

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

FAO 66/2022 and CM APPL. 13609/2022 (stay)

Date of Decision: 14.02.2023

IN THE MATTER OF:

RAGHAV GOEL

..... Appellant

Through: Mr. Akhil Mittal, Advocate

Versus

RACHNA PROTHI & ANR.

..... Respondents

Through: Mr. N.K. Kantawala, Advocate for
respondent No.1

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present appeal filed under Order 43 Rule 1 CPC, the appellant/defendant has assailed order dated 08.02.2021 and clarification order dated 17.11.2021 passed by the learned ADJ-01, South District, Saket Courts in CS No.448/2020.

2. Vide impugned order dated 08.02.2021, an application filed by respondent No.1/plaintiff under Order 39 Rules 1 & 2 CPC was allowed and the appellant restrained from blocking the front entrance of property bearing No.27, Community Centre, Saket, New Delhi (hereinafter, the 'suit property') by carrying out any construction, till the disposal of the suit. The appellant filed an application seeking clarification of order dated 08.02.2021 and the same came to be disposed of vide the clarification order dated 17.11.2021.

3. Initially, leasehold rights of the suit property were granted by DDA in favour of *M/s Supernal Corrugation (India) Ltd* vide lease deed dated 21.07.2000. Statedly, after obtaining sanctioned building plan from DDA in the year 1985, the construction was carried out. In the year 2005, the conversion of the suit property into freehold was permitted. After changing multiple hands, the suit property was purchased by one *Sidharth Chaudhary* and others who further sold it to the present parties.

While appellant claims to be the owner and occupant of Basement as well as the Ground, First and Third Floors of the suit property, respondent No.1 (hereinafter, the '*respondent*') claims to be the owner of the second floor.

4. Appellant contends that respondent's access to the Second Floor had always been through the rear entrance only and at no point of time, passage from the front entrance could be provided on account of the partition wall. He further pleads that after purchasing the portions at basement and ground floor, no material addition/alteration was carried out by him and the construction being old, only minor and permissible repair work was being carried out in the portion exclusively owned by him.

5. Respondent alleges that the appellant has recently constructed the partition wall to block access from the front entrance. She, in turn, has referred to the recitals in the sale deed, stated to be executed in her favour prior in time to the sale in favour of the appellant, where the word *entrance* has been used in plural and further, the possession letter where besides access from the rear entrance, the access from the front entrance is also reported to be mentioned.

6. During the pendency of the present appeal, this Court had appointed a Local Commissioner, who has reported existence of a partition wall after the front entrance on the Ground Floor of the suit property. The entire ground floor, admittedly, is with the appellant.

7. Although respondent has referred to the criminal complaint dated 12.09.2020 filed by her to submit that the partition wall was recently constructed, she has not placed any contemporaneous material or document on record in support of her claim that the front entrance was used prior to the alleged construction of partition wall.

8. Even though respondent's sale documents executed in the year 2018 refer to the front entrance, the sanctioned building plan shows existence of a partition wall. As per the sanctioned building plan, the passage from the front entrance ends in a partition wall behind which there is space earmarked for a washing closet.

9. At this stage, this Court has to look only at the pleadings and the documents to form a *prima facie* view. The respondent has failed to show existence of either a *prima facie* case in her favour or any irreparable loss to her. Admittedly, she has uninterrupted access to the second floor from the rear entrance. The balance of convenience is in favour of the appellant. Accordingly, this Court is of the opinion that the partition wall having been shown in the sanctioned building plan, the respondent would prove in trial that the same was built only later on.

10. Finding merits in the submissions of the appellant, the impugned orders are set aside. The appeal is disposed of in the above terms alongwith the pending application.

11. It is clarified that the opinion expressed hereinabove is only *prima facie* in nature and shall not influence the trial in any manner.

12. A copy of this judgment be communicated to the concerned Court for information.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 14, 2023

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