

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

+ FAO 258/2022, CM APPL. 43774/2022, CM APPL. 43775/2022, CM APPL. 43776/2022

Date of Decision 10/10/2022

IN THE MATTER OF:

ASHOK TRIKHA (SINCE DECEASED) THROUGH HIS LEGAL
REPRESENTATIVES Appellant

Through: Mr. Karan Luthra, Advocate.

Versus

MUNESH & ANR. Respondents

Through: Mr. Ashok Kumar Arya and Mr.
Vijay Datt Gahtori, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present appeal filed under Order XLIII(1)(r) read with Section 104 CPC, the appellant/plaintiff (since deceased and now represented by LRs) has assailed order dated 29.08.2022 passed by the learned Additional District Judge-08, Central District, Tis Hazari Courts, Delhi in Civil Suit No. 16261/2016, vide which his application under Order 39 Rules 1 and 2 CPC was dismissed on the ground that a similar application came to be dismissed earlier on 11.07.2019.

2. At the outset, the appellant/*Ashok Trikha* had filed Civil Suit No. 16261/2016 for recovery of possession, mesne profits/damages and permanent injunction against respondent No.1/defendant, claiming that

he was the son/legal heir of deceased/*Late Sh. Dwarka Nath* who owned property bearing *No. 3165, measuring 52 sq. yds., Punjabi Basti, Subzi Mandi, Delhi* (hereinafter, referred to as the '*Suit Property*') and died intestate. It was further claimed that defendant No.1, who claimed to be the wife of his deceased brother/*Late Sh. Sham Sunder*, was in unauthorised occupation of the *Suit Property* and liable to vacate the same. Alongwith the *Suit*, the appellant had also preferred an application under Order 39 Rules 1 and 2 CPC seeking to restrain respondent No.1 from transferring, selling, assigning and/or parting with the possession of the *Suit Property*.

3. In response, respondent No.1 filed a written statement as well as a reply to the appellant's application seeking interim relief, stating that she was the wife of appellant's elder brother/*Late Sh. Sham Sunder*, who came to own the entire *Suit Property* in terms of Will dated 17.11.1982 of *Late Sh. Dwarka Nath*. It was claimed that following demise of *Late Sh. Sham Sunder*, the *Suit Property* belonged to defendant No.1.

4. On 01.10.2016, the appellant/*Ashok Trikha* passed away and his LR's came to be substituted as Plaintiffs in the *Suit*. On an application made by the Plaintiffs, respondent No.2 (son/other surviving legal heir of *Late Sh. Dwarka Nath*) was impleaded as defendant No.2 in the *Suit* and he supported the case of the Plaintiffs. However, on 11.07.2019, the learned ADJ dismissed the application of the Plaintiffs seeking interim relief, holding that that there was no material on record to show that respondent No.1 was contemplating to part with the *Suit Property* and thus there was no *prima facie* case in favour of the Plaintiffs. Issues were framed by the learned ADJ and the matter put up for trial.

5. On 27.06.2022/28.06.2022, the appellant/Plaintiffs preferred a second application under Order 39 Rules 1 and 2 CPC seeking to restrain respondent No.1 from transferring, selling, assigning and/or parting with the possession of the Suit Property, wherein it was claimed that they had come to be in possession of a letter dated 18.06.2022 issued by Sub-Registrar-I, Kashmere Gate, Delhi as per which respondent No.1 had applied for sale/transfer of Suit Property to one *Ms. Priyanka Saxena*. A Reply to the same was filed by respondent No.1. Vide the impugned order, the second application filed on behalf of the appellant/Plaintiffs came to be dismissed.

6. Learned counsel for the appellant has submitted that a cause of action for filing the second application arose as after dismissal of the first interim application, the appellant/plaintiffs received letter dated 18.06.2022 from the office of Sub-Registrar-I, Central District, Delhi in response to his appellant/*Ashok Trikha's* letter dated 15.02.2016, whereby it was informed that defendant No.1 had applied for sale/transfer of the Suit Property. It is contended that the said letter constituted a change in circumstance and provided fresh cause of action for filing the application, which was not available at the time of earlier application. As such, the second application was maintainable and wrongly dismissed by the Trial Court.

7. A perusal of the impugned order would show that the learned ADJ dismissed the second application of the plaintiffs while noting that they had failed to challenge order dated 11.07.2019, whereby the first application under Order 39 Rules 1 and 2 CPC was dismissed, and that the Plaintiffs' receipt of letter dated 18.06.2022 did not constitute such

change in circumstance as would necessitate allowing a second application under Order 39 Rules 1 and 2 CPC seeking similar relief.

8. It is a settled principle of law that while considering the question of grant of interim injunction, Courts are required to consider the three tests of *prima facie* case, balance of convenience and irreparable injury [Refer: Shyam Sel and Power Limited and Another v. Shyam Steel Industries Limited reported as **2022 SCC OnLine SC 313**].

9. In the present appeal, the appellants have placed on record a copy of the letter dated 18.06.2022 stated to be issued by Sub-Registrar-I, Kashmere Gate, Delhi. A reading of the same would show that the appellants have been asked to produce a Court order of stay to prevent/restrain transfer of the Suit Property, failing which their objection/complaint regarding registration of Suit Property would be treated as null and void.

Besides, respondent No.1/defendant has not disputed the allegation of the Plaintiffs that the Suit Property is sought to be alienated.

10. On an entire conspectus of the material placed on record, especially letter dated 18.06.2022 issued by Sub-Registrar-I, Kashmere Gate, Delhi, and the absence of any counter on behalf of respondent No.1 to the allegation that the Suit Property is sought to be alienated, this Court is of the opinion that the appellants have been able to make out a *prima facie* case for grant of interim injunction in their favour. Keeping in view the facts and circumstances of the case as well as the nature of Suit, the balance of convenience also lies in favour of the appellants and no irreparable loss is likely to be caused to respondent No.1 if interim injunction is granted with regard to the Suit Property.

11. As such, interest of justice would be served if parties are directed to maintain *status quo* with respect to title and possession of the suit property during the pendency of the Suit. It is ordered accordingly.

12. The appeal is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 10, 2022

ga

