



2024:DHC:7099



\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 13.09.2024***+ **CS(OS) 29/2024 & I.A. 2564/2024**

SATISH GUPTA

.....Plaintiff

Through: Mr.Siddharth Aggarwal,
Mr.Gaurav Sindhvani, Advs.

versus

RACHNA GUPTA AND ANR

.....Defendants

Through: Ms.Manpreet Kaur, Adv.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****ORDER****13.09.2024**

%

1. This suit has been filed by the plaintiff praying for the following reliefs:

*“(a) Pass the permanent injunction restraining the defendants from entering into Property/Shop (22.46 Sq. Metres) and Godown (371.59 Sq. Metres) situated at J-37/D, Anand Parvat Industrial Area, New Rohtak Road, New Delhi-110005 and the creating third party interest of the same; and
(b) Award the costs of the present suit as also legal fees and court fees in favour of the Plaintiff and against the Defendants.”*

2. It is the case of the plaintiff that the plaintiff is the “lawful owner in possession” of the shop and godown situated at J-37/D, Anand



2024:DHC:7099



Parvat Industrial Area, New Rohtak Road, New Delhi-110005 (hereinafter referred to as the 'suit property') and doing his business from the said premises since 1998. The plaintiff asserts as under:

“3. That the Plaintiff is the lawful owner-in-possession of Shop and Godown situated at J-37/D, Anand Parvat Industrial Area, New Rohtak Road, New Delhi-110005 and is doing his business there since 1998.”

3. The plaintiff further asserts that the defendant no.1 along with certain goons has tried to enter the suit property and also put a lock at one door of the godown in its open condition below the lock of the plaintiff, because of which the Godown is lying open and plaintiff's goods may be stolen or misused by someone at any point of time.
4. The plaintiff asserts that the defendants and their representatives, agents are not authorized to enter the suit property and therefore, prayed for the above relief.
5. This Court by its *ex parte ad interim* order dated 12.01.2024, restrained the defendants from causing any interference in the peaceful enjoyment of the suit property as also in the business of the plaintiff.
6. The defendants thereafter filed an application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (in short, 'CPC'), being IA No.2565/2024, *inter alia* complaining that the plaintiff has concealed various facts from this Court, including the Will dated 05.06.2008 left behind by the grandfather of the



2024:DHC:7099



plaintiff and the defendant no.2, and proceedings seeking the probate thereof, being Probate Case No.65/2010 titled “**Deepak Bansal v. State & Ors**”. It was pleaded that the said Probate Petition was granted by the learned Additional District Judge *vide* judgment dated 15.07.2015, dismissing the objections of the plaintiff against the same.

7. The defendants also produced on record various documents showing their possession over the suit property.
8. This Court by a detailed judgment dated 02.02.2024, vacated the interim order on ground of concealment of facts, observing as under:

“4. Ld. Counsel has taken the Court through the full set of documents such as various police complaints, which were filed and certain assurances which were given by the respective parties before the police.

5. In addition, she has also taken the Court through the judgment in Probate Case no.65/2010, in respect of the Will dated 5th June, 2008 left behind by the grandfather of the Plaintiff and Defendant No.2, vide which the suit property bequeathed to Plaintiff and Defendant No.2.

6. The Court has also perused various photographs of the suit property, which would actually show that there was partition of wall between the two portions of the property.

7. A perusal of the record would show that due to the breaking of the partition wall both parties had approached the police authorities. The parties had then given undertakings before the police to the following effect:

Undertaking of Mr. Atul Gupta:

*“SHO, Anand Parbat Indl. Area,
New Delhi 23/ 11 /2023*

Res. Sir,

Re: J-37/D, Anand Parbat Indl. Area Delhi,



2024:DHC:7099



New Delhi-110076.

The above said property situated at Anand Parbat Indl. Area, N. Delhi is equally divided into two parts and has two separate entry gates. One part was occupied by me and other part was occupied by me and other part was occupied by my brother Mr. Satish Gupta.

Since, last three - four years, I was not well and hospitalized twice and was unable to visit the above property regularly. My wife Rachna Gupta visited the property occasionally during my illness.

On 29.10.2023, visited the property and found that Mr. Satish Gupta has partly the partition was in the property and placed his goods in my position.

