

\$~7

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

%

Judgment delivered on: 22.10.2021

+ FAO 152/2021 & CM APPL. 18235/2021

SMT. SARITA SINGH

..... Appellant

versus

SH. PRADEEP KUMAR & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Vineet Rana, Advocate (through VC).

For the Respondent:

Mr. P.S.Rana, Advocate (through VC).

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 27.03.2021 whereby the application of the appellant under Order 39 Rule 1 & 2 CPC has been dismissed.
2. Appellant had filed the subject suit for partition, possession and permanent injunction *inter alia* for property bearing No.226 out of Khasra No.532, VPO-Khera Khurd, New Delhi-110082 measuring 542 sq.yards.
3. Learned counsel submits that the subject property was owned by the father of the appellant and the respondent and after his demise *intestate*, his estate has devolved on all the legal heirs.
4. Learned counsel submits that there is already an interim order restraining respondents from creating any third party right in the subject

Signature Not Verified

Digitally Signed By: KUNAL
MAGGU
Signing Date: 23.10.2021 09:21:22
This file is digitally signed by PS
to HMJ Sanjeev Sachdeva.

FAO 152/2021

Digitally Signed 1
By: JUSTICE SANJEEV
SACHDEVA
Signing Date: 22.10.2021
20:49

property, however, recently respondent Nos. 1 & 2 have started raising illegal unauthorised construction in the subject property.

5. Learned counsel submits that even the Municipal Corporation and the Delhi Police have initiated action against the illegal unauthorised construction being raised.

6. Learned counsel submits that the defense of the respondent in the suit is that the respondents had got the mutation of the subject property done in their name based on a relinquishment deed dated April, 2013 registered on 24.05.2013.

7. Learned counsel submits that the subject relinquishment deed is with regard to an award with regard to acquisition of a different land and not the subject suit property.

8. Learned counsel further submits that the Trial Court has erred in dismissing the application by holding that respondents are in possession of the suit property and carrying out improvements in the suit property and as such they cannot be restrained. He submits that substantial addition, alteration is being made in the property and floors are being raised over the existing structure.

9. By order dated 03.06.2021 respondents were restrained from raising any further construction in the subject property till the next date of hearing.

10. Learned counsel appearing for the respondents submits that the suit filed by the appellant is not maintainable and respondents have filed an appropriate Written Statement to the said suit. He, however, without

prejudice submits that during the pendency of the suit no construction activity shall be carried out in the property.

11. Accordingly, parties pray that the interim order granted on 03.06.2021 be made absolute and the appeal be disposed of directing that the said order shall continue during the pendency of the suit.

12. The statement is taken on record.

13. In view of the above, the appeal is disposed of by confirming the interim order dated 03.06.2021 i.e. restraining the respondents from raising any construction in the subject property during the pendency of the suit filed by the appellant.

14. It is however, clarified that this order shall be without prejudice to the rights and contentions of the parties and shall enure only during the pendency of the suit and thereafter shall be subject to the final decision in the suit.

SANJEEV SACHDEVA, J.

OCTOBER 22, 2021

rk