

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

% Judgment delivered on: 27th October 2022

+ CM(M) 474/2021 & CM. APPLS. 22022-23/2021, 35560/2021

Rameshwari Devi & Anr. ... Petitioner

versus

Master Yash Tyagi & Ors. Respondents

AND

+ FAO 114/2021 & CM. APPLS. 10493-94/2021

Rameshwari Devi & Anr. Appellant

versus

Master Yash Tyagi & Ors. Respondents

Advocates who appeared in this case:

For the Appellant/

Petitioner : Ms. Smita Maan, Mr. Vishal Maan and Mr. Akash
Sehrawat, Advocates.

For the Respondents: Mr. Rishabh Kumar, Advocate for Respondents 1 to 3.

Mr. Rajat Sehgal, Advocate for Respondent No. 4.

Mr. V. Anirudh Yadav and Mr. Keshav Sharma, Advocates
for intervenor Naveen Kumar

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. The Petitioners in CM(M) 474/2021 and Appellants in FAO 114/2021 (Defendants 1 and 2 in the Suit) are aggrieved by order

dated 22.02.2021 (impugned in FAO 114/2021) whereby the application filed by Respondents 1 to 3 (Plaintiffs in the Suit) under Order 39 Rule 1 & 2 Code of Civil Procedure (hereinafter referred to as the CPC) has been allowed and the Appellants have been restrained from creating any third party right and interest in the suit property and status quo qua the possession of the Respondents 1 to 3 has been directed to be maintained.

2. Appellants are also aggrieved by order dated 19.07.2021 (impugned in CM(M) 474/2021) whereby the application filed by the Appellants under Section 151 CPC for restitution of possession has been disposed of and the trial court has held that the property is deemed to be in the custody of the court.

3. Appellants (Defendants 1 and 2 in the Suit) are the wife and son of Late Shri Subhash Tyagi. Subhash Tyagi was the brother of Shri Ravinder Tyagi, the Respondent No. 4 (Defendant No. 3). Respondents no. 1 to 3 (Plaintiffs in the Suit) are the children and wife respectively of Respondent No. 4 – Ravinder Tyagi.

4. On 04.01.2021, Respondents 1 to 3 (Children and wife of *Ravinder Tyagi*) filed the subject Suit seeking a decree of declaration for declaring the registered gift deed dated 14.08.2014 (registered on 16.08.2014) as null and void. They also seek a decree of partition of the suit property; decree of recovery of possession against the

Appellants herein and a decree of permanent injunction thereby restraining the Appellants from alienating, transferring and creating any third-party interest over the suit property. Further, relief of mandatory injunction is also sought thereby directing the Appellants to restore the physical possession of the Suit property to them till disposal of the Suit.

5. By order dated 22.02.2021, (impugned in FAO 114/2021), the Trial Court has allowed the application filed by Respondents 1 to 3 under Order 39 Rule 1 & 2 CPC holding that a prima facie case is made out in their favour that they are in possession and if during the trial the nature of property is changed it would involve multiplicity of litigation and irreparable loss and injury would be caused to them. The Trial Court has further held that as they are in possession it would be in the interest of the Defendants that no third party right or interest is created and status quo with respect to possession of the Plaintiffs be maintained.

6. The contention of the Appellants is that the Plaintiffs were admittedly never in possession of the Suit Property and it was the Appellants who were in possession and it was only during the pendency of the Suit that they have forcibly taken possession.

7. Appellants are further aggrieved by order dated 19.07.2021 (impugned in CM(M) 474/2021) whereby the application filed by the

Appellants under section 151 CPC for restitution of possession has been disposed of and the trial court has held that the property is deemed to be in the custody of the court.

8. Trial Court prior to passing the impugned order dated 22.02.2021 appointed local commissioner twice to inspect the property. The Trial court has held that when the first local commissioner visited the property no one was found in possession and the property was found locked and when the second local commissioner visited the property on 18.01.2021, Plaintiffs were found in possession.

9. In the impugned order dated 19.07.2021, whereby the application of the Appellants seeking restitution of possession was dismissed, the trial court has held that the said court had not passed any order qua possession and the Plaintiffs had not taken possession at the instance of the court and thus it could not direct restitution under Section 144 CPC.

10. Trial Court has further held that when, as per the Plaintiffs they were not in possession at the time of filing of the Suit and Appellants were also not in possession at the time of the visit of the local commissioner so there could be a possibility of a third party having possession of the suit property and collusion between the Plaintiffs and the Appellants.

11. Learned counsel for the Appellants submits that the impugned orders are not sustainable are completely contrary to the facts and settled position in law. It is contended that when the first local commissioner visited the property the Appellants were out of town and as such the property was locked and by the time the second local commissioner visited the property, they had been disposed by the Plaintiffs.

