



2025:DHC:11488



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 15.12.2025***+ **FAO 329/2022 and CM APPL. 55417/2022****SAROJ RANI**

.....Appellant

Through: Mr. Arun Baali and Ms. Arisha  
Ahmad, Advocates.

versus

**SUMIT SALUJA & ORS.**

.....Respondents

Through: Mr. Rachit Gupta and Mr. Kuldeep  
Kumar, Advocates.**CORAM:****HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA****JUDGMENT (ORAL)****CHANDRASEKHARAN SUDHA, J.**

1. This present appeal has been filed under Order XLIII Rule 1(r) of Code of Civil Procedure (the CPC) by defendant no.2 in Civil Suit No. 917/2021 on the file of ADJ-07, Tiz Hazari Courts, Delhi assailing the order dated 01.09.2022, whereby the application filed under Order XXXIX Rule 1 & 2 CPC by the plaintiffs was allowed and the defendants, their family members, and any other persons acting for and on their behalf have been



restrained from carrying out any illegal or unauthorized constructions and from creating any third party interest in the suit property till the final disposal of the related main suit.

2. Unless otherwise specifically stated, the parties hereinafter shall be referred to as they were described in the original proceedings.

3. In the plaint, it is alleged thus: The suit property (a building consisting of ground, first & second floor along with roof & land underneath on the plot bearing no.7, road no.23, in class D, measuring 278.19 sq. yds., situated in East Punjabi Bagh. Village Bassai Darapur, New Delhi-110026) was initially allotted to Late Sh. Saran Dass Vohra on 19.08.1958 by the Refugee Co-operative Housing Society Ltd. and subsequently conveyed to him by registered sale deed dated 26.02.1962. He transferred the property to Sh. Inder Jit Narula by registered sale deed dated 15.01.1964. Thereafter, Sh. Inder Jit Narula transferred  $\frac{3}{4}$  share to his brothers namely Sh. Joginder Lal Narula, Sh. Amrit Lal Narula, and Sh.



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Balbir Chand Narula by registered sale deed dated 22.04.1965, resulting in all four brothers holding equal shares 25% each. Then, the Construction of a building was carried out in the suit property in 1965 after obtaining sanctioned plans from (Municipal Corporation of Delhi) MCD vide file no. 3346/B/65 dated 19.04.1965, though no formal partition ever took place.

3.1. Subsequently, Sh. Amrit Lal Narula sold 15 % share to Sh. Joginder Lal Narula on 31.07.1993 and the remaining 10% share to Sh. Inder Jit Narula on 27.04.1994. As a result, Sh. Joginder Lal Narula held 40% share and was in possession of the ground floor, Sh. Inder Jit Narula held 35% percent share and was in possession of the first floor, and Sh. Balbir Chand Narula held 25% share and was in possession of the second floor with roof rights. Sh. Inder Jit Narula sold his 35% share to Sh. Shyam Sunder Juneja on 02.09.1996, who further sold the same to Sh. R K Aggarwal and plaintiff no. 2, viz., Smt. Sunita Aggarwal vide sale deed dated 25.11.1999. Upon the death of Sh. R K Aggarwal



intestate, his legal heirs, i.e., plaintiff no. 2 and her two daughters became co-owners of the first floor of the suit property.

3.2. Sh. Joginder Lal Narula sold the entire ground floor without roof rights to one Smt. Babita Malhotra on 24.06.2005, who further sold it to plaintiff no.1, Sh. Sumit Saluja and Smt. Neelam Saluja i.e., mother of plaintiff no. 1 on 18.12.2020. Therefore, plaintiff no. 1 along with his mother are in possession of the ground floor of the suit property, while plaintiff no. 2, Sunita Aggarwal, together with the other legal heirs of R K Aggarwal, is in possession of the first floor of the suit property.

3.3. Meanwhile, Sh. Balbir Chand Narula transferred the entire second floor with roof rights to Sh. Khushi Ram Kukreja by agreement to sell dated 11.09.2000. After the death of Sh. Khushi Ram Kukreja intestate on 15.11.2003, his son, defendant no.1, Sh. Mahinder Kukreja came in possession of the second floor and roof and during 2005 – 2006 constructed a room with a toilet on the roof.



