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

+ **CM(M) 3300/2024**

RAJAN DAS GUPTA AND ANR

.....Petitioner

Through: Mr. Brij Bhushan Gupta, Sr. Adv.
with Mr. Saurabh Seth, Ms.
Neelampreet, Ms. Manoj Kumar, Mr.
Abhiroop Rathore, Mr. Manas Arora,
Ms. Ananya Garg, Mr. Tapojit Sarker,
Ms. Achal Gupta and Mr. Karan Jain,
Advs.

versus

ASHOK DHAR AND OTHER

.....Respondents

Through: Respondents in person.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

27.02.2025

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CM APPL. 831/2025 (early hearing)

1. This is a petition under Article 227 of the Constitution of India, impugning the judgment dated 22.08.2024, passed by the learned District Judge-01, South East District, Saket Court, Delhi in Misc. Civil Appeal No. DJ 05 of 2024, titled "*Rajan Das Gupta & Anr. Vs. Ashok Dhar & Ors.*" and order dated 15.03.2024 passed by the learned ACJ-cum-CCJ-cum-ARC, South East District, Saket COURT Complex, Delhi in CS SCJ No. 1423/2023.
2. Petitioner No. 1 is an Advocate, having its law office in the basement of suit property i.e. G-68, East of Kailash, New Delhi-110065. The property



was purchased in the name of the petitioner No. 2 (wife of petitioner No. 1) vide registered sale deed dated 28.09.2021.

3. It has been submitted by the learned counsel for the petitioner that since October 2021, petitioner No. 1 has been using the common main gate/entrance, passage and areas of the building but respondents No. 1 to 3, who are the occupants of the first floor, upper ground floor, second and third floor, have been objecting and creating hindrances.

4. It is further submitted that in August 2023, respondents had installed a big iron gate in the internal common area towards the backside without the consent of the petitioner. Petitioner therefore filed a suit for declaration, permanent and mandatory injunction with an application under Order XXXIX Rule 1 & 2 CPC praying for the grant of temporary injunction.

5. The trial court, vide order dated 15.03.2024, dismissed the interim application filed under Order XXXIX Rule 1 & 2 CPC.

6. Aggrieved by the said order, petitioners preferred Misc. Civil Appeal No. MCA DJ 05/2024. However, the appeal has been dismissed by the Appellate Court vide impugned judgment dated 22.08.2024, confirming the findings of the learned trial Court in order dated 15.03.2024.

7. Learned counsel for the petitioner submits that respondent No. 3 was the owner of the subject premises that was jointly developed by respondent No. 3 and one Mr. Kewal Garg and that basement of the suit property was purchased by the petitioners vide sale deed dated 28.09.2021 from Mr. Kewal Garg in the name of petitioner No. 2.

8. Learned counsel for the petitioner has submitted that the appellate court and the learned trial court ignored the terms, specially 'Recital J' and 'Clauses 1,3,11,12,13 & 15' of the registered sale deed dated 28.09.2021,



through which, the said property was purchased in the name of petitioner No. 2 and thus petitioners have all rights, title and interest, easements, privileges and appurtenances thereto, with all rights in common and main entrances, passages, staircase and other common facilities and amenities.

9. The First Appellate Court was of the view that although the sale deed dated 28.09.2021 mentions that petitioners had the right to access the main gate of the suit property as well as the common areas, the sale deed has been granted in favour of the petitioners by Mr. Kewal Garg and not by respondent No. 3, who is the original owner of the suit property. The Court observed in its order that petitioners have not placed on record the chain of title documents i.e. agreement between respondent No. 3 and the builder to show that original owner transferred the rights to the builder, which he then transferred to the petitioners vide sale deed dated 28.09.2021. As no documents were placed on records, the Court was of the view that there does not exist a prima facie case in favour of the petitioners, which is required before grant of temporary injunction.

10. Learned counsel for the petitioner has placed strong reliance on the sale deed dated 29.10.2018, executed by respondent No. 3 in favour of Mr. Kewal Garg in respect of the entire basement as also the entire ground floor with entire stilt area with all rights, title and interest, easements, privileges and appurtenances thereto, with superstructure, electricity and water connections, fittings & fixtures, with all rights in common entrances, passages, staircase, lift and other common facilities and amenities provided therein for a total sale consideration of Rs. 1,96,50,000/-.

11. Learned counsel for the petitioner admits that the copy of the sale deed was not part of the judicial record either before the Trial Court or



before the First Appellate Court but states that the same has now been placed on record of the trial court.

12. The First Appellate Court dismissed the appeal mainly on the premise that the chain of the title documents i.e. agreement between petitioner No. 2 and the builder to show that the original owner transferred the rights to the builder, who then transferred the same to petitioner No. 2, have not been produced. The sale deed dated 29.10.2018 was never considered either by the Trial Court or by the First Appellate Court as the same was never produced. Since the same is now a part of the judicial record, it is deemed appropriate to remit the matter before the First Appellate Court to decide the application afresh in the light of the sale deed dated 29.10.2018, produced by the petitioners.

13. The impugned order dated 22.08.2024 is therefore set aside with direction to the First Appellate Court to hear arguments afresh on the application under Order XXXIX Rule 1 & 2 CPC and pass requisite orders as per law.

14. The next date i.e 19.03.2025 stands cancelled.

RAVINDER DUDEJA, J.

FEBRUARY 27, 2025

RM