On 29/10/23 my wife called 100 No. twice and the SHO requested both of us to mutually resolve the matter by 10/ 11/23 and he agreed for the same.

But he Mr. Satish Gupta gave no response till date.

He also filed complaints against us and not vacating the premises or removing his goods.

I am enclosing herewith copy of my grandfather Late Mr. Madan Lal Gupta who has clearly stated in his will that both of us are already having possession of above property.

Thanking you.

Encl: Copy of Will.

Yours faithfully

Sd/(Atul Gupta)

Mo. 98111-61202”

Undertaking of Mr. Sagar Gupta and Devika Sharma:

“The SHO

Anand Parbat

Delhi-110005

Dear Sir,

9/11/2024

I would like to submit that today on 9/1/2024 we made a call for unauthorized construction which was happening at J-37D, Gali no.-8, Anand Parbat Industrial Area, Delhi-5.



2024:DHC:7099



Actually this complete property has 2 gates and parts which is disputed property of my father Satish Gupta and Atul Gupta (said brother). I and Rachna Gupta (said Aunt) has come under resolution that we will put separate lock on each gate separately. One lock by us and other lock by Rachna Gupta. No construction inside the property will happen during this time and I can completely sell or remove my material within 4 days. This property is under the supervision and in High Court. I will main status quo till then and all the material & said goods are mine and not there.

Sd/-

9/1/2024

Regards

Sagar Gupta

9810219499

S/o Satish Gupta

Current at - 3306, Siena Tower,

Mahagun Mezzaria

Sector-78, Noida U.P.

Sd/-

9/1/24

Devika Sharma

3306, Mahagun

Mezzaria

Sec78, Noida

UP

9899738085

Undertaking of Ms. Rachana Gupta:

I Rachna Gupta W/o Atul Gupta resident of J-46, Sarita Vihar, New Delhi. The said property J-37D A.P.I. A Delhi is for jointly owned by my husband Atul Gupta and his brother Satish Gupta we have settled for a possession of one portion each therefore each of us will lock one portion separately. They have agreed to remove their stuff in 4 days. The property will remain as it is till further notice."

Regards

Sd/-

9th Jan 24



2024:DHC:7099



*Rachna Gupta
(W/o Atul Gupta)
9899774727*

8. The above assurances and the Probate petition judgement show that there was a serious dispute and parties had already resolved the same, before the police authorities. However none of these facts have been disclosed to the Court in the plaint which was presented. An impression was sought to be given that the Plaintiff is in exclusive possession of the property. However, the photographs, the undertakings to the police etc., show the contrary. There appears to have been clear partition walls separating the two portions, i.e., of the Plaintiff and the Defendants, in respect of which police complaints have also been filed. All these facts have been suppressed from the Court.

9. The Defendants have been deprived of using their own portion of the property owing to the ex-parte order. When the matter was called out in the morning, a passover was sought on behalf of the Counsel's colleague. After the passover, the Counsel for the Plaintiff has appeared and when confronted with the question as to why the complaints and the judgement in the probate case have not been disclosed, there is no satisfactory answer which is forthcoming.

10. In view of above, it is evident that the Plaintiff had suppressed information at the interim application stage and the Defendants have been bereft of accessing their rightful property."

9. The learned counsel for the defendants submits that the present suit is not maintainable inasmuch as, the suit property has devolved jointly on the plaintiff and the defendant no.2 from



2024:DHC:7099



their grandfather-Late Sh.Madan Lal Gupta. This has also been mentioned in the Will dated 05.06.2008 left behind by their grandfather, for which probate was granted by the judgment dated 15.07.2015 hereinabove. She submits that the claim of the plaintiff of being the exclusive owner of the property is, therefore, false to the own knowledge of the plaintiff and has been made only to obtain favourable order from this Court.

10. She also draws my attention to the various documents to show that part of the suit property had also been in possession of the defendant no.2.
11. On the other hand, the learned counsel for the plaintiff submits that mere concealment of facts cannot be a ground to dismiss the suit.
12. He further submits that the plaintiff is in settled possession of the suit property and therefore, cannot be dispossessed without the defendants taking due process of law.
13. To a pointed query of this Court, as to whether any document of title to the suit property has been placed on record, the learned counsel for the plaintiff submits that for a suit for injunction, the plaintiff need not plead or show title to the property. He places reliance on the judgment of the Supreme Court in **Rame Gowda (D) by LRs. V. M.Varadappa Naidu (D) by LRs & Ors.** (2004) 1 SCC 769; and of this Court in **Saleem & Ors. v. Wahid Malik.** 2022:DHC:4035.
14. I have considered the submissions made by the learned counsels for the parties.



