



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

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Judgment delivered on: 28th March 2022

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FAO 78/2021

KARTAR SINGH

..... Appellant

versus

SURESH CHHIKARA

.....Respondent

Advocates who appeared in this case:

For the Appellant: P.K. Rawal and Mr. Tarun Agarwal, Advocate.

For the Respondents: Mr. Deepak Tyagi, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Appellant impugns order dated 10.11.2020, whereby the application of the Appellant under Order 39 rule 1 and 2 read with section 94E and 151 CPC has been dismissed holding that the Appellant has failed to show a prima facie case.

2. Appellant, a senior citizen, has filed the subject Suit for possession against the Respondent his son contending that he is the owner of the suit property bearing no. 365, Street no. 1, Part of Khasra no.551/431 and 164, Pradhan Marg, Nirankari Colony, Delhi - 110009.

3. It is alleged that the property was purchased by his father Late



Shri Inder Singh vide registered sale deed dated 06.05.1966. Shri Inder Singh expired on 04.03.1985 leaving behind the Appellant and his sister who became the co-owners of the said property.

4. As per the Appellant, he renovated the ground floor and reconstructed the property in May 1996 and since then has been residing in the suit property. His sister namely Shanti Devi executed a registered relinquishment deed vide Regn. No.5324 dated 01.07.1996 in his name and thereafter, he became sole and absolute owner of the suit property.

5. It is contended that the Respondent is his elder son and as he was working with the Indian Air Force, he was posted from time to time at different stations where he resided with his family and even at the time of his posting in Delhi, he resided in his official residence.

6. It is alleged that the Respondent retired from the service in the year 2002 and requested the Appellant to reside in a portion of the ground floor. Appellant allowed the Respondent and his family to reside for some time in the front side portion of the ground floor of the suit property. It is contended that as Appellant was not having any permanent source of income, other parts of the property used to be let out to the students of Delhi University.

7. It is contended that the Appellant through his advocate served a legal notice dated 04.04.2011 upon the Respondent requiring him to vacate the suit property. It is contended that in reply dated 25.04.2011, Respondent admitted that he had no right, title or interest in the suit



property and that he was under an obligation to vacate the suit property, however he kept on occupying the suit property in illegal manner.

8. It is contended that after the termination of the license, Respondent filed a false and frivolous suit for partition and permanent injunction seeking a restraint on the Appellant from dispossessing him from the suit property.

9. It is contended that the Trial Court in that Suit was pleased to pass an order restraining the Appellant from dispossessing the Respondent from the suit property. Appellant filed an appeal but the Appellate Court dismissed the said appeal. It is contended that in the meantime, Respondent taking the benefit of the old age of the Appellant put his locks on the other portions of the suit property thereby denying the access to the other portion of the suit property.

10. It is contended by learned counsel for the Appellant that even at an ad-interim stage the Trial Court could have passed an order directing the Respondent to hand over the possession of rear portion of the ground floor and upper floors. Reliance is placed on the judgment of the coordinate bench of this court in *Sukerma Rani Kapoor versus Om Prakash Kapoor 2002(2) AD (Delhi) 860* wherein this court had granted a mandatory injunction at an interlocutory stage and directed the son to restore the possession of the property to his mother.

11. *Per Contra*, the case of the Respondent is that admittedly, Respondent was in possession of the entire suit property even before



the filing of the Suit and as such, the Appellant was seeking a mandatory possessory injunction, which could not be granted by way of an ad-interim arrangement.

12. The Trial Court, while prima facie holding that though the claim of the defendant to the suit property is questionable and it is not disputed by the Respondent that the suit property was owned by the grandfather Shri Inder Singh, who expired leaving behind the Appellant and his sister as the only surviving legal heirs. However, he claimed title to the suit property by virtue of an alleged oral family agreement dated 15.05.1985 which also appeared to be of dubious nature as the admitted fact was that the second heir of Shri Inder Singh i.e. Smt. Shanti Devi relinquished her share in favor of the Appellant by virtue of relinquishment deed dated 01.07.1996 around ten years after the alleged family arrangement.

13. However, the Trial Court has held that by the subject application, Appellant was seeking review of the findings given by the Trial Court and the first Appellate Court in the suit for injunction filed by the Respondent where it had already been decided that the possession of the suit property was with the Respondent.

