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

+ **FAO 73/2023 & CM APPL. 13979/2023**

SH AZAD SINGH & ORS.

.....Appellants

Through: Mr. Akash Mehta, Mr. Jai Khapran,
Ms. Keshvam Punj, Ms. Pooja and
Mr. Apoorv Yadav, Advocates

versus

SMT SARITA CHOUDHARY

.....Respondent

Through: Mr. Vijay Kasana, Mr. Chirag Verma
and Mr. Vaibhav Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

11.05.2026

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1. The present appeal has been filed under Order XLIII Rule 1 of the Code of Civil Procedure, 1908(hereinafter 'CPC') by the appellants, being the defendants before the Trial Court, assailing the impugned order dated 25.01.2023 passed by the ADJ-03, South, *Saket* Courts, Delhi in CS DJ 79/2020.

2. *Vide* the impugned order, the Trial Court allowed the application filed by respondent/plaintiff under Order XXXIX Rule 1 & 2 CPC and restrained the parties from creating any third-party interest with respect to the suit property, i.e., the constructed property comprising the ground, upper ground, first, second and third floors constructed on a plot measuring 100 sq. yards situated in *Khasra* No. 610 (2-01), extended *Abadi* (Lal Dora) of Village *Devli*, New *Delhi*, till the final disposal of the suit.



3. Briefly stated, the plaintiff is the wife of defendant no.1/respondent no.1, sister-in-law of defendant no.2/respondent no.2, Aunt/*chachi* of defendant no.3/respondent no.3 and mother of defendant no.4/respondent no.4. It is the case of the plaintiff that she had purchased a vacant plot admeasuring 100 sq. yards from Sh. *Chander Bhan* by way of a registered Sale Deed dated 20.06.2016 for a sale consideration of Rs.19,46,500/-. The plaintiff further claims that after purchasing the said plot, she raised construction alongwith defendant no.1, and the entire constructed property comprising ground, upper ground, first, second and third floors was thereafter managed by defendant no.1, who let out the premises to tenants and collected rental income therefrom, but failed to pay any share thereof or render accounts to the plaintiff. According to the plaintiff, disputes subsequently arose between the parties and when she visited the suit property around August 2019, when she discovered that defendant nos.2 to 4, alongwith defendant no.1, had taken forcible possession of the suit property.

4. Learned counsel for the defendants submits that no *prima facie* case is made out in favour of the plaintiff inasmuch as the suit was initially filed claiming rights in respect of only 100 sq. yards, whereas the entire constructed property admittedly admeasures 441 sq. yards. It is further submitted that the plaintiff had admittedly executed a GPA in favour of a third party pursuant where portions of the property already is sold. It is contended that despite the aforesaid disputed facts, the Trial Court proceeded to grant protection merely on the ground of maintaining *status quo*, without recording any finding regarding *prima facie* case, balance of convenience or irreparable loss.



5. *Per contra*, learned counsel for the plaintiff submits that the Trial Court has rightly exercised its discretion in granting interim protection under Order XXXIX Rules 1 & 2 CPC. It is submitted that the plaintiff claims ownership over the suit property on the basis of a registered Sale Deed and has alleged that the defendants, who are close family members of the plaintiff, had illegally taken possession of the suit property. It is further submitted that the allegations regarding execution of the GPA and sale of portions of the property involve disputed questions of fact which can only be decided at trial.

6. I have heard the learned counsel for the parties and perused the records.

7. A perusal of the record shows that the plaintiff claims ownership and possession over the suit property on the basis of a registered Sale Deed dated 20.06.2016 executed by *Sh. Chander Bhan* in her favour, which according to her was purchased from her own hard-earned money. It is her case that disputes subsequently arose between her and defendant no.1, she later discovered that the defendants had taken forcible possession of the suit property.

