

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

+ FAO 124/2023, CM APPL. 25707/2023, CM APPL. 25708/2023, CM APPL. 25709/2023

Date of Decision: 17.05.2023

IN THE MATTER OF:

KISHAN CHAND

..... Appellant

Through: Mr. Alok Tripathi, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ANR..... Respondents

Through: Mr. Ashim Vachher, Standing Counsel for DDA.
Mohd. Irsad, ASC, GNCTD with
Ms. Nasreen and Mr. K.R. Mishra,
Advocates for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The appellant, who is the plaintiff before the Trial Court, has assailed the order dated 04.05.2023 passed by Additional District Judge-04, East District, Karkardooma Courts, Delhi in CS No. 246/2021 vide which his application under Order XXXIX Rules 1 and 2 CPC came to be dismissed.

2. The appellant filed the underlying suit seeking reliefs of declaration, possession and permanent injunction against respondent No.1. Alongwith the suit, the appellant also filed an application seeking restraint on respondent No.1 from creating any third-party interest as well as hand over the possession of the property to the appellant till the disposal of the suit.

3. In the suit, the appellant claimed that the suit property was initially allotted by DDA/respondent No.1 to one *Sewa Ram* vide allotment letter No. F1(6)86/TP MIG dated 30.04.1986 who received the possession on 25.10.1986. *Sewa Ram* subsequently sold the suit property to one *Istekhar Ali* on 10.05.1988 by executing a GPA. It was claimed that *Istekhar Ali*, in turn, sold the suit property to the appellant on 20.06.1995 also on the basis of a GPA. It was thus claimed that the appellant became the absolute owner and in possession of the suit property however, since the property was in uninhabitable condition, he started renovating the same in the year 2020. It was further claimed that the electricity connection as well as house tax receipts are regularly paid by the appellant since the year 2020.

4. Mr. Alok Tripathi, learned counsel for the appellant submitted that the Trial Court without appreciating the aforesaid facts arbitrarily rejected the captioned application.

5. Mr. Ashim Vachher, learned counsel for respondent No.1, on the other hand, has vehemently opposed the above submissions made on behalf of the appellant. While referring to the written statement filed before the Trial Court, a copy of which has been placed on the record, learned counsel submitted that the suit property was never allotted to anyone including any *Sewa Ram*. He further submitted that entire chain of documents relied upon by the appellant is based on the initial allotment letter allegedly issued to *Sewa Ram*. The said allotment letter is nothing

but a forged document as till date, the possession of the suit property is with the DDA. It was further stated that the suit property has been reclaimed from the appellant on 23.06.2021. Lastly, it was submitted that granting the alternate relief would amount to grant of final relief prayed in the suit at the interim stage.

6. I have heard the learned counsels for the parties and perused the entire material placed on record.

7. The entire case of the appellant is based on the alleged allotment letter dated 30.04.1986. DDA has categorically stated that the said allotment letter is a forged document and the subsequent chain of documents, relied upon by the appellant are nothing but GPAs. It has also been categorically stated that at no point of time any allotment/conveyance deed was executed in favour of *Sewa Ram*. In fact, no payment was ever received by the DDA from *Sewa Ram* or anybody else with respect to suit property. It is noteworthy that though the appellant put reliance on the house tax receipts from the year 2000 onwards to claim ownership, it is no longer *res integra* that house tax receipts by themselves do not establish the claim of ownership. Trial Court has observed that even the electricity bills in the appellant's name show that the connection was energized on 10.07.2020. Even the chain of documents showing sale transactions from *Sewa Ram* to *Istekhar Ali* and from *Istekhar Ali* to the appellant are only notarised documents.

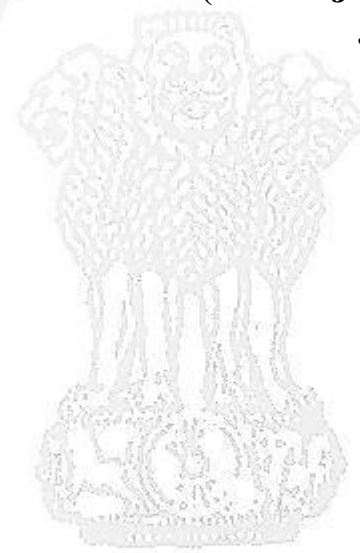
8. It is well established that a relief of temporary injunction is to be based on trinity test of establishment of *prima facie* case, balance of convenience and irreparable loss and injury, if injunction is not granted. In view of the facts noted hereinabove, this Court is of the considered *prima facie* opinion that the appellant has failed to make out a case

satisfying any of the above noted factors. Accordingly, this Court finds no ground to interfere with the impugned order. Consequently, the present appeal is dismissed alongwith miscellaneous applications.

9. Nothing stated hereinabove, which is only *prima facie*, shall be construed as a final expression or opinion on the merits of the case and shall not influence the final outcome of the Trial.

(MANOJ KUMAR OHRI)
JUDGE

MAY 17, 2023
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