12. With regard to the actual physical possession of the suit property is concerned, it may be noticed that when the appeal (*FAO 114/2021*) was for the first time listed before this court on 17.03.2021, counsel for the Plaintiffs was also present.

13. The counsel appearing for Plaintiffs/respondents 1 to 3 fairly conceded before this court that that when the Suit was filed, Plaintiffs were not in possession of the Suit property and came in possession during the pendency of the Suit. He also conceded that the Appellants did not voluntarily hand over the possession to the Plaintiffs.

14. This court by order dated 17.03.2021 stayed the operation of the order of the trial court dated 22.02.2021 whereby status quo in respect of possession of the Plaintiffs was directed.

15. There is a very strange turn of events after this court stayed the operation of the order of the trial court dated 22.02.2021. When the

Appellants applied to the trial court for restoration of possession by the Plaintiffs, on 19.07.2021, the trial court dismissed the application observing that there could be a possibility of a third party having possession.

16. It may be noticed that till that date (i.e. 19.07.2021) there was no claim by any third party to the property nor was there any whisper by any of the parties of any claim of any third party or any third party rights having been created by anyone.

17. An application for impleadment was filed by one *Naveen Kumar* before the trial court on 04.08.2021 and before this court on 24.09.2021.

18. It is the contention of learned counsel for the Appellant that the application for impleadment has been filed to over reach the orders passed by this court and to overcome the admitted position that the Plaintiffs were not in possession of the Suit property at the time of filing of the Suit and that the possession of the Appellants was admitted and that the Plaintiffs came into possession forcibly after the interim order dated 14.01.2021 was passed.

19. The case set up by the said *Naveen Kumar* is that he has purchased the suit property on 09.04.2010 vide General Power of

Attorney, Agreement to Sell, Will, receipt etc. and has been in possession since then.

20. It is alleged by him that *Ravinder Tyagi* had taken a loan of Rs. 40 lakhs from one *Pramod Kumar* and since he could not repay the loan he executed a Special Power of Attorney in favour of *Pramod Kumar* and *Pramod Kumar* sold the property to the applicant *Naveen Kumar* for Rupees sixty lakhs.

21. It may be noticed that none of the documents either in favour of *Pramod Kumar* or *Naveen Kumar* are registered documents. None of the alleged payments made either by *Pramod Kumar* to *Ravinder Tyagi* as an alleged loan or alleged payments made by *Naveen Kumar* to *Pramod Kumar* of Rs. 60 Lakhs are through any banking channel. The alleged documents are unregistered and all alleged payments are stated to be in cash. The documents and the payment receipts do not inspire confidence and there is a serious doubt on the alleged transactions.

22. *Ravinder Tyagi* has filed an affidavit dated 09.02.2022 disputing the sale of the property and contended that the documents were never to be acted upon that he never transferred possession to anyone and continues to reside in the property with his family (i.e. the Plaintiffs).

23. For the purposes of testing the veracity of the claim of Possession of the Plaintiffs, *Ravinder Tyagi* and the said *Naveen Kumar*, this court permitted them to file documents to show that they had been in possession since 2010 as alleged by them.

24. Not a single document was filed by them to even prima facie show that they had been in possession since 2010. They only filed affidavits of some alleged neighbours stating that *Naveen Kumar* is in possession. Besides the affidavits all that was filed was some recent photographs of August 2021 by which date admittedly the Appellants had been dispossessed. Photograph of *Naveen Kumar* sitting inside the property is filed which clearly shows collusion between *Ravinder Tyagi* and *Naveen Kumar*.

25. On the other hand, Appellants have filed several documents to show that on the basis of gift deed the existing electricity connection was got transferred in the name of Appellant No. 1 – *Rameshwari Devi* and thereafter she has paid all the electricity dues of the said electricity meter. Their household goods are placed in the constructed portion of the suit property i.e. microwave, two split AC, Invertor, Tata Sky, Videocon D2H, two beds, one sofa-cum-bed, five seater sofa, gas cylinder, Gas Stove, small Temple, Refrigerator, Almirah, LED TV and eight CCTV camera with DVR, three water tanks, Philips wall lights, Fans etc. The Tata Sky connection bearing

consumer No. 1352871519 had been installed in the name of Appellant no. 2. Videocon D2H connection bearing consumer No. 117383912 had been installed in the name of Late Sh. Subhash Tyagi. They have also placed on record bills of installation of household fittings besides filing photographs of constructions activity carried out by them. A Trust Deed was got registered in the name of Om Shakti Sangh at the address of the suit property on 26.06.2019. They have also filed CCTV footage to show their possession.

