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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 7th October, 2024+ C.R.P. 66/2022

KAMAL NAIN

.....Petitioner

Through: Mr. Vikas Khatri and Ms. Seema
Khatri, Advocates.

versus

BIHARI LAL & ORS.

.....Respondents

Through: Ms. Ira Gupta, Advocate for
Respondent No. 6 MCD.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****JUDGMENT (oral)**

1. The Revision Petition under Section 115 of the *Code of Civil Procedure, 1908* (hereinafter referred to as 'CPC, 1908') has been filed against the Impugned Order dated 11.02.2022 in Civil Suit No. 638/2020 whereby the Application under **Order 12 Rule 6 CPC** filed on behalf of the Plaintiff/Revisionist, ***has been dismissed***.

2. The Plaintiff/Revisionist in his Suit for possession stated that the property in question bearing No. SK-35, Chowki No.2, Joshi Nagar, BLK-SK, Sindhora Kalan, Sindhora Khurd, Delhi, without roof rights (*hereinafter referred to as suit property*), is a built-up property having five storeys, built on 75.9 Sq. yards. The Plaintiff has claimed that he *purchased the suit property vide* Sale Deed executed on 05.06.2020 and registered on 11.06.2020, from Defendant No. 2 and became its lawful and true owner of



entire built-up First Floor of the Suit property. He took the possession of the First Floor and started residing there with his family from 26.06.2020. He has explained that the suit property purchased by him is the First Floor of the property i.e. the floor above the Ground Floor.

3. The Plaintiff explained that Respondent/Defendant No.1 is the occupier/owner of the Ground Floor of the said property. The Defendant No.3 and 4 are the son and daughter-in-law of Defendant No.1 and are in illegal and unauthorized occupation of the First Floor of the Suit property owned and belonging to the Plaintiff. The Defendant No. 5 is the property dealer and father of Defendant No. 2. The Defendant No. 6 is the Civic Agency responsible for maintaining the civic amenities and checking unauthorized building construction etc.

4. *The Plaintiff further asserted* that after having purchased the First Floor of the Suit property, he got the water and the electricity connection in his name for the said floor. The Respondent/Defendant No.2 at the time of sale, had given an assurance to the Plaintiff that the Suit property was free from all encumbrances and was not booked by MCD for unauthorized construction etc. as was also mentioned in Clause 11 of the Sale Deed.

5. On 11.07.2020, officials of NDMC/Defendant No.6 came to the First Floor of the property and served a Notice in regard to the ongoing action against the Suit property which was booked in the year 2019, a fact which was concealed by Defendant No.1 to 5.

6. Thereafter, on 12.07.2020 the Defendant No.1 approached the Plaintiff to get some documents signed from him to be submitted in the office of Defendant No.6. On perusal of the copies of those documents, the Plaintiff came to know that the Suit property was illegally and



unauthorizedly constructed and booked by Defendant No. 6 for demolition. Thereafter, the Suit property was partially demolished in 2019. The Plaintiff claimed that he was cheated by Defendant No.1 to 5 collectively by inducing him to buy an encumbered property. The Plaintiff further came to know from those documents that a Writ Petition had been filed and disposed of in regard to the demolition and booking made by Respondent/Defendant No. 6.

7. When the Plaintiff confronted Defendant No.1, 2 and 5 about being kept in dark about the sealing and the impending demolition, he was threatened with dire consequences including dispossession and implication in false cases. The Plaintiff then asked Defendant No.2 to return the Sale consideration as he has been defrauded and cheated by execution of the Sale Deed fraudulently.

8. The Defendant No.1, 2 and 5 thereafter started extending threats to kill the Petitioner and his wife and also implicating his two adult major sons in false and frivolous criminal cases. Various complaints were made by the Plaintiff to the Police. His apprehensions came true when while they were away to visit his son from 28.09.2020 to 29.09.2020, they found that respondents had illegally thrown all the articles and belongings of the Plaintiff out of the First Floor and kept some of them on the Second Floor of the property, where he is being compelled to live with his wife presently. He found his various furniture items, jewellery, cash etc. missing.

9. It is claimed that Defendant No.1 to 5 have illegally encroached on the First Floor of the property which had been purchased by the Plaintiff. He thus, filed the Suit for Possession of the First Floor i.e. the Suit property.

10. *The Defendant No.1, 2, 3 and 4 in their Written Statement* denied all these assertions and admitted that Respondent No.2 is in possession of the



First Floor of the Suit property.

11. In view of these admissions, an Application under Order XII Rule 6 CPC was filed by the Plaintiff/Revisionist which, however, was dismissed *vide* Impugned Order dated 11.02.2022.

12. Aggrieved by the said dismissal, the present Revision Petition has been filed on the grounds that he has a registered Sale Deed in his favour in respect of the First Floor of the property in question which was before the construction was raised up to Second Floor, as is admitted in the Written Statement. There was earlier an old structure built up to Second Floor and the First Floor was purchased by the Plaintiff from Defendant No. 2. After the construction of the Suit property pursuant to a purported *Collaboration Agreement* dated 22.10.2019, the First Floor had been purchased by the Plaintiff *vide* registered Sale Deed dated 05.06.2020. Their documents clearly established his ownership in the First Floor. It is claimed that there is no clarification of the Sale Deed in respect of the First Floor being termed as Upper Ground Floor while it was identified as First Floor in the earlier Sale Deed dated 20.08.2018. There is no clarification in regard to the definition of the First Floor. Furthermore, had the intention of the parties been to enter into a Sale Deed in respect of the Second Floor or the Upper Ground Floor it would have been so specifically mentioned in the subsequent Sale Deed dated 05.06.2020.

