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

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Judgment delivered on: 26.03.2021

+ FAO 124/2021 & CM APPL.12523-24/2021

SYED AIJAZ HUSSAIN

..... Appellant

versus

ISLAHUDDIN KHAN & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Javed Ahmad, Advocate, Advocate.

For the Respondent:

Mr. Thakur Sumit, Mr. Zaki Kazmi and Mr. Amit
Dogra, Advocates for R-1 & 2.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 17.03.2021 whereby the application under Order 39 Rule 1 & 2 CPC filed by the appellant seeking a restraint on respondents from carrying out any construction activity or changing the structure of the suit premises i.e. property No.38 admeasuring 84 sq.yards L Type situated at Noor Nagar, Jamia Nagar, Okhla, New Delhi and further from transferring, alienating or parting with possession or creating third party interest in the said property during the pendency of the suit has been dismissed.

2. The appellant/plaintiff had filed the subject suit for declaration, recovery of possession and mandatory injunction on 24.02.2021 seeking a declaration, declaring the General Power of Attorney,

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Agreement Affidavit all dated 17.05.1967 to be null and void having no relationship with the suit property No.38, Khasra No.176 admeasuring 84 sq.yards L Type, Noor Nagar, Jamia Nagar, Okhla, New Delhi and further seeking a decree of possession in favour of the appellant and a mandatory injunction to remove the illegal and unauthorised construction raised over the subject property.

3. The case set up by the appellant is that one Najamuddin Khan was the lawful and exclusive owner of the built up property and had purchased and occupied the same before 1970.

4. It is contended in the plaint that Najamuddin Khan was a Government employee in Uttar Pradesh and due to his transfer had to stay in different parts of Uttar Pradesh along with his family members. However, on holidays used to come to Delhi and stay in the suit property.

5. It is averred in the plaint that approximately 25-30 years back said Najamuddin Khan shifted to Agra with his family and started residing over there, however, he kept on visiting the property as and when he availed suitable opportunities.

6. It is alleged that for some time Qamaruddin (father of respondent No.1) was staying as a licensee in the suit property with his family members and subsequently shifted to Zakir Nagar, Okhla along with his family.

7. It is alleged that Qamaruddin, with the permission of

Najamuddin his elder brother, had let out the suit property and used to pay rent the rent received to the erstwhile owner (Najamuddin). It is alleged that after the demise of Qamaruddin his son i.e. respondent No.1 started taking care of the suit property and used to collect rent from the tenants and pay to Najamuddin.

8. It is alleged in the plaint that for the last 3-4 years respondent No.1 stopped paying the rent to Najamuddin though he was regularly collecting it from the tenants.

9. It is alleged that in March-April, 2020 due to Corona pandemic the tenants vacated the property and appellant purchased the suit property on 15.06.2020 by way of execution of General Power of Attorney, Agreement to Sell, Affidavit, Will, Possession Letter and receipt and appellant was put in lawful possession of the said property.

10. It is alleged that having become the lawful and exclusive owner of the property, appellant put his materials and belongings in the suit property.

11. It is further alleged in the plaint that in the first week of September, 2020 appellant had gone to his native place in Meerut and when he returned on 06.09.2020 he was shocked to notice that labourers were demolishing the property and on enquiry he learnt that respondent was raising construction of the property.

12. Appellant thereafter filed a suit for injunction (hereinafter

referred to as the 1st Suit) . It is alleged that in the said suit respondent claimed ownership based on documents executed on 17.05.1967. It is alleged that the documents are forged and fabricated as the documents relate to Khasra No.174 whereas the subject property is situated in Khasra No.176.

13. It is alleged that by order dated 23.12.2020 the application for injunction filed in the 1st suit was dismissed by the Trial Court against which an appeal was filed. Subsequently, the appeal as well as the 1st Suit was withdrawn on 18.02.2021 and consequently the present suit has been filed.

14. In the impugned order, the Trial Court has noticed that the appellant had claimed title under one Najamuddin Khan but had neither pleaded nor placed on record any title document in favour of Sh. Najamuddin Khan.

15. Trial Court has noticed that, during arguments, it was contended that Najamuddin Khan became owner of the said property based on possessory title, which was transferred to the appellant by way of an execution of the standard set of sale documents on 15.06.2020. It is thus claimed that appellant was in settled possession of the suit property through his predecessor Sh. Najamuddin Khan.

16. With regard to the dispute raised by the appellant about the Khasra number of the suit property being 174 or 176 the Trial Court has noticed that it is common knowledge that Khasra numbers are

given by the revenue authorities to agricultural land and with rapid conglomeration of the modern cities and dense population the land is occupied by small pieces of plots/houses and it is difficult to demarcate the specific location in any particular khasra numbers.

17. The Trial Court has noticed that the suit property has been shown to be bearing property No.38 situated in Jamia Nagar, Okhla and there was no dispute with regard to the physical existence of the suit property or its identification. Accordingly, the Trial Court found that the difference in Khasra number in the title documents was of no consequence.