26. Now coming to the case as set up by the Plaintiffs, it is an admitted position that Respondent No. 4 *Ravinder Tyagi* herein was the sole, absolute and exclusive owner of the suit property i.e. property ad-measuring 1000 sq. yds, comprised in Khasra no. 117, Village Jhatikara, New Delhi. He is alleged to have received the property pursuant to an oral partition between his mother and her five sons in the year 1996. *Ravinder Tyagi* admittedly executed a Gift Deed dated 14.08.2014 in favour of Appellant No. 1 – *Rameshwari Devi* (the wife of his brother). Said Gift Deed was registered on 16.08.2014.

27. After the execution of the gift deed, *Rameshwari Devi* became the owner of the suit property and as per the Appellants, *Rameshwari Devi* along with her family members came into the actual physical possession of the suit property.

28. On 05.12.2014, the suit property was mutated in the name of *Rameshwari Devi*. *Ravinder Tyagi* appeared in the mutation proceedings and is alleged to have contended that the gift deed was obtained from him when he was under depression and he stated that he would challenge said gift deed subsequently. However, till the filing of the appeal and its hearing i.e. for over seven years, he neither challenged the registered gift deed dated 14.08.2014 nor the mutation order dated 05.12.2015.

29. It is further an admitted position that the Plaintiff and *Ravinder Tyagi* live together as a family. In the Plaint it is admitted that the Plaintiffs resided in the suit property till 2011 and thereafter, they shifted to Dwarka, New Delhi.

30. In the plaint it is specifically stated that the Plaintiffs requested the Appellants to return the Suit property to them and on denial and a threat that the Appellants shall sell the Suit property that the Suit has been filed.

31. It is alleged in the plaint that *Smt. Vidyavati* (mother of *Ravinder Tyagi* and *Subhash Tyagi*) inherited the Suit property in village Jhatikara from her mother. Her husband inherited some property in village Hastsal from his father and subsequently by way of oral partition the properties were divided and part of the property in

Jhatikara came to the share of *Ravinder Tyagi* and part of the property in Hastsal came to the share of *Subhash Tyagi*.

32. Though there is an averment in the plaint that the subject property is an ancestral property and even the trial court has prima facie observed that the property is ancestral, however besides the above averments that the properties were inherited by *Vidyavati* and her husband from their respective parents and thereafter the properties were partitioned in 1996, there is no material to show as to how the properties acquired the character of ancestral properties. It is further alleged that Plaintiff No. 3 Neelam got married to *Ravinder* in 1997 i.e. after the partition of the properties.

33. First of all, there is nothing to show that the properties are ancestral properties. Secondly, there is also nothing to show as to how the properties acquired the character of ancestral properties. Thirdly, even if assuming the suit property was an ancestral property, it would cease to be a joint property once the partition of the family takes place and the said property was allocated to the individual share of *Ravinder Tyagi*. Further, it may be noticed that admittedly, a registered gift deed is executed by its owner *Ravinder Tyagi* in favour of Appellant No. 1 on 14.08.2014 which has till date not been challenged by *Ravinder Tyagi* and the Plaintiffs admittedly are living with *Ravinder Tyagi* as a family.

34. As per the Appellants, the suit was listed for the first time on 12.01.2021. By order dated 12.01.2021, a local commissioner was appointed to visit the suit property on the same day. The case was listed for the following date on 13.01.2021, however, no notice of the Suit and the application was served upon the Appellants/Defendant No.1 & 2 and the matter was adjourned for 14.01.2021.

35. On 14.01.2021, counsel for the Plaintiffs submitted that they were not in possession of the suit property and that the Appellants interfere whenever the Plaintiffs visit the suit property. Ravinder Tyagi (father of the Plaintiffs No. 1 and 2 and husband of Plaintiff No. 3) submitted that he had no objection if the application under Order 39 Rule 1 & 2 CPC was allowed. On his submission, a status quo order in respect of creation of third party right or interest as well as possession to be maintained was passed and the case was adjourned for 28.01.2021 for filing of the written statement.

36. In the meantime, as per the Appellants, they had gone to their relatives and came back on 17.01.2021 and came to know from the neighbours that the Plaintiffs and Ravinder Tyagi had illegally and unlawfully broken the lock of the suit property and trespassed therein. A complaint was sought to be lodged with the local police but was not received by the Station House Officer and thereafter a copy of the

complaint was sent by post to the Station House Officer and the Deputy Commissioner of Police, Dwarka.

37. Appellants also filed an application under Order 39 Rule 2-A which was listed on 18.01.2021 and it was informed to the Trial Court that Plaintiffs had taken forcible possession of the Suit property from the Appellants. On the said date, counsel for the Plaintiffs stated before the trial court that earlier they were in notional possession and now they were in actual possession of the suit property and would like to withdraw their relief of recovery of possession.