2024:DHC:7099



15. As is evident from a bare reading of the plaint, the plaint is not founded on an assertion of mere possession of the suit property by the plaintiff. The plaintiff has categorically asserted that he is the sole owner of the suit property and is in possession of the same as the owner thereof.
16. The ownership is seriously disputed by the defendants by placing on record the Will of the grandfather dated 05.06.2008 and the judgment dated 15.07.2015 passed in the probate petition, which was concealed by the plaintiff from this Court.
17. In the Will dated 05.06.2008, late Mr.Madan Lal Gupta, grandfather of the plaintiff and the defendant no.2, insofar as the suit property is concerned, had stated as under:

“XI. That I have not given any share in my properties as covered in this Will, to my other sons and daughters because:

xxx

b) My two elder sons, namely Late S}). Om Prakash and Late Sh. Anand Prakash, have already expired. However, in their lifetimes I have given sufficient to them and their respective son/s are well settled in life and have sufficient means and properties in their names. Further my these two sons have left sufficient estate for their son/s and other members of their respective families. However I wish to state here that I had the possession of a property at J-37-D, A.P.I.A., New Rohtak Road, Delhi. This property was being used by Shri Om Prakash in his life time and after his death his two sons Satish Gupta and Atul Gupta are using it jointly. I wish that Satish and Atul continue to possess and use this property.”

18. The learned Additional District Judge, Central District, vide



judgment dated 15.07.2015, granted Probate of the said Will, dismissing the objections of the plaintiff thereto.

19. Though the learned counsel for the plaintiff has asserted that vide the above referred judgment, the Probate of the Will was granted only for the property bearing no.6A, Under Hill Lane, Civil Lines, Delhi-110054, the fact of the Will and the judgment is not even pleaded, leave alone any documents of title being filed on record to show as to how the plaintiff became the sole owner of the suit property.
20. In ***Anthula Sudhakar v. P.Buchi Reddy (Dead) by LRs and Ors.*** (2008) 4 SCC 594, the Supreme Court clarified the circumstances where the plaintiff may file a suit for injunction simpliciter as against the situation where the plaintiff would necessarily have to pray for a decree of declaration of title along with the decree of injunction, as under:

“13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his



remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively,



2024:DHC:7099



he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.”

(Emphasis supplied)

21. The above judgment was also followed by the Supreme court in ***T.V.Ramakrishna Reddy v. M.Mallappa & Anr.***, (2021) 13 SCC 135, where the Court has held that where the plaintiff's title is not in dispute or not under a cloud, a suit for injunction could be decided with reference to the finding of possession, however, in cases where *de jure* possession has to be established on the basis of title to the property, a finding of title cannot be recorded in a suit for injunction unless there are necessary pleadings and appropriate issues regarding the title, either specific or implied, framed. Where the averments regarding the title are absent in the plaint and no relief is claimed thereon, the Court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction. I may quote from the judgment as under:

“10. It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive



suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

11. No doubt, this Court has held that where there are necessary pleadings regarding title and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. However, it has been held that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction.

12. Further a suit simpliciter for injunction may not be maintainable as the title of the property of the plaintiff/respondent was disputed by the appellants/defendants. In such a situation it was required for the respondent/plaintiff to prove the title of the property while praying for injunction. Reference can be made to the judgment of this Court in Anathula Sudhakar v. P. Buchi Reddy (Dead) by Lrs.”

(Emphasis supplied)

22. The Supreme Court again reiterated the above view in ***Tehsildar, Urban Improvement Trust & Anr. v. Ganga Bai Menariya (Dead) Thr. LRs & Ors.*** 2024 SCC OnLine SC 169, observing as under:

“21.1 Further a suit simpliciter for injunction may not be maintainable as the title of the property of the plaintiff /respondent was disputed by the appellants /defendants. In such a situation it was required for the respondent /plaintiff to prove the title of the property while praying for injunction. Reference can be made to the judgment of this Court in Anathula Sudhakar v. P.Buchi Reddy (Dead) by LRs and Ors.”