14. Even though the Trial Court has prima facie held that the claim of the Respondent of his title and oral family arrangement is dubious, however what is relevant to be considered at this stage is the interim application filed by the Appellant whereby Appellant sought an ad-interim relief that the Respondent be directed to allow the entry of the



Appellant in his own property i.e. back portion of the ground floor and upper floors and for removal of the locks, if any of the Respondent and not to create any hinderance in the peaceful use and enjoyment of the said portion and the free ingress and egress from the said portion.

15. Though in the plaint, Appellant contends that the Appellant is in possession of part of the property, however by the relief sought in the application, there is an indirect admission that the Appellant is not in possession of any portion of the property.

16. The question as to whether Appellant has been ousted just before the filing of the suit or the Respondent has been in settled possession is a question that cannot be decided in a prima facie fashion without any material being brought on record.

17. Appellant has not placed any material on record to show that Appellant was dispossessed just before the filing of the Suit. There is also no material placed on record to show as to when the Appellant was dispossessed or since when he is being prevented from entering the Suit Property.

18. It may also be noticed that alongwith the Suit Appellant had originally filed an application under Order 39 Rules 1 & 2 CPC seeking a restraint on the Respondent from creating third party interest or parting with the possession of the subject property. Said application is still pending. Trial court has observed that Appellant has not pursued that application and the application was still pending.



19. Further, at this juncture it would be expedient to refer to the interim order passed by the Trial Court and the first Appellate Court in the Suit for Permanent Injunction filled by the Respondent.

20. In the application filed by the Respondent, seeking ad-interim injunction against the Appellant, the Trial Court in its order dated 01.11.2017 has recorded that *"During course of the arguments, it is admitted on behalf of the defendant no. 1 and 2 (Appellant) that possession of the suit property is with the plaintiff (Respondent)"*. In view of the admission, Trial Court restrained the Appellant from interfering with the peaceful possession/enjoyment in the suit property and restrained the Appellant from dispossessing the Respondent without due process of law.

21. In the appeal filed by the Appellant, the Appellate Court in its order dated 05.11.2018 held as under:

"During the arguments on the appeal also, Ld. Counsel for Appellants has admitted that RI has put his lock on the remaining portion of the suit property. Meaning thereby that the possession of suit property is with RI. The said possession has been rightly protected vide order dated 01.11.2017. Ld. Counsel for Appellants have failed to show any infirmity in the order dated 01.11.2017. The order dated 01.11.2017 is accordingly upheld. The appeal being devoid of any merits is dismissed."

22. Appellate Court has also recorded the admission of the Appellant that Respondent was in possession of the Suit Property. No further appeal was filed by the Appellant against the orders passed on



the application seeking ad-interim protection in the Suit filed by the Respondent.

23. Subject Suit has been filed on 19.12.2017 when admittedly Respondent was already in possession. Appellant is seeking a possessory relief by way of an interim application, which is not permissible when one of the questions to be determined is as to when the Respondent came into possession of the entire property.

24. Further, the Trial Court has also noticed that the entire application is completely silent with regard to the date of the alleged forcible act of locking by the Respondent.

25. The judgment in the case of *Sukerma Rani Kapoor (supra)* is not applicable to the facts of the present case. In *Sukerma Rani Kapoor (supra)* it was an admitted position that the son was not in settled possession of the property and had entered into the possession without the consent of the mother on the vacation of the premises by the tenant. In the present case, the son was admittedly put into possession of a part of the property. As to when the son came into possession of the remaining portion is not clear from the case of the Appellant. Appellant had even conceded that the Respondent is in possession of the entire property and that he would not evict the Respondent without following due process of law. There is also no further challenge to the order of the Trial Court and the Appellate Court in the Suit filed by the Respondent.

26. Consequently, there is no infirmity in the finding of the Trial



Court that from the available documents on record, the possession of the entire property remains with the Respondent only and the Appellant appears to be seeking relief of possession by bypassing the said judicial findings against him as well as without claiming any substantial relief in the suit.

27. In view of the above, the impugned order does not suffer from any infirmity and consequently does not warrant any interference. The appeal being devoid of any merit is accordingly dismissed.

28. However, keeping in view the facts and circumstances of the case, Trial Court is directed to expedite the trial and endeavour to conclude the proceedings and decide the Suit expeditiously, preferably within a period of six months from the next date fixed before the Trial Court.

29. It is clarified that the observations contained herein are prima facie and shall not have any bearing on the merits of the claims of either party.

SANJEEV SACHDEVA, J.

MARCH 28, 2022

HJ