38. The Trial Court appointed a local commissioner to inspect the suit property on the same day and adjourned the case to 19.01.2021. On 19.01.2021, counsel for the Plaintiffs stated that the possession of the suit property was with the Plaintiffs and he did not wish to press the relief of recovery of possession. Accordingly, the trial court dismissed the relief of recovery of possession as withdrawn.

39. Thereafter the Appellants filed the subject application seeking restitution of possession but the said application was dismissed by order dated 19.07.2021.

40. The observation of the Trial Court in order dated 19.07.2021 that the Plaintiffs had not come in possession pursuant to any order passed by the Trial Court is clearly erroneous as the Trial Court had

initially on 14.01.2021 passed an order of status quo with regard to possession of the Plaintiffs when admittedly they were not in possession. It is clearly under the garb of the said order of status quo that the Plaintiffs had forcibly taken possession.

41. This further becomes quite evident from the fact that the Plaintiffs themselves have admitted in the plaint that they were not in possession and were seeking a decree of possession. Even the counsel for the Plaintiffs admitted before the trial court that they were not in physical possession of the Suit Property and once they come into possession they sought to withdraw the relief of possession.

42. Before this court also, on 17.03.2021, counsel for the Plaintiffs admitted that the Plaintiffs were not in possession of the Suit property and came in possession during the pendency of the Suit and that the Appellants did not voluntarily hand over the possession to the Plaintiffs.

43. Clearly, Plaintiffs have failed to establish a prima facie case, leave along a strong prima facie case, in their favour. The Suit Property is admittedly owned by the Appellant No. 1. The Appellants were admittedly in possession of the Suit Property at the time of filing of the Suit. The executant of the Gift Deed i.e. the father of Plaintiff No. 1 and 2 and husband of the Plaintiff No. 3 lives with them as a family. He did not take any steps to challenge the Gift Deed for over

seven years. The challenge to the Gift Deed is *prima facie* barred by limitation. In an attempt to overcome the bar of limitation, subject Suit has been filed by the Plaintiffs. There is no material to show that the Suit Property was an ancestral property.

44. Further, the documents of alleged sale in favour of *Naveen Kumar* are unregistered and all alleged payments for the said alleged transaction are shown to be only in cash. Said documents clearly do not inspire confidence. It also *prima facie* appears that there is collusion between *Naveen Kumar*, the Plaintiffs and *Ravinder Tyagi* and *Naveen Kumar* has been set up only to defeat the rights of the Appellants and to overreach the orders of this court.

45. Plaintiffs have failed to establish any *prima facie* case. The Balance of convenience is also not in favour of the Plaintiffs and irreparable loss and injury would be caused to the Appellants in case the injunction is granted.

46. Clearly, the Trial Court has committed an error in granting an injunction thereby protecting the possession of the Plaintiffs when there was none to begin with. Trial Court has further erred in dismissing the application of the Appellants seeking restitution and in holding that the possession has not been taken by the Plaintiff under orders of the Court. Trial Court has clearly erred in not noticing that it was because of the ad-interim order passed on 14.01.2021 and the

pendency of the Suit that the Plaintiffs trespassed into the Suit Property.

47. As noticed above, when this court stayed the operation of the order dated 17.03.2021, the Trial Court in its order dated 19.07.2021, without any pleadings or averment of any party observed that some third party could be in possession of the property. Thereafter, immediately a third party (*Naveen Kumar*) filed the application for impleadment.

48. Further, as noticed hereinabove neither *Naveen Kumar*, nor the Plaintiffs or even *Ravinder Tyagi* have been able to produce any material to show that they were in possession after 2010 or 2014 respectively.

49. Trial Court also accordingly erred in holding that the Suit property is deemed to be in the custody of the court.

50. The property was in the admitted possession of the Appellants till they were disposed by the Plaintiffs during the pendency of the Suit. Thus, the possession of the property is liable to be restored to the Appellants.

51. In view of the above, both the appeal and the petition are allowed. The application filed by the Plaintiffs under Order 39 rule 1 & 2 CPC, on the record of the Trial Court, is dismissed. The

application filed by the Appellants under Section 151 CPC seeking restoration of possession, on the record of the Trial Court, is allowed.

52. The Plaintiffs, *Ravinder Tyagi* and *Naveen Kumar* are directed to hand over the peaceful and vacant possession of the Suit property to the Appellants within two weeks failing which it would be open to the Appellants to approach the Trial Court for appointment of a bailiff to take physical vacant possession of the Suit property and to hand over the same to the Appellants. Trial Court shall also permit the bailiff to take appropriate police protection in case of any apprehension of breach of peace and also authorise him to break open the lock of the premises if the premises is found locked.

53. It is clarified that the observations contained herein on merit are prima facie and would have no bearing at the time of final adjudication of the Suit by the Trial Court after trial.

54. Order *Dasti* to the parties under the signatures of the Court Master.

SANJEEV SACHDEVA, J

October 27, 2022
HJ