



2024:DHC:4196-DB



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

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Date of decision: 21.05.2024

FAO(OS) 224/2019

BIRENDER CHAUDHARY

..... Appellant

versus

KANWAL CHAUDHARY & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Rajesh Mahindru, Advocate.

For the Respondent: Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Kushagar Pandit, Ms. Anurag Agarwal, Ms. Meenu Agarwal & Ms. Tanya Chand, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns the order dated 13.09.2019 whereby the application of the applicant under Order XXXIX Rule 2A of the Civil Procedure Code (hereinafter referred to as CPC) alleging willful disobedience of interim order dated 07.03.2014 and 14.08.2015 has been dismissed.

2. Appellant and Respondent No.1 are real brothers. Respondent No.1 has filed the subject suit for declaration, partition, rendition of account and injunction claiming *inter alia* declaration that Respondent No.1 is sole and



2024:DHC:4196-DB



exclusive owner of property bearing No. EA-413, Maya Enclave, New Delhi. The suit for partition pertains to other properties as well.

3. By an interim order dated 07.03.2014, both parties were directed to maintain status quo with regard to title, possession and construction of the suit properties.

4. On 13.01.2015, on an application as filed by Appellant/defendant under Order XXXIX Rule 1 & 2 of CPC an undertaking was recorded on the part of Respondent No.1/Plaintiff that he shall not create any third party interest in the suit property and shall maintain status quo.

5. Subject application was filed by the Appellant under Order XXXIX Rule 2A contending that Respondent No.1 had parted with possession of a portion of the property in favour of a company Carbon Sinks Pvt. Ltd.

6. The stand of Respondent No.1 is that Carbon Sinks Pvt Ltd is a company in which the wife of Respondent No.1 is a major shareholder having 3334 shares of out of 10,000/-.

7. It was further contended by Respondent that only the registered office of the said company – Carbon Sinks Pvt. Ltd. was shifted to the said premises. The Company was merely permitted by way of permissive user through a license agreement to use the said premises. It was further contended that there was no subletting or parting with possession or creation of third party rights in the subject property.

8. Further, contention of the Appellant was that Respondent No.1 had permitted user of the premises by other advocates and as such had parted with possession of the same.



2024:DHC:4196-DB



9. By impugned order dated 13.09.2019, Learned Single Judge of this Court has held that the allegation that possession was handed over to the company-Carbon Sinks Pvt Ltd was not substantiated. Appellant had not contended that Respondent No.1 has stopped using the premises as his own office and since the office of Respondent No.1 who is a practicing Advocate continues to function from the said premises, as such exclusive possession could not have been handed over to the said company.

10. Learned Single Judge found that the License Agreement did not evidence parting with possession which would have established a willful default of the injunction order.

11. Learned Single Judge has further held that permission for the company to use the premises as registered office did not *per se* involve interference with the status quo as to title or possession and the factual foundation to support the claim had not been laid down in the application.

12. With regard to the second allegation of permitting other advocates to function from the premises, the Court has noticed the fact that the associate who was stated to be operating from the office was admitted by the appellant/defendant himself to be the associates of respondent No.1 and working in his office.

13. Learned Single Judge has held that use of a lawyer's office by juniors or other lawyers associated with him is a well known practice at the Bar and does not amount to transfer of possession.

14. We are in complete agreement with the view of the Learned Single Judge. There is no material foundation made out by the appellant in the



2024:DHC:4196-DB



application to establish that possession of any portion of the said premises was handed over to any third party.

15. During the arguments it is stated by learned counsel for the Appellant himself that the premises is a two room flat and the flat is being used by Respondent No.1 as an office. Subject application does not disclose as to which portion or room has been sublet or parted with possession.

16. Apart from a mere bald allegation that possession has been parted with there is no other material to substantiate the said allegation.

17. It is also not in dispute that the wife of Respondent No.1 is a shareholder and Director in the company which had its registered office at the subject premises.

18. Learned senior counsel for the Respondent under instructions submits that the registered office of the company has since been shifted from the said premises, though having registered office did not violate the interim order however, shifting was done to obviate any such allegation in the future.

19. We may also note that the learned Single Judge has noticed the undertaking given by Respondent No.1 that apart from the use of the premises as his office and by his juniors, he shall not permit the suit property to be used by any other entity for any other purpose during the pendency of the present suit.

20. In view of the above and also since the respondent No.1 who is present in person has reiterated his undertaking as noticed in the impugned order, we are of the view that the impugned order dated 13.09.2019 does



2024:DHC:4196-DB



not suffer from any infirmity or warrant any interference and as such we find no merits in the appeal and the appeal is accordingly dismissed.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 21, 2024/sk