CS No.27735/16
Ram Kishore Tyagi Versus Ms. Ritu Bahari & Ors.

02.04.2019

Present : None

1. Vide this order, I shall dispose of an application under Order 39 Rules 1 & 2 CPC filed on behalf of the plaintiff for restraining the defendant no. 1 and her agents etc. from raising any further construction in the suit property bearing no. 46, Khasra no.68/09, Gali no.2/2, A Block, Ajeet Vihar, Burari, Delhi and from creating any third party interest till the disposal of the suit. Arguments have already been heard.

2. It is submitted by learned counsel for the plaintiff that the daughters of the plaintiffs, namely, Smt. Neelam Tyagi and Smt. Anju Tyagi are the lawful owners of built up suit property constructed on area 1 bigha 1 bishwa bearing Khasra No.68/9 Min, situated in the revenue estate of Village Burari, Delhi (now it is known as Ajeet Vihar Burari, Delhi). It is further submitted that the suit property is having a gali from beginning on its left side which is shown in red colour in the annexed site plan. It is further submitted that the defendant no.1 in connivance with the defendants no. 2 and 3 started raising illegal construction over the suit property on 06.04.2016 which is evident from the annexed photographs.

3. On the other hand, it is submitted by the learned counsel for the defendant no. 1 that the defendant no.1 is lawful and absolute owner and in possession of the suit property. The defendant no.1 and her husband raised a boundary wall along with a security room on the suit property in the year 1998 just after its purchase. It is further

submitted that the said room and boundary wall became dilapidated with the passage of time and the defendant no.1 only repaired the same which were already existed on the site. The plaintiff and some bad elements in connivance with each other want to grab or to purchase the suit property of the defendant no.1 on 1/4th of the total market value. It is further stated that the plaintiff is not the owner of the suit property and the same is benami property and purchased by them through black money. It is denied that the suit property is having a gali right from beginning in its left side which is shown in red colour in the annexed site plan.

4. It is submitted on behalf of the defendant no.2/North DMC that during inspection of the suit property neither any construction was found nor any building material was found stacked at site.

5. I have given my thoughtful consideration on the submissions made on behalf of the parties.

6. Admittedly, the plaintiff is not the owner of the suit property. The plaintiff has alleged his daughters are the owner of the suit property. The present suit has not been filed by the owners of the suit property. It is averred in the plaint that the plaintiff has instructions and authority from his daughters to file the present suit, however no such document has been filed by the plaintiff on record to prima facie show that the owners of the suit property has authorized him to file the present suit on their behalf. More over, as per the status report filed by the defendant no.2/North DMC, neither any construction was found nor any building material was found stacked at site at the time of inspection of the suit property.

7. Considering the above facts and circumstances, I am of the considered opinion that no prima facie case is made out in favour of the plaintiff. For the same reasons, the balance of convenience is also tilted against the plaintiff. Plaintiff has also failed to show any irreparable loss likely to be suffered by him in case injunction is not granted in his favour.

8. In view of afore-stated discussion, the application under Order 39 Rules 1 & 2 CPC is dismissed. Nothing stated herein above shall tantamount to be my expression on merits of the case.

9. Put up for admission-denial of documents and framing of issues on **27.08.2019.**

(V.K. Gautam)
ASCJ (Central)/Delhi
02.04.2019