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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 12th September, 2024

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FAO 292/2024 & CM APPL. 53485-53486/2024

RACHNA PROTHI

.....Appellant

Through: Mr. Meet Malhotra, Sr. Advocate
with Mr. N K Kantawal, Mr.
Satyender Chahar, Mr. Chetan Singh,
Ms. Amaya Nair, Ms. Pallak Singha
and Ms. Sangeeta Gulati, Advocates.

versus

RAGHAV GOEL & ANR.

.....Respondent

Through: Mr. Akhil Mittal with Mr. Sunil
Mittal, Mr. Vivek Saigal and Ms.
Afnan Begum, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Appellant is plaintiff before learned Trial Court and has filed a suit for mandatory and permanent injunction.
2. Appellant had filed one application under Order XXXIX Rule 1 CPC and the defendants therein had also filed a similar application. Both these applications have been disposed of by common order dated 05.09.2024 whereby learned Trial Court has restrained the plaintiff from interfering with the peaceful physical possession of his property i.e. Shop No. 27, Ground Floor, Community Center, Saket and allowed the application of defendant.
3. Such order has been assailed by the plaintiff.
4. Plaintiff is owner and occupant of property bearing No. 27, Saket Community Centre, Saket, New Delhi-110017, which is situated at second floor.
5. According to plaintiff, he was having access to his aforesaid second

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floor premises from the front as well as from the rear entrance.

6. The suit in question is in respect of denial of access to his second floor premises from front entrance.

7. In the front, at the ground floor, there is a hall which is in the occupation of the defendant (respondent herein).

8. The defendant has access to such hall from front side through a door and also through a place where there is a rolling shutter which leads to a passage having width of 3'6'' and then, immediately, in the front there is a "partition wall" and some space eventually leading to staircase. If one takes turn to the left, it leads to said hall which is in the occupation of the defendant.

9. According to the plaintiff, the partition wall was erected, subsequently, in order to defeat his right to access from the front and such issue is already pending adjudication before the learned Trial Court and the case is already at the stage of defendant's evidence.

10. Admittedly, in the present petition, we are not concerned with the partition wall which has allegedly blocked the access of the plaintiff from front. It is though important to note that according to defendant, there was no access for the plaintiff from the above said front portion and the partition wall was there since beginning.

11. Presently, the dispute relates to wall in the shape of numerical seven (7).

12. Such wall in the shape of numerical seven is adjacent to the hall in the occupation of the defendant. Such wall is depicted in bold in site plan prepared when a Local Commissioner appointed by this Court in FAO No. 66/2022 had visited the suit premises along with architect and photographer



and submitted report with site plan on 09.09.2022. Copy of such site plan is attached with this order also for ready reference.

13. Learned counsel for defendant does not dispute that when the learned Local Commissioner had been appointed, he had prepared the site plan which indicates the position as it existed at that relevant point of time.

14. He, however, supplements that the said wall in the shape of 7, abutting the passage and adjacent to his hall is portion of his own hall and is under his ownership as per the sanctioned plan and he has every right to demolish such wall as it does not infringe the right and interest of the plaintiff, being inner part of his hall.

15. Per contra, learned Senior Counsel for plaintiff states that this is a part of his easementary rights because of the fact that he is permitted to have access as per the registered sale deed in his favour.

16. Admittedly, the suit in question is only with respect to the partition wall which if demolished would lead to staircase as well and since as on date, such partition wall is there, the plaintiff is in no position to use the front access.

17. When asked, learned counsel for the defendant, very fairly, admitted that eventually, if the suit filed by the plaintiff is decreed and he is directed to remove the partition wall, he would ensure that the other wall i.e. wall in the shape of numerical seven is restored to the original position as reflected in the above said site plan, while also reserving his rights to file appeal against any such decree or order.

18. In view of the above said statement made by the learned counsel for defendant, petitioner states that he does not press his appeal any further.



19. The appeal stands disposed of accordingly while directing respondent/defendant to remain bound by the above.

20. Since the case is already at the stage of defendant's evidence, it is expected that both the sides would render due assistance and cooperation to the learned Trial Court so that the suit is decided as expeditiously as possible.

(MANOJ JAIN)
JUDGE

SEPTEMBER 12, 2024/sw

