second floors as to their security and which apprehensions are well-founded.

14. Merit is also found in the contention of the counsel for the defendants that the defendants cannot afford to restrict or come in the way of aforesaid, access from the doors, in emergencies, because of themselves residing on the upper floors of the property and which will also come to harm.

15. It is thus deemed appropriate to dispose of the suit, by recording the compromise as arrived at and by directing (i) that the plaintiffs shall not have access from the basement of property No.S-54, Panchshila Park, New

Delhi-110017 to Driveway at point D, through the door at point 'F' in Ex.C-1, save in emergencies; (ii) by accepting the undertakings of the defendants , to, in emergency situation, when the occupants of the basement in the event of fire in or flooding of basement are unable to egress and ingress therefrom through Driveway B, or when access through Driveway at point 'D' is required to save the basement from fire or flooding or other like event, allow such egress and ingress and access through the doors aforesaid and Driveway at point 'D' and to immediately on such emergency happening, allow the said access and by binding the defendants by their undertaking and cautioning them through counsel of consequences of breach of undertaking given to the Court; (iii) by directing, that if at any point of time none is likely to be present on the first and second floors and/or none who is able to immediately provide access from the basement to Driveway at point 'D' is likely to be available in the property, in advance, furnish duplicate keys to the plaintiffs, to enable the plaintiffs, even in the absence of the defendants or their domestic help or agents, in the case of emergency have access from the basement to Driveway D.

16. The aforesaid shall however be valid as long as the defendants themselves are in occupation of and are residing in the property and as and when the defendants leave their residence on the first and second floors of the property, the plaintiffs shall be entitled to sue afresh seeking access from the basement to Driveway D.

17. The parties are ordered to be bound to the aforesaid arrangement and are left to bear their own costs.

18. A decree in terms of above, with today's order forming part of the decree be also drawn up.

RAJIV SAHAI ENDLAW, J.

MARCH 04, 2020

'shw/ak'

