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

\+ CS(OS) 810/2022 & I.A. 21669/2022, I.A. 6643/2023

SONAL SHUKLA & ANR. .....Plaintiffs

Through: Mr. Birendra Bikram, Mr. Himanshu Verma and Mr. Kartikeya Gautam, Advocates

versus

POOJA SINGH & ANR. .....Defendants

Through: Mr. Shubham Prajapati and Mr. Manish Sharma, Advocates

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% 08.08.2024

1. The present suit has been filed for a decree of permanent injunction to restrain the defendants from interfering with the peaceful possession of the plaintiffs in the suit property i.e. 3rd (third) and 4th (fourth) floor of the property bearing no. B-1/6, Model Town - II, Delhi – 110009.

2. Learned counsel for the defendants states that there was no interim order granted to the plaintiffs in the present proceedings.

3. He states, in the meantime on 07.03.2023, the plaintiffs herein vacated the possession and the defendants herein have since been in actual physical possession of the property.

4. He states that the defendants are the recorded owners of the suit property and are in actual physical possession of the said property. He states that the defendants herein have filed a suit for injunction registered as CS DJ

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273/2023, which is pending before the District Court at Rohini, North Delhi. He states that in the said suit, the plaintiffs herein are parties and there is an interim order dated 27.04.2023 in operation directing the parties to maintain status quo as regards ownership as well as possession. He states that the said interim order is continuing till date.

5. He states that in view of the fact that this is a simplicitor suit for injunction and the plaintiffs are admittedly not in possession of the suit property any more, the present suit is liable to be dismissed in view of these subsequent facts.

6. Learned counsel for the plaintiff sought a pass-over to confirm the aforesaid submissions of the learned counsel for the defendants as regards physical possession.

7. At the second call, he confirms the fact that the defendants are in actual possession of the suit property. He states that the plaintiffs are indeed parties in the said suit pending in District Court and are resisting the claim of the defendants. He states that as per the plaintiffs, they have been forcibly dispossessed. He states that the rights of the plaintiffs herein ought not to be prejudiced by the dismissal of this suit.

8. This Court has considered the submissions of the parties.

9. The present suit has been filed by the plaintiffs on the strength of an unregistered agreement to sell dated 16.11.2022 executed with defendant no. 2 ('unregistered ATS'). There is no relief of specific performance sought in the suit. The suit is simpliciter for permanent injunction. The suit seeking permanent injunction for protecting possession based on an unregistered ATS is not maintainable in view of Section 17(1-A) of the Registration Act, 1908 and Section 53-A of the Transfer of Property Act, 1882.

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10. In view of the subsequent events, whereby the defendant is now in the actual physical possession of the property since 07.03.2023 and the issue of illegal dispossession of the plaintiff herein, if any, is also in consideration in the suit pending before the District Court at Rohini, this Court is of the opinion the reliefs sought in the present suit have become infructuous.

11. The present suit is dismissed reserving liberty to the plaintiff herein to raise all its contentions in the suit pending in the District Court at Rohini, if available, in accordance with law.

12. The pending applications stand dismissed.

MANMEET PRITAM SINGH ARORA, J

AUGUST 8, 2024/*rhc/AKT*

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