

IN THE COURT OF SH. BHARAT AGGARWAL, LD. CIVIL JUDGE –
02, WEST DISTRICT, TIS HAZARI COURTS, DELHI

SUIT NO.1535/2018

1. Sh. Vijay Kumar Gupta
S/o Late Sh. Dhajja Ram Gupta,
R/o J-125, Second Floor, Kirti Nagar,
Delhi – 110015
2. Smt. Rajkala Gupta
W/o Late Sh. Rajendra Kumar Gupta
3. Sh. Sumit Gupta
S/o Late Sh. Rajendra Kumar Gupta
2 & 3 are R/o J-125, First Floor, Kirti Nagar,
Delhi – 110015
4. Smt. Chitra Aggarwal
W/o Sh. Ajay Aggarwal
D/o Late Sh. Rajendra Kumar Gupta,
R/o 416, Second Floor, Kohat Enclave,
Pitampura, Delhi – 110034
5. Smt. Shammi Garg
W/o Sh. Pawan Garg
R/o B-63 & 64, First Floor, Inderpuri,
Delhi – 110012
6. Sh. Rajkumar Gupta
S/o Late Sh. Dhajja Ram Gupta,
R/o M-45, Second Floor, Kirti Nagar,
Delhi – 110015
7. Smt. Anju Singhal
W/o Sh. Sushil Singhal,

D/o Late Sh. Dhajja Ram Gupta,
R/o PU 108, Pitampura, Delhi

.....**PLAINTIFFS**

VERSUS

1. Smt. Kanta Panesar
W/o Late Sh. Mahinder Singh
2. Sh. Tejpal Singh
S/o Late Sh. Mahinder Singh
3. Smt. Devender Kaur
D/o Late Sh. Mahinder Singh
All R/o 2253/C-2, First Floor,
Mandir Wali Gali, Shadipur,
Patel Nagar, New Delhi - 110008

.....**DEFENDANTS**

Suit filed on – 27/11/2018

Judgment Reserved on – 23/07/2020

Date of decision – 23/07/2020

**SUIT FOR POSSESSION/EJECTMENT, ARREARS OF RENT,
DAMAGES AND PERMANENT INJUNCTION**

EX-PARTE JUDGMENT: -

By this ex-parte judgment, I shall adjudicate a suit for possession/ejectment, arrears of rent, damages and permanent injunction filed by the plaintiffs against the defendants. Before adjudicating upon the issues framed in the present suit, it is necessary to state the pleadings in the present suit concisely.

1. The brief facts of the case are that the present suit has been filed by the plaintiffs against the defendants seeking possession in respect of the

property i.e. House No.2253/C-2, Mandir Wali Gali, Shadipur, Patel Nagar, New Delhi-110008 as shown in red colour in the site plan (hereinafter referred to as the “**suit property**”). The plaintiff has also sought for recovery of arrears of rent of Rs.96,000/- and recovery of Rs.26,000/- towards agreed rent with the interest @ 24% per annum alongwith damages of Rs.1000/- per day from 01/11/2018 till 24/11/2018 and decree of permanent injunction restraining the defendants from creating any third party interest in the suit property.

It is stated that plaintiffs are the joint and exclusive owners of the suit property admeasuring 54.17sq. yds. consisting of ground and first floor. It is stated that one of the co-owners of the suit property namely Sh. Rajinder Kumar Gupta has already expired and left behind his legal representatives i.e. the plaintiffs no.2 to 4. It is further stated that plaintiff no.1 has been duly authorized by all other plaintiffs by virtue of Special Power of Attorney dt.22/11/2018 to pursue the present case. It is stated that the mother of the plaintiffs no.1, 5, 6 and 7 and mother in law of the plaintiff no.2 and grand mother of plaintiffs no.3 & 4 was the actual owner of the suit property and she let out the first floor of the property to one Sh. Mahinder Singh who happens to be the deceased husband of defendant no.1 and father of defendants no.2 & 3 vide rent agreement dt.19/09/2005 whereby the monthly rent was fixed at Rs.3,500/-.

It is further stated that the said lessee Sh. Mahinder Singh did not vacate the tenanted premises/suit property and in the month of September, 2006 and he requested the plaintiffs for extension of tenancy on a month to month basis and it was agreed that Sh. Mahinder Singh shall pay a rent of Rs.4,000/- per month. It is stated that after the demise of Sh. Mahinder Singh, the defendants have failed to pay the rent from 01/08/2009 and since thereafter as the plaintiffs were not interested in keeping the defendants as their tenant any more and vide legal notice dt.07/06/2011, the tenancy was terminated from the midnight of 30/06/2011. It is stated that another suit was filed by plaintiff

no.7 bearing Suit No.608445/2016 before Ld. ADJ, Tis Hazari Court, Delhi which was, however, dismissed in default.

It is further stated that plaintiffs have waived off the rent of the suit property from August, 2009 to September, 20016 and the defendants are only required to pay rent of Rs.96,000/- from October, 2016 to October, 2018. It is stated that through a legal notice dt.15/10/2018, the plaintiffs revoked and terminated the tenancy of the defendants from the midnight of 31/10/2018 and since thereafter they are in unauthorized and illegal possession of the suit property. It is stated that despite service of the legal notice the defendants have not handed over the vacant possession and have not paid any rent or damages to the plaintiffs which had led to filing of the present case.

2. Summons were issued to the defendants, however, as there was a report of refusal the defendants were proceeded ex-parte vide order dt.27/02/2019 and in the same order, the interim application u/o XXXIX R.1 & 2 CPC of the plaintiffs was allowed and the defendants were restrained from creating any third party interest in the suit property and from raising any kind of unauthorized construction till the final disposal of the suit.

