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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 19th April, 2022

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FAO(OS) 26/2022**MRS. KULAN RUKHSANA AMIN & ORS.Appellants**

Represented by: Ms. Sumita Hazarika & Ms. Nazia Parveen, Advocates.

versus

GAURANG KANTH & ORS. RespondentsRepresented by: Mr. Madan Lal Sharma, Mr. Shivani Kher & Mr. Rakesh Kumar Lakra, Advocates for R-1 & 2.
Mr. Harish Malhotra, Sr. Advocate with Mr. Dhruva Bhagat, Advocate for R-3 to 5.**CORAM:****HON'BLE MS. JUSTICE MUKTA GUPTA****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****NEENA BANSAL KRISHNA, J. (ORAL)****CM APPL. 18400/2022 (Exemption)**

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

CM APPL. 18402/2022 (Permission to file lengthy synopsis)

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

CM APPL. 18403/2022 (Delay of 16 days in filing appeal)

1. By this application, the appellants seek condonation of 16 days' delay in filing the appeal.
2. For the reasons stated in the application, delay of 16 days in filing the



appeal is condoned.

3. Application is disposed of.

FAO(OS) 26/2022 & CM APPL. 18401/2022 (Stay)

1. The appellants have preferred the present appeal against the order dated 14th September, 2021 of the learned Single Judge dismissing their application for interim injunction to stay the construction over the suit property and for restraining the respondent Nos. 3, 4 and 5 from further selling the property and order dated 13th December, 2021 dismissing the review petition.

2. The appellants (*who are the plaintiffs in the original suit*) had filed a suit for Declaration, Possession and Injunction challenging the Sale Deed dated 04th November, 1999 executed in favour of respondents Nos. 1 and 2 (*who are defendants in the original suit*) on the ground of it being a forged document. It was claimed that the Sale Deed pertains to 360 square yards of land forming part of Khasra No. 138 situated in revenue district of Village Okhla, Abadi, Jamia Nagar (*hereinafter referred to as suit property*). The total area of the Khasra is more than 10,000 square yards but the exact location of 360 square yards of land sold to the respondent Nos. 1 and 2 is not identified. There is no schedule, site plan or description of the location of alleged 360 square yards in Khasra No. 138 square yards, which is a pre-requisite for any Sale Deed to be registered, as provided under Section 21 of the Registration Act, 1908. Since *situs* of the property remained unidentified, any sanction of the plan for construction on the suit property, cannot be lawful.

3. The appellants became aware of the subsequent Sale Deed dated 26th March, 2021 executed in favour of respondent Nos. 3 to 5 (*subsequent*



purchasers) only at the time of withdrawal of suit bearing CS No. DJ 6195 of 2016 for Permanent Injunction, on 7th June, 2021. The appellants were thus forced to first implead the subsequent purchasers as defendants No. 3 to 5 in the present suit and then to seek injunction against them.

4. It was further claimed that respondent Nos. 3 to 5, being the subsequent purchasers, cannot acquire any better right, title or interest in the suit property than the respondent Nos.1&2. However, they are illegally constructing and trespassing over the suit property. Hence, the appellants sought to restrain the respondent Nos.3 to 5 from raising any construction or creating third party rights by way of interim injunction application.

5. The learned Senior Counsel for respondent Nos. 3 to 5 and learned counsel for respondent Nos. 1 and 2 strongly opposed the application for interim injunction on the ground that a similar relief was sought by the plaintiff by way of I.A. No. 2371/2016, which was declined by the Court vide decision dated 14th July, 2016.

6. It was asserted that the 360 square yards of land was identified by late Mohammad Amin, the vendor in the original Sale Deed and the respondent Nos. 1 and 2 were in possession of the said demarcated portion since 1999. After obtaining requisite permission from the statutory authorities, the Sale Deed has been executed in favour of respondent Nos. 3 to 5 conferring a valid title on them. The respondents have further explained that the suit property was clearly demarcated and bounded by a wall which was unlawfully and illegally demolished subsequently by the appellant's husband. FIR No. 416/2015 was registered against the appellant's husband in which a bail application was filed wherein the husband of appellant undertook to incur the expenses for re-construction of the boundary and



agreed to compensate defendant Nos. 1 and 2, as was recorded in the bail orders.