8. On the other hand, the defendants contended that the land measuring about 2046 sq. yards comprised in *Khasra* No. 610, Village *Devli* originally belonged to Late *Sh. Ram Swaroop* and, upon his demise, devolved upon his legal heirs, namely *Sh. Suraj Mal*, *Sh. Chander Bhan* and the sons of *Sh. Prabhu* by way of an oral partition. According to the defendants, Late *Sh. Suraj Mal* had transferred his share in ancestral property bearing No. 280 situated in *Khasra* No. 135, Village *Devli* in favour of his brother *Sh. Chander Bhan* and, in lieu, *Sh. Chander Bhan* agreed to part with 200 sq.



yards out of *Khasra* No. 610, extended *Abadi* (Lal Dora) of Village *Devli*, New *Delhi* in favour of the legal heirs of Late *Sh. Suraj Mal*. It is further their case that 100 sq. yards each were transferred through registered sale deeds in favour of the wives of defendant no.1 and defendant no.2, though according to the defendants no actual sale consideration was paid.

The defendants further contend that thereafter the plaintiff and defendant no.1, alongwith one *Sh. Deepak Aggarwal*, a builder, undertook construction of the property measuring about 441 sq. yards, comprising 100 sq. yards in the name of the plaintiff and the adjoining 341 sq. yards to be in the name of defendant no.1. In connection, the plaintiff executed a registered GPA dated 19.03.2018 in favour of the said builder.

It is also the case of the defendants that matrimonial disputes arose between the plaintiff and defendant no.1 sometime in the year 2018 and divorce proceedings were initiated by defendant no.1 against the plaintiff.

9. In view of these rival contentions regarding title, possession, nature of the family arrangement, validity and effect of the GPA, and alleged transfers made to third parties, disputed questions of fact arise which cannot be adjudicated at the interlocutory stage and would necessarily require parties to lead evidence during trial. At this stage, the Court is only required to examine whether the subject matter of the suit deserves interim protection during pendency of the proceedings.

10. The contention of the defendants that the Trial Court failed to expressly record findings with respect to *prima facie* case, balance of convenience and irreparable loss also does not warrant interference with the impugned order. The material placed on record reflects that the plaintiff holds a registered Sale Deed dated 20.06.2016 in respect of the suit property.



The existence of the Sale Deed in favour of the plaintiff and the admitted relationship between the parties furnish sufficient basis, at this stage, to hold that the plaintiff has raised an issue requiring adjudication during trial. Even otherwise, a *prima facie* case stands established inasmuch as the defendants themselves do not dispute execution of the Sale Deed in favour of the plaintiff and have, on the contrary, set up a defence that the said transfer was pursuant to a prior arrangement. Further, creation of third-party rights during pendency of the suit would likely lead to multiplicity of proceedings which may cause irreparable prejudice to the rights of the parties. The interim protection granted is also limited in nature, inasmuch as the parties have merely been restrained from creating further third-party interest in the suit property.

11. Before proceeding further, it is well settled that while exercising appellate jurisdiction against an interlocutory order granting or refusing an injunction, the Appellate Court ought to be slow in interfering with the discretion exercised by the Trial Court. Interference is warranted only where such discretion is shown to have been exercised arbitrarily, capriciously, perversely, or in disregard of settled principles of law. [CR: Wander Ltd. v. Antox India (P) Ltd.¹; Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan²].

12. The grant of a temporary injunction is governed by the well-settled triad of principles, namely, the existence of a *prima facie* case, the balance of convenience being in favour of the applicant, and the likelihood of irreparable injury in the event relief is denied. These principles must co-exist and are to be assessed on a cumulative basis. [CR: Dalpat Kumar v. Prahlad

¹ (1990) Supp SCC 727

² (2013) 9 SCC 221



Singh³].

13. Tested on the anvil of the aforesaid principles as well as the material placed on record, this Court is of the considered opinion that maintenance of status quo with respect to the suit property is necessary so as to prevent creation of third-party rights and avoid multiplicity of proceedings.

14. Accordingly, this Court finds no grounds to interfere with the impugned order and deems it appropriate that *status quo* with respect to the suit property be maintained during pendency of the suit.

15. Therefore, the present appeal is dismissed alongwith pending application.

MANOJ KUMAR OHRI, J

MAY 11, 2026

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³ (1992) 1 SCC 719