3. Ex-parte evidence has been led, arguments have been heard & record has been carefully perused.

4. In ex-parte evidence in order to prove their case the plaintiffs got examined Sh. Vijay Kumar Gupta as PW-1 who tendered his evidence by way of affidavit Ex. PW-1/X and reiterated and reaffirmed the averments mentioned in the plaint.

Certain documents were also exhibited which are as under :-

Identification Mark	Description
Ex. PW-1/A	Copy of registered sale deed dt.21/07/1956 alongwith English translation.
Mark-A	Copy of electricity bill dt.04/10/2018 in favour of Smt. Ram Kaur.
Ex. PW-1/C	Copy of water bill dt.26/05/2017 in favour of Smt. Ram Kaur.
Ex. PW-1/D	Property tax bill issued by MCD in favour of Smt. Ram Kaur.
Mark-B	Sale deed dt.19/04/1968.
Ex. PW-1/F	Death certificate of Smt. Ram Kaur.
Ex. PW-1/G	Special Power Attorney in favour of Sh. Vijay Kumar Gupta dt.22/11/2018.
Ex. PW-1/H	Copy of Aadhaar Card of Sh. Vijay Kumar Gupta.
Ex. PW-1/I	Rent agreement dt.19/09/2005 between Sh. Mahinder Singh and Smt. Ram Kaur.
Mark-C	Order dt.03/10/2016 of Ld. ADJ-03, West in Suit No.8445/2016.
Ex. PW-1/K	Legal notice dt.15/10/2018 issued on behalf of the plaintiff.
Ex. PW-1/L	Speed post receipts.
Ex. PW-1/M	Undelivered notices in cover.
Ex. PW-1/N	Site plan.

5. Thereafter, evidence of PW-2 Sh. Manoj Sharma, JSA from Deputy Assessor and Collector, Karol Bagh Zone was led and he stated that he has brought the summoned record i.e. assessment form of property bearing No.2253/C-2 w.e.f. 01/04/1968. He further stated that as per the record the suit property from 01/04/1968 till date is assessed in favour of Smt. Ram Kaur, W/o Sh. D.R. Gupta and has not been mutated in favour of anyone else. The

attested copy of Form-A was placed on record as Ex. PW-2/1.

Thereafter, evidence was closed by plaintiff no.1 vide his statement on 03/09/2019.

6. It is pertinent to note that vide statement recorded on 03/09/2019 plaintiff no.1 also dropped the relief Clause – (b to d) from the prayer and only pressed for the relief of possession i.e. relief Clause – (a) and for the relief of permanent injunction as prayed for in relief Clause – (e).

Therefore, the present suit only remains for the prayer of possession and permanent injunction. The defendants have already proceeded ex-parte in the present suit and, therefore, there is no defence to the present suit. The testimony of plaintiffs' witnesses remains unchallenged and unrebutted and I find no reason to disbelieve the same. The documents have been duly proved as per law. The plaintiffs have proved the service of legal notice and as the same was not replied, an adverse inference may safely be drawn against the defendants. The suit has been proved on the scale of preponderance of probabilities in view of the documents placed by the Plaintiffs on record.

The plaintiffs have been sufficiently able to establish relationship between the parties from the evidence which is led on record. It is quite apparent that after the service of legal notice Ex. PW-1/K the defendants had become unauthorized occupant in the property and, therefore, the plaintiffs are entitled to possession of the first floor of the suit property.

Accordingly, the suit is decreed in favour of plaintiffs and against the defendants and following reliefs are granted to the plaintiffs: -


(a) A decree of possession in favour of plaintiffs and against the defendants thereby directing the defendants to handover the peaceful, physical and vacant possession of the first floor of the suit premises i.e. property bearing No.2253/C-2, Mandir Wali Gali, Shadipur, Patel Nagar, New Delhi –

110008, as shown in red colour in the site plan.

(b) A decree of permanent and perpetual injunction in favour of plaintiffs and against the defendants thereby permanently restraining the defendants, their agents, servants, assigns, etc. from parting with the possession of the suit property to any third party and also from making any kind of alteration or unauthorized construction.

(c) Costs of the suit.

Decree sheet be prepared accordingly. File be consigned to record room after completing the necessary formalities.

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(BHARAT AGGARWAL)

Civil Judge, Delhi (West)-02

Pronounced, through video conferencing through Cisco Webex Application, on 23/07/2020.

**IN THE COURT OF SH. BHARAT AGGARWAL, CIVIL
JUDGE-02 (WEST), TIS HAZARI COURT, DELHI**

SUIT NO.1535/2018

Vijay Kumar Gupta & Others

Plaintiffs

Versus

Smt. Kanta Panesar & Others

Defendants

THROUGH CISCO WEBEX VIDEO CONFERENCING

Date:23/07/2020 (2.15 P.M to 2.40 P.M)

File is taken up on an application filed by the Plaintiffs u/s 151 CPC for hearing of ex-parte final arguments

Present:- Sh. Digvijay Singh, Ld. Counsel for plaintiffs. (Mobile No.9313563111, 9312563111 & E-mail ID – voxvobislawfirm@yahoo.com)

In the application inter alia, it is stated that the Plaintiffs are continuously suffering as the Defendants are enjoying the property without making any payment. For the reasons stated in the application and in the interest of justice, application is allowed. Arguments heard.

Vide separate ex-parte judgment announced today through video conferencing through Cisco Webex Application, the suit of the plaintiffs has been decreed with costs of the suit.

Decree sheet be prepared accordingly. File be consigned to record room after completing the necessary formalities.

A copy of this order be sent to the Ld. Counsel for plaintiffs and also to the filing branch Tis Hazari Court, Delhi for uploading the same on the official website of the District Courts.

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C.J-02, West, THC, Delhi

dt.23/07/2020