2024:DHC:7099



23. In the present case, the plaintiff has filed the present suit claiming exclusive ownership of the suit property. He also claims exclusive possession thereof. Both the above assertions stand seriously disputed in view of the documents filed by the defendants. The plaintiff has, in fact, filed no documents to show the basis of his exclusive title to the suit property. As far as his exclusive possession is concerned, this Court, has already in its Order dated 02.02.2024, found the same to be based on concealment of facts. Therefore, the plaintiff cannot even be said to be in “settled possession” of the suit property.
24. In ***Rame Gowda*** (supra), the Supreme Court was considering the case where the plaintiff therein had filed a suit alleging his title and also possession over the disputed piece of land. The learned Trial Court therein had found that though the plaintiff had failed in proving his title, he had succeeded in proving his possession over the suit property, which he was entitled to protect unless dispossessed therefrom by due process of law. The learned Trial Court also found that the defendant therein had also failed in proving his title over the disputed land so as to substantiate his entitlement to evict the plaintiff. The plaintiff was found to be in “settled possession” of the suit land. It was in those facts that the Supreme Court held that where the plaintiff is in settled possession or effective possession of the suit property, though without title, he would be entitled to protect his possession even against the true owner. The Court, however, clarified that a stray



2024:DHC:7099



act of trespass or a possession which has not matured in a settled possession, would not be sufficient in such circumstances.

25. In ***Salim*** (supra), the learned Single Judge of this Court reiterated the above position in law. In the said case, the defendant therein, barring making bald assertion in the written statement, had led no evidence at all to show any title in the suit property or to show the possession thereof.
26. In the present case, as noted hereinabove, the plaintiff has failed to file any documents on record or even make an averment as to how the title of the suit property is claimed by him. His claim of being in exclusive possession to the Suit Property, has been belied by the documents filed by the defendants. The above two judgments, therefore, would not come to the aid of plaintiff.
27. On the other hand, the defendants have placed on record the Will dated 05.06.2008 of late Sh.Madan Lal Gupta, which shows that the property belongs to defendant no.2 as well. In the Will, the testator claims that he had allowed the possession thereof to be retained by the plaintiff and the defendant no.2. The said Will has been probated. The defendants have also placed on record the documents to substantiate their claim to a partition wall being constructed and the defendant no.2 being in possession of his part of the suit property. The title and possession of the plaintiff, both are, therefore, in serious doubt and applying the ratio of the judgment of ***Anathula Sudhakar*** (supra), the plaintiff would first have to seek a declaration of his title and consequential relief of possession/injunction. The present suit simpliciter praying for



2024:DHC:7099



injunction, therefore, would not be maintainable.

28. In addition to the above, in terms of Section 36 of the Specific Relief Act, 1963, the relief of injunction is discretionary. In terms of Section 41(i) of the Specific Relief Act, injunction may be refused where the conduct of the plaintiff has been such so as to disentitle him to the assistance of the Court. In the present case, the learned predecessor Bench of this Court has already found that the plaintiff, due to concealment and mis-statement, has disentitled himself to an *ad interim* Order of injunction. The Court vacated the injunction granted in favour of the plaintiff. Keeping in view the above, the plaintiff is held not entitled to the relief of injunction.
29. It is also to be noted that the defendant no.2 is claiming himself to be the co-owner of the suit property. There cannot be an injunction against a co-sharer or co-owner. Reference in this regard may be made to the judgment of the Supreme Court in ***T. Ramalingeswara Rao (Dead) Through Legal Representatives and Anr. Vs N Madhava Rao and Ors.*** (2019) 4 SCC 608, wherein the Supreme Court held that the possession of one co-sharer is the possession of all co-sharers and where it is not shown that one of the co-sharers is in exclusive possession to the exclusion of the other, no case to claim injunction can arise.
30. I, therefore, find that the present suit is not maintainable. The same is dismissed, leaving it open to the plaintiff to seek relief in an appropriate suit.
31. The plaintiff shall pay costs of Rs.1 lac to the defendants within a



2024:DHC:7099



period of four weeks from today.

32. The pending application also stands disposed of.

NAVIN CHAWLA, J

SEPTEMBER 13, 2024
RN/DG

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: SUNIL
Signing Date: 20.09.2024
16:26:07

CS(OS) No.29/2024

Page 16 of 16