3.4. During the year 2020, defendant no.1 carried out illegal and unauthorized constructions on the terrace by raising rooms, bathroom, and kitchen, encroaching upon the shaft area and making structural changes without permission. Complaints were made to the police and North Delhi Municipal Corporation (NDMC), defendant no. 3, but, no effective action was taken. Defendant no.1, thereafter, sold the second floor to defendant no. 2, Smt. Saroj Rani on 08.04.2021, describing the illegal construction over the terrace as a third floor. In October and November 2021, defendant no.2 commenced further unauthorized construction. The plaintiffs requested the defendants to stop the construction and also approached the authorities concerned regarding the construction being carried out without any sanctioned plan; however, all such efforts went futile.

3.5. In consequence, the plaintiffs filed the suit seeking declaration, permanent and mandatory injunction, and damages,



alleging that the sale deed executed between defendant no.1 and defendant no.2 is false and fabricated, intended to legalise the illegal construction on the terrace by describing it as a third floor, aimed at unlawfully claiming absolute ownership, and made to create third party interest.

3.6. The plaintiffs also filed an application under Order XXXIX Rules 1 & 2 before the trial court seeking an interim injunction restraining the defendants from carrying out any illegal or unauthorized constructions in the suit property and from creating any third-party interest therein till the disposal of the suit.

3.7. *Per contra*, the defendants contended that the suit was filed to pressurize them into accepting the plaintiffs' proposal to demolish and reconstruct the entire building, while offering the defendants only one floor in place of the two floors in their possession. They denied having raised any unauthorized constructions and asserted that only permissible repairs were carried out, with all existing construction dating back to the year



2000. They further claimed that the third floor was constructed prior to the cut-off date under the Special Protection Act, rendering it immune from punitive actions from Municipal Authority. On these grounds, the defendants sought dismissal of the suit.

4. After hearing both sides and perusing the materials on record, the trial court, vide order dated 01.09.2022, allowed the application and granted interim injunction insofar as the plaintiffs, being in possession and owners of the ground floor and first floor of the suit property, would be adversely affected by any unauthorized construction or creation of third party interest, particularly, when the sale deed executed by defendant no.1 in favour of defendant no.2 is under challenge and further directed the defendants, their family members, or any person acting for and on their behalf to be restrained from carrying out any illegal or unauthorized construction in the suit property and also from creating any third party interest therein till the final disposal of the suit.



5. Aggrieved by the decision *vide* order dated 01.09.2022, defendant no. 2 has preferred the present appeal.

6. Heard both sides.

7. According to the learned counsel for the appellant/ defendant no. 2, when he relies on a registered sale deed in support of his claim over the property, the trial court ought not to have allowed the prayer for interim injunction. It is also submitted that the fact that a sale deed exists in his favour has been admitted in paragraph 9 of the plaint and, therefore, in such circumstances, there was no justification for the impugned order.

8. *Per contra*, it is submitted by the learned counsel for the respondents / plaintiffs that the sale deeds in favour of defendant no. 2 have been challenged in the suit. According to the respondents / plaintiffs, they have 75% share in the disputed property whereas defendant no. 1 has only 25% share in the property. Despite the same, a sale deed has been executed by defendant no. 1 claiming to have 50% share in the property in



favour of defendant no. 2. The sale deed has been challenged in the suit. Therefore, there is no infirmity in the order that has been passed by the trial court calling for an interference by this Court, goes the argument.

9. The extent of share of the parties in the property and whether the sale deed relied on by the rival contestants do actually confer title as claimed by them is a matter that requires to be adjudicated by the trial court based on the evidence led during the trial court. The order that has been granted by the trial court is only to the extent of not creating any third-party interest in the property or from making any constructions. This order, in the facts and circumstances of the case, is necessary to preserve the subject matter till the trial court is finally able to adjudicate on the rival claims. I do not find any infirmity, calling for an interference by this Court.

10. The appeal *sans* merit is, thus, dismissed. Applications, if any, pending, shall stand closed.



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11. The trial court shall endeavor to dispose of the case at the earliest.

**CHANDRASEKHARAN SUDHA  
(JUDGE)**

**DECEMBER 15, 2025**  
kd/RN

Signature Not Verified

Signed By: KOMAL  
DHAWAN  
Signing Date: 18.12.2025  
15:52:04

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