18. The Trial Court relying on the judgment of the Supreme Court in *Suraj Lamp & Industries (P) Ltd vs. State of Haryana, (2012) 1 SCC 656* has noticed that appellant has not produced any registered document of title and has relied on unregistered documents and accordingly prima facie held that no right can be created by mere Agreement to Sell.

19. Learned counsel for the respondent contends that the execution of Agreement to Sell etc. is also disputed for the reason that the documents are alleged to have been executed on 12.06.2020 and 15.06.2020. He submits that in the situation of pandemic it was difficult for people to travel so there is a doubt that Najamuddin Khan aged 82 would have travelled from Agra to Delhi to execute the documents.

20. That apart, learned counsel submits that neither Najamuddin nor appellant were in possession of the subject property.

21. Appellant has relied on electricity bills of the year 2019 in the name of Najamuddin, ration card of the year 1970 as well as house tax receipts of 1967-1971 to claim possession of Najamuddin.

22. To my mind, said documents *prima facie* do not establish settled possession of Najamuddin. The electricity bill, though of the year 2019, does not show that any payment was made through a banking transaction that could have established that Najamuddin was continuing to pay the electricity bills.

23. The ration card of 1970 does not also establish possession for the reason that it is of the year 1970 and the possessory title claimed by the appellant of Najamuddin is till the year 2020 when he is alleged to have come in possession.

24. Similarly, the house tax receipts of 1967-1971 also do not establish *prima facie* settled possession of Najamuddin till the time he is alleged to have sold the property and transferred possession to the appellant.

25. Furthermore as is noticed from the plaint, that the plaintiff has himself stated that Najamuddin had shifted about 25-30 years back to Agra and the property was under various tenants with whom, Qamaruddin, the father of respondent No.1 and thereafter respondent No.1 had been dealing. They had been taking care of the suit property

and collecting rent from the tenants. Though it is alleged that they were paying the rent collected from the tenants to Najamuddin, but no material qua the same has been produced.

26. It is further averred in the plaint that in March-April, 2020 the tenants vacated the property. The plaint is very conveniently silent as to how Najamuddin or the appellant came in possession after the tenants allegedly vacated the premises. If respondent No.1 was admittedly dealing with the tenants, the tenants would have handed over possession to respondent No.1. The plaint does not disclose as to how the appellant or his predecessor Najamuddin could have come in possession without the respondent no. 1 handing over the possession to them.

27. Further, reliance placed by learned counsel for the appellant on the written statement filed by the respondents in the 1st Suit, to contend that they have admitted that Najamuddin was in possession of the subject property also does not further the case of the appellant in as much as it is the settled position of law that an admission has to be read as a whole.

28. Though a copy of the written statement has not been placed on record, however, it is contended that identical admission has also been made in the reply to the application under Order 39 Rule 1 & 2 CPC.

29. In the reply, it is stated by respondent No.1 that the father of respondent No.1 was taking care of upbringing and education of his

younger brothers and sisters including Najamuddin, who was studying at Delhi. Due to frequent foreign training and engagements, the father of respondent No.1 was not having enough time to take care of things like applying for electricity, water connection and paying house tax. Accordingly, in good faith he instructed his younger brother i.e. Najamuddin Khan to apply for the same. It is in these circumstances that the electricity meter or the house tax receipts are in the name of Najamuddin Khan.

30. Just because an electricity meter or house tax receipt is in favour of an individual does not by itself establish title of that individual in the absence of any title documents.

31. Further, it may be seen that appellant has relied on sale set documents that are unregistered. In the Agreement to Sell dated 12.06.2020, allegedly executed by Najamuddin Khan in favour of the appellant, there is a reference that he had purchased the property from one Ashfaq Ahmad son of Mr. Sher Mohd, r/o Okhla, New Delhi on 01.03.1965. The documents of title of Najamuddin have not been produced.

32. On a query, learned counsel for the appellant submits that said documents have been lost and a complaint is alleged to have been made to the police in the year 2018.

33. Clearly the Trial Court has not faulted in holding that appellant has failed to establish that Najamuddin was in uninterrupted peaceful

and continuous possession of the subject property.

34. Even at this stage, appellant has not been able to produce any document to establish that Najamuddin was in possession of the subject property till June, 2020, when he is alleged to have handed over physical possession to the appellant.

35. On the other hand, as noticed by the Trial Court, respondent had produced various letters issued by the bank, passport authorities, International Labour Office, MCD to show physical possession of Qamaruddin i.e. father of respondent No.1 to the suit property. Which, as per the trial court clearly refuted the claim of the appellant of uninterrupted possession.

36. Clearly the Trial Court has not faulted in holding that appellant has failed to show any *prima facie* case in his favour and has rightly dismissed the application under Order 39 Rule 1 & 2 CPC.

37. In view of the above, I find no infirmity in the order of the Trial Court. I find no merit in the appeal. The appeal is accordingly dismissed.

38. It is clarified that this Court has not expressed any opinion on the merit of the case of the parties and the opinion expressed is only *prima facie* for the purposes of the disposal of the application under Order 39 Rule 1 & 2 CPC.

MARCH 26, 2021/rk

SANJEEV SACHDEVA, J.

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