7. Not only this, the site report prepared by the Assistant Zonal Engineer, South-Delhi, Municipal Corporation dated 28th November, 2003 shows the sketch of the suit property and the passage leading thereto, which is in consonance with the site plan filed by the plaintiffs. It is further asserted that the construction has been raised within the area bounded by the wall, as is reflected in the sketch.

8. The learned Single Judge referred to a similar application bearing IA No. 2371/16 with similar prayers, which was dismissed by the order dated 14th July, 2016. It was observed that there was no change in the circumstances except that the suit property has been sold by respondents Nos. 1 and 2 to respondents Nos. 3 to 5 and the application was accordingly dismissed.

9. Aggrieved by the dismissal of interim injunction application, review application was filed which was also dismissed vide order dated 13th December, 2021.

10. Submissions heard.

11. The appellants had filed the interim injunction application to restrain the respondent Nos.3 to 5 from raising unauthorized construction in the suit property, which got dismissed.

12. The main ground of challenge in the present appeal is that the subsequent Sale Deed went beyond the earlier Sale Deed dated 04th November, 1999 through the schedule and the rough sketch showing a road on the plaintiff's property where none ever existed or was documented. The suit property has not been demarcated in Khasra No. 138, which measures



more than 10,000 square yards and the Sale Deed does not create any valid title in favour of subsequent purchasers to authorize them to raise any construction.

13. To appreciate the grievance of the appellants, it would be pertinent to refer to the earlier application bearing I.A. No. 2371/2016 under Order XXXIX Rule I and II Code of Civil Procedure, filed by the appellants wherein the following prayer was made:

“(a) pass ad-interim ex-parte order restraining the defendants and/or every person acting on their behalf including their attorneys, accomplices, agents and servants from selling/alienating/renting out, from creating any construction and/or creating any third party rights qua the suit property with respect to property bearing No. 268, Naseem Bagh, Jamia Nagar, New Delhi measuring 360 sq.yds.”

14. This application was rejected by this Court vide Order dated 14th July, 2016 by observing that the suit property was demarcated by a boundary wall which was demolished by the husband of appellant, which was not only acknowledged during the anticipatory bail proceedings, but he also paid ₹5 lakhs towards the construction of the wall and another ₹5 lakhs towards harassment and expenses incurred in regaining the possession of the suit property. It was held that there was suppression of material facts disentitling him to the discretionary relief. The injunction application was accordingly dismissed.

15. The present application has been filed by the appellants seeking following reliefs:

“(a) pass an ad interim ex parte order directing the Defendants and buyers to stay any further construction on the suit property;



b) pass an ad interim ex parte order restraining the Defendants and buyers from creating any further third party rights in the suit property.”

16. It is evident that the relief sought by way of this subsequent injunction application is identical to the relief that was claimed earlier. There has been no change in circumstances since then except that the property has been subsequently sold to respondent Nos. 3 to 5; the fundamental issue continues to be identity of the suit property which *prima facie* is shown to be demarcated by a boundary wall. The doctrine of *lis pendis* shall bound any subsequent purchaser or the Transferee *pendente lite* by the verdict just as if he were a party to the suit and the transfer shall be subservient to the result of the pending suit. No *prima facie* case is made out nor any change in circumstances established, since the dismissal of earlier interim injunction application as observed by the Ld Single Judge.

17. There is no ground for interference in the impugned orders. The appeal and the application are dismissed.

18. Order be uploaded on the website of this Court.

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(NEENA BANSAL KRISHNA)
JUDGE

(MUKTA GUPTA)
JUDGE

APRIL 19, 2022
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