13. *It is further claimed that respondent No.6/NDMC* has in clear and unambiguous words ascertained and identified each and every floor of the Suit property as Ground, First, Second, Third and Fourth Floor. With these categorical description and identification, admission of occupancy of the First Floor by respondent No. 2 and 3, the documents executed before and



after the construction raised in the Suit property, there is no scope of there being any other intention at the time of execution of the Sale Deed. It is claimed that respondent No.1, 3 and 4 have confused the Trial Court with its distorted versions, English description of phrases and explanations to define the floors of the Suit property.

14. In view of the categorical admissions in paragraph 19 of the preliminary objections of the Written Statement, it is evident that the Plaintiff is entitled to be put back in the possession of the First Floor of the Suit property. The reliance has been placed on M/s S.L. Associates Pvt. Ltd. vs. Karnataka Handloom 62 (1996) DLT 386; Rajiv Srivastava vs. Sanjiv Tuli & Anr. 119 (2005) Delhi Law Times 202 (DB); Uttam Singh Duggal & Co. Ltd. vs. Union Bank of India VI (2000) SLT 87; Davinder Kaur & Anr. vs. Kulbir Kaur & Anr. 204 (2013) Delhi Law Times 279; Sky Land International Pvt. Ltd. vs. Kavita P. Lalwani 191 (2012) DLT 594; and Chranjit Lal Mehra vs. Kamal Saroj Mahajan, wherein it has been held that where the admissions are clear, unambiguous and categorical, the Plaintiff is entitle to a Decree on Admissions.

15. The Respondent NDMC/Defendant No.6 in its short affidavit has submitted that as per the record there was unauthorized construction of the suit property from the Ground to Fourth Floor, on the municipal land which was booked under Section 343 and 344 of the DMC Act vide File No.877/C-78B-II/UC/KP2/2019 dated 08.05.2019. After following due process of law, Demolition Order under Section 343 of DMC Act dated 15.05.2019 was issued whereby directing the occupiers to demolish the unauthorized construction within six days. When the owner/occupier failed to comply with the directions, the demolition programme was fixed for 03.09.2019



during which roof slab of 3 rooms of Second Floor and one room of Fourth Floor with projection on municipal land was demolished and reinforcement cut by using gas cutter. Another demolition action was taken on 13.07.2020, whereby roof slab of one room on Fourth Floor and projection on municipal land was demolished and reinforcement was cut down by using gas cutter. Furthermore, the respondent No.6 has initiated sealing proceedings under Section 345A of DMC Act against the property in question and the Sealing Order has been passed on 07.12.2020. It is submitted that the action in accordance with law, has been taken by the answering respondent.

16. *Learned counsel on behalf of respondent No.1 to 5* has contended that the Plaintiff/Revisionist had in fact purchased the Second Floor which he has described as First Floor. Admittedly, he is in possession of the Second Floor and is, therefore, not entitled to any Decree of Possession.

17. *The Defendant No.1 to 5 had contested the Application* by asserting that the Plaintiff had purchased and is in possession of the Second Floor which he is mischievously referring to as the First Floor, and the Application under Order XII Rule 6 CPC is liable to be dismissed.

18. Ld. Trial Court/ District Judge dismissed the Application by observing that evidence was required to ascertain the correct identity of the property purchased by the plaintiff.

19. Aggrieved by the dismissal Order, present revision has been filed.

20. **Submissions heard.**

21. From the pleadings as narrated above, it is evident that earlier the construction existed from Ground Floor to Second Floor. The Plaintiff herein *vide* registered Sale Deed purchased the First Floor. However, it was subsequently reconstructed under a Collaboration Agreement on 22.10.2019



and five floors were constructed. Apparently, the new construction would be having the stilt parking, thereby changing the nomenclature of the Floors. The confusion has arisen about whether the First Floor is in fact the Upper Ground Floor or the Second Floor. There is a dispute about the description/identity of the floor which was purchased by the Plaintiff. It is not denied that the Plaintiff is in possession of the Second Floor of the Suit property though, he is asserting that he in fact is the lawful owner of the floor below the Second Floor.

22. The learned Trial Court while dismissing the Application under Order XII Rule 6 CPC has rightly observed that a trial is required to ascertain whether the First Floor or the Second Floor in which the Plaintiff/Revisionist is admittedly in possession, was the subject matter of the Sale Deed *vide* which the property was purchased by the Plaintiff. There were disputed facts as Defendants had been categorical in asserting that the Plaintiff is in possession of the floor which had been purchased by him.

23. In the light of the dispute in regard to the correct identity of the property, it cannot be held that there was any clear, unambiguous and unequivocal admission on the part of the Defendants in regard to the identity of the Suit property.

24. The learned Trial Court has, therefore, rightly dismissed the Application under Order XII Rule 6 CPC. There is no infirmity in the impugned Order and the Revision Petition is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 7, 2024/va