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

% **Date of decision: 21st March, 2025**

+ **FAO 213/2023, CM APPL. 43603/2023 & CM APPL. 43604/2023**

SHAKUNTALA & ORS.

.....Appellants

Through: Ms. Arti Bansal, Ms. Pinky Yadav and Ms. Shruti Geol, Advs.

versus

MURTI DEVI & ORS.

.....Respondents

Through: Mr. Kunal Kalra and Mr. Yaman Yadav, Advs.
Ms. Saroj Bidawat, Standing Counsel for MCD.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The appellants have preferred the present appeal under Section 104 read with Order XLIII Rules 1&2 read with Section 151 of the Code of Civil Procedure, 1908 [“CPC”] thereby assailing the interim order dated 28.06.2023 passed in CS DJ No. 687/2022, whereby the learned Additional District & Sessions Judge-02, North West, Rohini Courts, Delhi [“**trial Court**”] has been pleased to restrain the appellants from raising any illegal or unauthorized construction in the suit property and also from creating any third party interest therein, till the disposal of the suit.
2. Briefly stated, the respondents/plaintiffs have filed a suit seeking possession of the suit property claiming that they are the



owner and *Bhoomidar* thereof having an acquired right, title and interest in the suit property through their ancestors. It is not necessary to go through the family tree, which has been pleaded by the respondents, and suffice to state that the appellants have trespassed into the suit property admeasuring 250 sq. yards sometime in the year 2021, regarding which some police complaints were filed but no action was taken. It is claimed by the respondents that legal notice was given to the appellant No.1 calling upon her to handover the possession of the suit property but neither the possession has been handed over nor any rent/ damage charges have been paid. Hence, reliefs seeking possession of the suit property as also for payment of the damage charges w.e.f. January, 2022 @ Rs.1,00,000/- per month has been sought.

3. Suffice to state that the appellants have denied the assertions made by the respondents and they have claimed that they are in possession of the suit property since 1979 in their own rights.

4. Needless to say, that the learned Trial Court passed the impugned order dated 28.06.2023 on an application under Order XXXIX Rule 1 & 2 CPC moved on behalf of the respondents/plaintiffs, which is assailed in the instant appeal.

5. During the course of arguments, learned counsel for the appellants submitted that the suit property had been purchased by them in terms of the agreement to sell, GPA and other customary documents dated 10.10.1979 from Mahender Yadav and the property became urbanized sometime in 1982. It is submitted that the suit property comprises of ground floor and when the appellants sought to



carry out certain repairs in respect of a shed on the first floor, the present suit was filed in order to harass them. It is urged that the respondents keep on filing one application after the other on frivolous grounds, not even allowing them to carry out repairs and the impugned restraint order is irreparably affecting their legal rights to continue and enjoy the suit property in a peaceful manner.

6. Learned counsel for the appellants also relied on a decision by the Supreme Court in the case of **P. Kishore Kumar v. Vittal K. Patkar**¹ wherein the proposition of law was reiterated that mutation of the name in the revenue records does not confer any right, title or interest in favour of any person and it is only for fiscal purposes.

7. *Per contra*, learned counsels for the respondents pointed out that earlier to the suit for possession, the respondents/plaintiffs had filed a suit seeking permanent injunction wherein written statement was filed by the appellants and the following plea was taken *vide* paragraph (17)

“That the fact remains that the possession of the defendants of the property is legal and authorised. The defendant No.1 is the owner of the property and she has been enjoying ownership rights as owner thereof for last 42 years. At all times, the Plaintiffs were well aware of the factual position of the settled possession of the defendants No.1 and her family. The defendants No.1 has been openly claiming herself to be the owner of the property to the knowledge of the Plaintiffs and the word at large and have been dealing with all the departments including Electricity Department as owner. The defendant No.1 has been enjoying uninterrupted possession of the suit property for the last 42 years and there has been no interference in her peaceful settled possession till 05.08.2021 when Umed Singh along with some miscreants visited the property of the defendant No.1. The defendants No.1 has been living in the said property with her family for last 42 years in her

¹ Civil Appeal No. 7210 of 2011 dated 20.11.2023



own right as owner of the property and has been enjoying the ownership and possessory rights thereof, without any interruption and/or objection from any at any point of time.”

8. It is urged that in the previous suit, no plea was taken by the appellants that they are occupying their premises by virtue of the agreement to sell and other customary documents dated 10.10.1979. Although it is acknowledged that the said suit was withdrawn and the second suit of possession and damages has been filed, it is also vehemently urged that Mr. Mahender Yadav had no right, title or interest to sell the suit property in favour of the appellants either.

ANALYSIS AND DECISION:

9. Having heard the learned counsels for the parties and on perusal of the record, it would be expedient to reproduce the operative portion of the impugned order dated 28.06.2023, which reads as follows:

“4. In para 25 of W/S (P.O.), it is pleaded by the defendant no.1 to 3 that they came to know that the said persons had given up all his rights in Khasra no.208, Haiderpur, to one Mangat Ram in the year 1987. In para 23 (P.O.) of the W/S filed by the defendants in suit no.1059/21 in the case titled as *“Umed Singh Vs. Shakuntla & Ors.”* before the Court of Sh. Sushil Kumar, Ld. JSCC/ AS,CJ/GJ (N/W) it is pleaded that the defendant no.1 has come to know that Sh. Jagdish Chander had given up all his rights in the suit property to one Sh. Mangat Ram in the year 1987. It is pertinent to mention here that the defendant no.1 to 3 in the said suit are the very same persons as defendant no.1 to 3 in the present suit.

5. Hence, on the basis of the material available on record, a prima-facie case is made out and balance of convenience is also found lying in the favour of the plaintiffs and against the defendants.

6. Accordingly, the application is allowed. Consequently, the defendant no.1 to 3 are hereby restrained from raising any illegal and unauthorized construction at suit property and also from creating any 3rd party interest in the suit property i.e. Khasra no.208. Haiderpur, Delhi till the disposal of the suit.”

10. A bare perusal of the aforesaid order would show that the learned trial Court has not cared to satisfy the well-established ‘trinity test’. There is no reason given as to how or in what manner the



respondents/plaintiff have any right, title or interest in the suit property. The fact that the appellants are in possession of the suit property is not denied by the respondents except it is disputed that they are in possessory rights for more than 42 years.

11. On a careful perusal of paragraph (17) of the written statement alluded by the learned counsel for the appellant, it is difficult to raise an inference that a plea of adverse possession was taken by the appellants. Be that as it may, the respondents are failing to *prima facie* establish that they have any legal right, title or interest in the subject property. It is not denied that the appellants are in occupation of the suit property and have raised construction thereupon. It would, however, be open to the respondents/plaintiffs to prove their right, title and interest in the suit property during the course of trial.

12. Lastly, the impugned order passed by the learned trial Court thereby, restraining the appellants from raising any construction on the suit property is uncalled for since the area is already urbanized and if any illegal unauthorized construction is undertaken by the appellants, the Municipal Corporation of Delhi shall be at liberty to take action in accordance with law.

13. In view of the above, the impugned order dated 28.06.2023 is hereby quashed. It is, however, directed that in case the appellants propose to sell the suit property to any third person during the pendency of the case, they shall intimate the same to the court concerned so that it does not lead to multiple proceedings and prejudice the legal rights of the respondents/plaintiffs in any manner.

14. The present appeal is disposed of without prejudice to the rights



and contentions of the parties. All contentions shall remain open to be addressed during the course of trial.

15. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

MARCH 21, 2025 / *Sadiq*